

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

WILLIAM PENN SCHOOL
DISTRICT, *et al.*,

Petitioners,

v.

PENNSYLVANIA DEPARTMENT
OF EDUCATION, *et al.*,

Respondents.

No. 587 MD 2014

Appendix B

Part 1

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Debates of the Convention to Amend the Constitution of Pennsylvania (1873)

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*Debates of the Convention to Amend the
Constitution of Pennsylvania (1873) – Volume 2*

DEBATES
OF THE
CONVENTION

TO AMEND THE
CONSTITUTION OF PENNSYLVANIA:

CONVENED AT
HARRISBURG, NOVEMBER 12, 1872;

ADJOURNED NOVEMBER 27,

TO MEET AT
PHILADELPHIA, JANUARY 7, 1873.

VOL. II.

HARRISBURG:
BENJAMIN SINGERLY, STATE PRINTER,
1873.

DEBATES

OF THE

Convention to Amend the Constitution.

FORTY-SIXTH DAY.

TUESDAY, *February 18, 1873.*

The Convention was called to order at seven minutes after ten o'clock A. M. by the President.

Prayer was offered by the Rev. J. W. Curry.

The Journal of yesterday was read and approved.

THE CENTENNIAL EXPOSITION.

The PRESIDENT laid before the Convention the following communication :

INTERNATIONAL EXHIBITION PHILADELPHIA—1876.

OFFICE CENTENNIAL COMMISSION, }
No. 904 WALNUT STREET, }
PHILADELPHIA, *February 17, 1873.* }

Hon. WM. M. MEREDITH,

President Constitutional Convention :

SIR :—The joint committees having in charge the arrangements for Pennsylvania's grand mass convention to provide for the celebration of the Centennial Anniversary of American Independence, on the twenty-second inst., at the Academy of Music, respectfully ask your honorable body to be present on that occasion. Trusting that you will send us an early reply,

We are respectfully yours,

D. J. MORRELL,
ASA PACKER,

Commissioners for Pennsylvania.

Mr. J. PRICE WETHERILL. Mr. President: I move the invitation be accepted, which was agreed to.

THE SOCIAL SCIENCE ASSOCIATION.

The PRESIDENT also laid before the Convention the following communication :

No. 532 WALNUT STREET, }
February 17, 1873. }

Hon. WM. M. MEREDITH,

President Constitutional Convention :

DEAR SIR :—I am instructed by the executive committee of the Philadelphia Social Science association to invite the Constitutional Convention to attend the next stated meeting of the association, on Thursday evening, February 20, at eight o'clock, when Mr. Sydney Biddle will read a paper on the work of the Constitutional Convention, at the Mercantile Library hall, Tenth street, between Market and Chestnut.

Very respectfully, &c.,

J. G. ROSENGARTEN,
Secretary.

Mr. NEWLIN. Mr. President: I move that the invitation be accepted, which was agreed to.

WRITS OF ERROR.

The PRESIDENT laid before the Convention a communication from the prothonotary of Erie county, which was referred to the Committee on Judiciary.

PROHIBITION.

Mr. CARTER presented a petition from two hundred citizens of Lancaster county, in favor of a clause in the Constitution prohibiting the manufacture and sale of

intoxicating liquors, which was referred to the Committee on Legislation.

Mr. ANDREWS presented a similar petition, which, on motion of that gentleman, was referred to the Committee on Judiciary.

NEW COUNTIES.

Mr. PUGHE presented a memorial from certain citizens of Luzerne county, relative to the division of said county, which was referred to the Committee on Counties.

PROHIBITION.

Mr. LEAR presented a memorial from the monthly meeting of Friends, asking for a Constitutional provision against traffic in intoxicating liquors, which was referred to the Committee on Legislation.

MILITARY SERVICE.

Mr. LEAR also presented a petition from the same meeting, asking that its members be excluded from taxation for military purposes, which was referred to the Committee on the Militia.

Mr. NEWLIN offered the following resolution, which was referred to the Committee on the Executive:

Resolved, That the principal officer of in each of the Executive departments shall have the privilege of discussing in either House any measure pertaining to his department.

THE FORM OF THE BALLOT.

The Convention then resolved itself into committee of the whole, Mr. Lawrence in the chair, for the purpose of further considering the article reported from the Committee on Suffrage.

The CHAIRMAN. The question is upon the amendment to the second section, offered by the gentleman from Montgomery, (Mr. Boyd.) The amendment will be read.

The CLERK read: "Strike out all after 'section' and insert as follows: 'All elections shall be by ballot, except those by persons in their representative capacity, who shall vote *viva voce*, but in any city, borough, or town containing a population of at least fifty thousand inhabitants, the ballots shall be numbered by the election officers, when received, and each shall have endorsed upon it the name of the elector, written either by himself or by another citizen of the district, who shall not be an election officer.'"

Mr. BOYD. Mr. Chairman: I desire to withdraw that amendment, and substitute the following:

The CLERK read: "All elections shall be by ballot, which shall be numbered by the election officers, when received, but in any city, borough, or town containing a population of at least fifty thousand inhabitants, the ballots shall be numbered by the election officers, when received, and each shall have endorsed upon it the name of the elector, written either by himself, or by another citizen of the district, who shall not be an election officer; and all persons voting in a representative capacity shall vote *viva voce*."

Mr. BOYD. Mr. Chairman: The substitute that I have offered is the same as the original one that I offered, except that the ballots throughout the State shall be numbered. The reason that I have so modified it is because that arrangement will, in no wise, interfere with the convenience or inconvenience of the voter. The duty of numbering is imposed upon the election officers. I can see no objection to that, because, throughout the State, it may be the means of preventing fraud, and if fraud is perpetrated, it will enable an investigation into the regularity of the election, to ascertain by these numbers what otherwise might not be ascertained. Therefore I see no objection to it throughout the State. As I said before, inasmuch as election officers are to perform a duty, but when you come to the cities of a population of fifty thousand and upwards, it is provided that the ballots shall also have the names of the voters endorsed upon them.

Mr. LANDIS. Mr. Chairman: I propose to amend the amendment of the gentleman from Montgomery (Mr. Boyd.)

The CLERK read: "Strike out the words 'containing a population of at least fifty thousand inhabitants.'"

Mr. LANDIS. Mr. Chairman: I have only a word to say, and I will preface what I have to say with the statement that I entirely sympathize with every effort to inaugurate reform in the matter of conducting our elections. I believe, sir, that I am prepared to go as far as the farthest. There can be scarcely any one upon the floor of this House who would give his entire acquiescence to the proposition as submitted originally by the Committee on Suffrage and Elections as cheerfully as myself, if I did not deem that, in many respects, in certain portions of the State, it would be entirely impracticable. I believe the proposition is a good one, but I believe it is one that would be better adapted to the large cities and the large

towns of the State than the rural districts. Hence it is that I submit the amendment to strike out the population qualification, and make the proposition of the committee to apply entirely to the incorporated boroughs and cities of the Commonwealth, and leave the election laws of the State, as regards the rural districts, to stand in future as they have stood in the past.

Now, sir, I very well understand that these gentlemen who represent large towns and cities have felt the necessity for reform. There can be no doubt that they have felt it, but in the rural districts we have not felt it. Where the elections are conducted in the rural districts, they are generally held in school houses.—These school houses are isolated, and the voters come there, perhaps, from widely separated farm houses, and other places of abode. They come there alone, and they will find no facilities for complying with the requirements of the section. They may find no person there, if they are unable to write themselves, who can place their names and numbers upon the tickets, and whether any one may be able to write or not, no elector may be found to attest his vote. Election officers are forbidden to do so, and they will be thrown upon their own resources, and may not be able to comply with the requirements of the section.

In addition to that a majority of the people who live in the rural districts are the laboring and toiling population. Their days are spent in labor, and they do not go to the polls until after dark, and, in many cases, they will find it difficult to comply with the provisions of this proposed section. There will be no facilities furnished, and perhaps no adjacent houses or offices, and they will be utterly unable, in many cases, to vote; so that I fear that the effect of this proposition, instead of tending to effectuate reform, will operate to the defeat of the Constitution, for, by reason of its insertion, it may make it unpopular with the masses.

In view, therefore, of these difficulties, I have proposed this amendment. The gentleman upon the other side may reply that there may be a want of symmetry and uniformity in the Constitution if this amendment is adopted. They may say that it is adapted to the large cities, and should adapt itself to the country. I might pursue the same line of argument, and say that the present Constitution is adapted to the State at large, and therefore it ought to be adapted to the cities.

If they say it would largely prevent fraudulent votes in the cities, then I might urge it would tend greatly to prevent legal votes in the country districts. With a desire, therefore, of obviating the difficulties, as well as providing for the necessities of the case, and with the hope that conflicting views may be reconciled, I offer this amendment, believing that we ought to embody such a provision in the Constitution as will adapt itself to all portions of the State, although I am opposed, upon general principles, to the enactment or embodiment of special provisions in our Constitution.

I am very well aware that the tendency of this Convention is to adopt this clause, and they may do it, but I desire, before that is done, to make a stand here in behalf of the people who live in the rural districts, who do not like this provision, and who do not, I believe, so far as they are concerned, wish to have it embodied in the Constitution. I will therefore call upon those who are its special advocates to be careful before they conclude to adopt it, without making any effort to adapt it to the country districts. They may defeat the very object for which they are laboring—the accomplishment of reform.

MR. HOPKINS. Mr. Chairman: I have, in common, with many others of this committee, been a quiet listener during the two weeks that this subject has been under consideration. I will not now propose to enter into anything like an elaborate argument, but simply to refer, very briefly, to what has been said by one or two gentlemen during the progress of the discussion. The gentleman from Erie, (Mr. Walker,) for whom, personally, I have great respect, asked, yesterday, whether "our present Constitution regulating elections had proved a failure?" And he repeated the question, and, as it seemed, in rather a defiant tone, as much as to say, who dare assert that it has? I will take the affirmative of this proposition and say here, and now, that, so far as securing an honest expression of the the popular will is concerned, in some locations it has proved not only an utter "failure," but a miserable farce. Within the past few years it is notorious that the most wicked and stupendous frauds have been perpetrated in open day; the voice of the people has been ignored, and men "counted in" who had been repudiated by the honest voters of the Commonwealth, and others "counted out" who had received a clear majority of their suffrages.

These frauds have become so infamous that they are a stench in the nostrils of all decent men, without regard to party affinities. This committee need not be told that it is believed, by many of the best informed men of the State, if not, indeed, by a majority of the people, that more than one Governor, to say nothing of minor officers, has been inaugurated who did not receive a majority of the honest votes cast, but whose claim to the office was based on the doings of the infamous "ballot-box stuffer," perjured "repeater" and forged certificates of election officers. And, in the face of this deep-seated conviction on the minds of hundreds of thousands of the honest people of this Commonwealth, we are asked, with an air of triumph: "Has our present Constitution proved a failure?" It is true, the estimable gentleman from Philadelphia (Mr. Knight) admitted that there had "been some slight irregularities in a few of the precincts in the city."

It may seem, to some gentlemen, a very small matter to have these irregularities practiced, notwithstanding they may be and have been the means of setting at naught the expressed will of six or seven hundred thousand honest voters, by taking from one candidate for Governor a few thousand votes and giving them to his opponent, and thus defeat the will of the people in the balance of the State. But those of us who come from the rural districts regard it as a very important matter, and one which calls loudly for redress; and, for one, I am inclined to apply an adequate remedy, if that be possible. The section before us may not accomplish all that is desirable, but seems to be a step in the right direction. I would prefer that the proposed change should be confined to cities, as I believe there is not much necessity for it in the country; and it must be confessed that the writing of the name of the voter on his ticket would be attended with considerable inconvenience. But rather than not have it required in the cities I would be willing to vote for its general application. I will go further; I would say, in full view of my responsibility as a delegate of this Convention, if I must choose between having the elections conducted as they have been for the past few years, especially in Philadelphia, or abolishing them altogether, I would prefer the latter; and whenever I become convinced that nothing can be done here for the protection of the people against those

Heaven-daring frauds, then I will vote for a final adjournment any hour; for the idea of a candidate for a high office, Governor, for example, receiving a majority of the legal votes cast, and then, by sheer chicanery, the office be awarded to another, renders the election a most solemn mockery.

To my mind, the worst feature in this deplorable state of affairs is the apparent indifference with which men of high position in society, socially, morally and religiously, seem to look upon these enormities.

When I reflect upon this demoralized state of public sentiment I tremble for my country, and sometimes mentally exclaim: "How long! Oh, Lord! how long shall we be compelled to endure this system of fraud and corruption?"

Mr. CHARLES A. BLACK. Mr. Chairman: I was willing to wait until the gentleman who had the matter especially in charge, should be heard, and then, perhaps, cast a silent vote upon this section. And even now I shall do little more than give such vote, without indicating what shall be my course in Convention upon second reading. I shall say now, however, that I am willing for the friends of this proposition to get it out of committee of the whole, as reported by the Committee on Suffrage, Election and Representation. I think this much, at least, is due to them. They have advocated the proposition so gallantly, and ably, that so far as my vote is concerned, I am willing to assist them in getting the section on second reading. Nor can I see how this concession will at all affect the ultimate fate of the proposition. If we vote it down now, it will of course be submitted again, upon second reading. We cannot, if we so desired, escape a direct vote upon it, and by suffering it to pass, we get it through one reading, which may be regarded as doing a good deal towards substantial progress. Gentlemen who regard the defeat of the section in committee of the whole as a matter of such great importance should bear in mind the length of time we have been occupied upon its consideration. Doubtless the debate, or a greater portion of it, will be duplicated on second reading, and if this is to be the case, it certainly will be a matter of economy of time, at least, to suffer the section to pass as it is. I shall so vote, without regarding myself as bound to vote the same way upon the second or final reading. As to the amendment of the gentleman from

Montgomery, (Mr. Boyd,) I do not regard it with much favor. It proposes to confine the operation of the section to cities containing a certain amount of population. I am opposed to the principle of the amendment. If the report of the committee is right, and contains a new and valuable improvement upon the present Constitution, it should be adopted and made applicable to the entire State. It is a species of sectional legislation, to which I am opposed. One purpose of this Convention will be to provide for general laws in all cases possible, and it really seems to me that we set a bad example by proposing to incorporate in the fundamental law the very thing we so much reprobate. I think the plan proposed by the committee should be general or not at all. I can boast that there is, in my opinion, but little fraudulent voting in Fayette and Greene counties—the district I in part represent. Certainly not as much, if the charges on this floor be true, as other sections of the State complain of. But whether there be or not, the rule—if a sound one—should be as applicable to these counties as to other parts of the State. I shall, therefore, vote against this amendment, for the reasons I have given.

It contains in my judgment a false principle, and should not be adopted. Then upon the section itself, as reported by the committee, I shall do more than this. I shall vote for it, for the reasons already stated, that is, to get the report on second reading, without any indication whatever, as to what shall be my course upon second reading in Convention. This much, I repeat, is due to the gentlemen who have so well and so thoughtfully considered this matter, I must say this much, however, that notwithstanding they have so well maintained their position, and so ably defended this important proposition, my judgment has not yet been convinced as to the propriety of the measure. I am not by any means sure that this plan is the cure for the evils complained of. I apprehend that they tell us what is true about the frauds in this city. Now, without being an apologist of fraud at all, but wishing to extirpate it by all practicable means, I will say this, that if we read history aright, fraud has always existed, especially after such great civil convulsions as we have had in this country. Whoever reads, for instance, the history of England, especially after the restoration and settlement, will be startled at the great frauds that

existed in that country, always, in my opinion, the inevitable result of the convulsion and disturbance of a great civil war. It would be a curious, if not very profitable, inquiry to trace the parallel between the developments of fraud and corruption in that country at that period, and in ours at this time. We would find the same enormous abuses in high places, but with the striking difference, however, that in England, even so long ago as the great settlement, public officers were punished sharply and promptly for corruption. Members of Parliament, and even a speaker, were expelled for bribery, and government officials in high places were impeached and punished for the same offence. Here, under a more advanced civilization, fraud and corruption exist as extensively and notoriously as there; but we do not punish.

But, Mr. Chairman, I did not rise to debate this question. I do not wish to anticipate my position, nor the arguments I may be constrained to use hereafter. I only desire to say now that however deeply I may be impressed with the necessity of some remedy for the evils that doubtless exist, I cannot, just now, see how this proposed one will answer the purpose. It is admitted upon all sides, and without distinction of party, that the most enormous frauds have been perpetrated in the elections in this city; that repeating and personating are openly and systematically pursued; that the tickets of honest voters are destroyed before they pass from the hands of the officer to the ballot-boxes; that the boxes themselves are stuffed with spurious ballots; that they are clandestinely opened after the close of the elections and the tickets destroyed; that the lists and tally papers have been taken from the boxes and destroyed, or so emasculated as to change the result of the poll; indeed it is charged and believed that the result of a great election was entirely changed by the frauds in this city. Now it may not be surprising that this fraud exists, but it is certainly matter of astonishment that it exists in such a city as Philadelphia. Can it be that this state of things can long continue in community famed for its refinement, its wealth, its culture, its admitted high character for religion and morality? Surely a people like this can, by a spontaneous effort, correct this evil, great as it is, without asking us to impose upon the other portions of the State a remedy of very doubtful efficacy or expediency. In-

stead of standing back, as if afraid of these desperadoes, let the press, the great organ of the people, the pulpit and every public official speak out, independent of party or party influences, and most surely the trouble can be remedied. To my mind it is with the people themselves, or at least with the aid of such remedies as we may prudently adopt, to cure these evils. If I thought it were not; if no other plan could be devised than this, to save the purity of the elective franchise; to arrest the tide of fraud and corruption which, if left unchecked, may, ere long, subvert the very principles of our republican form of government, then I would support the proposition, notwithstanding the formidable impediment it would, in my judgment, interpose against the free exercise of the right of suffrage. Upon such contingency I would not pause to inquire whether or not the measure would be popular, believing, as I do, that the people themselves would freely make the sacrifice if they believed it necessary to the preservation of our free institutions. We should not, I admit, look to the mere popularity of a proposition in framing an organic law for the people, but exercise the best of our own judgment under the responsibility we have assumed. Having done this, it will then be for the people themselves to ratify or reject the result of our labors; but, in view of such action on their part, it would, in my opinion, be prudent at least, if not a duty, to obtain some expression, either from the press or the people, as to the popular sentiment upon this matter. Unquestionably it would impose a great burden upon the voters in the counties where the population is scattered; indeed, it would be burdensome everywhere, but especially where we have least right to impose it—in counties where fraudulent voting has never been heard of, at least to any extent. It is a political axiom that "the country is best governed which is governed the least;" and if this be so it certainly would seem to follow that in providing a fundamental law it should be so adjusted as to produce the desired result with the least burden or inconvenience. The aim here is to prevent fraud and corruption in the exercise of the elective franchise; and, as already intimated, I am not at all convinced that some other plan cannot be devised which would be less burdensome to the people. And whilst consenting to assist in taking the section out of committee, I shall certainly reserve my right

to oppose and vote against it in Convention, unless I can be convinced that it presents the only adequate remedy, or receive such expression from the people as would indicate a willingness on their part to make the sacrifice. I have had no expression whatever from my own district. Gentlemen from adjoining districts seem to think such sacrifice would be freely made for the public good.

Gentlemen seem to regard the defeat of this proposition as a fatal blow at reform, and almost despair of these evils being ever cured. I have no such fears. I have an abiding, unalterable faith in the people. It was the creed of a great American statesman, that "their sober second thought is never wrong," and upon that belief I am willing to risk the future of this country. With such judicious and popular aids, as I feel assured this Convention will furnish, the people themselves will arrest the tide of corruption and hurl the plunderers from power. I will, then, Mr. Chairman, vote against the amendment of the gentleman from Montgomery (Mr. Boyd.) I think it asserts a false principle, and is withal a grain cowardly in its nature. I shall then vote for the section, for the purpose I have already indicated, without, however, compromising my purpose to oppose it in Convention, unless I am satisfied that the plan proposed is the only remedy the friends of reform can devise.

Mr. CORSON. Mr. Chairman: I do not exactly know who is entitled to the credit of the invention which the committee has given to us, but I do not find in any Constitution in the world any such proposition as this which we are now discussing. As an improvement upon the report of that committee, I would support, of course, the amendment proposed by my colleague (Mr. Boyd.) I do not think, however, that the amendment proposed by the gentleman from Blair (Mr. Landis) is any improvement on the amendment proposed by Mr. Boyd; but I understand my colleague prepared this amendment because the distinguished gentleman from Philadelphia (Mr. Gowen) asserted that its citizens looked to the people of the country to save the city, remembering, I suppose, that "God made the country and man made the town." We are prepared by this amendment to save the city, and also to save ourselves from all the disgrace of a defeat before the people, for I firmly believe if this proposition, as it comes from the hands of this

committee, should be adopted, that the Constitution will fall unless that proposition could be separately submitted to the people and separately voted upon. This can be done, of course, but I suppose every man who is a member of this Convention would like to see the whole Constitution, as it shall fall from our hands, go out before the people as a whole and be accepted as a whole. If we are wise in what we prepare to submit to the people, it will be adopted intact, but no such proposition as is now proposed to be incorporated in the Constitution will ever purge the city of Philadelphia from its corruption—nothing but fire and brimstone, rained down from Heaven, will ever do it, and its citizens will either have to submit or move out in the country. Let them go out to Montgomery county or some other pure spot where election corruptions are unknown.

I infinitely prefer the principle enunciated by the gentleman *most* at large from Philadelphia, (Mr. Woodward,) in regard to *viva voce* voting. It is infinitely preferable, and I remember well the words of the Senator from Missouri, (Colonel Benton,) delivered in the Senate of the United States, nearly forty years ago, and which I read when a mere boy, when he described the sublime spectacle of a Roman citizen advancing to the polls and proclaiming: "I vote for Cato to be Consul." The Athenian—"I vote for Aristides to be Archon." The Theban—"I vote for Pelopidas to be Beotrach," and the Lacedæmonian—"I vote for Leonidas to be first of the Ephori;" and why may not an American citizen go up to the polls and proclaim, "I vote for Thomas Jefferson to be President of the United States."

Are the aged men, the old Quakers of Montgomery county, who have been voting for the last fifty years, to be compelled to stand up at the polls, in the bleak winds and snows of February and write their names upon their tickets? I will never submit to such a proposition as that, and I know the people of Pennsylvania will never submit to it. Rather than establish such a provision as this, let us plant a school house on every hill and at all the polls in Pennsylvania. What is wanted in Philadelphia, and in the State, are Quaker meeting houses on every corner of the streets. It would be better to build these, and teach men that they must be pure in all their transactions. What does all this revelation about the poor misera-

ble rounders and repeaters amount to? Are they any worse in their rush for money than the men who jostle each other in the stock gambling rooms in this city, and who, in their mad frenzy, fight over stocks that have no real existence? They are not a bit worse, and they are only one set of scoundrels that ought to be rooted out in this country. I do not think any particular proposition like this is required to correct one particular evil. God Almighty has never descended to the earth every year to change his ten commandments to correct some new evil which has been discovered. We need some broad, fundamental process. I would have the Constitution concise and to the point, but I would leave general principles to the Legislature. Corruption after corruption has been charged upon the Legislature, but henceforth its sessions will be held every two years, and its members will come fresh from the people, and the people will have a better opportunity to correct the corruption if it should exist. We must have a Legislature. It is the means whereby the will of the people is expressed, and I will say that the two gentlemen who represent Montgomery county in the Pennsylvania Legislature are as pure and incorruptible as any two delegates in this Convention. I will say, further, that although one of these gentlemen represents the party to which I am attached and the other the opposite party, and our Senator from West Chester, yet representing, as they do, the counties of Delaware, Montgomery and Chester, they are as pure as any three men upon this floor. So much, then, for our Legislature, and so much for the proposition which is now pending. I hope that not only the amendments, but that the proposition, as it came from the committee, will be voted down, and that we shall have nothing but the good old secret ballot, by which a man can go and vote in secret just as he goes to his closet to pray in secret, that he may be rewarded openly.

Mr. MACCONNELL. Mr. Chairman: I only propose detaining the Convention a very few moments, and in rising I do not propose to say that I am not going to make a speech, and then make a lengthy one. It has seemed to be a very important matter with many of the members upon this floor, that they should define their position in regard to this question, in order that their constituents should understand the position that they hold. I do not think it is very important for me to do

this, because I am very certain my constituents know exactly where to find me on a question of this kind. Nevertheless, in order to make assurance doubly sure, I will say that I am opposed to this whole section, as reported by the committee. I shall vote against it in committee of the whole, and I shall vote against it in Convention. During this discussion the frauds which have been perpetrated in Philadelphia have constituted the principal topic. It has been Philadelphia all the time, and if the descriptions which have been made by some of the representatives from the city, concerning its political affairs and election matters, are true, I think its inhabitants are not only unfit to vote, but that the ballot should be taken away from them entirely. If the representations which have been made upon this floor are correct, the city must certainly be exceedingly corrupt, polluted and vile, and I think the only thing that it is fit for would be to make a penal settlement of it, where all the convicts in the State would be sent, and where they would be governed by officers appointed by the State. I would then build a stone wall around it, and I would not permit any Philadelphian to go outside of it, unless he was provided with a passport. Various representations have been made upon this floor in regard to the election that was held in this city on the second Tuesday of last October. It seems that a lot of officers were elected, part of whom settled on Chestnut street, and part came down here to Spruce street. It seems that the part that settled on Chestnut street are a miserable set of rogues, but the gentlemen who came down here to Spruce street are all pure, upright and honest. Now I understand that every district outside of the city of Philadelphia is to be considered in a rural sense. I know that we are very rude in my portion of the State, but we have got a notion that chickens of the same brood are very apt to be alike, and that twin brothers, especially, are apt to have a family resemblance. I do not believe—with all respect to some of the gentlemen in this Convention—that any necessity exists for all the excitement which has been created in the Convention about the dishonesty of the city of Philadelphia. I believe there are enough honest people in Philadelphia to put down all this dishonesty if it really exists. I believe the honesty of the people of Philadelphia is rated here entirely too low, but I think that they are indifferent in a great extent

to matters which certainly ought to occupy a large share of their attention. I believe there are more than seven-eighths of the people in Philadelphia who are honest, but that they are too much absorbed in the various pursuits of life to make an effort to put down this corruption. If the seven-eighths of the honest community cannot eradicate the corruptness of the remaining one-eighth, why I say God help them. Now, Mr. Chairman, if it would not be considered impertinent in a member from a rural district to make a suggestion to the representatives of the city of Philadelphia, I would suggest, very humbly, that we have heard just about enough of the corruptions in this city. In speaking for the district which I have the honor to represent, I know that our citizens do not require any such provision, and that it is not needed in any of the rural districts of the State.

We have been debating this thing for several days, and the echo of it has come back from my district to me, and that echo is this, sir: That if you will put it into the Constitution and send it to the people of Allegheny county to vote on it, they will vote against it in a mass. They will not divide on it at all. And more than that, the echo is, that if it is sent to them in the whole Constitution to be voted upon, that, good as the Constitution may be, they will vote it down, rather than have this saddled on them.

Now, sir, I am opposed to the whole thing. I will vote against it, as I said, here and every place where I may meet it.

Mr. M'ALLISTER. Mr. Chairman: I rise for the purpose of giving a very few brief reasons why I think neither of these amendments should be adopted. I shall not go into a general discussion. I had supposed that we had made some progress yesterday, and that this morning we had under consideration propositions to which the debate was to be confined.

I am opposed to the adoption of either of these amendments, because it is an inauguration in the Constitution itself of a species of local legislation—special legislation, if you please—against which the people of Pennsylvania have cried out, almost in mass. We have acted against the principle, so far, in this Convention.

Mr. NILES. Mr. Chairman: I desire to ask the gentleman a question. Have not the Committee on Suffrage, Election and Representation themselves introduced special legislation in this report, when, in the last section, they have directed that

cities having more than one hundred thousand inhabitants shall be divided by the courts of common pleas.

Mr. M'ALLISTER. Mr. Chairman: That is not special legislation, and if the gentleman will wait until we come to the discussion of that subject I will be pleased to answer his question. But, I say here, it is not, in my mind, included in the principle against which I now protest, and I think that the gentleman will be satisfied of that when we come to argue that question.

For the reason given, then, I am opposed to either of these amendments. I cannot appreciate at all the difficulties suggested by my friend from Blair (Mr. Landis.) I have never seen an election district in Pennsylvania in which there was not pen and ink and paper, or, rather, pen and ink, for that is all that is necessary. The paper is furnished on the ballot itself, and only pen and ink will be required. The difficulties are imaginary. I have never seen at any election poll a lack of political servants. Not one man, but twenty men can be found to aid every voter on either side in getting in his ballot, so that these objections are entirely unfounded. But there is another objection to the proposed amendment which has not yet been mentioned. It is this: These ballots will be prepared in view to such endorsement as the Legislature in their wisdom shall prescribe. The ballot will be printed with that view, so as to afford the necessary blanks at the proper places for the endorsement of the name and the attestation. Now these ballots are prepared often in Philadelphia or Harrisburg, and sent out through the State; or, if not, they are prepared in the county towns and sent out into the district. Now mark the confusion which would arise in having two classes of ballots, one for an endorsement and the other without an endorsement. It would lead to difficulty and confusion in the distribution of the ballots, and would result in evil, and only evil, with no corresponding beneficial result. I am therefore opposed to either of these amendments, and hope they will be voted down.

Mr. J. W. F. WHITE. Mr. Chairman: I should not have troubled the Convention with any further remarks, but for the amendment now before the committee. It is proposed now to exempt the greater portion of the State from requiring the electors to write their names on their ballots, and apply it only to the large cities, or boroughs and villages of

fifty thousand inhabitants. That embraces, sir, the city of Pittsburg, from which I come, and as one of the delegates from Allegheny county, I protest against this Convention, and I especially protest against the delegates from Philadelphia forcing such a provision upon the city of Pittsburg.

Mr. STANTON. Mr. Chairman: The amendment was moved by the gentleman from Montgomery (Mr. Boyd.)

Mr. J. W. F. WHITE. Mr. Chairman: I am aware that the amendment was offered by the gentleman from Montgomery, but although moved by him, yet it is known that this is advocated mainly for the city of Philadelphia.

Mr. STANTON. Mr. Chairman: I would like the gentleman to know that I am from Philadelphia, and I am utterly opposed to it.

Mr. J. W. F. WHITE. Mr. Chairman: I am glad to find many gentlemen coming from the city of Philadelphia opposed to this measure. But we have heard from other delegates from the city of Philadelphia that this is necessary for their salvation, and an appeal was made yesterday, if I understand the report in the newspapers, by a distinguished delegate from the city of Philadelphia, to the country members to come up and save them, for they could not save themselves. They were a little better than Sodom and Gomorrah. They have a few more good men here than those cities had, but I understand they cannot save themselves, and the country members are earnestly entreated to come forward and save Philadelphia.

Now, sir, coming from the western part of the State, from the second city of the State, I protest against such a thing being applied to Pittsburg; and I agree with my colleague, (Mr. MacConnell,) that if you force into your Constitution the amendments proposed and now before the committee, our county will not sustain such a Constitution. Why, sir, I venture this assertion, that not one man in the city of Philadelphia ever dreamed that such a proposition was to come before this Convention, until it was introduced here. Who ever heard tell before of a provision in the Constitution that the elector's name should be written on his ballot? It is a thing unheard of. It is new under the sun. Yet we are made believe here, or the effort is made to convince us, that this Convention was called for this very purpose; that the great

body of the pure men of Philadelphia, that have been at the mercy of repeaters and scoundrels for years, called this Convention in order to compel the voters to write their names upon their ballots. Why, sir, look at the vote in this city on calling this Convention. Not one out of six of the voters of Philadelphia voted on the question of calling a Constitutional Convention. Not one in six of the voters here voted on the question at all. Whether there should be a Convention to revise the Constitution or not, was not a subject of any interest in this city.

Mr. D. W. PATTERSON. Only seventeen thousand out of one hundred thousand voters voted on the question.

Mr. J. W. F. WHITE. Only seventeen thousand voters out of one hundred thousand and upwards, Mr. Chairman, that have the right to vote in this city, voted on the question of calling a Convention, and yet we are told here that this was the great thing in Philadelphia. I do not believe it, sir. I do not believe a voter in Philadelphia thought of such a thing. I do not believe they thought they were so woefully oppressed and injured, as has been represented here, or they would have turned out at the election and voted for the Convention. I doubt very much if some of the gentlemen from Philadelphia who have appealed to us to come forward and save their city, voted for this Convention themselves. I should like to know if that is not so. I should like to know how these very gentlemen voted on this question? Why, if Philadelphia is to be redeemed, disenthralled and regenerated, it must be a different plan. When these gentlemen will consent themselves to go to an election and stand there during election day, watch the polls, detect the scoundrels and the repeaters, and punish those who commit frauds, when they themselves consent to act as election officers, then, and not until then, will you purify your elections in Philadelphia. When you agree to do what we do in Pittsburg and Allegheny county, and in the rest of the State, when good men, pure men, true men, the best men in the community, will feel it to be their duty on election day to attend the polls, then you will have pure elections, and I repeat it, not until then in Philadelphia. But when these men that from their mothers' arms have been trained up to purity and everything else that is good, will go only once in a while to the election, and when they deposit their ballot run away and never

do anything to preserve the integrity of the ballot-box, what else can they expect but that the elections will be controlled by dishonest men? As they have said here, they know of these frauds, these immense frauds perpetrated, and yet they do nothing under the heavens to bring these men who commit them to punishment, and want to shuffle all of that responsibility from themselves on to some imaginary thing like this to save them.

Why, sir, this will not do it. I have found here that those gentlemen who are opposed to the ballot wholly and totally, are for this provision. Every gentleman who wants the *viva voce* system of voting goes for this. Why? Because they want to destroy the secret ballot, and, sir, if they could do so, will they purify their elections or make impossible the frauds of which they complain? Why this morning I read in the paper of immense frauds perpetrated in the town of Lexington, Kentucky, where this *viva voce* system is practiced. The election officers excluded from the ballot-box the votes of over one thousand qualified electors, although they have there this open ballot. And, sir, if you have that mode in Philadelphia, frauds will be perpetrated just as long as you let that class of men control your elections. This amendment will not save you.

Mr. WORRELL. Mr. Chairman: If the gentleman will permit me to ask a question, will he please tell the Convention why these one thousand votes were excluded?

Mr. J. W. F. WHITE. Well, sir, the gentleman wants to know the reason of the refusal of these votes in Lexington, Kentucky. I will answer him. They were "niggers;" that's the reason.

Mr. NILES. A good reason!

Mr. WORRELL. Mr. Chairman: Was it not on account of a tax qualification?

Mr. J. W. F. WHITE. No, sir. Just because they were "niggers."

So it will be here. You may write your names upon your ballots. If you let rascally men have control of your elections, they will perpetrate frauds notwithstanding that. They can do it. How, sir? Why they can destroy the whole ballot-box. They can destroy the whole tally list and put in other names when it is necessary. They can make the returns of the election declare that certain men have received certain votes, and then somehow, mysteriously, the whole ballot-box, the whole tally list will disappear. They can

perpetrate frauds as well with this as without it.

Now there are thousands of men in Philadelphia, there are thousands of men in Pittsburg, and in every other city that has now or soon will have fifty thousand inhabitants, that cannot write their own names, and yet they would feel it a burden to be compelled every time they vote a ballot to write their names upon that ballot, apart from the fact that it is a destruction of the ballot. They would feel it a burden, sir, and many good men would be induced to stay away from the polls. But I object to it further, sir, and here it applies with peculiar force to cities and towns, with this plan of compelling every man to write his name upon his ballot what a power you give to the politicians of the city, these men that control elections, to control the voters. If you let them have the power of ascertaining how every man votes, by merely looking at his ballot, it will be one of the most powerful engines in the hands of politicians to make members of their party vote the party ticket. Both sides and all political parties attempt this thing of getting every man in the party to vote for the party candidates. I say both parties, because I do not discuss this on party grounds at all, but I appeal to the members of this convention to say whether on this plan the strong partisans, the party leaders, cannot most effectually whip in, and whether they will not whip in, all the members of their party and compel them to vote their ticket, or "spot" them.

[Here the hammer fell.]

Mr. NILES. Mr. Chairman: I move that the gentleman's time be extended.

The question being upon the motion of Mr. Niles, it was agreed to.

Mr. J. W. F. WHITE. I thank the Convention for this courtesy. I shall not trespass much longer upon its time. I wish merely to call attention to a few facts. It has been said that this vote by ballot has been a myth in this city. The gentleman from Philadelphia, on my left, (Mr. Gowen,) who is not now in his seat, said that in the city of Philadelphia they could always tell at the close of the polls how the vote was, that nine out of every ten men could tell how the vote stood; and the distinguished gentleman from Centre (Mr. Curtin) declared that in his town, where there were six election districts, they could at the close of the poll always tell precisely how the vote was. They therefore argue that the secret ballot is a myth.

I reply, sir, that if these are facts, and I take them to be true, what under the heavens do you need this mode of detecting frauds, for when you know how every man votes at the time the polls close? Why do you need this system to detect frauds? The very facts which the gentlemen adduced completely answer their own arguments and defeat their logic.

Mr. WORRELL. Mr. Chairman: The matter of the vote in Kentucky, at which a large number of voters were denied the exercise of the elective franchise, as referred to this morning by the gentleman from Allegheny, (Mr. J. W. F. White,) was one of the instances to which I referred the other day, in my remarks in opposition to the tax qualification, because in that place, as well as in other sections of the country, it was alleged that the provision of law, which required that the payment of tax should be a pre-requisite to the exercise of the elective franchise, had been so used as practically to disfranchise a large body of electors. And for the reason that such a provision of law might be used in that way I then opposed that provision as reported by the committee, or as inserted by the decision of the Convention.

Mr. HOWARD. Mr. Chairman: I have already spoken a few minutes upon this proposition. I do not know that I should have said anything more to the committee if it had not been for the remarks of my colleague from Allegheny (Mr. J. W. White.) I have listened to his arguments upon this section, as I always do, with very great respect, because I certainly have a very high regard for that gentleman, for his intelligence and ability. But I cannot let the statement pass upon this floor that I understand the gentleman to make, that Allegheny county is going *en masse* against this Constitution if we shall require the voter, as a means of detecting fraud, to endorse his ballot with his name.

Now I understand that our delegation upon this floor is just about evenly divided, and the gentleman therefore speaks, I suppose, for himself. I speak, sir, for myself. I know that the people of this Commonwealth did understand that great frauds have been perpetrated upon the ballot-box, and they did require of this Convention, and it was one of the main causes of the call of this Convention, that it should purify the ballot-box, and they expect this Convention to provide for the people a means of doing it. Of course we understand the means were not pointed out in

detail beforehand, but the great evil was pointed at very clearly. It was understood by every man in this Commonwealth. I understand the gentleman (Mr. J. W. F. White) to say that every man upon this floor who supports the report of the committee is in favor of *viva voce* voting and opposed to the secret ballot. Now I must, in view of this remark, say that I suppose the gentleman did not hear the remarks I made upon this subject, because I said distinctly that I should favor, and would, at the proper time, offer an amendment that the officers of the election board should be sworn to preserve the ballot a secret; that they should not make known the manner in which the voter had cast his vote, unless they should be called upon to disclose it in some proceeding to investigate the fairness or legality of that election; and I understand that to be the view of perhaps nearly every person who has spoken here, with the exception, possibly, of one delegate.

I believe, Mr. Chairman, that the people of this Commonwealth, and I believe the people of Allegheny county also, are just as much in favor of meeting this question of fraud and purifying the ballot-box as the people of Philadelphia: and when the people of Allegheny county are told: "Gentlemen, we come to you, as citizens of Allegheny county, and say that we have submitted this proposition to you, requiring you to endorse your name upon your ballot, because it will purify the ballot-box, so that each ballot can be identified, and so that the ballot-box stuffers and fraudulent election officers and others cannot substitute any other ballot for your ballot, and thus cheat you out of your rights;" when we tell the people that this practice of stuffing the ballot-boxes and repeating will be destroyed by this plan, they will acquiesce very heartily in the means we thus provide for the detection of fraud. What are these means? A man is registered in his right name; he votes on that name and goes away; he comes back to that poll and personates another voter, whom he finds has not been at the poll. Now by this plan, when this man comes to repeat, if he can do it at all, he has got to add the crime of forgery to repeating. He is obliged to write on the ballot the name of the person whom he attempts to personate.

I understand perfectly well why certain gentlemen are in favor of the secret ballot; I do not mean to apply the remark to any gentleman upon this floor. I believe

every man here has the courage to deposit the ballot openly, if it were necessary to the detection of fraud. But, sir, I know, and every man upon this floor knows, that, throughout this Commonwealth, there is not a single political division, or a single election district, where we have not got a race of politicians, from the meanest political rats up to the highest officers—men who make it a rule to promise every man that comes through the district that they will vote for him, and if they can get through with telling five hundred lies during one political campaign, they do very well. Then if they can hide all these lies under the secret ballot, it is a good thing for them. Many of them take money from these candidates for whom they promise to vote. This class of men all want the secret ballot. It will be a terrible thing for them if we shall take it away from them, that we might be enabled to detect frauds, and that honest voters might have their ballots counted for the purpose for which they put them into the ballot-box.

When this matter is considered thoroughly, what is it, this taking from a man the secret ballot? I would like to know whether that ballot is given to that voter as his right? It is given to him by a society. He is bound to cast it for the benefit of that society. He is interested in it only as a member of the community; and if society demands of him, in order to preserve the purity of the ballot, that he shall indorse his name upon it, so that he can identify it, so that he can swear to it, if it becomes necessary, in the investigation of fraud, then it is his duty as a good citizen to say: "I will do so."

I understand, sir, that, when you boil down this matter, fairly and squarely, it just comes to this: If you take away the secret ballot, you will destroy the great right of every one of this class of men that I have spoken of, who promise to vote for everybody that comes along, to hide, by the secret ballot, all their falsehoods.

Reasons have been given for adopting this change in the Constitution, and I believe the people of the Commonwealth, and the people of Allegheny county, are reasoning men, and honest men, and I say, unhesitatingly, what I believe for these people, as I believe for the entire Commonwealth, that when it is explained to them, and when they understand there is a sound reason for it, each man

will say at once: "If it is necessary to preserve the purity of the ballot-box I well endorse my name upon my ballot; it is no hardship at all." If frauds are perpetrated in Philadelphia, if in large cities repeating and ballot-box stuffing are perpetrated, why, sir, it contaminates the the vote of the entire Commonwealth. The gentleman from Montgomery (Mr. Boyd) limits his proposition, as I understand it, to cities of fifty thousand. If he leaves the door open for the ballot-box stuffer and repeater in this manner they will be transferred from the cities, and will find their way into the country, and the same class of politicians that have manœvered and used these tools in the city, to defeat the honest vote of the people of the Commonwealth, will use them in the country and in the smaller towns. The reason it has not been practiced more extensively there already is only because they could do it better in the larger cities. I know, however, that it has been done in the country. I know perfectly well that one Senator lost his seat because in one of the townships, perhaps the most honest, in this State, in Somerset county, he was just "ballot-box stuffed" out of it. The voters voted right; they swore that they voted right, to the best of their knowledge and belief.

It was in a township composed of these long bearded men, men who would not even put buttons on their coats, but had them all hooked up with hooks and eyes, men who never thought of cheating in their lives. They voted right enough, but they could not identify their ballots, for they had not written their names on them, and the result was that the men for whom they cast their ballots did not get the benefit of them. They only knew that they cast the secret ballot. I know that these frauds are not confined to Philadelphia, but are, to some extent, practiced in the country also, and the instance mentioned I know well, for I happened to be appointed on a committee to judicially investigate it. I should not have spoken again on this section, only because my friend from Allegheny, (Mr. J. W. F. White,) in expressing what no doubt is his honest, and earnest, and sincere conviction, (because I believe him to be an honest and earnest man, and willing to do what is right,) has undertaken to say for Allegheny county what I do not believe; and, sir, I claim the same earnestness and honesty for myself, and I believe he speaks for himself only, and not the sentiments of our

people. I speak for myself. I do not know the individual opinion of every man, nor of one-quarter, nor of one-tenth of the men of Allegheny county on this subject. I only reason as a reasoning man, that they are reasonable people, and that they will believe this to be a good measure to detect frauds, and that they will be just as willing to accept it as any other people in the Commonwealth.

Mr. AINEY. Mr. Chairman: I have just returned, after spending a few days with my constituents, and I rise to say a few words on the subject now under consideration. I made it a point to converse as extensively as I could with the people of my section on this question. With scarcely an exception, sir, I found them opposed to any change which so effectually destroys the great right of the secret ballot. The allegation of those who favor this radical change from the present order of things is, that it will prevent fraud at the polls. Now, sir, I will go as far as the farthest in advocating and adopting any necessary measure that will insure the purity of the ballot without encroaching too far on established rights. But I regard this measure as unnecessary to prevent frauds upon the ballot, and a serious invasion of rights long established by successful and satisfactory usage. I cannot see from the arguments which have been presented here, and I have been an attentive listener this morning, as I was in the two days in which I was present last week when this subject was debated, which satisfy my mind that this change is either necessary or proper. I say, sir, that I have listened in vain to hear any sufficient reason why we should compel the voter to publish for his friends and neighbors how he votes. I will not travel over the ground which has been gone over by those who preceded me in this debate, the section as reported by the committee. But to my mind there is more than one be sufficient reason why every man should be protected in the exercise of the secret ballot. My neighbor, my companion in business, my most intimate friend, it may be, is a candidate for some local office. I have reasons which satisfy me that I ought to vote against him. Is it necessary, is it desirable that I should be compelled by constitutional enactment to go to the polls and vote so that my neighbor, companion or friend, as the case might be, would know just how I voted, and thus disturb pleasant social and business relations? If such necessity exists, those who

style the secret ballot a failure ought to present some all sufficient reason for thus invading the social and business relations of friends and neighbors.

But I deny that the ballot is a failure under our present Constitution. It has been used by most of the great and minor societies with success and satisfaction. Composed as these societies are, of the intelligent, the thoughtful, the secret ballot is firmly adhered to by them because it is the safest and most successful mode yet tried, for expressing their preference in the election of their officers and managers in quiet harmony. Again, take religious conventions. They ought to be, and are, usually, composed of conscientious and intelligent men. How do they vote in selecting such of their number to fill positions in their gift? Usually by ballot. And why? Because it is a better method of maintaining harmony and friendly relations among those who compose such conventions. Take most of the secret societies, many of which are bound together by the closest ties of brotherhood. All of which I have any knowledge, when they come to express their preferences in the selection of the officers who shall govern them, without exception, use the secret ballot. In my judgment, if we embody this proposition in the instrument which we shall finally agree to submit to the people, it will greatly endanger its ratification by them at the polls, and I think we ought not, for the purpose of experiment in a matter involving so important a change, and one of such doubtful expediency, to run the great hazard of having essential reforms, upon which we all substantially agree, defeated. I, for one, will not consent to put them in jeopardy by incorporating either the section as it comes from the committee or as it would be if the amendment were adopted. I shall therefore vote against both the amendment and the section.

MR. LILLY. Mr. Chairman: I, too, have been home consulting my constituents, and I did not meet a man who was not in favor of this section as reported by committee. It depends entirely upon how you put it to the people. If you go to a man and say to him: "Now are you in favor of doing away with the secret ballot, and going up and showing everybody how you vote?" They will say "no," as some have to my colleague, (Mr. Ainey,) who just spoke. It all depends upon that. I think it is all nonsense and bosh to say that the people are going to reject

this Constitution on account of this provision being in it. I do not believe it at all. I believe that we are sent here by the seven hundred thousand people of the State of Pennsylvania to do this very thing of purifying the ballot-box, and to purify the Legislature. I believe that as sincerely as I believe that I am here. It is a very easy matter to get a public expression in one way or another from people that you meet upon these subjects, by putting the question in a certain way to them.

I did not tell the people that we are going to destroy the secret ballot, because I do not believe it; we are not going to destroy it at all; we are going to leave it as secret as it ever was; we only ask the man to write his name upon it, and we expect the election officers to be sworn to to keep that secret, as much as it is now. If you put it to the people in that way, they will be very ready to do anything to stop the corruption; ready to do anything to root out this sore that is eating us up.

Whilst I am upon my feet I desire to say one word in relation to the amendment to the amendment, offered by the gentleman from Blair, (Mr. Landis.) I like it very much better than I do the amendment offered by the gentleman from Montgomery, (Mr. Boyd,) because it comes nearer to the report of the committee, and the nearer you can get to that report the better I will like it. That is the reason why I like it better, but it is faulty, and I will show where it is faulty. This corruption is not all in the large cities and towns. By no means. I know of a case which happened in a rural district, in a county not more than a hundred miles from Philadelphia, where the whole ballot-box was changed, every vote in it, after the election was closed, and counted for another man, whom it elected to Congress. That was within the last six years. I say I know it. I know it in this way; the man who was elected by the fraud, told me so himself. Now I want to get rid of that sort of corruption. I think if we come to the report of the committee, and put to the people with the rest of the good things that we shall lay before them, I have no doubt they will accept it.

MR. LEAR. Mr. Chairman: When I came into this Convention I recognized the fact, which I have observed in all conventions of which I have been a member, that Pennsylvania consists of the city

of Philadelphia and the county of Allegheny; but I do object, as a neighbor of Philadelphia, though not a Philadelphian, that Allegheny county should set up for all the purity in political morals, and undertake to read to Philadelphia a lecture upon their mode of conducting business and upon their behavior. The gentleman from Allegheny (Mr. J. W. F. White) says that if this provision, as reported by the committee, be incorporated into the Constitution which we shall submit to the people, it will be voted against by the people of Allegheny county *en masse*. I do not believe that, although they proclaimed through one of the organs of the people of that county, after we adopted the provision in the Constitution as to when the election should be held, that our work would be repudiated by the people, and they commenced at that early day to set up for us the opinions of Allegheny county through that organ, which is controlled, it is said, by a hand inspired by the political purity of Robert Mackey and Russell Errett.

I repudiate them as the censors of the political morals of Pennsylvania, and when the gentleman talks about the corruptions of Philadelphia, let me say that the chairman of one of the parties in Pennsylvania, at the last election, who came from Pittsburg, told a member of that committee, when he was asked what would be the loss to a certain candidate in Pennsylvania with regard to his position before the people, and was informed that it would be from five to ten thousand, "we can make that up, here, in fifteen minutes!" That was the information communicated to our county by a gentleman who came from Pittsburg to conduct a political campaign, having his headquarters in this city.

Were those five or ten thousand votes that were to be made up in Philadelphia, to be made by an honest change of sentiment and opinions of the people of this city to the extent of five or ten thousand, or were the ballot-boxes to be stuffed, or the returns manipulated, and through frauds and corrupt practices, to be resorted to for the purpose of defeating the will of the honest people of this great city? Because I believe the honest people of this great city could not thus have been changed. When I refer to the city of Philadelphia, and to what the people here are, I refer to the merchants and manufacturers, and professional men engaged in their daily and lawful occupations as honest and up-

right citizens, not to those men who make politics a trade, and who have brought Pennsylvania to the condition that we are in to-day, that requires the radical action of this Convention, for the purpose of going down to the foundation of the corruptions and frauds which have been inaugurated in this Commonwealth, and which seem to have their principal seat in this city.

In passing through the streets of this city and looking at the palatial places of business, and upon the honest countenances of the people you meet when you go to their stores or dwellings, it is certainly a matter of surprise that there exists here somewhere out of sight, in the back slums or underground, a power which is capable of bringing disgrace not only upon the city of Philadelphia but the State of Pennsylvania. It seems, however, that this is so, and although this provision, if it is adopted, may subject the citizens of our country districts to many inconveniences, yet I believe they will be satisfied to put themselves to this inconvenience in order that their honest wishes by the ballot shall defeat the machinations of the politicians of Philadelphia who have taken possession of the politics of the State and destroyed the intentions of the people in the rural districts. Now, Mr. Chairman, with regard to this change which has been regarded as radical in its character. Gentleman upon this floor have asked: Has this republican experiment of ours been a failure? Shall we say that the Constitution under which we have been living for the last thirty years has been a failure? Gentlemen upon this floor have said that these old gentlemen in the rural districts who have been accustomed to going to the polls for years without registering, and without endorsing their names upon the ballot, will now be subjected to so many inconveniences that they will never vote. Why, let me ask the gentlemen of this Convention, how can it be known who will be the voters under this Constitution? When this Constitution that we are deliberating upon comes to be submitted to the people, about the year 1895, these old men of the rural districts will be dead, and their children, who will be educated under the common school system of Pennsylvania, will be able to write their names upon their ballots. I speak advisedly in regard to this question, for the gentleman to my left, (Mr. Mantor,) who is skilled in arithmetic, made a mathematical cal-

culation the other day by which he found, according to the progress the Convention has made in the number of sections passed upon in this article under consideration, that it will require a period of twenty years and six months before we have a Constitution framed to submit to the people of Pennsylvania. I say then, by that time the people of Pittsburg will be changed, and the people of Montgomery and the people of Bucks will also be changed, and fifteen or twenty years hence the members of this Convention will still be here discussing this article after it comes out of the committee of the whole. This being the prospect which is before us, I hope the members of the Convention, when they address their remarks to this committee, will reflect upon the condition of affairs that will exist, and that unless more rapid progress is made, that it will be a considerable length of time before the Constitution is submitted for the ratification of the people.

I am in favor of every improvement that will make voting practicable, and that will correct fraud in our elections. I know that we shall not be entirely successful in the end, but we may be able to check these corruptions and defeat the plans of designing politicians for a few years. This same principle has found an illustration in the criminal history of our country. It has not been many years since the Frankinite or chilled iron was invented for the purpose of protecting valuables against the skilful operations of the burglar. This protection, which has been considered impregnable, will only answer the purpose until the energy and skill of the depredator devises some new plan to overcome this protection and secure the business man's books, papers and money. This will be the case with regard to the measures that we may devise to protect the community against that class of corrupt men who make it their business to prey upon the State; and the people of this State will discover that whatever plans may be originated to defeat the accomplishment of fraud upon the ballot-box, skilful politicians, who hold their midnight caucuses in grog-shops, will contrive a plan to overturn and circumvent the wisest provisions of the best statesmen in this or any other Convention.

It is impossible to cure the evil heart. We cannot make men honest, but we can make the accomplishment of these frauds exceedingly difficult. It is the duty of this Convention to devise the most practi-

cal plan to ensure the protection of the ballot. I think it is a sacred right, and is of sufficient importance to require men to protect their ballots, either by writing their own names upon them or having their names written upon them by an elector of the district and attested by him, in order that it may be identified in the box as one of the means of preventing this fraud. I understand a great many objections have been urged against this provision. I confess I have not heard much of the debate on this subject, but I understand the principal objection which has been urged is: That it is one of the means by which a man will be controlled in the exercise of the elective franchise, and will be prevented from voting as a free and independent citizen, by reason of the powerful influence which will be exerted by the great corporations of the State. I deem the privilege of every man to vote just as he pleases, and without his neighbor knowing the nature of his vote, to be one of the most important elements in the exercise of the right of suffrage; but I find, in glancing over this provision, that it does not require an elector to unfold his ballot and exhibit it either to the boss or to the owner of any department of business. It does not require an elector to vote an open ballot. He may vote openly or secretly, just as he prefers; but when the ballot is deposited in the box, and fraud is alleged to have been committed, then his name may be referred to, in order to discover the manner in which he voted, and this is the only way in which it can be said an elector is required to vote an open ballot. There certainly can be nothing wrong in compelling a man to vote an open ballot. I say this principle has a tendency to make an elector independent in character, and that instead of the capitalists of Pennsylvania governing and controlling the laboring men in rendering their votes, that it will enable the employee to govern and control the capitalist. One of these branches of our community is as necessary as the other. The laboring man is as necessary to the capitalist as the capitalist is to the laboring man, but while scattered all over this State there are immense numbers of our laboring classes employed by large corporations in iron manufactories, railroads, and in mining operations, yet it will be found that these employees are not controlled by these corporations in the exercise of the elective franchise, but that they take pride in casting a ballot which

will, in its aggregate quantity, finally overbalance the power of those who control the purse and treasure of the Commonwealth of Pennsylvania. Everywhere you will find that these men assert their rights, and take pride in thus showing that they have the power by which to put their veto upon the vote of the men who would control their destinies.

Mr. WHERRY. Mr. Chairman: I would like to ask the gentleman a question, and it is if he had in his employ a man who persistently, and perhaps consistently, voted against his employer's interests, would he or would he not retain him in his employ?

Mr. LEAR. Mr. Chairman: Upon political grounds I would undoubtedly permit every man to act according to his own feeling and views, and I would permit him to vote for whom he pleased and for what he pleased. I believe this to be the general feeling which pervades the minds of those who have large numbers of men in their employ. I do not believe that the great corporations and monopolies, or the wealthy firms, or individuals in the State of Pennsylvania, make it a practice to control the ballots of the people that are employed by them. I do not hesitate to acknowledge that there may be exceptions, but I believe it to be the general rule in all these instances that every man's vote is controlled solely by his own volition, and he votes as he thinks best. In presenting these views I have endeavored to be as brief as possible, and in conclusion I can only add that I hope the amendments which have been offered to the report of committee will be voted down, and the article as reported adopted.

Mr. BOYD. Mr. Chairman: I shall vote against the report of the Committee on Suffrage, Election and Representation, for the reason that I believe that a majority of this Convention can never be secured for such a section. But I desire to say that I was induced, on my own responsibility, to offer the amendment that I have offered, with a view to assist Philadelphia and other large cities, where corruption is said to exist; and I beg to state to the gentleman from Allegheny (Mr. J. W. F. White) that no gentleman from this city had any consultation or hand in the getting up of the amendment that I have offered, and that if it is to damage Philadelphia in any way I will withdraw it most cheerfully. I believe that a remedy of that kind, applied to a great metropolis like this, might assist the good people of

this city to work out a reform, and cure the evil that is said to exist here. I do not mean by this that I wish it understood that I am one of those who believe that this great metropolis of the State, as much our city as it is the city of the citizens of Philadelphia, contains within itself as much of fraud and corruption as the gentleman (Mr. Simpson) would have us believe. I do not believe that that gentleman, who has undertaken upon this floor to represent all the integrity and morals of this city, is exactly the fit one to do it. I observe he is not in his seat, for which I am half thankful and half sorry. He seems to be speaking all the time for the city of Philadelphia, as if there was nobody from the city who could speak for it. If one-tenth of his experience with regard to the corruption and pollution of this city be true, then indeed she is defiled. But, as I said, I believe these statements to be highly colored. I think the gentleman puts considerably too much paint on his brush as he pictures up the rascalities of this city; and I am, although not a resident of this city, but as a citizen of this State, just as proud of Philadelphia as if I were one of her citizens. I feel as much humbled and humiliated when I hear her thus depreciated as the best of her citizens can possibly feel. I regret and deeply deplore that she should have a representative upon this floor who should take a special delight to make his city appear in the worst possible light, and even to magnify her corruptions.

So with regard to the city of Pittsburgh. I do not suppose for a single moment that even the eloquence and the popularity of the distinguished gentleman from that city (Mr. J. W. F. White) could ever get that city to do a wrong, or get it to vote against a Constitution that we shall submit to the people, simply because the action of this Convention did not entirely accord with the desire of that city in regard to the ballot. I cannot believe that of that great city. She, too, is a proud city, and a city that we, in this section of the State can well afford to be proud of. I do not think there is any corruption there to need any such provision about the ballot as is included in my amendment, yet, at the same time, even if there be nothing there to reform, if the provision will work a good for Philadelphia, that is working a good for the State. I would have no objection, if I thought there were frauds existing in the rural districts, to adopt the section re-

ported by the chairman of the Committee on Suffrage, Election and Representation; but I do aver here that, after thirty-five years of actual observation and experience in the county of Montgomery, there never has been a contested election, nor has there ever been any allegation of fraud, throughout the length and breadth of that county; and when the gentleman from Philadelphia (Mr. Simpson) stated upon this floor that frauds had been committed in Norristown, he was exceedingly unfortunate in fixing that locality. If he had put it in some remote corner of the county, where few of us seldom get, he might have had some hope of escape, for we would not have known whether he was correct or not. But to make that positive statement, in the face of a man who has lived there for thirty-five years, and who has known, from day to day, the acts of the voters of that community, was, to say the least of it, rash. If the gentleman stated it upon information he should give his author. If he said it upon his personal knowledge and responsibility, then I deny it; and if there is no more truth in his statement with regard to the frauds in Montgomery county than there is with regard to the frauds as he, I believe, magnifies them in this city, then I say that his testimony should be wholly and entirely rejected; because, while there has been fraud in this city, and must be, in the nature of things, because it is to be remembered that the very worst men from the country settle down here in the city, where they can have a greater field to carry on their nefarious practices, just as most all the best talent of the State comes to the city because it is better compensated in the city than in the country.

So that I say it is no argument to say, as has been urged here by the gentleman from Allegheny, that the citizens of Philadelphia were regardless of their duty and unpatriotic, when only seventeen thousand of them voted in favor of calling this Convention. I will declare and sustain here upon this floor that this was the strongest evidence of intelligence of this great city that possibly could be produced, because they were entirely sensible to the fact that there was no necessity for this Convention. Although I am here as a member of it, yet I voted against the calling of it. Although I have cried aloud for information to know what the Convention was called for, I have as yet been uninformed, because every reform that has

been proposed meets with a warfare which amounts to a defeat. The veterans, the most experienced men upon this floor, are against any material change in the organic law, and the few that are proposed as necessary, could have been just as easily obtained in the usual mode by a resolution of the Legislature, submitted to a vote of the people, just as we have been adding amendments ever since 1838. This would have answered every practical purpose in my humble judgment, and when the gentleman from Allegheny points his finger of scorn and ridicule at the city of Philadelphia, because out of its one hundred and twenty thousand voters only seventeen thousand voted in favor of calling this Constitutional Convention, I say Philadelphia was wise, as she always is, intelligent in everything that she does.

Mr. Chairman, I do not desire to longer take up the time of this Convention. I know that everybody is wearied with this debate, but I will remark that if any considerable number of gentlemen from the city of Philadelphia will say that they prefer that my proposition shall be withdrawn, I will withdraw it. If my friends here, Mr. Knight, Mr. Fell, Mr. Cuyler, Mr. Biddle, Mr. Dallas, or any of these gentlemen, will say that they prefer to take the chances on a vote upon the section as reported by the Committee on Suffrage, Election and Representation, I will withdraw my amendment, but I assure them at the same time that they may count upon the fact that this Convention will never adopt the section as reported by the committee, and if it does not, then, as a matter of course, Philadelphia will be left to conduct her elections in the future as she has done in the past.

As I said before, this amendment was a voluntary thing on my part, and I simply repeat, Mr. Chairman, that no member from the city of Philadelphia is to be held responsible for any odium or misapprehension or mistake that can arise from its presentation; the whole responsibility rests upon myself, and was intended for the good of Philadelphia, and any other city of the State where election frauds are known to exist habitually.

Mr. J. PRICE WETHERILL. Mr. Chairman: I could not help but think this morning, in listening to the course of debate on this subject, that we are certainly making haste slowly in the work committed to our charge. It seems to me that if we are desirous of coming up to the full line of our duty, which the voters who

sent us here expect, we should change our course. We certainly ought to take up the sections which have been reported to us in rather a different spirit, so as to arrive at a good result. Now, sir, we have taken an hour and a half to-day to discuss the frauds which may or may not have been committed in the city of Philadelphia, and I have been surprised as I heard all over the State the delegates of county after county, in their places, asserting that in their county fraud does not exist, that in their county the ballot-box is kept open, that in their county elections are the honest expression of the people, and that party tyranny is unknown. I confess I am somewhat astonished at the declaration. At the same time I look with some caution upon any section that claims for itself peculiar privileges in regard to honest elections, and fear that when a delegate claims for his section that "I am holier than thou," the language should be taken subject to some discount. The delegate from Allegheny has said a good deal about the election frauds in Philadelphia, and from his remarks I should judge that we in Philadelphia were in a deplorable condition, in that regard. I admit to the correctness of the charge, but deny the right of any section to make it unless their skirts are clear of fraud. I deny that the county of Allegheny is free from election frauds. I deny that the ballot-box is pure in that county, and therefore in reply say, "physician, cure thyself." A great deal has been said in regard to the want of interest which was shown by the people in regard to the calling of this Convention. Was this want of interest confined to Philadelphia alone? No, sir. The taxables of the State of Pennsylvania number nine hundred thousand; therefore about eight hundred thousand votes for or against this Convention should have been cast. How many votes were cast in the State of Pennsylvania upon this subject? Only about three hundred and fifty thousand. Therefore, if the voters of the city of Philadelphia did not take that interest in regard to the calling of the Convention which they should have done, is not the blame equally applicable to about four hundred thousand of the voters of the State of Pennsylvania who did not see fit to exercise that privilege? Take the county of Allegheny, for instance, about which we have heard so much. Why, according to the gentlemen who represent that county, I should suppose that every man in that county came up to the polls and voted against the calling

of the Convention, but the figures do not show it. The taxables of that county amount to about sixty thousand. Only twenty thousand votes were cast for or against the calling of the Convention; therefore about forty thousand votes of that county did not take sufficient interest in this Convention to vote in favor of calling it. About one-third of the electors of the county of Allegheny did not believe it to be necessary that this Convention should be convened. A great deal has been said in regard to the election frauds in Philadelphia. Is this not so, more or less, in all large cities? Is the city of Pittsburg free from it? We in Philadelphia number in population about one-fifth of the State. Concentrate in a given number of acres a like number of any part of the remaining four-fifths of our people, and would not that fact, alone, cause the existence of the same party tyranny that exists here? I therefore conceive it to be in extremely bad taste for any one to rise in his place and say that the people upon the given number of acres that he represents are purer, and more free from fraud, than the people upon any other given number of acres in the State.

I do not judge fraud by quantity. If fraud exists in any county in this State it is not right to judge of it by the quantity committed. The crime itself is just as bad, if committed by forty as by a few thousands, and the remedy should be applied. I therefore do not think that any man has a right, representing any county in the State, to say that his district is pure, because a very little amount of fraud exists in it. I feel it my duty to say, with regard to this matter, that holding up the city of Philadelphia, as it has been held up by this Convention, is not accomplishing the purpose for which we were sent here. The gentlemen from Allegheny county were not sent here to dictate to the delegates from Philadelphia, as to how this city should be governed. That is entirely outside of their province, and I say that there is no disposition upon the part of the Philadelphia delegates to do so either, for if the gentlemen will look over the list of members of the Committee on Suffrage and Election, they will find that out of fifteen but three are from the city of Philadelphia, and they do not favor this section as a measure they wish particularly to be adopted. I say to the gentleman from Montgomery, (Mr Boyd,) in my place, I am opposed to all special legisla-

tion, nor do I desire this special legislation for the city of Philadelphia. If it is not a suitable section for the State, then I do not want it adopted in Philadelphia. We can take care of ourselves. We neither ask or desire assistance in any quarter. We demand our fair and equal rights; nothing more. Neither is fraud confined to the boundaries of the city of Philadelphia; fraud exists throughout the length and breadth of the land. As we find it in our State, it is our bounden duty to strangle it, by a process confined to no section, or applicable to no locality, but broad enough and comprehensive enough to grasp and destroy it whenever and wherever found. Do not let us single out any district in specifying where fraud exists, and where it does not. In my opinion the Philadelphia delegates have been at fault in, upon every occasion, bringing into the Convention the disgusting details of party corruption here; I think that their dirty linen should be washed at home. We are here not to legislate for Philadelphia or for Allegheny county, not to correct fraud in either locality, but to correct it throughout the State; to frame an organic law applicable to the wants and requirements of the whole people, and in my opinion the delegate who takes a less comprehensive view of the duties which are incumbent upon him, is not coming up to the full line of his duty.

MR. STRUTHERS. Mr. Chairman: It appears to me that the greater part of the debates which have been had here, have been wide of the mark. I believe it is the design of the members of this Convention to do what the people sent them here for, with regard to this matter of the fraud, and to pass such amendments as will purify the polls as much as possible. It appears to me, however, that there has been a great deal more time spent for the purpose of convincing us that frauds have occurred, and do occur, in various localities, than has been necessary. I think the delegates of this Convention have had experience enough to know that frauds occasionally do break out, and are experienced, and ascertained to exist, not only in Philadelphia, but throughout the State, more or less. The largest aggregate of people being here, it is natural enough that the greatest amount should be here. But that does not matter. The question is whether it does exist. That fraud does exist, we may all take for granted; and yet the time of this Convention has been

occupied, for several days, in discussing whether it does exist.

Now the proposition which is made in this report is to cure all this difficulty by attacking the ballot. I would like to know how it has ever been ascertained that the ballot was a failure in this State. The evil which is so much complained of is not traceable to the ballot at all, but to the perverse use made of it to the frauds practiced upon it; and these frauds are what we want to arrive at, not to destroy the ballot. The ballot is an ancient and honorable institution. It is one of the main columns of the temple of liberty. It has long been in existence here, and long been revered, not only in this State, but all over the Union. I think the *viva voce* vote existed in several States down south. We all know what that lead to. It brought about an aristocracy—a departure from this democratic system of government altogether. It resulted in that, and it resulted in the great war of the rebellion. Now, regenerated, we find that these States are adopting the very thing that we, of Pennsylvania, are to-day contemplating, and devising means and measures to destroy, to tear up by the roots; because it is nonsense to talk about a secret ballot when you require every man to put his name upon it. And it is contemplated by this section that, in certain cases, it shall be signed by a witness. How can that be a secret ballot? The very class who are imposed upon and made use of, for the purpose of effecting these frauds, are that class of persons who will have to go to somebody who can write their names, and get them written. In such a case it is exposed, and it is no longer a secret ballot. Gentlemen of purity, and of independence, care not so much, whether their ballot is open or secret. But the ballot itself, in the manner in which we have used it, is such that any person may make it secret if he chooses; but, on the contrary, if he chooses, he may proclaim it, or he may put it in open. He may vote openly if he chooses; but it allows the timid, and those who are under influences that they do not like to confront, to go and put their ballot in quietly, in such way as their judgments dictate to them as right.

In this connection, for fear I may be misunderstood, I will say that I do not think the ballot is intended so much to guard and protect laborers and the poor and weak from the oversight and the influence and power, brought to bear upon them by their landlords and employers,

generally. That is not it. There is no part of the people of Pennsylvania, I will venture to say, that will vote so directly against all such influences as the employees. Miners are not governed by their employers. The employees in the manufacturing establishments are not influenced in that way. The employees of almost all the manufacturing establishments of the country like to have it proclaimed that they vote right against the interests of their employers. They take a pride in doing it.

That is not what the ballot is for so much. It is not to protect them from the power of their employers. It is for the purpose of protecting them from the influence of the manipulators, and the ward politicians, who receive their hire for going about and imposing upon their men, and using them. The ballot should be secured to them to guard them from the foul influences that are attempted to be wrought upon them by that class of men whose business it is to go around and manipulate for a price. Such men as are thus bought up are generally employees.

How do these ballot-box stuffers and that class of men come to be so active? They are all paid for it, sir. And how are they paid for it? How do they get their compensation? They are not candidates themselves; they are not elected to office; yet they are the busy men. They are the busiest bees in the whole hive. The men who, apparently, have no interest in the result, no hopes to be attained. Why is it? The candidates for office furnish the means; they furnish the money; they send these manipulators out to buy up these men.

Now what does this proposition, to put the names of all these parties upon the ticket, lead to in the end? It enables them to go around in advance of the election, sometimes, and secure all these men without doing it in the hurly-burly of the election upon election day. They have months to go around to secure these men; and when they bring them their tickets, and have them put their names upon them, they promise them their pay or pay them. Then, instead of furnishing the means of reducing or in any way putting a stop to all that kind of thing, you are furnishing facilities for the purpose of committing these frauds. You are furnishing facilities to these very men who manipulate these voters.

Now, sir, I only want to say one word farther. I think we are brought here,

not for the purpose of tearing to pieces this old, venerable Constitution of ours, but for the purpose simply of revising and amending it? Whoever heard, in Pennsylvania, that we wanted a revision of the ballot? Nobody on earth ever heard of it, at least I never did, and I have looked through the newspapers and never seen it in print anywhere. Nobody ever heard of it until after we came in here. I never heard of it until I saw this report.

I think if a plan were being devised for the purpose of defeating the doings of this Convention, however good and beneficial it may be in other respects, this section would be enough. This very thing would kill it as dead as a nit. The people never would stand it. I do not speak of the people of my particular district or any place else. I have traveled across the State from one end to the other, and seen a great many gentlemen, and this thing has never been intimated to me. I never heard of it. I do not think any man in the State ever did until it was conceived and brought out by this committee.

I hope we will move in a cautious, careful way, making amendments that are desirable, and submit to the people a Constitution worthy of their approval, one that we can hope for the approval of. How can we arrive at that? These frauds I would check as much as anybody; and I would put into the Constitution, as far as can possibly be put there, all the checks that can be put there in the strongest shape. There is a section or two in this same bill pointing to it. You want to reach frauds, not through the ballot, but by watching and protecting the ballot. You want to make it severely penal upon all men who will use money, in any shape or form, for the purpose of affecting elections. You want to make void the elections that they may secure by it, disfranchise the guilty parties from holding office and subject them to fine and imprisonment. The receiver of any such money should also be severely punished by fine and imprisonment. That is the way to get at that matter, in my opinion, and not by attempting to destroy the pure and simple ballot.

I am not in the habit of speaking, Mr. Chairman, but I have felt it my duty to myself and my constituents to state my position in regard to it. My ideas have gone a good deal further and varied very much from those of a large number of the gentlemen who have spoken on the subject upon either side. I shall fa-

vor an amendment proposing for the new Constitution the provision as existing in our present Constitution, *verbatim et literatim*. I see no reason whatever to change that, and to raise up, in that way, a weapon for the purpose of killing it before the people when we lay our report before them.

Mr. M'MURRAY. Mr. Chairman: I desire to make a few remarks on this subject. I notice that the members of the Convention are becoming somewhat impatient and doubtless weary of the subject, and therefore I will be brief. I have occupied, probably, five minutes of the time of this Convention since it convened and shall not occupy much more than that now.

I have observed this discussion as it has progressed from day to day, although I have been absent. One remark I noticed, that was made by the gentleman from Indiana (Mr. Harry White) some days ago. I believe it was this in substance—I saw it in the newspapers of the day—that could he control an earthquake he would hurl it at those persons who would take away or disturb the secrecy of the ballot. That was a grand sentiment; but, sir, I think I can conceive of a grander one. It is this: Could I control ten thousand thunderbolts, and had I the strength of Jove, I would hurl them, were it possible, with the power of Omnipotence itself, against every man, and every set of men, that would attempt in any way to pollute the ballot-box.

I think, Mr. Chairman, that the section, as it now stands, will go further to purify the ballot-box than anything else that has been offered in this Convention. When I saw the proposition of the gentleman from Bradford, (Mr. Patton,) relative to electors endorsing their names on their ballots, it challenged my judgment immediately as a thing that would go far to purify elections.

I have heard much about the election frauds in Philadelphia. I want to say this for the comfort of the gentlemen from Philadelphia: That election frauds are not confined to that city. I believe too much has been said about the city in that matter. I believe that my county, in honesty and intelligence, is equal to the average of the counties in the State; and I do know that election frauds are perpetrated in the rural districts of Jefferson county, among the simple inhabitants of the "pines and hemlocks," and we want such a provision as this to prevent them there. It will go

far to prevent them there, and to prevent them here, too.

The strong argument that has been made here against the section is that it destroys the secrecy of the ballot. There are several answers to that argument. The first is that the gentleman from Allegheny, (Mr. J. W. F. White,) a member of the Committee on Suffrage, is in favor of numbering the ballots with a number corresponding to that written opposite the elector's name on the tally list. If that provision is carried out honestly, it destroys the secrecy of the ballot just as effectively as writing the elector's name on the ballot would do. But it is open to this objection. That without this additional safeguard proposed, by writing the elector's name on his ballot, it would only make it easier for election officers to commit fraud than at present, because all they would have to do would be to throw out the genuine ballot and put in another, and write on it the corresponding number. Another answer to the argument is, that there are men here, and excellent men too, who are in favor of taking away the secrecy of the ballot entirely. Another answer is, that by writing the name on the back of the ticket, if there are frauds perpetrated we can ascertain exactly what frauds they are and who perpetrated them. I would say here that if it were necessary in order to prevent frauds on the ballot box, I would, without hesitation, take away altogether that secrecy. The argument, however, that this section would take away the secrecy of the ballot is an *ad captandum* argument; it is intended simply for the ear of a certain class of the public; there is nothing in it. It is the argument of the politician, and not the argument of the man who, in the honesty of his heart, would go down to the root of the disease and take away the cause itself.

I repeat, sir, that if it were necessary, in order to do away with these frauds, I would take away the secrecy of the ballot altogether. I would say further, that the very fact that we have voted by secret ballot has been the cause of more fraud, corruption, and injury to our government, than any other one thing that can be pointed to. It is not difficult to prove this. I will refer to an instance that has come under my own observation. A man is a candidate for a county office, for instance. Those political friends whom he has known for years he depends on for support. One of these—a man of influence in his locality—leads him, if not by prom-

ise, then by other means, to believe that he will support him, and vote for him. The candidate, therefore, depends upon him for support, for he has always been his friend. What is the result? The opposing candidate comes along, and with five, or ten, or fifty dollars—if he is a man to use money, and the other to take it—or with the promised future reward or support, buys the influence of that man against the man whom he had promised to vote for, and this entirely through the secret ballot. Because no one can ever know how the elector votes, he makes a promise to the candidate (or his friends) that he never means to fulfil, and never does fulfil. The secret ballot offers a premium for just such frauds and dishonesty as this. If you take away the possibility of that thing, you take away a powerful means of fraud. Sir, I have known these things to be, and I claim that the section reported by the committee will prevent this almost entirely. But why will it prevent it? Because it will induce men to vote honestly. They cannot pretend one thing to a candidate or community, and then go to the ballot-box and do an entirely different thing. Why? Because their names are written upon their ballots, and it is a guarantee that their votes, as deposited in the ballot-box, redeem the promises they made to the candidates and the community. I mention this because I have not observed that anybody else had mentioned it in the course of the discussion. There is another point that I will mention, which, to my mind, is in favor of the section. Secrecy is associated with the most offensive and revolting crimes. The murderer is in favor of secrecy. If anybody in the world favors it more strongly than another, it is the man who would take the life of his fellow man. The man who commits arson, and the burglar and the thief seek the cover of darkness and secrecy for the commission of their crimes, in the hope and belief that the secrecy and the darkness will give them immunity from detection and punishment. The honest man, on the contrary, will do what he thinks best for himself and others, and do it in the light of day. He is not afraid that people should see or know what he does. He needs no secrecy to protect him.

In making these remarks, however, I do not wish to be understood as favoring an entirely open ballot. I do not favor it, but I go so far as to say, that if I thought it were necessary, in order to prevent

fraud, I would favor an open ballot. I do not think that is necessary, however. The present section, requiring the names to be written on the ballots, does not necessarily constitute an "open" ballot. It is only in case of urgent necessity that it becomes known how men vote. The election officers can be sworn not to divulge how any elector votes; and I take it for granted that if this section is adopted, the Legislature will enact a law requiring that the election officers shall be sworn not to divulge how any elector votes at any election. Then the secrecy of the ballot will be observed, except in case of a proper and legal investigation.

In contested elections the value of the information to be gained from the writing of the names on the ballots cannot be over-estimated. We all know that the great difficulty in these cases is to find out which are the true ballots and which the false. It is apparent to the mind of every intelligent man how, with this help, you can arrive with almost unerring certainty at the conclusion, which votes are true and which false; and if the election officers should attempt to erase any name from a ticket, you can tell exactly which name has been erased, and which substituted for it. It is, therefore, a means of inestimable value in correcting frauds when they are perpetrated.

We have come here, sir, for the purpose of getting at these frauds and correcting them, if possible, for we know they exist, and not to make long speeches, or grand speeches, or to cover up or excuse wrong. Here is a practical prevention of fraud and wrong. Let us adopt it.

I have just returned from my home in the country. I have, on my visit to my district, conversed with a large number of persons in reference to this matter, and I have not met one man who was not in favor of this proposition. I have had people to say to me that it is just what they had desired for many years, and that this was the first time they had seen it in any practical form. They told me it would meet the evil and be of inestimable value.

Mr. PATTON. Mr. Chairman: I just rise to state that I have received letters from a number of my constituents, all of whom express themselves decidedly favorable to this section now under discussion, and I hope the section, as reported by the committee, will be adopted.

The question was then taken on the amendment offered by Mr. Landis, to strike out the words, "containing a popu-

lation of at least fifty thousand inhabitants," to the amendment offered by Mr. Boyd of Montgomery, and it was not agreed to.

The question then recurred on the amendment offered by Mr. Boyd of Montgomery.

MR. WHERRY. I call for the reading of the amendment.

The CLERK read as follows:

"All elections shall be by ballot, which shall be numbered by the election officers when received. But in any city, borough or town containing a population of at least fifty thousand inhabitants, the ballot shall be numbered by the election officers when received, and each shall have endorsed upon it the name of the elector, written either by himself or by another citizen of the district, who shall not be an election officer, and all persons voting in a representative capacity shall vote *viva voce*."

The question was taken upon the amendment, and it was not agreed to.

MR. JOHN M. BAILEY. Mr. Chairman: I offer the following substitute in place of the section, which I think will obviate all the difficulty which has been referred to by some of the gentlemen in the Convention. It is to strike out the section and insert the following: "All elections by the citizens shall be by ballot, and each elector shall write his name upon his ballot or ballots for officers elected by the State at large and for members of the General Assembly, or cause it to be written thereon and attested for him by another elector of the district, who shall not be an election officer; and the ballots for said officers shall not contain the name or names of candidates for any other office."

The CHAIRMAN. The question is upon the substitute.

MR. JOHN M. BAILEY. Mr. Chairman: It is not my desire to prolong the debate upon this question. When it was first reported by the Committee on Elections I was decidedly opposed to the whole principle of the open ballot, but I confess, from what I have heard already upon this floor, that I am personally a convert to it, so far at least, as the substitute which I offer commits me. It has been said in this Convention, and I can assert the same of the district which I represent here, that frauds in the rural districts are, to say the least of it, very rare. In fact I believe there are none at all. There may be mistakes on both sides by the election officers, but these mistakes do not affect

the result of the election one way or the other. We are told that frauds are of frequent occurrence in places where large populations exist, and that they cannot be avoided. I believe they are not confined strictly to the city of Philadelphia. I agree entirely with the gentleman from Somerset, (Mr. Baer,) who said if these large cities cannot prevent the commission of these election frauds that they ought to bear the yoke. I think, however, in the elections of State officers, in the election of officers at large, and in the election of members of the General Assembly, the yoke would be borne by all of us, but where municipal officers, prothonotaries, clerks of courts, registers and recorders are to be elected, the burden should be borne by those who permit these villains to bind it upon their shoulders. It has been said that seven-eighths of the people of Philadelphia are ruled by these villains who constitute the other one-eighth. This fact has been admitted in this Convention by gentlemen from that city, and as long as it does exist I would let the seven-eighths of the people bear the burden they have let the other one-eighth bind upon their shoulders; but whenever that burden has to be borne partially by my district, and partially by the whole State, I object to it, and say that the villains of Philadelphia shall not bind *their* burdens upon *our* shoulders. I am in favor therefore of applying this provision only to the election of officers affecting the State at large. We must take the people of the State as nature has made them. We cannot make them to suit the Constitution, and we must therefore make the Constitution to suit the people. Now then how are the people constituted? I knew some are strong and independent in feeling as well as in action, but there are others who are timid and weak, and who would not vote as they wished if their neighbors were aware of the manner in which they cast their votes. This feeling applies, perhaps, to only a particular class of officers elected. It has been within the observation of all of us in the districts which we represent that the people usually do not care who knows how they vote for Governor, for a judge of Supreme Court or any of the officers elected at large, but when it comes down to an election of a supervisor, clerk of court, register or recorder, the people do care, and they are particular that their neighbors shall not know how they vote. It strikes me that the substi-

tute I have offered obviates all these difficulties, and where a community allows itself to be ruled and controlled by a minority let them be controlled by it; but when that minority attempts to control the balance of the State, I say my district shall not be so controlled. Let us then adopt all the benefits which accrue from the section as it comes from the Committee, so far as it affects officers at large and members of the General Assembly. Frauds in elections are not so much attributable to the elector as they are to the election officers, and if these gentlemen in Philadelphia, these reformers, instead of sitting at home, in their velvet chairs and with kid gloves upon their hands, would go out and beard the lion in his den, at the proper time and at the proper place, and elect such officers as would carry out the wishes of the people, we would not hear so much about these frauds. Let them meet the danger where it occurs. Let them meet the difficulty where it exists, and not stay in their offices and pour out their paper bullets upon the fraudulent voters and upon the fraudulent election officers, which have no more effect upon them than they would have upon the hide of an alligator.

Let pure and upright election officers be appointed. It has been my observation in the county in which I reside, and in all the rural districts, that the election officers there would as soon think of picking your pocket as to commit a wilful fraud upon the ballot-box. These reform gentlemen in Philadelphia could carry out the same principle if they would take care that the proper men were selected for election officers, and we should not hear so much about these election frauds. The good citizens of Philadelphia are entirely to blame for this condition of affairs, and I would let them bear the burden themselves. I am in favor of the proposition of the committee, so far only as it applies to the officers of the State at large, and to the members of the General Assembly, but for the reasons which I have given, I shall feel compelled to vote against the proposition as it comes from the committee.

The question was then taken on the substitute offered by Mr. John M. Bailey, and it was rejected.

Mr. NILES. Mr. Chairman: I offer the following proviso, to come in at the end of the section: "*Provided*, That so much of this section as directs that the name of the

elector shall be endorsed upon his ballot shall only apply to cities having more than twenty thousand inhabitants."

The amendment was rejected.

Mr. HOWARD. Mr. Chairman: I offer the following amendment, to come in at the end of the section:

"And the election officers and clerks shall be sworn or affirmed before entering upon the discharge of their duties, that they, or either of them, will not, in any way, make known how or for whom any elector shall have voted, except when called as a witness in a lawful proceeding to investigate the validity or regularity, or the alleged frauds in such election, and the violation of such oath or affirmation shall be perjury, and punished as shall be provided by law."

The amendment was rejected.

Mr. HANNA. Mr. Chairman: I offer the following substitute for the section:

"All elections by the people shall be by ballot. The election officers shall enter and number the names of the electors on the list, in the order of their voting, and number each elector's ballot with his number on the list. All elections by persons in a representative capacity shall be *viva voce*."

The substitute was rejected.

Mr. BRODHEAD. Mr. Chairman: I offer the following amendment, to come in at the end of the section:

"*Provided*, That in elections for borough, city, township and ward officers the endorsement of his name upon his ballot shall be optional with the elector."

I wish to say, with reference to this section, that I am entirely in favor of the section as it stands; but it must be remembered that the people in the rural districts have no interest in the spring elections. We have an interest, however, in preserving the purity of the ballot-box at the fall elections, because members of the Legislature, Governors, &c., are elected; and in their election we have, of course, a common interest. In view of this fact, we are willing to submit to the inconvenience which will ensue by the creation of such a revolution in the manner of voting as is provided for by this section; but I can see no reason why this inconvenience should be inflicted upon us at the spring elections. In voting for our borough officers, it makes no difference to us how the people in Philadelphia vote,

and I can, therefore, see no good reason, as far as the rural districts are concerned, why this provision should be made to apply to all our elections. I have said that we have no common interest in the spring elections, and for this reason I have offered this amendment.

The question was then taken on the amendment, and it was rejected.

Mr. D. N. WHITE. Mr. Chairman: I offer the following amendment to the section: "To insert before the word "each," in the concluding sentence of the section, the words "at the November election."

The amendment was rejected.

Mr. HAZZARD. Mr. Chairman: I offer the following as a substitute for the section:

"All elections of the citizens shall be by ballot. The ballot voted may be open or folded, as the elector shall prefer, and they shall be numbered by the elector in the inside, and the same number shall be put on the tally list, and when the votes are counted the tally shall be sealed up. Voting in a representative capacity shall be *viva voce*."

The substitute was rejected.

Mr. HANNA. Mr. Chairman: I offer the following as an amendment, to come in at the end of the section:

"Persons in a representative capacity shall vote *viva voce*."

The amendment was rejected.

Mr. TURRELL. Mr. Chairman: I offer the following as an amendment, to come in at the end of the section:

"And that every elector shall be required to affix his photograph to his ballot before he deposits the same."

The amendment was rejected.

Mr. GILPIN. Mr. Chairman: I offer to amend the section, by inserting the words "the back of" between the words "upon" and "his," in the concluding sentence of the section.

The amendment was rejected.

Mr. HOWARD. Mr. Chairman: I offer the following as an amendment to come in at the end of the section:

"*Provided*, That before this provision shall go into effect the Legislature shall provide by law the form of oath to be administered to the election officers and clerks to keep and maintain the secrecy of the ballot, in all cases except in lawful

proceedings to enquire into the irregularity or alleged frauds in the elections."

Mr. HOWARD. Mr. Chairman: I have previously in this debate, Mr. Chairman, stated to the committee that I should support this proposition as it came from the Committee on Elections, provided, however, that at the end of the section there should be added a provision whereby the election officers and clerks should be sworn and that the vote of the elector should be kept secret except when it was otherwise necessary in the investigations of elections. Now this oath is perfectly right and proper, and with this addition which I have proposed to this section the ballot is rendered just as secret as it is now. I do not understand why the friends of this section are not willing to incorporate this oath in its provisions. It seems to me this oath is necessary to the completion of the section, and in order that the citizens of the Commonwealth may know that it will be beyond the power of the election officers and the clerks to divulge the manner in which they have voted, I take it that this oath is perfectly right and proper, and that we should put it in right here, for if we do that we can then say to our constituents: "We have given you the means of voting and have made the ballot as secret as it is now."

Mr. M'ALLISTER. Mr. Chairman: I desire to state, in explanation, that the committee in their discussions supposed that this question was one resting solely with the Legislature. The secrecy to be enjoined upon those officers having charge of the election is a proper subject for legislative action, and it is one which can be properly referred to that body.

Mr. BUCKALEW. Mr. Chairman: I am of the opinion that this amendment, if adopted, will preclude all action by the people, under the section, at the election to be held upon the adoption of the amendments to the Constitution, and that it will preclude voting under the section at the next general election, when, possibly, very important questions will be decided. If the amendment shall be adopted in its present form, no election under this section of the article can be held until the general election of 1874. For my part I have no objection to voting upon second reading in favor of an injunc-

tion to the Legislature to adopt such a provision, but I do not desire to take any step which shall interfere with the adoption of our amendments to the Constitution when they come to be voted upon by the people, or to lose the advantages of the section at the very important election to be held next fall. For the present, therefore, I shall vote against the amendment.

The question was then taken on the amendment offered by Mr. Howard, and it was rejected.

Mr. KNIGHT. Mr. Chairman: I offer the following substitute for the section:

"All elections shall be by ballot, except by persons in a representative capacity, who shall vote *viva voce*."

Mr. DALLAS. Mr. Chairman: I rise to a point of order. That amendment has already been voted upon, and has been rejected by the Convention.

The CHAIRMAN. The point of order is well taken, and the amendment cannot be considered.

Mr. RUNK. Mr. Chairman: I offer the following substitute for the section:

"All elections of the citizens shall be by ballot, open or secret, as the elector shall prefer. The ballot shall be numbered by the election officers when received, and the name of the elector endorsed thereon by the officer, in the presence of the elector, who shall furnish the elector with the number of his ballot."

The substitute was rejected.

Mr. HEMPHILL. Mr. Chairman: I offer the following substitute for the section:

"In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the vote shall be personal and publicly given *viva voce*: *Provided*, That dumb persons entitled to suffrage may vote by ballot."

The substitute was rejected.

The CHAIRMAN. The question now recurs upon the section.

Mr. DALLAS. Mr. Chairman: I call for the reading of the section.

The CLERK read as follows:

SECTION —. All elections of the citizens shall be by ballot. The ballots voted may be open or secret, as the elector shall prefer, and they shall be numbered by the election officers when received. Each elector shall write his name upon his ballot, or cause it to be written thereon, and at-

tested for him by another elector of the district, who shall not be an election officer.

Mr. TURRELL. I move to strike out all after the word "ballot."

The motion was not agreed to.

The question being then taken upon the second section, a division was called for which resulted: Affirmative, thirty-nine; negative, fifty-seven. So the section was rejected.

The CLERK read the third section, as follows:

SECTION 3. Electors shall in all cases, except treason or felony and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

Mr. M'ALLISTER. I move to amend, by striking out "or," in the first line. It is a typographical error.

The amendment was agreed to.

The question then being upon the adoption of the section, it was agreed to.

The CLERK read the fourth section, as follows:

SECTION 4. Whenever any of the qualified electors of this Commonwealth shall be in any actual military service, under a requisition from the President of the United States, or by the authority of this Commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual place of election.

Mr. ROSS. Mr. Chairman: I offer the following amendment:

The CLERK read:

Strike out all after the word "election," in the fourth line, and insert, so that the section shall read:

"Whenever any of the qualified electors of this Commonwealth shall be in any actual military service, under a requisition of the President of the United States, or by authority of the Commonwealth, such elector shall exercise the right of suffrage, in all elections by the citizens, only when present at the respective places of election of which they are residents."

Mr. ROSS. Mr. Chairman: Before the vote is taken upon this amendment, I desire to say a word or two in explanation of the reasons that induced me to offer this

amendment, and why I think it should be adopted. After the very extensive debate which took place in regard to the question of female suffrage, I think it is pretty generally admitted here that there is no such thing as a right to vote; that it is a conferred privilege; that it is a grant, and not a right; and therefore, sir, I want to start out in what I have to say by assuming that position to be correct.

In the second place, it is well known to all of us that the law-making power has restricted and modified the exercise of this privilege of voting; and again, it is well known that arbitrary restrictions—restrictions which have had reasons for their passage existing only in the minds of the law-makers—have been passed. Why is it that no man can vote until he is twenty-one years of age? Why is it that a residence is required? These are arbitrary restrictions.

Now, sir, I am aware that the character of the amendment which I have offered will, perhaps, strike gentlemen in this Convention as being one which will not be popular throughout the State. I am aware, sir, in view of the recent war which took place in this country, that it was thought right then that the citizens who left their homes at the call of their country, and who went away and were fighting and were located in different places at the time that election took place, should not be deprived of their right to vote because they had been animated by a patriotic spirit, and had left their places of residence at the call of their country, to fight for it. I know that at the time a vote was taken in this State as to whether soldiers should have the right to vote when away from their places of residence, that it was thought to be an unpopular movement to oppose that right to vote; but I submit to this Convention, and I submit to the common sense and sound judgment of the people of this State, whether it is not an extraordinary provision to put into a Constitution, that a man not at the time a resident of the district in which he has to vote, or where his vote is to be counted, and the district which will be affected by that vote, who may perhaps have been absent from that district for a period of a year or more, who, perhaps, has been so situated that he is not familiar with the requirements or the wants of his district,

shall have the right to vote, perhaps a thousand miles away from his home, where there is no opportunity for his fellow electors to challenge his vote, to ascertain whether he has complied with the other requisites which the Constitution requires. Such a provision has always appeared to me to be of an extraordinary nature, and contrary to intelligence and sound judgment.

There is a well known maxim, which says *inter armis silent leges*, and I think it applicable to this very question. Who has pretended to say, who can pretend to say, that the votes that were cast, in a number of instances during the war, by soldiers away from their places of residence, were the free, untrammelled expressions of their sentiments upon the occasions upon which they were voting?

In my own Congressional district, composed of county of Bucks and a portion of Philadelphia, I recollect very well that in 1864, after the Philadelphia wards had voted, and after my own county had voted and after all the votes had been counted and the result was known, there came from the south a parcel of votes, which, when counted, completely and entirely changed the result of that election. It was never pretended; it was never even asserted by the gentlemen upon whose side those votes were counted, that they were the honest, the legitimate votes of the persons casting them. We all know, and can very readily appreciate the circumstances under which a private soldier, away from home, under control and discipline, would cast his vote.

I sincerely hope that this country may never again be plunged into a war such as we have lately gone through; but still, it is possible that it may occur again; it is possible that our citizens may be required to leave their homes as they did before, and then this provision in the Constitution will be called into exercise, and the sentiments of voters at home will be affected and changed by the action of voters at a distance, who may or may not have cast the ballots which are represented to have been cast by them.

I hope that this Convention will seriously consider this section before voting, to adopt it as reported by the committee. I hope that you will ponder well upon the effect and upon the consequences which

a provision of this kind may have upon the result of our various elections. A soldier stationed at Wyoming territory, who claims a residence in this city, or who claims a residence anywhere in the State of Pennsylvania, may, under this provision, cast his vote out there and have it counted here, and that vote may or may not materially affect the result of our election. I submit that it is unwise; I submit that it is contrary to the spirit of our Constitution; that it is contrary to the spirit of the enactment in relation to the right to vote, that a provision of this kind should be inserted into our Constitution.

Why, sir, the right to vote is an arbitrary right. The privilege of voting is a privilege which is exercised under arbitrary restrictions, and all this is simply doing nothing more than saying to the military man, who is away from his home, that he must come back to his home to vote with his other fellow-citizens, or he cannot vote at all. It is not hard upon him, no harder upon him than it is upon other persons who are regular electors, who have been compelled to move out of their districts, and who, by reason of moving away, have lost their votes.

I do not suppose any gentleman in this Convention will pretend that the sections of this Constitution which will be adopted will always work well, and will always be right and proper. We do not, certainly, arrogate to ourselves more power or comprehension than the Almighty himself has exercised in his laws, and no gentleman will pretend that the divine laws always, and in all instances, work properly and work correctly. The Almighty governs us by grand laws, and in the individual working of some of those grand laws great apparent personal injustice and harm is done. In the law of gravitation I submit there are individual instances where great individual harm and great individual injury result in consequence of the workings of that great law of gravitation. A little child, standing balancing itself at a window, without being conscious of the danger of its situation, without being old enough to recognize its peril, loses its balance, and in consequence of the law of gravitation, is thrown down upon the ground and its life destroyed; yet, who would say that, because in that individual instance, the law of gravitation worked an injury; therefore the law is wrong, and that it ought not to

exist? So I say that, even if this amendment, which I offer in an individual case, did harm and worked an injury to the individual, yet, for the sake of the general good, for the sake of the community, it is required, and it is necessary, and I think it should be made a part of this section, and the section should read as I have amended it.

Mr. HUNSICKER. Mr. Chairman: I trust that this committee will not act hastily upon this section. I would suggest that here is one of the widest doors that could be opened to fraud. The article which we are now considering is copied from the old Constitution, or rather from an amendment to that Constitution. It was passed in a period of great public excitement, and I know, as an individual instance, that when the question was voted upon by the people, there were stationed around the poll where I voted—not exactly *stationed*, but there were standing—soldiers wearing the United States uniform, one of whom declared that somehow or other if any voter saw fit to vote against the soldiers voting, he fell down. He could not account how it happened, but he said that was the result.

It was adopted, therefore, in a period of great excitement, and without proper consideration. We are now living in a time of profound peace. We have but very few soldiers wearing United States uniform in actual service, and these are stationed out at the frontiers, and different places, taking care of the government property; but we may have another war. Nations are not exempt from that calamity, and I would like the committee to consider. You have adopted provisions to prevent frauds. You have defined the qualifications of voters, and have prescribed a penalty against those who would pollute the ballot-box, either by fraudulently voting or by a fraudulent count, or by fraudulent returns. I ask how would you enforce these laws against the election officers who are holding the election within the confines of a military camp? I would like to see that constable who would go, armed with a warrant of this State, into the State of South Carolina, when that State is in a condition of actual war, to arrest the judge of elections and to bring him to Montgomery county for trial. Is it not well known, in this State, that in the contested election case of Ewing and Thompson, it was the fraudulent manipulation of the soldiers' vote that determined that election; and we all know—I

know it, and I presume every member on this floor knows it—that the ballots were cast for one party in the field, and were returned for the other party when they came home. I would ask, if you have a war, and you have five hundred thousand electors in the army—if you could get so many into it—and put them into actual service, and you were to have an election poll in each company, with as many officers of course as there are companies—and if these officers are to be bound by the election laws which we have passed, how are you going to punish either the soldier who illegally votes, or the officer who commits a fraud upon the election?

If the elective franchise is to be valuable, if it is to be a reflection of the public will, it must be pure, not only at home but everywhere; and it is utterly impossible for the private soldier, who will even black the boots of his captain (if ordered so to do)—although in violation of the articles of war—to vote against the wishes of his superior officer. He has not the moral courage to do it. Is not that true? Do we not all know that to be true? If even he has the moral courage and does cast his ballot, there are no guards that can secure that from being altered. I want the soldier to vote, but I want his vote counted for the party he voted for. We have had one election law allowing soldiers to send their ballots home and vote by proxy; and it is said that General Hancock voted in that way for General McClellan, and when it reached home it was voted the other way.

I have cited these individual instances to direct, if I can, the attention of the committee to what I conceive to be as important a question as this committee can have before it. I therefore trust the committee will ponder well the subject, because it is one well worth considering.

Mr. NILES. Mr. Chairman: If the committee desires to vote I will not take up time in discussing this question; but I must say I am surprised at the amendment offered by the gentleman on my left (Mr. Ross.) In effect it is simply this, that every man who has patriotism enough to volunteer in defence of his country is to be disfranchised. If his proposition was simply to strike out this section, which was the result of the great difficulties of 1863 and 1864, it would have been a more manly proposition, it seems to me.

We all understand the origin of that amendment. We know very well why

that was incorporated into the organic law in 1864. We remember, sir, that at that time a hundred thousand of the brave boys of Pennsylvania were absent from their homes, from their voting places, fighting in defence of your country and mine. We believed that the crisis had come, and that it was dishonorable for us to remain at home, around our peaceful firesides, to vote when these men who were upon the tented field were deprived of the privileges of voting; to say who should rule and reign over them.

Now comes the simple proposition to do away with what we did in 1864, because if the amendment is to prevail, and if the soldier is only to vote when he is at home, we may, it seems to me, just as well blot out this whole section, which simply means to annul the section of 1864. I am opposed to the amendment, and in favor of the report of the committee.

In reference to frauds, I believe, sir, that the experience of 1864 and 1865 shows that, as honest elections were held in the army, there was as fair an expression of the qualified voters there as there was in any of the rural districts of Pennsylvania, to say nothing of our great cities. The gentleman who has spoken in favor of this amendment, and against the provision of 1864, says that the soldier has not the moral courage to vote against his superior officer. Well, sir, in answer to that, I undertake to say that the man who will leave his home and his fireside, and leave everything but life, and fight in defence of his country, has the moral courage—if he has the physical courage to enter the battle field, he has certainly the moral courage to vote according to the dictates of his own conscience. If any man is deprived of the right to vote it ought to be the man who sits supinely at home, and not he who leaves everything and fights in defence of his country and flag.

The question being upon the amendment offered by Mr. —, it was rejected.

The question then recurring upon the section, it was agreed to.

The fifth section was then read, as follows:

“The Legislature shall enact a uniform law for the registration of electors, but no elector shall be deprived of the right to vote by reason of not being registered.”

Mr. NEWLIN. I move to strike out all after the word “electors,” so that it shall read: “The Legislature shall enact a

uniform law for the registration of electors," and let it stop there.

Mr. TEMPLE. Mr. Chairman: In view of the discussion likely to ensue upon this subject, I would ask that it go over for the present, because I consider that the amendment offered by the gentleman is a very important one, and I have no doubt many gentlemen will like to speak on it.

The question being upon the amendment offered by Mr. Newlin, it was rejected.

Mr. EDWARDS. Mr. Chairman: I move to amend, by inserting the word "qualified" before the word "electors," so as to read, "qualified electors;" and also to amend the latter clause, by adding at the end the words "in his district," so that it shall read, "by reason of not being registered in his district."

The question being upon the amendment offered by Mr. Edwards, it was rejected.

Mr. J. W. F. WHITE. Mr. Chairman: Since we have adopted the tax qualification as one of the qualifications of an elector, I feel very strongly inclined not to vote for this section. I concur in the report of the committee, and am in favor of requiring the Legislature to pass a registration law, after we had taken away the tax qualification. I believe, sir, that tax lists will answer all purposes of a registration law where that registration law is as null as could be, under this section.

What is the use of a registration law, when the omission of a voter's name from it does not prohibit him from voting? I apprehend the use of it will give an approximate list of the voters. If we have a tax list prepared by the tax collector, I think we will have a better list of voters than we can obtain under the registration law which is proposed by this article reported by the committee. I think, however, the registration of electors will be of very little use, and therefore, since the first section of the report of the committee has been modified, I shall vote against the section. Some of the members of the committee were opposed to any registration law, because it would be conclusive upon electors, and they therefore insisted upon the proviso being inserted that no man should be deprived of his right to vote, simply because his name was not on the registration list.

Mr. McALLISTER. Mr. Chairman: It was the decided opinion of the Committee on Suffrage that the registration law should

not deprive a person of the right of suffrage, who had that right by reason of being a resident of the district, and that the neglect of the officer in putting his name upon the list should not deprive him of the right of suffrage, when he should prove to the satisfaction of the election officer that he had the right independent of the registration. It was shown clearly to the committee that under our tax prerequisite instances had occurred in which the neglect of the officer to assess the citizen had deprived him of his vote, and this, although the voter had gone to the officer at the proper time, and desired to be assessed, and the officer had then and there promised to assess him; yet not having been returned by the assessor he was in consequence deprived of his right to vote. It was to prevent a recurrence of such injustice and wrong that this section was framed and reported to the Convention. It seems to me the mere retention of the tax prerequisite to the right to vote does not supersede the necessity of this registration of voters. The registration is desired to give notice to the electors of the district who claim the right to vote, in order that inquiry may be made into their character, how long they had resided in the district and where they resided before they came there. This is all necessary, whether the tax qualification be stricken out or retained. Tax-payers are not all voters, nor are all voters necessarily tax-payers.

Mr. GIBSON. Mr. Chairman: I think, as the section reads now, it is rather incomplete. I think the difficulty can be remedied by means of the proposition which was suggested by the gentleman from Allegheny (Mr. Howard.) His suggestion was that the words "otherwise qualified elector" will remove every possible objection which could be raised to the section. I move, therefore, to amend the section, by inserting the words "no elector otherwise qualified shall be deprived of the right to vote."

Mr. KAINE. Mr. Chairman: I think this proposition might as well be voted down. It is nothing but a mere matter of legislation, and I am opposed to putting anything of the kind in the Constitution. The Legislature can, if it sees proper, pass a law prescribing the form and manner by which voters may be registered, and I cannot see the necessity of placing any such provision in the Constitution.

Mr. HOWARD. Mr. Chairman: It is well known to many members of the Convention that the mere fact that a man

is a tax-payer does not entitle him to vote, and, in many instances, tax-payers are not electors.

Mr. Kaine. Will the gentleman allow me to ask him a question?

Mr. Howard. Certainly.

Mr. Kaine. I desire to ask the gentleman whether that will prevent the Legislature from passing a law upon the subject? The mere fact that some citizens are tax-payers would certainly not prevent the Legislature from passing a law upon the subject. I have no objection to a registration law, but I am opposed to placing in the Constitution a subject which is a proper one for legislative action.

Mr. Howard. Mr. Chairman: The remarks of the gentleman may be very true, but, if this provision is placed in the Constitution, this trouble can be remedied before the Legislature can act in the matter. I have risen, however, for a single purpose, and that is for the purpose of correcting the idea, if any such idea prevails at all, that the tax list would be a criterion by which the electors of our districts could be determined, because there may be tax-payers who are not electors at all. The word "elector" describes a qualified elector, and it embraces all the qualifications of a voter.

Mr. D. N. White. Although tax-payers, yet are not the names of all the electors found on our tax lists?

Mr. Howard. That may be, but the object of registration is for the purpose of giving notice to all other electors of the district, in order that they may ascertain who have been selected and placed upon the list as electors. If their names have been wrongly entered, it at once furnishes the information to the other electors.

Mr. Minor. I would like to inquire whether the registration of voters gives them any advantage which they would not otherwise possess.

Mr. M'Allister. Mr. Chairman: It is a duty imposed upon the Legislature to make this registration of voters. The gentleman from Crawford (Mr. Minor) asks the question whether any person can be a voter who is not a tax-payer. I answer, certainly. If the citizen has paid a tax within two years, and has resided in the district two months, he will be entitled to vote, although not a tax-payer of the district at all, so that the assessment of a tax in the election district is no criterion of the right to vote, or of a just claim to the right to vote. It is for the pur-

pose of giving notice of this claim of right to vote to persons who are interested that registration is rendered necessary, and it is, therefore, enjoined by the section under consideration, as a duty upon the Legislature to provide this means of preventing fraud and corruption.

Mr. Carter. Mr. Chairman: I cannot agree with the gentleman from Fayette (Mr. Kaine) and others, when they assume that the Convention, on a second reading, will decide to retain what I regard as a most odious feature—property representation—of which the tax qualification is the tail end, and which I hope will be cut off in this body.

In reference to the provision which is to be made by the State, in which all the voters of the various districts are to be placed upon record, I would only remark that I do not agree with the gentleman from Fayette, (Mr. Kaine,) that this is a matter which should necessarily be left to the Legislature. I regard this provision as one of those which the committee has reported for the purpose of establishing guards around the sacredness of the ballot-box; and I think it might be said, with just as much force, that the Legislature should provide for the purity of the ballot-box in other respects.

It has been remarked that there appears a sort of contradiction in the wording of the section, where it is provided that a citizen shall not be deprived of the right of suffrage in the event of not being registered. This is a question which was fully debated in the committee, and it was decided that this provision was necessary to protect the voter, in case the registering officer omitted some names from the registration record. I think it is eminently proper that there should be some such provision of this kind made between the State and the voters, and that there should be a proper registration law.

Mr. Newlin. Mr. Chairman: I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to, and the President resumed the chair.

IN CONVENTION.

The committee then rose, and the chairman, Mr. Lawrence, reported progress and asked leave for the committee to sit again, which was granted; and to-morrow was named and agreed upon.

Mr. Dallas. I move to adjourn.

The motion was agreed to.

So the Convention thereupon, at two o'clock P. M., adjourned.

FORTY-SEVENTH DAY.

WEDNESDAY, *February 19, 1873.*

The Convention met at ten A. M. Prayer was offered by Rev. James W. Curry.

JOURNAL.

The Journal of yesterday's proceedings was read and approved.

VISITING PENITENTIARY.

The PRESIDENT. The Chair will observe that a few days ago an invitation was received from the officers of the Eastern penitentiary, asking the Convention to visit that institution, which was accepted. Upon a subsequent day a motion was made to fix the time. Pending that motion the Convention adjourned. If any gentleman will now make a motion in reference to the subject it will be received.

Mr. HAY. I move that the time be fixed for Saturday next at two o'clock P. M.

Mr. TEMPLE. I move to amend by inserting "Friday" in place of "Saturday."

Mr. KNIGHT. I move to amend the amendment, so that it will read "Saturday week at two o'clock."

The amendment to the amendment was agreed to.

The question being taken upon the motion as amended, it was agreed to.

PRIVATE CORPORATIONS.

Mr. D. W. PATTERSON presented a memorial from citizens of Lancaster county, asking for a change in the Constitution respecting private corporations, which was referred to the Committee on Private Corporations.

PROTHONOTARY'S REPORT.

Mr. CLARK presented a report from the prothonotary of Indiana county, showing the number of cases outstanding and upon the docket, which was referred to the Committee on the Judiciary.

PROHIBITION.

Mr. CARTER presented a petition from citizens of Mar'etta, regarding the sub-

ject of liquor license, which was referred to the Committee on Legislation.

PRINTING CONSTITUTION.

Mr. KAINE offered the following resolution, which was read twice and agreed to :

Resolved, That the Clerk is hereby directed to have the Constitution of the State correctly printed, in bill form, and placed upon the files of members, so that its amendment may properly be considered by the Convention.

VIVA VOCE VOTING.

Mr. HEMPHILL offered the following resolution, which was read :

Resolved, That the Committee on Suffrage be instructed to report a section providing for *viva voce* voting at all federal, State and municipal elections.

The question being to proceed to a second reading of the resolution, it was not agreed to.

CITIES AND CITY CHARTERS.

Mr. WALKER, from the Committee on Cities and City Charters, presented the following report, which was laid on the table and ordered to be printed, namely :

SECTION 1. The Legislature shall pass general laws whereby a city may be established whenever a majority of the electors of any town or borough, voting at any general election, shall vote in favor of the same being established.

SECTION 2. Every city now existing or hereafter established shall be governed by a mayor and a select and common council, in whom the legislative power shall be vested.

SECTION 3. The mayor shall have a qualified veto on all the acts and ordinances passed by the councils, shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal.

SECTION 4. The Legislature shall pass no special law enacting any municipality or regulating its form of government, or the management of its internal affairs, or altering the charter of any city now

existing, or creating a public commission for any purpose, unless such law is specially asked for by a majority of each council for a definite object; nor shall such special law prove any force or effect unless accepted by a majority of each council, and by a majority of the legal voters voting at the next municipal election after the acceptance by the councils. Every municipality shall have power to pass laws for its own regulation not repugnant to the Constitution of the United States or of this Commonwealth.

SECTION 5. No city shall have the power to create hereafter a debt exceeding two and one-half per cent. upon the assessed valuation of the real and personal estate within its corporate limits, except to suppress rebellion or repel an invasion of the State.

SECTION 6. Every city shall create a sinking fund, which shall be inviolably pledged for the redemption of its permanent debt.

SECTION 7. No city shall, by a vote of its citizens, or otherwise, become a stockholder in any company, association or corporation, or obtain money for, or loan its credit to any corporation, association or party.

SECTION 8. A municipal officer who has not accounted for and paid over money officially in his hands shall be ineligible to any municipal office.

SECTION 9. The Legislature shall not except any property, real or personal, within any city, from municipal taxation, except such as is exempted throughout the State by general law.

SECTION 10. The select and common councils, or either of them, shall have power to appoint a committee of their bodies or body to investigate official misconduct, with power to subpoena witnesses, compel their attendance, examine them under oath, and require the production of books, papers, documents and vouchers, and in case of the neglect or refusal of a witness to appear, the court of common pleas of the county in which the city is, upon proof of the service of the subpoena, shall issue an attachment and compel the appearance.

In case a witness shall appear, but refuse to testify, upon the same being brought before the court, it shall commit the witness for contempt, and impose

such fine as in its discretion shall seem meet.

If the charge is established, and the finding is approved by the councils, or council appointed by the committee, then the office shall be declared vacated, and the officer shall be ineligible to any office of trust or profit under the municipality, and may be prosecuted in the criminal courts.

Wilful false swearing before such committee shall be deemed perjury.

PROHIBITION.

Mr. CORBETT presented five memorials from citizens of Pennsylvania, praying for the insertion of a provision in the Constitution prohibiting the manufacture and sale of intoxicating liquors, which were referred to the Committee on Legislation.

Mr. JOHN N. PURVIANCE presented two petitions from citizens of Butler county, praying for the insertion of a provision in the Constitution prohibiting the manufacture and sale of intoxicating liquors, which was referred to the Committee on Legislation.

THE PRESIDENT. The next business in order is the consideration, in committee of the whole, of the article submitted by the Committee on Suffrage.

The Convention then, as in committee of the whole, Mr. Lawrence in the chair, proceeded to the further consideration of the article submitted by the Committee on Suffrage, Election and Representation.

THE CHAIRMAN. The amendment now pending is that of the gentleman from York, (Mr. Gibson,) which will be read for the information of members.

The amendment was then read, as follows:

Insert after the word "elector," the words "otherwise qualified," so as to make it read:

The Legislature shall enact a uniform law for the registration of electors, but no elector otherwise qualified shall be deprived of the right to vote by reason of not being registered.

Mr. HAY. Mr. Chairman: Perhaps I did not hear the amendment correctly read, but it strikes me the language is not proper to put in here. It seems to indicate that registration is a qualification of an elector, which is not the case.

Mr. CARTER. Mr. Chairman: I am opposed to the amendment, because I think

the idea can be better effected otherwise. I think the registration law is needed, and I also think it is eminently proper that this Convention should do something about it.

It was said yesterday that this was not necessary, that it might be provided by legislation. I took occasion to look over the various State Constitutions, and I find no less than twelve of them in which there is a registry provision; those being mostly recently formed Constitutions.

I hope this amendment will be voted down, and one which I shall offer will be adopted, which will remove the chief objection that I have heard urged. Therefore I shall vote against this amendment, and hope it will not prevail.

Mr. M'ALLISTER. I want to say just one word in reference to this. We have defined, in what we have already done, what we mean by elector. If the word were "citizen," then it would be proper to say otherwise qualified; but it is clearly set forth that an elector is a person entitled to the right of suffrage, so that the words of the amendment would be superfluous.

The question being upon the amendment of the gentleman from York, (Mr. Gibson,) it was rejected.

Mr. CARTER. Mr. Chairman: I offer my amendment now, to strike out all after the word "of," where it occurs the last time in the section, and insert the words "neglect, intentional or otherwise, of the registering officer."

I will occupy but a very few minutes of the time of the committee. I consider this an important question. It is true that the citizens of this city, and perhaps of Pittsburg, have had a law which has not given satisfaction. I think that arises more from the defects of their law, defects that could be remedied, than the defects of a general registry law. I do consider that it is the true idea that a registry of voters is necessary, because it is the only means of connection between the voters of the State and the State. The tax list is for another purpose. That represents, as it were, the property of the State—the other the children of the State—the voters of the State. I think it is absolutely necessary. I am strenuously in favor of this, because I hope the Convention will remove the tax qualification, which I

think wrong in principle. I am a democrat dyed in the wool—not in the partisan sense of the term, but in its broader sense. I would remove all restrictions upon the right of a man to vote. This tax qualification is a relic of the old property qualification. It is only retained in four or five States. Now, it might be of interest and profit to examine those States who have retained that qualification, to see whether they are worthy of imitation or not. Delaware is one, with its whipping post; Rhode Island is another; Georgia is another.

The CHAIRMAN. Will the gentleman please explain what connection he proposes to establish between his remarks and the amendment under consideration.

Mr. CARTER. I would simply explain, sir, that the connection I will make is this: That the registry law is necessary, in default of a tax qualification. I do not think it is very far from the point under consideration, but bears somewhat on it.

The CHAIRMAN. When that question comes up, the gentleman will be able to get the floor and give these views at that time.

Mr. CARTER. I have then only to say that I hope the section, as recommended by the committee, with this amendment, will pass. I have this to say about the section, that as it reads, as reported, the section is somewhat contradictory in terms. As it reads now it is:

The Legislature shall enact a uniform law for the registration of electors, but no elector shall be deprived of the right to vote by reason of not being registered. Now this contingency may occur, and doubtless will, that designing men may refuse or decline to register, and, in that case, men otherwise "duly qualified" should not be deprived of this right.

Mr. TEMPLE. Mr. Chairman: I desire to ask whether it is in order to offer an amendment to the amendment.

The CHAIRMAN. It is in order.

Mr. TEMPLE. Mr. Chairman: I then offer the following as an amendment to the amendment. Add after the word "elector" the following words: "But no law shall hereafter be passed by the Legislature in relation to the registration of voters which shall not be applicable to all the counties of this Commonwealth."

The CHAIRMAN. The Chair would suggest that as the amendment of the gentleman does not appear to be an amendment to the pending amendment, it had better be withdrawn.

Mr. TEMPLE. I will then withdraw the amendment for the present.

Mr. McCLEAN. Mr. Chairman: I have listened attentively to all the arguments which have been offered in support of this section, but if I had the power to induce the Convention to coincide in my views, I would offer a provision prohibiting the Legislature from passing any registration law whatever. The only merit which the section possesses, as it has been presented by the Committee on Elections, consists in its saving clause, that no elector shall be deprived of the right to vote by reason of not being registered. If the pending amendment is not adopted, I shall move to amend the section by leaving it a discretionary matter with the Legislature, and not imperative, to pass a uniform law for the registration of electors. From all the observation I have had in the working of our registration laws, I have found them to be burdensome, as well as expensive, and a great nuisance to the voters, while they have produced no good results whatever. I have been unable to see how they can prevent the commission of election frauds. In connection with this matter I desire to take this occasion, as the first opportunity I have had, to deny the assertion of the gentleman from Philadelphia, (Mr. Gowen,) who asserted, on Monday last, that Adams county was included among other counties wherein election frauds had been committed. I deny this assertion entirely. The fact may be that there have been illegal votes cast there, as they are everywhere; the votes may have been cast by voters not fully qualified, but there has been nothing like deliberate and intentional fraud anywhere in our county. I cannot see how the adoption of registration laws is to prevent frauds in any portion of the State. What has been the history of our registration laws? Every member of the Convention knows the operation of the registry law in Philadelphia which was adopted in 1869. It has proved a stigma upon the city, and has been productive of the greatest mischief. It has provided for a board of aldermen and an apportionment which

has resulted in the greatest wrong, not only to the people of Philadelphia, but to the entire State. For this and other reasons, Mr. Chairman, I shall oppose the amendment now under consideration.

Mr. DALLAS. Mr. Chairman. I desire to call for the reading of the section by way of preface to what I have to say in connection with the proposed amendment.

The CLERK read as follows: "The Legislature shall enact a uniform law for the registration of electors, but no elector shall be deprived of the right to vote by reason of the neglect, intentional or otherwise, of the registering officer."

Mr. DALLAS. Mr. Chairman: It is by no means clear to my mind that this Convention should insert a provision upon this subject in the Constitution which would be mandatory to the Legislature and require the passage of a registry act. I do not doubt the power of the Convention to insert such a section, but I cannot see the wisdom of doing so. Whether or not a registration law may be required is a matter, in my judgment, which can be very safely left to the Legislature. It is not a subject which warrants a provision in the nature of a mandate in the Constitution of Pennsylvania; but, sir, if we are to act upon this subject, I conceive that there is one provision which might very wisely be made in this connection, and that is a provision—not in the nature of an absolute direction to the Legislature, requiring the passage of a uniform registration law, but simply a restriction upon the power of enacting a registration and election law, except such as shall be uniform in its operation throughout the entire State.

Mr. Chairman, I claim the distinction, if it is a distinction, of not having yet intruded upon the committee the peculiar claims of Philadelphia, in any respect, and I do not now propose to do so. I think that many of the attacks Philadelphia has received from gentlemen, who have held their position here, apparently, as missionaries from the west to teach us in the east how to perform our duties, are due to the statements which have been made by some Philadelphia members themselves, and we can hardly complain if we have been considered as heathens by these philanthropic gentle-

men from Pittsburg and Montgomery, when some of our own delegates have given some warrant for the suggestion. The gentleman from Venango (Mr. Corbett) in the course of his remarks upon another subject, said that Philadelphia had forced the registration act upon the State, and that the honest people of his borough complained that they were subjected to a registry law, because the election evils in Philadelphia made one necessary for this city. Now, sir, I was surprised at such a statement. It was certainly made without due consideration or examination, for if the gentleman had examined the registry law he would have found that the first twenty sections apply, exclusively, to Philadelphia, while the balance of the sections apply, exclusively, to the counties outside of Philadelphia, so that there could have been no possible necessity for the imposition of this registry law upon the entire State for the benefit of Philadelphia. Whilst this city is not entirely blameless in many matters, and has many sins to answer for, yet I hope she will not be charged with more sins than properly belong to her. I respectfully submit, sir, that all future election laws, and all registry acts, should be uniform, in their operation, through out the State; and then there will be a hope of its being impossible for a few men from any one section, and I care not from what section, in the State, to petition the Legislature, successfully, to enact provisions for their own purposes and for their own particular localities, in order to perpetuate their power and the power of their friends.

Now perhaps the best evidence of the correctness of the view I take is to illustrate by the present state of the law upon the subject. We have, as I have said, twenty sections of the registry act that apply to this city, and to no other part of the State whatever. They apply only to that section which the gentleman from Allegheny (Mr. MacConnell) would wall up as a penal settlement. Sir, if those gentlemen who have come amongst us as missionaries—these great Stanley's of the west, who have penetrated into this Africa of Philadelphia—wish to discover the Nile source of the corruptions that we suffer from will only glance at Harrisburg, and the Legislature who gave us this law,

they will find there the proper subject for their christian purposes, and a realization of their hopes of important discovery.

I say, sir, that the best argument upon this question is a review of the present special provisions of the registry act. In its application to Philadelphia it is simply this: The board of aldermen, consisting of all the aldermen of the city of Philadelphia, meet together under the provisions of this law, and appoint all the election officers for every division in the city of Philadelphia. The law provides that they shall appoint a certain portion of them from the party in the majority and a certain portion of them from the party in the minority. This seems perfectly fair, and it would be so if the practical operation of the provision were such as might be anticipated from its language; but the majority of the board of aldermen have assumed the power of designating both the majority and the minority election officers, and the result has been precisely what to all reasonable men must be obvious.

MR. HANNA. I would like to ask the gentleman if each political party did not select their own election officers, when the supplement to that act was passed. The law, without the supplement, was that under which several elections in the city of Philadelphia were held. That was the special election law for Philadelphia, applying nowhere else, and it was under that law, given to us, and to us only, of all the State of Pennsylvania, that many of the frauds, and the worst of them, have been committed. And if a proper title had been given to that act, it would have been "An act for the protection of corruption and the organization of fraud." It amounts to nothing else.

That was the act as to election officers; but it went further, and provided that the canvassers who make the registry lists of the city of Philadelphia should also be selected by the board of aldermen. It provides, it is true, that two of them shall be of the majority party and one of the minority party. But here again, sir, the majority of the board of aldermen claimed to and did exercise the power to say who should be not only the majority canvassers, but also who should be the minority canvassers, and the members of the minority party of that board were not allowed

to name who should be the officers to represent their own party, so that we had the majority in Philadelphia represented by a majority in the board of aldermen selecting the men to count our votes, and the sentinels to watch them. That we owed, sir, to a law of the State of Pennsylvania, and not to any pre-disposition to fraud on the part of the people of Philadelphia.

MR. LILLY. Mr. Chairman: I would like to ask the gentleman a question. Why was this registry law passed originally? Was it not because of frauds which had been committed in this city, because more majorities had been returned for certain candidates in certain districts than there were voters in those localities? Was it not found necessary to pass this law to prevent such a recurrence of fraud?

MR. DALLAS. Mr. Chairman: I answer that the reason that law was passed, in my opinion, was that certain men in Philadelphia, certain combinations of men, holding particular local offices, and seeking to control political power, wanted to fix their power indefeasibly by force of an act of Assembly, and they were able to secure its passage. That is the reason, in my judgment, which led to this registry law. It is not to be wondered at that these canvassers, appointed in the manner I have said, leave off numbers of legal voters of the city of Philadelphia, and having the power, eight days before the election, to erase names that had been already registered, should erase the names of many lawful voters! An effort was made through the courts to assert and maintain the rights of those who were so treated, and we received the answer from the judges, and I do not say it complainingly, for my education teaches me to accept, as legally right, whatever falls from the courts of my State; but we were there told that these canvassers—politicians confessedly—and appointed all by one party, in omitting, and in striking off and erasing names, were acting judicially, and that their acts were not to be reviewed, and that no man had any redress against them. But this act, as applicable to Philadelphia, provided, further, that when the elector steps to the polls, and offers his ballot, the shall be told, although otherwise qualified, that if his name is not on that registry (so miserably compiled!) he cannot vote; his right to vote is taken from him

by these irresponsible three men, appointed all by one party, who, as canvassers, are high judges on this question, from whose decree there is no appeal whatever.

Now, sir, such was the registry law. But, says the gentleman from Philadelphia, (Mr. Hanna,) it has been amended, and power has been given to the minority of the board of aldermen to name their own canvassers. I have no hesitation, now that I have come to that, in answering his question, and I am prepared to say that such an amendment was recently passed, but what does it amount to? "It keeps the word of promise to the ear to break it to the hope." For we have had it decided by our courts, that not only do these three canvassers act judicially, and that their decision is final, but that two of them absolutely control, and what is the use of saying to me that I can have one-third voice in a question if the two-third voice absolutely controls the decision of it? That is the answer to that gentleman from Philadelphia.

But, sir, there was such an outcry against this infamous act by the honest people of Philadelphia, and they made so strong and hearty effort to induce the Legislature to repeal it, that, at last, we secured—what? Why, sir, we thought we were getting a great deal when we were told that the Legislature had enacted that the acts of these canvassers should no longer remain beyond review by the courts, and we had great hopes that there would at least be some opportunity for the voice of justice to be heard, but when the act came we found again how deceitfully we had been used. The section upon which we hoped for everything gave us nothing. It was only this:

"SECTION 2. That it shall be lawful for the court of common pleas of the county of Philadelphia, upon the petition and personal application of any citizen whose name has been erased from the registry list of any election division of said city, to examine such citizen touching his right to vote at the election next ensuing, and if the said court shall be of opinion that said applicant is qualified to vote, the said court may order the name of said applicant to be restored to said registry list: *Provided*, That said applicant shall give twenty-four hours' notice to the can-

vassers of said division of his intended application, and no such action shall be taken by said court within three days immediately preceding said election.

Now, sir, so far from that giving us the free access to the courts of justice to which we thought we were entitled and for which we had been led to hope, if my name were left from the registry list I had no redress under that amendment any more than I had before, and we were startled to find it only applied to men whose names had been *erased*, and that all that was necessary was for the canvassers to leave men's names off the list, and for that there was no remedy whatever more than before. But in addition to that, this section is so trammelled with form and the mode of procedure as to be practically useless. It requires that twenty-four hours' notice should be given to the canvassers, and provides that the court shall not act under it within three days of the election. Now, the erasures are made upon the eighth day preceding the election, and consequently just four days is allowed for the assertion and maintenance of the rights of over one hundred thousand voters before a crowded and busy court of common pleas. It was found utterly impracticable to do anything under this amendment.

Mr. NEWLIN. Mr. Chairman: I rise to a point of order. Is it in order on the pending proposition that the gentleman should discuss the details of some statute which happens to be on our statute book at this time?

The CHAIRMAN. The Chair understands the gentleman to be discussing the section which refers to registration and so refers to the law upon this subject. The gentleman is in order.

Mr. DALLAS. I am sorry, sir, that the gentleman from this city finds the details of this act distasteful to him, and I am glad to say that I am entirely done with them. I proposed to make my argument upon this question in form of illustration, and I have done so. I have contended that we should have no election law, no registry act in this city that is not uniform and general in its application from the river to the lake, from our northern to our southern boundary, and I have endeavored to prove this by showing what injustice can be perpetrated

when a few bad men from any section can unite for their own evil purposes in fastening special laws upon their own districts. It will be for this committee to say whether this endeavor has been successful.

Mr. J. W. F. WHITE. Mr. Chairman: I rise simply for the purpose of making an explanation and putting myself right, for it seems I was misunderstood in what I said yesterday, by the gentleman from the city who has just taken his seat, (Mr. Dallas.) by another delegate from the city, on my right, (Mr. Wetherill,) as well as the gentleman from Bucks (Mr. Lear.) I do not come here as a "missionary from Pittsburg," to lecture Philadelphians upon these frauds and corruptions. I said explicitly, a few days ago, that I did not believe in the wholesale denunciations of fraud and corruption at the elections in Philadelphia. I do not believe the Philadelphians are one-tenth part as bad as some of the delegates here say they are. But there are gentlemen from the city who pronounce elections in Philadelphia utterly corrupt, who declare that all honest men are deprived of the right of suffrage, or so interfered with that only repeaters, and rounders, and scoundrels control the elections. Now I believe no such thing. I did not, therefore, lecture Philadelphia for her frauds. There are members from the city here who deny these sweeping allegations. I merely took these gentlemen who make such allegations at their word, and if things are as bad as they say they are, and both of the gentlemen from the city referred to, represent things in Philadelphia in that way, I say, if they are as bad as they represent, the remedy they wish us to adopt in the Constitution will not help them. This is not the mode to reach these evils. I was merely turning their own guns upon themselves; that is all.

I respect Philadelphia, sir. I do not believe these frauds and corruptions are as great in extent and magnitude as represented. No doubt there are frauds here, but I do not believe they are one-tenth part as bad as represented. Neither will these special regulations for the city remedy them. All our election laws ought to be general and uniform throughout the State. One of the evils, permit me to suggest, one of the evils in Philadelphia has

been her special legislation on every subject. She is not in accord with the State on any subject whatever, but has a distinct system in reference to taxes, election laws, election districts, schools, and almost everything else. Her true policy is to put herself in harmony and sympathy with the whole State, for the rural districts take pride in the city of Philadelphia and feel a deep interest in her prosperity.

MR. CORBETT. Mr. Chairman: It appears to me that, in committee of the whole, we had better adopt this section as it stands now, and the reason that leads me to that belief is this: We have adopted the first section of this report with a tax qualification. On second reading in Convention it may be, possibly, that that part of the section will be amended or stricken out. If it be stricken out, it appears to me that the Legislature should be required to pass a uniform registry law; but if that section stands as now amended in committee of the whole, and remains so on second reading in Convention, then I am in favor of leaving this matter of passing a uniform law to the discretion of the Legislature. That can be effected by a very simple amendment on second reading of the section, in Convention, by changing the word "shall" to "may." Therefore, I think it better that this section should pass in committee of the whole as it now stands, until the first section, as reported by the committee, is perfected on the second reading.

MR. TEMPLE. Mr. Chairman: When this section was first read, yesterday, I thought that I discovered the importance of it, and for that reason I invited discussion upon it when I believed it was likely to pass in great haste. My colleague from Philadelphia (Mr. Dallas) has stated many reasons why this section should not be adopted, which I would have stated had he not stated them. I desire to state to the committee that the reasons I would express for not supporting this section, or anything like it, I believe are the reasons of nine-tenths of the honest voting population of the city of Philadelphia. Before this Convention assembled in Philadelphia, and since its assembly here, every man we meet upon the street who is interested in honest elections, asks us whether we can get rid of the Philadel-

phia registry law. Now if there is any member of this Convention, particularly if there is any from Philadelphia, whose experience is different upon this subject, I challenge him to state it. I make the broad proposition to this committee that nine-tenths of the honest voters in Philadelphia are in favor of getting rid of the present registry law which applies to this city.

I am somewhat surprised that the delegate from Philadelphia, (Mr. Newlin,) who interrupted my friend, (Mr. Dallas,) should express himself as against hearing the details of this registry law in this discussion. I say that the attempt to place a clause like this into the Constitution which we are now making, invites the fullest and broadest discussion upon the laws which we now have, with regard to the registration of voters.

If in speaking upon this subject we are obliged to speak of a certain class of men who do not reflect any portion of the public sentiment of this great city, if we are obliged to give reasons in support of the arguments against this section which fall heavily upon some persons who are the authors of this measure, we cannot help it. I undertake to state, in answer to the inquiry of the gentleman from Carbon, (Mr. Lilly,) that the frauds that existed in the city of Philadelphia prior to the passage of this registry law were not the reasons which led to its passage. I undertake to state to him and to this committee, that prior to the passage of the registry law of 1869, the frauds that then existed did not give rise to the necessity for the passage of that law, and inasmuch as he is desirous of knowing the reasons which led to it, I will take the liberty of briefly stating them. I state that in 1869 there were certain politicians in the city of Philadelphia—and I am only stating what is the reflex of public opinion and the universal sentiment in this community—who were then out of office, and who had met the disfavor of their own political organization, and were unable to secure an election by means of an honest vote, rushed off to Harrisburg to secure the passage of a law in order to reinstate themselves and revive their fallen fortunes. I say that it is a notorious fact that one politician, above all others, in

the city of Philadelphia, was the author of this registry law, and other gentlemen, who believed their political fortunes depended upon its success, heartily and cheerfully embraced it and it has well nigh wrought the ruin and destruction of the tax payers of this city. Why, then, was the registry law of 1869 passed? Was it demanded by the honest citizens? Was it because of frauds which had been perpetrated here? I answer no. But it was for the only purpose of reinstating into power those who had been driven from power by the unanimous opinion of all honest men, and we are asked everywhere upon the streets why we do not get rid of that registry law.

Now if this registry law of which we are speaking has been so productive of good; if the officers who are appointed by the board of alderman to conduct our elections are good, honest and capable citizens, why, let me ask the advocates of this measure, is it necessary, upon the top of this, to compel the court of common pleas to appoint watchers to watch over the deliberations and the actions of these very men appointed to conduct our elections? It is a notorious fact that in the city of Philadelphia, for the last three or four years, we cannot hold an election without additional officers or watchers, to conduct our election and supervise the action of those men who are appointed to supervise and conduct elections by the board of aldermen. To the gentleman from Philadelphia, who calls attention to the amendment of that act, let me say that he dare not stand up in the face of the community and of the citizens of Philadelphia and advocate a continuance of that registry law by this body.

MR. CHARLES A. BLACK. I wish to ask my young friend one question.

MR. TEMPLE. Certainly.

MR. CHARLES A. BLACK. Admitting that the present registration law is all wrong, how can he remove that by voting the section down, because they passed the registration law under the old Constitution, and they can do so again.

MR. TEMPLE. I will state, in answer to that, that I am in favor (and I state it for the benefit, not only of the gentleman, but of the committee) of the passage of a uniform registry law for the registration of voters, and I am in favor of the passage

of such a law which shall apply to every county within this Commonwealth, and, as the chairman knows, such an amendment was offered by me prior to this discussion. I say that I am in favor of a proper registry law, but I am in favor of the passage of a registry law which shall apply to every county in this State. Now what has been the result of this? Some gentlemen say leave the result to the Legislature; and leave it for the Legislature to say, whether there shall be a necessity hereafter for the passage of a registry law at all; and then, if they do, it shall be uniform throughout the State. The gentleman from Montgomery (Mr. Corson) yesterday declared that their representatives were honest. I do not deny it, and I am not here to deny that all members of the Legislature are honest; but I state to him, as a question of fact, that when delegations go from the city of Philadelphia and demand the passage of a registry law, applicable only to this city, in which the people of Montgomery county have no special interest, and in which the legislators from other counties in the State have no particular interest, such legislators are ready and willing to accord to Philadelphia what certain delegations and politicians may require. If the legislators from other counties would see to it that they carried out their principles of legislation, as well as those of honesty, if they would mete out equal justice to all counties alike, this registry law never would have been a disgrace to the statute books and an insult to the intelligence of the people of this city.

What is the character of the people who have been appointed to select our election officers? There are some distinguished delegates in this Convention who are not in the habit of coming in contact with that class of people known as politicians. They rely, mainly, upon what they see in their own business transactions and every day life; but I say that when they are thrust into contact with these people, and see by means of an investigation into these frauds and corruptions that exist, they cannot, as honest men, undertake to advocate any such measure.

Again, in the passage of this section, is it right, says some gentlemen, to object to the insertion of a section in this Consti-

tution which says that the election laws shall be uniform? My answer to that is that it is no more specific than the old Constitution upon this subject. There could be nothing more specific than that; yet we find that when the first registry law was approved and passed by the Legislature of Pennsylvania, that it was declared unconstitutional and void by the Supreme Court of this State. Then it is a fact, asserted by hundreds and thousands of people, that the original drawer of the first registry law sought the counsels of persons high in authority, who were to pass upon this law, and drew another registry law which would come immediately within the ruling of the Supreme Court.

Now, Mr. Chairman, we will see that unless there is some specific provision placed in our Constitution that there shall not be a special law passed for the city of Philadelphia, that we will have the same scenes, the same legislation, enacted over again that we did under the old Constitution. Therefore I am in favor of voting down this section as it now is, and the amendment thereto, which seems to me to be vague and uncertain, and placing at the end of the word "electors" the following: "But that no law shall hereafter be passed by the Legislature which shall not apply to all the counties in this Commonwealth." Let such a provision as this stare the Supreme Court in the face, let such a provision stare the trading politicians in the face, let them know that, when they go before the Supreme Court, the language is so indubitable, so positive in its character, that it would bring down upon that court universal opprobrium and disrespect if they were to undertake to gainsay it or set it aside. For these reasons, and for others which have been given by gentlemen more competent than myself, I am not in favor of this section unless it is amended as I have suggested.

Mr. MACCONNELL. I rise to say that I am in favor of this section, with the amendments which I propose to offer at a proper time, and which I hope will meet the views of the gentlemen from Philadelphia. I would add to the section, "and no law for the regulation of elections shall be passed, which shall not apply to the whole State." As it is here, it is confined merely to laws regulating

registration. I would make all laws in relation to elections uniform throughout the State. I am opposed to the singling out of any part of the State, either at Philadelphia, or Pittsburg, or Luzerne, or any other portion, and treating the people of that portion as sinners above all other sinners. We are all human; we are all liable to err; we are not only liable to err, but liable to sin. We are all alike. I would, therefore, treat all alike. I would put into the Constitution a prohibition of all these special laws which single out particular places, and treat them as particularly liable to perpetrate fraud.

Just here let me say, that some gentlemen appear to think I made an attack on Philadelphia yesterday; they are entirely mistaken. I certainly made no attack on Philadelphia. I did what I thought was vindicating Philadelphia against what seems to me as unworthy aspersions made against it, on this floor, by some of its own representatives. That is what I did, and all I did. I do not think Philadelphia is worse than other parts of the State. I think if you will gather together eight hundred thousand inhabitants of any other part of the State, and place them in such small bounds as the eight hundred thousand in Philadelphia are placed, you will probably find as many rogues among them as are crowded in Philadelphia.

As I have said, I dislike this singling out of places and charging them specially with fraud, particularly so when this charging is done by their own representatives. I think it is not in good taste, and we ought to eschew it if we can manage to do so.

I think, sir, that these registry laws are wholesome, and I think that strict and severe laws to regulate elections are good. But they should apply to the whole State. We should have them uniform throughout the State. Philadelphia, Pittsburg, and every other section of the State, should be all under the same laws, in this respect. We should cut up this matter of special legislation, not only in regard to matters generally, but in regard to matters relating to elections; and when it is in order, unless some gentleman will do it who can conceive the idea and present it better than I can, and I hope my

friend from Philadelphia (Mr. Dallas) will do it. I will offer this amendment.

Mr. GIBSON. Mr. Chairman: I have been informed that the Committee on Legislation have a provision relating to this subject under consideration. If such is the fact, of which we can be informed by some member of the committee, it will be as well to do in this matter as we have done in some other instances, vote this section down, so that this consideration may come up when the report of the Committee on Legislation is before us. The whole idea of the gentlemen who have spoken seems to be that the Legislature should enact a uniform registration law. The language of this section is objectionable in making it *imperative* on the Legislature. The language, perhaps, ought to be: "The Legislature *may* enact a law for the registration of voters, but shall not enact such a law unless it be uniform throughout the State. That would be subject to the provision that if a man could prove that he was otherwise qualified, he would have the right to vote, but I think that if the Committee on Legislation—and it is a matter within their province as much as within that of the Committee on Suffrage, it will be better not to adopt this section as presented now, but vote it down and take it up again when the report of the other committee is before the Convention.

Mr. DEFRANCE. Mr. Chairman: I have listened to the arguments of the gentleman about this section, and either I am exceedingly blind or exceedingly senseless, but it seems to me that the section just as it stands is what is wanted. "The Legislature shall enact a uniform law for the registration of electors." What does that mean? Does it mean that they can enact a special law for Philadelphia, and another special law for Pittsburg, and different laws for other sections? Why if it means anything at all, it means that the Legislature shall enact a uniform law throughout the whole State, applying, of course, equally to Philadelphia and every other place. If it does not mean *that* then there is no sense in plain language. It seems to me that the section as it stands, is just what we want exactly. "The Legislature shall enact a uniform law for the registration of electors," that is, *uniform* throughout the State; "but no

elector shall be deprived of the right to vote by reason of not being registered."

Mr. CHARLES A. BLACK. "If otherwise qualified."

Mr. DEFRANCE. Of course, "if otherwise qualified." That is what it means and that is what it says. I think it is just what we want.

Mr. MACVEAGH. Mr. Chairman: I am sorry to say I cannot see my way clear to vote for this question without, at least, some further explanation of it than I have yet heard. I would vote for a registration law with great cheerfulness, but I would make registration a precedent qualification to the casting of the ballot. I would see that I would gain thereby very great and material advantages. I would ascertain in advance of the date of the election by a public list open to everybody who were the qualified electors of that election precinct, and to put in the Constitution a mandate upon the Legislature that they *shall* enact a registration law and then qualify it with the provision that, notwithstanding such a law, no voter shall be obliged to register or see that he is registered, nor shall the fact that he is not registered impair in any manner his right to vote. It seems to me, sir, that the provision annuls itself in effect. If it is merely to prevent special legislation upon the subject, *that* belongs to the Committee on Legislation, and at the proper time, doubtless, some provision to require uniformity in this matter will be adopted by the Convention. I cannot see the advantage, however, of requiring a registration law and then declaring that it shall not be the duty of any voter to see that his name is upon it, nor that the fact of his name not being on it will impair his right to vote.

Mr. HUNSICKER. Mr. Chairman: I prefer having no registry law at all. The registry law is an innovation. It is only a few years old. Its practical result, instead of preventing frauds, has been to increase the facilities for perpetrating them.

In the consideration of this section, I know no safer rule than the old legal mode of constructing new laws, viz: By considering the old law, the mischief and the remedy.

Under the old Constitution of the State we have a few well defined qualifications necessary to constitute an elector. The

present registry law was passed, and it has been explained here by gentlemen who are more familiar with it and its practical workings than I am. It was objectionable, and was once pronounced unconstitutional by the Supreme Court of this State. Then it was revised, passed again, and again carried to the Supreme Court, and then pronounced constitutional.

It has ever since been a source of irritation and annoyance to the people, particularly of Philadelphia, and also to the people of the State, who were affected by the frauds made possible and practiced under it in the city of Philadelphia.

As an illustration of what was possible under the old registry law, before the last amendment referred to by the gentleman from Philadelphia (Mr. Hanna) was made, I cite a case that actually occurred in this city. The facts, as developed, were these:

Under the law there were three persons selected as canvassers by the board of alderman for each ward, two being of the majority party, and the third of the minority party. These three canvassers made up the list of voters, and unless a voter's name appeared on this list he was deprived of the right of suffrage. After the canvass was completed, it was made the duty of the canvassers to examine their work within a certain time and strike from the list all persons improperly registered. To do this, notice was by the law required to be left at the residence of the person whose right to vote was questioned to appear, in person, at a certain time and certain place before the board, to show cause why his name should not be erased. If any voter failed to appear, or did appear, in obedience to this notice, and the canvassers erased his name by drawing a red line across it, he was deprived of his vote, and had no remedy at law or otherwise. In one of these boards, notice of this kind was sent to a number of persons, regularly registered, to appear; whether the voters ever received the notice or not is not known. At any rate, a few minutes before the time for the final action of the board had expired, one of the majority of the board pulled out of his pocket a long list of names, say of one hundred persons, and said the names of these men must be erased. They were regularly qualified

electors, and never dreamed that they could or would be thus disfranchised. The minority member of the board said with horror, what would be done; in his despair seized the canvassers book, jumped out of the window and ran away with it. He was arrested for this, taken into court and tried before a judge of opposite politics in this city, who discharged him with the thanks of the court, the judge declaring that he had performed his duty, and had done the only thing possible under that law to prevent the wholesale disfranchisement of voters. Gentlemen, do you like this picture? Now there should not be, and I believe there is not, in this Convention any partisan feeling—because we are all animated with the single purpose of restoring the purity of the ballot-box, and if he would keep it pure by putting in a fundamental provision guarding and securing it—it does not and cannot make any difference what party has practiced frauds under the old system.

The majority party to-day may be the minority party to-morrow. It is not a party question, and it has been well said by the gentleman from Philadelphia (Mr. Gowen) that fraud, like everything else, is progressive, and each party improves in this line upon its predecessors.

I do not agree with the gentleman from Dauphin, (Mr. MacVeach,) that registration should be a pre-requisite to the right to vote. If a man can be deprived of his vote by the action of one man, or by two men who make out the registry list, then all that is necessary is to buy that man, or the two, and the red ink lines across the voters' names will do the business, as in the case I cited. It will not do at this day to say that men cannot be bought, for we have it to-day, from the highest authority, that men standing high in the councils of the nation have been guilty of selling the influence of their positions for money. I allude, of course, to the report of Judge Poland's committee to the House of Representatives at Washington.

No, gentlemen, either adopt a provision prohibiting the Legislature from passing any registry law at all or adopt this section, which provides for a uniform registry, and which prevents the registering officers from disfranchising the elector, and I do not agree with the learned and

distinguished gentleman from Dauphin (Mr. MacVeagh) that registration should be a pre-requisite to the right to a vote because that places the elector in the power of the canvasser as well as in the power of the registering officer, and if the registering officer sees proper to be corrupt the rights of voters, which are defined in the fundamental law, will be set aside. It is well known that men will sell themselves to the political party that pays the highest price, and we have only to look at the revelations which are now transpiring in Washington to be convinced that there can be no doubt of this fact. I say, therefore, if this subject can be considered in any other light—if it can be more properly considered when the report of the Committee on Legislation is made, or if a provision is inserted that the Legislature shall enact a registry law, I am ready to vote for the section, or I am ready to vote for the section as it stands, but I shall prefer the suggestion made by the gentleman from York, (Mr. Gibson,) that no electors otherwise qualified shall be deprived of the right of suffrage is adopted as a part of the section. In the event this amendment is rejected in committee of the whole, there will still be an opportunity to amend the section in Convention, and I trust that this committee will either vote for the section to prohibit the Legislature from enacting a registry law or else adopt the section as it stands.

The question was then taken on the amendment offered by Mr. Carter, and it was rejected.

Mr. DALLAS. Mr. Chairman: I offer the following substitute for the section: "All laws regulating elections by the people, or for the registry of electors, shall be uniform in their operation throughout the State, but no elector shall be deprived of the privilege of voting by reason of his name not being on the registry."

Mr. DALLAS. Mr. Chairman: I desire to say, in explanation of this substitute, that its purpose is to make it perfectly clear; that if a registry act be passed it shall be uniform in its operations, and not apply only to certain portions of the State, and that no different character of registry act shall be passed. The section, as reported, is mandatory, and a further purpose of this substitute is to leave the ques-

tion of whether *any* registry law shall be passed to legislative discretion. I desire to say a few words in reply to the delegate from Dauphin (Mr. MacVeagh.) He said he would make registration a pre-requisite to the right to vote, and unless a man's name should be found upon the registry list, that he would deprive him of the franchise. I desire to call attention to the practical results of such a suggestion. If, for instance, three canvassers made up the registry list, and the name of any citizen on that list was illegally stricken off, he would be practically without remedy. He could not hold these canvassers criminally responsible for the exercise of their judicial functions, however arbitrary or wrongfully they might have been exercised; and if he undertook to sue them, civilly, he would find, in ninety-nine cases out of a hundred, that a judgment against any one of these canvassers for five thousand dollars would not be worth five cents; so that you would, practically, have no remedy whatever. The gentleman from Dauphin (Mr. MacVeagh) has said, that unless you make the registration an absolute pre-requisite it will be of very little use or value. But I may remark that if you make a registration necessary to the elector, the franchise itself will become of very little use to a great many of us.

The question being taken on the substitute to the section, offered by Mr. Dallas, a division was called, which resulted as follows: Ayes, fifty-seven; noes, thirty.

So the amendment was agreed to.

The CHAIRMAN. The question is now upon the section.

Mr. NEWLIN. Mr. Chairman: I call for the reading of the section as amended.

The section was again read.

Mr. NEWLIN. Mr. Chairman: If it is in order I move to strike out all after and including the word "but."

The CHAIRMAN. The motion is not in order.

The question being taken on the section as amended, a division was called, which resulted as follows: Ayes, sixty; noes, thirty.

So the section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

Any person who shall give, or promise or offer to give, to an elector any money

or other valuable consideration for his vote at an election, or for withholding the same, or who shall give such consideration to any other person or party for such elector's vote, or for the withholding thereof; and any elector who shall receive or agree to receive for himself, or for another, any money or other valuable consideration for his vote, at an election, or for withholding the same, shall thereby forfeit the right to vote at such election; and any elector whose right to vote shall be challenged for such cause, before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received.

Mr. STRUTHERS. Mr. Chairman: I offer the following as a substitute for the section:

"In all elections the use by a candidate, directly or indirectly, of money, valuables, or any promise of office, place of honor, profit or trust, to aid in his procuring the same, or securing legislative, judicial or any other immunity or favor, shall be deemed bribery, and shall render void his election, disqualify him for holding office, and subject him to indictment and imprisonment; and the receiver of any such bribe shall be punished by fine or imprisonment, or both, at the discretion of the court. Disqualification to hold office may only be ordered by an act of the General Assembly, two-thirds of each House consenting thereto."

Mr. STRUTHERS. Mr. Chairman: The great topic of discussion which has prevailed since the commencement of the sessions of the Convention up to this day has been the manner by which election frauds may be prevented, and a reasonable degree of purity attained in our elections. These frauds, I think, can be checked at least, if not wholly prevented, by the substitute which I have offered for the section. In the first place the fountain, it is believed, of all these frauds is the money or other valuable consideration which men are frequently ready to give to secure some high or profitable position. The difficulty in the prevention of these frauds lies in the presence of an incentive to commit them by the voters. If the incentive to commit fraud is removed, by placing it out of the power of men who desire to attain public office to commit bribery by

the use of money or promises of favor when they shall be elected, the voters of the community will always act independently and according to their own judgments when they vote; and when they do that you will always find that the will of the people is honestly expressed in the ballot-box. I say, then, that the citizens of every community will vote according to the dictates of their judgments and consciences if there are no inducements held out to them to vote wrong. I will illustrate my remarks by referring, for instance, to the office of sheriff of the city and county of Philadelphia. A salary of ten thousand dollars would be unquestionably a fair compensation for the general exercise of the duties of the office of sheriff. The candidates for this important position understand very well that if elected they can make at least one hundred thousand dollars a year out of that office, and they therefore can afford to pay to the runners and the manipulators of the elections at least twenty thousand dollars or more for the purpose of corrupting the ballots. I desire to make this offence as highly punishable as it possibly can be made, and I hope the Convention will adopt such a provision that the perpetration of offences of this kind shall meet with the most severe and peremptory punishment. I think when the proper time comes for the discussion of the question of fixing the salaries of office holders, that if, for instance, the salary of the sheriff of the city and county of Philadelphia should be placed at ten thousand dollars, the candidate for this position could not afford to scatter his money around for the purpose of buying the office and corrupting the voters; and if this plan is pursued, with reference to the other office holders in the city of Philadelphia alone, at least three hundred thousand dollars will be saved from corruption purposes during the election seasons. If the salaries of public officers are fixed at reasonable rates of compensation, I have no doubt that in Philadelphia, as in all parts of the State, the services of good and competent men can be procured to perform these great public duties. I think, therefore, that the amendment here will have a very salutary tendency in putting a stop to the buying up of votes and the scattering around of money for

the purpose of corrupting voters, and lead to purify the polls more than any measure that has been here suggested. This section, I discover, points in that direction. It is intended for that. But in reading the section it recites:

"Any person who shall give, or promise or offer to give to an elector, any money or other valuable consideration for his vote at an election, or for withholding the same, or who shall give such consideration to any other person or party for such elector's vote or for the withholding thereof."

Then, sir, it turns right from that idea, without providing for or specifying any penalty at all that will be visited upon them for doing so, and says: "And any elector who shall receive or agree to receive for himself or for another, any money or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election."

There is the penalty imposed upon the voter who is purchased. The denial of the privilege of the right to vote at that election is by this provision fixed, and visited upon the elector who offers to receive, or does receive the bribe, and yet there is no punishment whatever, not even the slightest, visited upon the man who bribes him, who pays him the money and hires him to do it. This section, to say the least of it, is very imperfectly drawn up, because for the greatest offence there is no penalty whatever, while for the least offence, the only penalty is that the offender shall lose his vote at one election. I think it is inefficient. It amounts to little or nothing and would be better left out of the Constitution than in it in that form.

Mr. M'ALLISTER. Mr. Chairman: I rise to make a correction. In the first section the printer has left out after the word "give," where it occurs the third time, the words "or promise to give." The sentence as it was written is: "Any person who shall give, or promise or offer to give to any elector, any money or other valuable consideration for his vote at an election, or for withholding the same, or who shall give, or promise to give, such consideration," &c.

The CHAIRMAN. The correction will

be made by the Clerk, unless objection be made.

No objection was made, and the correction was noted.

Mr. BUCKALEW. Mr. Chairman: The amendment offered by the gentleman from Warren (Mr. Struthers) is in a different part of the Constitution. The Committee on Suffrage, Election and Representation supposed that the subject properly came under consideration in a subsequent part of the Constitution from another committee. It relates to one of the qualifications for office, or rather disqualifications. Bribery, or an attempt to bribe electors, should disqualify a person from holding a public office in this State, and for that reason that it was a disqualification to hold office, the Committee on Suffrage, Election and Representation did not act upon the subject. The section before the committee of the whole relates to the elector and the conduct of elections, a subject different altogether from the qualification or disqualification for any public office.

If the amendment of the gentleman from Warren should be adopted, it will strike out all that has been reported by the Committee on Suffrage in this article, and will substitute for it a section which, if it is adopted at all, belongs to another part of the Constitution.

The amendment was not agreed to.

Mr. J. W. F. WHITE. Mr. Chairman: I propose the following substitute, and I refer to page two hundred and seventy-six of the Journal, where it will be found: To strike out all after the word "section" and insert:

"No person who shall have given, or offered to give, received or agreed to receive, directly or indirectly, in money or other valuable thing, for the purpose of corruptly influencing the vote of an elector, or shall have made any bet, or wager, or shall be interested in any bet or wager on the election or defeat of any candidate or the result of any election, shall vote at such election. *Provided however,* If any elector be challenged for such cause, his vote may be received on his taking an oath or affirmation that the matter of such challenge is not true."

Mr. J. W. F. WHITE. Mr. Chairman: I will just say that this embraces all that is embraced in the section reported by

the Committee on Suffrage, Election and Representation, and in addition thereto embraces betting, or making wagers on elections, or on the defeat or success of any candidate. It adds that feature to the section, and I think embraces all that is comprised in the section as it has been submitted by the Committee on Suffrage, Election and representation.

Mr. M'ALLISTER. Mr. Chairman: I only wish to say a word with reference to this. This section gave the committee great trouble. It was in a dozen or fifteen forms before it assumed the form in which it is now. It does not reach everything on the face of this earth. There might be a number of suggestions made in reference to the subject of betting, or other subjects not in this section, and if it be wise, in the judgment of this Convention, to exclude a man from the right of suffrage, who bets upon an election, no one will go farther than myself upon that subject. It may be introduced in an independent section by itself, but it is not a sufficient reason, assuredly, for changing the whole form of this section and throwing it into some other form. These are a set of principles designed as the organic law, and whatever is necessary afterward by legislation to carry it out can be enacted. But I submit that if every one is to have a section reported from a committee changed or excluded because its exact wording does not suit him, we shall never get to the end of our labors. If each individual in this assembly is to hold on tenaciously to the words in which ideas are to be expressed, and to throw a report from a committee away simply because he conceives that it might possibly be put in better language, it will be a long time before we arrive at any conclusion.

The amendment was not agreed to.

The CHAIRMAN. The question is on the section.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK:

SECTION 7. Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage, but such right in any particular case may be restored by an act of the Legislature, two-thirds of each House consenting thereto.

Mr. LEAR. Mr. Chairman: I propose this amendment: To insert after the word "of," in the first line, the following words: "And sentenced for any infamous crime or." This would make the clause read: "Every person convicted of *and sentenced for any infamous crime*, or any fraudulent violation of the election laws, shall be deprived of the right of suffrage," &c.

Mr. LEAR. Mr. Chairman: I propose that addition to this sentence, for the reason that when a man is convicted in the ordinary sense of the term, many things may follow which will reverse the judgment of the jury. Conviction is understood to be a verdict, but there may happen an arrest of judgment or there may be a new trial. This simply provides for such a case, and is important to the section with a view of making it effective, not as now, to disfranchise a man who has merely been convicted, but to disfranchise him who shall be convicted and afterward sentenced. I have, therefore, proposed that part of the amendment and with it another portion, to disfranchise a man not only for any violation of the election laws, but also when he has been convicted and sentenced for any infamous crime. It is to prevent our elections being held and conducted or voted at by men who have been convicted of felonies and the higher grades of misdemeanors. I would have said felonies, only felonies do not include perjury or forgery which are, however, considered infamous crimes. But it seems to me to be very proper that we should disfranchise the thieves and burglars and pickpockets and the infamous characters who have been convicted and sentenced for criminal conduct. Not that we should include in our sweeping prohibition all men who have been convicted in a criminal court at all, for instance, as to assault and battery, but that all these infamous characters who have been the pest of the community and who are, to a very considerable extent, part and parcel of an organized conspiracy against the purity of the ballot-box and against a fair and honest management of the affairs of the election. I hope that this section will be so amended as to disfranchise not only those who have fraudulently violated any of the election laws of the Commonwealth, but who have

been convicted of and sentenced for any infamous crime whatever.

Mr. WHERRY. Mr. Chairman: I am opposed to the amendment of the gentleman from Bucks, (Mr. Lear,) as well as to the entire section as it stands reported. Whether it is possible, Mr. Chairman, for a Constitution to embrace within its limits the sanctions by which its provisions are to be enforced, may be fairly questioned. Whether it would be a proper thing to do, to place such sanctions in the body of the fundamental law, to bejewel it with damnatory clauses, even if it were possible to do so, is a question which, in my judgment, admits of but one answer. I am entirely opposed to making a criminal code in the Constitution—entirely opposed to the brimstone settings.

But, sir, admitting both the possibility and the propriety of putting such sanctions in the Constitution, I desire to call the attention of the committee to the very remarkable terms in which this section is reported. If you will look you will see that it does not propose to provide a sanction for any article of the Constitution. It does not propose to provide a sanction for any particular section of any article of the Constitution. But it is a sanction for "election laws"—for laws which the Legislature may have made years ago, and which the Legislature may at any time repeal—if we are to have a Legislature at all under the amended Constitution; for laws which the Legislature may make in future, and which may not need the sanction here provided. The truth is, this is not a constitutional sanction at all, but simply and purely a common legislative or legal sanction. I submit, therefore, if this view be correct, that the section, as reported, finds no place in a body of fundamental law. It would belong rather to a criminal code.

But admitting the propriety of inserting legal sanctions such as this in the body of the fundamental law, this particular sanction now before us is open to two serious and grave objections. In the first place, it opens too wide a door of escape from its penalties. The punishment to be inflicted is indefinite and uncertain in its weight and duration. It carries with it to the mind of the man about to violate these laws no moral conviction of inevitable punishment. It wears on its very face

not only the bud but the full blossom of hope of escape. What is that punishment worth, I ask, either as a deterrent or as a reformatory power, which holds out to the mind of the criminal the promise of speedy release, by no virtue or by no atonement of the criminal.

You will observe that the terms of the section allow this penalty to be easily and readily removed.

But by far the most serious objection to this section lies in the clause which makes the Legislature, in case of infraction and conviction, a high court of appeal and pardon. I beg members to look closely at this point. Are we, whose chief business here, if the many gentlemen who have so asserted are to be believed, is to limit and restrain the power of the legislative branch of the government, are we prepared, here and now, to extend its powers and jurisdiction in a new direction, and endow it with high and solemn semi-judicial and executive functions? I hope not. I hope gentlemen will hesitate a long while before giving their votes to place so extraordinary a power, so unusual and inappropriate a power in the hands of that department of the government, where it is most liable to abuse. So much for the terms of the section. But if you do not deem it irrelevant, I would like to say a few words about disfranchisement as a punishment, whenever and wherever inflicted.

And I regret that I am obliged to name again those two words which have become quite as distasteful to this body as are the words "Credit Mobilier" to the National Congress. I mean "elective franchise." But I say, if the elective franchise is a natural, inherent and inalienable right, which I deny, then, on no principle of justice, and by no power short of tyranny, can that right be taken away from any citizen whose moral conduct or mental aberration is not such as to make his association with his fellow-men dangerous. In other words, if a man is justly entitled as a citizen to the pursuit of life, liberty and happiness, without restriction, he is certainly entitled to an unrestricted exercise of that other natural right, whereby those rights are secured. But if he be a criminal so dangerous to the peace of society as to make his bodily restraint necessary, if it be unsafe to give him the

right of enjoying life and liberty, of acquiring, and possessing, and protecting property and reputation, and pursuing his own happiness, then, sir, and then only, on this theory, can he be deprived justly of that other inalienable right by which all those are secured.

But sir, I hold that the elective franchise is not a natural right, not a privilege, merely, but an imposed duty, an office; that the State may give it, or withhold it, or having given it, may, for just cause, take it away again. From this standpoint, then, the very lowest ground upon which the elective franchise can be put, I propose to argue against the expediency of exercising the power of disfranchisement as a means of punishment. I say, in the first place, then, disfranchisement is not an equitable punishment. It lacks the element of variability. It admits no maximum and minimum expression. It is a fixed quantity, consequently it cannot be varied to suit the circumstances of the particular cases to which, under the law, it might be applied. In cases of aggravated character it might be entirely too light; in cases with alleviating or palliating circumstances it might be entirely too severe. I say, then, disfranchisement lacks the first essential element of a good punishment, to-wit: Variability. Not only so, but the same nominal punishment is not always for different individuals the same real punishment. Disfranchisement might and would fix an indelible stigma upon a man of wealth, influence and political aspirations; while to a man of lower rank, with no capital but his cunning, and with no aspirations of a political character but to serve the demagogue who will pay him best, it would not weigh in the balance of his estimation with one poor paltry dollar.

But as a punishment, disfranchisement lacks deterrent force. It will not, in my judgment, avail to prevent the violation of these laws by others, and for this reason, among others—because its weight as a punishment, its extent and force, cannot be exactly measured in the minds of men. It does not exhibit to the mind of the tempted man, or to the designing villain about to violate these laws, the full measure of the consequences of his crime, as does, for instance, the gallows. On the contrary, men are most likely to under-

rate it as a punishment, before it has been experienced. I repeat what I said before, that it is not the real weight of a punishment as it seems to the legislator who provides it, but the apparent weight as it stands out distinctly, vividly before the mind of an individual about to violate the law which influences his conduct. Punishment by disfranchisement will, in my judgment, utterly fail as a means of general prevention.

But, sir, to come down to the section as reported by the committee, it seems to me to be an entirely inefficacious punishment when applied to particular individuals, and for these reasons: It will not take away his physical power of again violating these election laws. The criminal, though suffering under the penalty at the very time, is as free, physically, to practice his illegal arts, as if he had never been convicted. This punishment will not deter him by making him afraid to offend, because it has already expended upon him its entire force. Nor will it take from him the desire or motive to offend. On the contrary, I affirm, taking man's nature as we know it to be, it is safe to predict, that he, of all men against whom the State has raised her hand, and upon whose forehead she has set an indelible mark of distrust, and driven out from the political fellowship of his kind—it is safe, I say, to predict that he, of all men, will be most open to malign influences against the peace and welfare of the Commonwealth.

But, sir, the weakness and inefficiency of disfranchisement as a punishment cannot be better told or better seen than when you come to consider how easily it may be evaded. A simple change of residence from one State to another—ten cents upon the ferry of yonder river—would give exemption from it.

Mr. HANNA. Five cents.

Mr. WHERRY. Five cents ferryage, then, would exempt a man entirely from this punishment. More than this, a simple change of residence from one election district to another, in nine hundred and ninety-nine cases out of a thousand, would work exemption. Who would make it his business to go around through a county or through the State to learn whether this man or that man had been disfranchised in this or that district?

The punishment entirely fails in its application.

Now, I ask the committee, is disfranchisement a good kind of punishment? Does it possess the qualities of a good punishment? Has it variability? Has it equability? Has it certainty? Has it applicability? Has it deterrent power? It does not possess a single one of these qualities. And what is left to it? Nothing but the miserable sham of analogy, and the wicked, absolutely wicked spirit of vengeance. That is all. Does it consist with American ideas? What do American institutions offer a citizen that is not intimately dependent upon his right of suffrage? Our watchword is liberty or death; but what does liberty mean without a ballot? Is it a safe punishment for the State to inflict? Can the Commonwealth of Pennsylvania, or any other free Commonwealth, afford to create in her midst a class of exiles not exiled? Can we afford to set apart an ostracised class in our very midst, who will be forever plotting against the peace of the State?

MR. CARTER. Mr. Chairman: This section, as reported by the committee, was adopted by that committee with the same intention which has actuated them from the first, to be as another guard around the ballot-box. So far from agreeing with the gentleman from Cumberland, (Mr. Wherry,) that it is not appropriate as a punishment, nor would it act as a deterrent, the committee, generally, believed that it was most eminently calculated to produce that end; that the character of a penalty and deterrent indicating so clearly the offence is precisely what is needed; not that we expect an entire purification from this, but that this is one of the adjuncts, one of the measures, all tending to the same end. The gentleman seems to think that this punishment is unsuited somewhat to the nature of the offence; that this sacred right of the ballot should not be taken lightly or heedlessly from any individual. In that I concur with the gentleman; but the State has a right to protect itself. I say, further, we have a right to put, and we do put by this act, if we adopt this section, the mark of Cain upon the man who has destroyed his brother's vote, my vote, and destroyed one of my manhood's dearest rights, so far as he can do it, by fraud at the ballot-

box. It is eminently fit that when his fellow-citizens assemble every year to exercise this high prerogative, that that man shall stand forth as the man who has committed this great sin against the State and his neighbors, and should be so punished for it. I think there is an eminent fitness in this punishment as a deterrent, because so appropriate to the offence. I am opposed to the amendment of the gentleman from Bucks, (Mr. Lear,) because it does not seem exactly as if this was the proper place to disfranchise, as in the case of criminals. We are considering a section looking to the protection of the ballot-box—especially in reference to that one thing.

I think, Mr. Chairman, that if we adopt this it will have a wholesome effect. I think it was considered in the committee as one of the ideas in which we mostly concurred. We did not expect any one measure to entirely prevent all fraud, but so far as it went, the idea was to put a mark upon the man for a longer or shorter time.

I am, however, opposed to the manner in which this man is to be relieved of his disability and have this mark removed. I propose, when I can do so, to offer an amendment. It would not be right for it to come in after the amendment of the gentleman from Columbia, (Mr. Buckalew,) which is to refer the matter of pardons to the Legislature. That would be inducing special legislation; but, instead of that, to limit it to five years, so that the man who has acted in that manner shall bear his brand for that time; and so that when we go to the polls this man cannot vote among his old friends and neighbors until his offence is atoned for. I doubt exceedingly if any single provision is to do more good and is more fit in its application than this one under consideration. If this is voted down I wish to offer an amendment, taking it away from the province of the Legislature and of special legislation, and fixing the time at five years.

MR. M'ALLISTER. Mr. Chairman: I wish to say a few words upon this question. The word "*convicted*" is a technical term. It means a conviction by a court of competent jurisdiction, and it expresses all that would be expressed by the amendment proposed. As to the proposed insertion of the clause, "*persons*

guilty of felonious offences," this section, as has been said by the gentleman from Lancaster, (Mr. Carter,) is a provision against frauds upon the elective franchise only. It has no relation to other frauds or other crimes, and for that reason the provision, though never so wise, should not be inserted here. If it is to come at all, let it be offered as a distinct section. It cannot be inserted here without marring the harmony of this section. The design was to take out of the power of the Governor—who may have secured his seat by the very fraud of which the elector had been convicted—the ability to restore him to the privileges of an elector which he had forfeited.

This matter gave the Committee on Suffrage much trouble. What power should relieve this man from the consequences of his conviction and of his guilt? In the very first section I think that was adopted. In reference to elections there was a provision that the time of the election might be changed by an act of the Legislature, two-thirds of each House assenting thereto. That was thought to be the best provision here, requiring an act of the Legislature, the concurrence of both Houses and of the Governor, in order to consummate the act. That, however, was not sufficient, for a majority of the members of the Legislature might procure their seats at some general election by the suffrages of the same party, and it was thought best, therefore, to require two-thirds of each House to assent thereto. The dispute was as to a larger number than two-thirds, the question being whether it were not better to make it three-fourths, or some larger proportion, but it was thought best, on the whole, to confine it to two-thirds.

Let me say a few words in reply to the gentleman from Cumberland (Mr. Wherry) in reference to the propriety of this disfranchisement. If there is any one act which is more injurious than another to the welfare of the community it is fraud at the elections. It strikes at the very foundation of our government; it destroys representation; it is a most heinous offence against republican government. It was, therefore, thought best to distinguish the crime as has been done here, by forfeiting the right of suffrage and placing the brand of infamy upon the guilty perpetrator. It was the design of the act to

take away this right of suffrage from the convict criminal, whether he esteem that right much or little. I cannot appreciate the force of the argument of the gentleman from Cumberland, (Mr. Wherry,) when he distinguishes between the rich man who attaches great importance to the right of suffrage, and the poor man who attaches little importance to it. High or low, rich or poor, they are guilty of a great offence, and both should be disfranchised. I hope, therefore, the amendment will be voted down and the section pass as submitted.

Mr. LEAR. Mr. Chairman: I desire, after hearing the explanation of the chairman of the committee, to withdraw that part of my amendment which refers to infamous crimes, because I see that it would destroy the symmetry of this section. The gentleman from Centre (Mr. M'Allister) has, no doubt, together with the other members of the Committee on Suffrage, taken great care to understand the section in all its provisions. I do hope, however, that this provision, somewhere, will go into the Constitution, and I will bide my time to effect it. It should be in there somewhere, that men who have been guilty of infamous crimes shall not be a part of the source from which we derive our political power. I hope, also, that this section will pass, notwithstanding the remarks that have been made in opposition to it by the gentleman from Cumberland, (Mr. Wherry,) because I do not regard it as a matter of punishment alone to those who violate the election laws of the State, because I presume that when they have been convicted, it means that they shall have been punished in accordance with the sanctions that are provided in the election laws themselves; but that this is simply a protection to the people of Pennsylvania against the further interference in the elections of the Commonwealth by people who have sought to corrupt this source of power at its fountain head.

Mr. WHERRY. Will the gentleman explain, if this is not a punishment, what possible protection it can give to the community?

Mr. LEAR. It gives this protection: It protects them from further interference on the part of those people, and it deters others from taking part in this sort of

business, because it will endanger their right to enjoy this privilege. To that extent it is a punishment; but I suppose it is not intended and designed that the punishment shall not follow their conviction by the court in which the individual is convicted. But when these people go to the election poll, and by fraudulent naturalization papers, by fraudulent personation of others, by any other device through which the election laws of the Commonwealth shall be circumvented and defeated, corrupt this source of power of the people, I say that they ought to be disfranchised. I would go further than the report of the committee, and put it beyond the power of the Legislature, by a two-thirds vote, or any other power in this government, to restore the man who has once violated the election laws of the Commonwealth knowingly; he should never afterwards have any voice in the affairs of the State as an elector. Why, sir, I consider it the worst and most dangerous kind of treason. It strikes at our rights, at the very source of political rights, where they should be sustained and supported.

It was said yesterday, in this Hall, that men have been inaugurated and inducted into high offices who have never been elected by the suffrages of the people of the State or district. I say, further than that, that it is scarcely known who is elected in this State. There has been some deprecation of the declamations of these wholesale frauds that have been perpetrated in Pennsylvania—particularly in this city. I say, however, that until we secure a full diagnosis of the disease to which we are going to administer our remedies, we are not capable of fairly understanding the magnitude of the difficulty, with all its ramifications. Do not let us, then, get squeamish, because one day we have said some harsh things about those election frauds, and another day go back upon our record, and apologize for what we have said, or ask others to apologize. I repeat that I do not confine it to Philadelphia. That there is a system of frauds in Pennsylvania that has become frightful; and that we do not know, today, whether a man who holds office in the Commonwealth is there by the legal expression of the will of the electors of his district or State, is an admitted and deplorable fact. While that is so, an elec-

tion is simply a scramble, surrounded by all the contrivances and all the trickery of those who are skilled in respect to stuffing ballot-boxes and manipulating returns, and in the hurly-burly some one is declared elected to the office, and then he takes it and holds it and exercises its functions, and performs the duties under it, and takes its emoluments, and all is settled; but that it is an expression of the voice of the people of the State or district we have no knowledge, except in those places where there are overwhelming majorities, majorities so great that no reasonable amount of fraud could defeat the people's will. Why, not only is it a matter of importance for the purpose of giving the people an opportunity to have their own rulers, their own law-makers, and those who administer their laws, but it is important to us as a matter of economy.

There are now, probably, four or five committees of the Legislature at great expense to the State, besides innumerable courts in different parts of the Commonwealth, examining and investigating into various election frauds alleged to have been committed by the members of that body. I say, then, let the Convention make it a terror to those who shall be convicted of having defeated the will of the people by a violation of the election laws of the State, and I consider it will be a dereliction of duty on the part of the members of this Convention if they fail to incorporate such a provision as this in the Constitution. We are not here as the advocates of those who violate the election laws of the State. We are not here as the defenders of their rights, and I say it is a proper consequence of his act that a man who has been once convicted and found guilty of this grave offence shall never again exercise the elective franchise, because the man who is not willing to be governed by law and to exercise this privilege of an elector according to the provisions of the law which the wisdom of the State may dictate is not fit to live under a government and enjoy its privileges. I am therefore in favor of passing this section, and I therefore withdraw the amendment which I have offered, because it will probably interfere with the peculiar symmetry of the provision as it stands in reference to the violation of the election laws. If the gentleman from

Centre, (Mr. McAllister,) who is the chairman of this committee, is confident that conviction covers the whole case without sentence, I will withdraw the amendment, but I do know that some laws have been enacted by the wisdom of our Pennsylvania Legislature whereby a man must be convicted and sentenced before he can be visited with the consequences of his crime. I think the same principle will apply with regard to this section, and that before a man can be removed from his office and punished he must be convicted and sentenced. It was with this idea in mind that I proposed this amendment, but if the members of the Convention who are learned in the criminal law are satisfied that conviction is all that is necessary, I will then withdraw that part of my amendment which relates to infamous crimes and let the remaining portion be voted upon.

The question being taken upon the amendment offered by Mr. Lear, a division was called, which resulted as follows: Ayes, thirty-eight; noes, forty-six.

So the amendment was not agreed to.

Mr. W. H. SMITH. Mr. Chairman: I move to amend the section, by striking out all after the words, "deprived of the right of suffrage." In offering this amendment I desire to express, in a brief manner, the views I entertain in regard to the proposition before the Convention. It has been said by an old proverb that "there is nothing that succeeds like success," and I think this principle is extremely applicable to the case of election frauds. If a man is elected to office by the most flagrant frauds imaginable he is quietly permitted to enjoy the fruits of his success. He does not lose many friends, and, in a measure, society does not avoid him. I think, therefore, that it is quite time that some action should be taken by the Convention which will put a stop to these frauds forever. In order to accomplish this result, I think if this section is shortened just one line and a half, if we even cannot wholly protect the purity of our elections, it becomes our duty here in this body to declare that we believe the violation of the election laws and the frauds against the right of suffrage are crimes that should be punished, and should not be entirely forgotten. I am not, therefore, in favor of placing the pardoning power, for such crimes as these, in the

hands of any court or body, but I am in favor of a law which shall be positive, even if it destroys the votes of a hundred thousand persons, that any person convicted of a fraudulent violation of the election laws shall be disqualified from exercising the right of suffrage.

Mr. COCHRAN. Mr. Chairman: I propose to vote for the amendment offered by the gentleman from Allegheny, (Mr. W. H. Smith,) but not exactly for the reasons which he has given. I agree with the views of the gentleman from Lancaster, (Mr. Carter,) and am willing to vote to insert a provision limiting the punishment, upon conviction of violation of the election laws, to a term of five years, and in order to make room for the introduction of that amendment I shall vote for the proposition to strike out the second clause of the pending section. I think, sir, it would be entirely wrong to place this offence beyond the reach of pardon or forgiveness under any circumstances; and if it is right that a man, either wilfully or through the persuasion of others, has been led into the offence of committing a fraud upon the elective franchise, he should have a *locus penitentie*, like other people, and that the power of pardon or forgiveness should not be withheld from him any more than from any other citizens of the State who have committed other offences of perhaps greater magnitude. I hope this body, before it adjourns, will place such a restriction upon the pardoning power, by making it judicial in its administration, that it will be in safe hands, and can be exercised in the interests of the poorest and humblest of our citizens without endangering the public welfare. With these views, briefly expressed, I shall vote for the pending amendment of the gentleman from Allegheny, (Mr. W. H. Smith,) and in the expectation that the gentleman from Lancaster (Mr. Carter) will introduce his amendment as an amendment to the remaining part of the section.

Mr. CARTER. Mr. Chairman: I offer to amend the amendment, by adding the words "for the term of five years" to the end thereof. The section will then read: "Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage for the term of five years." Mr. Chairman, in offering this amendment, I desire to say but

a few words in regard to it. I agree entirely with the gentleman from Bucks (Mr. Lear) that we cannot estimate the enormity of this great crime—but, sir, there are certain considerations, well known to all of us, which should guide the Convention in the determination of this question. I am decidedly opposed, for reasons which I have heretofore indicated, and shall not reiterate now to intrust this pardoning power to the Legislature, inasmuch as the Convention designs taking from that body all the penal legislation which can be safely and properly done. I hope that the amendment will pass, and that the section will pass as amended. I do not claim or presume that the committee claims that this section affords a universal panacea for our troubles, or any sort of a cure-all, but it is a part of the system we are building up, looking towards that end, and in my mind it is eminently a proper one.

Mr. BUCKALEW. Mr. Chairman: The arguments which have been made in favor of the adoption of the pending amendment I think entirely misconceive the object of the section as it has been reported by the committee. The main intention of the section is not to provide a punishment for the fraudulent voter. His offence will be indictable under the statute laws of the State, and the courts will administer the punishment which the law has provided for the offence. If there should be mitigating circumstances in his case he will appeal to the ordinary tribunal. This section has been designed mainly for the protection of the ballot-boxes of the people against convicted rogues, who, by its provisions, shall be adjudged to be unfit for the exercise of the right of suffrage. I would not here attempt to measure the limit of the disfranchisement for offences of this kind, which shall be required for the protection of the ballot box, whether it shall be five years or twenty years. If it were simply a question of the punishment of the offender, as a matter of course, it would be proper to impose some limitation of time upon his sentence, or upon the extent of the punishment which should be inflicted upon him. This section, however, is a matter for the protection of the public, and I think the proposition is clear, that when a citizen of our

State has been adjudged, after all the forms of law have been gone through with, to be a fraudulent voter, the judgment of the people should go against him, and he should enjoy no more political privileges than minors, females, and other non-voting classes of our citizens.

Now, sir, we have provided, in the report of the committee, for extraordinary cases. It may happen, in very extraordinary and exceptional cases, that a man will be unjustly convicted; that afterward it may be possible for him to show that he was convicted upon false testimony. I can suppose, also, a case where it would be proper for the Legislature to interfere after some ten, or fifteen, or twenty years. A villain may repent and change his life. He may become an orderly member of society. He may join one of our christian churches, and by his walk and conversation he may demonstrate to all the people about him that he is a new man, and that if re-intrusted with this right of suffrage he will exercise it honestly and justly. Now, in any case where one of these disfranchised men shall be able to show that his heart and life have changed, and that he is a fit member of society, there will be no difficulty, upon an appeal to the Legislature showing these facts, to get a two-third or three-fourth vote restoring him to the full exercise of the right of suffrage. These cases will be rare, not common. They will not burden the Legislature with business.

For my part I would choose to change this number, and not allow a two-third vote to restore the right of voting. I would make it three-fourths, so that it should never be possible for a mere political majority in the Legislature to restore this right. When a man is to be re-clothed with the privilege which he has justly forfeited, let it be given to him by the judgment of the party opposed to him, or at least a portion of its members. The Legislature is better constituted than the Executive or the board of pardons, because, after all, your Executive is a partisan, and the board associated with him may be of the same party, and in attempting to exercise a pardoning power with those officials you have no check upon partisanism. But the Legislature of the State, springing from the popular action of our people, always divided into politi-

cal parties, will be so constituted that no restoration of this privilege can ever be done by a mere party vote, especially if you make it a three-fourth vote, and at the same time these few, exceptional, rare cases of restoration can be acted upon without difficulty.

If this amendment shall not be agreed to, Mr. Chairman, I shall move to make the vote required for the restoration of the right of suffrage three-fourths instead of two-thirds, as at present reported.

MR. BROOMALL. Mr. Chairman: I would like to ask the gentleman who has just taken his seat (Mr. Buckalew) whether his experience in legislative pardons, which I know has been considerable, has induced him to favor them; or whether he does not know that in all cases, or in the class of cases, at least, in which he and I have been familiar with legislative pardons, the action of the legislative body has not been wholly without definite information upon the subject, and that the plan served the purposes only of the few who are wealthy enough or important enough to bring themselves within the notice of the legislative body? Now I am entirely opposed to pardons as they are being granted at present, or as the pardoning power is now used, and I trust that this Convention will reform it to a very considerable extent. I have no definite idea on that point, but wherever the pardoning power is placed I want it to reach these offences, as well as other offences, in the same manner. I am, therefore, entirely in favor of the motion of the gentleman from Allegheny, (Mr. W. H. Smith,) and opposed to the motion of the gentleman from Lancaster (Mr. Carter.) I am in favor of the amendment, not because I think with the gentleman who offered it, that it constitutes the offence an unpardonable one, because I do not believe that we should have in this sublunary world of ours any unpardonable offences. I would not deprive any criminal of the right to apply for forgiveness, here or elsewhere, and obtain it. I believe in striking off that provision of the sentence, and leaving this offence like all other offences, within the reach of pardon.

I am opposed to the limit of five years, although at first inclined to favor it, because these offences are very unequal.

No single punishment can apply to all of them. There are violations of the election laws that should deprive a man of his right to vote probably for life. There are others that should deprive him of his right to vote only at the election where the offence is committed. I am not willing to take these two offences and apply the same punishment to each. Because it is a punishment, notwithstanding the ingenious argument of the gentleman from Columbia (Mr. Buckalew) that it is a mere protection to society. I would like to know what all punishments are but mere protections to society. I am, therefore, inclined to vote against the amendment of the gentleman from Lancaster, (Mr. Carter,) and in favor of the amendment of the gentleman from Allegheny, (Mr. W. H. Smith,) leaving the section stand:

"Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage simply by a mere conviction."

MR. BIDDLE. Mr. Chairman: I desire to say a very few words on this subject. There is, undoubtedly, very great force in what has been said here by the gentleman from Columbia, (Mr. Buckalew,) but it strikes me it goes too far, and I think a few reflections will show that it does.

Undoubtedly it is a very great wrong upon the community when a man violates the election laws in any of the modes pointed out in the preceding section, but it is not the greatest of all crimes. We are a little excited now, and have been for the last week, in discussing this subject, and having our minds unduly heated in approaching the discussion of this subject, we are a little run away with. There is but one offence to which a penalty is affixed by the laws of this Commonwealth, which, when once executed, is irrevocable. There is but one; and will gentlemen, when they look at this question apart from the heat of the moment, seriously undertake to say that a youth barely twenty-one, who, under, I grant you, improper pressure, but still under the pressure of party, violates the election laws in any particular, commits an offence for which no atonement can be made? Surely this cannot properly be said. All punishment has but two objects, as was hinted by my friend from Delaware, who has

just taken his seat, (Mr. Broomall.) One is the protection of society. That is a part of every punishment. The other is the reformation of the offender. This is the object of all punishment, and punishment that has not these two objects in view is simply vengeance.

It seems, therefore, quite clear to my mind, and I hope it does to the minds of the members of the Convention, that there ought to be some mode of washing away the sin of an offence which is often committed in the heat of excitement, but which does not necessarily, wrong as it is, leave a man so coated with infamy that there can be no chance of his ever becoming better. Now how is this to be done? Is he to be disfranchised forever? Is he to have a punishment worse than Cain thought was inflicted upon him? Is he to go about the community forever branded? That is not the spirit of the laws of this Commonwealth. That was not the spirit of its great founder. That is not the spirit of our penal legislation, which has always partaken of the spirit of that great founder. There ought, therefore, to be an opportunity to reform given to these men. How shall it best be done? It is difficult to decide this, I admit. But it strikes me that of all the modes suggested, this mode of appealing to the Legislature is the worst. I do not know exactly to what the gentleman from Delaware (Mr. Broomall) alluded when he referred to some case of legislative pardon, but I can very well understand that an appeal to the Legislature will be very rarely efficacious in behalf of a humble member of the community. I would prefer myself some definite limit as to time; and I vibrate, therefore, between the proposition of the gentleman from Lancaster (Mr. Carter) and that of the gentleman from Allegheny, (Mr. Smith,) with a leaning in favor of that of the former. I do not believe a man who once commits a fraud at an election is forever to be condemned. I believe a period of time may come when he may be a better man. Whether five years is the period, or whether it would be better to leave it to Executive clemency, modified, as I think it undoubtedly will be to some extent by this Convention, is a question that is for this body to determine. I would rather myself make it a longer term of years.

Five years, perhaps, is not enough. It is said that we all change physically, perhaps mentally and morally, every seven years. I will adopt that theory. None of us hold the opinions to-day, precisely, that we held seven years ago. I am disposed to adopt some such limitation as this. A man who is twenty-one years of age, who commits, in the heat of party excitement, a breach of the election laws, may well be considered at the age of twenty-eight to have attoned by an abstinence from participation in all public business for the fault originally committed by him. If the gentleman who proposed the amendment of five years (Mr. Carter) will make it a little longer, I will vote for it, as I believe it to be right to hold out always, to every one who has done wrong, an inducement to become a better member of society. I think it is a mistake to leave in any community, men so branded, that in no future time, do what they may, they can ever recover the original position which, by a single offence, they have unfortunately lost.

Mr. CARTER. Mr. Chairman: I accept the modification of the gentleman from Philadelphia, (Mr. Biddle,) and so change my amendment to seven years instead of five.

Mr. KNIGHT. Is an amendment to the amendment now in order?

The CHAIRMAN. Not now.

Mr. MINOR. Mr. Chairman: It seems to me that we have overlooked one point, in leaving this power with the Legislature, and that is that it requires them to engage in one of the most unpleasant kinds of special legislation, and one that will subject them to more corrupt influences, perhaps, than anything else. It is open to any influence, good, indifferent, bad or positively wicked, that can be brought to bear upon any or all of the members for the purpose of obtaining pardon by those who may have committed this offence. It seems to me that if we are going to do away with special legislation, that we ought not to introduce it upon a subject like this, which, as I said, before, will open the way for opportunities of a greater number and strength of evil influences upon the Legislature than almost any other that can be named. Let the pardoning power on this subject rest where the pardoning power on all other

crimes does, and let the section, if adopted at all, stop at the word "suffrage," which I understand is the amendment of the gentleman from Allegheny (Mr. W. H. Smith.)

Mr. CASSIDY. Mr. Chairman: I offer to suggest to the gentleman from Lancaster (Mr. Carter) a proposition, which, perhaps, he will accept as an amendment. I think it will also meet with the desire of the gentleman from Philadelphia (Mr. Biddle.) It is to insert in this section, "may by the court, before which he was convicted, be deprived of," &c., so that the section will read, "every person convicted by a fraudulent violation of the election laws, may, by the court before which he was convicted, be deprived of the right of suffrage," &c., so that if it be a proper case, and not a mere case of a young man, twenty one years of age, having the first time violated the election law, in some way that is not, perhaps, very material, the court may exercise its judgment and make it a part of the sentence to deprive him of the right of suffrage, or not, as the case may warrant. Then, I have no objection to voting for the amendment of my friend from Lancaster, (Mr. Carter,) limiting the exclusion from the right of suffrage to five or seven years, though I would prefer it to be without limitation. I suggest that to him; if he thinks it ought to be accepted, very well; if not, I will move it as an amendment at the proper time.

The CHAIRMAN. The question is upon the amendment of the gentleman from Lancaster, (Mr. Carter,) to insert the words, "for the term of seven years;" this being an amendment to the amendment offered by the gentleman from Allegheny, (Mr. W. H. Smith,) to strike out all after the word "suffrage."

Upon this question a division was called, and being taken, resulted: Affirmative, thirty-eight; negative, forty-four.

So the amendment to the amendment was rejected.

Mr. KNIGHT. I move the following amendment:

The CLERK read: Insert after the word "suffrage," the words "for the term of five years," leaving the balance of the section as it stands.

The section would read as proposed to be amended:

"Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage for a period of five years, but such right, in any particular case, may be restored by an act of Legislature, two-thirds of each House consenting thereto."

The amendment was rejected.

Mr. BUCKALEW. Mr. Chairman: I move to strike out "two-thirds," and insert "three-fourths."

The motion was not agreed to.

The question recurring upon the amendment of Mr. W. H. Smith, to strike out all after "suffrage," in the second line, it was not agreed to.

Mr. HOWARD. Mr. Chairman: I move to strike out all after the word "suffrage," in the second line, and insert "and be guilty of a misdemeanor, and shall be punished as shall be provided by law."

I have thought proper to offer this amendment, because I believe that simply depriving a man of the right of suffrage for a violation of this great right, which lies at the very foundation of our government, is not sufficient punishment. The crime of violation of the election laws I conceive to be a greater crime against society than almost any other that a man could commit, and I believe that simple disfranchisement is not a sufficient punishment. I do not agree with the position taken by some gentlemen that disfranchisement is not a penalty. The deprivation of the right of suffrage is a penalty, and can be viewed in no other light, and the amendment which I now offer proposes an additional penalty. Of course the judicial interpretation is, that the person violating has wilfully violated, and we make it a crime, we punish it by depriving the offender of the right of voting. The person then who has wilfully violated the election laws of the Commonwealth has undertaken to corrupt the very foundation of this government, without which there is no mode of administering a republican form of government. This is the mode adopted to record the will of the people, and to secure the permanency of a republican government, and the man who would undertake fraudulently to destroy that will, I would not only punish by depriving him of his right of suffrage, but I would go further, and I would say that

it should be a crime, to be further indicted and further punished. Many persons would take their chances, if they were simply to be stripped of the right of suffrage. Their citizenship remains.—They have all the rights in society left, except simply the right to go to the polls and cast a vote, and this can be restored when they can get a two-thirds vote of the Legislature to restore that right.

Now, Mr. Chairman, it is for these reasons, believing that this right of suffrage is the very highest right that a citizen can enjoy, and the violation of it is the greatest crime that he can commit, that I would make the punishment of it greater. I would make him feel the sting of a criminal prosecution and punishment in addition to depriving him of the right of suffrage.

Mr. DALLAS. Mr. Chairman: I think the amendment proposed by the gentleman from Allegheny (Mr. Howard) goes rather too far, in proposing that we should insert in this section that offences against the election laws shall be misdemeanors, and punishable, by indictment, as other crimes. I think that is a proper matter for legislation, and not for constitutional provision; we are not to provide, by this instrument, a penal code, either in full or in part. The crime proposed to be provided against, by this amendment, is a fraudulent violation of the election laws. Certainly we can trust to those laws for imposing their own sanctions, and it is not necessary for us to say that a violation of a law shall be a misdemeanor. The law itself will say that, and it will be punished under the provisions of the law; and it is bringing into this section, and this article, more minutiae than it should contain. This view, however, does not apply to the section as reported by the committee, for, as I understand it, while it is true that, in effect, a punishment is inflicted by this section upon the man who violates it, still the purpose of it is clearly within the proper limitation of constitutional enactment, for this reason, that its real purpose is to designate who shall exercise sovereign power in this State. It is properly said by the Constitution and the laws that men of unsound mind shall not vote.

It is intended simply to go one step further here, and say that a man who shall be guilty of fraudulently violating

the election laws is no more fit to exercise the privilege of franchise than a man mentally unsound. Such moral insanity as truly unfits him from exercising the privilege of a sovereign voter as unsoundness of mind, and therefore, whilst punishment results under the section that is proposed, the *purpose* is to declare that that class of men who can be guilty of this wrong are not fit to exercise the privilege of casting ballots, because they have shown themselves to be unqualified for the franchise. Therefore the amendment is objectionable, because it proposes to encroach upon the province of legislation. But I have tried to show that the section itself is not amenable to the same objection, because it proposes simply to designate where sovereign power shall reside and to what classes of people it shall be restricted.

Mr. MACVEAGH. Mr. Chairman: I trust the committee will vote intelligently on this matter—that is, that the members will consider what they are doing. They are asked, certainly, to compound two hitherto distinct departments of this government. Hereafter we will be asked to impose political, legislative and Executive functions upon the judges, which functions they are discharging in this city to-day to a very large extent. We are asked to make legislators Governors—distributors of Executive grace and Executive pardon. I care not how you constitute your Executive department; that is a matter for discussion; but I do beg this Convention to confine Executive matters to the Executive department. Give the Executive aids that you can trust; erect barriers about Executive duty that will be a protection to the people; but do not put upon legislators the discharge of Executive duties, and do not put upon judges the discharge of Executive duties.

Surely none of the evils of which we complain, have arisen from the old division of our government—the Executive, the legislative and the judicial divisions—and the matter of pardons belongs to the Executive department of the government. Let us confide in our Committee on the Executive, at least until we shall have had the honor of hearing their report. Doubtless they will give an Executive committee on pardons, or an Executive council of pardons, or some ma-

chinery of the Executive branch, in which we can trust. We cannot do well by confounding distinctions of this character. Surely you do not want your judges to exercise the pardoning power? Judges cannot be Governors and legislators, and at the same time continue to be judges. Neither can legislators become judges or Governors—cannot be a council of pardon—as I read political history—with any safety whatever. The gentleman from Columbia (Mr. Buckalew) and the gentleman from Delaware (Mr. Broomall) have had experience on this question in the National Congress. I should like to hear from either of them, how it is possible for a legislative body to hear and consider and decide the propriety of granting an individual pardon for an offence. The distribution of powers of government rests upon the gravest principles. It has been the theme of thinkers for many centuries, and we have reached, as it seems to me, a wise conclusion. It certainly is desirable that we should consider carefully what we are doing, even in making so slight a change, tending as this change seems to me, to lead to confound the distinctions which we have hitherto maintained in our Constitution.

Mr. COCHRAN. Mr. Chairman: I move to amend, by striking out all after the words "restored by," and insert in lieu thereof the words "the pardoning power, after the expiration of seven years, from the date of conviction."

The CHAIRMAN. The Chair would suggest to the gentleman from York (Mr. Cochran) to withhold that amendment until the question is taken on the amendment of the gentleman from Allegheny (Mr. W. H. Smith.)

Mr. COCHRAN. I have no objection to withholding it for the present.

Mr. GIBSON. Mr. Chairman: As has been remarked, by some of the gentleman who have recently spoken, it is well to vote upon this question intelligently. I cannot understand, however, how the different functions of the government are confounded by the provisions of this section, as reported by the committee. I cannot understand why the term "*pardon*" should be used in this connection at all. It seems to me, sir, that if gentlemen of the committee will reflect for a moment, and will read the language of the section, they will see it has

no connection whatever with the pardoning power. This section provides that every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage.

Conviction has been decided, technically, to mean not only the verdict of the jury, which finds the man guilty, but the passing of sentence or the judgment of the court pronounced upon him. Now, sir, the offence of violating the election laws of the Commonwealth does not differ from any other criminal offence. If no change is made in the Constitution now undergoing consideration, the pardoning power rests with the Executive; and if a man is tried, found guilty and sentenced of the crime of a fraudulent violation of the election laws, the Governor can pardon him of that offence; and if he is pardoned by the Executive, or by the pardoning power, of that offence, he stands exactly in the position of a man who has never committed any crime; and therefore it may be all the remaining portion of this section becomes null and void as regards that man, who has been convicted and pardoned.

Now, sir, if such is the case—if such is the law of the case—that the pardoning power can restore a man to all the rights of citizenship, as though the crime had never been committed, this section would apply only to persons who stand convicted and are not pardoned. But be that as it may, when the Legislature is called upon to act, they do not pardon the criminal, because he may have gone to jail, may have paid his fine and costs, or suffered his imprisonment; but they restore to him merely the right, which we say here in this Constitution he shall be deprived of. He is not restored; he is not cleaned from what has been put upon him by his crime; he is not an innocent man. It simply provides in this section that the right of suffrage shall again be restored to him; and I cannot understand how gentlemen can confound that, in any degree, with the pardoning power. The two things are entirely distinct. The Governor, or whoever will have the pardoning power, will still have, I think, the pardoning power, and this section will not interfere with that right in any particular.

Mr. NEWLIN. Mr. Chairman: I desire to say a word or two to the gentleman

from Allegheny, (Mr. Howard,) who proposes, as I understand, to legislate in this matter of fraudulent voting by making it a misdemeanor, and specifying the penalty. Now, sir, that is a matter which is proper to be taken cognizance of by the Legislature; and I will say to him that the Legislature has heretofore done that very thing, and I will refer him to the act. He will find it in *Pardon's Digest*, new edition, page 367. It says: "If any person not duly qualified shall fraudulently vote at any election within this Commonwealth, or, being otherwise qualified, shall vote out of his proper district; or if any person, knowing the want of any such qualification, shall aid or procure such person to vote, the person or persons so offending shall, on conviction, be fined in any sum not exceeding two hundred dollars, and be imprisoned for any term not exceeding three months." The Legislature has, therefore, provided for this very thing.

The question being upon the amendment of Mr. Howard, it was rejected.

MR. JOHN N. PURVIANCE. Mr. Chairman: I move to amend, by striking out the words, "two-thirds of each consenting thereto," and inserting instead the words, "for a period of seven years from the time of conviction."

The question being upon the amendment, it was rejected.

MR. COCHRAN. Mr. Chairman: I now offer my amendment, to strike out all after the words "restored by," and insert "the pardoning power, after the expiration of seven years from the date of conviction."

MR. LILLY. Mr. Chairman: I am opposed to this amendment, because it may sometime or another keep an innocent party—a man falsely convicted—out of his liberty for seven years. The idea of the committee in saying that he should be pardoned by the Legislature was to meet any cases where he could prove that he was illegally and wrongfully convicted—as by false evidence and false swearing. Now, by this amendment, you would keep such a man out of his liberty for seven years, with that dreadful stigma upon his character, even when he has been discovered to have been wrongfully convicted.

MR. COCHRAN. Mr. Chairman: I would simply remark, about this amendment,

without desiring to detain the committee, that it substantially embraces two propositions. In the first place it proposes to substitute the expression "the pardoning power" for "the Legislature." I am opposed, and I apprehend that to be right in principle, to having the Legislature exercising such special power as this, for reasons which it is unnecessary to reiterate, and because I believe it would be open to corruption and evil influences to which it ought not to be subverted. As to the limit of seven years, I am prepared to say that, in my opinion, this offence, which is a very grave one, should not be pardonable inside a term of seven years; but if there are gentlemen in this committee who think that the pardoning power should be allowed to act upon it within that term they can move to amend the amendment, by striking out that term and leaving it to "the pardoning power," of whatever constituents it may be composed, generally to act upon it at any time, and in that way the limitation or restriction for the seven years would be removed. I prefer, myself, to make the term seven years, or five, or some such definite term, before the pardoning power should interfere, but if the sense is to strike out that term I will vote to leave it to the pardoning power at any time.

MR. BROOMALL. Mr. Chairman: I move strike out all the gentleman has inserted, and to substitute in lieu thereof simply the word "pardon."

MR. MACVEAGH. If the gentleman will allow me to interrupt him for a moment, I would like to state that we shall certainly be better able to decide this question when we have heard how the court of pardons is to be decided. I hope, therefore, the further consideration of this section will be postponed for the present.

MR. CURTIN. Mr. Chairman: I also desire to interrupt the gentleman by a few words of explanation. The committee on the Executive department will make their report in a very short time, and we hope to so protect the Executive, as well as the people, in this great question of Executive pardon, as to commend our action to the good sense of the Convention. My impression is that we had better postpone the further consideration of this section, as is suggested by the gentleman from Dauphin, (Mr. MacVeagh,) until

the Committee on the Executive department has made its report.

The CHAIRMAN. A motion to postpone cannot be entertained. The section can be voted down, and its consideration resumed on a second reading.

Mr. BROOMALL. Mr. Chairman: My motion is based upon the conviction that the committee that has this matter in charge, will report a satisfactory pardoning provision, and that they will throw sufficient guards around it. I have no doubt about that, and I think the Convention may assume that as a fact; but I do not think it is necessary that we should await the action of that committee. I do hope, however, that the Convention will not entrust two-thirds, three-fourths, or a majority of the Legislature with any such power as that of pardoning offences. I do trust, before we mix up jurisdictions and functions in this manner, we shall consider the impropriety of conferring the power of granting pardons upon the Legislature.

I would remind the Convention further, that cases of an ordinary character would never be brought before the Legislature, and hence the provision, that the committee has reported will amount to an eternal deprivation of the right of suffrage in most cases. I trust the Convention is not going to make a discrimination between those who are wealthy, and therefore able to abuse the privilege of franchise, and repeat the mischief again, and those who are ignorant or are induced by undue influence to violate the election laws, leaving the latter without remedy. Do the members of the Convention remember what a vast scope is occupied by the grade of offences against the election laws? Are the advocates of this measure prepared to say, that a young man just of age and under the party drill, who shall be guilty of a fraudulent violation of the election laws if he happens to treat his companion in order to secure his vote, is thereby guilty of an unpardonable crime? Why murder is pardonable! They say the case supposed will not be a fraudulent violation of the election laws. I submit it would be an intentional violation of the law, and hence necessarily fraudulent; and should such a man be deprived of his right to vote for life, for committing such an offence? Certainly

not. Yet that would be the effect; for unless the offender should be a wealthy or influential man, he would never get his case before the legislative body. I contend that the legislative body is not the proper body in which these questions should be decided. I remind the gentleman who sits before me, (Mr. Buckalew,) who has had considerable experience in legislative pardons, that the last body to obtain exact information upon the subject matter will be the legislative body. These questions had better be submitted to a court in our own counties and cities, or anywhere else, than in the legislative body. I repeat again, that this section, in my judgment, contains in it more mischief than anything else that has come even from the Committee on Elections.

Mr. M'ALLISTER. Mr. Chairman: I rise to add a few remarks to the very sensible and pertinent argument of the gentleman from York, (Mr. Gibson,) and to answer the gentleman from Dauphin (Mr. MacVeagh.) The Convention seems to be getting into confusion. It was well said by the gentleman from York, (Mr. Gibson,) that there is no interference with the pardoning power by this section, whether that power be vested in the Governor or in the Governor and his counsel. The offender may be pardoned the next day after his conviction, but this does not relieve him of the loss of the right of suffrage. The right of suffrage is a mere incident of conviction; and when the provision is placed in the organic law, that the offender shall be deprived of the right of suffrage, it will be impossible for the pardoning power to restore that right, although it may restore him to liberty and all other rights. The organic law still deprives him of the exercise of the right of suffrage. Now it is alleged by the gentleman from Dauphin (Mr. MacVeagh) that this section confounds the Executive and the judicial and the legislative power, and that it is an innovation upon the principles of government. How can this be? It is proposed now, in the section under consideration, that instead of this deprivation being perpetual, or for life, the legislative body may restore it. Is it not right that the Legislature should restore it? Is not the Legislature the only power of government which, on principle, can restore it? Surely it is. It is a legislative act, and not an Executive act.

Mr. WHERRY. I desire to ask the gentleman from Centre a question. The gentleman from Centre maintains that the right of suffrage is an inalienable, inborn right. How can the Legislature restore an inalienable, inborn right?

Mr. M'ALLISTER. Mr. Chairman: It is true, the gentleman from Centre asserts that the right of suffrage is a natural social right, and he contends further, that being a natural social right, it belongs to the people, in whom all power is inherent. That people being here to-day, by their representatives, to establish their organic law, he also contends that by passing the section under consideration the people thus represented agree, each with the other, that any one convicted of a fraudulent violation of their election laws shall forfeit this great natural social right of suffrage. Are they not competent so to agree? And having so agreed, do they not thereby deprive the Governor of all power to restore the forfeited right by a pardon?

This is a principle which seems perfectly plain, and which no lawyer can dispute, much less a constitutional lawyer. If the right of suffrage is to be restored it should be by a legislative and not an Executive act.

Mr. ARMSTRONG. Mr. Chairman: It is very evident that this section is open to great difference of opinion upon its judicial construction. I apprehend that the work of this Convention ought to be so certain as to permit no room for any misapprehension among lawyers or judges as to what its true interpretation should be. I shall propose an amendment to the section, but inasmuch as I presume it is not in order at this time I shall merely read it for the information of the Convention. I propose to add at the end of the section the following words: "But nothing herein contained shall exclude the right of Executive pardon, which shall restore the right of suffrage." This amendment will very distinctly raise the question before the committee whether they intend to enact such a provision as shall wholly exclude the right of pardon. I could not myself assent to a proposition so entirely sweeping in its character. The violation of a law enacted to preserve the purity of the ballot is a crime of exceedingly great magnitude, but it is not mur-

der. It does not equal in its magnitude or its consequences a vast number of other crimes, and it is peculiarly a crime which may be committed by the inexperienced and under circumstances which strongly call for the immediate interposition of Executive clemency. My judgment cannot approve any system which proposes to fix upon the people a crime of such magnitude that it shall be wholly beyond the power of Executive clemency. The chairman of the Committee on the Executive Department has stated that that committee will report a provision which it is hoped will meet with the approval of the Convention, by which the pardoning power will be greatly circumscribed and limited, and no longer be left to the sole discretion of the Executive. He will be required to exercise that discretion in accordance with the recommendations of a competent court of pardons, whose recommendations shall be filed and recorded with the reasons at large upon which the recommendation is based. I trust I do not improperly disclose, in venturing to say this much, the proposed action of the Committee on the Executive Department, but I trust when their report is made that it will satisfy the Convention; there is no necessity for excluding this crime from the scope of Executive clemency any more than other crimes of even greater magnitude. With this view, and in order that the committee may vote intelligently upon this question, I have offered the amendment that if the Convention means to exclude the power of Executive pardon, we shall express that intention in such terms that neither the judges nor the people can misunderstand the provision.

With the views I have expressed, I repeat, I cannot approve a provision which, it is admitted by its friends, will lift this crime above the reach of Executive clemency, and place it by itself wholly above the power of pardon. I will therefore offer, if it be now in order, the amendment to which I have referred in the opening of my remarks.

The CHAIRMAN. The Chair would suggest that the gentleman had better withhold his amendment until the vote is taken upon the amendment of the gentleman from Delaware (Mr. Broomall.)

Mr. BROOMALL. Mr. Chairman: Would the amendment be in order if mine was withdrawn?

Mr. ARMSTRONG. Mr. Chairman: I will, with the permission of the House, again read my amendment for information. It is as follows:

To add to the end of the section the words: "But nothing herein contained shall exclude the right of Executive pardon, which shall restore the right of suffrage." It still leaves to the Legislature the right to remove the disability as expressed in the section. I have not proposed by the amendment to exclude the right of the Legislature, two-thirds concurring, to restore the right of suffrage. On the propriety of this I express no opinion at this time.

The CHAIRMAN. The Chair suggests to the gentleman from Lycoming (Mr. Armstrong) that if the amendment is adopted, and then the amendment of the gentleman from York, (Mr. Gibson,) it will not read well, and it would be better to take a vote on the separate proposition.

Mr. ARMSTRONG. I defer to the opinion of the Chair, and will wait until the amendment of the gentleman from York has been acted upon.

The CHAIRMAN. The question is upon the amendment of the gentleman from York.

Mr. HANNA. Mr. Chairman: I would like the amendment read for information.

The CLERK. "Any person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage, but such right, in any particular case, may be restored by the pardoning power after the expiration of seven years from the date of conviction."

The amendment was not agreed to.

Mr. ARMSTRONG. Mr. Chairman: I now move my amendment:

To add to the end of the section the words: "But nothing herein contained shall exclude the right of Executive pardon which shall restore the right of suffrage."

Mr. MACVEAGH. Mr. Chairman: I renew, as an amendment to that, the amendment offered by the gentleman from Delaware, (Mr. Broomall,) which seems to me to keep the matter in the power of the Executive department of the government. I move to amend as follows:

To insert the word "pardon" after the word "by," in the third line.

Mr. ARMSTRONG. Mr. Chairman: I respectfully suggest to the gentleman from Dauphin that the amendment I have offered does not interfere with the general pardoning power of the Executive.

Mr. MACVEAGH. Mr. Chairman: At the suggestion of the gentleman from Lycoming I withdraw the amendment for the present.

Mr. D. N. WHITE. Mr. Chairman: Has the question been taken on the amendment of the gentleman from Allegheny to strike out?

The CHAIRMAN. Long ago, sir.

Mr. BUCKALEW. Mr. Chairman: The amendment of the gentleman from Lycoming (Mr. Armstrong) meets the question distinctly; in substance presents the question whether we are to put a clause upon this subject in the Constitution or not; because I take it for granted that most friends of the proposition reported by the committee will vote heartily against it in this changed form. The gentleman from Lycoming states very accurately that his amendment raises the direct question involved in this debate. I agree with him, and I say here distinctly, that a provision of this sort, a provision of disfranchisement, with an unlimited power in the Executive department to pardon, is more than worthless, because it is a power which will be exercised by political personages for political purposes, to assist their own party, and to discriminate against those opposed to it, and it would be monstrous to put such a provision into the fundamental law of the State.

Now, sir, the report of the Committee on Suffrage, Election and Representation did not exclude the Governor from action on this subject. The report of that committee is, that the Governor of the Commonwealth, with the assent of two-thirds of each House of the Legislature, may restore to a citizen the right of suffrage. The Governor is to participate in the enactment of the law. If in a particular case he has objection against restoration, he can veto the bill, and send it back to the Legislature, with the whole weight of his official influence and of his arguments, to reverse the first vote in each House.

Now the question is, whether the Governor, in assenting to the restoration of

this political privilege, shall have associated with him the two Houses of the Legislature, or, under some other proposed amendment, shall have associated with him his own Secretary of the Commonwealth, and one or two other political officials, agreeing with him in political sentiment, whose check upon him in these political cases will be comparatively worthless. Joining the Legislature with him means a check and a curb upon the Executive. It means that no one party of this State, through its Executive or otherwise, shall restore this right; that the reasons of its restoration shall appeal to political opponents as well as to political friends. If, therefore, this committee of the whole choose to reject the proposition of the Committee on Suffrage, by which this restoration is not to take place from political favoritism under any circumstances, and shall lodge this whole authority of restoration with a partisan power, lodge it with the Executive and the political officials he may have associated with him, why, sir, we had better leave the section out of the Constitution altogether. It is not worth putting it there.

At all events, Mr. Chairman, I feel obliged to the gentleman from Lycoming for piercing through the mists in which the debate had involved this subject, and bringing us to the direct question, whether it is worth while to put into the Constitution a provision of this kind.

One other topic and I will leave the debate. My construction of this clause is, that it excludes altogether the ordinary pardoning power from actions in cases arising under it. Here, when you provide in this section a special remedy for the disfranchisement; when you provide by special constitutional provision that this restoration shall be by two-thirds of the Legislature and the Governor in the enactment of a law, you exclude necessarily other modes of restoration and the ordinary pardoning power cannot apply. To be sure, in another part of the Constitution you will grant to the Governor a general power, with or without an assistant council, to grant reprieves and pardons, but that general power is to be construed in connection with other parts of the Constitution. It will receive its construction in connection with this very section, and here, where another remedy

is constitutionally provided for the restoration of this political right, the general power necessarily will not apply. So that without any amendment or change of the section as reported by the Committee on Suffrage, we will have the simple provision that men who pollute the ballot-box shall not vote, unless both of the great political parties of this State represented in the Legislature, in connection with the Governor, shall see such equity and justice in his case that they will restore to him the right of suffrage.

Mr. ARMSTRONG. Mr. Chairman: I am glad that the amendment which I had the honor to suggest has brought before this Convention very distinctly the question upon which we are about to vote. It no longer rests in doubt that the Committee on Suffrage Election and Representation in reporting this section intended to exclude all power of Executive pardon. This offence is thus to be lifted by the act of this Convention into a magnitude and gravity which overtops all other offences known to criminal law. I apprehend, however, that it is not accurate for the gentleman from Columbia, (Mr. Buckalew,) for whose opinions ordinarily I have the highest respect, to argue that this section does not propose a punishment. Why, sir, there is no right of which a citizen is deprived which is not a punishment. If he is limited in the exercise of a right which other citizens exercise it is, *pro tanto*, a punishment and it is no answer to say that in this particular case it is the people only who suffer. It is the people always who suffer by a crime in contemplation of law. In a criminal prosecution when we indict for the commonest misdemeanor, or for the highest crime known to the law, it is in the name of the Commonwealth of Pennsylvania, and against the peace and dignity of the same. And because this is an offence against the rights and liberties of the people, it is none the less the truth that the punishment lights upon the offender, and he experiences in his person the penalty of the offence which he has committed against the public welfare.

Now, sir, in this case, the person deprived of the elective franchise is punished severely. I know of but few punishments more severe than that a man should be singled out in a community and branded as unworthy of the exercise of the

right to vote. It is to a sensitive man, it is to all ordinary men, a punishment of the greatest severity. Why shall this crime alone be lifted beyond the reach of all power to correct the mistakes which are incident to all human proceedings? If the power of pardon were to be vested in the Executive alone, without limitation and with power to exercise it in a manner calculated and designed to promote merely partisan interests, or to reward or to gratify political partisans or favorites I should agree with my learned friend. But the proposition already intimated to this Convention is to vest the power of pardon in a board which shall be, as far as possible, without political prejudice, and which shall not exercise the right of pardon in aid of, or to advance the interests of, any political party or for any political purposes whatever. If we fail to create a board of pardon, which shall attain to this end, the Convention will, in that regard, most signally fail of its duties. If it does reach that end, and constitutes a board whose recommendation to pardon, and without which it shall not be granted, shall be upon grounds distinct from political influences, then why should this particular offence be taken wholly beyond its range? Many instances will occur when, from inexperience, or when, from being the dupe of others, the person by whom the particular offence which would bring him within the provisions of this section will be com-

mitted, would be by far the least guilty of the parties concerned, and in such an instance, or where conspiracy or false testimony might work conviction, there ought to be a power which can relieve instantly the great wrong which would be perpetrated by suffering such a person to lie under such great privation as that of the elective franchise. I do not believe that any evil can result from the adoption of this amendment. On the contrary I believe that it would at all times greatly advance its efficiency, and I therefore hope that this committee will not undertake to say that this offence, of all others known to the law, shall be excluded from the right of Executive clemency.

Mr. LAMBERION. Mr. Chairman: I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to. The committee rose, and the President resumed his chair.

Mr. LAWRENCE, chairman of the committee of the whole, reported that that committee had further discussed the article reported by the Committee on Suffrage, Election and Representation, and had instructed him to report progress and ask leave to sit again.

Permission was given the committee of the whole to sit again to-morrow.

The hour of two o'clock having arrived, the President declared the Convention adjourned until ten o'clock to-morrow morning.

FORTY-EIGHTH DAY.

THURSDAY, *February 20, 1873.*

The Convention met at ten A. M.

The PRESIDENT. There does not appear to be a quorum of members present.

Mr. LILLY. Mr. President: I move that the roll be called, to ascertain whether there is a quorum present.

The CLERK then called the roll.

PRESENT.—Messrs. Achenbach, Alricks, Andrews, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Bartholomew, Beebe, Black, Charles A., Boyd, Broomall, Carter, Clark, Cochran, Craig, Darlington, Davis, De France, Edwards, Elliott, Ellis, Gibson, Gilpin, Gowen, Guthrie, Hanna, Hay, Hazzard, Hopkins, Horton, Howard, Hunsicker, Knight, Lamberton, Landis, Lawrence, Lear, Lilly, Long, M'Allister, M'Clean, MacConnell, M'Culloch, M'Murray, Mantor, Minor, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Reed, Andrew, Rooke, Ross, Runk, Russell, Sharpe, Simpson, Smith, Henry W., Smith, W. H., Stewart, Temple, Van Reed, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N., White, J. W. F., Wright and Meredith, *President*—74.

NOT PRESENT.—Messrs. Addicks, Ainey, Armstrong, Baer, Bannan, Barclay, Bardsley, Biddle, Black, J. S., Bowman, Brodhead, Brown, Buckalew, Campbell, Carey, Cassidy, Church, Collins, Corbett, Corson, Cronmiller, Curry, Curtin, Cuyler, Dallas, Dodd, Dunning, Ewing, Fell, Finney, Fulton, Funck, Hall, Harvey, Hemphill, Heverin, Kaine, Littleton, M'Camant, MacVeagh, Mann, Metzger, Mott, Newlin, Palmer, H. W., Parsons, Porter, Purviance, John N., Purviance, Samuel A., Reed, John R., Reynolds, James L., Reynolds, S. H., Smith, H. G., Stanton, Struthers, Turrell, White, Harry, Woodward and Worrell—58.

WOMAN SUFFRAGE.

The PRESIDENT laid before the Convention a communication from Mrs. Elizabeth S. Bladen, chairman of the executive committee of the Citizens' Suffrage association of Philadelphia, requesting the use of the Convention Hall, on Mon-

day evening next, for the purpose of listening to an address from Mrs. Elizabeth Cady Stanton.

Mr. BROOMALL. Mr. President: I move that the request be granted.

The question being taken, a division was called, and the motion was agreed to, a majority of a quorum voting in the affirmative.

REPORTS OF PROTHONOTARIES.

The PRESIDENT laid before the Convention the report of the prothonotary of Tioga county, relative to the number of civil cases pending upon the civil docket of that county, which was referred to the Committee on the Judiciary.

INTOXICATING LIQUORS.

Mr. DARLINGTON presented a memorial from the London Grove monthly meeting of Friends of Chester county, praying for a prohibitory clause in the Constitution against the sale of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. HAZZARD presented a memorial from the Monongahela Valley district convention, held at Pittsburg, praying that a separate clause in the Constitution, prohibitory of the sale of intoxicating liquors as a beverage, be submitted to the vote of the people, which was referred to the Committee on Legislation.

ADJOURNMENT.

Mr. LILLY offered the following resolution, which was twice read:

Resolved, That when this body adjourns to-morrow it will be until Monday next at ten o'clock A. M.

Mr. ALRICKS. I move to amend, by striking out "ten" and inserting "eleven." The motion was agreed to.

Mr. COCHRAN. Mr. President: I would like to say a word in regard to this resolution.

Mr. LILLY. The gentleman is out of order.

Mr. MANTOR. I would like to inquire whether next Saturday, being Washington's birthday, is not a legal holiday, and made so by an act of Congress.

Mr. COCHRAN. Mr. President: If it is the object of the resolution to adjourn over after to-morrow until Monday, for the purpose of commemorating the anniversary of the birthday of the Father of his Country —

Mr. BOYD. Mr. President: I rise to a point of order, and it is that debate is not in order upon the resolution, under a resolution which was adopted by the Convention a few days since.

The PRESIDENT. It is not a question of adjournment to-day. The motion is when the Convention adjourns to-morrow it will adjourn until Monday.

Mr. BOYD. I call for the reading of the resolution relative to debate upon questions of adjournment, which was adopted the other day.

The CLERK read as follows:

Resolved, That hereafter all questions as to the time of meeting and adjournment of the Convention shall be decided without debate.

The PRESIDENT. The point of order appears to be well taken. The Chair was not aware such a resolution had been passed in his absence.

Mr. COCHRAN. I merely wished to state —

The PRESIDENT. Debate is out of order.

The question being taken on the resolution, the yeas and nays were required by Mr. Hay and Mr. Cochran, and were as follow, viz:

Y E A S.

Messrs. Achenbach, Alricks, Andrews, Baker, Bartholomew, Beebe, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Clark, Craig, Curry, Curtin, Dallas, Davis, De France, Edwards, Elliott, Ellis, Gibson, Gowen, Guthrie, Hanna, Horton, Hunsicker, Knight, Lambertson, Landis, Lawrence, Lear, Lilly, Long, M'Clean, MacConnell, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W., Patterson, D. W., Patton, Pughe, Purviance, John N., Ross, Runk, Sharpe, Simpson, Stanton, Stewart, Temple, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, Worrell, Wright and Meredith, President—61.

N A Y S.

Messrs. Bailey, (Huntingdon,) Bailey, (Perry,) Biddle, Campbell, Carter, Cochran, Corbett, Darlington, Fell, Gilpin, Hay, Hazzard, Hopkins, Howard M'Alister, M'Culloch, M'Murray, Patterson,

T. H. B., Purman, Reed, Andrew, Russell, Smith, Henry W., Smith, W. H., White, David N. and White, J. W. F.—25.

So the resolution was agreed to.

ABSENT OR NOT VOTING—Messrs. Adicks, Ainey, Armstrong, Baer, Bannan, Barclay, Bardsley, Black, J. S., Bowman, Brown, Carey, Cassidy, Church, Collins, Corson, Cronmiller, Cuyler, Dodd, Dunning, Ewing, Finney, Fulton, Funck, Hall, Harvey, Hemphill, Heverin, Kaine, Littleton, M'Camant, MacVeagh, Mann Metzger, Palmer, H. W., Parsons, Porter, Purviance, Sam'l A., Read, John R., Reynolds, James L., Reynolds, S. H., Rooke, Smith, H. G., Struthers, Turrell, White, Harry and Woodward—46.

THE COMMITTEE ON ACCOUNTS AND EXPENDITURES.

Mr. HAY. Mr. Chairman: I have been instructed by the Committee on Accounts and Expenditures to present the following report:

The Committee on Accounts and Expenditures respectfully reports:

That it has examined the following accounts for expenses of the Convention, viz:

1. John Smith, for clearing ice and snow from the yard of the hall occupied by the Convention and carting away same.....	\$25 00
2. A number of accounts for printing and advertising proposals for the printing and binding of the Convention, done by direction of the Committee on Printing and Binding, as follows:	
Messrs. M'Laughlin Bro's., printing.....	36 00
Evening Herald, Philadelphia, advertising.....	10 00
Evening Bulletin, Philadelphia, advertising.....	17 60
Evening Star, Philadelphia, advertising.....	8 00
Evening City Item, Philadelphia, advertising.....	10 50
Evening Telegraph, Philadelphia, advertising.....	13 20
The Inquirer, Philadelphia, advertising.....	13 20
The Day, Philadelphia, advertising.....	8 00
The Ledger, Philadelphia, advertising.....	19 60
The Age, Philadelphia, advertising.....	8 80

The Press, Philadelphia, advertising.....	\$11 00
The Public Record, Philadelphia, advertising.....	8 80
State Journal, Harrisburg, advertising.....	5 50

Together amounting to..... 170 20

And that said accounts are for proper expenses of the Convention, and should therefore be paid.

The following resolution is accordingly submitted:

Resolved, That the Chief Clerk be directed to pay to the persons entitled to receive the same, the several amounts reported as proper to be paid in the above report of the Committee on Accounts and Expenditures.

The resolution was read a second time and agreed to.

COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, on the report of the Committee on Suffrage, Election and Representation, Mr. Lawrence in the chair.

THE SUFFRAGE ARTICLE.

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Lycoming (Mr. Armstrong) to the seventh section. The amendment will be read.

Mr. SIMPSON. Mr. Chairman: I rise at this time to make a personal explanation. On Saturday last I stated to the Convention that business would require my absence from the city on Tuesday and Wednesday. I asked and obtained leave of absence for those two days. The Journal was read on Monday, stating that fact in the presence and hearing of the members of the Convention. During the discussion that arose on the subject before the committee of the whole, on Monday, I had occasion to make some remarks on election frauds in different localities. I left the city early on Tuesday morning, and you may understand how surprised I was on reading the paper of yesterday I found the remarks that had been made about myself and my statement, in my absence, by a member of the Convention. In regard to a portion of those remarks I do not propose to say anything. I have lived in this community for more than forty years. I was elected to this Convention by the largest vote cast for any man in the district. I had one thousand more majority than the candidate

for Governor on the same ticket in that district. I am very well known amongst my constituents. With them I can leave my reputation for veracity. But the charge was made by the gentleman from Montgomery, (Mr. Boyd,) that, in speaking of election frauds, I had spoken of Norristown. I desire to say here that I have referred to the reporter's notes of the remarks that I made on Monday, and they agree precisely with my own recollection as to what I did say. I neither mentioned the borough of Norristown nor the county of Montgomery then or at any other time. I spoke of Bensalem township, in the county of Bucks, and the five counties in the Sixteenth Congressional district in this State, making in all six counties, one relating to the elections of 1868 and the other to the election of 1870. I also referred to the investigation now going on in Harrisburg. I repeat, I do not know of any fraud ever having been committed in the county of Montgomery, either in the borough of Norristown or in any of its townships. If I had, then was the time for the denial, not taking advantage of my absence to make the charge. When the gentleman from Montgomery (Mr. Boyd) stood up on this floor, and said that I had charged fraud in Norristown, he either spoke misunderstandingly of what I had said, or he wilfully misrepresented me.

Mr. BOYD. Mr. Chairman: I simply understood the gentleman directly to state, not only upon that occasion, but upon previous occasions, that there were frauds in Montgomery county, and it was because I knew that it was not true that I took the liberty of making the statement which I did. If the gentleman disclaims alluding to Montgomery county, it is all right. I do not take any offence at his remarks upon the subject, but I have no apology to make.

Mr. SIMPSON. Mr. Chairman: I read from the report of the gentleman's remarks: "When he stated upon this floor that frauds had been committed in Norristown, he was exceedingly unfortunate in fixing that locality. If he had put it in some remote quarter of the county, where few of us ever get, he might have had some chance to escape, for we would not have known whether it was correct or not."

I spoke of the counties of Bucks, Somerset, Bedford, Fulton, Adams, Franklin and Philadelphia.

The CHAIRMAN. The Chairman understands the gentleman from Montgomery (Mr. Boyd) to accept the explanation of the gentleman from Philadelphia (Mr. Simpson.)

Mr. BOYD. Yes, sir; I accept his apology. [Laughter.]

The CHAIRMAN. The question is upon the amendment of the gentleman from Lycoming (Mr. Armstrong.)

The CLERK read: "But nothing herein contained shall exclude the right of the Executive pardon which shall restore the right of suffrage."

Mr. HAZZARD. Mr. Chairman: We have been talking for two or three weeks upon this subject of fraud at elections, and most of the remarks have been in regard to the manipulation of votes after they had passed into the ballot-box, and the indignation of the members has been very properly and eloquently expressed; but nothing heretofore has been done in our constitutional deliberations with regard to that matter that may have a tendency to restrain electors themselves from committing frauds; but now we have come down to the bottom of the subject, and are dealing with the vote as cast by the individual, the ballot itself. It seems to me that here is where the whole mischief, or most of it at any rate, is done. I was somewhat astonished yesterday to hear the gentleman from Dauphin (Mr. MacVeagh.) His history has certainly been at fault if he knows of no matter which properly belongs to the Executive department that has been transferred to the legislative department. If I have read the newspapers properly, for the past eight years there has been plenty of such legislation by the general government. After the war a great many people were disfranchised in the south. It was a proper matter for Congress to remove the disability, and I have never heard that the President has grumbled any because the proper function of his office has been taken away from him. Here is a person who commits a fraud upon the election; he deposits an improper and illegal vote. It seems to me to be a proper matter for the Legislature. A precedent has been set us by the general government.

The gentleman from Columbia (Mr. Buckalew) stated yesterday that in case this subject was referred to the Executive alone, and his board of officers, that it would partake of party bias, and no doubt it would, for the Governor and his council would be very apt to find some excuse

for pardoning a partisan, and they would be likely to lean towards the party who cast a vote on their side of the question. That is certainly an objection to referring it to the Executive; but there are also objections even to referring it to the Legislature, because, as has been well stated here, a poor man cannot go to the Legislature to have his rights vindicated or corrected there. Many a man may be disfranchised forever without having the disability removed by legislative enactment. It seems to me that the provision should be in some such shape as was yesterday presented to the Convention, namely: To limit the disqualification to a certain time, and then when that time has expired the elector should be enfranchised.

Now it is said that this should not be put above and beyond Executive clemency. I think it should, because I believe it is one of the greatest crimes that may be committed against the country. I know that *quasi* these crimes are against the Commonwealth, but really they are against individuals. If a murder is committed it only affects the man that is guilty and his family, except in the outraged justice and sense of right, as it pervades the whole community; and if you steal my coat it is personal to me, but of course the criminal is prosecuted in the name of the great Commonwealth, although really it does not affect the rest of the people only as it outrages public justice; but how is it with regard to polluting the ballot-box? Mr. Chairman, that goes to the very foundation of our government, and you and I, and every other individual, are interested in such an outrage, and I say it ought to be put beyond Executive clemency, and the trouble of going to the Legislature should not be imposed upon the poor man or anybody else.

It is said that it will be a disgrace upon this man, that the mark of Cain is upon him. Well it ought to be. Is it not a disgrace for a man to go to the penitentiary if he steals ten dollars worth of property? Is it not a stigma upon him? It seems we have grown tender-footed when we approach the very thing we ought to be correcting. In this country gentlemen have said that this principle of suffrage is at the very foundation of government. Is not the abuse of that principle a crime greater than stealing a coat or a horse? Everything that strikes at the foundation of the government tends to the destruction of this glorious fabric that we have raised in this country, of which

We propose to celebrate at the next centennial, and should be rooted out if possible, and yet gentlemen are fearful that the punishment for such a crime inflicts a stigma upon the offender. I would put such a stigma upon him that would surprise him very much more than could be placed upon him in any way that I could devise. Let the stigma be upon him because he has committed an act worthy of stigma; but the punishment in the penitentiary is just as public. If the offender is kept away from the polls during his probation I think it would be much better to let his disability expire at a certain time. He will gradually grow out of it and out of notice, and into his rights, without much attention from the public. I say that this is a greater crime than almost any other, because it goes to the very foundation of our civil fabric, to the very foundation of sovereignty, and in that we are all interested.

I hope this amendment will not carry; it encumbers the matter too much. The criminal may go to the Legislature; he may be pardoned by the Governor after seven years probation. Let it be fixed at a less period; let it be five years, and let it expire of its own limitation. There will then be no party Governor to be consulted and no act of the Legislature to be required.

Mr. KNIGHT. Mr. Chairman: Is this an amendment to the amendment?

The CHAIRMAN. It is an amendment simply.

Mr. KNIGHT. I move an amendment to the amendment, to be inserted after the word "suffrage," "for the term of four years," so that the section will read: "Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage for the term of four years, but such right, in any particular case, may be restored, by act of the Legislature, two-thirds of each House consenting thereto."

The CHAIRMAN. The Chair thinks that the gentleman had better withhold his amendment, as it will come in in another part of the section, until the vote is taken upon the amendment of the gentleman from Lycoming (Mr. Armstrong.)

Mr. STEWART. I offer the following amendment:

Strike out all after the word "section," and insert, "in addition to such other penalties as may be by law provided, fraudulent violation of the election laws may be punished with deprivation of

the right of suffrage for a period of not less than four nor more than ten years, at the discretion of the court before whom the offender shall have been convicted."

The CHAIRMAN. Does the gentleman move to strike out the section and insert this?

Mr. STEWART. That was my motion.

The CHAIRMAN. It is not in order.

Mr. BROOMALL. Mr. Chairman: I only desire to say, in the absence of the gentleman from Lycoming, (Mr. Armstrong,) that this is intended to provide for a class of cases that the Convention does not seem, from anything that I have heard, to have had in mind at all. We have been supposing that a man convicted upon the finding of a verdict of a jury is necessarily guilty. That is a great mistake. There are too many lawyers here who know better than that for it to be received as the opinion of the Convention. The most that can be said of the verdict of a jury is that it is sometimes right, and as long as that is the case we should have some means of remedying the mischief when the jury is wrong. When a jury convicts a man wrongfully, and that can be made known two weeks afterwards, I want to know whether anybody here will say that there should be no possibility of pardon, but that the poor individual wrongfully convicted must await the slow action of the Legislature, and that only after seven years, as some members of the Convention would like us to say.

Mr. CRAIG. Mr. Chairman: When I first considered this proposition I felt favorably inclined to it. It looked to me like that homoeopathic specific which declares that a little of the hair of the dog that bit you will cure the bite. But having slept upon it, I am of the opinion that we ought to throw aside the whole idea of the forfeiture of the right of suffrage. I think there are good reasons, sir, why that penalty should not be imposed for this act. Society lays before every voter now, and will continue to do so, the temptation to commit frauds upon the election laws. Scarcely any man who has attended the polls but has seen reputable men there who would not steal, who would not commit any other fraud, deliberately do things which, under this provision, would forfeit their right to suffrage. Now, sir, we place before men the temptation to commit this crime, and then having led them into temptation—contrary to all our teaching upon this subject—we turn around and we place the temptation be-

fore a jury to convict men wrongfully, who are honest men.

Men commit these frauds because they are excited. They are actually demented by passion, for the time being, and then, as criminals against these laws, are arraigned in the courts.

We shall have after a while, a majority of the jury determining the verdict—and you then lay before the jury the temptation to convict a man because he is of opposite politics, and to acquit him because he is of the same politics, and thus place before the jury the temptation to commit perjury. I say the whole business is a mere scheme of temptation, which can lead only to evil.

Then, sir, I think there is another good reason for not adopting it. In every country on earth where men are deprived of the rights of citizenship they become brigands, they become fungi upon society—preying upon its bitter interests. This law will erect in our country—in this community—a brigand class. Deprived of the right of suffrage, they will say to themselves: "We are outlaws in society; we have no part or lot in it," and will act accordingly.

It is vain to say that they may go to the Legislature, or to the Governor, or pardoning power, and there be restored. The pride of human nature will not permit them to do it. Men will not get down on their knees and humiliate themselves in the dust. Their very pride of nature will rebel against this humiliation. It is therefore to create a class of outlaws and brigands in the community.

For all these reasons, and I have stated them as briefly as I can, I have made up my mind that I will vote against this provision in all its parts.

Mr. WALKER. Mr. Chairman: For one, I am disposed to go a very great distance in punishing every one that is guilty of fraud in any direction upon the ballot. I can vote almost cheerfully for the section as it stands, although I could prefer an amendment. I would insert in the third line after the word "by," so as to make it read: "Every person convicted of any fraudulent violation of the election laws, shall be deprived of the right of suffrage, but such right, in any particular case, may be restored by the Executive on the recommendation provided in section — of article —, of this Constitution;" that is the article that provides for the board of advisors for the Governor in granting pardons. If that would meet the

approbation of the committee, it strikes me, sir, that it is such punishment as those who are guilty of perpetrating a fraud on the election should receive. There is a way by which these men can be pardoned without the cumbersome way suggested by some gentlemen.

Mr. HOPKINS. I am opposed to this amendment, for I think that it nullifies the section itself. The section proposes that the fraudulent violation of the election laws shall be disfranchised. The amendment proposes that that man may be pardoned by the Governor, and restore to him his rights as a citizen of the Commonwealth.

I cannot add anything to the very forcible remarks made by my colleague, (Mr. Hazzard,) this morning, upon this subject, except that I will state, or remind the Convention, that we have an illustrious example of what this Executive clemency has done, and perhaps may do again. Why, sir, upon the records of one of your courts, in this city, a man was convicted—for what? Why, sir, for going from precinct to precinct, some say, as many as twenty odd times. However that may be, I do not know; but, certainly, he voted several times, and swore, before high Heaven, that he was a citizen, qualified to vote in the precinct where he was offering his ballot. This thing was brought to the notice of a court and jury, and it was regarded as a crime of such infamy that he was sentenced to undergo an imprisonment of, I believe, three months for his bad conduct. What then? Why, sir, the President of the United States extended his clemency to, and pardoned, this scoundrel, who was, I believe, the first that was convicted under the act of Congress, and turned him loose upon society again, to go on and perpetrate this repeating to his heart's content.

Now, sir, I am decidedly opposed to lodging this power in the Executive, even with counsellors, as it has been suggested it should be. I would not even give it to the Legislature. I would prefer modifying it, so as to confine it to, say five years, or four, or seven years; but I would make it unconditional and absolute, so far as this disqualification goes, without the intervention of even the Legislature or Executive. If, however, I must choose between the two evils, the Governor and his counsel or the Legislature, I prefer the latter.

Mr. LILLY. Mr. Chairman: I came to this Convention with my mind fully made

up to punish every violation of the ballot-box without respect to persons. I am in favor of making the punishment of persons who pollute the ballot-box as severe as it is possible to make it.

I do not agree at all with the gentleman from Lawrence, (Mr. Craig,) who spoke a few minutes ago, that a man is, perhaps, excited when he does this sort of thing, and ought to be treated leniently on account of that excitement. I want to put caution before every man's eyes, that he must not get excited in that direction.

As for the pardoning power, I do not believe that the best plan would be that recommended by the gentleman from Washington, who has just taken his seat, because a man may be convicted unlawfully or by false evidence, and if such a thing should happen there ought to be some place where he could show the fact and prove it, and get himself pardoned. Hence I believe the pardoning power ought to be lodged somewhere, and I believe the committee has reached just the place where it ought to be. As that power is now—in the hands of the Executive—it would be entirely useless, because politicians would go to the Executive and say, "why this fraud was committed to elect you," and that would be the strongest argument they could present for Executive clemency. In order to get rid of that difficulty I believe, with the gentleman from Columbia, (Mr. Buckalew,) who spoke so lucidly on this subject yesterday, that by placing it with three-fourths or two-thirds of the Legislature you must have the consent of both the great parties of the Commonwealth to pardon. I am quite willing to fix some reasonable limit, at the expiration of which the guilty man be pardoned, say five or seven years. I do not know that I should insist upon forever disfranchising him, but I want to leave the door open for him to be pardoned in that time. I want, however, that the evil-doer or the man contemplating the doing of an evil that will pollute the ballot-box to have before his eyes the fact that he must suffer, and suffer, too, in a way that he will most feel it, even to the extent of putting a brand on him, if you please, and letting him go through the world saying, "I am the man that attempted to destroy the nation by polluting the ballot-box."

MR. DARLINGTON. Mr. President: It seems to me we are endeavoring to prescribe penalties in the Constitution for the violation of laws which possibly may be passed. It strikes me it is wrong end

foremost in the Constitution, and is not rightly placed there. We must remember what the difficulty is now. It is that the Legislature has no right, under the existing Constitution, to prescribe as a part of the punishment of a fraudulent violation of the election laws, the deprivation of the right of suffrage. The right of suffrage is a constitutional right, and cannot be taken away by the Legislature as I understand it. Now do we need to do anything more therefore than to confer upon the Legislature the right to take away the right of suffrage as an additional penalty for a violation of the election laws? This is the manner in which I view this question, but I do not know how it may strike the minds of other gentlemen in the Convention. Instead, therefore, of favoring the section as it is reported by the committee, and as proposed to be amended, I will, if it is in order, and if not, I will, at the proper time, propose the following section as a substitute for this section for the consideration of the committee:

"The Legislature may prescribe such punishment for a fraudulent violation of the election laws as they may deem proper, including the deprivation of the right of suffrage, but such right may be restored by pardon."

Now I would give the right to the pardoning power to restore the right of suffrage, of which the Legislature shall have deprived a citizen, when the pardoning power shall deem it proper to exercise it. It must be remembered that we are in the early stages of the proceedings of this Convention. We have not yet decided what limitations we shall place upon the pardoning power of the Executive power, but I apprehend we will agree to fix some limit upon it, so that it cannot be exercised save by the advice and consent of some suitable council, who shall advise the Governor when it is proper to issue the pardon. To that council, however constituted, I am willing to confide the pardoning power. It must reside somewhere, and I consider there is no place so proper in which it shall reside as the Executive of the Commonwealth, around whom can be thrown all the necessary and proper guards.

I am not willing to confide this power to the Legislature, after what has been stated in the Convention in regard to that body, and which I am bound to believe, when gentlemen have spoken of the views which have been entertained by their own representatives. You could

not always secure a pardon from the Legislature, even if the proper means are taken, and I am unwilling to confer any power upon them in this line, not only for that reason, but because it is a matter of special legislation, of which we are so very anxious to deprive them. It is, therefore, better, I suggest to this committee, to confer upon the Legislature the additional power to that which they now have in the punishment of fraudulent violation of the election laws, by depriving the voter of the right of suffrage; but, at the same time, if it shall be shown that a person, subsequent to conviction for this crime, was not so guilty as to require a lengthened deprivation of the right of suffrage, the Executive, by the exercise of the pardoning power, with such guards as we shall throw around him, may relieve the voter innocently or ignorantly drawn into the commission of this crime. If it is in order I therefore move to strike out the section.

The PRESIDENT. The motion will not be in order.

Mr. HORTON. Mr. Chairman: I have not the least desire to occupy the time of the committee further than just simply to say that ever since the commencement of this discussion I thought I could cheerfully vote for the article as it came from the committee, and I had been firm in the belief that I could do so until I heard the arguments of various members upon the floor, and especially those of the gentleman from Columbia (Mr. Buckalew) and the gentleman from Lycoming, (Mr. Armstrong,) and then I felt a little uncertain as to what would be proper in regard to a vote upon the article. The gentleman from Chester, (Mr. Darlington,) I think, has just embraced, in a separate article, the points wherein so many members of the Convention differ in regard to this question. I have no objection to giving a person convicted of having fraudulently violated the election laws the opportunity of two modes of escape, and hence I was in favor of the amendment to the article offered by the gentleman from Lycoming (Mr. Armstrong.) Now it is true that a man may be convicted on very insufficient evidence. Our courts are not always perfect, and many bad decisions have been given by them, but if this question of the pardon of persons convicted of fraudulently violating the election laws is to be one resting wholly within the jurisdiction of the Legislature, it will be difficult to ascertain when the

pardon will be granted. There has been a great deal said in the Convention in regard to the sacredness of the ballot, but I think none too much, and hence the higher estimate we place upon the ballot, the greater will be the obligation resting upon us to punish very severely any violation which may be perpetrated against the laws regulating the exercise of the elective franchise.

Now in order that there may be fair dealing, I say there can be no possible harm in the adoption of the amendment of the gentleman from Lycoming, (Mr. Armstrong,) and I think it would be very proper that there should be the privilege given to the offending individual of having the right of suffrage restored to him by pardon, after he shall have been deprived of it by reason of having fraudulently violated the election laws, without having to undergo a deprivation of the right for years, which would be the inevitable necessity if the pardoning power was entrusted wholly to the Legislature. As I said in the beginning of my remarks, I do not wish to occupy the time of the Convention, but I do want to say that after we have had the views of a committee of fifteen members, which framed this article, that we certainly ought to pay some attention to them. I do not believe that there has been a single proposition presented here yesterday or to-day which has not been before that committee, time and again, and it was upon that ground I decided to vote for the report as it came from the committee, and I am of the opinion that if the question should come up plainly upon the section as reported by the committee, and even with the addition of the amendment of the gentleman from Lycoming, (Mr. Armstrong,) I shall vote for it.

Mr. LEAR. Mr. Chairman: This section proposed to the new Constitution, it seems to me, must be misunderstood by the gentleman from Chester, (Mr. Darlington,) or else I must misunderstand it, for I understand, from reading it, that every person must first be convicted in a court, and when convicted he is bound to be sentenced by that court, because when I proposed an amendment yesterday to this very article, by which the person fraudulently violating the election laws should be convicted and sentenced, the chairman of the Committee on Elections (Mr. McAllister) said that he was satisfied in his own mind, and the committee had also been satisfied, that the word "conviction" covers the whole

ground, having a technical meaning, and upon consideration I have no doubt that he is right, and for this reason: If a man who has been once convicted is again brought into court upon an indictment, and he pleads a former conviction, he must show, not only that there was a verdict of a jury, but that he was sentenced by the court in pursuance of that verdict, and that it was not a mere verdict subsequently arrested or set aside. Therefore it is in this section, *ex viceribus siris*, that you will find the whole explanation of what is intended to be done by the Convention in adopting it. The article provides, in the first place, that the offender shall be convicted and, of course, sentenced by a criminal court, and then it provides as to what shall be done with the convicted individual in case the Executive, or whatever branch of the government in which the pardoning power may be vested, decides to relieve the offender from the consequences of the sentence. So that under this section, as it is now proposed, we shall have, in the first place, a conviction, and that shall be a conviction under the election laws of the State, followed by a sentence, because it is for a violation of these election laws that the sentence shall be imposed. Then follows the disability, and there comes in the real question of discussion upon this amendment, and that is, whether this pardoning power, by which this disability from exercising the elective franchise is to be removed, shall be vested in two different branches of the government, or whether it shall be removed by the pardon of the offender from the penalty inflicted upon him by the sentence of the court of quarter sessions, and whether that pardon shall carry with it a relief from the disability the offender would be under by virtue of this constitutional provision.

Now I say that it is impossible to understand, by the very terms of the section itself, that when an offender against the election laws is pardoned from the penalty inflicted by the court, that he is by that restored to all the privileges of a citizen. The pardon does not carry with it a restoration of this privilege. The individual who shall have thus violated the election laws still remains under the disability, and I say, although the gentleman from Lycoming (Mr. Armstrong) has been complimented by the gentleman from Columbia (Mr. Buckalew) for having penetrated the fog with his amendment, he has taken the whole question

through the fog and left us on the other side of it, for this amendment, it seems to me, renders it more obscure than it was before, and the object, as the gentleman said himself, was to place a provision in the section as would relieve these unfortunate offenders from their disabilities, and in order that there might be no mistake as to the meaning of the section, I would like to inquire, however, if any delegate can inform the Convention, by the mere wording of the amendment, as it stands, what is meant by it.

Now, I think, we ought not to load down the section with such qualifying provisions, as to render it void of meaning. The evil resulting from thus encumbering a section was seen yesterday, when a section relating to the registry law was adopted, and then it was qualified in such a way as to render it a nullity. We ought either to have our provisions sufficiently clear and efficient, or else let them stand without being encumbered by limitations and qualifications. It is said that old Menenius took his wine hot, without a drop of allaying Tiber in it, but we have put so much Tiber into this section that it has become all water. And this section itself, if it becomes amended by such emendations as this, will, after a while, become so diluted as to be, if not all water, at least all milk and water. Now this section, if amended in this way, will read as follows:

"Any person convicted of any fraudulent violation of the elections shall be deprived of the right of suffrage, but such right, in any particular case, may be restored by a vote of the Legislature, two-thirds of each House consenting thereto, and nothing herein contained shall exclude the right to Executive pardon, which shall restore the right of suffrage."

What is meant by that right of Executive pardon which shall restore the right of suffrage? Does it mean that this right of Executive pardon which shall restore the right of suffrage shall apply to the relief of the offender from a penalty inflicted by the quarter sessions? Or does it mean that he shall be restored by virtue of the Executive pardon from all of the disabilities and penalties inflicted upon him, for a violation of the election laws? That is to say, as this stands at present, if a man convicted of a violation of the election laws comes before the Executive, and is pardoned there, according to the terms of this amendment—if he is pardoned by the Executive—it carries with it the restora-

tion of his right as an elector; but if he goes before the Legislature, what is he to obtain there? Certainly not the pardon of the offences of which he has been convicted in the court of quarter sessions, and the penalty which has been imposed upon him there. The Legislature, it is not intended by this provision, shall do that duty; neither is it intended—if he be convicted and sentenced in the court of quarter sessions—that the penalties of that sentence shall be relieved by the pardoning power. And I do not admit, with the gentleman from Dauphin, (Mr. MacVeagh,) that the pardoning power is necessary an Executive power. It may exist anywhere else. It may be lodged in a court of pardons, or in a council of pardons.

Now with regard to this argument, we were called upon very energetically, yesterday, by the gentleman from Dauphin, not to forget the three distinctive departments of government, and he asked this Convention to pause and see what they are doing, because they will be led into the error of giving Executive power to the Legislature. I am not partial at all that we should give this to the Legislature. I think that we should not. I would like the proposition made yesterday, by the gentleman from Lancaster, (Mr. Carter,) much better, "that the offender should be disqualified from voting for a limited term of years." I would say during the term of his natural life, but this Convention would not go with me, and I do not know, upon consideration, whether it would be right. But I like much better the proposition that "his disability to vote shall extend through a limited term of years—five, seven, ten, or any other number that the committee may in their wisdom determine," and not go to the Legislature at all to have this kind of special legislation, as it has been called in this debate, although it is not legislation. The gentleman from Dauphin (Mr. MacVeagh) said that this Convention did not seem to know what they are doing, if they are about to give this power to the legislative branch which belongs to the Executive; but it does not necessarily belong to the Executive.

This Convention or the Committee on Executive, I presume, will report some provision by which this power will be placed in some other hands than those of the Executive. There is no reason why there should not be a court of pardons, where the matter shall be judicially ex-

amined into and determined by a competent body, to understand the requirements of the applicant, and the safety of the other citizens in the Commonwealth when the pardon is applied for. I do not believe that these different departments have always been kept so distinct as the gentleman seems to think. Why, the Legislature of that country from which we derive, principally, our law is the last high court of errors and appeals, and the House of Lords determine these questions of law, of property, and of human rights, and is the last court for that purpose. That is a Legislature that exercises judicial functions, and the Senate of the State of New York used to do the same thing. The Senate of Pennsylvania to-day is competent to hear and decide questions of impeachment, which are judicial questions, as the Senate of the United States may do in proper cases of impeachment. Consequently these three branches of the government are not kept distinct entirely, and I say that this pardoning power is not necessarily a feature or an arm of the Executive department of the Commonwealth of Pennsylvania, although it has been lodged there for years past. It is not a part of the execution of the laws. If this is the Executive department, I have no doubt that the man Brown, who was pardoned by the President of the United States, or Robert Smith Lister, who was pardoned by the Governor of Pennsylvania, greatly admired that play of executing the law. It is not a part of the Executive duty or of the Executive department. It is rather an obstruction in the execution of the laws of the Commonwealth, and the carrying out of the sentence of the court, and therefore I do not admit that this is a duty necessarily imposed upon the Executive department, and I do not believe that this Convention are going so far as to say so.

As I said, I am opposed to everything that follows after the word "suffrage" in this section. I am opposed to every portion of it, as all these parts are included in the whole, and therefore I am opposed to this last amendment proposed by the gentleman from Lycoming, (Mr. Armstrong,) which is now the only thing before this committee.

Mr. MINOR. Mr. Chairman: I would not prolong this debate a single moment, but it seems clear to my mind that we are drifting into a mistake. We have been, for the last two weeks, talking about great criminals, in connection with

election laws, and we have confined ourselves almost entirely to persons of that grade. We talk as if we are legislating only for the chief class of offenders, and nobody else.

That leads me to the first objection I have to this section, and to all the amendments that are pending upon it; that is, that, in applying the worst part, and by worst I mean the severest part, of the result that can follow an infraction of the law, we make no distinction whatever between criminals. Let one man who is greatly guilty, and another who is slightly guilty, both be convicted before a court of an infraction of the election law, what is the result? Each undergoes his penalty of a fine, and perhaps of imprisonment. Each pays his fine, and each suffers his imprisonment of a longer or a shorter period. Then this is forgotten in the community; and from that time, although one is the greatest offender and the other is the slightest, are both, as they walk about the community, branded in precisely the same manner. They must go about, for some amendments, say four years, others five years, others seven years and others for life, until pardoned, with precisely the same brand, although their guilt is as wide in degree as the difference between the greatest and the smallest offence known to the election laws. I say that we would do a great wrong in putting all criminals, both large and small, on the same basis.

But another objection is this: We are fixing a severe penalty in advance, without even knowing what the law is to be. Who knows what even frivolous laws will yet be passed by the Legislature? They may pass laws so frivolous as to be absolutely unjust, yet if a man violates one of these laws, not intentionally, but by a mistake of judgment, or by a mistake in construction, yet if he is convicted, by partisan juries, or otherwise, or even by a justice of the peace, if he has final jurisdiction, you are visiting upon him this terrible result that will be entirely inadequate to the crime he has committed. How can we, at this time, and in this Constitution, define a penalty proper for all the offences that may be committed under any and all the laws that may be passed by any or all the Legislatures for the next thirty or forty years? Are we not overlooking our instructions and drifting into a mistake?

I close this brief statement, sir, by saying: Leave it with the Legislature to pass

the laws and prescribe the penalties upon this subject as future light shall guide the way. Give them full power, even extending to the right of suffrage, if you please, and then give the opportunity of adjusting these penalties, according to the degree of the crime, to that tribunal before which the case is tried, and which alone can have full knowledge of the facts. To these considerations I will not take time to add others, for, it seems to me, those already suggested are fatal to this section. I therefore repeat, we will, if we adopt it, do more evil than good, because of its terrible penalty, when the crime, in many cases, is slight; for, if it is adopted, jurors will violate their oaths, and acquit the lesser criminals, because of this fearful penalty; and then the law will often remain a dead letter in instances when it should be enforced. But I will not prolong. I am opposed to all these amendments. We are legislating in advance, and failing to make distinctions between the great and small degrees of guilt, and tying up the future, when we cannot possibly know what that future is.

Mr. ARMSTRONG. Mr. Chairman: This section, as it stands, together with the amendments that have been proposed, I think, does not entirely come up to what I believe ought to be the provision contained in the section. I propose to modify my amendment, so that it shall read thus:

"Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage for the term of four years, but such right may be restored by Executive pardon."

The reason for that is this:—

Mr. MACVEAGH. Mr. Chairman: Will the gentleman read the proposed amendment once more?

Mr. ARMSTRONG. Mr. Chairman: I will read the amendment as I propose to amend it, or as it will be if my amendment is adopted. I have said that I propose to modify my amendment, so that the section, as amended, will read thus:

"Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage for the term of four years, but such right may be restored by Executive pardon."

The reason is this: It is not well, as it strikes me, to confound these well settled distinctions which have grown up with the country, and have become a part of its settled legislative, judicial and Executive functions. The words which I would

propose to strike out are those which would invest the Legislature with the right to pardon, if not that, virtually nothing else. It is contrary to the established principles, and to all the analogy which have heretofore controlled questions of this kind. We recognize the distinction in judicial proceedings between civil and criminal cases.

This is a criminal proceeding; it has all the characteristics and features of a criminal proceeding. To say that it is a crime is simply to express what every man's intelligence tells him. We are attempting to punish crime, and one of great magnitude, and one which should require not only severe punishment, but *prompt* and *certain* punishment. Now my difficulty is this: If we undertake to say that the Legislature, even with a vote of two-thirds, may pardon, we invest the Legislature with power which is unusual, and bring a certain class of criminal proceeding within the scope of a power never before exercising it, and where it would be particularly liable to political influence. If we vest this power, however, in the Executive, and within the general scope of the pardoning power, then we bring it into close analogy with all other criminal proceedings. And to say that such a pardon would be granted upon merely political ground would be simply to say that this Convention is not able so to restrict the pardoning power; that it can be unjustly or unworthily exercised. I do not concede any such proposition. On the contrary, I believe that this Convention has the power, and will exercise it, to so hedge around the exercise of the pardoning power that it may be safely vested in the Executive and shall not be liable to the abuse which many gentlemen on the floor of great intelligence apprehend. Now I believe that it is wiser and better that we should recognize this crime against the elective franchise as a high crime to be adequately punished; but bring it within the scope of all other criminal jurisprudence, and vest the power to do away with the sentence where we vest the power of all other control in similar cases. For this reason, again, the very existence of the pardoning power pre-supposes judicial mistakes; it pre-supposes that a man may be convicted upon false testimony, or that he may be the victim of conspiracy, and convicted upon improper evidence, and in such event he ought not to be the subject of imprisonment for any length of time,

not even for one moment, beyond that which is necessary to interpose the Executive pardon where the facts are clearly established.

Under such circumstances the amendment, as it is now proposed, would meet all the exigencies of the case; it would punish crime as it ought to be punished, and it would vest in the Executive the power to arrest the course of a sentence which, under new developments of facts, ought never to have been imposed. This Convention will certainly adopt some provision by which this Executive clemency is to be exercised properly, and without the dangers which now surround it, for I am free to say if it were left to the exercise of Executive clemency, as it now is in the sole discretion of one man elected by a political party, and under the sole influence of that party—it would not be best. My idea, however, is this, that we vest it within the restrictions which this Convention will unquestionably place around it, as suggested in the amendment, and that we may thus reach the crime without subjecting it to that constant, continued and unalterable decision proposed, which might work the extremest injustice.

MR. M'ALLISTER. Mr. Chairman: It is not to be concealed that these offences, these frauds upon the ballot, have been considered very slight offences. We find men employed in that business who hold a respectable position in society, and it was the design of this section to place a stigma upon them and place them in the community as beacons, to warn all such of the danger they are in when they tamper with this right of the ballot. That was the design of the committee in reporting this section as it is. Now it is alleged that it is wrong to take away the right of franchise from a man simply because he has been guilty of fraud upon it. I reply that the forfeiture is a consequence of his own act, his own voluntary act, his own fraudulent and wicked act—an act which strikes directly at the foundation on which the structure of civil government is reared. Let us look at the formation of a republican government. The people come by their representatives only, because they cannot assemble in mass. Every citizen is potentially present. The majority cannot deprive the minority of the right of suffrage—that is the right to participate in the formation and administration of the government, because their hair is white, or because it is red, or because it is black.

If they do they violate the law of nature, the only law that governs the people in the formation of their government; but it is perfectly competent for the people, thus assembled, in the formation of their government to agree, each with the other, that any one of them who shall be guilty of frauds upon the right of suffrage shall forfeit his right of suffrage. That is the principle upon which this section is founded. It seems to be conceded that an offence that strikes at the life of a free republican government should cause a forfeiture of the right of suffrage, but how long and in what manner shall the forfeiture be removed is the difficulty. It is alleged by the gentleman from Lycoming (Mr. Armstrong) that the Executive department alone should have the right to remove the forfeiture. I utterly deny the correctness of the position. The Executive has power to pardon offences, and thus relieve the convict from prison and set him loose on the community, and that power properly belongs to the Executive department.

But when, as a Constitutional Convention, we put in the organic law a provision that the right of suffrage shall be forfeited, that right cannot be restored by an ordinary Executive pardon. Under the proposed amendment, when and how is this pardoning power to be exercised? Will the restoration of the right of suffrage result as an incident of the pardon of the offence of which the forfeiture was itself but an incident? Such construction would negative the section and render it absurd. The very design of the Constitutional provision is to take away the power of the Executive to pardon. Is the power now proposed to be given a distinct independent power, or is it an incident of the ordinary Executive pardon? I ask the gentleman that question. Are the Executive and his council to grant two pardons? One for the purpose of relieving the man from imprisonment, the other to restore the right of suffrage? The difficulty in reference to this forfeiture is, that it will be for the life of the man, unless provision be made for its removal. Several provisions have been suggested. The most reasonable amendment, if an amendment be thought necessary at all, would be to insert after the word "suffrage," in the second line, the words, "for the term of five years," four years or seven years. "But such right, in any case, may be restored by act of the Legislature," &c. Though the time be limited, still the Legislature

should have power to remove disability. Such cases may occur as will need a removal of the disability within the term of five years; and if five years should be inserted, I would still retain the clause giving the Legislature power to remove disability. There may possibly occur, in times of great political excitement, cases that would justify a removal of the disability within five years. I am utterly opposed to committing this power to the Executive, or to the Executive council, under any possible circumstances. That council must either be elected by the same people who elect the Governor, or must be appointed by the Governor, and to give a body who have secured their offices directly or indirectly through frauds upon the election, frauds which may have resulted in giving them their places, would be unwise. It would be a means of protecting fraud, and the power should not, therefore, be committed to the Executive or his council; but when we commit it to the Legislature, who have the powers of the government in their hands, and require a legislative act, and when we require two-thirds or three-fourths of each branch of the Legislature to concur, we may be assured that there will be no party prejudice in the exercise of the power necessary to remove the disability.

Mr. MANTOR. Mr. Chairman: I rise for the purpose of making only a few remarks on regard to this question on this section before this committee. I am aware that we are getting somewhat tired, and demand a speedy vote. We have had some fourteen or fifteen speeches this morning, and it seems to me that this section, as reported, is wrong, and the remedies which it seeks to make are entirely too severe, as might be applied to certain offenders against the peace and dignity of the Commonwealth. If we had some power whereby we could go behind the offending party, which this section suggests, and cause the arrest and carry punishment to another class of offenders—those who induce men to commit the frauds. Now, sir, in the precinct where I cast my vote—at our election last fall—a man was arrested for casting his vote, on the ground that he was a resident of another county, and of course another precinct. He was urged to cast this vote by men who knew—or ought to have known—that he had no such right to vote; yet he was over-persuaded, and all remonstrances to the contrary were in vain.

This man was accordingly arrested for casting his vote where he had no right to vote, and the result was, the day following he plead with those who caused his arrest to get him out of his difficulty, for he said he had been over-persuaded by others to commit this wrong. He was accordingly released. Now, sir, if he had committed this wrong with such a clause as this section proposes, he would have been disqualified for voting thereafter. I ask is this right, to inflict such penalty on every one who may commit a wrong in this way, or should we seek to punish according to the crime, giving due allowance to some who are dragged into the wrong and seek to find some way to punish one who makes himself an accomplice to this crime? For one, I am in favor of protecting the rights of every citizen, and dealing out punishment to the fearfully wrong doer, and show at the same time some mercy on the ignorant and those who may be easily enticed into sin. Therefore, taking this view of the matter, I cannot support this section as it stands.

Mr. DELFRANCE. Mr. Chairman: I am in favor of this section as it stands. If the section is read it will be found to read that "being deprived of the right of suffrage" is no part of the punishment of the crime that any person is convicted of. The gentleman from Lycoming (Mr. Armstrong) seems to think that it belongs to the pardon power to pardon him, and that this deprivation is in the nature of punishment. I do not consider it so at all. Pennsylvania has the right to say who shall be her voters, and she has the right to say on what conditions they shall be voters, and, I think, this is a proper case for us to do something, if possible, to purify the ballot-box. If there is any crime against republican government it is this question of destroying the consent of the people—of making the thing a farce. It is, in my judgment, equal to treason; it is, in fact, treason, because if the right of government belongs to the people, and criminals will destroy the ballot-box, and in that manner the very foundation upon which republics exist—the only foundation upon which they exist—that crime ought to be punished more severely than any other crime in the calendar. Some gentlemen have talked about this being a small matter, and about young men committing these crimes. If young men have been committing these crimes it only shows, sir, that we ought to teach our children better; we ought to teach young men that

there is no crime known to the law so great as that which destroys the right of the people to govern themselves. There is no crime so great in the catalogue of crimes, because it destroys the very foundation stone upon which republics rest. In any other government—a government of force—it is not so great a crime. In a republican government there is no crime known to the law so great as destroying the right of the people to govern, and that is what this is.

Mr. Chairman, I have been amused, I might say, at the talk here about purifying the ballot-box, purifying the right to vote. I have been amused at it. Men have told me, in reference to this other section, that each elector shall write his name upon the ballot; that it will not do; that it is all wrong; that it will be beaten fifty thousand in Philadelphia, for instance. Then the next thing is: How do you propose to purify the ballot-box? How is it proposed to purify the ballot-box? From my standpoint, viewing the matter as I do, it would seem to me a reasonable conclusion that the majority of this Convention intend to do nothing about the purity of the ballot-box. They intend to leave things as they are. They intend to talk long and loud about the ballot-box, but when it comes down to the question of how we shall remedy the evils there is nothing proposed as yet. If I am wrong that this is the greatest crime in a republic, and if I am right that the taking away of the right of suffrage is a sovereign right of the people of Pennsylvania, then it does not come under the power of pardon, and has nothing to do with the power of pardon. What nation in the world that has taken away the right of suffrage from its citizens holds that it belongs to the pardoning power to have anything to do with it? What nation in the world? Is it the American nation? Is it the English nation? Is it any nation under the heavens that claims that when their principal right is taken away that the pardoning power restores it? The pardoning power has nothing to do with that. It is the sovereign power of the State, wherever that lies, and in this case it lies in this Convention.

Mr. JOHN M. WETHERILL. Mr. Chairman: I move to further amend, by striking out the word "four," before the word "years," and insert "seven."

Mr. ARMSTRONG. I accept that amendment.

Mr. CORBETT. Mr. Chairman: I move to amend, by striking out all after the word "suffrage," and inserting "for the period of seven years from the time of conviction. In case of the afterdiscovered innocence of the party, a pardon may be granted to him in the manner provided for the granting of pardons by the Executive."

This proposition to amend the amendment has this feature in it: That it confines the power of the Executive to pardon to a case where the party has been convicted innocently. The pardoning power may possibly be abused in such a case, but the Executive will have to base his pardon on the grounds of innocence. Besides that, it fixes a limit at which the deprivation of this right will cease, and that period is seven years—the same period that is fixed in the amendment. I think that this will meet the general views of this Convention. We shall have a limit at which the time of the deprivation of the right of suffrage will cease. It will give to the Executive power of relieving this disability, provided the party be convicted when he is innocent, and I therefore hope that it will be adopted.

Mr. CLARK. Mr. Chairman: There seems to be a confusion of ideas as to the character of this section. Objection is made that the Constitution of the State should not contain a penal clause. I do not regard this as a penal clause any more than I should the clause in the article presented here by the Committee on the Legislature. The latter part of the eleventh section presented by that committee reads: "And every member who shall be convicted of having sworn falsely to, or having violated his said oath of office, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in the State."

I regard an elector, as I have said upon previous occasions, as holding an office under the people; the Constitution designates him to perform a certain function of the government. He is to all intents and purposes a representative man, representing not only himself, but all about him, and concerned with him in interest; and the penalty proposed is a deposition from office of that elector. He acquires his position as an elector under this Constitution. We say that he and many others, acting for all the citizens of the Commonwealth, shall perform the function of the electoral department of the State. If he does it well he shall be

continued in its possession; if he does it illy he shall be deposed, as the members of the Legislature are in a like case.

I do not regard the proposed amendment as a penal statute. I regard it as a protection set up by the people for their own protection, and not for the punishment of offenders. It seems to be admitted here by the gentlemen who advocate the amendment to this section that the pardon of the Governor would not pardon the offence, that is to say, it would not restore the disqualification which the section imposes. I admit that freely, and I admit it because it is not an offence.

The section under consideration is a constitutional provision, which deposes the elector from his high office as an elector. The pardoning power of the Governor will be sufficient to pardon the offence, but not sufficient to restore the forfeited right to vote. The pardon of the Governor does not remit the costs of a conviction, or order a restitution of stolen property, but it will remit the penalty to the State—the fine and imprisonment consequent upon the sentence. The forfeiture of the right of suffrage is a disqualification which the Governor has nothing to do with, and it does not properly belong to the pardoning power of the Governor. Why, Mr. Chairman, it is the province of the Governor to execute the law; in the event of a sentence it is his duty to remit that sentence if it becomes necessary; but by this section an elector is deposed from his position, and he is no longer an elector. He is deposed from his office for the unfaithful performance of his duty. It is the province of the Legislature to create a new order of things. If a citizen is to be made an elector after he has been deposed from his office, and if he is to be restored to all his rights and privileges, it is the proper province of the Legislature to act in the matter. The Governor's power is limited, and he is restricted to the enforcement of the law as it is, and is allowed in any given case to remit the penalty for an offence. He can create nothing. He simply executes the law already in existence. If an elector is to be restored to his privileges after his disqualification for the performance of the office of an elector, he must be restored to it by a positive act, which only a legislative body can perform with any safety to the government. That is the reason why I say the Legislature ought to restore this disqualification of the elector. Would the gentlemen who advocate the proposed

amendment intimate that if a member of the Legislature, under the particular section reported by the Committee on Legislature, was deposed from his office for false swearing, that the pardon of the Governor would return him to his seat in the Legislature? Will it be intimated that the pardon of the Governor is so wide in its scope as to restore a deposed member of the Legislature, not only to his rights as a citizen, but as a member of the Legislature?

Mr. WHERRY. I would like to ask the gentleman whether he regards the granting of a pardon an act of the Legislature, or simply a suspension of the law.

Mr. CLARK. Mr. Chairman: I have been endeavoring to explain that question. I say it is not a part of the pardoning power of the Executive. The pardoning power is utterly unable to reach the disqualification of an elector. The restoration of an elector to all his former privileges, involves the creation of a new right which has been lost by that elector.

Mr. MACVEAGH. I wish to understand the gentleman's view of the law. Under the provision, with reference to members of the Legislature, ineligibility is made a penalty for a certain offence; but apart from the constitutional provision that each House shall be the judge of the qualifications of its members, would not the Governor's pardon make the convicted person eligible? In other words, does it not remove the taint of ineligibility?

Mr. CLARK. Under no circumstances. The disqualification of a member of the Legislature is a forfeiture of his constitutional rights. He held his office under that instrument. He violated its provisions, and that instrument forfeits the rights which it conferred upon him; and no Governor can restore him to the rights of which the law has thus deprived him. It involves the creation of a new right—the legislator having lost the old; and no power of this State ought to be permitted to create a new right in any citizen of this Commonwealth, except that power which we establish and create for such purpose—the Legislature.

This is an important question, and I apprehend that under no circumstances could a member of the Legislature be restored to his position in that body by Executive clemency as a full member of the Legislature after he had been deposed by this provision of the Constitution. And I apprehend that the proposed disqualification of electors is no part whatever of

the sentence of the court. The court will impose a fine upon the elector. It is a part of the sentence of the court that he shall pay so much of a fine, or that he shall undergo such imprisonment. This is all the Governor can pardon, and beyond this sentence of the court, and incidental to the conviction, is the disqualification imposed by the Constitution for the commission of the offence. It is incidental to the conviction, and forms part of the results of the conviction under the Constitution of the State. It implies trial and sentence after the conviction, and it is only the result of that trial and conviction which the Governor's pardon can reach. The disqualification will still remain beyond all this, out of reach of the pardoning power of the Executive, and it properly belongs to the province of the Legislature.

Mr. DARLINGTON. Mr. Chairman: I have but a single word to say in reference to the remarks of the gentleman who has just taken his seat. I wish to ask the attention of the gentleman from Indiana (Mr. Clark) for a few moments. I do not know whether he has happened to advert to the fact that the Constitution, as it now stands, provides that "any person who shall fight a duel, or send a challenge, shall be deprived of the right of holding any office of honor or profit under this Constitution, and shall be punished otherwise as shall be prescribed by law, but the Executive may remit the offence and all of its disqualifications." Now where is the difference between disqualifying a man from holding office and disqualifying him from electing another to office? And is it not competent for this Convention to prescribe a disqualification by a provision in the Constitution, and at the same time provide that the Executive may remit the offence and all the disqualifications?

Mr. CLARK. Mr. Chairman: The reference which has been made to the Constitution by the gentleman from Chester (Mr. Darlington) only strengthens the more the position which I have taken. It requires a constitutional provision in order to enable the Governor to restore qualifications to a person violating the section of the Constitution to which the gentleman has referred. This is not a decision of our courts. It is a part of a section in the Constitution—"but the Executive may remit the offence and all of its disqualifications." The Executive can exercise this power, because the Constitu-

tion authorizes him, but if there was no constitutional sanction he could not, of course, exercise the power.

Mr. MACVEACH. Mr. Chairman: That is expressly prohibited in this section. In the division of the powers of the government, you look for the extent of the pardoning power under the Executive, and that gives him the right to grant pardon and to restore the offender the rights he possessed before the offence was committed.

If you create a provision of a constitutional character, of course you may limit the pardoning power, or you may divide it between the Executive department and the legislative department and judicial department; but if you make it by the Constitution a penalty for the offence that a person shall not vote, or shall not hold office, unless in some manner a limitation of the right of pardon and of the consequences of pardon is expressed. Whoever is pardoned of his offence is restored as he was as far as the public is concerned, and as far as punishment and penalty and forfeiture are concerned, before he committed the offence. Therefore it was that I insisted from the beginning that this discussion certainly was premature, and that the committee ought, at present at least, to vote down the section until we know how the council of pardon is to be constituted. You ask us now and here to say that the Legislature shall pass such a law. Do gentlemen hold that it is a matter coming within the scope of the Legislature to grant pardons, for, after all, it is giving a new right? It is taking away the old right from the Executive, leaving it for special legislation by the legislative department of the government. You make the Legislature simply a court of pardons for particular cases, and I trust the gentlemen of the committee will hesitate long before they vote that the Legislature of Pennsylvania shall be required to pass special laws for the relief of each offender against any of her statutes, or any of her constitutional provisions. Of course, the qualification of members is to be decided by each House, but this decides a different matter from the remission of fines, forfeitures or penalties. If this crime is to be taken out of the catalogue of crimes; if, as the gentleman from Philadelphia (Mr. Biddle) remarked, we are not getting a little wild upon this matter, if it is true you may leave with your Executive department the right to pardon those who murder voters, yet deny

the right to remove the penalty from those who take the life of the vote, then, I say, if that is the philosophical order of crime, then I can understand that you should say that this offence shall not be reviewed, shall not be pardoned; but if it is to be reviewed and pardoned at all, I do hope that we will not take the power from the Executive department, at least, until we hear from that committee having this department of the government in charge.

Mr. WHERRY. Mr. Chairman: This is a new and startling doctrine advanced by the gentleman from Indiana (Mr. Clark.) If carried to the ultimate and applied to to our institutions it will, in my opinion, subvert the very foundations of liberty and justice. He admits, and I agree with him, that the right of suffrage is a public office. Now Chief Justice Story says:

"The legislative power cannot justly reach the property or vested rights of the citizen, by providing for their forfeiture or transfer without trial and judgment in the courts." Again: "Any one claiming a public office has a constitutional right to a trial by jury, and the right cannot be taken away from him by any law. No statutory tribunal can be created for that purpose."

Now, then, I submit that if it is a right which cannot be taken away, except by trial by jury and judgment in a court of justice, it necessarily follows that this penalty of disfranchisement must be accounted part and parcel of the punishment inflicted upon conviction in such court. If not, why not?

Mr. NEWLIN. Mr. Chairman: I call for the reading of the amendment to the amendment.

The CLERK read as follows:

Strike out all after the word "suffrage," and insert "for the period of seven years from the time of conviction, and in case of the after discovery of the innocence of the party, a pardon may be granted to him in the manner provided for the granting of pardons by the Executive."

Mr. J. M. WETHERILL. Mr. Chairman: I call for a division of the question.

The CHAIRMAN. The question will be taken on the first division of the amendment. The Clerk will read the first division.

The CLERK read as follows:

The first division is "for the period of seven years from the time of conviction."

The question was then taken on the division, and the division was not agreed to.

The CHAIRMAN. The question is on the second division, which will be read.

The CLERK. "And in case of the after discovered innocence of the party, a pardon may be granted to him in the manner provided for the granting of pardons by the Executive."

The second division was rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Lycoming, which will be read.

The CLERK. "To strike out all after the word 'suffrage,' in the second line, and insert, 'for the term of seven years, but such right may be restored by Executive pardon.'"

Mr. ARMSTRONG. Please read the section.

The CLERK. "Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage for the term of seven years, but such right may be restored by Executive pardon."

Mr. GIBSON. Mr. Chairman: I ask for a division of that question, also, at the words "seven years."

The CHAIRMAN. The question will be upon the first division, which will be read:

The CLERK. "Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage for the term of seven years."

Mr. KNIGHT. Mr. Chairman: I move to amend, as follows: To strike out "seven years" and insert "four years."

The CHAIRMAN. The gentleman cannot offer an amendment, the question having been called. He will have to offer it again.

On the question of agreeing to the first division, a division was called, which resulted in the division being rejected, not a quorum of a majority voting in the affirmative.

The CHAIRMAN. The question is upon the second division, which will be read:

The CLERK. "But such right may be restored by Executive pardon."

Which was rejected.

Mr. KNIGHT. Mr. Chairman: I now move to strike out "seven" and insert "four."

Which was rejected.

The CHAIRMAN. The question is on the section as amended.

Mr. LILLY. Mr. Chairman: Has it not been voted down by division?

The CHAIRMAN. The divisions of the

amendment being voted down, the amendment itself remains.

Mr. HOPKINS. Mr. Chairman: I will inquire whether the committee having negatived both the divisions that does not negative the amendment itself.

Mr. LILLY. Mr. Chairman: If I understand it aright, a division of a certain amendment was asked. After it was divided, the first division was voted down. The second division was voted down, and consequently the amendment must fail, and there can be no vote on it. The amendment is ended and the vote is on the section.

Mr. DARLINGTON. Mr. Chairman: I now move to insert the following as a substitute for the section:

"The Legislature may prescribe such punishment for fraudulent violation of the election laws as they may deem proper, including deprivation of the right of suffrage, but such right may be restored by pardon."

The CHAIRMAN. When the Chair made his decision on the amendment, being before the committee, it was so stated under a misapprehension. He thought it was only an amendment to the amendment, which fell and that the amendment remained.

Mr. ARMSTRONG. Mr. Chairman: I desire the decision of the Chair upon the question whether voting the separate divisions down is a conclusive disposition of the entire amendment. My impression is that it is not, for the reason that the committee may, if it see proper, retain one part of an amendment though it reject the other part.

The CHAIRMAN. The Chair is of opinion that the voting down of the separate propositions of the amendment killed the amendments, but I will leave it to the committee. The Chair is inclined to believe that the majority of the committee is in favor of the amendment.

The decision of the Chair is that the amendment falls. Shall that decision stand?

Which was determined in the affirmative.

The CHAIRMAN. The question is on the amendment of the gentleman from Chester (Mr. Darlington.)

Which was rejected.

Mr. STEWART. Mr. Chairman: I now renew my amendment, to come in as a new section.

To strike out all after the word "section," and insert: "In addition to such

other penalties as may by law be provided, fraudulent violation of the election laws may be punished with deprivation of the right of suffrage for a period of not less than five nor more than ten years, at the discretion of the court before which the offender may have been convicted."

Which was rejected.

The CHAIRMAN. The question is on the section.

On agreeing to the section a division was called, which resulted: Sixty in the affirmative and thirty-five in the negative.

So the section was agreed to.

THE SECOND SECTION RE-CONSIDERED.

Mr. HUNSICKER. Mr. Chairman: Before we proceed to the consideration of the next section, I having voted on Tuesday last with the majority that voted down section second, I now move that that vote be re-considered.

The CHAIRMAN. Is the motion seconded?

Mr. LONG. I second it.

The CHAIRMAN. How did the gentleman vote?

Mr. LONG. I voted in the affirmative.

Mr. MACVEAGH. Mr. Chairman: I call for the reading of the section.

The CLERK:

SECTION 2. All elections of the citizens shall be by ballot; the ballots voted may be open or secret, as the elector shall prefer, and they shall be numbered by the election officers when received. Each elector shall write his name upon his ballot, or cause it to be written thereon and attested for him by another elector of the district, who shall not be an election officer.

Mr. STANTON. Mr. Chairman: We have been occupied over a week on this section, and it was voted down by a decided majority. I hope that this motion to re-consider will not prevail.

On the motion to re-consider a division was called, which resulted: Fifty-eight in the affirmative, and forty-five in the negative. So the vote, by which the section was defeated, was re-considered.

The CHAIRMAN. The section will be read.

The CLERK again read the section.

Mr. M'ALLISTER. Mr. Chairman: I move to strike out the section, and substitute as follows. It is the substance of the section, drawn up to meet the views of some gentlemen who were simply opposed to its construction:

"All elections of the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it is received, and the number recorded by the election officers, opposite the name of the elector who presents the ballot. Each elector shall endorse his name upon his ballot, or cause it to be endorsed thereon, and attested by another elector of the district, who shall not be an election officer, and the oath required to be prescribed for the election officers shall require secrecy as to the contents of every ballot cast at the election."

Mr. WOODWARD. Mr. Chairman: I wish the gentleman from Centre would strike out the word "elector" where it occurs in the clause requiring the endorsement to be made by the elector. Let the man's name be endorsed by anybody, his wife, his daughter, his son, or by anybody else. If the gentleman will do that I will vote for the amendment cheerfully. I will vote for it any how, but I will vote for it much more cheerfully if he will do that.

Mr. M'ALLISTER. Mr. Chairman: That question was very much considered both in the Committee on Suffrage, Election and Representation and in the committee of the whole, and I think the general sentiment of this body is, that the elector is the better one to prevent the wife, and the daughter, and the minor from being called on. The design was to give some person within the election precinct who is well known—whose hand-writing is known. It is the more important in the event of his death. We want some person whose hand-writing can be proved—who is liable to summons—some person liable to attachment, if he does not come willingly, if required. I think the language is best as it is, and I cannot accept the word proposed by my friend from Philadelphia, (Mr. Woodward.)

Mr. WOODWARD. Mr. Chairman: Then I move to strike out the words "another elector," and substitute "by any person."

The CHAIRMAN. The amendment of the gentleman from Philadelphia will be read.

Mr. WOODWARD. Mr. Chairman: I am surrounded by so many friends that I am constrained to accept their advice. They desire me to withdraw my amendment, and I withdraw it for the present.

Mr. BARTHOLOMEW. Mr. Chairman: I move to amend the amendment offered by the chairman of the committee, (Mr. M'Allister,) to strike out the word "shall," wherever it occurs, and insert the word

"may," making it a mere provisional clause.

Mr. TEMPLE. I desire to ask the gentleman from Schuylkill (Mr. Bartholomew) whether he does not consider that such a change would virtually kill this section.

Mr. BARTHOLOMEW. I will answer no; that it will apply to the city of Philadelphia, where you expect frauds; but it will relieve the country from the burden which it is proposed to impose upon it by this section and defeat your Constitution.

Mr. HOWARD. Mr. Chairman: Before a vote is taken upon this question I want to say a word or two about this "country" that is going to have such a burden put upon it. Something was said, when this question was up before, about some portion of the country going *en masse* against it. Since that time this Convention has, no doubt, been somewhat enlightened upon this subject from the fact that the newspaper press in different parts of the country have spoken.

I do not think, as I said before, that this is going to impose any great hardship upon the voter in the country, any more than it imposes a hardship upon the voter in the city. *The man in the country* is affected by the fraudulent votes cast in cities as *much* as the *man in the city* in *all general elections*.

For the purpose of referring to something in regard to public opinion upon this subject, I propose to read a short paragraph from the *Pittsburg Gazette*. I cannot read it if there is so much noise in the Hall. I talk pretty loud, but I cannot talk as loud as forty or fifty gentlemen, when they undertake to do it all together.

Mr. DARLINGTON. Mr. Chairman: I rise to a point of order. We cannot hear the gentleman at all; everybody is talking.

The CHAIRMAN. The Chair has endeavored, for the last few days, to preserve order in the Hall, and if he were the regular presiding officer of the Convention he would compel it. As it is, he can only ask gentlemen to preserve order, and appeal to their sense of manhood. It is utterly impossible to hear what is going on.

Mr. HOWARD. Mr. Chairman: I propose to read from the *Pittsburg Gazette* of Tuesday, February 18. I am going to read it as a part of my speech. I desire to say, also, that we regard this as a good, sound paper; the oldest and one of the most influential in the west. It gives

good advice, and its advice is carefully considered and often accepted, by at least a portion, and quite a respectable portion, of the people of the country where it is published, and I have no doubt that it does speak, in a large measure, the public sentiment. The article to which I now refer, and from which I propose to read, is a long editorial article upon the second section of this report, and the discussion upon the subject when it was before the committee upon a previous occasion. In speaking upon that subject it uses this language:

"The proposition requiring the ballot to be numbered, and the corresponding number to appear on the poll list, with the voter's name, is a wise precaution against repeating and stuffing the ballot-box.

"Our friends in the country, who know nothing of election frauds save what they read in the papers, may think all these precautions tedious and unnecessary, but we submit to them that they will be the gainers by these restrictions, as well as the people of the great cities. If their ballots are over-stowed by false votes, cast in another portion of the State, the elective franchise is a barren privilege to them."

The trouble, also, of *writing* the name and number, &c., are all considered in this article; so that we see that, at any rate, this proposition is endorsed by a paper in the western part of the State that we know to have character and influence with the people.

It is some expression of the public sentiment that the people are not going *en masse* against this proposition. It is an endorsement of my course that I am grateful for, and I am glad this subject has been re-considered. I believe gentlemen of this Convention have received some information upon this subject since it was last before the committee, and I hope now that the Convention has the back-bone to stand up and say that we will submit a proposition to the people for their adoption, so that when a man has once cast a vote he may make his mark upon it, so that once more in this world he may know that it was *his* vote. If the ballot is the great right of the freeman then let us provide a mode so that after he has put the vote into the ballot-box he can mark it, so that if fraud is perpetrated he can say *that is the vote* I put into this box. Without this provision there is no means by which he can do it. Under the secret ballot, when the voter parts with it he

can never again recognize the vote, and the means of detecting fraud is taken away. Therefore I do sincerely hope that this Convention will adopt this provision or the amendment offered by the gentleman from Centre, (Mr. M'Allister,) which I consider better than the original provision, because that requires that the election officers shall be sworn to secrecy. Under such a provision the ballot is made just as *secret as it has been heretofore under the old Constitution*. Then, sir, we have these guarantees against fraud, and I believe the people of the Commonwealth will adopt it by an overwhelming majority.

Mr. MACVEAGH. Mr. Chairman: I do not know that it is worth while to even ask for the attention of the committee for a few minutes, but I would like them, at least, to consider the light in which some of us feel compelled to regard this section, certainly without the amendment of the gentleman from Schuylkill (Mr. Bartholomew.) You are endeavoring to correct frauds in your great cities. In that work, as I understand the means to be adapted to it, I purpose to go as far as any person here, in the first place, in ascertaining who the honest elector entitled to cast one vote is. I was in favor of a registry law for that purpose; not such a registry law as was adopted—a registry law not to register, but a registry law compelling registration as the price of franchise, and then to make your election district so small that with a list of two hundred voters, ascertained thirty days before an election, frauds will be almost impossible. Then I would also put all effective safeguards around the duty of the election officers, and I would impose severe penalties upon them. But between the honest elector, when he is clearly ascertained, and the dropping of his vote into the box, I have not yet seen any reason why we should put any impediment whatever, and I beg gentlemen to believe that whatever this Convention may do, in the vast regions of this State in which frauds never have occurred at elections, this is an exceedingly odious and exceedingly unpopular provision.

There is no question about it, as it seems to me. In that I may be in error, but from the intercourse I have had with people living in such districts, I believe there is an universal sentiment against it, and there will be sufficient interests arrayed against the Constitution to make its adoption very uncertain. Gentlemen, do not believe that the people are waiting eagerly

and anxiously to adopt our work when we are done. They will have arrayed against us enemies of great power, of great numbers, of great influence, and while they represent what is evil in our State we can afford to incur their hostility; but I beg of you not to make the honest voter in the country believe that you have put a new trouble in his way, or imposed a new duty upon him. How many men write their names legibly in the country districts? How many intelligent voters do not write their names with sufficient legibility to care to write them at all? In the most exciting political contest, what proportion of voters have to be brought to the polls by party agency and the expenditure of money? You talk as if this provision would tend to prevent fraud. Gentlemen, this provision will tend to make a larger sum of money necessary, in every election hereafter, in Pennsylvania, than has ever been spent before.

We were called together by only three hundred thousand voters. There are but three hundred thousand voters in Pennsylvania who ever said they wanted us to meet; and even to elect a President, even to elect a Governor, even to elect a Congress in the throes of a great civil war it has always cost a large expenditure of time, and effort and money to get out the average voter of Pennsylvania, and every impediment you place between him and the ballot he is entitled to cast, so much do you add to the difficulty of getting him to vote, so much do you add to the power of the politician and to the need of money to bring him to the polls. With this provision in your Constitution your election becomes a pure question of money. With the rural districts it becomes a question as to which party will spend the most money to have active electioneering agents going around to every house, seeing that each man writes his name upon the ticket, furnishing him with a witness, if he has not got one, and furnishing him with a carriage to bring him to the polls. It will then be discovered that you have simply multiplied the power of the professional politician, and multiplied the sum that is required for the ordinary expenditures of an election canvass. If you need it here, if you need it in Pittsburg, do not put it upon all the rest of the State. Trust them that they understand something of their own need, and when they want it they will apply for it, and when they need it they will get it, but do not burden the whole Constitution with this provision.

Mr. NILES. Mr. Chairman: Is there an amendment to the amendment pending?

The CHAIRMAN. Yes, sir; the proposition now is to strike out the word "*shall*," and insert the word "*may*," as proposed in the amendment of the gentleman from Centre, (Mr. M'Allister.)

Mr. NILES. Mr. Chairman: I do not at this time desire to detain this committee, because the vote upon the reconsideration seems to have determined the fact that this clause in the report of the committee is to be adopted.

During the many long days of this discussion I believe I have not troubled this committee with any remarks upon this subject; but representing, as I do, in part, a rural district—composed of four of the largest agricultural counties, as far as territory is concerned—in this Commonwealth, I feel that I would be derelict in my duty towards them were I not to rise in my place, and protest in their name, against the passage of this amendment.

I am willing, to-day, sir, to go as far as the farthest to protect the elective franchise in Philadelphia, or in any of the great cities of this Commonwealth. I am willing, as I said to the distinguished gentleman from Philadelphia, (Mr. Cassidy,) the other day, to vote affirmatively upon any proposition that proposes to purify the ballot-box in this or any other city; but, for the purpose of benefiting them—and of purifying the ballot-box in the great cities of the Commonwealth—I believe it would be an outrage and a wrong to the people of the rural districts, where no frauds are committed, to impose this great and unnecessary burden upon them.

I have here a resolution or proviso which I propose to introduce at the proper time, to limit the effect of this article to cities having more than thirty thousand inhabitants. If Philadelphia desires this measure, let Philadelphia have it.

What is it that is proposed to be done? Why, sir, look over the broad States of this Union, over which we heard so much eloquence last evening—are we not departing from the rule of conduct in every one of them? Is there a government to-day upon the face of God's green earth where men vote by ballot with such restrictions and limitations thrown around them, as those you propose to throw around the people of Pennsylvania by the section now before us? I appeal to the friends of this measure, those who propose to put this great and unnecessary hardship upon the voters of this Commonwealth, if you

are not departing from the common law of voting in every civilized government upon the face of this earth, where you put a restriction upon the voter, requiring him before he can deposit his ballot—the right of every man—to write his name or have it written upon that ballot, you compel him to do a thing unheard of before!

For the purpose of protecting the ballot-box in Philadelphia, you propose to-day to depart from the acknowledged rule of conduct in every State of this Union, because it has not been said by the earnest and eloquent advocates of this measure during the sixty-two speeches we have had upon it *pro* and *con*, that any government, either upon these shores or any other, have ever adopted such a provision—that any government has ever imposed those unnecessary restrictions upon the voter in the discharge of his duties as an elector.

My friend over the way (Mr. Howard) says he has heard from Allegheny. Well, sir, I have heard from the northern tier, and from my constituents above the Alleghenies, and I say, in my place, that the universal sentiment of my people is opposed to this.

In a township adjoining the borough in which I live there were five hundred votes cast at the last election. The people met—as people meet in the rural districts—at a school house at the "four-corners." Now, sir, I submit, is it not a hardship for these people to come, many of them, four or five miles to meet there, in an inclement season of the year—in November—and compel them to write their names upon their ballots, when they have no writing appliances or conveniences? Besides, sir, and by way of making the matter worse, at every one of our elections four or five ballots are required to complete the tickets. It may be convenient enough for clerks—men whose profession it is to use the pen—to write their names upon their ballots, especially when they meet here in your large cities, close by their homes, and surrounded with every proper appliance for writing. I submit, however, to this Convention, that it is a great hardship to the men that live in the rural districts—men that are not used to writing—men who follow the plow instead of the pen—to compel every one of them, when they get out there, away from their homes, and with no conveniences, to write their names, or cause them to be written, upon

four or five ballots, before they can discharge the right that they all possess.

I have now said, sir, all, and more than I intended to say when I rose. When the time comes for the purpose of showing my earnestness and conscientiousness on this subject, I propose to submit this amendment, giving to Philadelphia this great right that she says she desires; but I, for one, protest, in the name of the rural districts, against the enforcement of that provision.

Mr. DALLAS. Mr. Chairman: I confess, sir, that I am unable to state what the views of my constituents, or of any number of them may be on this subject. The gentleman from Dauphin (Mr. MacVeagh) and the gentleman from Tioga (Mr. Niles) may have superior means of discovering or divining what the sentiments of the people who sent them here may be. But, sir, that gentlemen may be mistaken in their suppositions on that subject has been fully evidenced to us morning. The distinguished delegate from Pittsburg, (Mr. Howard,) when this question was last before the committee, modestly stated that he was unable to say what views the citizens of Pittsburg would take of this subject. On the other hand delegates from the same city stated, with the greatest confidence, that if the Constitution should be made to embody the provision now under consideration, the citizens of Pittsburg would vote it down *en masse*. Still we find the gentleman from Pittsburg, who was too modest to assume any knowledge of the views of his constituents, establishing, this morning, that he is endorsed by the citizens of his district, in so far, at least, as a highly respected and influential portion of their press may be accepted as a representative of the people in that respect. We have also seen two gentlemen rise in their places this morning, one to move a reconsideration of this section, and the other to second that motion, who had previously voted upon this question in a manner differently from that upon which we are now led to hope for, and we have a right to presume that they may in the meantime have learned something from their districts to make them doubt the correctness of the course which they have hitherto pursued, and to confirm them in the good purpose they have now in mind.

I do not think this the way for this body to view any question; to haltingly and fearfully consider what their constituents are going to say about it. With all re-

spect for the gentlemen who have invoked such an influence, I must say I do not think it is a manly way. I, for one, will vote upon every question before this body upon my own conviction of what is right. I believe, however, that if the people of Pennsylvania desire anything at our hands; if there is anything that will secure their favor for our work, it is some provision in our Constitution looking to a radical reform in our elective system, and for the correction of election frauds.

The gentleman from Dauphin (Mr. MacVeagh) has told us that he is for a registry act, as a means of ascertaining, beyond question, the legally entitled voter; that, however, when the voter shall be ascertained he (Mr. MacVeagh) is opposed to anything that comes between him and the ballot-box—any unnecessary impediment; but, sir, it is not in the dropping of the ballots into the ballot-box by the honest voter that the wrong is done: it is in the manner in which they are taken out, the manner in which they are counted, and the manner also in which they are put in; but not by men even purporting to be honest voters, but by scoundrels and by the handful; and the provision that the standing committee has reported to us is recommended to us all by the fact that it proposes to enable honest voters to detect which of the votes in the box were put there by legal voters, and to distinguish them from those which were not. It would enable every honest voter to say, if necessary, "*this* was my ballot," and it would enable the people, if false votes were cast, to see that the purpose of the honest voters should not be thwarted by fictitious and fraudulent ballots.

This, sir, is not a Philadelphia question. The State of Pennsylvania is a unit. I am proud that I am a citizen of so great a Commonwealth; and the citizens of all this State, from one end to the other, should be proud that this great Commonwealth has so noble a metropolis as that in which we meet. No feeling of rivalry should exist between the rural districts and the city of Philadelphia. We are one State, and we should be brothers, and on this question we should be a unit for the *general* good, because in every election for State officers the franchise of the voters of every portion of this State is exercised. It is idle for gentlemen to say: "We will give you this in Philadelphia. We do not require it in the pure atmosphere from whence we come."

Sir, unless the ballot-box shall be

equally protected throughout the State—unless we can guard it in every section of our Commonwealth—men who perpetrate frauds upon elections will go where they can make their calling effective. Deprive them of the power of exercising their nefarious trade here, and even the pure atmosphere of Tioga will shortly become polluted. But there can be no doubt that there are certain sections of the State that need it equally with us. The article that the gentleman from Pittsburg (Mr. Howard) read, from a Pittsburg paper, this morning, shows that Allegheny county, at least, is not so wholly freed from election frauds as some gentlemen have represented. If you do not protect every section, not only those sections in which fraud has existed, but into which it may come, you omit a measure of relief for the entire people of Pennsylvania. The frauds that have been committed in different sections do not affect merely local offices. Their perpetration involves State elections as well. You may cast as many legal votes as you please west of the Allegheny mountains, and they will avail nothing, if east of those mountains a sufficient number of illegal votes can be cast to overpower them.

I yield to no man in my reverence for the ballot. I look upon it as next only to trial by jury in its importance to us as freemen, and when I saw that this section proposed to interfere with it, I confess I hesitated long before I could feel that it would be right to adopt it; but the people of Pennsylvania are looking for something to be done for the *purification* of the ballot. This sacred right has been corrupted and polluted; and here is a committee of fifteen gentlemen, who have been for a long time considering the subject, and as a result of their best efforts to *purify* our elections, they have brought us this single proposition. No gentleman on this floor has suggested a better, and the united wisdom of this committee of the whole has been unable to present any other proposition to the end desired; and still gentlemen tell us that they are anxious to get rid of these frauds, but will vote down this only practical measure for relief whilst having no other to present.

MR. CARTER. Mr. Chairman: I think it would be presumptuous in any one to attempt now to add anything new to what has been said during the past four or five days we have devoted to the consideration of this subject; but I have something to say in reply to the gentleman from

Philadelphia (Mr. Dallas) and the gentleman from Pittsburg, (Mr. Howard,) who have last addressed the Convention. I thought there were some very weak points in both of their arguments, and I think the extract which the gentleman from Pittsburg (Mr. Howard) read from the Pittsburg paper only confirms the opinions which I, for one, and I trust a majority of this Convention, have held in regard to this question. I understood the tenor of the extract which the gentleman read that this was not a provision which would meet with the endorsement of the people in the rural districts. This is the point we take, and that brings me right square to the argument of the gentleman from Philadelphia, (Mr. Dallas,) who said that he was unable to state what his constituents may think in regard to this matter, and that he thought it was immaterial to know the opinions which they entertained. I desire to direct the few remarks I shall make against this great radical error. We are not assembled here, as I have remarked before, to determine upon questions likely to arise or a state of public opinion that may exist in the future, and to say this subject under discussion being right shall be the fundamental law of the land. We are legislating (for this is a species of incipient legislation) for things as they are and for men as they are. We are bound to consult the opinions and prejudices of our constituents, and we cannot go far in advance of the people and declare that such principles are correct, irrespective of the views our constituents may entertain, if we would have the work of this Convention meet with an endorsement at their hands when it shall have been completed.

I deem it would be extremely unwise if the sentiments entertained by the gentleman from Philadelphia find response in the minds of many members of this Convention, and the wishes of the people regarding questions coming before us for discussion were entirely disregarded and set aside. I firmly hold that the Convention has much important work to accomplish in many different directions, besides the purification of the ballot, if it would look to the interests of the whole people of the State. The gentleman from Philadelphia (Mr. Dallas) seems to have entirely forgotten, in his remarks, that the report of the Committee on Elections contains many features looking to that end, and that many of them have been adopted. I do not feel disposed to detain the Convention by enumerating them, but

we all know that many of these features contained in the report have been adopted, and there will be more suggested before this Convention adjourns. This question, which has been so lengthily discussed, is certainly an important one, and I entreat the earnest attention of the members of the Convention in its deliberation, for the people of the State feel a deep interest in its final decision. The amendment of the gentleman from Schuylkill (Mr. Bartholomew) seems to have created an apprehension among some of our members that if it is adopted it will kill the section under discussion. Better it should than the entire work of the Convention. I have conversed with many of the citizens of my own county, and with a member of the Legislature from the district I represent, and on all sides I learn that nothing can be more unpopular among the German masses residing in my district than the adoption of this measure. Will gentlemen assert that it is possible for us to educate the people up to this standard? I think the practical and most statesman-like manner this question can be viewed is to wait until the people are, to some extent, disposed to endorse such a provision.

I have received information and have conversed with gentlemen residing in Delaware, Chester and Berks counties, and from all I can learn I am fully and perfectly satisfied that this measure is exceedingly unpopular in those regions. If we cannot place sufficient guards around the ballot-box to protect it without necessitating this special measure which is so obnoxious, I think, to all portions of the State, why should we incorporate it in the Constitution, and imperil all the work of reform which I believe the Convention is destined to accomplish? I said I did not intend to enter into the argument, believing that it has been entirely exhausted, but there is one point upon which I feel it my duty to express my views. I am very familiar with the feelings and sentiments of the so called German classes of the voters in the county in which I reside. They are a class of people who are exceedingly tender and delicate about the exercise of this right of franchise. There already exists considerable difficulty in getting them to the polls at times, and most certainly the difficulty should be lessened instead of increased. I can well understand the discouragement which would ensue among them if this measure was adopted and they were not

permitted to vote in a conscientious and independent manner, and the reluctance they would have in being required to write their names on every ballot, thus destroying the secret ballot which they have always been permitted to use. I have now, Mr. Chairman, only one word to add in regard to the so called destruction of the secret ballot. I hold, whether it is right or wrong in itself, that the people of this country are not prepared to destroy the secret ballot, and to this remaining point I desire briefly to allude. I strongly believe, unless I can be otherwise convinced by the presentation of other arguments than I have already heard in this Convention, that this section, if it is adopted, will destroy the secret ballot. The people are not ready to have it destroyed, and this section does destroy it. This fact can be easily illustrated. An honest farmer or a citizen of a rural district does not want to vote for a man or neighbor, it may be with whom he may be, perhaps, on friendly and social terms, but he cannot conscientiously support him. He may desire to vote for a man whom he can conscientiously support, but he does not wish to have his vote known, and his vote will be known and thus to incur the enmity of old friends and neighbors.

Is a citizen of the State protected in cases similar to this, if this measure shall be carried into effect? It will be, I say, absolutely impossible to retain the secrecy of the voter's ballot, because when the box is opened to count the votes there is the voter's ballot and name. The judge of the election and the election officers, or anybody else in the room, can see at once the name of the voter and the manner in which the ballot was cast, and discord and dissension will be created to such an extent that voters will long hesitate before they encounter the animosity of their friends and neighbors. The timid, the shrinking and the cowardly voter, if you so choose to designate him, shields himself behind this secret ballot. The large class of our people who may wish to conscientiously cast their votes, but who would hesitate if they knew their ballots, and the manner in which they were cast, could be at any time exposed to the public gaze, and the result would be that in a majority of cases they would remain away from the polls, but will attend to vote against our work, when we need them most to vote to sustain the labors of this Convention. In conclusion, Mr. Chairman, inasmuch as I am convinced that

the adoption of this section will interfere with the harmony and the adoption of the work of reform which the Convention has been called especially to accomplish, I shall vote against this, as I hold, improper, if not iniquitous, measure.

Mr. RUSSELL. Mr. Chairman: I have thus far been as silent during the discussion of this question as any other member of the Convention, and I would remain silent if I did not consider the question now before the committee one of the most important that will come before the Convention. It must be confessed, Mr. Chairman, that the work of the Convention will be in vain, unless some protection is thrown around the ballot-box. This protection, be its form what it may, must be afforded by this Convention, if we would save our government and preserve our free institutions. I have listened attentively for days to the arguments that have been made upon this question, and I have yet heard none which have convinced me that the section reported by the Committee on Suffrage, Election and Representation ought not to be adopted, in the absence of a better or more satisfactory proposition. We have been told by the gentleman from Dauphin (Mr. MacVeagh) that he is in favor of a registration law, and that it will correct all the evils under which the country labors in consequence of the frauds committed at our elections. Mr. Chairman, a registration law has been tried, and has failed to accomplish the desired end. Besides, a registry law, to which I am not opposed, if it will do good, imposes as much trouble upon many voters as it would be to write their names upon their ballots. The gentleman also told us that if the section under consideration is incorporated in the Constitution, the people will reject the entire work of the Convention. We have heard this argument, if argument it can be called, over and over again, from all parts of this Hall. I do not, Mr. Chairman, apprehend any such result. The people are honest, and desire fair, honest elections, and will sustain any reasonable proposition that will keep the ballot-box pure and undefiled. If, however, they do not approve of what we do, we must abide by their decision; but, Mr. Chairman, my constituents have sent me here to do what is right, and I intend, regardless of all considerations, to do what is right as God enables me to see the right; and I intend, therefore, to vote for the incorporation of this section in the Constitution, because I

believe that it is right, and that it should be there, even if some of my constituents should differ from me, and manifest their disapproval in their vote upon the adoption of the Constitution which this Convention may submit to them. I have said, Mr. Chairman, that this is an important question. Nearly one hundred years ago, in a hall only a short distance from this hall, a body of illustrious men convened and framed the Declaration of Independence. The history of that day tells us that the adoption of that great measure depended upon a single vote. That grand old patriot, John Hancock, was, as we all know, the president of that Congress. When the vote was taken it resulted in a tie—a member was hourly expected, and history further informs us that Hancock delayed the announcement of the vote, awaiting the arrival of the absent member, and occupied the attention of the Congress in a speech in support of the declaration until that member made his appearance in the hall. The vote was then taken and the declaration was carried, and the old State house bell rang out to the anxious, waiting people the glad news that Congress had declared that the thirteen colonies were free and independent States.

Mr. Chairman, upon that day was laid the foundation of the most magnificent governmental structure which the world has ever seen. The thirteen colonies, occupying a narrow strip along the coast, with a population of only four millions, have become thirty-seven States, with a population of forty millions, stretching from the lakes to the gulf, and from the Atlantic to the Pacific, cemented now by the blood of half a million of the best men of our country. The corner stone of that structure is the elective franchise. Keep that pure, and all will be well. Allow it to be corrupted, permit the enormous frauds, the perpetration of which is not denied, to be continued, the labors of the men of 1776 will all have been in vain, and our free institutions must come to nought. Mr. Chairman, a Macedonian cry has come up from Philadelphia to the rural districts for help. She seems to be paralyzed, and asks the representatives from the other parts of the State for aid to correct the great evil under which she labors, and to help her to devise measures to insure purity in her elections. So far as I am concerned, I will do what I can to remedy this enormous wrong, not only in Philadelphia, but wherever it may exist

in our great State, and I am willing to rest the Constitution with the people, and with this section reported by the committee incorporated among its provisions. We ought to do all we can to bring about a reform upon this most momentous subject. Let us adopt the section, and if we find, before it is taken up for final action in the Convention, after it has passed the committee of whole, that it is so distasteful to the people that they will not approve it, we can retrace our steps and agree upon something else to meet the emergency which will be satisfactory to the people. I hope that the members of the Convention will meet the question like men, and that they will, at all events, be willing to try what can be done to prevent for all time to come the gross frauds under which our Commonwealth has suffered.

Mr. BUCKALEW. Mr. Chairman: I rise to make an appeal to the committee for greater despatch in the transaction of our business. Certainly this question has been sufficiently debated, and I hope the committee, without further indulgence in discussion, will dispose of it now, one way or the other. I hope that this afternoon, instead of entering into a general debate upon a section the subject matter of which has been already fully considered, that we will dispose of it, and then I hope that tomorrow we will take up the remaining part of this report from the Committee on Suffrage and finish it, so that this matter of the report of that committee shall be fully passed upon in committee of the whole and reported this week. We are certainly consuming time at a rate that will make the Convention sit much longer than we originally intended, and may prevent that full consideration which will be due to the very important business which other committees will present to the Convention. We are pretty near the end of February, and we have made no progress except upon a few points submitted by the Committee on the Legislature, and to some extent upon this report from the Committee on Suffrage. If we shall dispose of this question without further debate, one way or the other, I hope we will be able to get out of the committee of the whole upon this entire report to-morrow, and upon second reading, if any gentleman has remarks to make, which are deferred now, they may be heard then.

Mr. SIMPSON. Mr. Chairman: I do not desire to waste the patience of the House upon this subject, but at the risk of being

charged with taking too much time, I desire to tell a little story that was told: Speaking of the case of an election occurring in one of the boroughs of this Commonwealth, under very high political excitement, the judge, who was a whig, allowed everybody who came to the polls to vote. If challenged by his party friends, it made no difference. The votes were received at the window, and before the election was closed he received a great many curses from his party friends. To the astonishment of everybody the whig ticket, the next morning, was found to have received some three or four hundred more than the usual majority in that borough. When they began to apologize to the judge he said: "It don't make any difference, but how in the name of common sense could I get the majority if I did not have the votes?"

Now, sir, if we want to get substantial reform adopted here in the interest of this Commonwealth, the Convention will adopt this section as reported by the committee. If the Convention does not want that reform they will vote this section down.

Mr. J. W. F. WHITE. Mr. Chairman: I do not intend to inflict a speech upon this committee—

Mr. MACVEAGH. Mr. Chairman: I trust the gentleman from Allegheny will allow me to say one word. I appeal to the member from Columbia (Mr. Buckalew) not to interfere with the course of this debate. I do not say that it is true, but I heard on my way here this morning, that arrangements were made, mainly by one political party, to re-consider this vote, to prevent debate and to pass this section through the committee. I said then that I did not believe it, and I do not believe it now.

Mr. WORRELL. State your authority, sir.

Mr. GOWEN. Mr. Chairman: I ask the gentleman to give his authority for that statement.

Mr. MACVEAGH. Mr. Chairman: I beg to inform those gentlemen that I am not in the habit of giving the names of gentlemen who come to speak to me privately unless they request it. And now if anybody else has any more questions to ask, I will be glad to hear them.

I have already said that I did not believe it, but I appeal to the member from Columbia that it would be wise to allow unrestricted debate to-day to prevent any misunderstanding.

Mr. HOWARD. Mr. Chairman: I rise to a point of order. I ask if it is in order for gentlemen to rise upon this floor and charge that measures are started here as party measures?

The CHAIRMAN. The Chair will state that there is no occasion for this allusion to party. It is all out of order, but the Chair cannot tell what gentlemen are going to say until they utter their words.

Mr. BUCKALEW. Mr. Chairman: I desire to—

The CHAIRMAN. The Chair wishes to take this opportunity to say that he sees no need for this exhibition of party feeling.

Mr. BUCKALEW. Mr. Chairman:—

The CHAIRMAN. The gentleman from Allegheny has the floor.

Mr. J. W. F. WHITE. Mr. Chairman: I yield to the gentleman from Columbia.

Mr. BUCKALEW. Mr. Chairman: In consequence of the intimation made here by the member from Dauphin, (Mr. MacVeagh,) I have to reply that I did not know that this motion to re-consider was to be made at all, until a few minutes before it was proposed. As to this statement which the member has just made, in reference to an understanding between the members of one political party, as far as my knowledge and belief goes, it is utterly without foundation.

Mr. J. W. F. WHITE. I said, Mr. Chairman, that I did not design to occupy the time of this Convention.

Mr. HUNSICKER. Mr. Chairman: As the mover of this motion to re-consider, I hope that the gentleman from Allegheny will yield me the floor for a minute.

Mr. J. W. F. WHITE. I prefer, Mr. Chairman, saying what I have to say now.

Mr. BIDDLE. Mr. Chairman: I would like to make an explanation. I am sorry, very sorry, that any reference to party has been made.

The CHAIRMAN. The gentleman from Allegheny has the floor.

Mr. BIDDLE. I desire to make an explanation, Mr. Chairman.

The CHAIRMAN. Will the gentleman from Allegheny yield to the gentleman from Philadelphia?

Mr. J. W. F. WHITE. Mr. Chairman: I prefer to say what I have to say now. I do not intend to inflict a speech upon this committee, but I must say that I think the suggestion made on the other side is a little unkind at this time. This question was discussed very fully and very ably in the committee of the whole, and

a vote was taken upon it regularly, at the close of discussion, and the section as reported by the Committee on Suffrage, Election and Representation was voted down by a vote of fifty-one to thirty-nine. Those of us who are opposed to the section had no idea of the matter being sprung upon the committee of the whole to-day. A number of those who are opposed to the section and are opposed to this plan of writing names upon their ballots are not here to-day. It seemed very much as if there was a concerted movement on the part of the friends of this measure to bring it up to-day, and, without any discussion, force it through the committee. I say this seemed to be the plan, but I submit that it was taking advantage of those who are opposed to this plan. We all anticipated the question would come up again on the second reading of the section in Convention. That was the general understanding, because it will come up again then properly. But as a committee of the whole we had passed upon the question. We had disposed of it, so as to get through our work and return the same to the Convention. Now to bring it up again to-day, in the absence of some who are known to be opposed to it, seems unfair to those who expect it to come up at a different time and in a different way.

Now, sir, I do not intend to discuss the question again; but I beg to make one or two remarks, called forth by my colleague from Allegheny county. He quoted from the *Pittsburg Gazette*, but if the gentleman had noticed carefully what he read he would have found that the *Pittsburg Gazette* does not endorse the writing of the names upon the ballots. It favors the numbering of the ballots, and that these numbers shall correspond with the numbers upon the list, but it speaks doubtfully of the propriety of putting the names upon the ballots. The very manner in which it refers to it expresses doubt on that point, and speaks of it as being obnoxious and open to very serious objections. It says if that will be useful in the way of preserving the purity of elections, why not endure the inconvenience and trouble to which it will subject voters? I do not advocate or oppose any question here because of its party relation. I trust, Mr. Chairman, that while I am a partisan in one sense, and belong to one of the great political parties of the State,—

Mr. HOWARD. Mr. Chairman: Will the gentleman allow me to interrupt him?

Mr. J. W. F. WHITE. No, sir; I will not be interrupted. The gentleman can reply. He has his opportunity.

Mr. HOWARD. Mr. Chairman: I do not wish to respond, but I want to call the attention of my colleague to this article.

Mr. J. W. F. WHITE. Mr. Chairman: I read the article at the desk of the gentleman, and I say that it approves of the numbering of the ballots directly, and it speaks rather doubtfully of the other suggestion of writing the electors' names upon their ballots; but admitting that the gentleman is even right, that is the only paper in the city of Pittsburg that has said a word on the subject; but even if all the papers there had come out in favor of it, as an individual and as a member of this Convention, I should exercise my own judgment. I do not intend to advocate or oppose any measure here because of its relation to parties. I will do here in this Convention what I believe to be best; what will be best for the people of the State, without regard to whether it is advocated by republicans or advocated by democrats, or without regard to any possible influence upon political parties. I have opposed this measure of writing the names upon the ballots on that ground solely, and totally and entirely. I am in favor, Mr. Chairman, of the first part of the section now before the committee; and I shall move, when it comes in order, to strike out the last part of that section, and I ask the attention of the committee a very few moments now to this thought.

The first part of the section reported by the chairman of the Committee on Suffrage, (Mr. McAllister,) now before us, provides that the ballots shall be numbered by the election officers, and the numbers correspond with the names of the electors, on the list. Now, sir, I am willing to go for that. I am willing to vote for that, because it will not subject the voter to any inconvenience whatever. It can be done very speedily by the election officers, and will not encumber the ballot-box, and will cause no annoyance to the elector; and because I believe we can still preserve the ballot in its secrecy by that mode. In this way, if the election officer wishes to find out how a man votes he cannot tell by the ballot when the ballot is simply numbered. He will have to see what number is on it and then turn to the list and see what number is on the list; and only by referring to the list and also to the number of the ballot can he tell whose ballot it is.

Now the Legislature might provide that before the election officers undertake to count the ballots, they shall seal up the list of voters; and if they did that, then it is impossible even for the election officers themselves to tell how any man voted. The Legislature may provide that. It may also provide that election officers shall be sworn not to tell how the elector voted, unless called as witnesses in court.

With these guards provided by the Legislature the ballot will be preserved, and its purity, as it has existed from the origin of our State down to the present time, and subject the voters to no inconvenience, no trouble and no vexation whatever. I object, therefore, to the latter part of that section which requires the names to be written, because I believe the numbering of the ballots will enable the parties in the case of a contest to tell whether frauds have been committed by the election officers. For example: If a controversy arises, I am called as a witness. The number of my name and ballot is fifty. The ballot marked fifty is shown me, and I am asked, "Mr. White is that your ballot?" I answer, no; I did not vote that ballot. In the same manner other voters are called as witnesses. The ballots marked as their ballots they testify are not the ballots they voted. And if the cases of this kind are numerous, we would have conclusive evidence of fraud on the part of the election officers, and the evidence would be just as conclusive as if the electors had written their names upon their ballots. With numbered ballots, election officers would feel that they cannot tamper with the ballots. If they should take out of the box the genuine ballots, and substitute others, they are liable to be detected. You would simply have to call the voter himself to prove it, and not have to call all the men that voted at any election, as you have to do under the present law, to establish the fact of fraud. Hence I am in favor of the first part of the section and opposed to the second part of it.

If you force this section into the Constitution you know that one-third of the Convention can demand a separate vote upon it. That, I apprehend, will be done. Had you not better put a clause into your Constitution that we can all agree to such as is suggested now, or the clause of the present Constitution, then submit this as a separate amendment to the vote of the people? I am willing to vote for it in that shape.

Mr. DUNNING. Mr. Chairman: I think

the gentleman from Allegheny (Mr. J. W. F. White) is mistaken when he says this measure was sprung upon this Convention. There is a much larger number of members here to-day than there was upon the day on which the vote was taken before.

I want to say simply this, as I have not said a word upon this subject at all, when I get an opportunity to vote upon this question, I want my vote to be so recorded that it shall go to the country that I have voted in favor of some reform upon this question that so materially affects the people of this entire Commonwealth. I have neither the time nor the disposition to enter into the discussion of what the troubles are in connection with this; they have been so fully elaborated here, but I want to put my name upon the record among those who vote in favor of such measures as shall reform and correct the evils that have crept into the ballot during the last few years, and I want to be found amongst those who will not vote as a partisan. I do not want to belong, nor to be recognized with those who vote upon this question who shall be called a partisan in voting upon it.

The people are demanding that we shall furnish to them such measures and such reforms as shall correct the abuses of the ballot box. I have failed to see anything which would lead to a reform that the people would not gladly endorse. They demand reform; and I believe the Committee on Suffrage have presented to us just such measures as the people all over this Commonwealth want, and I shall support, most cordially, the section as it comes from the committee with the amendment of the gentleman from Centre (Mr. M'Allister.)

Mr. HUNSICKER. Mr. Chairman: As I am the author of all this mischief, and have provoked all this discussion, I desire to state all that transpired between myself and other members of this Convention with regard to my action. When I came into this Hall this morning, I met the venerable chairman of the Committee on Suffrage, Election and Representation (Mr. M'Allister.) I also called upon the gentleman from Carbon, (Mr. Lilly,) and I said, to both of them, that I was convinced in my own mind that the vote I had cast the other day against this section was a mistake, and if they could name another gentleman who had voted in the same way, who would second my motion, that

I would, this morning, make a motion to re-consider, because I expected to be absent next week, and I desired to make this motion in committee, so that the committee could re-consider it, if my vote with the others was strong enough to do it. There was no party combination; there was no party question; I had no idea either of stifling or provoking debate, and I do say, with all deference to the gentleman from Dauphin, (Mr. MacVeagh,) that he must have had a very unreliable informant, or he must have been quick with his suspicions.

Mr. HOWARD. It must have been his imagination.

Mr. HUNSICKER. As my friend suggests, it may have been imagination; but I do think that this subject has been fully and thoroughly discussed. I have taken no part in the discussion of it whatever, nor do I mean now to go into the discussion of it; but, upon consultation with my constituents, at least with as many of them as I could see, and after reflecting, I have become entirely convinced that the substitute for the section, as offered by the gentleman from Centre, (Mr. M'Allister,) is a necessity imperatively demanded by the times, and that was the reason why I moved to re-consider. If gentlemen desire to discuss it, so far as I am concerned, they may discuss it from now until the end of the Convention.

Mr. HOWARD. Mr. Chairman: Just one moment's time of the Convention for the purpose of correcting the statement of my very respectable colleague, (Mr. J. W. F. White,) who seems to think I did not read the article from the *Pittsburg Gazette* aright, or that it was not exactly as I stated it.

In regard to the writing of the name upon the ticket, I am reading from the editorial now. I will read that part of it which I did not read when I spoke before upon this subject.

"In regard to requiring the signature of the voter on the ballot, and if he cannot write, his name written and attested by a resident of the district, it is open to the objection with many that it interferes with the secrecy of the ballot. Not any more than the numbering process, if the election officers are sworn, and the vote is only made known in an election contest."

"So far as this writing the name on the ballot is calculated to add a feeling of personal responsibility to the voter for his discharge of his duty, it seems to us a wise and thoughtful policy. It will tend to

elevate and make more impressive the elector's duty. This is precisely what is needed most."

If that does not squarely and fairly endorse all that is before the Convention I cannot understand the meaning of language. The writing of the name is "precisely what is needed most." I do not think that can be dodged.

Mr. MACVEAGH. Mr. Chairman: I was out in the ante-room and did not hear all of the remarks of the gentleman from Montgomery (Mr. Hunsicker.) It seemed to me that perhaps he did not fully understand what I had said. I did not say—because it would not have been true, and I knew it—that there were not gentlemen of both political parties upon both sides of this question, as ardent in their political faith the one as the other. Nor did I intimate that the gentleman from Montgomery, (Mr. Hunsicker,) so far as he was concerned—for I had no information upon the subject—had any knowledge of it; but I did say to the gentleman from Columbia, (Mr. Buckalew,) with his permission, that I thought it was exceedingly unwise and inopportune to close debate this morning summarily upon this proposition, because of alleged information had been brought to me, I stated then that I did not believe it. Other gentlemen around me said that they did believe it, and other gentlemen had heard the same thing. We do not make anything by failing to recognize matters just as they are. I was informed, as I said before, that gentlemen in political sympathy with the gentleman from Montgomery (Mr. Hunsicker)—nobody was named or I would name them here—would, this morning, move to re-consider this vote, and that they would endeavor to prevent debate upon it.

The CHAIRMAN. The Chair will state that gentlemen of both particular parties came to him, this morning, and asked him at what time this motion should be made. I did not understand that there

was any idea of party feeling connected with it all.

Mr. BROOMALL. Mr. Chairman: I move the committee now rise, report progress and ask leave to sit again.

Upon this motion a division was called, and resulted: Affirmative, fifty-one; negative, fifty-eight. So the motion was not agreed to.

Mr. BUCKALEW. Mr. Chairman: I will add a word more. The remarks I made this morning in favor of concluding the debate on this subject were made of my own motion, without consultation with any human being, and upon the reasons, therefore, as they presented themselves to me. In addition, in reply to the suggestions of the member from Dauphin, (Mr. MacVeagh), I must be permitted to say that I think that it is unnecessary for any member of this Convention to bring into this body and put into our debates a report which he says he does not himself believe.

Mr. BROOMALL moved that the committee do now rise, report progress and ask leave to sit again, which was agreed to.

So the committee rose.

IN CONVENTION.

Mr. LAWRENCE. Mr. President: The committee of the whole has had under consideration the article reported by the Committee on Suffrage, Election and Representation, and has instructed me, as its chairman, to report progress and ask leave to sit again.

Leave was granted.

LEAVES OF ABSENCE.

Mr. MACCONNELL asked leave of absence for Mr. Porter for a few days, which was granted.

Mr. WOODWARD asked leave of absence for Mr. Armstrong for a few days, which was granted.

The hour of two o'clock having arrived, the Convention adjourned until to-morrow morning at ten o'clock.

FORTY-NINTH DAY.

FRIDAY, *February 21, 1873.*

The Convention met at ten A. M.

The President, Hon. William M. Meredith, in the Chair.

Prayer was offered by Rev. James W. Curry.

The Journal of yesterday was then read and approved.

THE CENTENNIAL CELEBRATION.

The PRESIDENT laid before the Convention the following communication :

U. S. CENTENNIAL COMMISSION, }
PHILADELPHIA, *Feb. 21, 1873.* }

Hon. WM. M. MEREDITH,
President Constitutional Convention:

DEAR SIR:—I have the honor to enclose herewith stage tickets for all the members of the Convention for the centennial celebration at the Academy of Music, this evening.

Very respectfully,

D. L. MORRELL,
Chairman.

REPORTS OF PROTHONOTARIES.

The PRESIDENT laid before the Convention the report of the prothonotary of Franklin county, relative to the number of civil causes pending upon the docket of that county, which was referred to the Committee on Judiciary.

PROHIBITION.

Mr. HORTON presented a petition from the citizens of Bradford county, praying for a prohibitory clause in the Constitution against the sale of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. S. A. PURVANCE presented a petition from two hundred citizens of Allegheny county, praying for the same provision in the Constitution, which was referred to the same committee.

SUB-DIVISION OF COUNTIES.

Mr. WRIGHT presented a petition from the citizens of Luzerne county, praying that a clause be inserted in the Constitution that in all counties having a population exceeding one hundred thousand, the Legislature shall have power to make

sub-divisions thereof, establishing in each sub-division all the necessary courts pertaining to counties, which was referred to the Committee on the Judiciary.

APPOINTMENT OF HON. HENRY GREEN AS A DELEGATE.

Mr. FELL. Mr. President: In accordance with a recent resolution passed by the Convention, I desire to submit the following resolution on behalf of the delegates at large, to whom was referred the filling of the vacancy occasioned by the resignation of Hon. Samuel E. Dimmick.

The PRESIDENT. The resolution will be read.

The CLERK read as follows:

Resolved, That Henry Green, of Northampton county, be and hereby is appointed a member of this Convention, to fill the vacancy caused by the resignation of Samuel E. Dimmick, a delegate for the State at large."

The resolution was agreed to.

Mr. HENRY GREEN, at the request of the President, then came forward to the bar of the Convention and took the usual oath prescribed for members of the Convention.

THE ADJOURNMENT OF THE TWENTY- SECOND OF FEBRUARY.

Mr. HAY. Mr. Chairman: I desire to present the following reason for the vote given yesterday by various members of the Convention against adjourning over the twenty-second of February, and request that they be entered on the Journal.

Mr. BROOMALL. Mr. Chairman: I move the reading of the communication be dispensed with.

Mr. DARLINGTON. I would like to hear what the communication is.

The PRESIDENT. The communication will be read.

The CLERK read, as follows:

REASONS FOR VOTING AGAINST ADJOURN- MENT.

No debate having been in order upon the resolution adopted yesterday for an adjournment over Saturday, the twenty-second inst., Mr. Hay, Mr. W. H. Smith,

Mr. W. L. Corbett, Mr. Russell, Mr. T. H. B. Patterson, Mr. Gilpin, Mr. Hopkins, Mr. J. M. Bailey, Mr. J. W. F. White and Mr. A. A. Purman present the following reasons for their vote, viz:

1. The example of the Constitutional Convention of 1837-38 is against unnecessary adjournments; that body having sat on the fourth day of July, on Christmas day, on New Year's day and on the twenty-second of February, when it adjourned.

2. That as Washington was distinguished for his steady, untiring devotion to the performance of every duty, public and private, it would seem that the fittest way for this Convention to honor his memory would be to remain in session on his birthday, as on other days, giving attention to the discharge of the public duties for which it is assembled.

3. That as the State is at considerable expense for every day during which the sessions of the Convention are prolonged, whether any business is transacted or not, this fact should induce the Convention to remain in actual working session on every day when there does not exist a public necessity for an adjournment.

MALCOLM HAY,
J. W. F. WHITE,
WM. HOPKINS,
WM. L. CORBETT,
JOHN GILPIN,
W. H. SMITH,
S. S. RUSSELL,
T. H. BAIRD PATTERSON,
A. A. PURMAN,
JOHN M. BAILEY.

Mr. DARLINGTON. Mr. President: I would like to add my name to that paper.

Mr. ELLIS. Mr. President: I move that the document be referred to the Committee on the Bill of Rights.

The PRESIDENT. The Chair would state that the reasons which have been submitted by the gentleman for their vote yesterday, in regard to the question of adjournment, are not referable to any committee. The rules of the Convention require them to be entered upon the Journal.

Mr. LILLY. Mr. President: I desire to say that the resolution to adjourn over until Monday—which was adopted by the Convention—assigned no reason for the adjournment, and I think that the reasons of members for voting against the adjournment are entirely unnecessary.

Mr. HAY. Mr. President: The rules which the Convention has adopted are

explicit in stating that any member of the Convention can submit, in writing, the reasons which have influenced his vote upon any particular question, and they can then be entered upon the Journal.

Mr. TEMPLE. Mr. President: I would like to inquire whether, as a matter of right, the reasons for the votes of these particular members upon this question of adjournment can be entered upon the Journal.

THE THIRTY-THIRD RULE.

The PRESIDENT. The thirty-third rule of the Convention will be read for the information of the members.

The CLERK read as follows:

"The yeas and nays of the delegates, on any question, shall, at the desire of any two of them, be entered on the Journals; and the delegates shall have a right to insert the reasons of their votes on the Journal."

Mr. T. H. B. PATTERSON. Mr. President: I rise for the purpose of asking permission to make an explanation in reference to the paper containing the reasons of certain gentlemen of this Convention for the vote which they gave yesterday, upon the question of the adjournment of the Convention until Monday. The Clerk read the name of Mr. Patterson as one of the signers. There are two Mr. Pattersons in the Convention, and I would like him to mention which Mr. Patterson it is, because I voted against adjourning over until Monday, on account of the twenty-second of February—Washington's birth-day.

The CLERK. The name is T. H. B. Patterson.

Mr. HEMPHILL. Mr. President: I move the subject be laid on the table.

The PRESIDENT. The Chair is of the opinion that there is really no proposition before the Convention. Rule thirty-three gives every member the right to enter the reasons for his vote upon the Journal. In the exercise of this right certain gentlemen of the Convention have presented their reasons for their vote upon the question of adjournment yesterday, and in the opinion of the Chair no other disposition can be made of the matter except to enter them upon the Journal unless the Convention absolutely refuse to permit this course to be taken.

Mr. MANTOR. Mr. President: I would like to inquire whether the reasons of a member for his vote upon a particular question can be given verbally.

The PRESIDENT. They must be in writing, in order to be entered upon the Journal.

Mr. HEMPHILL. Mr. President: How long after the vote is taken?

The PRESIDENT. The rule does not say.

Mr. DARLINGTON. Mr. President: I ask the unanimous consent of the Convention to sign that paper as containing my reasons for the vote I gave, along with the other signers.

["No." "No." "No." "No."]

RESTRICTING LEAVES OF ABSENCE.

Mr. DeFRANCE. Mr. President: I offer the following resolution:

Resolved, That this Convention will hereafter grant leave of absence from its sessions to none of its members, except in case of the sickness of members or their families.

On the question to proceed to a second reading and consideration of the resolution, it was not agreed to.

LEAVES OF ABSENCE.

Mr. BOYD asked and obtained leave of absence for Mr. Huusicker until next Tuesday.

COMMITTEE ON SALARIES.

Mr. HEMPHILL. Mr. President: I move that the Convention proceed to the second reading and consideration of the resolution I offered on the 4th inst., respecting an alteration of the rules of the Convention by the appointment of another committee.

The PRESIDENT. The resolution will be read for information.

The CLERK read as follows:

Resolved, That the rules of the Convention be amended, by adding an additional committee, as follows: "No. 28. A Committee of seven on Salaries, Fees and Compensation of Officers, State and County."

On the question to proceed to a second reading and consideration of the resolution, a division was called, and it was determined in the negative, less than a majority of a quorum voting in the affirmative.

IN COMMITTEE OF THE WHOLE.

The CHAIRMAN. The question is upon the substitute for the section offered by the gentleman from Centre, (Mr. M'Allister,) which the Clerk will read.

The CLERK read:

"All elections of citizens shall be by ballot; every ballot voted shall be num-

bered in the order in which it is received, and the number recorded by the election officers opposite the name of the elector who presents the ballot; each elector shall endorse his name upon the ballot, or cause it to be endorsed thereon and attested by another elector of the district, who shall not be an election officer: *Provided*, The oath of the election officer shall require secrecy as to the contents of every ballot cast at the election."

Mr. M'ALLISTER. Mr. Chairman: I rise to suggest a verbal correction. I move to strike out "provided that," and insert "and" in the place thereof.

Mr. STANTON. Mr. Chairman: As there seems to be a very slim attendance I move that further consideration of this question be postponed.

The CHAIRMAN. That motion is not in order. The section may be voted down and taken up again at another time.

Mr. COCHRAN. Mr. Chairman: This committee will bear me witness that however much I may have been afflicted with *cacoethes loquendi* on other subjects I have not troubled them with any expression of views upon the question now pending, which has been largely discussed, and I do not know that I should do it now, if it were not presented to us in the peculiar form which seems to require and challenge from every member here a review and re-consideration of the opinions which he has formed upon this subject. This section was originally acted upon by this committee, and by a majority of the committee it was rejected. It has occurred, however, to one gentleman, after reflection, subsequent to that vote, although the discussion had been large and general, to move a re-consideration and recall the question to the attention of the committee, and ask them to adopt that which he, with a majority of the committee, had previously rejected.

Now, sir, with regard to this question, I have a clear, fixed and settled opinion. I am decidedly opposed to the change which is contemplated by this provision, yet I should not have intruded my opinions upon this committee had it not, as I said before, been for the peculiar form, and under the peculiar circumstances, in which it is presented. We are now about to depart from the practice and traditions of this Commonwealth which have existed from the day of its first foundation, aye, sir, from the time when its foundations as a province, were laid by Penn himself. We are now about to withdraw from the

citizens of this State the privilege which they have enjoyed, for many generations, of depositing their ballots and exercising the elective franchise, without question by any person, and without the right of any man to inquire into the manner in which they have discharged their duty. I am opposed to the innovation. I do not concede, sir, that there is sufficient reason given why this long practice of the people of this Commonwealth should be broken in upon and destroyed, and why we should introduce here a new practice, which, however it may be disguised, under the style and form of words in which it is couched, is nothing more or less than the destruction of the right of the private ballot. What is there which should induce us to depart from the practice of one hundred and fifty years? What call has come up to us from the people of this State asking us to make this change? What cause can be assigned for it that is inherent in or connected with the exercise, use or employment of the vote by ballot, as we have heretofore used and employed it? I have listened in vain for any sufficient reason. It is said that it is necessary to make this change in order to defeat frauds at elections; that it is necessary to impose upon the great mass of the honest electors of this Commonwealth a provision which is intended to protect a certain other portion from frauds, which they are perfectly competent to protect themselves from if they exercise the power and the rights which are vested in them by the Constitution and the laws; but you, for the sake of throwing a shield over them, will impose a burden upon the great mass of the honest electors of this Commonwealth, whose exercise of the right has not been and cannot be impeached.

Mr. Chairman, this matter of frauds at elections has been talked of here at such length as, to use a phrase with regard to it that was used with regard to another thing, and with a great deal more justice, I apprehend, that it has become "loathsome." Sir, the right of election should be guarded and protected, and we should have pure elections, but it is not necessary, in order to obtain these, that we should subvert all the foundations upon which this government rests. This right of election, by secret ballot, has been the guard of human liberty in every struggle to attain and secure the inalienable right of man to its possession. It has been the cry

of all those who are aspiring to the exercise of equal political rights in all nations, and the example of this country has been held up throughout the world as a proof that this right is necessary for, and runs parallel with, the enjoyment of human rights and human liberties everywhere. At this very time, sir, the men who are struggling to release themselves from the bondage which has been imposed upon them by ancient traditions and ancient institutions, are the men who are calling for the right of suffrage by secret ballot; and it is the unanimous demand of these men throughout the world that this right should be accorded to them, and the example of this country has been the example to which they have appealed for proof that they should be admitted to the exercise of this right, and that it was the sure guarantee of their welfare and of their freedom. Now, sir, we are called upon to take steps backwards; we are called upon to reverse all the precedents which have been set for us in our history, and we are called upon to say to these men, who are struggling for the attainment of their rights, that this has all been a mistake; that the right of the secret ballot is not a right but a wrong, and that to confer it upon them would not be a blessing but an injury. That is what we are about to decide by the vote which shall be taken on this section, if it is decided in the affirmative.

I cannot consent to admit that proposition. I do not believe that it is essential to the enjoyment of the power of franchise, that this right of voting by ballot should be taken away from the citizens of this State. I believe that it will be a great wrong done to the great body of the people by demanding that they should submit to the restrictions proposed to be imposed upon them by the provision now under consideration. Why, sir, it is a fact known to all who live in the rural districts of this State, that the great difficulty is to get a most valuable class of our citizens to exercise the right of suffrage. They are men who do not like to be put to the trouble of doing it; it requires an effort to get them to the polls; and now you are about to impose upon them a burden and a restriction additional to that which has hitherto been imposed upon them, and one which will have still more the effect of inducing them to decline to attend your elections and to withdraw the expression of their opinions through the

ballot-box, which is so important to the well ordering and good government of this Commonwealth.

This matter has been spoken of at length by the gentleman from Lancaster, (Mr. Carter,) and I shall not further dilate upon it; but it is a fact, in the experience of the country, that this is so. It will be held to be a burden upon these men, which they will reject, if it is attempted to be imposed upon them.

Mr. Chairman, if this matter were essential, in my judgment, to the enjoyment of a pure right of suffrage, I would vote for it, even under all these circumstances and conditions; but I do not think it is. There are provisions which have been proposed by this Committee on Suffrage, and there may be others, for all I know, yet to be proposed by them, which, I think, will be sufficient and adequate to attain the purpose which, I presume, we all have in view. These provisions consist of various matters of detail, some of which we have adopted already. We have adopted the tax restriction, which that committee rejected, and although there was great difference of opinion with regard to that, I stood by it because I believe it is a just and valuable restriction. We have imposed, also, a restriction which tends in the direction of purity, with regard to the time that shall elapse before papers of naturalization shall be used; and many resisted that wholesome restriction who are contending for this. There are other restrictions, among which is the proposal to reduce the number of voters in any election precinct. This I consider a valuable restriction, and one which ought to be supported. If it is adopted it will take away a great many, if not entirely remove all, the objections which are interposed here against the secret ballot, and are used as an argument for the passage of the pending proposition. In large precincts, in the thickly populated districts, like those in the city of Philadelphia, of course it is impossible to know all the men who come to vote, personally. One gentleman in this city told me that he lived in one of its best wards, and when a man was nominated by his own party for a member of the Legislature he did not know, and he could not find a friend who could inform him who the man was for whom they called upon him to vote. But it is not so in the country, by any means, and if this reduction of the number of persons entitled to vote in any election precinct is made, then the know-

ledge of the voters will be communicated to the election officers, and there will be no difficulty with regard to false personations, or with regard to the alteration of the ballots after they have been orderly deposited in the ballot-box.

I hold that the secret ballot is a protection to the voters. There is a class of voters in this State who ought to have protection. It is not enough to say here that in this State it is not necessary, although it may be necessary in Great Britain. It is just as necessary, and just as likely to become still more necessary, than it is in that kingdom. It will not do for gentlemen to say that the *employees* rule their employers in the State of Pennsylvania. The time has not yet come here, more than anywhere else, that labor has obtained the ascendancy over capital; nor is that time going to arrive, if the present policy of this Commonwealth is to be continued, and capital shall continue to be accumulated in great masses in the hands of artificial and irresponsible bodies. The power and weight of that influence is to be brought to bear upon the ballot-box. Nor is it sufficient that I should be told that there are rules in these artificial bodies which prohibit their ministering servants from interfering with the right of election. I do not care whether such rules exist now or not, but this I say: That when the time comes, when it shall be expedient that that power should be exercised, it will be brought to bear with unsparing force upon the employees of these corporations. The right of voting by ballot is the badge of republican freedom, and I will not consent, under the circumstances in which we stand, and under the circumstances which appear to be drawing near to us, that that protection which it has thrown around the right of suffrage by the citizen shall be withdrawn, at least so far as my vote goes.

There is a question of expediency here; the public sentiment of the interior of this State, I am satisfied in my mind, is and will be opposed to the introduction of this provision into the Constitution, and by doing it you jeopardize the success of your entire work and jeopardize it, sir, because the people will not sustain the provision, and not only will there be a *direct* opposition to it, but the parties who are opposed to certain other provisions which may be introduced into this instrument, will be sagacious enough to bring their strategic tactics to bear upon the rejection of the Constitution by the use of this provision

as a weapon by which to kill it. [Here the hammer fell.]

Mr. TURRELL. Mr. Chairman: I desire to offer an amendment to the amendment now pending.

The CLERK read: "Provided this article shall apply only to cities of thirty thousand inhabitants or upwards; but any county of a like number of inhabitants, by vote of the majority of its qualified electors in favor thereof, at any general election, may have the same applied to its locality, and the same notice is to be given of the taking of said vote by the sheriff of the county, on the written requisition of fifty electors of said county, as given of the general election."

Mr. TURRELL. Mr. Chairman: From the discussion that has been had upon this subject, it is evident that there is a great difference of opinion upon the question pending, and if we are to get a vote which shall be ratified by the people of this State there must be some concessions. If the gentlemen will notice the amendment I have offered, they will see that it contemplates a solution of the question to which all might agree. I propose to apply this writing of the names upon the ballot now to cities of thirty thousand and upwards; and the amendment *further provides*, that any county of a like number of inhabitants may subsequently require this article to be applied to their localities, by vote of the majority of its citizens in favor thereof, taken at any general election, of which vote the same notice is to be given as of the general election by the sheriff, upon the requisition of fifty electors of that district.

Now this leaves it in such a shape that every county in the State, if it chooses, may have this provision applied to itself by a vote upon this question. Then we shall avoid this difficulty that has been spoken of, and which I believe to exist, namely: That the rural and agricultural counties of the State do not need and will not accept this requisition. The cities may require it. I am not prepared to say that they do not. There is, however, a division of sentiment through the State. Why attempt to force public sentiment on the subject? Why attempt to force upon one locality or another a provision which they are not prepared to accept? Now, sir, I would not deprive the city of Philadelphia or any other city in the Commonwealth of the benefit of this provision, if they need it, and at the same time I do not want them to force it upon my

county or my district, because I know that the people are not in favor of it. Upon this point I concur most fully with the utterances of my friend from Tioga (Mr. Niles) yesterday. I am satisfied, from the expression of the people and of their press, although these I consider merely as an expression of the editors, that the agricultural portions of this State do not want and will not have this provision, compelling them to write their names upon their ballots. I concur very fully also with the remarks which have just been made by the gentleman from York (Mr. Cochran) upon this subject, and will not therefore repeat them. Now will not this proposition answer the difficulty in the minds of the gentlemen who are in favor of this proposition? Does it not afford a fair intermediate ground where we can meet upon this question and settle it fairly? The amendment was hastily drawn and may not be entirely perfect. If so it can be corrected; but it seems evident to me that there must be some concession on this subject. I consider the remarks of the gentleman from York, (Mr. Cochran,) expressive of the opinions and views of the agricultural districts of this State in relation to this matter, correct, and that we will hazard the results of our entire labor here by the adoption of a provision which shall force upon the rural districts the necessity of writing their names upon their ballots. I ask the gentlemen to look at this for a moment candidly. Let them not be led away by any excitement of feeling engendered by the discussion. Let us be fair to all portions of the State. Without multiplying words, Mr. Chairman, it seems to me that the proposition as I have submitted it—amended, perhaps, somewhat in detail—might meet the difficulty, and ought to be satisfactory.

Mr. PUGHE. Mr. Chairman: I do not intend to take up the time of this Convention with any remarks upon this question, as it has been so ably and so well discussed; but I have listened with a good deal of attention to the arguments from those gentlemen who urge this proviso: "That the elector, when he votes, shall place his name upon his ballot." I look upon it, sir, as an infringement upon the rights of the people, and for this reason—among others—that there has never been one single petition presented to this Convention asking for such a change. As the distinguished gentlemen from York (Mr. Cochran) remarked, this system of voting

by secret ballot has been carried on in this State for one hundred and fifty years, and it has worked well; and the only reason that gentlemen can give for the adoption of any other system is to prevent fraud. I tell you, sir, that the professional ballot-box stuffer, notwithstanding all the provisions that we can adopt, can commit fraud just as easily as now, by simply writing a name upon the ballot. Take, for instance, a ward in which all are of one party—the judge of election, the inspectors and the clerks—and I have seen it at home, in my own city. What difference does it make? Why, probably upon the registry list there are four hundred names, but, sir, there are twelve hundred votes cast. How is it done? Why, by writing upon the tally list such names as Daniel Archibald, Biddle M'Alpine, Seth Stoke, Timothy Barney, or any other name. Then the ballots are put into the box to correspond. Can they not do it? And can they not write these names upon the ballot, and deposit the ballot in the box and number it? This expedient will not prevent fraud. The great trouble, sir, with fraud in this city is the lavish use of money in elections, and that is the fault of those men who give their money so freely at such times—to debauch and demoralize the working men. I know of one Congressman in my district that spent seventeen thousand dollars—in the county of Luzerne—to be elected to Congress.

I know another gentleman that was nominated a delegate at large on one of the tickets; that was a gentleman who lives in our county, who was assessed, by the county committee, twenty-five hundred dollars, and by the State committee twenty-five hundred, making five thousand dollars, for the privilege of running as a delegate at large to this Convention. Where does this money go to? To debauch and demoralize the citizens of the State. Immediately after the Convention is held in the county, the county committees of both parties come to the city of Philadelphia, and want money, and why? To demoralize and buy up votes. That is what they want. It would be just as well as this written or open ballot to put in such a proviso as this: "That every voter should provide himself with a monogram, cut in brass or nickel, and stamp his ballot with said monogram, in green or red wax;" and then it would be known certainly that it is his ballot.

I believe, sir, that every corporation and capitalist in this State is desirous that

this should pass, because then they would hold over those that worked for them the very power to compel them to vote as they want them to. If you want an open ballot; if you want your name impressed upon the ballot, or written upon it, let it be the same as the English system. That is more noble, more manly. When a man steps up to the hustings there, and they ask his name and he gives it, they then ask him: "Who do you vote for?" He replies: "I vote for William E. Gladstone," or whoever he may prefer. The working classes of England, however, and of France, and of all other countries, have looked to America as a model, and have been struggling to get for their own countries the very thing—the secret ballot—that we want now to sweep away.

The CHAIRMAN. The Chair will state that the Clerk was in error as to the question to be voted on. The Chair will ask the gentleman from Susquehanna (Mr. Turrell) to withdraw his amendment for the present.

Mr. BROOMALL. Mr. Chairman: I have not said anything, thus far, upon this question, neither in its present shape nor in its former one. The reason I have not, is not because I have not a decided opinion, but because I could not see that there was any danger of this Convention passing anything that seems to me so monstrous as the destruction of the secret ballot—the right of every individual to vote wholly without regard to the intentions or power of other people. I do not yet think or believe that it will ever become part of the voting system of the State, and I am satisfied that the people will not permit it. We may pass it. We may put it into the Constitution, but if we do not submit it to a separate vote of the people it will carry down the whole work of the Convention, and if we do submit it to a separate vote, it will itself go down.

Now, Mr. Chairman, it is said that this provision, once placed in the Constitution, will cure all election frauds in the State. The gentleman who has just taken his seat has clearly shown that as a means of preventing frauds it will be wholly ineffectual. What, I would like to know, is to prevent a repeater from providing himself with fifty ballots, all of them attested in the same manner required by this provision in the Constitution, and voting every one of them? What is to hinder the repeater from committing the frauds in this manner, because it is only

by the connivance of some election officers that these frauds can be perpetrated at all, and they can connive at the counting of one hundred and fifty names or tickets, and all of them duly attested by the persons who present them. Where then does this provision provide a remedy for this evil? Instead of providing a means of detecting these frauds, I consider that it affords a better opportunity to bad men, both inside and outside the election board, to perpetrate the frauds in a systematic manner. The gentleman who last addressed the Convention (Mr. Pughe) pointed out a means whereby the provision will be rendered more effectual than it is now; but I have devised a plan which will make this a perfect voting machine, and I will submit it to the chairman of the Committee on Elections, and I know he will accept it, because it is so perfect. Now the committee do not mean to submit to the people a voting system that is even intended to be practically enforced. What they contemplate is a perfect one on paper, and one which can be pointed to as being absolutely perfect, but so perfect as to be wholly impracticable.

There was a dutchman once, Mr. Chairman, who was a watchmaker in the old country, and he proposed to make a watch that should be a piece of absolute perfection. So, after twenty years of constant work, he succeeded in making it, and every one who looked at it said it was perfect. All the mechanical and different societies before who it was exhibited pronounced the watch absolutely perfect, but when the old dutchman came to start it he found it would not go. And why? Because he had made it so perfect that it was not adapted to this world at all. And such will be the fate of this perfect voting machine which the Committee on Election have constructed. Now I desire to point out to the chairman of the committee, and I ask his attention for a moment, a provision which I have drawn up in order that this machine may be absolutely perfect. If I can obtain his attention for a moment I will read it, and I know he will accept it, for it will commend itself at once to his judgment, and it is entirely at his service. I shall not offer it myself, but he may and I am satisfied that he will. It reads as follows, Mr. Chairman:

"*Provided*, That before the ballot shall be cast it shall be acknowledged before a justice of the peace, or other officer authorized to acknowledge deeds, and shall be duly certified by such officer, and shall

be recorded in the office for recording deeds in the proper city and county, and certified by the recorder under his seal of office."

Now when that provision is placed in the Constitution it will prevent, at once, all this personation in election frauds, and will make this voting system absolutely perfect, unless, indeed, it shall become necessary, which I do not believe, to have each vote certified by the justice of the peace or the alderman before whom the acknowledgment shall be taken. Seriously, Mr. Chairman, the provision which has been suggested by the chairman of the Election Committee, in lieu of the section which was voted down, will not prevent election frauds, and if it would it will only impose upon the people, where the evil does not exist, a burden that they will not take upon their shoulders, and to which they should not be asked to submit. What is the cause of all this evil about which we have heard so much in the Convention? I tell you, as has been said upon several occasions, that this evil is entirely unknown in the country districts. Why in my district there have not been five illegal votes cast in five years. There may have been votes cast under a mistake, it is true, but there have been no illegal votes deliberately cast for the purpose of committing an election fraud. The election frauds are limited entirely to the large cities of the State, and the cause of all the evil seems to be this:

In the large cities of the State the majority of the people are wholly unorganized; the bad men invariably form the minority of the people in all communities, are organized, and as is well known, an organized hundred men can always rule and overpower a thousand unorganized men. This is the whole secret of the success which has attended the perpetration of these frauds, and the blame must rest solely with the majority of the people, who have permitted them to be committed unrestrained, if not unrebuked. If the people of Philadelphia will allow themselves to be governed by an organized minority of bad men, no laws can remedy the evil. If they permit these frauds to be perpetrated they must suffer the consequences until they are forced to take the power in their own hands. If the majority in this country will not undertake to govern, the minority will, and that is precisely the trouble in our cities now. What, then, is the remedy? The gentleman from Philadelphia, (Mr.

Temple,) who recently addressed the Convention, has most eloquently pointed out the remedy, and it is: To throw open the ballot to those whose mere glance will purify it. I wish I had the Debates up to this time, in which to read the glowing language of this gentleman when he pointed to this remedy for all your election evils. Sir, there is no pollution so foul or so corrupt but that the light of day and the eye of woman will render it pure.

Mr. RUNK. Mr. Chairman: I have already spoken twice upon the question now before this committee. Silently as I have voted upon every other question that has come before the Convention, and as I prefer to vote on every other question that shall come before the Convention, the extent and character of this debate has been such that I feel it my duty to express the sentiments I entertain in regard to the question now before the committee. I regret, exceedingly, that it seems to be the intention of a large portion of the Convention to insert in the Constitution which we propose to submit to the people of this State, a provision which shall interfere with and restrict the free exercise of the elective franchise. It is upon the freedom and extent of this right that the characteristic distinction of the American form of government depends, and it is upon the freedom with which this right of franchise is exercised, that depends the doctrine contained in the Declaration of Independence, that "all men are born free and equal." The humblest man in our country, when permitted to exercise the untrammelled freedom of the ballot, feels that he is the equal of the wealthiest citizen who holds the highest position in the nation's gift or who revels in all the luxuries of society. Whatever shall tend to diminish the right of the humblest citizen to exercise the privilege of the elective franchise, or in any other respect shall, at all times, receive my most cordial and determined disapprobation. I apprehend that it is not pretended by the distinguished gentlemen of this committee who advocate this provision of the Committee on Elections, that it does not hinder or restrict the freedom of the exercise of the elective franchise, and it is because, in my humble judgment, this will be the effect of its adoption that I have already voted twice in this Convention against the proposition; and I shall continue to raise my voice and cast my vote in disapprobation

of a provision, which, if submitted to the people, may imperil the whole work of the Convention. These frauds, about which we have heard so much complaint, are committed by the parasites of society, and not by the honest voters of our communities.

But they are perpetrated by those men who depend for their subsistence upon the contributions of gentlemen of medium wealth, and of extensive wealth in society. Why, sir, you know, and this Convention knows, that, but a few years ago, we had paraded before the people of this country the fact that one citizen of this government had contributed the sum of \$40,000 00 to carry an election in this country. Was that for the purpose of an honest election, or was it a contribution to sustain the parasites upon society who perpetrate the extensive frauds of which we have heard so much in this Convention? I happy to say, sir, that the gentleman, who is alleged to have contributed this large sum, now no longer revels in the wealth of which he then boasted. I believe that the remedy for the evils complained of in this Convention, and especially by the members from this city, lies not in the conversion of the gentlemen who perpetrate these frauds to be honest and upright citizens, but that it lies in an entirely different direction. We may legislate in vain. We may prepare Constitution after Constitution on the morals of the gentleman who prepared these frauds, and it will all be in vain. It is not by introducing into this Convention a provision that the honest voter shall write upon his ticket his name before he shall be allowed to deposit his vote in the ballot-box, that we shall remedy the frauds that are now complained of. But it is by placing in the room, and as members of the board, honest and upright citizens. I have been appealed to, Mr. Chairman, by a gentleman of this city, in whose ability, whose learning, and in whose integrity I have the highest confidence, and with whom, when he asked me to vote in a particular way, when it did not contravene my consciousness of right, I would most cheerfully and most cordially concur and comply. But when he asks me to vote for a restriction upon the freedom of the elective franchise I cannot comply with that, because I believe that, in doing so, I would disfranchise thousands of the honest voters of this State, simply to comply with his request, or to defeat the action of the few

who, in my own judgment, necessarily control the election districts of this city, and of this State, so far as the preparation of frauds are concerned.

Do you, Mr. Chairman, do you, gentlemen of this Convention, believe that the gigantic frauds that are perpetrated in this city are perpetrated by the thousands of honest voters here? Is it the laboring man; is it the poor man, whose only hope of private success and support is his family depend upon what he can earn to-day; is it they who perpetrate these gigantic frauds? No, sir, Mr. Chairman. No, sir, gentlemen of this committee, it is not they; it is not the poor man; it is not the mechanic, who makes the workshops of this city, and who makes the results of these workshops the glory of this city and of this State; it is not he, and it is not they who perpetrate the gigantic frauds of which we have heard *ad nauseam* in this Convention. It is the parasites, as I said, upon society. It is the man who depends, not upon his own exertions, but who lives upon the contributions of the medium class, and the wealthy of this city who contribute their thousands to an election fund to defraud the honest voters of this Commonwealth. It is there where the evil lies, and it will be only when we reach that point and strike at the contributions of these large election funds that we shall begin to attain a point where we shall begin to reform the disgrace of the ballot-box, and the corruption and the infamy of the dishonest men who are now alleged to control it. Why, sir, we have had here the statement by gentlemen who seem to entertain as their pet remedy for all the evils which inflict society a proposition that if we shall wipe out from the statutes of our State, the provisions by which the men who fill the row offices and who fill other positions in society, are compensated by a system of fees, we shall have attained the acme in the reformation of society, so far as the ballot-box is concerned.

I have no pet remedy. I have no proposition to lay before this Convention, which will act as a universal panacea to purify the morals of every gentleman that may appear at the ballot-box to deposit his vote. But I trust that this Convention will adopt as a part of its provisions that in this city, and in other large cities, the precincts shall be confined to the number of two hundred voters, or any other reasonable number that may be suggested in the judgment of this

Convention, wherein every honest voter who shall appear at the polls shall know and be able to tell to the honest voters and officers, who fill the board of election, whether a man who appears there and offers his vote is an honest voter and entitled to deposit the ballot which he offers. When you have arrived at that position, when you shall fill your offices of election with honest men, such as the distinguished gentleman who applied to me in strong tones to support the re-consideration of the vote by which this section was lost, and if he were in his seat, and it were proper, I would ask him the question whether he has ever filled an office on the election-board in his precinct. I say when you fill the boards of election with men of integrity, with such as fill almost every seat within the circle around me, it will then be that you will provide a remedy that shall remove from the city and from the State the corruptions that now inflict the ballot-box, as completely and as certainly as the morning sun dispels the dews of the morning. Until that period arrives—until you fill your election boards with honest men, with men of courage, such as sit before me—you will legislate in vain. You may pass Constitution after Constitution and you will not have attained the result that is desired by this Convention. When you adopt the principle that has been reported, "that in large cities the precincts shall be composed of not more than two hundred citizens," when every man who goes to the polls shall be known to the election officer, and when you shall fill that board with men of integrity, like those who sit at my right, and in my front, and at my left, then, sir, you will have taken a step in the right direction of reform. Then you will institute—you will have initiated—the reforms which are desirable and which are effective to sweep from your city and from your State the frauds and the corruptions that now threaten our free and our grand institutions. Until then, Mr. Chairman—until then, gentlemen of this Convention—you will not have attained the purpose that you desire. I care not, though you introduce into your Constitution all the plans that have been proposed in correction of this evil.

[Here the time of the gentleman from Lehigh expired. Being extended by a vote of the committee, Mr. Runck resumed.]

Mr. Chairman: This proposition which is under consideration would be a restric-

tion upon the right of the honest and the poor man, who is to vote according to his judgment. It will interfere with the freedom that he has enjoyed for the last two centuries, and yet it will not reach the evils that are now so prevalent, the evils of fraudulent elections and corruption at the ballot-box.

I am profoundly sensible, Mr. Chairman, of the honor shown me by this committee in extending my time. The best appreciation that I can give of the confidence of this House, is to yield the floor, because I am impatient, as is every other member of this Convention, to reach the end of this discussion, and to legislate wisely and well upon the subject pending before us.

Mr. BEEBE. Mr. Chairman: I do not desire to prolong the debate a single moment. But it seems to me that if there is a disposition on the part of the advocates of this measure to offer a legitimate legislation which shall be approved by the people of this State in the organic law, that they will vote for this amendment. The city of Philadelphia urges that the whole basis of this action is for the purification of elections in Philadelphia. This amendment proposes to give to Philadelphia, and to any other cities, all that they desire. It has been alleged here that this would be special legislation. I ask if we have not a committee raised in this House to report upon the necessities of cities in those things of which we know little in the country, so that we may incorporate into the organic law in relation to these matters such principles as are necessitated by the peculiar character of cities?

What can we of the rural districts say to our constituents if we shall vote down a proposition of this kind which gives to Philadelphia all that she asks, and which leaves us all that we desire? I certainly cannot see why any member upon this floor should fail to give his sanction to this amendment; and it strikes me, reasoning from my standpoint, that it would be a perverse inclination to thwart the will of what might now be called the minority of this Convention if we should fail to do so.

It has been well said by the gentleman last upon the floor (**Mr. Runck**) that the frauds that have been practiced do not come from the voter, but that they come from the leaders, from the ballot-boxes, and from the boards controlling your elections. As the gentlemen remarked, I wish to say again, as I said in substance

the other day, that we cannot place that in the organic law which will control this matter until the public sentiment of the community is aroused as it is now being aroused, and I wish, right here, to say that I have more hope for this nation, in reference to the purification of the ballot-box, and the body politic from the present condition of that body politic than from any legislation whatever. General Sherman, in issuing his celebrated notice to the inhabitants of the city of Atlanta, when they complained of it, said to them, "war is cruelty." He might have added, if the circumstances had required it, "war is demoralization." All over this country, from the largest gatherings of population down to every four-cross-roads, this demoralization grew up under the peculiar conditions which the war involved. These conditions led in a large measure, to the present condition of things; but, sir, the sun is rising upon us. Public sentiment is awakening, and is determined to purify the whole matter. Two years ago an investigation into the matter of the Credit Mobilier would have been laughed at by the parties interested in it. Is it so to-day?

Why, sir, even in the city of New York, when the first effort was put forth to purify the city of its corruptions, and to arouse public sentiment when every other means had failed, the men wielding this influence, the men having the money, and who had been guilty of the corruption, putting faith in what had been successful before, laughed to scorn the idea of investigation; but, sir, the uprising of that public sentiment has degraded, as a criminal, a man who thought he stood high in national power, and in controlling the national destinies of a national party. Recent instances occurring in this city of Philadelphia show that the same uprising is taking place here. Taking the view of this matter that I do, believing that it is of the people, and that the time has come, I do not see why this Convention, in its zeal, in the heat of debate and in the excitement of the occasion, should put upon the five or six hundred thousand honest voters of this district, for years to come, that which trammels their ability to exercise the elective franchise.

I trust, therefore, that both sides of this question will see the propriety of adopting, in substance, the amendment of the gentleman from Susquehanna, or, at least, that part of it which restricts this to cities of thirty thousand inhabitants.

Mr. GOWEN. Mr. Chairman: If the arguments advanced by a number of delegates on this floor in opposition to the amendment to the Constitution, that has been suggested by the Committee on Suffrage, Election and Representation, are to be believed, there was no necessity for calling this Convention—no necessity whatever.

We hear gentlemen very blandly tell us—gentlemen that are optionists—that everything is going on very well. One gentleman will roll his hands and say that there have been “slight irregularities” in the city of Philadelphia; and another one will say there has been “a little wrong,” and that the only difficulty is that the intelligent gentlemen of Philadelphia do not act as election officers.

Mr. Chairman, unless there is some reform in the elective system of this State, no intelligent or honest man in the city of Philadelphia will ever be permitted to exercise such an office. We are powerless. I beg the gentlemen to consider one moment how this city is governed. The election officers are appointed by the board of aldermen composed of but one political party. They control the election officers. The citizens do not appoint the election officers. The citizens of Philadelphia have no right to go to their polling places, as people do in the country, and determine who shall be their election officers. The election officers in this city are appointed by a class of men fraudulently elected and fraudulently returned for no other purpose under Heaven than to control the ballot-box fraudulently; and it is idle for gentlemen from the country to say that we should look to this, for there is a restriction upon our action that prevents us from either looking to it or from curing it in any manner whatever. This Convention was called for a great purpose.

It was called to correct the tide of corruption now sweeping over the land. Nine out of every ten of the honest citizens of this State believed that this tide of corruption has risen to such a height that if something was not done to arrest it the whole fabric of the government would be involved in one common ruin. The greatest evil we have to contend with is open, glaring, notorious impurity of elections—consisting of stuffing ballot-boxes with hundreds of fraudulent ballots before the very eyes of the people, the perpetrators of the crime boasting of it afterwards as something to be proud of, not only boasting of it, but exhibiting to the public

gaze, and glorying in the shame that exhibits it, the checks drawn by prominent citizens of this city to pay for the fraud that arrested the rights of the freeman from the honest people of the Commonwealth.

Mr. RUNK. Mr. Chairman: I should like to ask the gentleman whether all that could not be corrected if the amendment referred to by me should be adopted—that the people of the respective election precincts shall choose their own election officers, and elect, say, such gentlemen as the gentleman (Mr. Gowen) himself?

Mr. GOWEN. My modesty prevents me from saying what would happen if I were myself to be a member of the election board. I cannot, therefore, answer that part of the gentleman's (Mr. Runk's) question; but I can answer the first part by saying that, no matter how you may require the people of the several election districts to choose their own election officers, unless you permit the people to put a mark on their ballots, so that they can identify them, the will of the people will be set aside by ballot-box stuffers. We are not in the same position as the gentlemen in the country. If we go to the polls, with the view of electing the purest and best men in this city to preside at the polls and conduct the election, when the election is over we shall find that our ballots have been thrown out, and fraudulent ballots put in their places, by the custodians of the ballot-box, for the avowed purpose of defeating the will of the people.

It will not do for gentlemen in the country to say that this is something which affects us only. It affects them equally. The elections of the honest people in the country districts have been, time and again, set aside, nullified and wiped out of existence, by the purchased certificate of an election return, paid for to a forger in the city of Philadelphia.

I believe, from my residence for a long time in the centre of the State of Pennsylvania, I have as thorough a knowledge of the country people of this State, and as high an appreciation of their integrity as any member on this floor. I believe when these gentlemen from the country districts say this amendment will be voted down they misunderstand the feeling of their own constituents. There is no better class of people under Heaven than the simple-minded, old-fashioned people of the rural districts of the State of Pennsylvania. If

you should come into the city with the wand of an angel and sweep away all the people here, and transplant six hundred thousand people from the centre of Pennsylvania to take their places, we would have purity of elections, until the corrupting influences that have heretofore destroyed that purity shall, in the course of two or three generations, have left their blighting marks upon the new population; for we cannot help admitting the bitter truth that—

“Where Wealth and Freedom reign, Contentment falls,
And Honor sinks where Commerce long prevails.”

The difficulty in this city is that we have no power to help ourselves, and if the gentlemen from the country will not help us, then our elections will be set aside and taken for naught by the very act of the people here who, they say, should help themselves.

I was very sorry, sir, to hear the gentleman from Dauphin, (Mr. MacVeagh,) yesterday, allude to this question as a party matter. For my part, until the gentleman from Montgomery (Mr. Hunsicker) made his motion yesterday, on the floor of this Convention, I did not know that this motion to re-consider the vote was to be made at all. I thank the gentleman, (Mr. MacVeagh,) from the bottom of my heart, for the compliment he pays my party by assuming that it is the party in favor of this amendment; but on behalf of very many honest, upright and intelligent members of this Convention who represent the same party with the gentleman from Dauphin, I have to deny his right to place them upon the other side. On behalf of many gentlemen who differ with me in politics, and who have the most earnest desire to bring about reform, I say to him that the party lash he cracks over their heads sounds harshly in their ears, and the excoiating mark that it leaves upon their shoulders will be resented whenever he attempts to apply it. The gentleman tells us that if we adopt this amendment we will raise against us enemies of great power throughout the State. “Enemies of great power!” I admit it. God knows it is true. Who are these enemies? Every ballot-box stuffer in the city of Philadelphia is its enemy. Every man who has derived a princely income from forging election returns will be its enemy. Every man who is a professed politician, and whose subsistence depends upon false election returns, is its open and avowed enemy. There are

also very many gentle, simple minded, good-hearted, wealthy citizens, who contribute large sums of money to carry the election, knowing, perhaps, little but certainly caring less how it is to be used—these will be the enemies of this reform; and monied mediocrity will issue its feeble wail against any innovation upon the established usages of election districts.

Who will be its friends? Every man who feels that when he casts his vote it should not be taken away from him by substituting in its place the vote of some one else, who had no right to deposit it, will be its friend. Every honest voter of the city of Philadelphia who desires his vote to be counted will be its friend. Every man who honestly desires purity of election, who wants the will of the people, as expressed at the ballot-box, to be the law of the land, will be its friend. And if there are parties, the party lines will be drawn between these two. If there are parties, one will be the party in favor of reform, and the other will be the party in favor of corruption. If there is any party in favor of this question, certainly the party in favor of it cannot be charged with being the party in favor of corruption.

We want purity of elections. How will this reform bring it about? Simply by placing upon the ballot the name of the person who casts it, signed either by himself or by some one who attests it, so that when the contest comes up in the court, the ballot can be followed into the ballot-box and identified. The gentleman (Mr. Pughe) who spoke this morning, and said that repeaters could put into the box fifty ballots, signed with other people's names, forgets that when names are forged in that manner, the forgery can readily be detected.

I have heard no argument on this floor against this, except these two. The first is that it will not suit the convenience of the public—that is, that it is better to have impurity of elections than to ask the public to take a little trouble. I do not believe in that argument. I do not believe that that argument can be sustained. I do not believe that the honest people of this State, whether they live in Philadelphia or in the country, will be averse to taking the little trouble that is necessary to identify their ballots. I believe they will do it cheerfully, gladly, eagerly and willingly, and that they will lend all their influence and assistance to stop this tide of corruption.

The second argument is this: That the

people of the State will reject the Constitution if we put this in. Now there are certainly enough delegates in this Convention opposed to this amendment to insist upon its being submitted as a separate article, and whether the people reject it or not, we shall have done our duty. Is there any harm, then, in permitting us to submit it to the people, with the request that they vote upon it separately? We must be bound by the will of the people. If they reject the new scheme we will not be to blame; but if we refuse to submit it to them, upon the ground that they would reject it, and it should afterwards appear that they would have adopted it, we will be blamed for not giving them the opportunity of rescuing themselves and their posterity from corruption.

MR. MACVEAGH. MR. Chairman: I did not suppose that anybody's memory was so very short as the unfortunate memory of my friend from Philadelphia (Mr. Gowen.) It is but a few hours since I stated twice, in order to avoid misunderstanding, that I had been informed that gentlemen sympathizing in political views with the gentleman from Philadelphia, had been urged to vote to re-consider this amendment, and that it was intended to do so without debate. I stated, also, most distinctly, that of course I did not mean, what everybody knew could not be the fact, that there were not gentlemen of equal earnestness of political views, belonging to each political party, who were upon both sides of this question. I stated it very distinctly, and supposed everybody had heard it. It is not the first time the gentleman from Philadelphia (Mr. Gowen) has trusted to a memory which is not reliable. I remember one day he forgot his own words over night. In the hearing of the entire Convention he arose and denied one day what he had said a few days before.

MR. GOWEN. Will the gentleman give me leave to explain?

THE CHAIRMAN. The Chair does not understand the gentleman to be making any personal reflections.

MR. MACVEAGH. It is unwise, I submit, for a person with such an unreliable memory as the gentleman from Philadelphia, to possess or attempt to repeat what any other gentleman said the day before. I am very glad if any republicans have empowered that gentleman to be their champion. It is not a quarter to which I would have gone for such advocacy; but it was their privilege to go, and I have

no objection to it, if any republican has really done so. I wish to say, further, that it is becoming difficult to know what lines of remark we are to be permitted to follow here. My friend from Schuylkill, (Mr. Bartholomew,) the other day, was so unfortunate as to use an illustration in his argument upon this very question. In speaking of the inadvisability of compelling every voter to write his name upon the ballot, he spoke of the possibility of a great corporation taking to itself the monopoly of one of the necessities of life, gathering to itself the ownership of vast estates, and suggested, especially, if it was mainly owned in a foreign country, that it might become the interest of that corporation to control an election of a township, or a county, of a municipality, or a Commonwealth.

I understood it to be objected, by the gentleman from Philadelphia, that it was not proper for any gentleman to allude to such a corporation. Now the same gentleman assumes to lecture me, because, yesterday, I told what I had heard, and appealed to the gentleman from Columbia (Mr. Buckalew) to desist, as he did desist, from stopping debate, to avoid misconstruction. Indeed, I disregarded the remarks of my friend behind me, (Mr. Walker,) and my friend to the left of me, (Mr. Knight,) who seemed to have heard the same suggestion, and to have believed it. I submit that I was, in no sense, assuming to crack a party whip over anybody. Indeed I expressly disavowed the idea of confounding the earnest gentlemen of one political party, who were divided, and come to be found upon both sides of this question, and the earnest gentlemen of the other political party, who were equally divided upon it.

I say now, however, that one of the great dangers of this movement is clearly indicated in the position of the gentleman from Philadelphia who has just spoken. He says that the party to which he belongs will gladly take upon itself the burden of the reform of our State affairs. I shall gladly join in that good work, and go as far as anybody else, but in no partisan sense. I certainly shall never say that every man who honestly desires reform will vote with me. I do not think such language becoming. I have never said in the presence of gentlemen here, certainly the peers of any gentlemen upon this floor—certainly in character, in experience, in position in the community, the peer of the gentleman himself. I

have not assumed to say, even by implication, that they were not honestly in favor of reform unless they believed with me. I have heard the repetition of the phrase three or four times from the gentleman who last addressed the committee, that whoever is honestly desirous of purifying the ballot-box, will vote for this proposition and will support it. I say that is utterly untrue. The gentlemen who are opposing this compulsion to write the name of the voter upon the ballot, resent with indignation that is akin to contempt, the imputation of the gentleman that they are not as honestly and as sincerely for reform as any other gentlemen in this Convention. The gentleman also says that I spoke of the great interests that would be arrayed against our new Constitution; but he ought to have known, and he would have known, if his memory had not failed in the interval, that I said we would array great corporate interests against our new Constitution, and great interests in many walks of our diversified industry, and, therefore, I said it was unwise, by this provision, to create antagonism amongst the voters of the rural districts. Did I not say so? Is there a gentleman within the sound of my voice but the gentleman from Philadelphia, (Mr. Gowen,) with the unfortunate memory, who does not remember that I distinctly discriminated between the opposition that might be created by other reforms, and that which this reform would array against our work in the rural districts where voters would understand that it was the imposition of a burden, and of a *quasi* disqualification upon the honest and ascertained elector?

I intended to make that distinction very clearly. I think I did make it very clearly; and now I will tell you the reason why I think the hostility will not be found in the quarter where the gentleman supposed. It will not be among the corrupt politicians, either of the Fourth ward of this city or elsewhere, as he imagines. They are in favor of this proposition. If I am not mistaken one of the evils they desire to correct by this proposition is that certain nominal adherents of the great political parties of Philadelphia do not vote the regular ticket. Certain gentlemen in this city, as I understand it, have been charged for years with having cheated both of the great political parties here, and it is determined to have the opportunity of making each man put his name upon his ballot, so that if

any member of either political party attempts to cheat his party leaders, he shall be singled out for vengeance, and possibly for violence. This is the reform which gentlemen from the country districts are asked to insert in the Constitution. This may account for a part, at least, of the eagerness outside of this Convention, which in certain portions of this city exists, for the passage of this provision. I can understand how it may be very important for certain politicians of this city or of any city to know how their henchmen vote. I can understand how a man who will now vote one way, if he is obliged to expose his ticket, will vote another; and while this provision does not go the entire length of the open vote, and does not gain the advantages that the open vote would gain, still it allows the politicians to know how each man votes; and, therefore, it will add to their power.

There is another ground of objection to it. The gentleman from Philadelphia (Mr. Gowen) has announced to this Convention that it has been necessary to issue a positive order to the employees of the corporation he represents that they shall not interfere with our elections, or attempt to control the votes of their fellow-men. I do not know the terms of the order. It has not been laid before this Convention, but it has been stated by the chief executive officer of that corporation that such an order has been issued. What are the terms of it? Does it limit the right of the American citizen to his franchise or to his privilege of influencing his fellow-men? The one is as much a right as the other. If it was issued it must have had some justification. It is at least only charitable to make that supposition. Its justification must be, I suppose, in the fact that a power of this kind is too great to be exercised as the political liberties of other citizens are exercised, without restriction of any kind. If it simply means that they shall not be intimidated, which perhaps it does, then the very necessity of the order shows the danger of this method of voting. You are asked now, in the face of the avowal of the chief executive officer of a great corporation, that an order, defining the political rights of her employees, is necessary; you are asked, in the face of that avowal, to compel each employee of that corporation to put his name upon his ballot. In the interest of a true reform, in the interest of the purification of the ballot-box, in the interest

of the independence of American citizens, I submit to you that the propositions are not compatible; either the order which the gentleman presented before this Convention was necessary, or the compulsion upon the voter to write his name upon his ballot is unwise. As my time has expired I leave the alternative I have mentioned to the judgment of the committee.

Mr. RUNK. Mr. Chairman: I think I stated, s'r, in my remarks that my action upon the section now pending before the Convention depended entirely upon my own conviction of right. I understood the gentleman from the city, at my left, (Mr. Gowen,) to state that a man who would vote for the report of a standing committee of the House was in favor of reform, and a man who would not vote for or support the proposition was not in favor of reform.

Mr. GOWEN. Mr. Chairman: May I interrupt the gentleman? If I said so I certainly did not intend it.

The CHAIRMAN. The Chair did not understand the gentleman from the city as making any personal reflections, but as speaking of the people outside of the Convention.

Mr. GOWEN. Mr. Chairman: I said nothing about the members of the Convention; and when I spoke about the ballot-box stuffer in the city of Philadelphia, I meant no member of this Convention.

Mr. RUNK. Mr. Chairman: I understood the gentleman to say—

The CHAIRMAN. The Chair will take this opportunity to say that he will not permit personalities, and he will be obliged to gentlemen if they will not introduce politics. It is unpleasant to the Chair and to every member on the floor.

Mr. RUNK. Mr. Chairman: What I understood the gentleman from Philadelphia to say was, that those who vote in favor of the report of a standing committee were those who are in favor of reform, and that those who do not vote in favor of the report of that standing committee were opposed to reform. If I misunderstood the gentleman I regret having alluded to the subject; but I claim, s'r, as did the gentleman the other day—when he claimed that he was the one hundred and thirty-third part of this Convention—I claim the right to exercise my own opinions and convictions in this, as in all other matters. I have voted and shall vote upon this proposition, and every other that shall come before the Convention, according to my own convictions of right.

Mr. GOWEN. Mr. Chairman: I am very reluctant to trespass longer upon this Convention, but if there is one little mental faculty among the paucity of intellectual endowments God has given me, which deserves greater credit than another, it is memory. I believe among my friends I have always been celebrated for that, and probably it is the only intellectual faculty that I possess, and therefore when my friend from Dauphin (Mr. Mac Veagh) charges me before this Convention with want of memory, and with uttering a denial of what I had previously stated, I am placed in such an unfortunate position before my fellow-members that I must deny it.

The first argument that I made on the floor of this Hall was in favor of having the time for the local elections fixed on one day throughout the State. I endeavored to show that some of the evils of our election system would be cured by such a provision. My friend from Dauphin got up and immediately referred to the great evils, the gigantic intelligence, and the corrupt influences of gigantic corporations. For the intellectual attainments which compelled him to answer an argument by a reflection intended to wound the feelings of a member of this Convention, I have the most profound respect. For the delicate courtesy of debate, which insinuates a reflection against a fellow-member, flimsily hidden under the whip-syllabub of that sophomorical eloquence with which my friend garnishes all his rhetorical efforts, I tender him my most heartfelt thanks.

The next argument I made before this Convention was upon some subject connected with purity of elections, in which I said that the great evil to be cured was, that the young men of this country were bred up to be professional politicians. My friend from Dauphin, a few moments afterward, got up and replied by saying that "Mr. Gowen proposes to cure this evil by preventing young men from going into stores." I denied that, because my friend's memory was at fault. I have, therefore, Mr. Chairman, hardly ever had accorded to me the opportunity of making an argument upon this floor without being replied to with something of a sneer, or something of a taunt from the gentleman from Dauphin, and when he says this morning that he and his friends regard me with an indignation akin to contempt, let me tell him that the opinion that he entertains of

me does not weigh one feather in the scale which records my self-respect.

The CHAIRMAN. The Chair did not understand the gentleman from Dauphin to say anything of the kind.

Mr. GOWEN. Mr. Chairman: I took the words down, and if the Chair will permit the reporter to read the words, I think they will be found "indignation akin to contempt."

The CHAIRMAN. The gentleman did use that term, but not as the gentleman from Philadelphia understood it. It had no personal application.

Mr. MACVEAGH. Mr. Chairman: I said that the aspersion for the insinuation that a gentleman who voted against this section, the insinuation or the aspersion that a gentleman who opposed this section was not necessarily in favor of reform, was repelled by us with an indignation that was akin to contempt. The gentleman from York (Mr. Cochran) has just come over to remind me that it was the way in which he understood me, and other members understood it in the same way.

Mr. GOWEN. Mr. Chairman: I was fully aware that the gentleman had a great contempt for what I said, and I was led to suppose that the contempt extended to me personally. I am very glad to know it does not.

I came into this Convention as a private citizen. My right on this floor is as good and held by as sacred an authority as that of the gentleman from Dauphin. I am not here as the representative of any corporation, and any taunts or insinuations the gentleman may make will not affect my conduct or influence my vote in any way whatever. If the time shall ever come, that because a man happens to be the president of a large corporation, he is unfitted to come into a Convention to amend the Constitution of Pennsylvania, I will willingly resign the presidency of that corporation, aye one thousand times, rather than I would resign the position which I now hold here. It may be my misfortune that I have adopted a line of life which does not meet the approval of the gentleman from Dauphin. It may be, but I care little. I simply ask the right which every member of this Convention has, that his profession, or occupation, or business, outside of the Convention, shall not be made use of as a taunt and a slur upon him, when he gets up in his place and makes a legitimate argument upon a subject under consideration. That is all

I ask, and this is what I accord to every one else.

In answer to the gentleman from Lehigh, (Mr. Runk,) I have to say that he misunderstood my remarks. When I spoke of voting for this section I meant the people who would vote for the adoption or rejection of the Constitution when it came before them. I trust that I know my duty too well, and that my own feelings are such that I would not, willingly or knowingly, cast any imputation upon any member of this Convention, and I merely ask that the same courtesy shall be accorded to me.

Mr. M'ALLISTER. Mr. Chairman: I had supposed the proposition under discussion admitted of doubt; I had supposed there might be honest differences of opinion as to whether it should or should not be adopted as a part of the organic law, but I did not believe, Mr. Chairman, that the ridicule and the contempt of any member of this Convention would have been bestowed upon it so lavishly as it has been. The gentleman from Delaware (Mr. Broomall) undertakes to ridicule it out of the Convention. He suggests that he has no doubt the committee who reported it would take his proposition and have the ballot acknowledged before and certified to by a justice of the peace, that it might be recorded. Another gentleman proposes that a photograph of the voter shall be attached to his ballot when presented at the poll. Are such suggestions intended to have weight in this Convention against a proposition reported by the Committee on Suffrage, Election and Representation?

Now, sir, I will refer to what the gentleman from Delaware intended as argument. He asks whether this section as reported will accomplish the end proposed, and he suggests that one man may repeat fifty times, notwithstanding this section should be adopted, whether at the same poll or at fifty different polls he did not condescend to tell us. But how, let me ask the gentlemen, would one man repeat fifty times at the same poll, or at any number of polls, without affording the evidence which would lead certainly and inevitably to his conviction? If he writes his own name then he writes that name fifty times in the same hand-writing. Would not that afford evidence against him? If he gets another to write his name then he would have fifty separate witnesses, and who are these witnesses? Not one individual in fifty election districts or pre-

cincts, because the witness is to be an elector of the election district in which the vote is cast. Thus there must be fifty different men, fifty different witnesses, to aid in his conviction and to assist in visiting him with the penalty of his crime. I therefore answer, no such inference can be justly drawn as that drawn by the gentleman from Delaware. But the gentleman from Delaware did not condescend to tell us how ballot-box stuffing and ballot-box changing could be effectually guarded against in any other possible way than that provided by the committee in this section. He told us of repeaters, and he failed to make out his case. But what provision does he suggest against ballot-box changes, against the crimes of those individuals who bribe the officers of an election to allow the box to be taken from their custody, and the entire contents of the box changed and the box returned? How does he provide against that, or how does he provide against the dropping of the ballot on the way to the box and the substitution, by manipulation, of another ticket in place of that deposited by the elector? Neither the gentleman from Delaware, nor any other gentleman in this Convention, has suggested any possible mode by which these frauds can be prevented, except that provided in this section.

Now are these frauds such as should be guarded against? Have they not been repeated, time and again, in this city, and out of this city? Have they not told upon our general elections? Have they not been the means of palming upon us officers that were not elected? Surely they have; and if so, the simple question arises whether the elector will allow himself to be subjected to the little inconvenience that arises out of writing his name himself, or procuring a friend, an elector of the district, to write it for him, and to attest it, in order to prevent the evil? Certainly the trouble is nothing compared with the good consequences that will follow the adoption of the section. The confidence that will be given the community in the result of their ballots will, alone, far more than compensate for the burden. This want of confidence is keeping away from the polls in Pennsylvania, this day, ten votes for every one that will be kept away by this restriction. There are men in this community, by the hundreds and thousands, who do not go to the polls, because, they say, though we do vote, we shall be defrauded out of our rights, and

the minority will palm upon us a man against our choice. The poll will be increased instead of being diminished by this restriction.

These frauds must be guarded against, and I appeal to every man here who has spoken, or is to speak, to inform the committee in what way, except that provided, can the admitted evil be prevented. The old argument that we had when this subject was first under discussion, was that it removed secrecy from the ballot; and that leads me to speak of this amendment, and I call the attention of the committee specially to the changes it proposes.

Three objections were made against the proposition as reported by the committee. The first was that the ballots, although required to be numbered, were not to be numbered consecutively, and that there was not a consecutive record required to be made of that numbering. It was answered, when that subject was before the committee, that it was for the Legislature to prescribe how the ballots shall be numbered and where they should be numbered. It was contended that should not be left to the Legislature, and to remove that objection the first change was made.

Then it was said that the section as reported did not specify where the name was to be written, whether in the inside or the outside. It was thought best, in order to remove that objection, to require it to be endorsed. That is the second change. Now this endorsement of the name or the attestation upon the back discloses nothing. It does not enable the officer, when the ballot is put in, or any one standing at the window, to discover how the elector casts his vote or for whom, and yet it affords the means of securing compliance with the law, because if the endorsement is not upon the ticket, the election officer can say to the elector, "your ticket is not endorsed," and hand it back to him to be endorsed before it is deposited.

Again, it was objected that there was no obligation of secrecy imposed upon the election officers. It was replied, "that is a subject matter for the Legislature. They can prescribe the oath." But that did not seem to be satisfactory to some gentlemen, and therefore it is put in this section, as a part of our organic law, that an oath of secrecy shall be required. How, I ask, Mr. Chairman, is this secrecy of the ballot invaded by these provisions? It is true that the officers, in counting the votes, looking at the endorsement on the

ballot, will know for whom the elector voted. But when the oath of secrecy is enjoined, is not the elector protected? Surely he is completely protected. Who complains of the publicity of dispatches by the electric telegraph? No one; and yet it is only the oath of secrecy that prevents their publication. Who complains of the want of secrecy in what transpires in the grand jury room? And yet it is only the oath of secrecy that prevents what transpires there from being known to everybody. We have then the ballot protected in its secrecy, until there is an allegation of fraud in the district; until the ballot-boxes are opened by the judicial officers, or by those authorized to make an investigation. And under what system on the face of this earth will you detect fraud unless there be publicity at some time. When you come to this point, how every man voted must be made public, or the crime committed by the election officers remains covered, and it is impossible to convict anybody of any crime upon the ballot-box. But if at this time, under some other system that the gentlemen would devise, publicity is given, is this any worse? Both plans stand upon the same footing, and the secrecy of the right of suffrage is necessarily invaded to the same extent by the investigation. The exposure is but an incident of investigation, so that this argument of innovation upon the secrecy of the ballot falls to the ground. There is less than nothing in it.

But it has been insinuated that there has been a scheme, a plan, concocted here, by which one political party in this House is to carry this section against the will of the House. It struck me as a most remarkable insinuation. I would like to see the party in this country that would identify itself with frauds upon the ballot-box, that would throw itself, as a party, against a proposition designed to protect the sacredness of the ballot. I pray to God that the party with which I have the honor to be connected—the party with which I have esteemed it a privilege in all the glorious past to be connected—will never identify itself with any such iniquity. But as to the truth of the insinuation made by the gentleman from Dauphin (Mr. MacVeagh) against the democratic members of this House, that gentleman says he did not know it, and he did not believe that it was true, but that somebody, he did not name, told him that it was true. I ask,

was that a justification for so grave an insinuation?

I may say, Mr. Chairman, that somebody told me that there was an effort being made in this Convention, by politicians, to sweep in the republican party, as a party, in opposition to this measure, that it was going on all the forenoon, in which the gentleman made the insinuation, but I scout it. I could not believe it. I could not believe that anybody would attempt to get up a partisan feeling to defeat a measure reported by a committee on any such ground. Conscious of the fact that there was no partisan division in the committee of fifteen, that democrat and republican stood side by side, and shoulder to shoulder, in committee, and that it was carried by a large majority without any partisan division whatever, I felt sure that the insinuation of the gentleman from Dauphin could not be true. It was most remarkable, Mr. Chairman, that the insinuation should come from, and the tocsin of alarm sounded by, the same individual who inaugurated the only partisan vote that ever has taken place in this Convention.

The CHAIRMAN. The Chair would observe that he desires the gentleman from Centre to confine himself to the subject before the Convention.

Mr. M'ALLISTER. With pleasure, sir. I then hope that having answered these insinuations, as I felt bound to do as a member of the republican party, and to denounce it as far as myself was concerned; for I had, probably, more to do with the subject, certainly had more to do with the proposition that is now under consideration, than any other member, for I wrote that without consultation with any gentleman outside of the committee, and submitted to no one. I do not know that a single democrat in this House knew of the proposition I proposed to make when the re-consideration was moved and carried. I hope, then, that this Convention will decide upon the amendment on its merits, that neither now nor at any other time will partisan prejudices be allowed to influence any member in his vote. We have come here as the representatives of the sovereign people of this Commonwealth, without respect to party. Let us maintain that position and go forward to the ascertainment of truth, and when we ascertain that let us act in accordance therewith.

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Schuylkill, (Mr. Bartholomew,) to strike out the word "shall," and insert instead the word "may."

Mr. DARLINGTON. Mr. Chairman: Was the motion made by the gentleman from Susquehanna withdrawn?

The CHAIRMAN. Yes, sir; it was not in order when offered.

The question being upon the amendment offered by Mr. Bartholomew, a division was called for, and resulted: In the affirmative, fifty-one; in the negative, forty-one.

So the amendment to the amendment was rejected.

Mr. TURRELL. Mr. Chairman: I offer now the following amendment, to come in at the end of the section:

"*Provided*, That this article shall apply only to cities of thirty thousand inhabitants and upwards, but any county of a like number of inhabitants, by vote of a majority of its electors in favor thereof, taken at any general election, may have the same applied to its locality; the same notice to be given of such vote by the sheriff of the county, on the written request of fifty electors of said county, as given of the general election."

Mr. HANNA. Mr. Chairman: I move to amend the amendment, by striking out "*thirty*" and inserting "*twenty*."

Mr. TURRELL. Mr. Chairman: I hope that will be voted down. Let us adhere to the "*thirty*;" that is a fair proposition.

Mr. BROOMALL. Mr. Chairman: Are there not two amendments pending?

The CHAIRMAN. This is an amendment to the amendment.

Mr. BROOMALL. I think, sir, it is an amendment to an amendment to another amendment.

The CHAIRMAN. The gentleman (Mr. Broomall) is right. The gentleman from Centre offered yesterday a substitute for the section, which is an amendment to the amendment.

The question being upon the amendment offered by Mr. Turrell, a division was called for, and resulted: In the affirmative, thirty-nine; in the negative, fifty-one.

So the amendment to the amendment was rejected.

Mr. NILES. Mr. Chairman: I offer the following amendment, to come in as a proviso at the end of the section:

"*Provided*, That so much of this section as provides that the name of the elector

shall be endorsed upon his ballot, shall only apply to cities having more than twenty thousand inhabitants."

Mr. DARLINGTON. Mr. Chairman: I move to strike out the first line of the amendment—the substitute offered by the gentleman from Centre (Mr. M'Allister): "All elections of the citizens shall be by ballot," merely because the language is not very good; and I propose to substitute, so as to make it read: "All elections by ballot, except those by persons in their representative capacities, who shall vote *viva voce*: *Provided*, That cities containing more than thirty thousand population," &c.

Mr. DALLAS. Mr. Chairman: I rise to a point of order: That so much of the amendment as proposes to limit the proposition to thirty thousand inhabitants to a county has been voted down.

Mr. DARLINGTON. Mr. Chairman: The proposition in this form has not been voted down; it is a distinct and separate proposition. This presents the distinct question, whether we can or cannot retain the provision of the old Constitution, with the amendment which the gentleman from Centre (Mr. M'Allister) has engrafted upon it; that is to say, shall we, or shall we not, have for all of this State, except those cities, the provision of the Constitution as it now stands—that all elections shall be by ballot, except those in a representative capacity, and can we not, and will we not apply this proposed remedy to cities, where the mischief is avowed to be? I am willing, for one, that we should adopt for the cities a plan which will correct the mischief of which they complain, and I am unwilling that we should, in order to accomplish that purpose for eight hundred thousand people, impose this provision upon the other two and a half millions of the people of this State, a provision that they do not want.

I am willing to vote for the proposition as a whole, and I think my friend from Centre (Mr. M'Allister) will, upon reflection, see the propriety of accepting this as an amendment to his proposition. Let us retain the proposition of the old Constitution for all the rest of the State, including the county of Centre, and others outside of Philadelphia and Allegheny, and at the same time give the cities where trouble is found to exist, the remedy for that trouble. We have had from the gentleman from Philadelphia, who sits in the north-east corner of this Hall, (Mr. Simpson,) and from another gentleman who

sits next the aisle, (Mr. Dallas,) and from another gentleman who sits upon my right, (Mr. Gowen,) and another who sits in the south-east corner, (Mr. Jno. Price Wetherill,) gentlemen representing both political parties, the open avowal here, that these frauds in Philadelphia are most serious. But these frauds do not afflict the rest of the State. I am willing to give this city what it wants, if it will act as a remedy for the trouble complained of; but why impose it upon the rest of the State? What argument can be given to the people of the country districts to satisfy them —

Mr. ELLIS. Mr. Chairman: I would like to ask the gentleman a question. Has the gentleman from Chester not heard of the sweeping frauds that have been perpetrated during the last few years in Schuylkill, and Lawrence, and Luzerne counties?

Mr. DARLINGTON. Yes; and I will apply it to them, if they want it. Let them have it, if they choose; but do not put Chester, and York, and other counties that do not need it, to the trouble which it will entail, if they do not want it. Show me where the disease is; show me, where you desire, the sore is, and I will cauterize it; but it is not necessary to cauterize the sound part.

Mr. LILLY. Mr. Chairman: I want to ask the gentleman a question —

Mr. DARLINGTON. I would let even Carbon have it if it wants it. [Laughter.]

Mr. LILLY. I wish to ask the gentleman a question. Was not the secretary or the chairman of a standing committee of this State from Chester county?

Mr. DARLINGTON. Who is he?

Mr. LILLY. It is not necessary to name him.

Mr. DARLINGTON. I do not know. I never was secretary of a standing committee. I want this question simplified. I want my friends from Allegheny, who are not satisfied with it, —

The CHAIRMAN. The gentleman will please suspend his remarks until the members come to order. The Convention must keep order.

Mr. DARLINGTON. I believe I have said all I desire to say on the subject.

Mr. SIMPSON. Mr. Chairman: I want to call the attention of the committee to a single fact. The first township, borough, county or precinct vote that was thrown entirely out of the count by reason of illegal votes, occurred in Cambria county, about 1857. That is the first case to be found re-

ported in any of the books on elections in this State; so you will see these frauds began somewhat earlier, and not in the city of Philadelphia.

Mr. WM. H. SMITH. The first fraud that I ever heard of was in Youngwomantown, Adams county, where there was a majority of twelve hundred for a candidate, when there were only two hundred voters in the town.

The PRESIDENT. If no more gentlemen wish to give their historical recollections, the question will be taken upon the amendment of the gentleman from Chester (Mr. Darlington.) The amendment will be read.

The CLERK read: Strike out the words, "all elections of the citizens shall be by ballot," and insert, "all elections shall be by ballot, except by persons in their representative capacity, who shall vote *viva voce*."

"Provided, That in cities containing more than thirty thousand population, every ballot voted shall be numbered in the order in which it is received, and the number recorded, by the election officers, opposite the name of the elector who presents the ballot. Each elector shall endorse his name upon the ballot, or cause it to be endorsed there and attested by another elector of the district, who shall not be an election officer; and the oath of the election officer shall require secrecy as to the contents of every ballot cast at the election."

Mr. D. N. WHITE. Mr. Chairman: I move to divide the question, if it is proper. My object is to allow members to say, by their votes, whether they are willing to have the tickets numbered. I wish to divide, so that we can have a separate vote upon the proposition to number, and strike out that part that has reference to putting the names on.

Mr. GOWEN. Will the gentleman please state how he would divide the question, so that we can vote intelligently?

Mr. BROOMALL. I call for a division into thirds.

Mr. HOPKINS. I would inquire whether that can be done.

The CHAIRMAN. Gentlemen cannot call for but one division at a time.

Mr. BROOMALL. Then my division comes first. I call for a division of the first sentence.

Mr. D. N. WHITE. Mr. Chairman: I have not yet relinquished the floor. If

the Clerk will read the section, I will indicate the division.

The CLERK read:

"All elections of the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it is received and the number recorded, by the election officer, opposite the name of the elector who presented the ballot."

Mr. D. N. WHITE. That is the part that I wish to have presented separately to the Convention.

Mr. BROOMALL. I ask a division of that.

The CHAIRMAN. The gentleman from Allegheny (Mr. D. N. White) has the floor.

Mr. D. N. WHITE. Mr. Chairman: I have not said a word upon this matter during the whole debate of it. I think that is as far as this Convention ought to go. It will impose as many burdens upon voters as ought to be imposed. I am perfectly willing, if that will meet the views of the Convention, that the tickets shall be numbered, and that will identify every ballot put into the box. His name has a number to it, his ballot has a number to it, and in case of any contested election or any examination you will have nothing to do but open the box and trace the votes.

Mr. LILLY. And allow the election officers to stuff the ballot-boxes.

The CHAIRMAN. The gentleman from Carbon (Mr. Lilly) will not interrupt the gentleman from Allegheny (Mr. D. N. White.)

Mr. LILLY. I thought he was through.

Mr. D. N. WHITE. I am satisfied that by putting the names on the tickets you will open up greater opportunities for fraud than you correct. Gentlemen who have attended the polls have observed a crowd of men coming up to vote, with their buckets in their hands, coming from the factories and from their work on their way to their homes and stopping to vote. They will decline, in nine cases out of ten, to put their names on the ballots. They will say "you do it," or "you do it." How easy it will be for scheming men to slip in the wrong ticket and put the voter's name on it, and it will be frequently done by those who wish to defraud. It will give a greater opportunity to defraud than any other way that I can think of. A great many men are not in the habit of writing their names. The great mass of farmers do not often write. Many of them come there after riding four or five miles. It may be that there will

be no opportunity for writing. They will ask some one to write their names. They will esteem it a hardship, and many a good man will not vote at all. We know how difficult it is now to get good men to go to the polls; how we exert ourselves, and go around and urge this man and that to go and vote, and they will say: "Well, if I have to write my name upon four or five tickets, and be put to so much trouble, I think I will not go." I believe the people will look upon it as a hardship, and not esteem it as a reform. Therefore I am opposed to it.

I deny in toto that the gentlemen, either in this House or out of it, who are opposing this matter of writing their names upon the tickets, are opposed to a reform of the ballot-box. No man has a right to say that. The present plan which we have pursued for long years, as far as we in the country know any thing about it, have found it honest and upright. If it is not so in the city, here, we cannot help it.

I hope this Convention, in its sober "second thought," will consent to adopt this intermediate method of allowing the numbers to be placed upon the tickets, which I think will answer all purposes, and let this method of writing the names thereon go by.

Mr. BIDDLE. Mr. Chairman: I do not propose, as I have already spoken upon this question in committee of the whole, to go over what I have already said, but I rise to say that I agree with the gentleman from Allegheny, (Mr. D. N. White,) and I am willing to go that far; and I trust gentlemen who favor this identification, as they call it, of the ballot, will stop at this point. I feel convinced from all I have heard on this floor, and from all the knowledge I believe I brought with me into the Convention, that this is an experiment which will disappoint those who introduced it. I am willing to go to this limited degree, and I merely rise to say that, and to throw it out to gentlemen who are very much attached to this new plan, I ask them to receive it in the spirit of concession, in which it is offered, because I believe in this modified way they will get it, but I think if they persist in asking for more they will lose it altogether.

Mr. RUNK. Mr. Chairman: I wish to offer an amendment.

The CHAIRMAN. An amendment to the amendment is now pending, and no

further amendment will be in order until that is disposed of.

Mr. HAZZARD. Mr. Chairman: I think we had better pause a little while just here. We are voting down all these propositions, it seems to me, just because we can. The pending proposition, divided at the instance of the gentleman from Allegheny, (Mr. D. N. White,) will serve every purpose, and will disencumber the provision from the process of writing the name upon the ballot, and it is well known that in the country it is a very inconvenient thing to do, and will not accomplish, I presume, what its friends anticipate. So far as it is necessary to recognize that vote upon contested elections, the number which will be placed upon the ticket by the election officers, relieving the voter from the trouble of putting his name upon it, and preventing the inconvenience which will ensue to many who cannot write, for all practical purposes, it seems to me, will be entirely sufficient. In cases of contested elections the investigators can trace the votes, and it will disencumber it from unnecessary trouble and annoyances.

It seems to me that we ought to pause here, and pass this as a general provision, not for Philadelphia, but for the whole country, and thus avoid the introduction into the Constitution of special provisions, when we propose to insert in the Constitution such provisions as will prohibit the Legislature from doing that very thing. It will not be objected to, I presume, in the country, and will serve all practical purposes.

Mr. RUNK. Mr. Chairman: I presented an amendment which I have now sent to the Chair to be read, if in order, for information.

The CHAIRMAN. It can be read as a part of the gentleman's remarks.

The CLERK read: "All elections by citizens shall be by ballot, open or secret, as the elector shall prefer. The ballot shall be numbered by the election officer when received, and the name of the elector endorsed either by him or in his presence, and the number of his ballot given to him by the officer."

Mr. RUNK. Mr. Chairman: I present this amendment, not because I favor the report of the standing committee, but because I believe if any provision is to be adopted by this committee and this Convention, by which the ballot deposited by any particular voter shall be identified, that this is as far as this committee and

this Convention should go. It will be observed that this will answer all the purposes, contemplated by the standing committee, with the exception of the single fact that when the ballot has been handed in at the window the officers of the election may manipulate it and substitute in lieu of the ballot deposited by the voter, a ballot in his own possession, and I think this Convention should adopt a provision prohibiting the election officers from taking into the room in which the officers of the election sit any ballot whatever; and if that is the case the amendment which I propose to this Convention now will answer all the purposes of a ballot deposited with the name thereon, be written by the party by whom it is deposited.

It will be perceived that this provision does not interfere with, hinder or restrict the right of a party who offers to vote, but that it provides that the election officer, when he receives the ballot, shall endorse thereon the number of the ballot and the name of the party who deposits it. All these services are to be performed by the election officers, and the only possible event in which fraud could be possibly perpetrated would be the substitution of another ballot by the election officer for the one handed into the window by the voter. It will thus be observed that all restriction in the free exercise of the elective franchise is at once removed, and as a complete mode of identification of the ballot of the voter is furnished in the event of the perpetration of fraud. The provision I shall offer constitutes as acceptable a system of voting as can possibly be provided. I do not agree with the argument which has been advanced during the discussion of this question—that the endorsement of the number and the name of the voter upon the ballot will interfere with the secrecy—because the persons who sit inside the election board know at once, by the difference of type, almost invariably the character of the vote that is deposited—excepting in cases where there may be names crossed out and other names inserted thereon, either by printed slips or otherwise. It seems to me if the amendment I shall offer is adopted, it will afford all the necessary means for the detection of fraud; and hence I shall vote for it in preference to the report of the standing committee.

The CHAIRMAN. The question is now upon the first division of the section as amended by the substitute offered by the

gentleman from Centre (Mr. M'Allister.) The substitute will be read for the information of the committee.

The CLERK read as follows:

"All elections of the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it is received, and the number recorded by the election officers opposite the name of the elector who presents the ballot. Each elector shall endorse his name upon his ballot, or cause it to be endorsed thereon, and attested by another elector of the district, who shall not be an election officer; and the oath prescribed for the election officers shall require secrecy as to the contents of every ballot cast at the election."

Mr. HUNSICKER. Mr. Chairman: I desire to ask, for information, if the separate divisions of the amendment are voted down will that defeat the amendment itself?

The CHAIRMAN. Such is the ruling of the Chair.

ELECTIONS BY BALLOT.

The question was then taken on the first division of the amendment, viz: "All elections shall be by ballot," and the division was agreed to.

NUMBERING THE BALLOTS.

The second division of the amendment, viz: "Every ballot shall be numbered in the order in which it is received, and the number recorded by the election officers opposite the name of the elector who presents the ballot" was then read, and upon a division being called it was agreed to, a majority of a quorum voting in the affirmative.

ENDORSEMENT AND SECRECY OF THE BALLOT.

The third division of the amendment was then read, viz: "Each elector shall endorse his name upon his ballot, or cause it to be endorsed thereon, and attested by another elector of the district, who shall not be an election officer, and the oath prescribed by the election officers, shall require secrecy as to the contents of every ballot cast at the election."

Mr. GOWEN. Mr. Chairman: Is it proper to say one word? I simply wish to say this—

The CHAIRMAN. The gentleman has spoken twice on the question. Shall he have leave to speak again?

Mr. MACVEAGH. Will the Convention pause one moment? The gentleman from Philadelphia (Mr. Gowen) is chairman

of the Committee on Revision and Adjustment, but surely independent of this fact we certainly ought to treat with deference a member who rises perhaps at the last moment before a vote is taken upon a question, to suggest something that may be very important. I trust that leave will be extended to the gentleman.

Mr. BUCKALEW. Mr. Chairman: I rise to a point of order, and it is: That after a vote upon a pending question has been ordered, and the Convention has proceeded to take the vote, debate is out of order pending the division of the Convention.

The CHAIRMAN. Shall the gentleman have leave to proceed?

["Aye." "Aye." "Aye."]

Mr. GOWEN. Mr. Chairman: I simply desire to say, if the pending division of the question is adopted, there can be no possible identification of the ballot, except by the election officer, who in nine cases out of ten—

["Question." "Question." "Question."]

The question being then taken on the third and last division of the amendment, a division was called which resulted as follows: Ayes, fifty-seven; noes, fifty-five.

So the third division of the amendment was agreed to.

The CHAIRMAN. The question is upon the section as amended.

THE VOTE OF DUMB PERSONS.

Mr. HEMPHILL. Mr. Chairman: I offer the following amendment:

"In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the vote shall be personally and publicly given *viva voce*: *Provided*, That dumb persons entitled to suffrage may vote by ballot."

Mr. RUNK. Mr. Chairman: I offer the amendment I submitted as a substitute for the pending amendment.

Mr. BUCKALEW. Mr. Chairman: I rise to a point of order, and it is: That nothing is now in order, by way of an amendment, except something additional to the section as amended.

The CHAIRMAN. The point of order is sustained. The amendment of the gentleman from Lehigh (Mr. Runk) is not in order, as it contemplates a change in the section as amended.

The question was then taken on the amendment offered by Mr. Hemphill, and it was not agreed to.

Mr. STRUTHERS. Mr. Chairman: I offer the following amendment, to come in at the end of the section.

"*Provided*, That if this section shall not be approved by the vote of the people, when separately submitted for that purpose, the second section, third article, of the present Constitution shall remain in force."

Mr. STRUTHERS. Mr. Chairman: I desire to state the reasons I have in view in presenting this amendment. There seems to be a very strong disposition to oppose the adoption of the section reported by the committee, as it has been amended, and the report of the committee itself.

Now, sir, this is a new proposition before the people of Pennsylvania, altogether. This is a proposition. I venture to say, no gentleman heard talked of before he came here. It has been brought forward here and discussed earnestly and ably, and seems to strike the judgment of very many gentlemen favorably. They seem to be interested in it and to regard it as a great improvement to be introduced into the Constitution. But it is an attempt to introduce, as an experiment, what has not been discussed before the people of the State; and my own opinion is that the people of the State will not approve of it; that this section, even if adopted here in this form, would be disallowed, would not be agreed to by the people. In that case we would be without any provision on the subject, and that is why I have offered this proviso, that in case, when submitted upon a separate vote to the people, this proposed plan shall fail, we will still have a provision in the Constitution on the subject. We will then have the old provision itself still in force if this proposition shall come before the people and be disapproved. But without this proviso we will, in such case, be without any provision on the subject in the Constitution. It appears to me, therefore, that it is highly important that such a proviso should be adopted.

The CHAIRMAN. The question is on the proviso.

Mr. BAKER. Mr. Chairman: Can it be read for information?

The CLERK. "*Provided*, That if the foregoing section shall not be approved by the votes of the people, when separately submitted for that purpose, the second section of the third article in the present Constitution shall remain in force."

Mr. STRUTHERS. Mr. Chairman: I

will make one verbal correction before the vote is taken, to change the word "foregoing," in the first line, to the word "this."

The CHAIRMAN. The proviso will be so amended.

The proviso was rejected.

The CHAIRMAN. The question is on the section as amended.

On the question of agreeing to the section, a division was called which resulted: Fifty-three in the affirmative and forty-seven in the negative. So the section was agreed to.

The CHAIRMAN. The question is on the next section, which will be read.

The CLERK: SECTION 8. In cases of contested elections no person shall be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceedings.

Mr. M'ALLISTER. Mr. Chairman: I desire to correct a mere typographical error, to strike out the "s" in the last word, and make it "proceeding" instead of "proceedings."

Mr. HEMPHILL. Mr. Chairman: I move the committee rise, report progress and ask leave to sit again.

On agreeing to this proposition, a division was called. A majority of a quorum not voting in the affirmative, the motion was declared rejected.

Mr. RUNK. Mr. Chairman: I wish to know if it is proper to propose an amendment to this section or not. The section provides that the holders of shares in a corporation shall be entitled—

The CHAIRMAN. That is not this section. We are considering the eighth section.

Mr. RUNK. Mr. Chairman: I ask for information. What is the section now under consideration?

The CHAIRMAN. The section under consideration is the eighth.

Mr. M'CLEAN. Mr. Chairman: I agree with the minority report of the Committee on Suffrage, Election and Representation, adverse to this section. I am one of a small minority of this body that is opposed to interference with the Bill of Rights, in the present Constitution of the State. The minority report of the Committee on Suffrage, Election and Representation characterizes this section as an innovation, a dangerous, mischievous innovation upon our American jurispru-

dence. The ninth article which is in our Bill of Rights contains a provision that, in all prosecutions, no one can be compelled to give evidence against himself. It is not a sufficient answer to this to say that this section provides that such testimony shall not be afterward used against him in any judicial proceeding. I am satisfied with the Bill of Rights as we have it. The liberties of the people of this Commonwealth have been preserved in the fullest manner under it, and I am willing that it should go down to my children, and to others, as their sufficient safeguard and protection against wrong. I am opposed to any innovation upon the protection which every man enjoys, in not being compelled to testify against himself, or compelled to criminate himself; and for that reason I shall vote against the section now under consideration.

Mr. BUCKALEW. Mr. Chairman: I desire to make but few remarks upon this subject. The ninth article of our present Constitution, as the Committee on Suffrage, Election and Representation understand it, prohibits the extorting of evidence from any party in a criminal proceeding. Yet it has been considered by some that this prohibition was universal; at all events the law has been made or so construed in this State. Now in the particular cases provided for in this section, a different rule is necessary and proper. Take the instance of an election agent who has corrupted fifty or a hundred votes in a district. The fact may be notorious. Many of those to whom money has been paid, may have stated that fact, and yet when you proceed to investigate the case, you may call the whole list, one after another, and they can defy you to obtain from them the slightest information upon which to base a decision. Your object may not be to pursue the recipients of the money. You may desire and ordinarily would desire, only to punish the principal offender, the man who has corrupted the votes. You may desire to obtain their testimony against him, and they would be perfectly willing to testify, at least many of them would, if it were not for the existing provision of law that there shall be no compulsion upon them. If you have this rule by which they cannot be permitted to withhold their testimony, a great many of these persons would willingly testify under the conditions that their testimony given in the interest of public justice should not be used after-

ward against them. At present you are often powerless to discover the truth. With your witnesses standing before your tribunals, you are powerless to procure a word from him. It rests in the discretion of the witness whether he will tell you anything at all about the transaction of which he has knowledge. Necessarily you have to allow him to be the judge himself, whether the testimony will criminate himself or not. Nay, the law is, that if his testimony will *tend* to his own crimination he may withhold it from you.

Now, Mr. Chairman, I am not impugning this rule of the law in cases of private transactions which are investigated in courts of justice, or the constitutional prohibition in criminal cases, that when you put a man into a prisoner's dock for trial you shall not extort from him any confession. I am not impugning that rule of law, or that provision of the Constitution, applicable, as it is, almost invariably to questions of a private character—to questions concerning the relations of individuals in the ordinary transactions of society. But, in this business of electing the officers of the government, a public duty charged upon the citizen, not relating to the affairs of private life, but business in which everybody in the State is interested, in which the public interests overwhelmingly prevail, and transcend any private interest which may be involved. I would not permit any person who knows a single fact, interesting to the public and necessary to the administration of public justice, to withhold it. Under the limitation that what he shall say shall not be used against himself in any subsequent judicial proceeding, I cannot see that any abuse or any hardship will follow from the adoption of the section.

Mr. DARLINGTON. Mr. Chairman: I cordially agree with the objections of the gentleman from Adams (Mr. McClear.) I do not see the propriety of any distinction being made by our Constitution and laws between the offence of stuffing the ballot-box or fraudulent voting, and any other crime or charge that may be made against a citizen. If there be any propriety in compelling a man to testify in a manner which may criminate himself, or fix upon him a stigma of any kind, you might as well include all offences as one. Can any one give me a reason for the distinction between a crime against the ballot-box and a crime against property, or the individual has not been pointed out by anybody. I submit to this committee

that no distinction beside the punishment of the principal can be made between one offence and another. If that portion of the Bill of Rights which prohibits you from compelling a man to criminate himself is right to be retained as to any offence, it is practically right to be retained as to all. You should not retain one kind of crime as to which the criminal's, or alleged criminal's, mouth should be secret, and another to which he shall be compelled to testify, because it is not the conviction and the punishment alone that is to be guarded, but it is the social standing and position in society of the individual. He shall not be compelled to testify in anything which shall bring him into public scandal or disgrace any more than he should be brought into a criminal court and be punished for the offence. The question is, then, is it wise? The ninth section of article ninth of the old Constitution, known as the Declaration of Rights, says: "That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information, a speedy trial by an impartial jury of the vicinage." He cannot be compelled to give evidence against himself, nor can he be deprived of life, liberty or property unless by the judgment of his peers or the law of the land.

That is the provision of our Constitution, as it has been for eighty years. The question is: Do we mean to retain that good provision or break it? If we mean to retain it, and say it is right, and agree that no man shall be compelled to give testimony against himself—that he shall wait until he has been proved to be guilty by witnesses—not himself. If it is wise, I say, to retain that provision, then it is certainly unwise to infringe upon it—even with regard to the purity of the ballot-box. It would be a very strange spectacle were we to present it, that as far as one crime, say murder, manslaughter or burglary—a man accused shall not be compelled to testify about himself, and that with regard to another crime he may be compelled—in other words, that English and American justice shall be administered in one case, and French justice in another. I believe that throughout the French territory—if not in other countries on the continent of Europe—the first thing they do is to put a

man to the torture to make him tell all he knows about the crime, and exculpate himself if he can. That, however, is not right, according to our way of thinking. Every man is believed to be innocent until he is proved to be guilty, and therefore the Constitution guarantees to him the right of silence until proved by other testimony that he is guilty. I say if that provision be retained, then this provision now before us is a clear violation of it. What is it? "In cases of contested election no person shall be permitted to withhold his testimony, upon the ground that it may criminate himself." He shall be compelled to testify, even if it criminate himself. Now is the security of the ballot-box of so much greater importance than the security of life, that if a man should be compelled, in one case, to testify against himself, he should not be compelled to do so in the other case? I have an idea that life, and liberty, and reputation are among the first things to be looked to, and neither of these should be taken from him by any criminal proceeding with his help. He should be sacred. His testimony—whatever he may know himself, he is at liberty to withhold and let it die with him, if he pleases. Society will not call upon him to say whether he is guilty or not, except to answer when he is on trial on the charge, and society will not call upon him to say whether he is guilty or not, by putting him to the book.

Now is it right to make an exception with regard to a crime, insignificant when compared with the destruction of life, and insignificant as compared with destruction by burning, or as compared with the violation of the person. A man who violates your wife or your daughter by force has the privilege of saying nothing until he is proved to be guilty, and a man who commits a murder has the same privilege; the man who fires your house and destroys all within it has the same privilege. These all have the privilege and immunity of saying nothing, as to whether they are guilty or not, even in these high crimes; aye, even in treason against the State. And are not these offences of higher import than the ballot-box purification? Why, surely, what signifies the ballot-box and all its contents against the life, and virtue, and purity of the people. I venture to say this Convention are not prepared and never will be prepared to modify or change the laws and abolish that provi-

sion of the Bill of Rights; and if we do not, and if that is retained, then this section, as it stands, must be voted down. They cannot stand together with any propriety. They could not, with decent respect for ourselves, be permitted to stand. Two principles so opposite to each other as these are, could not be permitted to stand, with self-respect on the part of this Convention. Our own character, as consistent men, would require that we should dispose of one or the other of these, and not adopt diametrically apposite principles. For these reasons I am opposed to the adoption of the amendment as it stands, as altogether unnecessary. Leave the criminal, if such he be, against the election laws, to stand upon the same rights and privileges as any other man; aye, and with perfect immunity, as far as regards testimony. Leave him the privilege of being silent until he is proven guilty.

Mr. SIMPSON. Mr. Chairman: With all due respect for the gentleman from Chester, (Mr. Darlington,) I cannot see that the proposition now before the committee can, in the slightest degree, affect or change the ninth section of the ninth article of the Constitution, commonly called the "Bill of Rights." As I read that section, it provides "that in all criminal prosecutions the effect of the section applies, and can apply to no other than a criminal prosecution." That raises the question: Then is a contested election case a criminal prosecution or not? It has never been so held in Pennsylvania, and is not so held now. It is not, in one sense, a private prosecution or a civil suit, but it is a prosecution in the nature of a great public investigation, a question in which the public are directly interested, no matter what the office may be that may be under consideration. It is not a criminal prosecution, and therefore the provision that is proposed to be inserted into the new Constitution cannot, in any way, affect, or change, or modify that section of the Bill of Rights as it now reads. If I thought it had such an effect I would not vote for it, but I hold that it has not. For more than thirty years we have had upon the statute book a section that requires that where a man was proved to have voted illegally, that he might be compelled to disclose for whom he voted, and no one suspected that that was a regulation against this section of the Bill of Rights. It was held by the courts that persons were compelled to disclose for

whom they cast their illegal votes, yet it was not held to be a violation of the ninth section of article ninth. Surely, if it had been, the court would not have compelled the disclosure.

For more than thirty years we have been practicing under it, and no one has suspected until now that a contested election case was a criminal prosecution. If the argument was based upon a good foundation, I should go with the gentleman from Chester (Mr. Darlington) upon it, but as I believe it to be upon a bad foundation, I cannot agree with him, and the Convention will be obliged to say, if they come to his conclusion, that a contested election case is a criminal prosecution, and therefore in violation of the Bill of Rights; but should they adopt the proposed section, as I believe they ought, for the reasons assigned by the gentleman from Columbia, (Mr. Buckalew,) this section will be needed to make the whole perfect in all its parts.

Mr. M'ALLISTER. Mr. Chairman: The question has been asked, should a man be compelled to testify against himself in election frauds, and not be compelled so to testify in other cases? This offence has been compared to offences against individuals. This, Mr. Chairman, is the mistake that gentlemen fall into. There is a clear and manifest distinction between the offences arising out of the formation and nature of government, and this is the distinction. We are here to form an organic law. Every citizen of this Commonwealth is represented in this body. We are here as representatives, and this representation is a necessity. The people are presumptively here in their sovereignty, individually and collectively. Representation is the corner-stone, the great foundation upon which the structure of our government is to rest. Now this section contains an agreement of every man with every other man in the community that the citizen who conspires with his fellow-man to undermine that foundation shall be compelled to testify to his own guilt and the guilt of his fellow. In the formation of government every man agrees to surrender certain of his rights, the better to secure other rights. The surrender of the right not to be compelled to criminate himself is a small sacrifice in order to secure and preserve intact the great foundation upon which all his civil rights depend.

We have had the testimony of several members of this Convention, that even in

country districts in the State men have a price for their votes, and that in close districts they have been bought by the fifties and hundreds; money is furnished by the candidates, or furnished by the emissaries or agents of the candidates to purchase votes. That is the evil which we propose by this section to remedy. We cannot remedy that evil without evidence, and how are we to obtain the evidence without the adoption of this section? The knowledge that the government must get in order to punish the criminals is in the exclusive possession of the parties to the fraud, either as purchasers or as purchased. Suppose twenty-five men come up to one poll and take the proffered consideration in a private way from the man who acts as a purchaser, and suppose it is noised about, you cannot make it out unless you have the testimony of at least of some one of the twenty-five who have been purchased; but the man who has purchased them, hearing of the suspicion cast upon him, comes to them and says: "Gentlemen if you say one word about your having taken money; if you agree to become a witness, or say anything about it, I will have you arrested for this fraud; I will have you imprisoned to-day; I will have you in the penitentiary just as soon as the courts can convict you. He does that either by himself or by his friends, and their mouths are closed and their evidence cut off. This section then requires them to testify, and relieves them from the penalties that may follow their testimony. They shall not be prosecuted for that crime, although they testify that they have been participants therein. "Their testimony shall not be used against them."

If this section is adopted we will have, not one, but the fifty men, who have been purchased, willing to testify to the guilt of the agent of the man who furnished the money to corrupt the ballot, and he will be punished and placed where he can do no further harm instead of misrepresenting his constituency. An example or two and we shall have no more election frauds of that kind. The evil will be thus reached and remedied without difficulty. Why then should we not have this provision? In this way we reach the author and thus prevent the fraud. This is a crime which, as the law now stands, it is the highest interest of all parties participating in it to conceal. Remove the terrors of the law which coerce concealment, and we shall have no more money used

by candidates nor their agents. The distinction is palpable between private offences which only affect one, or two, or a dozen, or twenty, individuals in the community, and the offence which strikes at the foundations of the government. We had better form no government at all than to allow the government we establish to be undermined by villains who cannot be detected, who cannot be convicted and punished, by reason of the very instrumentality we allow them to retain in their hands, to stop the mouths of everybody who knows anything about their crimes against the government.

The question being then taken upon the eighth section, it was agreed to.

Mr. LANDIS. Mr. Chairman: I move the committee do now rise, report progress and ask leave to sit again.

The motion was agreed to, and the committee rose.

IN CONVENTION.

Mr. LAWRENCE. Mr. President: The committee of the whole have again had under consideration the article reported from the Committee on Suffrage, Election and Representation, and has instructed its chairman to report progress and ask leave to sit again.

Leave was granted to the committee to sit again on next Monday.

THE EXECUTIVE DEPARTMENT.

Mr. CURTIN. Mr. President: I ask leave, at this time, to present a report from the Committee on the Executive Department.

Mr. WORRELL. Would it be in order to move to dispense with the reading of the report?

The PRESIDENT. It will not be out of order, but it is regular to read a bill or article when it is brought into the House.

The CLERK read the report.

DEBATE IN COMMITTEE OF THE WHOLE.

Leave being granted, Mr. Lilly offered the following resolution, which was read and laid upon the table, under the rule:

Resolved, That in committee of the whole, hereafter, speeches upon any proposition, or amendment to propositions, shall be restricted to one speech, of not more than ten minutes, without permission.

Mr. WORRELL. Mr. President: I move the Convention do now adjourn.

The motion was agreed to.

So the Convention, at two o'clock and five minutes, adjourned until Monday next at eleven o'clock A. M.

FIFTIETH DAY.

MONDAY, *February 24, 1873.*

The Convention met pursuant to adjournment, at eleven o'clock A. M., President Wm. M. Meredith in the chair.

Prayer was offered by Rev. J. W. Curry.

The Journal of Friday was read and approved.

NO PROHIBITION.

Mr. DE FRANCE presented a petition from Abner Applegate, of Mercer county, asking for the insertion of a clause in the Constitution against the prohibition of the sale or manufacture of intoxicating liquors, which was referred to the Committee on Legislation.

PROHIBITION.

Mr. MANTOR presented the petition of citizens of Crawford county, asking that a clause be inserted in the Constitution prohibiting the manufacture and sale of intoxicating liquors, which was referred to the Committee on Legislation.

Mr. CURRY presented a petition from the citizens of Duncansville, Blair county, to the same purport.

Mr. FULTON presented a petition from the citizens of Westmoreland county, to the same purport, both of which were referred to the Committee on Legislation.

LEAVE OF ABSENCE.

Mr. D. N. WHITE asked and obtained leave of absence for Mr. MacConnell, of Allegheny, for a few days from to-day.

Mr. CURRY asked and obtained leave of absence for Mr. Russell, of Bedford county, for a few days from to-day.

Mr. DALLAS asked and obtained leave of absence for Mr. Corson, of Montgomery, for a few days from to-day.

Mr. LILLY asked and obtained leave of absence for Mr. Davis, of Monroe county, for a few days from to-day.

Mr. HEMPHILL asked and obtained leave of absence for Mr. Broomall, of Delaware, for a few days from to-day.

Mr. HEMPHILL asked and obtained leave of absence for Mr. Boyd, of Montgomery, for a few days from to-day.

EXAMINING INMATES OF INSTITUTIONS.

Mr. BARDSLEY offered the following resolution, which was referred to the Committee on the Judiciary:

Resolved, That the Committee on Judiciary be requested to report a section in the Constitution to give to the judges of the courts of common pleas and quarter sessions of the several counties of the State, the power to enter or cause to be entered by the proper officers of the courts, any institution of any character whatever, for the purpose of examining the same or any of the inmates thereof.

LIMITING DEBATE IN COMMITTEE OF THE WHOLE.

Mr. LILLY. Mr. President: I call up the resolution offered by me on Friday last.

The PRESIDENT. The resolution will be read for information.

The CLERK. *Resolved*, That in committee of the whole hereafter, speeches upon any proposition or amendments to propositions shall be restricted to one speech of not more than ten minutes without permission.

On the question of proceeding to second reading, a division was called, which resulted: Forty-one in the affirmative and eighteen in the negative, so the resolution was read a second time.

On agreeing to the resolution, the yeas and nays were required by Mr. Cochran and Mr. De France, and were as follow, viz:

YEAS.

Messrs. Achenbach, Addicks, Baker, Black, Charles A., Carter, Corbett, De France, Dunning, Gilpin, Guthrie, Hanna, Hopkins, Horton, Knight, Landis, Lawrence, Lilly, M'Culloch, M'Murray, Mann, Mantor, Minor, Mott, Newlin, Palmer, G. W., Patterson, T. H. B. Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Ross, Simpson, Smith, H. G., Smith, Henry W., Stewart, Struthers, Turrell, Walker,

Wetherill, Jno. Price, White, David N., White, J. W. F., Woodward—43.

N A Y S.

Messrs. Alricks, Baily, (Perry,) Bardsley, Campbell, Cochran, Craig, Curry, Curtin, Cuyler, Dallas, Dodd, Elliott, Fulton, Hay, Hemphill, Heverin, Howard, Kaine, Lear, M'Allister, M'Clean, Niles, Wherry and Meredith, *President*—25.

So the resolution was agreed to.

ABSENT OR NOT VOTING.—Messrs. Ainey, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Beebe, Biddle, Black, J. S., Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Carey, Cassidy, Church, Clark, Collins, Corson, Cronmiller, Darlington, Davis, Edwards, Ellis, Ewing, Fell, Finney, Funck, Gibson, Gowen, Green, Hall, Harvey, Hazzard, Hunsicker, Lamber-ton, Littleton, Long, M'Camant, M'Connell, MacVeagh, Metzger, Palmer, H.W., Parsons, Patterson, D.W., Porter, Pughe, Reed, John R., Reynolds, James L., Reynolds, S. H., Rooke, Runk, Russell, Sharpe, Smith, W. H., Stanton, Temple, Van Reed, Wetherill, J. M., White, Harry and Wright—65.

Mr. WHERRY. Mr. President: I rise to a point of order. I think it requires a two-thirds vote to adopt the resolution. I call the attention of the President to Rule 25: "In committee of the whole a delegate may speak oftener than twice upon any subject." Rule 40th says: "No rule shall be altered or dispensed with, without a two-thirds vote of the members present."

The PRESIDENT: The Chair understands that to be to dispense with a rule upon a particular occasion, and he holds that it does not require a two-thirds vote to adopt a new rule of the House, which has now been done, the resolution having lain upon the table for one day, and having now been taken up and adopted. For that reason the Chair is of the opinion that a majority of two-thirds is not required.

IN COMMITTEE OF THE WHOLE.

The Convention then, as in committee of the whole, Mr. Lawrence in the chair, proceeded to the further consideration of the article reported by the Committee on Suffrage, Election and Representation.

The CHAIRMAN. The question is upon the ninth section.

The CLERK read: "No election or appointment to fill a casual vacancy in a public office shall extend beyond the unexpired term."

Mr. Kaine. Mr. Chairman: It strikes me that this section does not belong to this article, but, more properly, to the Committee on Offices. The Committee on Offices is preparing sections on various subjects of this kind, and this is one of them. The subject has no connection whatever with suffrage and election. I submit, therefore, that it does not belong to this article of the Constitution at all.

Mr. WHERRY. Mr. Chairman: I desire simply to add that my venerable friend from Fayette (Mr. Kaine) is chairman of the Committee on Commissions and Offices, and I trust that this section will be passed over.

Mr. M'ALLISTER. Mr. Chairman: I suppose there is no objection to the adoption of the section at present. We supposed that it belonged to this committee. There is an interloping, of course, in every case in which committees are appointed upon principles and not upon articles; but there is no objection to its being adopted here. If there is a similar provision to be reported by another committee, it will not interfere with this. I think it is well, in all such cases, to allow a subject to be passed upon, so as not to prejudice the report of the committee in any way.

Mr. HAY. Mr. Chairman: It seems to me that there are objections to the consideration, certainly to the adoption, of this clause at this time. Amongst other reasons for this, that it applies to the judiciary, and until the report of the Judiciary Committee has been made to the Convention and we know how many judges there are hereafter to be, and how they are to be elected—whether singly or in groups, and if in groups then in what manner—we cannot properly enter upon the consideration of the question whether the election of a judge to fill a vacancy shall be for the remainder of an unexpired term or for a full term. I am not prepared to vote upon this question now, and hope the consideration of the section will be postponed until the report of the Judiciary Committee is before the Convention.

The only way in which the consideration of the question can be postponed in this committee is to vote down the section now, and let it come up again when the report of the Judiciary Committee is before us.

The question being taken upon the section it was rejected.

Mr. LILLY. Mr. Chairman: I offer a new section, to come in at this point.

The CLERK read: "It being the duty of every elector to vote, the Legislature may pass such laws as it may deem necessary to secure the performance of that duty.

Mr. WHERRY. Mr. Chairman: I rise for information—whether it would be proper to introduce a new section at this stage.

The CHAIRMAN. It is in order.

Mr. WHERRY. After the motion to postpone the following section?

The CHAIRMAN. Yes, sir.

Mr. LILLY. Mr. Chairman: At the suggestion of a member of this Convention and of quite a number of citizens of the Commonwealth, I introduced a resolution at Harrisburg, during the early days of the Convention, upon the subject of compulsory voting. Since that time I have had quite a number of communications upon that subject, and have been approached by men of intelligence from all parts of the State, urging me to press the consideration of the question upon the Convention. I am fully convinced that it is proper and fully convinced that it should be adopted by the Convention. Whether we are far enough advanced in civilization to go so far as that, I am not ready to say. It is well known that there are from twenty-five to seventy-five thousand of the best citizens of the State of Pennsylvania who do not usually attend elections, and if these men did attend and exercised the elective franchise as they should do, it would probably change the complexion of many elections. I can see no objection to it. It may be said that it is contrary to the spirit of our institutions. I think not. We say that it is a man's duty to sit upon a jury, and the laws compel him so to do, we say it is the duty of a man to hold municipal and other offices, and if he refuses to do it we fine him for so refusing, and also the same is true with reference to a great many other things which we compel people to do and the re-

sult of which is no more beneficial to the institutions of the Commonwealth than their going to the polls and casting their votes. This proposition does not compel a man to vote any particular way, but compels him to show himself at the polls and vote in some way.

I am not in hopes of passing this measure through the committee or the Convention, but I feel under obligation to persons who have approached me, and for this reason I have brought it up at this time.

Mr. DALLAS. Mr. Chairman: I rise to ask a question whether the gentleman conceives it to be necessary to give this grant of power to the Legislature to enable them to pass such a law if they deem proper?

Mr. M'ALLISTER. Mr. Chairman: I will state as chairman of the committee, that this is a partial report. Subject matter which was referred to the Committee on Suffrage, Election and Representation, if still before it. The gentleman who offered this amendment is a member of that committee, and I suggest that it is improper for us to entertain new sections before that committee has completed its report. If, in their final report, anything is omitted that should be inserted, there will be ample opportunity to have it inserted, and if members are to get up here, and on this partial report, make all the suggestions that occur to their minds, we will not get through with this partial report for weeks to come.

Mr. HOPKINS. Mr. Chairman: I will simply suggest to the gentleman from Carbon (Mr. Lilly) that if he will make a slight modification of his amendment I shall vote for it; that is, if the Legislature take measures to compel them to vote the democratic ticket.

Mr. LILLY. Mr. Chairman: I desire to explain, as far as the chairman of the committee is concerned. I do not consider it proper to state the action of the committee. It has already dispensed with this subject, passed it over, and I think the remarks of the chairman are entirely uncalled for upon that ground.

Mr. TURRELL. Mr. Chairman: I wish to amend the amendment of the gentleman from Washington, (Mr. Hopkins,) by adding the words "or republican ticket, just as they are of a mind to; and if

they do not, they shall stay in jail until the next election."

The question being on the section as introduced by Mr. Lilly, it was rejected.

The CHAIRMAN. The question is upon the tenth section.

The CLERK read:

SECTION 10. The Legislature shall provide by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock, equal, or to distribute them on the same principle among as many candidates as he shall think fit, and directors or managers shall not be elected in any other manner.

Mr. WOODWARD. Mr. Chairman: I wish to call the attention of the committee to the fact that the section belongs to the Committee on Corporations, and that committee is preparing a report that will cover this ground. Therefore I hope the section will not be considered at present.

Mr. M'ALLISTER. Mr. Chairman: I would like to inquire of the gentleman from Philadelphia, (Mr. Woodward,) to which committee on corporations this gentleman supposes this refers?

Mr. WOODWARD. The Committee on Private Corporations has the subject now under consideration.

Mr. M'ALLISTER. Mr. Chairman: Private corporations is divided into two classes—canals and railroads, and other private corporations.

Mr. WOODWARD. Our rules will answer the gentleman's question. We have a Committee on Railroads and Canals, and a committee on all private corporations, except railroads and canals and private and literary corporations. The Committee on Private Corporations and the Committee on Railroads are about to hold a joint meeting, and will probably make several reports covering this very subject. Obviously the subject belongs to one or the other of these committees. There will be no conflict between them, but it is quite out of order for the Committee on Elections to take the subject

away from those committees and legislate with reference to it, without regard to what they are doing.

Now, Mr. Chairman, this subject properly and naturally belongs to what we suppose to be the Committee on Private Corporations. I suggest, therefore, that the section shall not be passed upon at present, and when the report of the Committee on Private Corporations is made, the section can then be amended. In the meanwhile, I think it would be injudicious to take any action upon the section.

Mr. M'ALLISTER. Mr. Chairman: There is no disposition at all to press this section upon the committee; but it clearly belongs to the Committee on Suffrage and Election, from the simple and conceded fact that it was discussed in various other committees. The fact is, if the subject matter of this section belongs to the Committee on Private Corporations, it belongs as well to the Committee on Railroads and Canals, of which I am a member; and I know that that committee does not claim that it comes within their supervision or the line of their duty. I am of the opinion, however, that this section comes within the jurisdiction of the Committee on Railroads and Canals as much as it does the Committee on Private Corporations. The manner in which the sections of this article may be arranged is a matter for future consideration, and therefore the Committee on Suffrage, Election and Representation did not number them, but reported them without numbers for the convenience of the committee of the whole, and of the printer. Where this section shall go in the Constitution is a matter for future adjustment, but as a committee of conference has been suggested between the Committee on Private Corporations and the Committee on Elections, there is no disposition, whatever, to press the section.

The question was then taken on the section, and it was not agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION — Wards of cities, or boroughs and townships, shall form or be divided into election districts of compact and contiguous territory, in such manner as the court of common pleas of the city or county in which the same are located

may direct: *Provided*, All districts in cities of over one hundred thousand inhabitants shall be divided by the courts of common pleas of said cities, whenever the preceding election shows the polling of more than two hundred votes, and in other election districts whenever the court of the proper county shall be satisfied that the convenience of the electors and the public interests will be promoted thereby.

Mr. HANNA. Mr. Chairman: I offer to amend the section, by striking out all after the word "manner," preceding the proviso, and inserting the words, "as shall be prescribed by law." In offering this motion I would submit to the committee, in the first place, that I doubt very much whether this section properly belongs to this Committee on Suffrage. It seems to me it comes more properly within the line of duty of the Committee on Cities, City Charters, Counties, Townships and Boroughs; but still, as it has come before the committee for consideration, I have moved this amendment. In moving the amendment I have been influenced by several reasons which have convinced me that the section should not be adopted as reported by the committee. With due deference to the Committee on Suffrage, I must differ with its members in regard to the propriety of incorporating in the Constitution of the State a provision which, to my mind, embraces a subject of legislation. In the second place, not only does the matter contained in this section belong to the Legislature, but by the adoption of this provision in the Constitution the Convention will, in fact, legislate for the people of the wards, counties and boroughs of the State.

Now sir, this section, as reported by the committee, provides that the wards of cities or boroughs and townships shall be divided, but that all districts in cities of over one hundred thousand inhabitants shall be divided by the court of common pleas whenever the preceding election shows the polling of more than two hundred votes, and in other election districts whenever the court of the proper county shall be satisfied that the convenience of the electors and the public interests will be promoted thereby. It will be observed that this section is directly intended to apply to one city of the Commonwealth, perhaps two, the city of Philadelphia and

the city of Pittsburg. Now why should we specially legislate for two municipalities in the State? I submit that such a provision as this will take away from the people of the cities and counties the right to legislate upon their own internal affairs. Not only is it legislation, but it is special legislation. It is designed to legislate specially for the people of these two particular localities, and so the city of Philadelphia and the city of Pittsburg are to be divided by the Constitution into election districts which shall comprise only two hundred voters. I agree entirely with the intentions of this proposition of the Committee on Suffrage, and I believe that it is wise and proper to divide the election districts into small sections of two hundred or three hundred voters, but I submit that this is a matter which belongs entirely to the people of each section of the State. They should be the judges, and should know whether such a division of the wards or townships is necessary and warranted by the necessities of the case. The committee, however, in introducing this proposition, designs that the Convention shall legislate for the people of these different sections, and I contend that it is inconsistent with all precedent. The Committee on Cities and City Charters reported on Friday last a section, to which I call the special attention of the committee. It reads as follows:

"The Legislature shall pass no special law creating any municipality or regulating its form of government or management of its internal affairs."

How can we consistently, with the views of the people, or with the views which we have ourselves expressed upon this very subject, specially legislate in favor of such a section in the State Constitution as has been proposed? Why we propose to prevent the Legislature from legislating upon special matters, and upon taking away from the people of different localities the right to govern themselves in all internal affairs, and yet we propose, in this Constitution, to tie the hands of the people of two of the largest cities in the Commonwealth in regard to this very matter. I submit that the people of these sections, through their municipal legislators, are far better judges than the Convention whether such a division shall be made. I consider that the provision is entirely improper, for it not only designs

to legislate for the people of these sections, but it proposes a system of odious *special* legislation, and to give to the judges of our court of common pleas this power. Is this right? As was remarked by the gentleman from Dauphin (Mr. MacVeagh) the other day, are we to be governed by the judiciary? I submit not at all. Why, sir, I think I will surprise this committee when I inform them how, by special legislation, the judges of the city and county of Philadelphia regulate our internal police affairs. What are they doing now? By special acts of Assembly, the judges of our courts appoint members of the board of revision of taxes, controllers of the public schools, guardians of the poor, the board of health, prison inspectors, mercantile appraisers, commissioners of Fairmount park, inspectors of the Eastern penitentiary and board of city trusts. I would like to enquire where we are to stop. Is this Convention further to empower the judges of our courts to divide our election precincts? I find no fault with the appointments made by our judges, for they have uniformly appointed the most reputable and upright citizens of our community, but, sir, is it right in principle that this power of self-government should be taken away from the people of our different cities and counties and placed in the hands of our judiciary? It is not judicial, and I consider that this patronage of our judges is becoming entirely contrary to the spirit of our institutions, and I would add, it is not only undesired by them but is obnoxious to them. Are we then, by means of this special form of legislation, to compel our judges to sit upon the bench and attend to petitions respecting the division of our election districts into two hundred voters or more. I submit it is entirely wrong in principle, although I confess the object of the provision coincides with my views. If such a proposition was submitted in another form, I would gladly vote for it, for I believe in dividing our cities into small election districts. I think, however, this power should rest solely with the municipal legislature. The people, through their immediate representatives, can attend to all this matter. How would it be if we should provide in our State Constitution that every city of so many thousand inhabitants should be supplied with gas and water? Would not such a sug-

gestion be as wise as the provision which the Committee on Suffrage has reported? for it is, after all, a matter of mere police regulation. It is nothing more or less than a matter affecting the private internal affairs of the different municipalities of the State, and I do submit, while it may be necessary thus to divide the city, and while I would gladly vote for such a proposition in the proper place, yet I deem it exceedingly unwise and improper for the Convention to place such a trivial insignificant matter in the Constitution of the State. I therefore hope that it will be submitted, as a proposition, to the Legislature of the State, for representing, as they do, our citizens. I have no doubt that their wishes and intentions will be duly expressed.

Mr. DALLAS. Mr. Chairman: I move to amend the amendment by adding the following words: "All districts in cities of over one hundred thousand inhabitants shall be divided by the city councils of said cities, whenever the preceding election shows the polling of more than two hundred votes."

Mr. HANNA. I accept the modification of the amendment.

Mr. J. W. F. WHITE. Mr. Chairman: I shall oppose this section, because in the first place, I do not like those special provisions in our Constitution. I am in favor of making our Constitution applicable to the entire State, not putting special provisions in it with reference to special localities. I am further opposed to this amendment, because it applies to the city of Pittsburg, although intended primarily only for the city of Philadelphia. It would apply to the two cities, only, Philadelphia and Pittsburg.

Now, I am not prepared to say, positively, that our people do not want this provision, but I think I can say they do not want it, because I never heard such a desire expressed by any citizens of the city of Pittsburg. I know that our election districts in that city are a great deal larger than this section proposes, and I know, also, that they can be divided and they are divided as often as the people of our city desire them to be divided. I never heard complaint on this score. I believe that to multiply our election districts and limit them down to about one hundred voters, because that will be the practical operation of this. If, whenever

the vote exceeds two hundred, the district is to be divided, some districts will probably have, on the average, less than one hundred votes at each election. No district will have two hundred votes, because it will then have to be divided. To multiply election districts in that way, with all the section officers, seems to me an unnecessary expense and an unnecessary burden, and in the absence of any reason or any expression of opinion in favor of it, I shall oppose such a provision. I can see no use in it.

I am opposed to it further, because I do think that this is a matter that ought to be left to the discretion of the Legislature, or the discretion of the people. Why should we put this unyielding, unbending provision in our Constitution? There may be localities where it would be desirable to have small election districts, but there are other localities where they can have two or three hundred or even four hundred voters that will accommodate the people better than these very small districts. I know the fact, and perhaps every member of the Convention knows the fact, that there are districts throughout our State, many of them that have more than two hundred votes, and you could not get the voters in those districts to consent to a division. In all our rural districts the people vote in townships where they have three hundred, four hundred or sometimes five hundred voters. They get through the election in time and without any difficulty.

Mr. HOPKINS. Mr. Chairman: If the gentleman will allow me to interrupt him, I will state that there are three districts in Washington county where there are over five hundred voters.

Mr. J. W. F. WHITE. Mr. Chairman: I know that in Allegheny county we have a number of districts that contain from four hundred to five hundred voters.

Mr. HAY. Mr. Chairman: I desire to state to my colleague that one precinct in Allegheny county contains nearly two thousand voters.

Mr. J. W. F. WHITE. My colleague states that one district in Allegheny City contains very nearly two thousand voters. I think that is too many. I do not believe there ought to be so many; still, that is a matter for the people. I cannot see that we ought to put such an iron rule

in the Constitution, one that is unyielding and unbending, and without any exception, that in cities of one hundred thousand inhabitants election districts must be divided whenever the vote exceeds two hundred.

Mr. TURRELL. Mr. Chairman: It seems to me that this had better be postponed until we ascertained the construction of the courts. That would have a great deal of influence upon the minds of many gentlemen in relation to their votes upon this subject. It seems to me, therefore, that we had better postpone it until that point is ascertained. In my own mind, my own judgment would be to allow these divisions to be made in cities by the city councils, and in the other counties of the State, if we have courts constituted somewhat after the present form, composed of three judges, it seems to me that they should make that division. But in such cases I would let the people be heard from. It should be left to the people to determine when such a change was necessary, and it ought to be done only on petition. I would not, as my friend from Allegheny (Mr. J. W. F. White) says, put in an imperative provision like this. I would leave it so that the people of a particular locality, on petition, might have their district changed to suit their convenience.

Mr. GUTHRIE. Mr. Chairman: I am not entirely in favor of the section as reported by the Committee on Suffrage, Elections and Representation, although I agree with some of the ideas it embodies. I am opposed to inserting so much machinery in the Constitution. I would be in favor of passing a general article on this subject, and permit the Legislature to carry it into execution. I prefer offering an amendment, so as to make the whole section read in this way:

Wards of cities, or boroughs and townships, shall form or be divided into election districts of compact and contiguous territory, containing not over two hundred voters, in such manner as shall be defined by law.

Mr. WHERRY. Mr. Chairman: That is exactly Mr. Hanna's amendment.

Mr. S. A. PURVIANCE. Mr. Chairman: I would suggest to the gentleman from Allegheny that the Legislature has that power now.

Mr. GUTHRIE. I admit that the Legislature has this power.

Mr. J. PRICE WETHERILL. Mr. Chairman: It seems to me that the consideration of this section should not be discussed at the present time. The Committee on Cities and City Charters have presented a report, and if that report be adopted it will conflict with a part of this section. That committee have seen fit to give the cities full and supreme control over their own affairs, believing that inasmuch as power must be fixed somewhere, that power should be lodged in the mayor, the select and common councils of cities. To that view I believe the Convention will assent, and yet if we adopt this section we will say that this Convention does not agree to that principle. On the other hand, with regard to the regulations of elections in boroughs and townships, I suppose that that matter will be taken up and discussed by the Committee on Boroughs and Townships, and inasmuch as the Committee on Cities and City Charters have reported, and it is likely the Committee on Boroughs and Townships will report perhaps adversely to the proposition as presented by the Committee on Suffrage, Election and Representation, I think it would be well if we postponed the consideration of that section until that time. I would be extremely sorry if we would in this way prevent the full and complete control of cities in the management of their own affairs. I can see clearly how the select and common councils of the city of Philadelphia would know much more in regard to the regulation of election districts than any court, and if they do wrong, if they act improperly, there is a corrective principle behind, which, at the proper time, will present and enforce a proper corrective. And on reflection I am satisfied that no special legislation should be asked for in relation to the regulation of the internal affairs of any city. For that reason I shall vote against this section; and for the reason that both of the other committees I have named may at the proper time present reports which will be adverse to this section. I hope that the further consideration of the section will be postponed for the present.

The CHAIRMAN. The motion is not in order.

Mr. TEMPLE. Mr. Chairman: How

does the section, as it has been amended, read?

The CLERK. Wards of cities, or boroughs and townships, shall form or be divided into election districts of compact and contiguous territory, in such manner as shall be provided by law: *Provided*, all districts in cities of over 100,000 inhabitants shall be divided by the city council of said cities whenever the preceding election shows the polling of more than two hundred votes.

Mr. COCHRAN. Mr. Chairman: I should not have been able to vote for that section had the power of dividing districts been left in the hands of the courts. I most decidedly object to mixing up the courts with the exercise of those matters which are simply and purely political, and whose tendency is to degrade the courts and draw them away from the discharge of their proper judicial duties. But as this section has been amended, I am quite ready to support it, for the reason that I assigned the other day, that I believe it shows a wholesome provision tending to protect the proper exercise of the elective franchise, and calculated to advance the public interests in that direction. I am prepared, therefore, to vote for the amendment, and the section as it will stand when amended.

Mr. M'MURRAY. Mr. Chairman: The reason why the Committee on Suffrage, Election and Representation proposed this section was, to meet the objection that the election precincts of our large cities were entirely too large. Not only inconveniently large, but so large that the number of voters afforded an opportunity for illegal voting; and it was to get rid of this difficulty of illegal voting, or rather in order that the electors of a district might be better enabled to detect persons offering to vote illegally, that this section was presented.

I think the section an admirable one, and I really hope the Convention will approve it. Nay, from the tenor of the discussion that has taken place already on the report of the Committee on Suffrage, Election and Representation, I supposed it was taken for granted by the majority of the body that this section would be adopted without any opposition. Gentlemen, in their remarks uttered, during the course of the debate upon the pending report, have virtually pledged

themselves to vote for this section, and have referred to it as the specific remedy for those irregularities which it was proposed to cure by other sections. It was remarked the other day of one of our cities—I believe the remark referred specially to Pittsburg—that in some of the districts there, just before election, some of the hotels would be so full of voters that you could see their legs sticking out of the windows. I do not know whether that is literally true or not, but probably it was an approach to truth. Probably these hotels were overcrowded and the proprietors could not accommodate their guests properly, and I am perfectly willing to come to their relief.

But that is not the object of the section. As we have done before in nearly every discussion, so here we almost immediately come to the subject of frauds in elections, and it was for the purpose of preventing these that this section was proposed.—Whether the precincts shall be divided by the courts or the councils, is immaterial to me. I prefer the courts, because I believe them to be entirely non-partisan, and have an abiding confidence in our judiciary. Councils would, probably, be partisan. That might not be much of an objection, but if we must choose between two tribunals, we should choose the better, and I think the courts would be entirely the better tribunal. I really hope that this section will be adopted, and that no member will make any captious objection to it. The gentleman from Allegheny (Mr. J. W. F. White) objects seriously, and says the people of Allegheny and Pittsburg do not wish their precincts divided, as they are not too large. I think the people of that county, especially of Pittsburg, would do well to have their precincts divided. If I am credibly informed, a very large proportion of the voting of that city is done late in the evening, after twilight and darkness have gathered around the polls. That certainly affords great facility for fraud in polling votes. By this measure we desire to protect the ballot-box from receiving illegal votes; and by other provisions we seek to purge it from illegal votes that have crept in. If I had one object in view in coming to this Convention, it was that I might, by my voice and vote, purge the ballot-box of frauds and irregularities

that have surrounded, and even found their way into it.

I think this is a very wholesome provision, and I appeal to gentlemen here to allow it to pass. The precincts now are divided almost all over the State by the courts. This section only provides an arbitrary rule as to numbers for cities of over one hundred thousand inhabitants; the places where illegal votes are most likely to be cast. It leaves the matter, so far as it relates to the small towns and country districts, just as it has been heretofore. But it should not be left to the discretion of councils, courts or any other tribunal to say *where* the division should be made. But the precincts should be so small that each elector in a district might know every other elector, and that none but honest votes should go into the ballot-box, and I want the rule compulsory so that the division *must* be made whenever a precinct shows the polling of more than a certain number of votes, but I would prefer that that number should be two hundred and fifty or three hundred.

Mr. NEWLIN. Mr. Chairman: The people heretofore have had the most implicit confidence in the judiciary, and in order that they may continue to have the most implicit confidence in them, I hope this power will not be given to them. There is another objection which is one of detail. In the city of Philadelphia we have at each election division twelve officers, and if each division is to consist of not more than two hundred inhabitants, and inasmuch as a considerable portion of the inhabitants do no vote, the consequence would be that you would at every election have about seven per cent. of the voting population engaged as election officers.

Mr. DALLAS. Mr. Chairman: The proviso is not that the districts shall be reduced in size so as to contain only two hundred inhabitants, but two hundred who actually voted at the last preceding election, the presumption being that at least an equal number will vote at the next succeeding election. I trust that the principle of this section will be adopted. I hope the committee will make a provision to limit election districts so that no one will comprise more than two hundred voters, for I believe that nothing will

so aid in the suppression of fraud as the intimate personal knowledge which each man would then have of every other man offering to vote in the same district. But I desire to call the attention of the committee, for one moment only, to the effect of the amendment of the gentleman from Philadelphia, (Mr. Hanna,) as it has been modified by myself. Objection has been made, and I think well made, to the original proposition, because it intends to lodge in the courts the power to divide election districts. I do not propose to go over the argument upon that subject again. I concur in the objection, but I think it will be well removed by the adoption of the pending amendment, so as to make the section read that "election districts shall be composed of compact and contiguous territory in such manner as by law may be provided; but any and all districts in cities of over one hundred thousand inhabitants shall be divided by the city councils thereof, whenever at the preceding election more than two hundred votes shall have been cast in such district or in each of several such districts." This would meet the objection of the gentleman from Philadelphia on my right, (Mr. Wetherill,) and would vest the power to divide districts, where it ought to be, in the city councils to determine, and in the rural districts, as to which there seems to be a difference of opinion upon the subject, the proposed amendment leaves the whole matter to the Legislature. The purpose of this section is to restrict the number of voters to a district in the large cities, and that object is good, and the amendments which have been submitted make it possible to attain it without casting legislative duties upon judicial officers.

Mr. TEMPLE. Mr. Chairman: I think that the section as amended is a very wholesome one, and should be adopted, as modified at the suggestion of my colleague, (Mr. Dallas,) I agree with him and with my other colleague (Mr. Newlin) in suggesting to this committee that the courts of the city of Philadelphia should not have the right to re-district our election divisions. It is not necessary to state the reasons for lodging this power in some other hands. I prefer to leave it with the councils of large cities in preference to the Legislature, for the reason that the section which was read

by the chairman of the Committee on Cities and City Charters, which provides that the whole machinery of our city government shall be left in the hands of the city councils.

It is evident, from what has taken place in the elections in the city of Philadelphia, and in other large cities, that the substance of this section should be adopted; and the only question is as to whom the power shall be vested in. I believe it should be left with the legislative department of the particular locality to which it is adopted, and for this reason I am in favor of leaving it with the councils of Philadelphia, if this section is to be adopted at all. If it could be taken out of the committee of the whole I would be in favor of taking this subject up when we come to discuss and consider the result of the labors of the Committee on Cities and City Charters, but if we are to adopt it here, I am in favor of leaving it where my friend from the city (Mr. Dallas) desires it to be left by his amendment, to the city councils of the city of Philadelphia, and other large cities, to determine when and how the division shall be made, restricting it always to an election district not containing over two hundred voters.

Mr. BUCKALEW. Mr. Chairman: This section is one of a series reported by the Committee on Suffrage, intended to secure integrity in elections. That is its principal object, and, so far as that object is concerned, I desire to submit a few words to the committee before a vote is taken.

At present the power of establishing new election districts is vested, generally, throughout the State, in courts of quarter sessions. By legislation it is provided that the people living in districts proposed to be divided may vote upon this subject; at least, there is such a regulation of law upon the question of establishing new election districts. You will observe that this section says that these districts shall be made under the "direction" of the court. The power is not to be exercised by the court directly, but by commissioners appointed by the court. All that is required is that the authority of the court shall be appealed to, in order to establish. The court will have a supervisory power over reports which shall

be made to them by the persons whom they shall appoint for this purpose.

Now this section of the present report of the Committee on Suffrage establishes a uniform rule for the whole State, so far as the power of creating election districts is concerned, and therefore it is a proper and a judicious provision.

If gentlemen shall succeed in carrying their amendment, leaving this power, in certain cases, to the legislative bodies, the councils of cities, I see no reason why they should not extend their amendment, so that it shall vest the power in councils of boroughs and commissioners of counties. If they shall succeed in carrying their amendment, by which the courts in a part of the State shall be prevented from ever exercising this power, I think we had better drop the section. We had better let matters remain as they are now; for at present, in the case of the city of Philadelphia at least, the councils have a statute power upon this subject. It is a very peculiar provision, because, when they have acted, they must send the record of their proceeding to the court of quarter sessions of the city. You must have a place where you can find these records—not among the loose papers of a city or town council or a commissioners' office—you must have them in court.

Now what reason is there why the councils of a city should have this power ordinarily vested in the courts of quarter sessions? There is no reason in the world for this, unless there be some desire to gerrymander the wards or election divisions of a great city. No other reason for it can be presented.

The most convenient, the cheapest, the most efficient and the most unobjectionable mode of establishing new election districts, is by the appointment of commissioners, just as we make local divisions of townships and of school districts throughout the State. Prompt, competent men are always selected, and if there is anything wrong in their action and the citizens have the chance to appeal to the court, to object to the report of the commissioners and have it corrected. Ordinarily the courts do not interfere, except for strong reasons. The inconveniences of dancing attendance upon two chambers of councils, in case the citizens think that wrong has been done, and desire to appeal to the authorities, is ap-

parent, should the power be vested in the Legislature of a city. These gentlemen serve, I believe, without pay. The hearing is very different from what it would be in a court of justice.

I think, therefore, that we should place a provision in the Constitution, that the courts of quarter sessions, in both city and county, shall direct the manner in which all election districts should be made. This will also prevent vicious legislation at Harrisburg. If it is not so provided, this power may be vested in one city in the councils, in another in the courts; in one county it may be vested in the commissioners, and in another, a different rule may prevail.

It is a judicial proceeding, notwithstanding the criticisms which have been made here. It has been so regarded, practically, almost uniformly in our State, and it is properly vested in the courts of quarter sessions, which are charged with very nearly all the municipal judicial business of the State. Properly the changing of these election districts, and still should be with local authority, but it may be done by the Legislature. A provision of the Constitution of the State, prohibits the Legislature from acting where the courts can act, but the prohibition does not extend to municipalities; it applies only to corporations of a business character. Therefore, this power may still be exercised by the Legislature at the instance of individual interest.

The other provision here relates to the number of voters in an election precinct, where the voters in any precinct, in a city of one hundred thousand inhabitants, shall exceed two hundred, the precinct shall be divided. Now, I do not pretend to say what the number should be. The members of the Committee on Suffrage from this city seemed to acquiesce in that number; therefore, I favored it. If a higher number is desired I am willing to take it, even if it be three hundred; but there ought to be, in order to avoid difficulty hereafter, and to give an inflexible and binding rule to the court, some number fixed, so that citizens, when they come to the court can say to the court that it has jurisdiction, and not only jurisdiction, but that it is its duty, a duty charged upon it by the people, to do what they ask in the matter. What is the object of small election districts in

cities? Why, in the first place they are necessary in order that the election board shall know all the voters. If you poll, as you sometimes do now, in cities, six or eight hundred votes in one election precinct, it is impossible for the election officers to know all, or even one-half of them; and this is one of the principal reasons why there are fraudulent personations of voters at elections.

It is necessary, therefore, in this respect, that the election divisions of cities should be kept within small limits. But there is another reason for it now, because these election divisions are so large, and there is so much work thrown on the election officers, that you have to have special laws for cities in order to work the system. You provide here in Philadelphia for nine election officers to hold elections in every precinct of the city. You have, first, two window inspectors, and their two clerks; making four; the judge of the election, five; there are two return inspectors and their clerks, which make nine; and while the window inspectors are receiving the tickets during an hour, the return inspectors are counting the votes for the previous hour, so that you have a board of nine officers. When you come to the question of how the election officers shall be chosen and how many there shall be, I trust we shall go back to the old provision of the statute of '39 and provide that three election officers shall be chosen by the people in every district of the State and city directly by their own votes, and in such a manner that they will be divided between political parties, and then the inspectors will appoint their clerks, and if you have any additional persons officially present in the election room in a city let it be a watcher or somebody appointed by the local courts of the State or of the United States, charged with such power as may be necessary as a check upon the election board.

You observe, then, that if you reduce your electoral divisions in the city you can dispense with four election officers in every precinct, and I insist upon it that, instead of this provision accumulating expenses, it will leave the sum total of election outlay about what it is now; that the element of expense is out of the case, if, by such provision, you can re-

duce the number of officers; if you can keep the level of expenses of elections about what it is now; if you can secure a knowledge of all the voters by the election boards, because they live in the immediate neighborhood, and are but a small number, you will secure the purity of the ballot-box and a most valuable reform.

Why then should not this section be adopted? It is drawn for the whole State and is uniform, so far as the power of creating new districts from existing ones is concerned. Discretion, however, is properly allowed to the courts with reference to the size and population of interior election districts. We provide, as the section is drawn, that in the interior of the State, in agricultural regions, the courts shall not be compelled to divide districts unless public necessities and the convenience of the people require it. That is the only difference proposed between city and country in the section.

MR. GUTHRIE. Mr. Chairman: I offer the following amendment to the amendment: To insert in the third line before the word "in," the words, "containing not over two hundred voters," and strike out all after the word "law," in the amendment now pending.

MR. CASSIDY. Mr. Chairman: I think the report of the committee should be adopted. I earnestly protest against the Legislature of the State or the councils of the city having anything to do with the formation of election districts. It is not a legislative duty at all, and is no more a political matter than it is to pass upon any measure involving our rights of liberty or property. One of the necessary steps in the reform that we are called upon to carry out is to enable us have honest elections. One of the steps that is necessary to carry out this purpose we have already adopted. As another advance in the cause of reform, none has been presented more important than that now under consideration. It proposes that election districts hereafter shall be so formed as not to exceed two hundred votes. I should have preferred a much smaller district, mainly on the ground that where the smallest number of votes have to be polled there would be the least chance of fraud. If you have but one hundred votes to be polled, the persons

residing in the district would know every voter, and the same line of argument would apply to the district of two hundred votes, but of course not in the same degree. In a district where the votes are known to each other you can see at once there could be no such thing as importing or colonizing voters, and you would have the additional opportunity of permitting the whole of the election law to be considered and enforced by the election board.

I submit to the Convention that it is not physically possible for the election officers to do their whole duty, and take more than twenty votes an hour, or a vote in every three minutes, and at that rate you would take a working day of ten hours to poll two hundred votes. If a person comes up to vote, he is to announce to the election officers who he is, where he resides, how long he has resided there, whether naturalized or not, and the various claims that he has to present his vote and have it polled. That, to be calmly and carefully considered, as I trust we agree all election officers ought to treat the matter, will, at least, take the time I have indicated. To say that it would take less time, would be to say that the taking of the vote would be simply the physical discharge of the duty of taking the ticket from the voters hand and putting it into the box, without asking any question or testing him as to his qualifications. That is not the whole duty of the election officers, for, under the obligation of his oath, he is not only to take the vote of the person, but to see that the person who presents it has the legal right to vote. Therefore I submit to the Convention, that it is a physical impossibility for the election officers, who will do their duty, to take more than two hundred votes in one day. This being conceded, the necessity for small districts is established. Who are to form the districts? Surely not the Legislature, if you would have them formed without regard to political preference. The Legislature, past experience establishes, will form the election districts so as to give their political friends power; and this will be so no matter which party is in power. They have done so time out of mind in making senatorial and representative, and even in judicial districts, they have made these

districts to suit themselves and the political party they represent, and they will do so to-day. The same argument applies to the city councils. They will be called upon to carry out the views of the political parties which they represent, and if they are called upon to do that, will they not do what their predecessors have done time out of mind?

Is this state of affairs not an evil, and one of the very things that gave rise to this Convention? Are we not here to so form the organic law, that the system of "gerrymandering" shall not any longer be carried into effect throughout this State? It has been a discredit and a disgrace to the Commonwealth, and all agree that it ought to be changed. If so, where can this power be most safely vested? I submit in the courts of the Commonwealth. I do not care whether it shall be in the court of common pleas or other court. The court of common pleas was named, because it is a recognized court under the present Constitution. This power may be vested in the court of quarter sessions, or it may be placed in the hands of any other court. I am perfectly willing to trust the courts with the arbitration of this question, because whatever disputes may arise will be settled openly and judicially, and the people who have an interest in the proceedings will be entitled to be heard by counsel or by petition. The judges of these courts having been elected for long terms of office, are far removed from politics, and will decide these questions in court, not according to their political proclivities, as legislators do, but according to the wants and interests of the people.

I cannot agree with those in the Convention who have argued that such a provision as this will drag down the judiciary. This power which is proposed to be conferred upon the judges of our courts does not give them patronage. It simply devolves upon them the determination of a legal proposition, submitted to them for their decision, of the same character as the confirmation of an award of damages by a road jury, or to say whether or not a road shall run in a given direction, or whether a ward house shall be kept as a place for voting. These are all questions submitted to the courts of this county, and I have yet to hear any objection made

to the exercise of this power by the judges on account of their partisan proclivities. I therefore submit that this question of dividing the precincts is one which should rest wholly within the jurisdiction of the courts, where the power will be far removed from even a suspicion of being governed by politics or politicians. It is said make this provision for Philadelphia alone. I answer that I am opposed, as a matter of principle, to framing a system exceptional in its character. I am not willing to place upon the record that the people of the city of Philadelphia require an exceptional constitutional provision for their benefit. On the contrary, I desire the people of this city to stand upon the same footing as the people of the rest of the State, lest, however, some of our friends from other parts of the State should except to this arrangement, we have provided that outside of cities it shall not be compulsory upon the courts to divide the precincts. In the provision for the country we have said that the courts shall only be called upon whenever, in their judgment, the popular interest shall require them to interfere. It therefore seems to me that this is a fair proposition, and I submit to the consideration of the convention that the more thought that is given to it the more convinced we must become that it will be one step further towards purifying city elections, while at the same time, it will in no way interfere with the conduct of elections in the rural districts.

Mr. MANTON. Mr. Chairman: It was not until the amendment to the amendment was offered that I designed saying anything upon this question, but after hearing all the arguments of the different gentlemen that have spoken on this subject, I cannot hesitate in declaring that I am opposed to the pending amendment.

In speaking of this subject, I desire to call the attention of the Convention to the fact, that it would be exceedingly inconvenient to divide into election districts the territory of wards of cities, boroughs and townships. In the county in which I live, which is, perhaps, one of the largest in the State, there are sixty-six election precincts. There are two incorporated cities in the county, and about nine boroughs, and there is no inconvenience whatever in polling the votes in times of election. The borough in which I live,

contains about three to four hundred voters, and it would be certainly a great inconvenience if the borough was divided into two precincts, so that there would be only two hundred votes in each precinct. All the votes in that borough are cast without difficulty between morning and evening. No difficulty is experienced whatever, and I am, therefore, opposed to this section, because I think that it will trespass entirely upon the rights of a class of people who have heretofore been entirely satisfied with their election precincts. I feel confident that what I have said in regard to the county which I represent, will apply equally as well to all the counties of the rural districts. So far as the city of Philadelphia is concerned, or any of the other large cities in the State, I have little or nothing to say. I am rather of the opinion, however, that a division in the number of precincts would, perhaps, be beneficial in their elections, but it can certainly produce no good results in the rural districts, where the people are all acquainted with each other, and in my opinion, will only work great inconvenience, in dividing the townships, wards and boroughs in election precincts, so that each precinct shall not contain over two (200) hundred voters, as this amendment proposes. Therefore, I shall vote against this amendment to the amendment.

Mr. MINOR. Mr. Chairman: I am opposed to the amendment which has been offered by the gentleman from Allegheny, which proposes to divide districts any where in the State whenever more than two hundred votes are polled. In the rural districts it may be taken for granted that at least nine-tenths of the voters are known to the election officers, and that proportion can vote as fast as their votes can be taken and their names recorded. In the city in which I reside, containing about twelve thousand inhabitants, the different wards contain a voting population varying from a little below to a little over two hundred each, and if a division was made every time more than two hundred votes were cast, it would result in exceeding inconvenience. Besides, if a division was made it would have to be by ward and township lines, otherwise, when ward or other

local officers were elected, it would occasion great confusion, and if such lines are preserved the divisions would be unnecessarily small. Under the present system, in our towns and smaller cities, there is not the slightest difficulty in polling sometimes between three and four hundred votes in a ward, whereas, if these various sub-districts, which are proposed, are made in the large townships and small cities, it will become exceedingly burdensome. The provision which is contemplated may be applicable to the large cities of the State, but it certainly will not answer in the rural districts and smaller cities. It seems to me that this amendment will result in great inconvenience to them, without any corresponding benefit. I am therefore opposed to its adoption.

Mr. M'ALLISTER. Mr. Chairman: I desire to say a few words in reference to the object of this provision. It was designed mainly to protect the right of the voter, and to secure him justice—justice in the foundation of the district, as well as justice in the depositing of his ballot, and in that view, the same rule which now exists throughout the entire State, except Philadelphia, was applied to the State at large.

The Committee on Suffrage desired to secure uniform laws—laws governing the people throughout the State. The courts of quarter sessions now have the power that is proposed to be given by this section to the court of common pleas. If, however, the court of quarter session is preferred, by any delegate in this Convention, there is certainly no unwillingness to strike out the court of common pleas and insert the court of quarter sessions. Why, then, should not the same rule be applied to cities, in reference to the formation of these election districts throughout the entire State. It is said that the city councils in Philadelphia, have exercised this power, and it seems they feel disposed to hold on to it, which is but another evidence of the disposition of man never to surrender willingly any power he holds. Our inquiry, however, is, should the courts have this power? We say they should because the courts are not political bodies. They never have been, and I sincerely hope they never will become political bodies. It will be observed that the territory, out of which the dis-

tricts are to be formed, is not only to be contiguous, but compact. A political body, whether the Legislature or the city council, will give a different construction to these words, "contiguous and compact," from what a judicial tribunal will do. A judicial tribunal is governed by principle and precedent, and one decision is followed by another decision, because of the first, but political bodies are governed by no such rules. I might refer to our legislatures gerrymandering the State, who think of referring to the action of one legislation as a reliable precedent for the action of another legislation. No one so great a fool as to think of it. Not so, however, had the power been vested in the judiciary. Had that been done in the past, we should now have laws upon the subject arising from the precedents. I hope, Mr. Chairman, that this power will be conferred upon the courts, and that other powers in reference to the districting of the State will also be conferred upon the courts and not upon political bodies, who inquire, not what justice and law require them to do, nor what they can do for the benefit of the people at large, but what they can do for the benefit of their party. I would confer this power upon no such body, and it is therefore that I would have the city conform to the general law provided for the State.

Now this law is uniform, except in one particular. The power is the same and the only difference between city and county is that, in cities of over one hundred thousand inhabitants, the courts are compelled to divide a district when the voting population thereof exceeds two hundred. In the rural districts and throughout the entire residue of the State the courts are to exercise their judgment upon the petition of the citizens as to when districts should be made. It will not lead to any material changes of the present law in the country, but it was most earnestly contended by some of the city members of the Committee on Suffrage, Election and Representation, that unless the election districts were brought down to one hundred voters they could not protect the purity of the ballot. That number was thought too small and the two hundred was agreed upon as a compromise with great unanimity. That number will not create much incon-

venience to anybody, and yet it is a number so small that when the list of voters is placed up a reasonable time before the election, inquiry can be made as to the qualification of every man whose name was upon the list, and all the knowledge obtained necessary to prevent illegal voting. If this end can be thus easily accomplished, why not adopt the section as reported? The purity of the ballot-box is the leading object of this restriction. The rule is uniform with the single exception stated. No special legislation will be required. The number, two hundred, was agreed upon as the number best suited to secure convenience and preserve the purity of the ballot-box. I hope, therefore, that these amendments will all be voted down and that the proposition as it came from the committee will pass.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny.

Mr. NEWLIN. Mr. Chairman: I ask that it be read.

The CLERK. The gentleman from Allegheny moved to amend the amendment by inserting after the word "territory" in the first sentence, the words "containing not over two hundred votes," and striking out the proviso in the amendment.

The CHAIRMAN. The section as amended will be read that it may be properly understood.

The CLERK. Wards of cities or boroughs and townships shall form or be divided into election districts of compact and contiguous territory containing not over two hundred votes in such manner as shall be prescribed by law.

The amendment to the amendment was rejected.

Mr. J. PRICE WETHERILL. Mr. Chairman: I desire to offer the following, to come in at the end of the pending amendment. To add the words, "such districts to be as nearly equal in numbers as practicable."

Which was agreed to.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia, (Mr. Hanna,) modified as it will be read by the Clerk.

The CLERK. To strike out after the word "manner," in the first line, and in-

sert, "as shall be prescribed by law: *Provided*, All districts in cities of over one hundred thousand inhabitants shall be divided by the councils of said cities whenever the preceding election shows the polling of over two hundred votes in any of said districts."

Mr. S. A. PURVIANCE. Mr. Chairman: I move to strike out from the fifth line the word "one," applying to one hundred thousand inhabitants, and insert the word "two."

The CHAIRMAN. Does the gentleman propose that as an amendment to the section, or to the amendment?

Mr. S. A. PURVIANCE. To the section.

The CHAIRMAN. The gentleman had better wait until the amendment is disposed of.

Mr. HAY. Mr. Chairman: If it is in order, I would ask for a division of the amendment, the division to be at the word "law."

Mr. LILLY. Mr. Chairman: I want to offer an amendment.

The CHAIRMAN. A division of the amendment has been and is in order. The first division will be read.

The CLERK. "Wards of cities, or boroughs and townships, shall form or be divided into election districts of compact and contiguous territory, in such manner as shall be prescribed by law"—

Mr. LILLY. Mr. Chairman: I want to offer an amendment before the division is made—to strike out "two hundred," in the proviso, and insert "three hundred."

The CHAIRMAN. The gentleman from Allegheny has called for a division of the amendment. The first division has been read, and the question is upon it. The gentleman from Carbon will have to wait until the division is taken.

Mr. HAY. Mr. Chairman: I will withdraw the call for a division, to allow the gentleman from Carbon to present his amendment.

Mr. LILLY. Then I offer my amendment, to strike out "two hundred," in the proviso, and insert "three hundred."

Mr. WHERRY. Mr. Chairman: I object. I renew the call for a division.

Mr. LILLY. Mr. Chairman: I have a right to amend, and after we get through amending, if the division is desired it can be called.

The CHAIRMAN. The gentleman from Carbon has a right to amend if he offers his amendment at the right time.

Mr. HOPKINS. Mr. Chairman: I suppose the simple question before the committee is the division called for.

The CHAIRMAN. The gentleman from Allegheny first rose and asked for a division of the question, and afterwards yielded the floor to the gentleman from Carbon to offer his amendment. The question is on that amendment.

Which was rejected.

The CHAIRMAN. The question is now on the first division.

On the question of agreeing to this, division was called. Thirty-three voting in the affirmative, it was decided rejected, less than a majority of a quorum voting.

The CHAIRMAN. The question is on the second division, which will be read.

The CLERK. "Provided, All districts in cities of over one hundred thousand inhabitants shall be divided by the council of said cities whenever the preceding election shows the polling of over two hundred votes in any of said districts."

Mr. LITTLETON. Mr. Chairman: I desire to amend, by striking out "two hundred" and inserting "four hundred."

Mr. LITTLETON. Mr. Chairman: I desire to suggest that it is perfectly practicable to conduct an election in a precinct where the number of voters in the precinct is four hundred. In this city we will have two elections each year, according to the provision adopted by this Convention in reference to that subject, and if, in addition to doubling the elections, you increase the number of precincts, practically to double their present number, you will so multiply the expenses of the elections that they will become a burden.

The CHAIRMAN. Does the gentleman from Philadelphia move to amend the proviso of the printed section or the proviso of the manuscript amendment?

Mr. LITTLETON. Mr. Chairman: I desire to make my amendment apply to the division of the amendment under consideration. I believe the proviso is in both the section and the amendment.

Mr. S. A. PURVIANCE. Mr. Chairman: I inquire whether my amendment is not now in order. I move to strike out "one

hundred thousand" and insert "two hundred thousand."

The CHAIRMAN. The gentleman from Allegheny refers to the printed section, does he not?

Mr. S. A. PURVIANCE. No, sir; I refer to the proviso of the amendment pending.

The CHAIRMAN. The Chair understood that the amendment of the gentlemen related to the original section and not to the amendment. The Chair should have given the floor to the gentleman from Allegheny, but the gentleman from Philadelphia took it. The question will be first taken upon the amendment of the gentleman from Philadelphia to strike out "two hundred" and "four hundred."

Which was rejected.

The CHAIRMAN. The amendment of the gentleman from Allegheny is now in order, and will be read.

The CLERK. "To strike out the words 'one hundred thousand,' and insert 'two hundred thousand.'"

Mr. S. A. PURVIANCE. Mr. Chairman: Before the vote is taken I will say that I offer this amendment for the purpose of carrying out the views expressed by my colleague on the other side of the House (Mr. J. W. F. White.) We do not regard this provision as necessary for the city of Pittsburg. It is a city of about one hundred and thirty-three thousand inhabitants, and so far we have discovered no inconvenience in taking our votes in the precincts as at present composed. In the city of Allegheny, in the precinct in which I reside, we poll usually about one thousand votes, and yet I have never discovered any inconvenience in taking these one thousand votes. Therefore I do not desire that the provision shall be applied to the city of Pittsburg.

The CHAIRMAN. The Chair suggests to the Convention that the adoption of the proviso now would, perhaps, not be proper, as the first division has been voted down. The proviso is a provision upon what has been voted down.

Mr. MANN. Mr. Chairman: I do not understand how the amendment of the gentleman from Allegheny (Mr. S. A. Purviance) can be voted on. We have agreed to vote on this second division of the original section.

The CHAIRMAN. It is not for the Chair to suggest to the committee, but if the

proviso is voted down, then the balance of the section can be amended as the gentleman desires.

Mr. MANN. Certainly.

The question being upon the amendment offered by Mr. Guthrie, it was rejected.

The question then being upon the proviso, it was rejected.

Mr. DARLINGTON. Mr. Chairman: If in order, I move to amend this by striking out the words, "common pleas," where they occur, and inserting the words, "quarter sessions."

The question being upon the amendment of Mr. Darlington, it was agreed to.

The CHAIRMAN. The question is now upon the section.

Mr. J. W. F. WHITE. Mr. Chairman: I do not know that I understand exactly what is before us, and what was done on the motion of my colleague (Mr. Guthrie.)

The CHAIRMAN. It was voted down; and the proviso was also voted down. Now, the question is on the section as amended by the motion of the gentleman from Chester (Mr. Darlington.)

Mr. J. W. F. WHITE. As I understand it then, the question is on the section as reported by the committee substituting "quarter sessions" for "common pleas."

The CHAIRMAN. That is it.

Mr. J. W. F. WHITE. I think, sir, there was a misunderstanding in the vote on the motion of my colleague (Mr. Guthrie.) I wish to present that to the committee properly and fairly. He moved, as I understand him, to strike out the word "one" in the fifth line and insert "two."

The CHAIRMAN. To strike out "two" and insert "three" according to the manuscript.

Mr. J. W. F. WHITE. Well, sir, I move to strike out the word "one" in the fifth line and insert "five;" and I have merely this remark to make, I hope that, as this section is designed mainly for Philadelphia, and is not wanted by the delegates from Pittsburg in this Convention, the members from Philadelphia will not force it on Pittsburg. If it works well here, it can be adopted by us afterwards, but I do not believe it is wanted there, and I trust that those in the city of

Philadelphia and elsewhere, who think this provision so important here will not force it upon the people of Pittsburg. The provision as it now stands, applies to these two cities, and my amendment is designed to except Pittsburg from it and leave it to apply to Philadelphia alone, and I trust that that will be agreed to.

Mr. LITTLETON. Mr. Chairman: It seems to me that if this principle is to be adopted it should be general. I have yet to learn that there is any great demand in Philadelphia for a decrease in the number of voters who shall vote at a precinct. It is really of importance to Philadelphia to have the number increased than otherwise, because, as I said before, it increases the expenses enormously, especially when we are to have elections twice a year. I do not think we will have the benefit from it that is expected; but I think we should all be in the same boat. I think the number ought to be increased to four hundred to a precinct, with the same precincts that we have now.

Mr. TEMPLE. Mr. Chairman: I have only this to say in answer to the remarks of my colleague, (Mr. Littleton,) that the cost of contested elections—so frequent have these contests become—is much more than the cost of the elections in the first place.

Mr. LITTLETON. I think the gentleman is mistaken on that point.

The question being on the amendment offered by Mr. J. W. F. White, it was not agreed to.

Mr. BUCKALEW. Mr. Chairman: I move to make this number two hundred and fifty. I think there is some force in the remark made, that after a precinct is divided there may not be over one hundred in either of the precincts into which it is divided. I think it would be as well not to make it imperative that it should be divided when it comes to have only just a little over two hundred.

Mr. LILLY. Mr. Chairman: For the very reasons that the gentleman from Columbia (Mr. Buckalew,) gives, I offered a motion to make the number three hundred. Now, under this proviso, if any district in Philadelphia or Pittsburg, shows a vote of two hundred and one persons at a precinct you have got to divide the precinct, and thus you multiply precincts very considerably.

The question being upon the amendment offered by Mr. Buckalew, it was agreed to.

The question then being upon the first section as amended, it was agreed to.

The proviso, as amended, was then read as follows :

Provided : All districts in cities of over one hundred thousand inhabitants, shall be divided by the courts of quarter sessions of said cities whenever the preceding election shows the polling of more than two hundred and fifty votes, and in other election districts, whenever the court of the proper county shall be satisfied that the convenience of the electors and the public interests will be promoted thereby.

Mr. MANN. Mr. Chairman: I apprehend there was a mistake on the part of members of the committee in voting down the motion of the gentleman from Allegheny (Mr. J. W. F. White.) I think they were voting on the number of voters in a district. I would therefore move to amend the fifth line by striking out "one" and inserting "two," so as to make the number two hundred thousand.

Mr. HOPKINS. Mr. Chairman: I rise to a point of order. That proposition has been voted down.

Mr. MANN. No, sir.

The CHAIRMAN. The Chair will state to the gentleman from Washington, that the amendment proposed by the gentleman from Allegheny (Mr. Guthrie) was a limit of the number of voters in a district.

Mr. HOPKINS. The gentleman from Allegheny (Mr. J. W. F. White) on my right, moved to strike out the word "one" and insert "two"—that is in reference to cities of a population of one hundred thousand.

Mr. MANN. Mr. Chairman: I think I have the floor. I desire to state my proposition. I move to strike out the words "one hundred" in the fifth line and insert "two hundred and fifty," so as to read "two hundred and fifty thousand." I submit that that proposition has not been voted on, and it is therefore in order. I feel very confident the committee will accept this proposition when the members reflect that as the section stands it excludes from its provisions all the cities of the Commonwealth, except Pittsburg

and Philadelphia. Why should Pittsburg be put in when Harrisburg, and Reading, and Lancaster are not in. If the proviso is intended to correct evils that are inherent in cities, why exclude these others? It is very clear there was a misapprehension as to the former motion.

The CHAIRMAN. Does the gentleman make a motion?

Mr. MANN. Certainly.

The question being upon the amendment offered by Mr. Mann, it was rejected.

The question then being upon the proviso, a division was called for, and resulted, in the affirmative, 47; in the negative, 22.

So the proviso was agreed to.

Mr. DARLINGTON. Mr. Chairman: There is a supplementary report of the committee, partly on this same subject, on the next page.

The CHAIRMAN. It has nothing to do with this, unless it is moved as an amendment to the section.

Mr. DARLINGTON. Mr. Chairman: I understood this to be a report from the same committee—the Committee on Suffrage—merely a supplementary report, and, of course, to be considered by the committee of the whole, precisely as the other has been. It will be for the chairman of the committee to say whether that is right or not.

Mr. NEWLIN. Mr. Chairman: I move that the committee do now rise, report progress and ask leave to sit again.

Mr. M'ALLISTER. Mr. Chairman: I would remark that the Committee on Suffrage and Elections have other sections under consideration which they will report in a few days. We submit to the Convention, itself, the propriety of proceeding with the consideration of the supplementary reports. There are two of them—numbers four and five—or to defer them until we further report.

The CHAIRMAN. The chair would state that he thinks the only way to get the supplementary report before this committee would be to move the section as a new section.

Mr. LILLY. Mr. Chairman: I move we proceed to the consideration of supplemental report No. 5.

Mr. M'ALLISTER. Mr. Chairman: It seems to me that as a further report will

be made in a few days that will show the entire plan of the committee, it will be better to defer these sections until that report is made. Therefore I do not, as chairman of the committee, move these as new sections.

Mr. LILLY. Mr. Chairman: I am in favor of the committee taking that section five up.

Mr. NEWLIN. Mr. Chairman: I ask what has become of my motion that the committee rise, report progress, and ask leave to sit again?

The CHAIRMAN. The Chair will state that he did not put the motion because the section was gone through with.

Mr. HOPKINS. That motion cannot be entertained for the simple reason that the section has been gone through with.

The CHAIRMAN. The gentleman from Carbon moves to proceed to the consideration of supplementary report, No. 5, of the Committee on Suffrage and Elections.

Mr. NEWLIN. Mr. Chairman: I ask leave to make my motion that the committee rise and report the bill, as the bill has been gone through with.

The CHAIRMAN. It does not require a motion to report a bill.

The question being upon the motion of Mr. Lilly, a division was called, and resulted: In the affirmative, forty-one; in the negative, twenty-nine.

So the motion was agreed to.

The CHAIRMAN. The Chair will state to the gentleman from Carbon (Mr. Lilly) that his understanding of the question is that the gentleman will have to move this supplement by sections.

Mr. LILLY. Yes, sir. My motion was to consider report No. 5.

Mr. M'ALLISTER. Mr. Chairman: Why not proceed in the order in which they were reported, if you take it up at all.

The CHAIRMAN. Will the gentleman from Centre (Mr. M'Allister) be good enough to state how many sections there are?

Mr. M'ALLISTER. Two on No. 4 and one on No. 5. I move, as an amendment to the proposition, that the committee now proceed to the consideration of section one of No. 4.

Mr. LILLY. Mr. Chairman: The only reason why I did not make that motion is that the gentleman who sits at my right (Mr. Brocmail) is absent to-day.

He made a special request of me that in case this matter of report No. 4 came up I would do what I could to postpone its consideration until he returns, as he wants to be heard upon it. I promised him I would do so.

Mr. MEREDITH. Mr. Chairman: May I be allowed to make a single remark? By order of the Convention these reports from the several committees were received as separate articles, and each has been printed as a separate article. The inconvenience of a committee cutting up its report into several distinct matters was obvious, I believe, to everybody from the beginning; but that course has been adopted. Now, the article referred to this committee of the whole is the article preceding No. 4. It is not competent for this committee to take up an article that has never been referred to it. It appears to me if any gentleman desires to go on with that article he has to make no reference to it as an article, but move the several words of that section as a new amendment.

The CHAIRMAN. That is what the Chair stated, substantially. The Chair now understands that the gentleman from Carbon (Mr. Lilly) moves as an amendment to add a new section to the bill. It will be read.

The Clerk then read the new section, as follows:

"All elections by persons in their representative capacities shall be *viva voce*."

The question being on the amendment, it was agreed to.

Mr. LILLY. Mr. Chairman: I now move to amend by adding the words of the second section, as follows:

Females of the age of twenty-one years, or upwards, shall be eligible for election or appointment to any office of control or management under the school laws of this State.

Mr. DARLINGTON. Mr. Chairman: As a question of grammar, I propose to strike out the words "for election or appointment."

The question being on the amendment offered by Mr. Darlington, it was agreed to.

Mr. LEAR. Mr. Chairman: I move to amend by striking out the first word, "females," and inserting in lieu thereof the word "woman."

The question being upon the amendment offered by Mr. Lear, it was agreed to.

Mr. SIMPSON. Mr. Chairman: I move to amend by striking out the words "twenty-one," and inserting instead, "twenty-five."—

["No!" "No!" "No!"]

You may say "no," but you will hear me.

Under the present law of the State no person can be eligible to the office of school director until he is of sufficient age to serve as senator, and that is twenty-five years. If that is the law for males, I do not think there should be any different law for females.

Mr. BUCKALEW. That is a matter of statute merely, and not a constitutional provision. The statute can be changed at any time.

Mr. M'MURRAY. Mr. Chairman: I wish to ask the exact meaning of these words, "control or management." I was not in the Committee on Suffrage when this section was agreed to, and I do not understand why these words are in there. I would like to know from the chairman of the committee, or somebody. I want to vote intelligently on the section. I should like to know whether these words would prevent a female from holding any office under the school laws of the State, whether she is to be limited to certain offices, or can hold any office whatever?

Mr. DARLINGTON. Mr. Chairman: I move to amend the section by striking out the words, "of control or management," so that the section shall read "females of the age of twenty-one years or upwards, shall be eligible for election or appointment to any office under the school laws of this State."

Mr. CARTER. Mr. Chairman: I apprehend that this is a step in the right direction as it will accord to women certain privileges which shall place her in a position of usefulness from which she has hitherto been debarred. I think it is not only a step in the right direction, but one that has been made at the right time. It has been demonstrated so clearly that women are the proper instructors of youth, so designed by nature, so designed by the Almighty Father who seems to have so fittingly constituted them as the guardians of the children of the Commonwealth, and who have proved themselves

so eminently successful as their teachers, that the time has now arrived when we can consistently make this concession to them, if concession it may be termed. I considered that it is eminently proper, and will be most useful, and that it will infuse a new life into the public school system in the rural districts of the State. This is by no means a new idea. I think it has been only about a year since that the British Parliament framed a new law embracing this very provision, and under it were elected two ladies renowned for intelligence and philanthropy, and perhaps as it so chanced added to their efficiency the possession of immense wealth. I think the names of these ladies are Miss Garrett and Miss Countts. It is said that they have done a vast amount of good, having infused new life into the educational system of Great Britain, or more especially of the city of London. The efficiency of women in the school system of the State wherever they have been permitted to take an active part, has been so clearly demonstrated, that I think it is perfectly safe now to introduce this new educational element, and I have no doubt whatever that it will be attended with the most beneficial results. Why, sir, I remember some forty years ago, when it was said that women could never teach schools. I remember the agitation of this question well, when this system was first established in the State of Pennsylvania, for I was interested in such matters then as a school director, being one at the time. For a long time there was a lingering doubt in the minds of many, whether lady teachers would ever supplant the old masters that had been accustomed to teach our children. The experiment, however, was tried, and it was successful from the first, and it has been successful in its fuller development ever since. I think then that the amendment which has been offered is a step in the right direction, because it will tend to remove those restrictions that should be forever put out of sight under a new and liberal Constitution. I assert that every employment should be open to every person of the Commonwealth, man or woman, if they possess the necessary qualifications to fulfil the duties which may be assigned them. The whole tendency of modern civilization looks to the elevation of woman, and to the removal of all the re-

strictions which have been thrown around her, and will ultimately place her in a sphere of far greater usefulness; and while I cannot doubt this for one moment, I am yet unable to agree with those who have argued that it will destroy feminine purity. It has not been long since when, in conversing with a member of this Convention, he said that he would oppose everything that looked to the destruction of feminine purity. I replied that he would have to go back thirty years, when great objections were made to women teaching, and contemplate the results of it in the State, if he desired to be convinced of the ennobling effect it produced upon her character and her employment, as well as upon her pupils. I remember well the astonishment that the suggestion of female teachers created. Many at that time looked with abhorrence at the idea of a young lady going among and teaching the big boys of a school. The experiment, however, was tried, and it was found that moral force predominated over physical, and the superiority of their teachings was not long in becoming apparent and approved by all. The moral force of the true woman, combined with the gentleness of her character, restrained the unruly, and her influence was found to be more beneficial than the stern corrections of male teachers. I did not favor the granting of the suffrage to women, but it was not that I had any objection to it as a matter of principle. I thought the women themselves of this country had not yet demanded it, and I thought that there were enough indifferent voters in the State already who do not exercise this invaluable privilege, and that further, we had enough of uneducated voters. I opposed it for this ground, believing that it was a mere question of time; but I think the time has now come when we can, with safety, adopt this section as it has been reported by the committee.

The question was then taken on the amendment, striking out "twenty-one

years" and inserting "twenty-five years," and it was not agreed to.

The question then recurred on the amendment, striking out the words, "of control or management," and it was rejected.

Mr. MANN. Mr. Chairman: I move to amend the section, by adding the words, "and if otherwise legally qualified, shall have the right to vote for any committee or school officer."

The question being taken on the amendment, it was not agreed to.

Mr. FENCK. Mr. Chairman: I move to amend, by adding at the end of the section the words, "and to the office of recorder of deeds."

The question was then taken on the amendment, and it was not agreed to.

Mr. HAY. Mr. Chairman: I move that the committee rise and report progress. There are a number of gentlemen who desire to offer amendments, and, as they will lead to further discussion, I think it is unnecessary to continue the session any later in the day.

The motion was not agreed to.

The question being then taken on the section, a division was called, which resulted as follows: Ayes, fifty; noes, thirteen.

So the section was agreed to.

Mr. DALLAS. Mr. Chairman: I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

IN CONVENTION.

The committee then rose, and Mr. Lawrence, chairman of the committee of the whole, reported progress and asked leave for the committee to sit again.

Leave was granted, and to-morrow was named.

Mr. STANTON. Mr. Chairman: I move that the Convention do now adjourn.

The motion was agreed to.

So the Convention, thereupon, at two o'clock P. M., adjourned.

FIFTY-FIRST DAY.

TUESDAY, *February 25, 1873.*

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. Jas. W. Curry.

JOURNAL.

The Journal of yesterday's proceeding was read and approved.

REFORM CLUB.

The PRESIDENT laid before the Convention a communication from the Reform club, of this city, tendering to the members of the Convention the use of the house of the club during the sessions of the Convention.

Mr. M'CLEAN. Mr. President: I move that the invitation be accepted, with the thanks of the Convention.

The motion was agreed to.

PROHIBITION.

Mr. DARLINGTON presented a petition from citizens of Chester county, in favor of the prohibition of the sale of liquor, which was referred to the Committee on Legislation.

THE DEATH PENALTY.

Mr. DARLINGTON presented a memorial from Fallowfield monthly meeting of Friends, praying for the abolition of the death penalty, which was referred to the Committee on Legislation.

PAY OF OFFICERS.

Mr. CORBETT offered the following resolution, which was twice read:

Resolved, That the Committee on Accounts be requested to report a resolution directing warrants to be drawn for thirty per cent. of the pay of the clerks and other officers of the Convention.

Mr. JOSEPH BAILY. Mr. Chairman: I move to strike out "thirty" and insert "twenty." If we draw warrants for thirty per cent. it will pay the officers one-half of their salary up to this time. They

have already had twenty per cent. of their pay, and we have not gone through one-half the period of the time this Convention will probably be in session; and it seems to me improper that the officers should be paid one-half of their salary for the time we have been in session.

The PRESIDENT. The question is upon the amendment of the gentleman from Perry (Mr. Joseph Baily.)

Mr. CORBETT. Mr. Chairman: I hope the amendment will not prevail. These clerks have only received twenty per cent. of their pay, and they are at considerable expense, and it is right that they should receive this additional thirty per cent. There will still be one-half of their pay remaining, and certainly we can vote them this amount without danger to the treasury.

The amendment was rejected.

The question recurring upon the adoption of the resolution, it was agreed to.

PROHIBITION.

Mr. JOSEPH BAILY presented a petition from citizens of Perry county, asking for the abolition of the manufacture and sale of intoxicating liquors, which was referred to the Committee on Legislation.

RAILROADS.

Mr. JOSEPH BAILY also presented the petition from citizens of Perry county, relative to the subject of railroads, which was referred, without reading, to the Committee on Railroads.

LEAVE OF ABSENCE.

Mr. PATTON asked and obtained leave of absence for Mr. Horton for a few days from to-morrow, on account of sickness.

Mr. HOPKINS asked and obtained leave of absence for Mr. Elliott for a few days from to-day.

Mr. ELLIS asked and obtained leave of absence for Mr. Bartholomew for a few days from to-day.

IN COMMITTEE OF THE WHOLE.

The Convention resolved itself into committee of the whole, Mr. Lawrence in the chair, for the purpose of further considering the report of the Committee on Suffrage, Election and Representation.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Carbon (Mr. Lilly) to the supplementary report of the committee. The Clerk will read the section as proposed to be amended.

The CLERK read:

SECTION —. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States; nor while engaged in the navigation of the waters of the State or of the United States, or on the high seas; nor while a student of any seminary of learning; nor while kept in any poor house, or other asylum, at public expense, nor while confined in any public prison. *Provided*, That when any student shall have wholly abandoned his former residence he may acquire a new residence as any other citizen.

Mr. McCLEAN. Mr. Chairman: I move to amend, by striking out the proviso. I understand that the section now under consideration is the printed copy of the section which we have upon our desks; and I desire to ask the attention of the committee for a moment to the consideration of the provisions of that section, with regard to voting, by students in any seminary of learning. I submit, sir, that the section, as we have it, is correct in principle; that for the purpose of voting, no person shall be deemed to have gained a residence while a student in a seminary of learning. That is the part of the section to which I wish to direct the attention of the committee.

I submit, sir, that the proviso makes that section wholly inoperative, whilst declaring that no students shall gain a residence by reason of his being a student, while he is a student, yet when he shall wholly abandon his former residence he may acquire a new residence, as any other citizen. I consider this proviso unnecessary, and as productive of a great

deal of mischief in its practical operations. We have recently had a decision of the Supreme Court of Pennsylvania affirming the decision of Judge Longaker, of the Lehigh district, that the residence of a student, while pursuing his studies, is merely temporary, and that he does not thereby acquire a residence.

I understand this to be a correct rule of law, and that it is a wise principle recognized by the United States government. When the conscription laws were put in operation, students were not enrolled at their schools, colleges or seminaries. They were enrolled and made subject to the draft at their homes, and their homes were considered their legal place of residence. The mischief, therefore, which this proviso, if put in operation, will produce, is just this: That students, when they are brought to the polls where their schools are situated, will be tempted to swear, when their votes are challenged, that they have wholly abandoned their former residence, when the fact and the law are both against such an assumption. I submit that the section in this regard is right, and that the proviso is inconsistent with it; and I trust the latter will be voted down. I have lived in a place where a very respectable and prominent college (Pennsylvania college) is situated, and I have seen year after year the mischief which just such a provision has created. Young men of both political parties have been brought to the polls, perhaps under the influence of political leaders, and induced, when sworn, to state that that locality was their place of residence, and in several cases of contested elections students have been brought forward as witnesses, and in their examinations have attempted to convey the impression of having acquired a residence at the place where the college is situated. I know that instances have occurred where they have been induced to testify that they have entirely abandoned their homes, and that they have had no intention of abandoning, as their residence, the place where the college was situated. This is exactly what necessarily leads to all the trouble. If, in case a student has really abandoned his former residence by becoming a married man, or under other circumstances, this section, as it has been reported by the committee, without the

proviso, would not exclude that person from voting; but I submit that the proviso, if put into operation, will bring almost the entire student vote into the ballot at the place where the college or seminary may be situated. I hope, therefore, for these reasons, that the proviso will be stricken out, and the section then adopted.

Mr. DARLINGTON. Mr. Chairman: I rise merely for the purpose of adding a single word to the remarks of the gentleman who has last addressed the Convention. There are a large number of students from all parts of the country, who are being educated in this State, and I think it is a wise provision that they should not lose their right to vote in the city, from which they come, nor acquire the right to vote in a county wherein they are receiving their education. I am in favor of striking out the proviso, as I believe it will accomplish all that can be desired.

Mr. TEMPLE. Mr. Chairman: I desire to add a few remarks in reference to this section, as it has been reported by the committee. If I understand it properly, it says that no person who is confined in any public prison shall lose his right to vote in the State of Pennsylvania. I apprehend that the people of Pennsylvania do not desire a provision to be incorporated in the organic law, which shall permit criminals from other States, who may be convicted of crime and confined in one of our jails or penitentiaries, to claim their residence and the right to vote in the particular counties where such jails may be located. If this is the meaning of this section I shall certainly vote against it. It is evident to my mind that this is the meaning of the section, but before the vote is taken, I should like to hear from the chairman of the committee.

Mr. M'ALLISTER. Mr. Chairman: The meaning of this section is: That every man has a residence at some place, and he can have but one residence. Residence is requisite to the exercise of the right of suffrage, and we can give no better definition of residence than that found in the books, which, for all the purposes of voting in all the Constitutions of the State, is synonymous with domicile and habitation. Residence is the best word that can be used, and it is an elementary

principle that a man does not lose one residence until he gains another, and that he always has a residence. Now it is provided that by none of these things mentioned in the section shall a man gain or lose a residence. That is the intention of the section, and this is the only explanation I have to make in regard to it.

Mr. TEMPLE. Mr. Chairman: I will then move to strike out that part of this section which refers to criminals being confined in public prisons. I think such a provision as this would be a disgrace to the State of Pennsylvania. I desire to call the attention of the committee to the words I propose to strike out in the section. They are: "Nor while confined in any public prison."

Mr. MANN. Mr. Chairman: I suppose that the motion of the gentleman from Philadelphia (Mr. Temple) is not in order until the pending amendment is disposed of. I rise for the purpose of speaking against the amendment of the gentleman from Adams (Mr. M'Clean.) I understand his amendment is to strike out the proviso from the section as reported by the committee.

The CHAIRMAN: The gentleman is correct. The question is upon the amendment offered by the gentleman from Adams (Mr. M'Clean.)

Mr. TEMPLE. Mr. Chairman: I withdraw my amendment for the present.

Mr. MANN. Mr. Chairman: In listening to the remarks made in favor of striking out the proviso from the section reported by the committee, I certainly gathered the idea that the young men who attend our colleges had committed some crime, and that they were to be punished by being deprived of the right of suffrage if they shall presume to aspire to any other position than that which they have heretofore occupied, and that the section without the proviso would imply that a student could not acquire a residence in any election district of the Commonwealth. If I understood the remarks of the gentleman, (Mr. M'Clean,) he said that students ought not to be able to acquire such a residence as would enable them to vote at elections while attending college. I have heard this sentiment expressed so often, and there seems to be such a disposition on the part of some men to place restrictions upon young men who desire to vote while at

college, that there must certainly be some meaning attached to it. The language of the section which immediately precedes the proviso seems to be so clear and explicit that there can be no possible danger in making a mistake. It is only where students abandoned entirely their former residences that they may acquire a residence at the place where they are attending college, which will enable them to vote. Without this proviso they would be entirely disfranchised, while the man working on our railroads could deposit his vote unchallenged if he lived in the district sixty days prior to the election, but a student, who may have attended college for years, shall not be permitted to vote. I cannot see the propriety of thus discriminating against intelligent young men attending college, and engaged in the pursuit of acquiring a liberal education. It certainly can have no other meaning if this proviso is stricken out than that the students in our colleges shall be disfranchised. It seems to me it is a creditable object in a young man to go to college, and in encouraging them to pursue this course they should be allowed to exercise all the rights of citizens while they are thus becoming liberally educated. If the proviso to this section is stricken out it will be beyond the power of a young student to acquire a residence that shall enable him to vote except at the home of his father. I can see no possible evil in retaining the proviso to the section, and I hope, therefore, the amendment will be defeated.

Mr. TURRELL. Mr. Chairman: I rise to correct the statement made by the gentleman from Centre, (Mr. M'Allister,) in respect to the meaning of the word "residence." He says that it is conceded that a man cannot lose his residence in one place until he has gained it in another. I think a little reflection will satisfy the gentleman that such a statement is entirely inaccurate, to say the least. Residence is mainly a question of intention, and partly of fact. The state of fact must correspond with the intention. Now it has been well settled, and I have no doubt it will recur to the gentleman's mind, upon reflection, that if a man leaves this State with the intention of making his permanent residence in another State, the moment he leaves the State with that intention his residence here is lost. If he

goes beyond the borders of the State, and though he may return the next day, still it would require a residence of six months before he could vote again. This very point was decided by Judge Parsons, upon full consideration, in M'Daniel's case, reported in Third Pennsylvania Law Journal, page 89, &c. Many other cases, equally pointed, might be referred to, but it is not necessary, and I will not take the time of the Convention in so doing.

There is another point in connection with this section, and it is in relation to the character of the voters—students, laborers, and the like, who are required to leave home temporarily. Now, sir, the act of Assembly which gave rise to the decision in the Allentown case has had different constructions in different parts of this State. In the northern part of the State, so far as my observation has extended, before the time of the decision referred to was made, mechanics, students and all persons temporarily absent from their homes were permitted to vote, if otherwise qualified, provided they were within the election district ten days prior to the election, and in pursuance of their lawful calling. I understood from a gentleman who assisted in passing that act, Hon. A. H. Read, now deceased, who is doubtless remembered by many of the older members of this Convention, that this was the express object of that act, which is exactly reverse to the decision made in regard to it in the Allentown case.

Why, sir, it is said that you place a hardship upon the laboring man—the carpenter, the mason, and men of that class, who labor away from their homes for a livelihood—to make them lose time, a day, or two days, perhaps, and the attendant expenses, to go home to vote, refusing them the privilege of voting in the district where they are at work, where they are well known, and where they have been pursuing their lawful occupation for the space of ten days. I, for one, believe that it is right that that class of men should be protected and encouraged in the exercise of the right of suffrage, and should not be put to expense for the purpose of exercising it at home. As to students, I admit, sir, that there might be a seeming hardship occur by a large body of students congregated in one place, as

there were at Allentown, who should come in and vote at municipal elections; but they should have the right, if otherwise qualified, if they have resided in the district the time required by law, to vote for national and State officers, and there could be, it seems to me, no objection to this. In all cases it would be easy for a man to establish his right to vote.

But I do not intend to make any extended remarks, but wish to express my dissent to the view expressed by the gentleman from Centre (Mr. McAllister) as to residence.

Mr. HOPKINS. Mr. Chairman: I do not know that I have much to say in regard to the immediate question before the committee, which I believe is the amendment offered by the gentleman from Adams (Mr. McClean.) I am not lawyer enough to know whether the striking out of the proviso is necessary to make more effective the requirements of the section itself. But I, for one, desire to say that I believe a provision of this kind ought to be engrafted on our organic law, prohibiting students at colleges from voting, and I will tell you why. You, sir, know, Mr. Chairman, and I know, that in Washington county it has occurred more than once, that this vote controlled the election in the county. I know it has occurred more than once that it controlled our municipal elections in the town of Washington. In the county of Washington the difference between the political parties does not sometimes amount to fifty votes, and it has often been that it did not amount to ten votes, and at that time we had two colleges in our county, and I suppose it would not be exaggeration to say that from forty to sixty students voted at the two colleges. Many of them were not even citizens of the State, except as they became so by being at college a year. They were foreign to our soil, and yet their votes controlled the election, not only for county and municipal officers, but for members of the Legislature and for Congress. It has occurred more than once, and it has been a source of very great annoyance. I have seen the question raised a score of times in my own town, as to whether they should vote or not. They have generally been allowed to vote upon swearing that they had been there one year, and these people from other

States, and from other counties or our own State, absolutely controlled the result of the election.

I am not sure whether it is necessary to strike out the proviso to give the proper effect to the section, but I am decidedly in favor of a provision which will prevent students from voting. If they desire to vote they ought to go home.

Mr. DODD. Mr. Chairman: Having been a student in Washington county for four years, and having voted there, I simply desire to state to the gentleman that if all the voters of Washington county were as intelligent as the students he ought not to be ashamed of them. I see no reason why students, if they are twenty-one years of age, should not vote as intelligently as any other class of voters. If they are living at the institutions where they are acquiring education, and they have no residence elsewhere, why should they be prohibited from voting in the county where they have a right to?

Mr. HOPKINS. Mr. Chairman: I did not intend to cast any reproach upon the intelligence of the students, and surely I would be the last man to cast reproach upon the intelligence of the gentleman from Venango (Mr. Dodd.)

Mr. McCLEAN. Mr. Chairman: I rise to explain. The gentleman from Potter (Mr. Mann) seems to impugn my views in making the proposition I have. I totally deny the justice of any charge of the kind. I have been a student myself, and I know that I would never attempt to exercise the right of suffrage at the seat of any institution which I have attended, literary or law. I have had no right to vote except at my home, which was my legal place of residence. That was the place for the exercise of my right of suffrage. I make no discriminations against students. I yield to no man in respect for the great body of students, and it is only to preserve the honor of that noble class of young men that I have offered this proviso, that they may not be led into the temptation which this provision offers them, that I ask that this proviso be stricken out.

Mr. METZGER. Mr. Chairman: It occurs to me that this section would be less confused, and more easily understood, if the proviso were stricken out. If I understand the section, if the proviso were stricken out, it would not disfranchise

the student, for it would leave his residence for the purpose of voting at the place where he resided at the time when he entered the college or the seminary. Consequently there will be no difficulty in ascertaining where his actual residence is, while if you leave in this proviso, it seems to me *you you will have difficulty*. At every place where there is a college or seminary, it will become a question as to what students have wholly abandoned their former residences, and who have not. In our city there is a seminary of learning, and a very respectable one, and to my knowledge, there has not been an election within the last ten years where we have not had trouble in ascertaining what students were entitled to vote. Sometimes they were wholly excluded. It depended upon the election board. At other times they were all permitted to vote. There have been occasions when I have seen the principal of the institution march down with the students and vote them *en masse*. Now if this provision were stricken out, such a scene as that could not be enacted, and these gentlemen, if they wished to exercise the elective franchise, could do it by going to their former residences. Certainly they should not ask any greater privilege, while connected with a seminary of learning, preparing themselves for future active life, than the man who is engaged in the service of the nation, doing duty for his country. If you strike out the proviso, it leaves the section simply to mean, that a man who enters a seminary of learning or a college, while there, neither gains nor loses a residence. It leaves it in such a position that the election officers will have no difficulty, and there will be none on the part of any one to know what the section means, whereas, if you leave the proviso in, I apprehend that wherever colleges and seminaries are located trouble will ensue.

MR. AINEY. Mr. Chairman: There are cases that may arise where it is impossible for a student to retain his residence with his father, or at the place where he resided prior to entering an institution of learning. If a student leaves or abandons the district where he has resided with his father, to go to an institution of learning in another county or district, and his father, during his residence at such institution, changes his residence to another

county, such student could not go to the home of his father from the school to vote. Where would be his residence then, in such case? How could he go home to vote? His father resides in another county or district. He has never resided there for a single hour. He has acquired no shadow or semblance of a residence there. There are many other cases which might be suggested. It is unnecessary here. This whole subject was well canvassed, and deliberately and maturely considered before the Committee on Suffrage, Election and Representation, of which I have the honor to be a member. If I correctly understood the feelings of the committee, it was a source of regret that this section must necessarily be limited in its character. We desired to make it more general, more comprehensive, and more precise. We desired to define more definitely and clearly what should constitute a residence, under the Constitution, for the purpose of voting. After a series of meetings, at which many propositions were brought forward, and after long and deliberate consideration, the committee came to the conclusion that this was about the best we could present to the Convention. I am clear, in my own mind, that this proviso is proper and necessary; without it the section would be imperfect, and be liable to result in injustice. It can do no harm. The student, by the simple act of attending college, neither gains nor loses a residence; but if he shall have wholly abandoned his former residence, and has no other residence, then he acquires a residence at the college, or at the institution of learning where he is, as another citizen. This is certainly right. It is necessary to protect, or at least to make clear, his rights in certain cases, and will serve as a guide to election officers, by making the purpose and scope of the section more clear and precise.

MR. WHERRY. Mr. Chairman: I am opposed to the proviso reported by the committee, and in favor of the amendment of the gentleman from Adams, (Mr. M'Clean.) I oppose the proviso, first, for the reason that the word "students" is too general. It is not specific enough.—Gentlemen have spoken upon this question as though it was confined to students in literary institutions. Now, I apprehend, that the word includes much more

than that, and if it does not, we will have to have a definition of what a "student" is. I hold that a young man leaving his father's residence, and going into another county to learn any trade, is a student. Does the chairman of the Committee on Suffrage, Election and Representation hold that he is not? Or does he admit that the word "student" will cover this class of citizens too?

Mr. M'ALLISTER. Certainly not!

Mr. WHERRY. Then, Mr. Chairman, I am opposed to this proviso on that ground. I shall oppose the proviso because it discriminates in favor of one class of students against another class. Moreover, the proviso reads "who shall have wholly abandoned." I want to know what "wholly abandoned" means. Does it mean that he has turned his back upon his father's house and taken a solemn vow that he will never return there again? Or does it merely mean that in the pursuit of his avocation, namely, the acquirement of an education, he has seen fit for a while to leave his father's residence and take up his residence in another county? If this last be the meaning, I would like to know what is the use in making this discrimination in favor of students over and above the favor bestowed on other citizens? If it only means that by going from his father's house and making his abode in the place in which he is pursuing his studies, he has thereby obtained a residence in that place; he is put precisely on the same footing with other citizens without this proviso. I hope, therefore, the proviso will be stricken out.

This is wholly lacking in specific statement. If it means what gentlemen claim, then it is a discrimination in favor of one class of citizens against all others. If it does not mean what the gentlemen claim, it is of no use whatever and ought to be stricken out.

Mr. M'ALLISTER. Mr. Chairman: This section was not intended to alter the legal construction of the preceding sections. It is simply explanatory of what we have enacted, not necessary for a lawyer, but presumed to be necessary for the guidance of election boards—the proviso as well as what precedes it.

Now, a word in reference to this proviso, "that when any student shall have wholly abandoned his former residence,

he may acquire a new residence as any other citizen." This is the law now—this will be the law after the adoption of the section even without the proviso; but to exclude the inference, that because a student, he could not acquire a residence, it was thought best to insert the proviso. Is it not right that doubt should be removed? Is it not right that a student who is turned aloof from his father's house, by force, it may be, and who makes his home at a college, seeking employment as a school teacher, and thus accumulating money sufficient to support him at college, but gaining no residence in the teaching of the school, because but a few months only in any one place should acquire a settlement? Most certainly it is right. During the time that he is acquiring his education, the only residence he has, or can have, is at the college, and he should not be deprived by any election ward of his right of suffrage by mistake or otherwise, and hence the proviso is inserted, that he may so acquire a residence, has been laid down as elementary law in "Cooley's Constitutional Limitations," page 600, in these words:

"A student in any seminary of learning, who has a residence there for purposes of instruction, may vote at such place, provided he is emancipated from his father's family, and, for the time, has no residence elsewhere." And the elementary writer himself, of standard authority, refers to *Lincoln vs. Hapgood*, 11 Massachusetts Reports, 350; and *Putnam vs. Johnston*, 10 Mass., 488. So much in relation to this proviso.

Now a word in reply to my friend from Susquehanna, (Mr. Turrell,) in reference to the error which he supposes the chairman of the committee has fallen into, in saying that every man must have a residence somewhere. He cites the case of a man leaving Pennsylvania with a view to seek a settlement in another State, and asserts that a citizen of Pennsylvania thus leaving with the mere intent to seek a residence in another State, loses his residence in Pennsylvania the moment he leaves the county in which he resides. I take issue with the gentleman. It is not the law; and the gentleman will find in no standard author authority to sustain his allegation. There is but one case in which that can occur, and it is

this: If a native of Ohio come to Pennsylvania with a view of making Pennsylvania his residence, and acquires a residence here, and after having so acquired a residence here, determines to return to his native State and make his former his future residence, he then loses his acquired residence in Pennsylvania the moment he leaves Pennsylvania for Ohio. But if a native of Pennsylvania having no residence elsewhere, leaves his State, his residence remains in Pennsylvania up to the moment when he acquires a residence elsewhere. Upon this subject I refer to "Story's Conflict of Law."

Mr. MANTON. Will the gentleman permit himself to be interrupted for a question?

Mr. M'ALLISTER. Certainly.

Mr. MANTON. If a man were to take his household furniture and move into the State of Ohio from the State of Pennsylvania, and was gone one single day, with the intention of leaving the State of Pennsylvania and then came back, could he vote in Pennsylvania?

Mr. M'ALLISTER. Mr. Chairman: I hold as an undoubted principle of law, that if a resident of Pennsylvania leaves his residence and goes to Ohio and travels all over it for six months, and does not find a residence there, and returns to Pennsylvania, he is a legal voter in the district he left; his residence remains all the time in Pennsylvania. That is the well settled law upon the subject of domicile and residence. It was upon that subject that I was about to refer to "Story's Conflict of Law," par. 47, p. 42, when interrupted: "A domicile once acquired remains until a new one is acquired." Again: "If a man has acquired a new domicile different from that of his birth and removes from it with an intention to resume his native domicile, the latter is re-acquired, even whilst he is on his way, for it reverts from the moment the other is given up." But in the other case it remains until he acquires a new domicile.

That has been the well considered rule in Pennsylvania. It was the rule on which votes were received at the last election in the borough in which I live, after full discussion and reference to authorities. A citizen had left the borough with a view to making his residence in Indiana if he could find a residence

there; but he did not find it and returned a few days before the election, and offered to vote in Bellefonte, and was permitted to vote on the ground that he had not lost his residence. Upon this principle, then, I contend that this whole section is explanatory of the sections that we have adopted and intended wholly for the guidance of the election board. I hope this amendment will therefore be voted down and the section pass as reported, with one exception, however, and that is in reference to those persons kept in poor-houses and asylums. I think, myself, that the words, "at the public expense," are in good place as applied to them.

Mr. LANDIS. Mr. Chairman: I do not want to trouble the Convention more than for a moment; and what I have to say is rather interrogatory than argumentative. I think there is some misapprehension about the construction of this section, and I think there is more claimed for it than the language would guarantee. We are told in the section that those in the service of the government, in seminaries of learning, and in certain other institutions, shall, for the purpose of voting, be deemed not to have gained a residence nor to have lost it. Now, sir, if they have not gained it, then they have not lost the old residence. If they have not lost the old residence then, surely, as a logical consequence, their place of election would be at the old residence. If it is proposed that they shall vote at the place where they temporarily sojourn, would it not then be best that it should be broadly, distinctly, and squarely stated? The committee have provided for that in the fourth section of their report in the case of those of our citizens who are absent in the army of the United States, in which they provided there should be some proper legislation to allow them to do so. If it is not then provided that they should vote away from home, so far as regards other persons provided for in this section—when they have done so in case of soldiers—then surely it cannot follow that any of these other classes of citizens have any right to vote away from their place of residence, that, then, being conceded—that being the reason of the section.

Mr. M'ALLISTER. Will the gentleman allow me to say that the fourth section did

not refer to soldiers in the army of the United States? It refers to those temporarily absent under call.

Mr. LANDIS. I understand it so, precisely. It speaks of citizens of the Commonwealth who are temporarily absent in the military service of the United States or of the State. I understand that to be so. If that requires a special section to allow them to vote while absent, would it not also follow that a special section would be required to allow the others to vote inasmuch as they are said not to gain a residence nor to lose it by reason of the circumstances stated? Now, as to the proviso, which I believe is the real question before the committee; suppose there was no proviso there. What is it? "When any student shall have wholly abandoned his residence, he may acquire a new residence as any other citizen." Would not that follow any way without the proviso being there? If it is held that the proviso is for the purpose of letting him vote whilst absent from home, it does not say so on its face. The proviso is entirely unnecessary, because in the absence of the proviso, the student or any other citizen, shall be permitted to acquire a new residence, when he has wholly abandoned his former residence. Therefore, that being a self-evident proposition, what is the use of embodying it in this section? Let us not encumber the section with any surplusage. Let us have nothing here that is certainly wholly useless.

Mr. STEWART. Mr. Chairman: The section, considered as a whole, presents a plain and simple proposition, open to no serious objection so far as I can see; but, regarded without the proviso, it is imperfect and defective, for the reason that it would virtually disfranchise a portion of our people.

It provides that no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while a student in any seminary of learning.

Under this provision, if an individual voluntarily abandons his residence for the purpose of prosecuting his studies at an institution of learning, he puts it beyond his power to get a new residence while so engaged, no matter how long he continues in that particular place.

The proviso is required to relieve the section of this objectionable feature. And

it does it by declaring that the student, when he wholly abandons his residence, shall not be an exception to the general rule, but shall be allowed to acquire a new residence in the place to which he removes, just as other citizens may, without regard to his business or pursuits.

With the proviso I shall vote for the section; but if the amendment of the gentleman from Adams (Mr. M'CLean) prevails, I shall vote against it.

Mr. LILLY. Mr. Chairman: I do not rise to make a speech, but I desire to say that while this Convention sat at Harrisburg I submitted a proposition, which was referred to the Judiciary Committee, requiring that they should fix the matter of residence in some definite manner, so far as it relates to voting. However, some other person had a similar proposition, referred to the committee of which I have the honor to be a member, the Committee on Suffrage and Elections. In that committee we have discussed this matter very fully, and I am free to say that out of the whole fifteen members there are not two of us who think alike upon it. Each lawyer I meet in committee tells me that he understands it thoroughly, and that nobody ought to understand it in any other way than his; but when the committee get together, and get conversing on the subject, they soon get by the ears. I think that this is an important question. I have studied it up so much in committee that every one in the committee who refers to this subject refers to it as "Lilly's question." It is an important question, this question of residence, and should be so defined that the commonest mind can understand it. I do not attempt to say that it should be defined so that all lawyers would agree on the terms exactly, but it should be so defined that the election officers, that the common mind, should know what it means. We have a gentleman living in our county who has resided there for forty years, and has raised his family there, and had them married from his house there, and has never lived anywhere else, yet for the last ten years he has voted in this city, and he is upheld in that. That is one point that I think ought to be settled, so that that man, who is a man of high standing and respectability, should go home to vote, and not vote in Philadelphia. Again, we have another man in our county, a gen-

tleman that I know, and whom I have known for thirty-five years, and, in my opinion, he has never voted at his residence, and yet he has voted at every election. He resides at Beaver Meadow, with a sister; he goes there every Saturday night, stays there all Sunday; if he is sick, he goes there at once; every holiday that occurs he goes there; and if you ask him where he is going, he tells you he is going "home." This gentleman, however, will tell you that because the law reads, "In pursuance of his lawful calling," he can vote where he does business. The election officers let him vote; and we have, in every election contest in our county, and at every polling place, a difference of opinion on this subject, which causes more discussion and dissension there than any other one thing. It is due to this Commonwealth, the legal acquirements of this Convention owe it to the people of the Commonwealth, that the question of residence, in its relation to voting, shall be so stated that every man who holds an election office, and every man who approaches a ballot-box to vote, shall know what this word "residence" means. Under these different statements and decisions in our country, I meet men every day who say they have the right to vote at a half dozen places. That is unreasonable; there is no man in this Convention, I suppose, who will for a moment say that it is not unreasonable; yet it is the fact.

In our town, at the last election, a man came up to vote, and he was asked if this was his home. He says, "yes." Where do you work?" "At Tamaqua; but this is my home. I have worked there for six months, but I pay my taxes here, and here is where I want to vote." He voted. Three hours afterwards, another man came up to vote and he was challenged, and was asked, "where do you reside?" He says, "in St. Francis, in Columbia county?" "Have you your family there?" "I have." "You pay your taxes there?" "Yes." "Is that your home?" "Yes." "Then what under the sun brings you here to vote." "Why," he said, "I have worked on the Lehigh and Susquehanna Railroad for the last twenty days, and have been in the pursuance of my lawful calling there for that time. I am entitled to vote here." So they took his vote. I say to this Convention

that it owes to the people of the State of Pennsylvania, to themselves and to every duty which they came here to perform, to define, clearly and sharply, what residence means. Let it be arbitrary if you please; but set down some positive rule by which election officers can be governed, as well as the people, when they go to vote. That difficulty creates more strife, and heartburnings, and trouble at our election poll, and at every election poll throughout the Commonwealth, I have no doubt, than any other one question you can bring before it. It should be so fixed that a citizen in the position of the one whom I first mentioned would be obliged to go home to vote and not come to Philadelphia for that purpose. There is a great deal of ill-feeling created on this subject in its various bearings, and I think there is no member on this floor who will not concur with me that the question ought to be set at rest in such a manner that there should be no further trouble about it.

MR. LEAR. Mr. Chairman: I shall vote in favor of striking out this proviso. I shall also vote against the whole section, and I shall regard it as a very grave mistake if this section is put into our Constitution. If it is for any purpose, it is for the purpose of defining what kind of absence from home will lose a man his residence. If we confine it to these cases mentioned in this section, we shall have a limitation which, by its own force, will exclude every man from the right to vote who is absent from his home upon his particular business, whatever it may be. I avail myself of the privilege of discussion in committee of the whole, not so much to speak of this proviso as of the section itself, for it provides that: "For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of the State or of the United States or on the high seas, nor while a student in any seminary of learning," &c. Now, sir, it seems to me that to take that section as it stands, is as much as to say that every person who is absent from his place of residence in any other department of business or calling than those mentioned here, will lose his

residence by that absence from home—which I suppose this committee does not intend should be done. Besides, nearly the whole of the provisions of this section are of such a character as have been well established, for instance, that a man should not lose his residence by reason of his being thus engaged away from home. Who ever supposed that a man should lose his residence by reason of his being away from his place of domicile, engaged in the civil or military service of this State or of the United States? If it has always been supposed that he did not thus lose his residence, why should we enact it into this clause of the Constitution, when it is already a very well settled principle of common law with regard to this question of residence? If we undertake to say that he "shall not lose his residence by reason of his being engaged in the civil or military service of this State or of the United States, or by reason of his being engaged in the navigation of the waters of this State, or upon the high seas," do we not thereby indirectly and impliedly say that he will lose his residence if he is from home engaged in any other duty than those named? What becomes of the commercial travellers of this country? What will become of the residences of those men who are engaged as collecting agents, and who go out of this State and into other States, and domicile themselves for many months together in Chicago, St. Louis, Louisville or Cincinnati, for the purpose of collecting money for their principals, or of selling goods for those with whom they are engaged? They do not lose their residence in Pennsylvania, and yet there is no word said about them in this section. There is a well settled principle of law that "the expression of one thing is the exclusion of all others." If we undertake to define by what means a man shall *not* lose his residence, it is supposed that we express *all* the classes of cases which will come under that exclusion.

By the provisions of this section, then, it will be held by election boards construing this law, that by that rule we establish a principle that all those who are away from home, and who are not within the definition of these classes of persons enumerated in this provision, will lose their residence by this absence. Therefore, it is a mistake to undertake to define,

by a single section or article in the Constitution, what classes of persons shall not lose their residence in consequence of being absent from their places of business or from their ordinary domiciles; and I think that we will commit a mistake if we incorporate this as one of the provisions of our new Constitution.

Let all these classes of cases be considered by the election officers under the common law principles as to what *shall* and what *shall not* lose a man his place of residence as a voter in the State of Pennsylvania. They have been determined, as was suggested by the gentleman from Adams, (Mr. M'Lean,) by the Supreme Court of the State in one case, and by other courts in this State with regard to other questions, and similar questions, and we have them well defined. When we undertake to define, then, a new class, and leave others out, it will be and properly may be understood by the election officers that we have undertaken to explain by this section *all* of the classes who should not lose their residence by their absence from home; and, therefore, all other men who are engaged, as, for instance, travelling for their leisure, or in any other occupation, who have gone from their homes without any intention of changing their places of residence—will lose their residence by reason of this absence. Hence I think we had better not adopt the section as it stands, because it is impossible to meet every possible case which might occur.

With regard to this very question of "students" who go from their homes and are temporarily away, although sometimes for three or four or more years, the gentleman from Cumberland has very well asked the question, whether that expression "student" means apprentices? It means here, according to the language actually used, "students in seminaries of learning." It does not cover students of art who go, for instance, to Italy, for the purpose of studying the old masters, or of improving their knowledge of their profession, and yet when we put such a provision as this into the Constitution we say, that while students in all seminaries of learning shall not lose their residence by reason of absence from home, yet students of art, and students in other departments, men engaged in business, as upon railroads, lose theirs, and in this

shiftless and restless population of ours there is a great portion of the community that have occasion to go from home every year of their lives for some personal purpose or other, and it will, not unreasonably, be held by virtue of that principle—*"expressio unius est exclusio alterius,"* that we have undertaken to exclude all others from the provisions of this Constitution that we have not actually expressed within it, and therefore these people leave their difficulty with the election board, and it will add confusion and difficulty to the determination of the question as to whether a man should lose his residence by this effort to define it.

The question being taken on the amendment striking out the proviso, a division was called, which resulted as follows: Ayes, thirty-eight; noes, twenty-five.

So the amendment was agreed to.

Mr. TEMPLE. Mr. Chairman: I move to amend, by striking out all after the word "asylum."

Mr. WHERRY. Mr. Chairman: I move to amend the amendment, by striking out all after the word "learning."

Mr. TEMPLE. Mr. Chairman: It has been suggested by a number of gentlemen in the Convention that my amendment should include all after the word "learning." I have no objection to accepting that as an amendment. I have, however, a few remarks to make in regard to the amendment. I cannot possibly conceive why the Committee on Suffrage should have reported such a section as this, or at least that part of it which my amendment is designed to strike out. I cannot understand why the committee should undertake to make a provision in the Constitution that shall guarantee to a class of persons who see proper to go into other cities or into other counties than those in which they properly live, and get into penitentiary or other prisons, and by doing that retain their residence in the place from which they went. I cannot understand why the committee should undertake to place such a provision in the Constitution, which accords to this class of people such a protection as this; and why they should be unwilling to leave the question to the ordinary decision of the courts. If such a provision as this is even introduced into the Constitution of the State, any

number of criminals who shall come over from the State of New Jersey, or the State of New York, and who may be incarcerated in the penitentiary, can thereby acquire a residence in the State of Pennsylvania. It seems to me, upon the ground of decency alone, such a provision should be excluded from the Constitution. The modesty of the Convention, if you please, should forbid us from placing such a provision in the Constitution. I therefore hope it will be voted down.

Mr. DARLINGTON. Mr. Chairman: Is it in order to offer an amendment?

The CHAIRMAN: There is an amendment to the amendment already pending.

Mr. ANDREW REED. Mr. Chairman: I do not think the gentleman who has last addressed the Convention (Mr. Temple) can have read this section very carefully, or he would not have made the speech he did. He states that the effect of this section will be that criminals, coming to this State from New Jersey or New York, who may be incarcerated in the penitentiary, will thereby, under this section, acquire a residence. Now if the gentleman will read the section attentively, he will find that a criminal incarcerated in a penitentiary of this State does not thereby acquire a residence in the county where the jail may be located. The whole section provides nothing further than what is now contained in the Constitution. A person may now be taken to a jail in another township or county and incarcerated therein, but he would not thereby acquire a residence in the county where the jail may happen to be located, because he has no intention of making that county his residence. A residence, in the meaning of the law, is a question of intention entirely, and the criminal is there in the jail of a county against his intention and against his will, and his residence refers to the place from whence he came before he was incarcerated in jail. I trust, Mr. Chairman, that part of the section in reference to the poor house will also be retained in the section. How often have we seen the degrading spectacle in each county, of the steward of the poor house bringing up the inmates of that institution in regular order and voting them like so many machines. It is evident to every candid mind that such proceedings are entirely wrong, and that they have an evil ten-

deney. The residence of paupers and criminals should always refer to the place from whence they come and where they voted, if they voted at all. I doubt, however, the propriety of allowing these classes of our society to exercise the right of elective franchise at all, I cannot perceive the evils to which the gentleman from Philadelphia (Mr. Temple) has referred, and I therefore shall vote against his amendment.

Mr. TEMPLE. I would like to ask the gentlemen whether he believes that the insertion of this clause in the Constitution will change the law as it now stands in any material.

Mr. ANDREW REED. Certainly not.

Mr. TEMPLE. Then why do you desire its insertion in the Constitution?

Mr. ANDREW REED. I presume the Committee on Suffrage inserted this section into their report for the purpose of furnishing an unvarying rule for the election boards, and in order that the law might not operate differently in one county than in the another. This is the only good that I can see will be accomplished by placing such a provision in the Constitution. This far it may be beneficial, but it certainly gives no residence to criminals from other States, who shall be incarcerated in the various jails of our counties.

Mr. MACVEAGH. Mr. Chairman: While I shall vote for this amendment, I confess I have yet to hear any satisfactory reasons given for the insertion of this section at all into the fundamental law of the State, and I trust the members of the Convention will take care to read it thoroughly and consider it, and then that we will vote the whole section down as suggested by the gentleman from Chester (Mr. Darlington.)

The question was then taken on the amendment, striking out all after the word "learning," and it was not agreed to.

Mr. DARLINGTON. Mr. Chairman. I now move to strike out all after the word "section," in order to bring the Convention to an affirmative vote on the question.

Mr. BUCKALEW. Mr. Chairman: I object to the motion upon a question of order. I contend that no amendment can be received which is equivalent to a

rejection of a proposition under consideration.

The CHAIRMAN. The Chair, although disposed to gratify the gentleman from Chester, (Mr. Darlington,) will so rule, and decides the motion out of order.

Mr. DALLAS. Mr. Chairman: I call for the reading of the section as amended.

The CLERK read as follows:

SECTION 14. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of the State, or of the United States, or on the high seas, or while a student of any seminary of learning, nor while kept in any poor house or other asylum at public expense, nor while confined in any public prison.

The question being then taken on the section as amended, a division was called, which resulted as follows: Ayes forty; noes, thirty-six.

So the section was agreed to.

Mr. CORBETT. Mr. Chairman: I move the committee rises and report progress.

The CHAIRMAN. The motion is unnecessary.

IN CONVENTION.

The committee then rose, and the President resumed the chair.

Mr. LAWRENCE. Mr. President: The committee of the whole, having had under consideration the report of the Committee on Suffrage, Election and Representation, have instructed me to report the article, with sundry amendments.

The PRESIDENT. The amendments reported by the committee of the whole will be read.

Mr. MACVEAGH. Mr. President: Is it in order—

The PRESIDENT. It is not in order. The amendments will be read.

The CLERK read as follows:

THE SUFFRAGE ARTICLE AS AMENDED.

The report of the committee of the whole on the article on suffrage, election and representation, is as follows:

SECTION 1. Every person possessing the following qualifications shall be an elector, and be entitled to vote at all elections, viz:

1. A male person twenty-one years of age.

2. He shall have been a citizen of the United States at least one month.

3. He shall have resided in the State one year, or, if he had previously been a qualified elector of the State, removed therefrom and returned, six months immediately preceding the election.

4. He shall have resided in the election district where he offers to vote two months immediately preceding the election.

5. If twenty-two years of age or upwards, he shall have paid within two years a State or county tax, which had been assessed at least two months, and paid at least one month before the election.

SECTION 2. All elections of the citizens shall be by ballot. Every ballot voted shall be numbered in the order in which it is received, and the number recorded by the election officers, opposite the name of the elector who presents the ballot. Each elector shall endorse his name upon his ballot, or cause it to be endorsed thereon, and attested by another elector of the district, who shall not be an election officer, and the oath prescribed for the election officers shall require secrecy as to the contents of every ballot cast at the election.

SECTION 3. Electors shall in all cases, except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance on elections, and in going to and returning therefrom.

SECTION 4. Whenever any of the qualified electors of this Commonwealth shall be in any actual military service under a requisition from the President of the United States, or by the authority of this Commonwealth, such electors may exercise the right of suffrage in all elections by the citizens under such regulations as are or shall be prescribed by law as fully as if they were present at their usual place of election.

SECTION 5. All laws regulating elections by the people, or for the registry of electors, shall be uniform in their operation throughout the State; but no elector shall be deprived of the privilege of voting by reason of his name not being on the registry.

SECTION 6. Any person who shall give or promise, or offer to give, to an elector any money or other valuable consideration for his vote at an election, or for withholding the same, or who shall give, or promise to give, such consideration to any other person or party, for such elector's vote, or for the withholding thereof, and any elector who shall receive, or agree to receive, for himself or for another, any money or other valuable consideration, for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election; and any elector whose right to vote shall be challenged for such cause before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received.

SECTION 7. Every person convicted of any fraudulent violation of the election laws shall be deprived of the right of suffrage, but such right in any particular case may be restored by an act of the Legislature, two-thirds of each House consenting thereto.

SECTION 8. In cases of contested elections, no person shall be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding.

Sections 9 and 10 were stricken out.

SECTION 11. Wards of cities or boroughs and townships shall form or be divided into election districts of compact and contiguous territory, in such manner as the court of quarter sessions of the city or county in which the same are located may direct: *Provided*, All districts in cities of over one hundred thousand inhabitants shall be divided by the courts of quarter sessions of said cities whenever the preceding election shows the polling of more than two hundred and fifty votes, and in other election districts whenever the court of the proper county shall be satisfied that the convenience of the electors and the public interests will be promoted thereby.

SECTION 12. All elections by persons in a representative capacity shall be *viva voce*.

SECTION 13. Women of the age of twenty-one years or upwards shall be

eligible to any office of control or management under the school laws of this State.

SECTION 14. For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence or lost it by reason of his absence while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of the State, or of the United States, or on the high seas, nor while a student of any seminary of learning, nor while kept in any poor house or other asylum at public expense, nor while confined in any public prison.

The PRESIDENT. The Chair will state that upon a former occasion the question of agreeing to the amendments made in committee of the whole was put to the Convention. This action is in conformity with parliamentary law, and the Chair pursued this course. It has never been the custom in Pennsylvania, and, as a number of gentlemen for whom the Chair entertains the highest respect have suggested that it would be best for the Convention to follow our own custom in this respect, the Chair will submit to the Convention whether the question of agreeing to the amendments shall be put to the Convention or not?

The question being taken, it was decided in the negative.

Mr. DARLINGTON. Mr. President: I move that the article as amended shall be printed.

The motion was agreed to.

The PRESIDENT. The Chair will observe, on this question, that the House may understand it, that this bill will be in order to-morrow morning, on second reading; and unless it be re-printed before that time, it will not be practicable for the House to go on with it understandingly.

Mr. DARLINGTON. Mr. President: It must be printed before the House can understand it.

The motion that the article, as reported by the committee of the whole, be printed was agreed to.

The PRESIDENT. The next business before the House would be article four of the report of the Committee on Suffrage, Election and Representation, but which has been incorporated in the article reported in committee of the whole. Is it

the pleasure of the House to proceed to the consideration of that article?

Which was decided in the negative.

The PRESIDENT. The next business in regular order would be article five of the report of the Committee on Suffrage, Election and Representation, which has also been included in the report made by the committee of the whole. Is it the pleasure of the House to proceed to the consideration of that article?

Which was decided in the negative.

Mr. MACVEAGH. Mr. President: If it is in order, I would move that the House go into committee of the whole, to consider the report of the Committee on Legislature.

The PRESIDENT. The article reported by the Committee on Legislature was before the committee of the whole, and the committee of the whole had leave to sit again. On the day that they had leave to so sit, it was not passed over but postponed. It is in order now to go into committee of the whole on the article on the Legislature.

IN COMMITTEE OF THE WHOLE.

The motion was agreed to, and the Convention resolved itself into committee of the whole, Mr. Hopkins in the chair.

THE LEGISLATURE ARTICLE.

The CHAIRMAN. The business before the committee of the whole is the consideration of the report of the Committee on Legislature. The section in order is section twenty, which will be read.

SENATORS FROM PHILADELPHIA.

The CLERK:

SECTION 20. The General Assembly shall apportion the State at its first session after the adoption of this Constitution, and once every ten years thereafter, by dividing the population of the State, as ascertained by the last preceding national census, by the number thirty-three, and the quotient shall be the ratio of representation in the Senate. Counties containing a population of four-fifths of said ratio shall be separate Senatorial districts, and each elect one Senator. Counties containing not less than the ratio, and three-fourths thereof, shall each elect two Senators, and one additional Senator for each number of inhabitants equal to the ratio contained by said counties in excess of twice the number of said ratio. All Senatorial districts shall be formed of contiguous and compact territory, and contain, as

nearly as possible, an equal number of inhabitants: *Provided*, That no city or county shall elect more than four Senators.

Mr. DARLINGTON. Mr. Chairman: When this committee of the whole was in session before, on this Legislature article, I moved this amendment: To strike out all that section, and insert:

SECTION 20. The General Assembly shall apportion the State, for the election of Senators and Representatives, according to population as ascertained by the last preceding census, every ten years, commencing at the first session after the adoption of this Constitution. Senators and Representatives shall be chosen by single districts, composed of contiguous, and as nearly as practicable, compact territory, of equal population. When a city or county shall be entitled to two or more Senators, it shall be divided by ward or township lines. No city or county shall be entitled to more than six Senators. Each county shall be entitled to at least one Representative. When any city or county shall be entitled to two or more Representatives, they shall be divided by ward or township lines.

The number of Representatives shall, at the several periods of their apportionment, be fixed by the Legislature, and shall never be less than one hundred and fifty, nor greater than three hundred. The number of Senators shall, at the same times, be fixed by the Legislature, and shall never be less than one-fourth, nor greater than one-third, of the number of Representatives.

I now desire to modify that amendment by the addition of another clause. After the word "Representative," at the end of the fifth sentence, I desire to interpolate the words:

"But no county hereafter erected shall be entitled to a separate representation until sufficient population shall be contained within it to entitle it to one Representative, agreeably to the ratio which shall then be established."

The CHAIRMAN. The gentleman from Chester has modified his amendment, and it is before the committee.

Mr. MACVEAGH. Mr. Chairman: How will the whole amendment read?

The CLERK:

SECTION 20. The General Assembly shall apportion the State for the election of Senators and Representatives, according to population as ascertained by the last preceding census, every ten years,

commencing at the first session after the adoption of this Constitution. Senators and Representatives shall be chosen by single districts, composed of contiguous, and as nearly as practicable, compact territory, of equal population. When a city or county shall be entitled to two or more Senators, it shall be divided by ward or township lines. No city or county shall be entitled to more than six Senators. Each county shall be entitled to at least one Representative. But no county hereafter erected shall be entitled to a separate Representative until sufficient population shall be contained within it to entitle it to one Representative, agreeably to the ratio which shall then be established. When any city or county shall be entitled to two or more Representatives, they shall be divided by ward or township lines.

The number of Representatives shall, at the several periods of their apportionment, be fixed by the Legislature, and shall never be less than one hundred and fifty, nor greater than three hundred. The number of Senators shall, at the same times, be fixed by the Legislature, and shall never be less than one-fourth, nor greater than one-third, of the number of Representatives.

Mr. WORRELL. Mr. Chairman: I move to further amend, by striking out the words, "no city or county shall be entitled to more than six Senators."

Mr. DARLINGTON. Mr. Chairman: In presenting for the consideration of this committee this amendment, it will be at once perceived that it proposes the establishment of single districts throughout the State, both for Senators and Representatives. That is the leading feature of this provision. The report of the Committee on Legislature proposes Senatorial districts, not all single, if I understand it right. Perhaps it does, but at all events representative districts may be established for two or more Representatives.

Now, sir, I urge the consideration of this committee to this important principle, as I conceive, in the representation of this State. This amendment proposes to establish single Senatorial, as well as single Representative, districts. It proposes, also, another very important provision, an increase in the number of Senators and Representatives, not so large, perhaps, as will be desired by some members, but sufficient to enable the members to express their opinions, also, upon that question and to propose a larger House of Representatives, and, if they choose, a

larger Senate. It proposes, also, to allow the city of Philadelphia six Senators, and this, it will be perceived, is precisely in conformity, so far as proportion is concerned, to the present Constitution, which, with a House of Representatives of one hundred members, allows the city of Philadelphia, or any other city, not exceeding four members of the Senate. If you increase the House, however, to one hundred and fifty, then the Senate would contain about fifty members, and the city of Philadelphia would have, by the same rule of proportion, at least six Senators, being fifty per cent., added to the number of the House, and that number added to the number of Senators in the city. If, however, it should be the wish of the committee, and subsequently of the Convention, to increase the number of the House, say to three hundred, the number of Senators to which the city shall be entitled, if the Senate bears the same proportion then to the House as it does now, say one-third, will be twelve, instead of six, and so in proportion, as you shall fix the number of Representatives.

But the main and leading feature, and the one which I have most at heart, is the establishing of single districts for the choice of Senators and Representatives. I think, sir, that it is a cardinal principle in the establishment of our government that the representative should be brought as nearly home to his constituents as it is possible to bring him. It is important that the circle of gentlemen who are to choose a representative, whether of the Senate or the House, should be limited in their choice to their own immediate representative, and that they should have no care beyond the general care which every one has in the character of the citizens of the whole Commonwealth in the choice of the representatives of other districts. I would, therefore, in thus bringing the member home to his constituents, make him the representative of his own district, whether in the Senate or the House; and I would have a particular district composed of a certain number of counties, or a single county, or a certain amount of population, whichever it might be. I would have no man elected along with another man, but the State should be so divided for the choice of Representatives, as well as of Senators, that each district should elect but one man.

What would be the advantages which would be derived from such a system, is the natural inquiry? They would be nu-

merous. I conceive, in the first instance, besides what I have stated, it would do away with all the evil which is generally understood to exist in the formation of districts for representation by the Legislature. It would do away with the necessity which either party, no matter which should be in power, would exert in forming districts to the advantageous of their own particular views. I take it, sir, that it would be impossible for any party, no matter what might be its complexion, that should chance to be in power, to form the State into one hundred or one hundred and fifty districts, each of contiguous and compact territory as nearly as may be practicable without making them very largely divided; so that we shall accomplish what is desirable in every well regulated government, a balance, as nearly as possible, of power between the two large over-ruling parties of the country.

I believe that all statesmen agree in one thing, that it is desirable under all circumstances, in all legislative bodies, that there should be majorities and minorities, but all insist that the majority should never be overpowering, but should always be controllable by a determined, energetic, intelligent minority, who are able to reason, who are able to vote, who are able to combine and prevent any unnecessary, imprudent and injudicious legislation.

It is important, therefore, in the construction of every government, that we should, if possible, as nearly as practical, balance the political parties in its legislative bodies. How can we more surely do it than by requiring every man to be elected in his own district; for it is well known in history, and every man understands it, that the State of Pennsylvania, as all other States, has been divided in sentiment by two or more political parties, and I take it such always will be the case. That being true, in one county you will find a large preponderance of the people of one party, and in another county you will find a large preponderance the other way. When you come to divide those counties into districts for Senators or Representatives, you will find it perfectly impossible, adhering to the principle of this amendment, to make your districts as nearly as practicable of compact and contiguous territory, to regulate them otherwise than that some should be of one political complexion and some of another.

Now, sir, if you accomplish that, and, at the same time, bring each representative home to his constituents—make him answerable to those who will send him—and allow those constituents to select their own man from among those whom they know, uninfluenced by any other consideration, you will accomplish the double good of bringing the representative home to his constituents, and making him immediately accountable to them, and, at the same time, of dividing your representatives, as nearly as practicable, into equal parties. The same thing would occur in the selection of Senators. Although you may have to combine two or more counties in a district, in some portions of a State, for the election of a Senator—depending, in this respect, upon the number, to be sure, of which that body should be composed—with the restriction upon the Legislature that they must be formed of contiguous and compact territory, you would necessarily bring together that portion of the population embracing one or more counties.

[Here the hammer fell.]

Mr. ALRICKS. Mr. Chairman: I move the gentleman have permission to proceed.

The motion was agreed to.

Mr. WORRELL. I rise to a point of order. The committee of the whole cannot change a rule of the Convention.

The CHAIRMAN. The rule is that no man can speak more than ten minutes, unless leave be given. That leave has been given. The gentleman will proceed.

Mr. DARLINGTON. I was about to say, sir—and I will not detain the committee long—that, in the formation of Senatorial districts, we may have to embrace two or more counties, in some instances; but we cannot take a county here and a county there, and another yonder, of a long and narrow shape, for it would not be conforming to the provision, which requires the districts to be of contiguous and compact territory, as nearly as practicable.

In carrying this out, it will be found, whether in the formation of Senatorial or Representative districts—adhering to the spirit and letter of this proposed amendment—we should necessarily bind the Legislature; in other words, must expect it to obey the constitutional injunction—to conform to the Constitution, if practicable, in every respect; and thus you would have the Senatorial districts formed, as you would have the Representative districts.

Now, sir, suppose that, in the county of Chester—a county which, for the last ten or twenty years, has been as decidedly one way in politics as the county of Berks has been decidedly another—suppose we are to be entitled to three or four members, if you choose, and that county is to be divided into districts for the election of Representatives, and the Legislature is confined to contiguous and compact territory, it would be utterly impossible to secure, in the county of Chester, all the districts of one political complexion; and, I presume, it would be equally impossible, in the county of Berks, to secure them of the same politics. My friend from Berks (Mr. H. W. Smith) says not. Well, if there is but one party there, be it so. Probably, in the county of Washington, we might have both parties represented; and in the county of Lancaster you would have some of one party and some of the other.

In the city of Philadelphia your Senatorial districts would necessarily result, if properly formed of contiguous and compact territory, in the selection of those, at all events, who would represent the people of the district in each case, whether there be a majority on one side or the other. In the General Assembly there would still be those who want to represent their districts respectively, whatever might be their politics.

I will tell you of another difficulty which now exists, which would be avoided. It is one that occurs in the gerrymandering of the State, so as to form districts for party purposes.

Again, it would avoid another difficulty which we have in both parties, and which occurs in nominations in counties entitled to more than one representative. It would do away with the system of log rolling to get upon the ticket. Men put their heads together and say, "You help me, and I will help you. My delegates will go for you, if your delegates go for me," and thus they manage to get upon the ticket. It would do away with that. Each man would stand upon his own just foundation; and if he was a proper person to be placed in nomination by his own party, in his own district, if he was the man who should succeed in getting the majority of votes and be fairly nominated, what then? The other party would put forward their best man, and thus you would have the best men that could be selected by this district, the best man upon the one side against the best man upon the other,

and a fair choice would be presented to the electors from which to choose. This would be an advantage, and a very great one.

Now, sir, this is no novel idea. It has been tried and is in successful operation throughout the whole country with regard to our members of Congress. I speak, now, irrespective of those cases in which, by reason of the non-apportionment of the State, the apportionment bill not having been passed by Congress early enough, two or three members at large have been elected, in some cases. The apportionment of the States of the Union for Congressional representation is by single districts of contiguous territory. We have had it in operation for a number of years, and I venture to say that it has been nowhere condemned. It produces the best results. It puts forward the best men for the representation of the single district which each party can venture to put into the field, and then the choice is fair between two good men, as to who shall represent it. It is, therefore, no untried scheme; but it is a scheme that has worked well throughout the nation. Nay, more; in the existing Constitution is contained the provision that by single districts shall the representatives from the city of Philadelphia be sent to Harrisburg. Has it not worked well? Some say it has not; some say it has; but whether they be good or bad representatives that are sent from the city of Philadelphia to Harrisburg, I suppose we are to assume that they are proper representatives of the people who sent them. If it does not secure proper representation in the city of Philadelphia, it would do so if the citizens of Philadelphia who do not go to the polls, would go. If those who do not go to the primary meetings for nominations, were to go, and thus secure the placing upon the ticket of the best men, then the best men would go to Harrisburg. If the good people neglect to do this, others will take it up. It is no argument against the system itself that in Philadelphia it may not have produced all the fruits which they expected from it.

This is the system which has been in operation in the State of New York ever since the year 1846, if I mistake not, as long as the present Constitution has existed. They have elected by single districts. Wherever a county is about the proper size for a single district, of course the county has a member; but single districts is the Constitutional provision of

the State of New York, and I had it from a very respectable citizen of that State, very soon after the first election under that Constitution, that that election had sent to Albany the strongest body of men that had ever been elected in the State. Whether it continues so to the present time, I do not know. That was the testimony then. If it does not continue to be the case now, I apprehend that it is not because they are elected in single districts, but because other principles and other interests are involved which have led to a different result. I have heard no objection to it. I know very well that in the formation of the recent Constitution, along with many other things, this was changed, but that Constitution was rejected by the people, whether for this or some other causes I know not. It has not been adopted by the people of New York. It stands then, sir, so far as my knowledge extends, upon the experience of the Congress of the United States, and the experience of the State of New York and the city of Philadelphia. No one will deny but that it is right in principle; that the true theory of our government is that every man should be elected by the district which he immediately represents. It is so with the Governor; it is so with every State officer; it is so with the judges of our Supreme Court; they are all elected by all the people because they hold offices and perform duties with which all the people charge them with. They represent, in that sense, all the people. So it should be with every man elected everywhere. The true theory is, so far as we can adopt it, local self-government for all offices which are not necessarily State or more extended. The county elects the officers that are to represent the people of that county in their municipal affairs; the judicial district elects the judge who is to preside in the courts in their district. So throughout the State; so everywhere; so in all things. What are the objections, then, to it? Of course it is not for me to anticipate them. Now is there any difficulty in carrying it out?

I do not contemplate by this amendment, it will be perceived, the entire destruction of county representation, by any means. I do not consider it important that this last provision in reference to equality of population is so essential that it may not be varied. It must necessarily be varied. Take a county that has population enough for one member, and a few hundred or a few thousand more, it must

have its one member of the Legislature; if enough for two, it must have two. Fractions I would disregard, in dividing a county that is entitled to two or more members, divided by township lines; a certain number of townships, say, form a district, although there may not be the precise amount of population in it that is necessary; while another district may contain more population than is necessary. I care not about a little variation in that respect. We still have as near as practicable the representation of the people by single districts, with population as nearly equal as possible. They will not be exactly equal, nor is it important that they should be. This I consider of minor importance.

We would then gain by the adoption of this amendment. Let the committee settle upon the number of Representatives and Senators. I name one hundred and fifty, and three hundred others may name five hundred, with a less number of the Senate. I do not know what we shall agree upon. Whatever number shall be agreed upon, the principle which I suggest in this amendment of representation by single districts will be the true theory, and it is the only true theory that ought to be adopted.

I do not mean to do more than to introduce this subject to the consideration of the Convention. It seems to me that it must necessarily commend itself to the good sense and sound judgment of every member of this body, and although it may be subject to modification as to form, I am satisfied that it is the principle which should be adopted.

MR. MACVEAGH. Mr. Chairman: I beg the gentlemen of the Convention will do the committee I represent the kindness of turning their attention now to the very great gravity of the question which is attracting the attention of this committee. Some of the most important considerations that will come before this Convention are now presented for the consideration and the action of the committee of the whole. In the first place there is opened by these two sections, the entire question of the numbers of the legislative bodies, how many Senators you intend to have, and how many Representatives you intend to have. In the second place the amendment of the gentleman from Chester (Mr. Darlington) introduces the question of whether you will have them in single districts; in other words, whether each Senatorial and each Representative

district shall elect one Senator and one Representative. Then I beg the attention of members to the fact that the proviso reported by the committee limits any city or county of this State to four members, which, as you will see, raises another very important question in the distribution of legislative power. A fourth consideration of great importance is presented, and that is, what method will be most likely to prevent unfair advantages being taken by one partisan organization which happens to have a majority in the Legislature in districting the State.

I have already had the honor to present to the committee the considerations which compel my own mind to the conclusion that we ought not to increase the number; but that question will be fairly presented by an amendment to strike out the numbers thirty-three and one hundred, and insert any other numbers. I had the honor of stating to the committee then that I thought it was an utter fallacy to suppose that, by increasing the numbers, you gained either increase of character or integrity of any representative bodies; and I now venture to add that the experience of the eastern States is not in favor of the increase, and it is the smaller legislative body in every American State which has most stoutly withstood the attempts at its corruption.

In the next place, as to single Representative districts, I cannot forbear thinking that the county is the unit of representation with reference to the State, and that the State Legislature ought not to be entitled to carve a county to suit the necessities of the majority of that body; and finally, I believe that this provision reported by the committee, the provision adopted by the late Constitutional Convention of Illinois, is more likely than any other to secure an equitable and just districting of the Commonwealth for legislative purposes, but at any rate I trust the committee will give to these grave questions the full, grave and earnest consideration which their magnitude and importance deserve, and then I am very sure every member of the committee which reported this article will be glad to join in the final judgment of the committee upon the subjects embraced in it.

MR. WORRELL. Mr. Chairman: I would not say one word upon this question, were it not that I represent in part the largest Senatorial district of this city, the largest district in point of population, and consequently the district in which there

is the greatest number of citizens unrepresented, and practically disfranchised.

I had hoped that the chairman of the Committee on Legislature would have favored us with the reason which induced his committee to propose this restriction upon the right of representation. But as no reason has been assigned for the proposed limitation, and as no just ground presents itself to my mind for a qualification of the principle that each elector shall have an equal voice in the selection of representatives, I am embarrassed in the discussion of the pending amendment.

The amendment of the gentleman from Chester (Mr. Darlington) provides that the House of Representatives shall consist of not less than one hundred and fifty members, and not more than three hundred members, and that the Senate shall consist of not less than one-fourth, and not more than one-third, of the number of the members of the House, with the *proviso* that no city nor county shall elect more than six Senators. This means that the Senate may consist either of fifty or one hundred members, and upon that basis, if the *present proportion* were preserved, the city of Philadelphia would be entitled to either *six* or *twelve* Senators, but if the number of taxable inhabitants were made the basis of apportionment, the city of Philadelphia could properly claim either *nine* or *eighteen* Senators accordingly, as the House of Representatives was made to consist of either the one or the other number of members which the gentleman proposes. The gentleman from Chester, it will be seen, asks us to adopt an amendment which may reduce Philadelphia's representation in the Senate lower, proportionally, than that which the city has under the present Constitution.

Now I submit, Mr. Chairman, that each city and county in this State should have of right that representation in each branch of the Legislature to which its population entitles it. Taxation and representation, under our form of government, should be reciprocal, and if any body of electors be denied participation in the legislation of the Commonwealth, they should, to the extent of the denial, be exempted from the burdens of government. It is proposed by this section to announce that taxation and representation are not reciprocal, and that the city of Philadelphia shall bear the burdens of government, but shall not enjoy govern-

mental rights, in proportion to her population. No tax can be properly assessed nor legally collected, unless those upon whom the taxation is imposed were represented in the body which laid the assessment, or at least had the opportunity of being represented.

I think, Mr. Chairman, no analogy exists between this proposed limitation and the article of the Constitution of the United States, which provides that each State shall have two Senators.

Mr. Chairman, the people living in sections of this State other than the city of Philadelphia, should feel no jealousy of the citizens of Philadelphia. Our interests are common. We should take a just pride in the welfare and the prosperity of each other. The rights of each are the rights of the other, and every citizen of this Commonwealth should assert and maintain the equality of these rights, whether of representation or otherwise. I trust, Mr. Chairman, that the Convention will not commit itself to the theory that a qualified elector, because he resides in a populous city or county, may be denied representation in that department of government which makes the laws to which he is to be amenable, and by which his rights are to be regulated.

Mr. J. PRICE WETHERILL. Mr. Chairman: I desire to call, in a brief manner, the attention of the committee to the exact character of the amendment offered by the gentleman from Chester (Mr. Darlington.) I will take it for granted, when he says the number of Representatives shall never be greater than three hundred, and the number of Senators not more than one-third of that number, that the House of Representatives will always consist of three hundred members, and the Senate of one hundred members; and I submit that the past legislation, not only of this but in other States, shows that the Legislature, wherever there has been legislation on this subject, has always adopted the largest number of members; and, where constitutional enactments have been enforced, the largest number has been fixed, both for the Senate and the House of Representatives. I think I am safe, then, in saying that the number of the members of the Senate, according to the amendment of the gentleman from Chester, (Mr. Darlington,) will be one hundred, and the number of the members of the House of Representatives will be three hundred. Taking this, therefore, as a

basis, the ratio of representation in the Senate will be thirty-five thousand, and the ratio of representation in the House will be in the neighborhood of eleven thousand.

I could not help thinking, Mr. Chairman, as I glanced over the population of the county of Chester, how beautifully this amendment fitted into that county. That county has a population of seventy-seven thousand; and, if the ratio of representation in the House of Representatives is eleven thousand, Chester county will be entitled to seven members, without the loss of a vote; and, if the ratio in the Senate should be thirty-five thousand, and the population of Chester county seventy-seven thousand, we see how easily it entitles that county to two Senators, with a loss of only seven thousand votes; and yet, in the face of the fact that this county obtains her full count, the gentleman who represents Chester county proposes to restrict the city of Philadelphia to six Senators.

Now, Mr. Chairman, how does this principle operate? Why, sir, we have a population in the city of Philadelphia of about six hundred and seventy thousand, and if this city is limited to six Senators, the ratio of representation to each Senator will be about one hundred and fifteen thousand. Now, as the ratio of representation for the Senators throughout the Commonwealth is thirty-five thousand, it will thus be perceived that the city of Philadelphia loses on every Senator at least eighty thousand in population, and, as a consequence, the Senatorial power of every voter in Chester county has three times the force of the Senatorial power of every voter in the city of Philadelphia. In view of these facts I think this is one of the most unfair propositions I have ever heard of, or I am very much mistaken in my calculations. Now look at Allegheny county, and see how this principle will work there. In that county you have a large city, and you find existing in that city quite as much of election irregularities, in proportion, as is charged against the city of Philadelphia. There can be no question about this; and if the members of this Convention desire any proof of this fact, I think it will not be very difficult to furnish; therefore all large cities of the State should be subjected to the same rule. The city of Pittsburg, in the county of Allegheny, contains a population of about two hundred and sixty-five thousand. In the city of Philadel-

phia there is a population of six hundred and seventy thousand, and in the name of justice and fairness I ask the gentlemen from Chester (Mr. Darlington) why he, in his wisdom, proposes to give the city of Pittsburg and the county of Allegheny the same number of Senators as the city of Philadelphia? What could be more unfair than such a proposition? Will the gentlemen of this Convention ignore the large cities of the State entirely? Why, the city of Philadelphia, together with the corporations connected with it, pays a State tax of \$2,500,000, in a State revenue of \$8,000,000. The city, in her vast mercantile and manufacturing interests, demands that her rights to which she is fairly entitled should be recognized. I cannot understand why such a proposition should come from a delegate who is the representative of so liberal a county as Chester.

I do hope the Convention, when it comes to look at this question in all its length and breadth, will carefully examine this ratio of representation. Even with a representation of eleven thousand inhabitants there will be some six or eight counties without a representative. I am clearly in favor of giving to every county in the State a representative in the House. I am decidedly in favor of enlarging the Senate and the House of Representatives, in order to bring the legislative body as near as possible to the people, but I want to see fair and honest representation therein. I desire that every county in this State shall have their representatives, but I want it distinctly understood that I do not stand here in my place and favor representation by the acre. If there is force in the argument which I have used, then when we come to increase the Senate and House of Representatives, so as to give a representative to nearly every county, in that enlargement I desire that the city of Philadelphia shall receive all the Senators her population would entitle her to, and I hope, and am satisfied, that the members of this Convention from the city of Philadelphia, who have her interest at heart, and from simple justice to her tax-payers, will not frustrate this true and liberal ratio of representation, and I earnestly hope that the city of Philadelphia will meet with the same liberality at the hands of the interior counties which her interests demand and her population justifies.

Mr. CAMPBELL. Mr. Chairman: I hope that the amendment of the gentleman

from Philadelphia (Mr. Worrell) will pass, for I consider that the proposition in reference to large cities, which the report of the Committee on the Legislature contains, is a relic of old times, when the population of the State was much smaller than it is now, and when the limitation of four Senators to Philadelphia was not considered unfair. Since this limitation has been in force the city of Philadelphia has greatly increased in population, and the growing necessities and interests of that population certainly demand a larger representation in the Senate. The limitation to such a small number of Senators for a city of the extent and population of Philadelphia is almost an anomaly in the provisions of State Constitutions, relating to Senatorial representation of large cities. In the Constitutional Convention which was held in Illinois in 1870, a special provision was not made for the city of Chicago. That great city was not limited to a smaller number of Senators than her population entitled her to.

The Illinois Convention provided that the State should be divided into fifty-one Senatorial districts, and gave to Chicago, the largest city of the State, its full and just representation. In the other recent State Constitutions we do not find the largest cities of the country deprived of their equal and just number of Senators and Representatives. In rising, Mr. Chairman, and in making these remarks, it is with the intention, not of making a long speech upon the subject, but of merely adding my voice to those of the gentlemen from this city who have already spoken in favor of striking out this proviso, and against the unfairness and injustice of limiting Philadelphia to such a small number of Senators.

Mr. LILLY. Mr. President: I only rise for the purpose of explaining the position I hold in regard to this question. I am in favor of basing representation upon population, and I cannot see why Philadelphia should be limited to a less number of representatives than according to her population she is fairly entitled to; and I claim for the little county of Carbon an equal representation according to her population, which is in the neighborhood of thirty thousand. We desire nothing more, and we will be satisfied with nothing less. I think if every gentleman of this Convention will consider this as a fair proposition, we shall have no difficulty in arriving at an equal and proper ratio of representation. I have only

a single word to add in connection with the report of the Committee on Suffrage, Election and Representation, and it is, that by to-morrow the committee will have a section ready to report to the Convention which will take the place of this entire section, and, as we believe, will dispose of this whole question. It is designed to go further than the section under consideration, and will be an appropriate section to insert in the Constitution. I am strongly in favor of the largest representation in our Legislature, for I believe the enlargement of both the Senate and the House will greatly tend to purify our elections.

Mr. KNIGHT. Mr. Chairman: I rise to state that I am also in favor of representation according to population in cities, towns and country, the State over. In the city of Philadelphia, in the year 1840, we had a population of 258,037. In 1838, when the other Convention met, the population probably was about 244,000. In 1870 we had a population of 674,022, and in 1873 the population would be about 700,000. Now at the same ratio of increase in thirty-five years, from 1838 to 1873, which would be about two and three-fourths, or nearly three for one, it would make our population, thirty-five years from this, 1,925,000. I ask the representatives on this floor whether it is fair, just, liberal and right that they should restrict the city of Philadelphia for thirty-five years in the future to four Senators, each Senator representing, probably, a population of nearly 500,000 citizens. I would like gentleman to consider this and see if there is any justice or equity in it.

Whilst I am up I will merely state that I am greatly in favor of largely increased numbers in both branches of the Legislature, one that would certainly give us a larger representation and a representation that we ought to have in proportion to our population.

Mr. WOODWARD. Mr. Chairman: I agree with my friend before me (Mr. Knight) in regard to increasing the number of both Senators and Representatives, and when we come to vote upon that question I shall vote with those who vote for the largest number. I believe that the Constitution will be greatly improved by increasing the numbers of both Houses. But the chairman of the Committee on Legislature, (Mr. MacVeagh,) who has brought this subject to our attention, limits the number of both Houses to what they now are—one hundred in the

House and thirty-three in the Senate, and what I rise to say is this: That if that is to be fixed in the new Constitution, then I am altogether opposed to the striking out of this proviso that limits any city to four Senators. I say that this proviso is most important to remain in our Constitution if we retain the numbers of our State Legislature as the chairman of the Committee on Legislature proposes, one hundred in the House and thirty-three in the Senate.

Let me allude to the history of this. In the reform Convention of 1837 the late Thaddeus Stevens brought forward this proposition to limit cities to not more than four Senators, and he made a speech of extraordinary power, founded upon the text of Thomas Jefferson, that great cities are great sores upon the body politic. Mr. Stevens illustrated it in his masterly manner, and, sir, that speech of Mr. Stevens woke up the President of this Convention, (Mr. Meredith,) who replied to him in one of the most remarkable speeches that has ever been made in Pennsylvania, in our day certainly, if not in all time. It was a glorious conflict, sir. Why I recollect it now with that sort of pleasure with which we remember reading some of the most powerful fairy tales of our youth. Nobody interfered between these giants. They had the field to themselves. What was the result of that debate which, in a mere forensic sense, was greatly in favor of our friend, the President of the Convention? The result was that Mr. Stevens' amendment was carried and sustained by a large majority of the Convention, and the people of Pennsylvania sustained the Constitution with that amendment in it. And my opinion is here, to-day, that they will never give it up while the world stands, and it never ought to be given up.

MR. DARLINGTON. Mr. Chairman; Will the gentleman allow me to ask him a question?

MR. WOODWARD. Certainly.

MR. DARLINGTON. Was it not in the Constitution of 1790 in precisely the same terms?

MR. WOODWARD. Mr. Chairman: Perhaps it was. The proposition may have been in the Convention of 1838, as it is here, to strike it out of the Constitution. Mr. Stevens made his speech upon that subject. So far as I can recollect, and if my memory is at fault my friend from Chester (Mr. Darlington) will correct me, this was the subject on which these gen-

tlemen debated so infinitely to our edification and amusement, and the result was, if it was in the old Constitution it was kept there; it has been kept there, and I trust it will always be kept there.

What my young friend from Philadelphia (Mr. Campbell) says here about representation from the city of Philadelphia, and from other counties, according to population, is all right in the abstract. Undoubtedly population is the true basis for representation. But these great cities are exceptional. They are an exception to that rule. And, sir, if you will recur to what you have heard upon the floor of this House since we have been here, you will find a sufficient justification of this limitation, for, from the evidence of every gentleman from this city, and from other parts of the country, we learn that the most vicious legislator at Harrisburg comes from the representatives of these large cities. I do not know how it is. I do not mean to say that populations in the rural districts are any better or purer than populations in urban districts; but such is the practical outworking of our system that our great cities send into the Legislature the men who give us the worst legislation of any class of representatives. They ought to send there the most intelligent and leading minds of the country, for they contain them. Intellect, like capital, centres in these great cities; but when have these great cities been duly represented in the Legislature of Pennsylvania? What gentleman will rise now in his place and say they are represented to-day as they ought to be? That the intellect, and culture, and enterprise of Philadelphia are represented to-day in the Legislature of Pennsylvania as they ought to be? No man will say it. When have they been so represented? Never in our day. When will they be so represented? Never in our day.

Now gentlemen may search for the reason of this down in the foundation of things as deep as they please, and one man will assign one reason and another man another; but there is a reason lying deep in the foundation of things, from this fact: It is only the effect that works out to the surface, and we may all feel it, and see it, and know it, that teaches us that this provision, which my friend says was in the Constitution of 1790, is a most salutary provision, provided you retain the present numbers for the two Houses. But if you increase the present numbers of the two Houses, which I hope will be

done, why, then I will vote for an increase of this limitation, still retaining the limitation; still retaining the principle; but, of course, increasing the limitation if we increase the numbers of the two Houses of the Legislature.

What I feel concerned about is, first, that we are not going to increase the two Houses. From what I hear from the chairman of the committee, whose report is now under consideration, and other influential gentlemen of the body, I anticipate that the disposition of the majority is to retain the present number. Very well. Then I insist upon retaining this amendment. If you increase the numbers of the two Houses, I will agree to enlarge the basis of this exception; but this exception I hold to be most salutary and conservative, and I shall be extremely sorry to see it stricken out of our Constitution. I say this as a Philadelphian, which I am in some sort. But I do not forget that I represent on this floor, not Philadelphia, but the State of Pennsylvania. I am a delegate at large. I represent the people of Pennsylvania, and I think I serve them faithfully when I say that it would be a great mistake to deprive them of this limitation upon these great overgrown communities which constitute our cities.

MR. SIMPSON. Mr. Chairman: I would like to know for my gratification, if I could ascertain it, upon what principle the proviso is based, and how it can be justified. I would like to know by what rule, by what theory, a man residing in one locality is to have, in the legislative branch of the State, a power three times as great as a man who happens to reside in another. Neither, perhaps, resides at his home from choice, but from compulsion. If we propose to have a democracy it ought never to exist. Even if we propose to have it in the form of a republic, of a representative government, it ought not to exist. It seems to me that a proposition to provide that a city or a county, no matter where located, what it may want, or how many people it may have, shall be restricted by an arbitrary principle in the proportion of the representation of the State, is to cut at the very foundation of the government, which is the right of the governed to be represented.

If the proposition be carried out, if this principle is to be carried out as it is now proposed, and as it is now applied under our present Constitution, it cannot be said, in the language of the Bill of Rights, that

all men are free and equal. I am not equal to a man residing outside of the city of Philadelphia so far as the Senate of the State is concerned. I have not that power. My voice is not so potent in the Senate of this State as a man who resides a quarter of a mile from me, because between him and me runs a little creek called Cohocksink, a little stream about four yards wide. He has a power in the Senate which I have not. He may be as intelligent as I am, as wealthy or as poor as I am, but his power in the legislative branch is far greater than I possess.

I can understand very well why such a limitation as this would be originally imposed in 1790, although I have not seen any such limitation in that instrument. But at that time, if delegates will recur back to the history of this State, it was believed that the city of Philadelphia would grow in a much larger ratio than all the rest of the State, and that in time it would probably contain one-half of the population of the entire State. Now I can imagine why such a proviso could have been placed in the old Constitution of 1790.

MR. DARLINGTON. Mr. Chairman: Allow me to suggest to the gentleman that it is explicitly set forth in that Constitution in the article beginning: "The Senators shall be chosen in districts."

MR. SIMPSON. Mr. Chairman: I was just about to read that section to show how our old Constitution did treat this subject.

"The Senators shall be chosen in districts, to be formed by the Legislature, containing each, as nearly as may be, such a number of taxable inhabitants as shall be entitled to elect one Senator; but where that cannot be done, then such number of adjoining counties shall be formed into one district as shall be entitled to elect not more than four Senators: *Provided*, That neither the city of Philadelphia, nor any county, shall be divided in forming a district."

I can understand very well the theory that existed then. It was feared that Philadelphia, from its aggregation, would come, in time, to absorb one-third, or one-half, or even, perhaps, more than one-half, of the entire population of this State, and when occurred, it was feared the city would, in both branches of the Legislature, grasp the power of the State, and therefore the limitation was necessary. Well, that limitation, as passed by the Convention of 1838, was designed to restrict the city, in its lawful representation,

upon the floor of the Senate; and yet, under that limitation, if now in force, Philadelphia would have, upon the floor of the Senate in Pennsylvania, this day, its eight members. She would have eight members to-day, but for the fact that, in 1854, the old county of Philadelphia was merged into the city; the city borders were enlarged, and it was all brought within one limit—the city of Philadelphia. But for that act of consolidation Philadelphia would, to-day, be entitled to its proportion of the Senate—not exceeding eight members; four from the old city and four from the districts surrounding it. The city and county would have been entitled to eight Senators.

But by the act of consolidation, merging the city and county into one city, it fell within that clause of the proviso that no city or county should be entitled to more than four members; and although we had, at the time of the passage of the act of 1854, five Senators, yet at the first apportionment thereafter we lost one of them, and from that time to the present we have had but four Senators. Now if the proviso that was in the Constitution of 1838, was carried out as it was intended to be, as applied to the city, limiting the proportion and not the number, as, for instance, that it should not have more than one-fourth of the Senators, or more than two-fifths, or some other definite proportion, I could understand the justice of the argument; but I cannot understand it when it is made an arbitrary number, which number may, in time, work great injustice, as in the instance cited by the gentleman from Philadelphia, (Mr. J. Price Wetherill,) that where a citizen residing in Chester county might have three times the power that a citizen residing in Philadelphia has. That ought not to be. We have, in that rule, departed from the foundation stone. As I have shown that the reason has passed away, there is no fear, and can be no fear now, that Philadelphia will ever, in relation to population, increase in an equal ratio with the rest of the State. There is no danger. The opening up of mines and of collieries, and the development of all the varied interests of the State, have gathered together populations and masses of people so great as to put it beyond peradventure that Philadelphia can ever, possibly, have one-third of the population of the State of Pennsylvania; and if Philadelphia cannot have more than a third, giving her her representation, she cannot control the State

government. She ought not to, if she could. In the proviso, if there should be substituted a proportion, say one-fourth, or two-fifths, I would vote for it; but I cannot, and will not, vote for the proviso in its present form, and I hope the Convention will vote this down as anti-democratic and anti-republican, and as against the spirit of free institutions, and in violation of the rule that all men are free and equal.

Mr. BUCKALEW. Mr. Chairman: It seems to be pretty well settled that this limit in the Constitution was placed there a generation before most of us were born. It has been in the Constitution of the State ever since 1790, and the simple question now for the Convention to determine is, whether it shall be struck out after this long period of time has elapsed, assuming that the total number of Senators shall be retained at thirty-three. Necessarily, if we change the total number of members in each House, this limitation will become inapplicable or improper. It must be changed or some other one substituted for it. Therefore this question involves the discussion of the other points, to wit: Of how large a number shall the Legislature consist; and also certain of the conditions upon which membership shall be assigned to the several divisions of the Commonwealth, whether counties or cities.

I am strongly, very strongly, opposed to the amendment of the gentleman from Chester, (Mr. Darlington,) and to all propositions of a similar character which may be proposed hereafter. One of the great evils at which, if it be possible, this Convention should strike, and strike unflinchingly, is "gerrymandering," as we have had it heretofore illustrated, in the Legislature of our State. And if we can reach that great evil and iniquity, and I hope, before we are done with this question, we shall reach it, we should apply a thorough and effectual remedy for the future. If you are to divide this State into single Representative and single Senatorial districts, and commit the work to the Legislature, as is proposed by the amendment of the gentleman from Chester, (Mr. Darlington,) the iniquity and evil of the "gerrymandering system," as it has been known heretofore, in this and other States, will receive an unexampled illustration. It will become so intolerable and offensive that you will be obliged promptly to again change the fundamental law of the State; at least that is my opinion.

Now, sir, I think that it is perfectly feasible to take this question of apportionment out of the Legislature entirely; and I will read the form of a proposition by which it may be accomplished.

"At the general election in the year 1881, and every tenth year thereafter, there shall be chosen by a vote of the electors of the State at large, ten commissioners of apportionment, whose duty it shall be to divide the State into Senatorial and Representative districts, and assign to each of such districts its appropriate representation. Any apportionment, or report thereof, so made, shall be concurred in by at least seven commissioners;" and then the proposition further provides that the commissioners shall be elected upon the plan of the "limited vote"—no voter voting for more than five—and that any vacancy in the number of said commissioners shall be filled in the manner in which vacancies are filled in the membership of this Convention.

So that by no accident shall the Constitution of that "board," if you choose to call it such, be changed or altered before the work is done, and by requiring the concurrence of seven of the ten members who shall constitute it, you have a guaranty—an effectual guaranty—that the apportionment will be justly made.

Now, sir, the last apportionment of this State by the Legislature cost the people no less than seventy-five thousand dollars. The session was protracted nearly two months beyond the ordinary time of adjournment, and compensation to members was voted for the additional time after one hundred days of session, at the same rate at which members are ordinarily paid, for that time, swelling up the expenditures for the session enormously. The figures were referred to by the gentleman from Philadelphia (Mr. Jno. Price Wetherill) some time since, in debate, as showing the profligacy, or, perhaps, I should use a softer term, the want of economy, in the Legislature of our State; yet, sir, that outlay was but reasonable, because the detention of the two Houses until nearly the first of June in the making of that apportionment. But that apportionment, as made, was stamped all over its face with wrong and injustice, and, in one part, with unconstitutionality also. The county of Luzerne had enough taxables for five Representatives, and a surplus, and she had also a surplus in her Senatorial district; yet, arbitrarily, she was given but four, in flat contempt of the Constitution of the

State. If you will cast your eye over the State, you will see here and there counties joined to each other, not for any just, proper and public reason, but to subserve some individual or partisan purpose, as, for instance, the junction of Perry county with Dauphin—and several other instances might be named.

Sir, I am in favor of enlarging the number of Senators and Representatives in the Legislature of our State, if we can secure along with it a reform in the manner of choosing them, by which all the people shall be represented. In case the two go together, in my judgment we will have a great reform; but I am not, as at present advised, in favor of disturbing this report of the Committee on Legislature as to the number of Senators and Representatives, if we are to have no reform or improvement in the manner of selecting them. I would rather leave things as they are, trusting to the increased experience of the people in future years.

If we shall increase the number of members of the Legislature in the two Houses, I think, instead of this arbitrary provision in the Constitution as to the number of Senators, I would agree to a proposition that no city or county shall have more than one-sixth part of the total representation in the Senate. That would give, upon a basis of sixty Senators, ten to this city. At present her representation is a little less than one-eighth. I think, sir, that the old idea that you should constitute the lower House of the Legislature upon the principle of numbers, absolutely representing the whole population of the State, and the other House upon a different basis—taking into account territory and the diversity of interests as they may exist in different parts of the State—is a sound one, or, at least, it is capable of being vindicated by argument. But, sir, I perceive that my time is up.

Mr. NEWLIN. Mr. Chairman: I move that the time be extended, so as to allow the gentleman (Mr. Buckalew) to proceed.

The motion was agreed to.

Mr. BUCKALEW. Mr. Chairman: I thank the committee, but I do not desire to speak further at this time.

Mr. M'ALLISTER. Mr. Chairman: Coming, as I do, from the interior of the State, I feel called upon, just here, to say a word or two in reference to the true basis of representation. I understand it to be conceded by the gentleman from Philadelphia (Mr. Woodward) that popula-

tion is the basis, and the only true basis, of representation; but that, as there are exceptions to all general rules, he thinks cities ought to be made exceptions to this general rule. The only reason he gives for thus depriving a portion of our citizens of their just representation is this: That his friend Thaddeus Stevens, in 1838, made a great speech, in which he denominated great cities great ulcers and sores on the body politic. The truth of the assertion he does not undertake himself to verify.

I will concede that in cities there are great vices, but I must also be permitted to assert that there are great virtues there also. The only city interested in the provision under discussion is great in commerce, great in her manufactories, great in the diversity of her interests, and great in everything that points to human weal. Why, then, should she be deprived of her just rights to representation? I will admit the power of this Convention to deprive her of her just rights, but the question presented to us is, should the majority of this Convention do it? Will they not violate the law of nature if they do it? It seems to me they will. I have been wholly unable to conceive any possible reason why Philadelphia should not be placed upon the same platform with every other portion of the State when she comes to ask her representation. On a former occasion I remarked that representation arose from necessity, and from necessity alone; and if we were not under that necessity, and the masses could assemble and deliberate for their welfare, who would undertake to deprive any portion of the citizens of Philadelphia of their right to deliberate, of their right to be heard in the democratic assembly? And if representation arises out of necessity, how can we be justified in depriving any portion of that population of being heard by their representatives? The representative body being but an epitome of the people at large, and, if an epitome, then, why should they not be fully represented in the Senate as in the House, and in both bodies alike? It may be placed upon the ground of contracted territory, and that territory should enter into the basis of representation. I do not think the argument is good. The diversities of interests of the inhabitants of a city are greater—far greater—in proportion to the number of inhabitants in a city, than in districts in the country of equal population. These different interests in a city

should be represented. The people of the entire State have a right to demand of us, in making a Constitution for their government, that they shall each and all be fairly represented, and how can you afford a just representation in the city of Philadelphia to these varied interests in commerce, in learning, and in everything that pertains to the good of man, unless you give them a just epitome of their population in the representative body?

For these reasons, Mr. Chairman, I am opposed to any restriction whatever. I was not surprised at the gentleman from Chester (Mr. Darlington) when he made his proposition. I have observed his course from our first meeting, and he seems to be wedded to the Constitutions of 1790 and 1838—joined to his idols. My friend from Philadelphia (Mr. Woodward) seems to sympathize with him in his adoration, probably from having participated in the erection of that fabric of human liberty. I cannot conceive any reason why we should not reform the errors of the past. With that view we are called here—to correct errors—not to bow submissively to what has been given to us in years that are past. We are here for the purpose of doing better than they did, in the light of the age in which we live, and therefore I do not sympathize with those gentlemen in adhering to error simply because it has the prestige of antiquity.

Mr. BIDDLE. Mr. Chairman: I desire to say a few words on this subject to-day, because I may, on account of engagements which I cannot control, be absent from the Convention to-morrow.

There are two great points involved in this twentieth section which deserve a separate discussion. I shall say but little about one of them at this time, because I desire to occupy my time in discussing what, to me, is of paramount importance.

I believe in the value of larger representation. I believe experience, especially to the east, has shown the advantage of that, in preventing improper combinations, to the disadvantage of the people, to be so easily formed, and in limiting and greatly impeding improper attempts at influencing the legislative bodies. I shall, therefore vote for the very largest number that I may have an opportunity of voting for; certainly up to four hundred for the lower House, if I may be so permitted. But I want to say something about a subject that is vastly more important. It is a matter of which justice itself lies at the root.

On what principle is this limitation of a city or county to a designated number based? I defy any gentleman on this floor to give a good reason for it. I can understand very well that where your principle of representation, in the smaller or upper body, is based upon a representation of *interests* and not of *population*, something may be said about it. That is not the theory of our government. It is not the theory of this section. It still comes to city and county representation, which is altogether diverse from a representation of political or economical interests. It has no analogy to any such system of representation as that. You therefore, in electing members to the upper House, per force, unless you change—unless, indeed, you tear to pieces—your present system, assume, as a basis, population. I want any gentleman that is prepared to vote for this grave act of injustice to pause. Let him search his heart and see if he can find any reason for this, and if he appeal only to mere selfish motives, let him dread, if he casts his suffrage in favor of such a limitation as this, whether, in some shape or other, poisoned chalice may not be returned to his own lips. Why should Philadelphia have a smaller representation in the Senate? Why should any city or county have a smaller representation in the Senate than any other portion of the community? Is it to be said that large cities do not pay their full ratio of the public burdens? The merest glance at the returns of the taxes paid, direct and indirect, will refute that. If you take taxation as a ratio, then, instead of asking, as we might, sixteen or eighteen members, we would be entitled to ask twenty-four. This, therefore, cannot be the reason. It is to be supposed that we are not equally alert to bear, according to the ratio of our population, an equal share of public burdens in other ways. Why, sir, Philadelphia—and this section, disguise it as you may, is aimed at Philadelphia—has always sprung to her feet at the call, real or suppose—too frequently the latter—of patriotic appeal, to do more than her full share in pouring out her blood and treasure, on every occasion, in which has been asked.

Are we to discuss here, at some future stage of the report of one of the leading standing committees, the question whether minorities shall have their just share in the voice of the public councils, when we say in advance that we are ready to deprive the citizen by any imaginary barrier, of his

fair share of representation? Why, sir, all these discussions, if this blot remains in this system, will be worse than idle. Why talk of the "rights of minorities?" Why talk of "proportional representation?" Why talk of modes of getting "a fairer expression of the will of the people," when you stamp indelibly upon your whole system a brand which proclaims that because a city or a county, in its struggles for the acquisition of material wealth, reaches a certain figure in population, you will by a barrier that cannot be passed, condemn her on that very ground of material advance, to a less share of justice than is meted out to her neighbors. Are gentlemen prepared to do that? I at first thought that the amendment offered by the gentleman from Chester possessed some little merit. I see it now, stripped of all such attempt at fairness; for, whilst this section gives four Senators, his gives six, with a ratio three times as great. He ought to give us twelve, to be consistent with the system as it now exists. I care not for any such amendment. I maintain, and I hope this Convention will in simple justice—that is all we want—no favors, justice, equality—assert the principle of having a representation, both in the Senate and the House, based upon county and city life, which means population and nothing else, according precisely the same to all. If you do not, your labors are in vain. Why talk of improvement? Why talk of advance? Why talk of the progressive spirit of the age, if the progress is to be in injustice and not towards fairness? Why cite the Constitution of 1790, which, by the bye, contains no such provision as the Constitution of 1838—

MR. WOODWARD. You are right about that, I find.

MR. BIDDLE. I know I am right, because I examined it before I came here. The Constitution of 1838 does, but is that a reason? We come here, or are supposed to be here, to correct something that heretofore has been wrong, else we had better have stayed at home. Now let us begin, not by doing that which is merely supposed to be more expedient, not by doing something the value of which is problematical, not by changing that which has heretofore worked well, but by going back to the very source at which justice is found to exist.

I do not know, Mr. Chairman, whether my time is up or not? I do not wish to

encroach upon the rule of the Convention.

["Go on!" "Go on!"]

The CHAIRMAN. You have two minutes yet.

Mr. BIDDLE. Well, sir, I merely wish to say, in closing, that I want this Convention, unless it can see some reason based upon some generically different rule which is not yet found in any of these sections, to conform to that principle which says that the citizens shall be heard through his representative, his selected mouth-piece. My friend from Philadelphia (Mr. J. Price Wetherill) has depicted fairly, not rhetorically, the gross injustice of treating a man living on one side of a creek with a certain proportion of representation in that body which is considered the higher and the more conservative, and giving to a man who lives immediately opposite to him, on the other side of the creek, possessing no more rights than he, and without any reason for the distinction, just three times as large a voice in that body.

Are cities such blots upon the body politic? Are the citizens of this State to be deprived of their natural right because they happen to live in a city? From whence do gentlemen draw this argument? I have always supposed that as the political heart became enriched with richer blood, the extremities also are benefited by the circulation through the different veins and arteries which course through our political system. Are our cities to be looked upon like fungus, or a festering sore that possesses no life or vitality. If so then proclaim it boldly, and you will do less injustice in depriving us of that to which we are fairly entitled. Large cities and large communities will not be willing to submit to such a provision. A majority may ride over the rights of a minority, but they can never do this with justice to themselves, or with honor and fairness, in dealing with the rights of the people. It would be just as difficult to change the primordial laws of our natures, as to expect that such an element of injustice as this can ever find a permanent and abiding place in the Constitution of this Commonwealth.

Mr. WOODWARD. Mr. Chairman: I only desire to occupy the time of the Convention a few moments, and, with the privilege of the Convention, I shall proceed to make a few explanatory remarks upon the position I held when I addressed the Convention upon this question. Since

that time I have consulted the record, and I find that I was absolutely correct, and that the gentleman from Chester, (Mr. Darlington,) in presuming to correct my statement, was himself in error. In the Constitution of 1790, it was provided in section seven, that "the Senators shall be chosen in *districts* to be formed by the Legislature; each district containing such a number of taxable inhabitants as shall be entitled to elect not more than four Senators." The Constitution of 1838 reads thus: "Section 7. The Senators shall be chosen in districts to be formed by the Legislature; but no district shall be so formed as to entitle more than two Senators, unless the number of taxable inhabitants in any city or county shall at any time be such as to entitle it to elect more than two; *but no city or county shall be entitled to elect more than four Senators.*" &c. This was the amendment which Mr. Stevens moved, and out of which the debate arose to which I have alluded. It was not in the Constitution of 1790, because the Constitution of that year has reference to districts, while the provisions of the Constitution of 1838 have reference to cities and counties.

Mr. DARLINGTON. I desire to ask the gentleman whether the Constitution of 1790 does not provide that no district shall elect more than four Senators, and that no city shall be divided in the form of districts. Placing these two clauses together, I would ask the gentleman if it did not restrict the city to four Senators?

Mr. WOODWARD. Mr. Chairman: The provision of 1838 was added to the Constitution, so far as my memory serves me. I have already stated that the people of Pennsylvania ratified the Constitution, and no complaint ever arose in regard to it. Mr. Chairman, as I said before, all this talk about the purity of the rural population, as compared with the other populations of the State, has a great deal in it that is not true, and yet it is a well known fact, that the 700,000 people that inhabit this city are the consumers of the products of the entire people of the State. We are all consumers, living upon the industry, more or less, of the other portions of the State, and what, then, would this great city be without the country which surrounds it and has made it? Why the State was originally a State of farmers. When William Penn found that his English colonists had become malcontents upon his hands, he went to Germany and established emigration societies in all

the German cities, and those societies sent a thrifty population to our shores, and it has been upon the labor of this class of our citizens that the whole prosperity of the State has been based. The German population of our interior counties, from whom we originally derived our government, farmed the lands of the State, and it was the transportation of the products of their farms to market that projected the railroads and canals throughout the State. Pennsylvania, whose Constitution we are now considering, was not then a State of cities; it was a State of solid, substantial German farmers, and when I hear gentlemen talk about the justice and injustice of disfranchising a portion of the people, I say that these political regulations rest at last upon the judgment of the real people of the State, and the people of the State have settled this distinction upon a reason which has been found to be a solid and substantial one. There is no injustice, therefore, it seems to me, in the people of such a State as Pennsylvania, in saying to the great cities of the Commonwealth, that their representation in the upper branch of the Legislature shall be limited. It is impossible to tell to what extent the city of Philadelphia may grow, for within its limits it already possesses one-fifth of the population of the State of Pennsylvania, and we do not know but that the city of Philadelphia may grow to such an extent as to possess the Legislature of the State. Man made the city and God made the country; and the farmers and the producers of the staples upon which the cities live do desire to retain this provision in our Constitution. The country has made the city and the city has not made the country. When gentlemen talk about the magnificence and importance of Philadelphia, and the injustice of imposing a limitation, in our fundamental law, upon the overgrown population of this great city, they talk as if they had never read the history of the State; they talk as if they were not Pennsylvanians. I do not desire to run a parallel between the urban and the rural populations, but I recognize the fact that there is a distinction between them away down in the foundations of society, and, in the very nature of things, that distinction must always exist between the producing and the consuming populations. That distinction is honored by this limitation in representation. Why, sir, if thirty-three Senators comprise the Senate of the State, certainly four Senators are enough to represent the city of Phila-

delphia. When, I would like to inquire, does the city of Philadelphia propose to send any of these delegates, these highly gifted and intelligent gentlemen who I see around me, to the Senate of the State. Why I should like to see one of these delegates, whom her citizens have sent to this Convention, run against the ring in this city. The gentleman from Columbia (Mr. Buckalew) narrated an instance that occurred in a recent election, in which Col. McClure was an opposing candidate, where three election officers and nine citizens voted in one precinct, between the hours of eleven and twelve o'clock, and not a single vote was announced during that entire hour for the candidate for whom the votes had been cast. Three election officers and nine citizens were thus cheated out of their votes in a single hour. An expensive contested election case followed, wherein all these facts were developed and McClure was awarded his seat in the Senate of the State, and now represents the city of Philadelphia. This instance of election fraud is by no means exceptional, for other developments have been brought to light by the reform organization of this city. If we can purify the ballot-box, if we can secure a representation for the substantial and worthy citizens of Philadelphia in the Legislature of the State, I submit that this limitation is too small, but in the existing state of affairs, I maintain it will be a great mistake if the Convention shall, by its action, exceed this limitation.

MR. LITTLETON. Mr. Chairman: I desire to say just one word. The argument of the gentleman from Philadelphia (Mr. Woodward) seems to be that because we do not elect good representatives, therefore, we should not have our full share. Now I do not think that that is logical. I think that the argument should be that population should be the basis of representation.

But I arose to make simply one remark. The gentleman from Philadelphia—I believe he is called from Philadelphia—suggests that the citizens of Philadelphia are simply a body of consumers. I desire, in answer, to state that the manufactured products of Philadelphia, two or three years ago, amounted to \$335,000,000 yearly, so that if he will look at that fact, he will see that we do produce something here, something besides illegal votes, and I do not believe that we produce half as many of them as has been stated here, but still we do produce something that adds to

the wealth of this community and of the State. The argument made by the gentleman from Philadelphia is, that we should endeavor to make this Constitution for the farming population of Pennsylvania. That upon this class should devolve entirely the duty of forming a Constitution which is to govern the whole State of Pennsylvania, including the city of Philadelphia, is a proposition to which I do not submit. His argument amounts to that, and nothing more. If you should take the varied interests of Philadelphia, and put them into comparison with any portion of this State, and base the representation upon that comparison, then we would be willing to put the question upon that basis. Take all the interests together of the different communities of the State, and if the apportionment is to be based upon these, and not upon population, Philadelphia certainly could be satisfied.

Mr. DALLAS obtained the floor, when Mr. Biddle requested that he yield to a motion that the committee rise.

Mr. DALLAS yielded; and

Mr. BIDDLE moved that the Convention rise, report progress and ask leave to sit again.

The motion was agreed to, the committee rose and the President resumed his seat.

IN CONVENTION.

Mr. HOPKINS, chairman of the committee of the whole, stated that the committee had considered the report of the Committee on Legislature, and had instructed him to report progress and request leave to sit again.

Leave was given the committee to sit to-morrow.

Mr. HARRY WHITE moved that the Convention adjourn, which was agreed to, and at 1.56 the Convention adjourned until ten A. M. to-morrow.

FIFTY-SECOND DAY.

WEDNESDAY, *February 26, 1873.*

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. Mr. Curry.

JOURNAL.

The Journal of yesterday's proceedings was read and approved.

THE ELECTIONS IN PHILADELPHIA.

PHILADELPHIA, *Feb. 26, 1873.*

To the HON. WM. M. MEREDITH,

President Constitutional Convention:

DEAR SIR:—At the last October election, one hundred and eighteen thousand seven hundred and nineteen votes were polled for a municipal officer, the receiver of taxes. The Convention proposes to separate the election of the municipal officers of the city from the general election, and have fixed the third Monday of February as the day on which it is to take place. By the consolidation act of 1854, which had been framed with great care, and after an ample discussion by the General Executive consolidation committee of the citizens of the city and county of Philadelphia, the first Tuesday in May was appointed for the municipal election, being in a mild season of the year, and when a full vote could be brought out. The day selected by the Convention is in the most inclement season of the year—in mid-winter—with the streets filled with snow and ice, and with ice gorges in the Schuylkill and Susquehanna. Sunday, the sixteenth day of February, was a day on which no one ventured into the streets, except under the pressure of absolute necessity. How many votes would be polled on such a day, or on the succeeding Monday. If it is intended to have a real separate municipal election, some other day must be selected, and I know none more suitable than the first Tuesday in May.

The city of Philadelphia covers one hundred and thirty square miles, and has a larger number of houses, in proportion to its population, than any other large city in America, and the honest mechanic and operative can have his separate dwelling, with water and gas. It is the great-

est manufacturing city in the United States, and is commencing to re-gain its foreign commerce by establishing lines of iron steamships, built by American mechanics, on the shores of the Delaware.

She has within a fraction of one-fifth of the population of the State, and her list of taxables entitles her to six Senators out the thirty-three Senators, which I feel the justice of the Convention will give her.

By the census of 1870,—

The population of the State is... 3,521,791
The population of the city is..... 674,022

By the triennial assessment,—

The taxables of the State were... 861,498
The taxables of the city were... 158,622
For each Senator is required..... 26,106

Which would give the city of Philadelphia six Senators out of these thirty-three Senators.

In 1790 the population of the State was 434,373

In 1790 the population of the county, now city, of Philadelphia was 54,391

Showing the increase of the city to be much larger than the rest of the State.

I am, very respectfully,

JOHN M. READ.

PROHIBITION.

Mr. ANDREW REED presented a petition from the citizens of Juniata county, praying for a provision in the Constitution against the sale and manufacture of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. H. G. SMITH presented a petition from the citizens of Lancaster county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. HAZZARD presented a petition from the citizens of Washington county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. TURRELL presented petitions from the citizens of Wayne, Lycoming and Columbia counties, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. DUNNING presented a petition from the citizens of Luzerne county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. LONG presented a petition of the citizens of Carbon county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. CURRY presented a petition from the citizens of Blair county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. H. W. PALMER presented a petition from the citizens of Luzerne county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

DEBATE IN COMMITTEE OF THE WHOLE.

Mr. WRIGHT offered the following resolution, which was laid on the table under the rules:

Resolved, That when, in committee of the whole, a motion is made to extend the time of a member in debate the length of the time shall be fixed in the motion.

SMULL'S HAND-BOOK.

Mr. LILLY offered the following resolution, which was twice read:

Resolved, That the State Printer be and he is hereby required to furnish to the Convention one hundred and forty copies of Smull's Hand-Book for 1873: *Provided*, That the cost of the same shall be the same as is charged the State for those furnished the Legislature.

Mr. AINEY. Mr. President: I move to strike out the words "State Printer," and insert "Chief Clerk."

Mr. LILLY. Mr. President: I desire to state that the State Printer is the publisher of this very convenient Hand-Book, and that is edited by Mr. Smull. The State Printer is able to furnish this book at the manufacturer's prices, and I cannot see the advantage of inserting the name of the Chief Clerk in the resolution.

Mr. AINEY. Mr. President: I withdraw my amendment.

Mr. KAINE. I would like to know what the probable cost of this book will be.

Mr. CAMPBELL. Mr. President: I hope this resolution will not pass. It has been a great source of complaint with the citizens of this State that the Legislature is continually making appropriations to purchase

books of this character, and I think we had better not imitate the example of the Legislature in this respect. Therefore I do hope that we will not vote for any more books or publications to be furnished to this Convention at the cost of the State.

Mr. HARRY WHITE. Mr. President: I hope that this resolution will pass. I can conceive of no possible complaint that any tax-payer or any citizen of the Commonwealth can make against the passage of this resolution. It is not merely for the personal profit or benefit of the members of this Convention, but to assist them in the performance of their duty here.

Now what is Smull's Legislative Hand-Book? It is no job. It is matter that is contracted to be published annually by the State, by a solemn statute, at a fixed rate. It is a valuable publication. There is statistical information, items necessary to be known by the representatives of the people, aggregated there in a convenient and compendious form, not to be had in the same form elsewhere. Yesterday, when the question of apportioning the State, the question of the taxables and of the census returns were talked of, there was a singular want of the proper means of information upon these subjects in the Convention. Now Smull's Legislative Hand-Book has all these things aggregated in a convenient manner. The cost of it is a matter of small consequence. It will not amount to one dollar a volume.

Mr. CAMPBELL. Mr. President: Will the gentleman allow me to ask him a question?

Mr. HARRY WHITE. Certainly.

Mr. CAMPBELL. Is not the list of taxables already furnished in the Convention Manual that we have paid for.

Mr. HARRY WHITE. Mr. President: That may be so; but there are other items of information comprised in this Hand-Book. The present legislative districts of the State, as fixed by the last apportionment, the present Congressional districts, the present judicial districts, the numbers of the judges, the popular vote for several years past in the different counties, and much more, is contained in this compact volume; and all this information is valuable.

I am in favor of economy always. For one, I yield to no man in my record on this subject; but I conceive there is a propriety in securing proper information for the use of this Convention.

Mr. DARLINGTON. Mr. President: I am always opposed to this buying busi-

ness, but I would not object in this small way if the gentleman who offered the resolution would strike out "Smull's Hand-Book" and insert "Ginx's Baby," we would then have a more valuable book.

On the question of agreeing to the resolution, the yeas and nays were required by Mr. Cochran and Mr. Fell, and were as follow, viz :

Y E A S.

Messrs. Achenbach, Addicks, Ainey, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bardsley, Black, J. S., Brodhead, Buckalew, Carter, Clark, Curry, De France, Dunning, Edwards, Ellis, Ewing, Fell, Fulton, Gibson, Green, Guthrie, Hanna, Hemphill, Heverin, Howard, Knight, Lamberton, Landis, Lawrence, Lilly, Long, MacConnell, M'Allister, M'Camant, M'Clean, M'Murray, Mann, Mantor, Metzger, Minor, Niles, Palmer, H. W., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, S. H., Ross, Runk, Smith, H. G., Smith, W. H., Stanton, Stewart, Temple, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F. and Wright—63.

N A Y S.

Messrs. Bailly, (Perry,) Campbell, Cochran, Corbett, Craig, Curtin, Cuyler, Darlington, Dodd, Funck, Hay, Hazzard, Hopkins, Kaine, Patterson, D. W., Patterson, T. H. B., Reed, Andrew, Rooke, Smith, Henry W., Struthers, Turrell, Walker, Wetherill, John Price and Meredith, *President*—24.

So the resolution was agreed to.

ABSENT OR NOT VOTING.—Messrs. Armstrong, Baker, Bannan, Barclay, Bartholomew, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Broomall, Brown, Carey, Cassidy, Church, Collins, Corson, Cronmiller, Dallas, Davis, Elliott, Finney, Gilpin, Gowen, Hall, Harvey, Horton, Hunsicker, Lear, Littleton, M'Culloch, MacVeagh, Mott, Newlin, Palmer, G. W., Parsons, Read, John R., Reynolds, James L., Russell, Sharpe, Simpson, Wetherill, J. M., Woodward and Worrell—44.

LEAVE OF ABSENCE.

Mr. NILES. Mr. President : I ask leave of absence for a few days for Mr. Beebe, of Venango.

Leave was granted.

Mr. DARLINGTON asked and obtained leave of absence for to-day for Mr. Dallas, of Philadelphia, on account of sickness.

Mr. DUNNING asked and obtained leave of absence for a few days from to-day for Mr. G. W. Palmer, of Luzerne.

Mr. H. W. PALMER asked and obtained leave of absence for a few days from to-day for Mr. Mott, of Luzerne.

SKELETON MAPS OF PENNSYLVANIA.

Mr. ELLIS. Mr. President : I offer the following resolution :

Resolved, That the Clerk be instructed to procure from the State Printer, for the use of the members of the Convention, five hundred skeleton maps of the State, with the population and taxable inhabitants of each county throughout the State.

On the question of proceeding to the second reading, a division was called, which resulted : Forty in the affirmative and fifteen in the negative. So the resolution was read a second time.

Mr. KNIGHT. Mr. President : I move to amend, by striking out "five hundred," and inserting "one hundred and forty."

Mr. ELLIS. Mr. President : I would simply remark that the expense of these skeleton maps is very trifling, not more than from ten to fifteen cents each. They give outlines of the counties, and in our work on the Legislature, in reference to the grouping of the counties, they will be of great advantage to us. They will also be of advantage upon the question of grouping the judicial districts. The expense is so extremely trifling, and the convenience so great, that the resolution ought to be passed.

Mr. EDWARDS. Mr. President : I move to amend the amendment, by making the number two hundred, instead of one hundred and forty.

The PRESIDENT. The Chair would suggest to the gentleman from Schuylkill (Mr. Ellis) that he strike out the number in the resolution, and let the blank be filled.

Mr. ELLIS. I will accept the suggestion of the Chair.

The PRESIDENT. The numbers of five hundred, one hundred and forty, and two hundred, have been named. Does any gentleman suggest another number?

Mr. LAMBERTON. Three hundred.

The PRESIDENT. The question will first be taken upon the largest number.

The question being taken, shall the blank be filled with five hundred, it was agreed to.

The question being then taken upon the adoption of the resolution, it was agreed to.

PAY OF CLERKS AND OFFICERS.

Mr. HAY, from the Committee on Accounts and Expenditures, in obedience to a resolution of the Convention, adopted on the 25th of February, presented from said committee a resolution directing warrants to be drawn in favor of the clerks and officers of the Convention, for the payment of thirty per cent. of their salary, which was twice read and agreed to.

The PRESIDENT. The next business before the Convention is the second reading of the report of the Committee on Suffrage, reported from the committee of the whole yesterday. The Clerk will read the first section.

The CLERK read :

SECTION 1. Every person possessing the following qualifications shall be an elector, and be entitled to vote at all elections, viz:

1. A male person twenty-one years of age.
2. He shall have been a citizen of the United States at least one month.
3. He shall have resided in the State one year, or if he had previously been a qualified elector of the State, removed therefrom and returned, six months immediately preceding the election.
4. He shall have resided in the election district where he offers to vote two months immediately preceding the election.
5. If twenty-two years of age, or upwards, he shall have paid, within two years, a State or county tax, which had been assessed at least two months, and paid at least one month, before the election.

Mr. KAINE. Mr. President: I move that the further consideration of that article be postponed.

The motion was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Hopkins in the chair, for the purpose of further considering the article reported by the Committee on the Legislature.

The CHAIRMAN. The pending question is upon the amendment offered by the gentleman from Philadelphia (Mr. Worrell) to the amendment offered by the gentleman from Chester, (Mr. Darlington,) to strike out "no city shall be entitled to more than six Senators."

The Chair desires to make a suggestion to the committee. Under a rule recently adopted by the Convention, members are limited to ten minutes, unless, upon leave granted, they may speak longer. If that

leave be granted, then there is no limit, and the delegate may speak for two hours if he thinks proper. The Chair would therefore suggest to the members—and they may adopt it or not as they choose—that in moving that the time be extended for the delegate, that the mover designate the time, say five, ten or twenty minutes, as he may deem proper.

Mr. STANTON. Mr. Chairman: The amendment offered to the twentieth section yesterday, by the gentleman from Chester, (Mr. Darlington,) was, as justly observed by my colleague, (Mr. Biddle,) a wrong aimed directly at Philadelphia. Philadelphia, with a population of nearly seven hundred thousand, represented by a taxation, an amount of property, and individual assessments, second to no other city in the Union, has but four Senators. As all such representations of the people are based upon population, Philadelphia is justly entitled to the highest number such population gives. Apart from the effect that this amendment would have upon our political status, would it not tend to affect our great commercial and mechanical interests? A proper and just representation, based upon population, is all that our city or county should ask, and it is that which our State Constitution grants, and the time has now arrived for us to secure all our political, commercial and mechanical rights by just and proper representation.

I agreed with my colleague (Mr. Jno. Price Wetherill) when he said that the proposal of the gentleman was the most unjust he had ever heard. It was shown that Chester would have two Senators and eleven Representatives, while Philadelphia would be restricted to four, and Allegheny county, composed of two hundred thousand or more, would have six Senators. Now if the Convention should agree to limit the number of Senators to four or six, for cities and counties, it would establish a precedent which would lead to the ultimate injury of all our large cities, and to ours more particularly, as we have at stake a representation more than any other city in the State of Pennsylvania. On mere politics I, for one, oppose all attempts to degrade our city by making it, even in a political point of view, seem a—village.

At the outset of this Convention, Mr. Chairman, it was proposed to do away with special legislation. Gentlemen that represented the western districts, especially Pittsburg, begged and pleaded

with us not to separate Pittsburg from Pennsylvania or Philadelphia, but to stand shoulder to shoulder, although some of their representatives have accused Philadelphians of being ready to sell out for a certain political consideration, which I, for one, deny. I have never heard that any of our representatives were even suspected of having tendencies in that direction.

This position is well taken if it is proposed to separate the city from the State. We have no idea of seceding. We have proved it to all the country that we are not in favor of secession; we want to be placed on the same footing as any other city in the State, and I trust the amendment offered by the gentleman from Chester (Mr. Darlington) will not prevail. All that we want is equality and our rights. It is in your hands to give them to us. We intend to stand by every large city in the State, Pittsburg, Williamsport, Lancaster, Scranton, and others. Now, let us all come in alike, and I am sure there will be no complaint by citizens of Philadelphia or citizens of Pennsylvania.

MR. HEVERIN. Mr. Chairman: I desire to add my endorsement to what has already been said in advocacy of the claims of Philadelphia to a representation based upon proportional population. While no member of the committee pretends to dispute the justice of our demands, under an abstract consideration of the question, as it relates to the fundamental principles of our government, yet surprising arguments have been adduced in favor of restricting, by constitutional provisions, our agency in the legislative department of the State. The distinguished gentleman from Philadelphia (Mr. Woodward) yesterday, under his rural predilections, attempted to vindicate his position by referring to the primitive condition of our State. He certainly is insensible to social and governmental progress, when he seeks to remind us of the primeval relations of our ancestors as a criterion for our conduct. When he refers to the "dutch farmers," who acquired their titles under the patents of Penn, he certainly forgets that nearly two hundred years have passed and gone since Charles II ceded the territory of Pennsylvania.

We are not here to represent the condition and the interests of the German husbandmen of 1681. We are not here to make organic law for the people of two

centuries ago, but for the people of the present, and, probably, of fifty years to come. If we are to retrograde, if we are to go back to the condition of the aborigines, then such arguments possess, probably, some plausibility; but if the products of our labors here are to be consistent with and appropriate to the natural course of events and the progress of civilization, then we want no reference to these antiquated and moss-grown theories of the by-gone. If we are to respect the wants of the agricultural emigrants under Penn, then we should have some regard to the claims of the Swedes and the Finns who settled here in 1627; if we are to preserve the crude institutions of the German agriculturalists of the seventeenth century, let us also perpetuate the tastes, habits and customs imported by the Swedes; if we are to adhere to the errors of the past, then let us continue the government of the Vasas of Sweden. Let us form a Constitution in conformity with the reign of Sigismund and the rule of Adolphus. Let us be faithful to barbarism and consistent in our actions; but, Mr. Chairman, I imagine no member of this Convention, who was born a little later than the eminent gentleman from Philadelphia, (Mr. Woodward,) and who has realized that the world moves, will be influenced by such frequent animadversions to the examples of a condemned antiquity. The gentleman says further that the city is simply a consumer; that she produces nothing. I have not yet heard of any theory in republican or democratic government which elevates the agricultural above the manufacturing interests. I know of no principle in our government which invests the humble husbandman with rights and prerogatives paramount to those which attach to the manufacturer; and I would like the learned gentleman to inform me what would become of the producers if there were no consumers, and whether this dependency is not mutual. Such arguments are unworthy of the ability and experience of the gentleman who utters them. But even admitting that the city is dependent upon the country, then, Mr. Chairman, I find in this the strongest argument in favor of municipal representation. The dependent is always loyal to his benefactor, the beneficiary is always faithful to the source of favor and sustenance, and if the city is entirely dependent upon the country, as asserted by the gentleman from Philadelphia, (Mr. Woodward,) then its repre-

sentatives have always an incentive and inducement to be true to the rural sections, which claim Providence as their architect, and they will never imperil the interests of the country by indulging in selfish and injudicious legislation. The dependency will conduce to identical ambitions, and will tend to promote their common welfare. Common interests induce sympathy of purpose and concert of action; therefore we see that the reasons urged to justify this unjust affliction upon Philadelphia are the best advocates in favor of unrestricted, urban representation.

Again, the gentleman argues upon the false and exploded theory that a legislator is bound by the will of the people of the particular locality which he represents, that he is exclusively the representative of a particular section—a mere mechanical exponent of the will of those whose votes confer the office. Why, Burke said long ago—and it has been since recognized as a cardinal truth—that “government is not a matter of will, but a matter of judgment and reason.” The Legislature is not an “assembly of ambassadors from different and hostile interests, which interests each must maintain, as an agent and an advocate, against other agents and advocates, but a deliberative body, with one interest, that of the whole—where not local purposes, not local interests ought to guide—but the general good resulting from the general reason of the whole.” And much more will this principal prevail if there exists this dependency which the gentleman referred to, for then, in such case, are all legislators particularly bound to respect the will of the entire State, by ties higher than those which bind them to their constituents, and they will support measures for the benefit of the whole State, even at the risk of prejudicing the immediate local interests of those who send them. Now so much for the arguments of the gentleman who came open yesterday like a suddenly aroused Rip Van Winkle, oblivious to the events of a half century.

But we are told that cities are ulcers and gangrene upon the body politic, therefore they must be deprived of this right of equal representation; that, because a man accidentally happens to be an inhabitant of a city, he should, therefore, have an unequal voice in the Legislature of the State.

I have been a silent listener to attacks upon the city of Philadelphia, and, whilst

I admit the truth of much that has been said, I must say that some of the information that I have received here from country members has induced me to consult the latest geographical authorities, in order to insure a correct knowledge of my own residency. And when I heard one gentleman proclaim, with sweeping emphasis, that the probable fate and deserved destiny of all those who enjoy the emoluments of office in the city of Philadelphia, another gentleman (Mr. Woodward) assert that we were all drones, I was almost inclined to ask a letter of introduction to my own constituents.

If the interests of the city are not identical with those of the country—if we are to declare war between the city and country—then the arguments which have been adduced on the other side might, with some degree of propriety, have weight here. But, sir, I am not only opposed to limiting our Senatorial representation here, by constitutional provisions, but I am in favor of increasing the membership of the whole General Assembly. I believe that, as in union there is strength, so in the multitude integrity and honesty always have an abiding place. The circumscribed pool is easily roiled, but it is a potent agency that disturbs the crystal purity of the deeper and broader waters. He who was surrounded by the good influences of eleven others could command thirty pieces of silver, while the solitary dealer in birth-rights brought but a mess of pottage to his coffers.

But, say the opponents of this measure, it offends the traditional significance of our institutions. Well, practice has established more general errors than general truths. Make age the badge of institutional virtues, and despotism is, by many thousand degrees, on the scale of antiquity, better than representative government. The laws of Draco are older than those of Solon, and idolatry antedates christianity.

But, if we are to regard the lessons of history, let us consider now what it teaches. The Amphictyonic Council was an improvement upon the Triumvirate. The former exerted a beneficial and civilizing influence, and knit together the twelve distracted tribes of Greece, in a bond of common interest and piety; while the latter, with its trio of rulers, bequeathed no cherished institutions or beneficent influences. The paucity of its members presented opportunities for successful corrupting approaches; and war, lawlessness

and ruin befel the government that enjoyed wealth and power when its management was confided to the *patres et conscripti* that formed the "Council of the Elders."

Again, the Roman Senate, with its three hundred members, exhibited its virtues in a protracted and meritorious existence; while the Decemviri lived but two short years. The Senate, with its numerical greatness, evinced a virtue and integrity which made it the superior of the ten law-makers who went out with the impious Claudius.

And now, Mr. Chairman, if we are to effect and perpetuate the grand objects of free government, and of our own official existence—honorable motives in the exercise of the elective franchise, honor and integrity in those who occupy the high seats of authority, and virtue and purity in the administration of all the departments of government—we must let sovereignty find expression through the many.

[Here the hammer fell.]

Mr. ALRICKS. Mr. Chairman: I have but a few remarks to make on this subject. A good deal may be said upon a subject of this nature, but gentlemen should not permit their zeal to outrun their discretion. We must not forget that the question actually before this committee—which is, how many Senators is it proper a city or county within this Commonwealth should be entitled to? That is the question. Philadelphia is not alone concerned. Every growing county in the Commonwealth, Luzerne, Allegheny, and every other county in the Commonwealth, are concerned. There is no war between the city and the county. We are not acting on a question of first impression. The case comes before us after it has received the judgment of a past generation. I may say that for generations our organic law has stood as it stands now. In 1838 the Convention thought proper to say that no city or county should have more than four Senators. Philadelphia might have had eight if she had not thought proper to extend her municipal territory, so as to embrace the whole county. She supposed that it was to her interest that she should have but four Senators, inasmuch as she consolidated the county, by embracing it within the limits of the city. That gave her but four Senators. Now the question we have to pass upon is, whether she is entitled to any more or not. I must confess I am in favor of the bill as it has been

reported by the committee. I apprehend that when we come to look at the matter, we will find that it is right; and unless we increase the number of Senators in other parts of the State, we should not increase the number in Philadelphia. Why, sir, we have been brought here for the purpose of reforming abuses. The complaint was that there was corruption at the ballot-box. We have been brought here to reform that. The allegation was that our Legislature was not pure. We have been brought here for the purpose, if possible, to take care that the Legislature should not be corrupted. The allegation was that certain officers were receiving immense fees. Those have been the evils. We are told that corporations have an overwhelming influence. These matters brought this Convention together—that they may be reformed. But, Mr. Chairman, what section of the State has ever raised a voice against the number of representatives that a county or city has had in the State Senate? In 1850 the Constitution was amended, and nothing was said about this then. In 1857 the Constitution was again amended, and this very article, in relation to the city of Philadelphia, was passed upon by the people, but there was no objection to its having but four Senators. In 1864, and in 1872, we again passed amendments to our Constitution, and this question never was mooted in all these amendments.

I apprehend, then, that the city of Philadelphia, and all other cities and counties in this Commonwealth, ought to be limited to a certain number of representatives in the Senate. You well know, Mr. Chairman, that our Senate is constructed upon the same principle upon which the United States Senate is constructed. It is constructed for the purpose of being a check upon the other power—upon the popular branch of the government—if choose you to put it so.

It is said that during the war of 1812, the State of Delaware did not pay as much direct taxes into the United States Treasury as a single township in the county of Lancaster; and yet the State of Delaware, during all that time and up to this day, had and has her two United States Senators, equal with New York and Pennsylvania, and that great State at that day, old Virginia.

Well, now, is it not consistent that we should remember that in the construction of our government we intended to limit the number of Senators in any city or

county? The gentleman from Centre, (Mr. M'Allister,) however, has informed the Convention that he is in favor of representation according to population. Why, sir, that is not the principle upon which the Senate of Pennsylvania has been constructed. The great theory of our government would be completely overturned if the Convention adopted the gentleman's crude notions upon this subject. It was never intended that taxation, population, nor territory should alone be taken into consideration in the construction of the Senate of the State; but the apportionment was made so that a limit should be placed upon the number of representatives that were sent from any particular city or any particular county to the Senate of Pennsylvania.

The gentleman from Philadelphia (Mr. Knight) says that in 1838 Philadelphia had a population of only about two hundred and fifty thousand, but the gentlemen of this Convention well know that the members of the Convention of 1838 understood as well as we do that the city of Philadelphia in 1873 would have a population treble what it was in 1838, and when that Convention formed the organic law of the State in that year, they intended it for all future time and not merely for ten, twenty or thirty years. When that Convention incorporated this limitation in the Constitution, they designed that it should remain there, not only for half a century or a century, but they intended, even when the city of Philadelphia had a population of a million and a half of inhabitants, that she should not have more than four Senators in the Senate of Pennsylvania, and therefore the arguments of gentlemen in this Convention against this limitation, do not weigh a feather in the consideration of this question.

The gentleman from Philadelphia, Mr. Chief Justice Read, in his letter, intimates that the city of Philadelphia pays about one-fifth of the entire amount of taxes collected in the State of Pennsylvania. I reply to this assertion of the gentleman, that if Philadelphia does pay one-fifth or one-fourth of the taxes, she gets nearly one-fourth of the money after it reaches the treasury of the State. It is no more than justice that the city of Philadelphia should be compelled to pay a large amount of taxes, because the debt of the State was almost entirely incurred for the benefit of this city, and in making her what she is—the metropolis of Pennsylvania. Look at the great arteries of com-

merce, the railroads and the canals, which have cost forty millions (\$40,000,000) of dollars, leading from this great city, and then contemplate what Philadelphia would be without them. Look at the manufacturing establishments which have been built up by these great commercial facilities, and then can any one doubt that Philadelphia should bear a portion of the burden which has been created in placing her where she is—among the first cities of the nation, and made her the metropolis of this Commonwealth?

She, perhaps, ranks among the greatest manufacturing cities of the world, and the rest of the State are proud of her commercial and manufacturing achievements. We are proud that she forms a centre around which the arts, sciences and literature cluster, and are advanced. We are proud of her immense and industrious population, for we acknowledge she is an honor to the State; but we are compelled to say to our sister city that she must remember when the Constitution of the State was formed it was thought wise and prudent that a provision should be inserted in the Constitution, so that no city or county should have more than four Senators in the Senate of Pennsylvania. The Scriptures tells us that Aaron's rod became a serpent, and when the sorcerers threw down their rods Aaron's rod devoured them all. I do not believe that Philadelphia will gobble up the rest of the State, but we believe that there is wisdom in this provision of our Constitution, and therefore I am disposed, for one, to adhere to it. I believe this provision should be retained in the Constitution, for while it will do no injustice to Philadelphia, it will, at the same time, be only just to the other sections of our large State.

Mr. J. S. BLACK. Mr. Chairman: When the proposition was first made to give to the city of Philadelphia a representation in the Senate of the State, less than what is accorded to other portions of the State in proportion to her population, I did not think it would have the support of a single member of this Convention—unless it were the mover of the amendment himself. I was not convinced that it was going to have very much support, until I heard the very plausible speech of my excellent friend and brother, who sits on my right, (Mr. Woodward.) Then I thought it would not go very far until I learned in conversation that divers gentleman—one

who has just spoken, (Mr. Alricks,) and one of whom I expected better things, who has not yet spoken—had received a very strong impression from the speech made by the gentleman from Walnut street (Mr. Woodward;) and it seems to me that we have reached the time in the latter days when teachers would come about who would be able “to deceive the very elect.” Now the theory of this government of ours is: “That it is a government of the people, for the people, and by the people; and that in every department, especially every department that has anything to do with the great functions of making our laws, the whole people are to be represented, and all the interests that belong to every part of the State are to be supported by all those who are engaged in it. It is proposed, in effect, to say that the city of Philadelphia shall have in the future about one-half as many members in the Senate in proportion to her population as the same population, residing anywhere else than in Philadelphia, would have and be entitled to. Now if a proposition of this kind were to be made by one of the other counties of the State to a third county—that is to say, suppose a war of roses should occur between the two counties of Lancaster and York, and one of those counties should deliberately propose to this Convention, or any Convention representing the people, that the other county should only have half of the representation in proportion to her population that she claims for herself, such a proposition would not be listened to for moment by any just or fair-minded man. The gentleman from Columbia (Mr. Buckalew) referred yesterday to the iniquitous apportionment, by law, which gave to the county of Luzerne only four Representatives in the lower House, while she was entitled to five, according to the ratio of representation, and he said what everybody admits to be true, that this thing had stamped upon its face, all over, the marks of wrong and injustice.

If the city of Philadelphia had the power to determine in what proportion the representation should be in the Senate, and she were to propose to us in the country that she would give us one-half of the representation which she claims for herself in proportion to the population, what would we say about it? Why we would thunder it into the ears of the world as the grossest and most outrageous wrong that could be perpetrated. Now why should we not do unto Philadelphia

what we would Philadelphia should do unto us if the cases were reversed; and here comes the curious part of my friend's argument. He gives certain facts which he calls reason for this. One of them is that the city of Philadelphia is vicious; they are wicked people that live here, and it may be, for aught I know, that it is filled with publicans and sinners. Very certain they are no better than they ought to be, and when the gentleman compliments the tillers of the soil, of whom I am one, and tells us that they are much better and more righteous than those who inhabit the city, I am willing to own the soft impeachment. Still I think it partakes a little too much of the spirit of the Pharisees, for those from the country to say to the inhabitant of the city: “Stand aside, I am holier than thou.”

I would punish every body who commits crime against society, but I must object to a punishment of this kind. I do not think you can ever safely or fairly administer purity of justice by way of making a bad government for the people that are guilty of it. This provision injects into the Constitution a bill of pains and penalties upon the city of Philadelphia for its peculiar wickedness that some people suppose exists in this city. Now we have a provision in the Constitution of the State that no bill of attainder shall be passed, and I hope we shall keep it there. The amendment which is proposed I consider altogether wrong, and besides, if you disfranchise the city of Philadelphia to such an extent you will not only let the punishment fall upon the heads of those whom you believe to be wicked people, but upon those who are known to be as good as we are. It does not only deprive a certain portion of the people of the right to vote for Senators, but it deprives every man in the city of half of his vote. You take away from him half the weight and power that his vote is entitled to after he had given it.

There is no mode of dealing with wicked people, except to take each one and punish him for his personal guilt, after he has been legally convicted, up to that time. I think, as a public body, my friend, with all his indignation at everything that is not good, which is perfectly natural to him and very proper, he ought to be willing to consider the unconvicted as standing upon a perfect level, in the eye of the law, with himself, and that is as high a level as anybody can get to; but they are entitled to it.

Now, then, there is another objection to allowing Philadelphia what I consider a fair chance, which is that they are a set of idlers and drones, and do not work; there is nobody in this whole city that is engaged in productive industry. I answer that by simply saying that the fact is not so. I do believe, on my conscience, from all the observation I have been able to make, and from the results of all the inquiry that I have instituted into this subject, that this is one of the most industrious communities on the face of the earth. When the gentleman said that they do not work, why somebody has been victimizing him. Somebody has taken the advantage of his youth and inexperience and imposed upon him most grossly. [Great laughter.]

MR. WOODWARD. MR. CHAIRMAN: I am very sorry to interrupt the fervor of the gentleman's imagination, but I observe he is drawing upon his imagination for his facts; but when he alleges, in the face of this body, that I alleged that the people of Philadelphia do not work, he either has no ears or his imagination has got the better of his judgment. I alleged no such thing, sir. What I alleged was that the original source of wealth was in the agricultural productions of the country, and that there was seven hundred thousand people of Philadelphia who could not produce a loaf of bread to save their souls. That is what I said. I did not say they did not manufacture all sorts of useful things.

THE CHAIRMAN. The time of the gentleman from York has expired.

MR. CHAS. A. BLACK. MR. CHAIRMAN: I move his time be extended twenty minutes.

The motion was unanimously agreed to, and Mr. Black resumed.

MR. J. S. BLACK. MR. CHAIRMAN: I have nothing further to say since my friend takes it back.

MR. WOODWARD. I do not take back anything.

MR. J. S. BLACK. The people of Philadelphia are not idle people. They are industrious people. Will the gentleman tell me or anybody else that a man who is engaged in manufacture, in trade, or in commerce is not engaged in as meritorious a business as the man who makes a loaf of bread? Every man that earns his bread is entitled to it, one just as well as another. So I think the gentleman has been imposed upon; perhaps not by anybody that took advantage of him, but his

own imagination, as he would call it, has imposed upon him when he supposes that people who work at one business were less entitled to protection, supposing their labor to be honest, and proper and lawful, than any other; so that at last the error is just as bad as I supposed it to be. However there is just one reason that I have heard suggested from him. He seems to think that between the city of Philadelphia and the people in the country there is some kind, or is to be some kind, of conflict of interest. Now that may be true for anything I know. They may have interests that, at some time or another, will come in conflict with our interests in the country. But for that very reason, when the conflict comes, they ought to have fair play, and we ought not to deprive them of one atom of the natural power they have to protect their interests. Whether the fight be between us and them, when it does come, let it be decided according to the old rules of wager in battle, where we will go out into the open lists, and make a fair division of sun and wind and fight on level green.

I might illustrate, perhaps, now, what I think would be a fair principle, by mentioning an occurrence that is said to have taken place at one time, a great while ago, on the coast of New Jersey. The navigation there was somewhat dangerous, and a good many wrecks were cast ashore, and which the people were in the habit of plundering. A clergyman preached against that particular sin from the text, "Thou shalt not steal," and he was in the very fervor of the most eloquent part of his sermon when somebody cried out, "there is a wreck on the coast." Every individual in the congregation rose up and rushed toward the door. The clergyman begged them to stop only for a minute while he would say but four words to them. He succeeded in getting them to stop, and in the meantime he was getting to the door and had his coat buttoned, and when they waited in expectation of hearing these four words, these were the words he said: "Let's all start fair." [Laughter.]

Now I think that would not be a bad rule to apply to this case. If we are going to have any future conflict, or if there is to be a race for our rights and our privileges, or any other advantages, let us start fair. For my part, I feel much more anxious to give to the city of Philadelphia fair play, than, perhaps, I would if I was exclusively a representative from the coun-

try. His Honor (Mr. Woodward) says that he is a delegate at large, though he lives in the country. That is exactly my case. I am a delegate at large, though I live in the country; and perhaps a larger number of the votes that he and I both got were received from the city of Philadelphia than from any other one portion of the State. I think, therefore, that we are both bound to do what we can to save Philadelphia from what I would consider most unjust and unequal distribution of the power of this government.

MR. MEREDITH. Mr. Chairman: I was a good deal struck yesterday, surprised I may say, to hear my friend from Chester (Mr. Darlington) state that there was a clause in the Constitution of 1790 similar in its effect to this which is now pending before the committee. I wish to vindicate that Constitution of 1790 from such an imputation. That Constitution, sir, is one to which, substantially, we shall some day have to go back. Our people were forced in that year, as we know by tradition, to tear themselves out of the anarchy which had succeeded the Constitution of 1776, in which everything was elective, as it is now. That Constitution was formed upon the sound political principles of republican representative government the first of which, and that which lies at the foundation of all of them, is, that the political power is to begin in communities, and then from that to grow into the general government of the State. It is an axiom in our political learning that where the local jurisdictions have been preserved most carefully, and most effectively, there have the principles of republican government thriven.

Now, sir, the Senatorial representation provided by that Constitution of 1790 was, first, that the Senators should consist of the city of Philadelphia, and the different counties in proportion to their respective taxable inhabitants. That was the basis. Then they provided that the Legislature, as soon as there might be a county that was not entitled to one Senator, or another county of different size, that the Legislature might form Senatorial districts from adjoining counties, provided that in forming these districts they should not form one with more than four Senators. Then they went on, inasmuch as it might happen that the Legislature would divide these communities, and thus destroy the community representation, and prohibited them from dividing the city of Philadelphia, or any other county, in making Sena-

torial districts. The result was, that if there had been at that time a city or any county in the State whose taxable population entitled them to more than four Senators they would have been entitled. This was the universal understanding. This rests upon the principle of representation in proportion to the number of taxable inhabitants, which is, or ought to be, familiar to all of us, although I am afraid some of us are, perhaps, losing sight of it a little. This was the universal understanding of the meaning of that clause in the Constitution of 1790, and therefore it was that in 1838, for causes or reasons which it is not necessary to go back to, and which I never could half understand, in regard to a great many of the members of that Convention, except that they were carried away with the rush of a particular party as it existed then, founded on one idea, and rushing with that in their teeth anywhere where their leaders drew them, put this iron clog on Philadelphia. It is not necessary to go back to that, sir, but it was necessary, in order to reach the present limitation, that there should be a distinct and positive proposition to that Convention, and no man, then or since, has ever signified that the Constitution of 1790 was, in any manner, responsible for that clause.

Perhaps I may make that a little clearer. The principle on which the revolution began was, that there should be no taxation without representation. Carrying out this principle the Constitution of 1790 apportioned the representatives according to the number of taxable inhabitants. This provision is to be found in article one, section four. The sixth section of the same article provides that the number of Senators shall be apportioned among districts "formed as hereinafter described, according to the number of taxable inhabitants in each." The seventh section provides that the Senators shall be chosen in districts to be formed by the Legislature, "each district containing such a number of taxable inhabitants as shall be entitled to elect not more than four Senators." The same section provides that neither this city or any county shall be divided in forming a district. If, therefore, any city or any county should have more than, or as many taxable inhabitants as would entitle it to four Senators, the Legislature could not interfere with it, either by adding to it or by dividing it. The consequence is that such city or county would form a separate district and be en-

titled to the number of its taxable inhabitants, under sections four, five and six. This was the construction which was always taken for granted under the Constitution of 1790, though the case for acting on it had never arisen. But the debates in the Convention of 1837-8 will show, it is believed, that it was never doubted. I do not remember to have ever heard it doubted till yesterday.

I have said this much in vindication of that Constitution, because I will say here that, speaking from tradition, from history, and in part from experience, that during the time when that Constitution was in full force, say from 1790 down to about the year 1835, there never was on the face of the globe a better government, on the whole, than that of Pennsylvania. To be sure, we had none of this election of monied officers. The people did not undertake to act as the Executive. We had responsibility. We had a Governor who dared not appoint a bad man to an office, and who never did; and we had a Governor who, if he made a mistake, and had appointed one, would have been compelled at once to remove him by the representations of his fellow-citizens. Now we have forgotten all responsibility. We elect officers. Who is responsible for them? Nobody. Who are they responsible to? Nobody. In that way our elections have mainly become tainted.

This, by the by. I now propose to say a word or two on the proposed amendment, the part of that offered by the gentleman from Chester, (Mr. Darlington,) which is now proposed to be stricken out, and I shall say what I have to say on this subject in a very few words, and without the slightest irritation myself or the least desire to irritate anybody else.

I am sorry the city of Philadelphia has been introduced here by name. I look upon this as a general provision, that no city or county having more taxable inhabitants than would entitle her to four Senators shall have her senatorial representation, but that it shall be taken away from her.

Upon what reason is that attempted to be founded? I have heard only one reason given for it; and I do not consider that a reason at all. I have heard, on a former occasion, a great deal of hard language offered to the inhabitants generally of large cities. I am happy to have heard nothing of that kind on the present occasion except what perhaps has been drawn upon us by some of our own members. The

reason given was that large communities—still having the idea of communities—might swell up and obtain more weight and influence than they ought to have in reference to the body of the people of the State. Now, sir, apart from the fact that that seems to rest upon no reason that is consistent with the principles of the Constitution and of the government, which are, that communities shall have exactly that weight in the government of the State which their ratio of taxable population entitles them to. Apart, I say, from that, what is the altered state of the question in regard to the city of Philadelphia? Is that a "community" for the purpose of representation? No, sir; you have destroyed it. In neither House of the General Assembly has the city of Philadelphia a representation at all. Other counties are there in a body. Every man in Lancaster county knows who his representatives are. They go as the representatives of the county. They speak for the body of the community to which they belong. They are a body of men who are responsible to their constituents. What have you done here? We ask to go to the House of Representatives. You do not pretend to deny us that. "No," you say, "we do not deny it to you, but you shall not go as a community; we cut you up as little election districts," numbered, I believe, from one to eighteen. Who do the members of these districts represent? The city of Philadelphia? By no means. They represent, in fact, nobody but the little knot of ward politicians to whom they look for protection, and from whom they receive it. We were a community before the wise men of 1854 resorted to the philosophical experiment which, for myself, I wish had been first tried upon some other subject—for instance, of suspecting a number of eggs to be not exactly in a true state, and conceiving that they could run them together into one large shell and produce a monstrous fowl that would astonish the world. [Laughter.] When they tried that experiment, sir, what did they do? Why they forgot that they were taking away our Senatorial representation.

Gentlemen have said that this provision in the Constitution of 1838 has stood unchallenged. Why? Simply because it was never anything but a proposition in the future. It never had a practical application. The city of Philadelphia never had more than two Senators; the county of Philadelphia never had more

than three; and when the consolidation came this number was reduced to four. This consolidation was done by act of the Legislature. You put it upon us, in fact, though, I am sorry to say, probably with the assent of most of our citizens. What did that do? It consolidated two communities, each of which, at that time, was entitled to four Senators, into one community; and that is entitled to but four. We have lost half our right, not by any intentional act upon the part of the Legislature, or anybody else, but simply by the fact that this consequence was overlooked when that act of consolidation was passed.

Now, sir, what have we? We have no community representation. Gentlemen complain that bad bills are passed at Harrisburg. I have no doubt they are. They complain they are passed by bad men. I do not know whether they are or not. But this I do know: That if there be a fault there, let not the gentlemen of the interior of the State attempt to throw it upon us. Why have we not our old representation there, of the city on one hand, and of the county on the other, which could be held responsible, and which were responsible, and which held to the resolution, at that time, that no man was ever taken up, on either ticket, who was not a man of good private character, and known to be such? Who has taken that away from us? Your Legislature. They have destroyed us. They have destroyed our community system; and then, when our members go there, representing nobody but a little district of inhabitants, half of whom do not know who their representatives are, and a little knot of ward politicians, to whom they can go for support in everything they do, they bring in bad bills. Who corrects them? Where is the large body of members of the interior who should stop that, and who should crush such bills, and take their proper part in the legislation of the Commonwealth?

Why, sir, they have established a rule of etiquette at Harrisburg, which is utterly inflexible, that if members desire a bill to pass that refers to their own localities or districts, all the members from the other districts keep "hands off" and vote for it, right or wrong. Blame us! Blame yourselves. Help us to do justice. What can be done? Give us back our representation on such a scale that we shall have some thing like a community representation. Take the old city, which was to

have six members; take the rest of the county, which had eight; give them that representation back again, and you will get a body of men who will soon set things right, if it has not got too far to be set right. You will then have a body to be represented that is of some importance, and who will expect to be represented as such; and you will have a body of Representatives who must either do their duty or fall under the censure of a responsible body like the inhabitants of the old city.

Instead of doing this, however, gentlemen seem inclined to cast all sorts of reflections upon us, and at the same time appear to think there is none to be cast upon themselves. A fault of omission, where it leads to such consequences, is as great as a fault of commission. I have been sorry to hear these discussions. I do not think they lead to any good result. We have been told that our elections are all badly and dishonestly held. Whose fault is that? Is that the fault of the city and county of Philadelphia? Did they vote for this amendment of 1838, out of which that has arisen? No; they did not. Did the people of the Commonwealth ever vote for it? No. There was a nominal majority for it of, I think, under three hundred. There are many counties in the upper part of the State where no tickets against the Constitution were printed; and upon a fair and full vote it would not have been adopted. We never voted for it. Yet what has it done? You have, by its means, compelled the people here to take into their hands Executive power. You compel them to appoint these monied officers. Of course they come into the nominating conventions. While these offices have grown to the importance which they have at present attained, their incumbents being responsible to nobody, and nobody being responsible for them, the amounts they receive as compensation for their duties are "fabulous." Certainly if you were to designate the sum you would use that phrase, and I hope it would be properly used. Why your legislators, your representatives—that class of public servitors, for they are not "officers" at all, though I find we have got to calling them such—are lost sight of in this contest for offices of one hundred, or more, thousand dollars a year, the holders of which can afford to spend almost unlimited sums, if they choose to do it. I do not know that they do; I hope they do not—in manipulating nominating conven-

tions, and securing their own re-election, or the election of their immediate friends and dependents.

You put them upon us; and then you follow that up by taking away our community rights, by denying us the right of having a set of representatives representing the whole community, by splitting us up into these little districts so easily manipulated. Then, some gentlemen seem to put all the blame upon us.

I will say this, that I believe the true basis is that which the Constitution of 1790 adopted. It has always been so regarded. It is an instinct of our race, and wherever that has been allowed to be followed it has led to good results; wherever it has been abandoned the consequences have been evil.

I believe the inhabitants of a large city, say of this city, are as much entitled, from their intelligence, from their industry, from their honesty and integrity, to be heard at the ballot-box as the inhabitants of any other part of the State, for these corruptions, great as they may seem, have not spread to the body of our people. As one professing to know, perhaps, something about this matter, I beg leave, sir, to say that there is not on the face of the earth, so far as I have been able to find, a working population approaching in purity and integrity of character the working population of Philadelphia; and I say this boldly.

What are we? The dangerous classes, as they are called, are reduced to a minimum, and why? Because our early system of ground-rents, a system which the "wise men" of modern times are breaking up, encouraged every workman to take up his lot of ground with the assurance that he would get the benefit of the profits that the ground would bring; and he knew that if he could build a small house upon it, his family would be provided for. The consequence is, that you have miles and miles of small houses, as comfortable and convenient as the largest, each inhabited by the separate family of a working man. That man, instead of being driven from his home of an evening to the saloon or the gaming table, as he would be likely to be if he lived in the uncomfortable, uninhabitable and miserable tenement house of other cities, goes promptly home when his day's work is done, to spend the evening in comfort with his wife and children.

I have seen these things, sir, all my life, and I cannot refrain, when I hear the

population of Philadelphia spoken of as unproductive, from testifying to what I know and have seen of them. No man has ever seen a mob in Philadelphia. We have seen what are called mobs, but by "mob" I mean a body of men let loose from all the obligations of society, such as the mob known to London and New York, which, whatever may be the pretext for its assemblage, begins immediately to be a thieves' mob, and proceeds, indiscriminately, to rob and plunder houses and persons, and which takes the strongest exercise of power to subdue. We have had some "insurrections," as they call them, here, and have even had a partial "civil war." We have seen the time when the native Americans and the Catholics were at open war in the lower districts of the city of Philadelphia. It continued, substantially, for some weeks, although nominally quelled. The fights continued at night, in the streets, and yet, during the whole of that period, the citizens who were not actively engaged as factionists on one side or the other, walked the streets among the combatants with just as much safety as they did at noon-day at any other time; and no one was heard of as having been robbed, or molested, or even had his pocket picked. Theft was not known. That will serve to show what I mean when I say you can not get up a mob in Philadelphia. It has never been done. I look upon it as a glory to this city that such is its condition, and that the dangerous classes are brought down to such a small proportion that they dare not show themselves. Especially when the people are out, are these parties, such of them as we have amongst us, careful to go to their hiding places; and if they come out, it is when the streets are not frequented by others.

I have one more remark to make. I do not doubt the intelligence of such a people. I have nothing to say against the inhabitants of other parts of the State. I owe them too much, so much, indeed, that even a feeling of gratitude would prevent it. I respect and honor them all. The German farmers, in particular, have been at times the anchorage of the State by their conservatism. If we have a fault in our population, is it that it is not homogeneous. We have the German and the Scotch-Irish, the New Englanders up in the "Seventeen townships" and in that neighborhood. We have the old English population here in Philadelphia, and in Chester, Delaware and the lower portions

of Bucks and Montgomery. They are not strung exactly on the same key; and it has, therefore, sometimes happened that when an excitement is just dying out among one class of the population it would be taken up when too late by another. We have seen the time, for instance, when some excitement which was dying out, say among the Scotch Presbyterians, would be eagerly caught up by the German population just in time to be too late for any good; and so it has sometimes been found among others, the excitement dying out in one place when taken up in another.

In conclusion, sir, let me say that our skilled workmen, our artisans, our mechanics, our thousands of honest laborers, skilled and unskilled, have as much intelligence to vote, and have as much a right to self-government as the population in other parts of the State. They claim no more. They do not set themselves up because they live, forsooth, in daylight, as entitled to govern the thousands who live in the darkness of the mines, under ground, and who are not, perhaps, able to see as clearly as we who are above. They pretend to nothing of that sort. They allow the equality of all who are competent voters, and they desire to have the rights of all secured.

Mr. Chairman, since the only plausible reason that ever was given for this clause has now been doubly removed, first, by the destruction of the principle which was the original foundation on which the clause was based, and, secondly, by the consolidation which has squeezed us here into one-half the number that the provision originally allowed, I trust, and I hope I may be pardoned if I say I expect, that this body will go back to the principles upon which our liberties depend, and declare that the right of representation, whether in the Senate or House, should be by communities, in proportion to the number of their taxable population. Do that, and you restore harmony. What are we laboring under now? We are entitled, under this clause, to four Senators. What Senators? Senators representing the "city and county." Have we got them? No, sir; we have no Senators. We have four Senatorial districts, carved out upon some principle or other. Each elects one Senator. Are other communities on the same footing? No, sir; they are represented as communities. Suppose these Senators in Philadelphia are elected, two of them in districts a majori-

ty of whose voters are of one political party, and two in districts a majority of whose voters are of another political party, what representation has this community? None at all. Their votes balance each other. Do not leave us in that position. Do not, on the other hand, grind us down in our right of representation. Put us upon an equality with other citizens; give us a fair chance; treat us as if we were men and citizens, and, because you happen to have a majority of this Convention coming from the interior of the State, do not use your power to screw a particular portion of the State, and deprive its citizens of their rights. [Applause.]

Mr. BUCKALEW. Mr. Chairman: I ask leave, at this time, to address the committee.

Unanimous consent was given.

Mr. BUCKALEW. Mr. Chairman: I have listened to the remarks of our respected President, with deep satisfaction, upon both the main points to which his remarks were directed. One of the main objects that I have desired to see secured by this Convention is the correction of one of the constitutional amendments of 1857, which was drawn by me, and was adopted by the Legislature by an almost unanimous vote. I mean the amendment under which this city is divided into single Senatorial and Representative districts. I think that amendment was a mistake, and that the results of it upon the character of our Legislature have been most disastrous.

Now, sir, when Mr. Eli K. Price came up to Harrisburg, backed by the voice of Philadelphia, and demanded that the city and county should be consolidated into a single municipality, those of us who represented other sections of the State could not refuse the demand. We passed the bill; we gave to this city enlarged boundaries, including within its limits large sections in its neighborhood which were really agricultural in character. But one certain result of that measure we all saw would be, if the Constitution remained unchanged, that control, absolute and constant control, of the political complexion of the Legislature would be assigned to this city. All the members from Philadelphia would be elected upon a general ticket, so that so many as eighteen votes in the House of Representatives would now be constantly polled by one political party. This political difficulty induced that amendment of

1857, requiring the Legislature, in future apportionments, to divide the city into single Representative as well as Senatorial districts. We resorted to this means of relief, or rather of protection against an impending political evil or mischief, because we did not know what else to do, how else to divide the representation of this city, so that it should not have absolute political control over the action of the State government. Our justification for what we did consists in the fact that we were ignorant how else to accomplish our object. But, sir, from the day that amendment was adopted the character of the representation of this city has gone down; gone down in ability, in character, in reputation; and we have, in all parts of the State, suffered the consequences of it.

We now have an opportunity to amend and correct that error, and the direction in which we are to correct it is exactly the one indicated by the President of this Convention. It is at once, without hesitation, to sweep away the whole system of breaking this city up into minute fragments and allowing the politicians, some of them armed with improper influences, in every little community to represent themselves in the government in defiance of the aggregate or general will of the honest and intelligent citizens of Philadelphia. There is, as matters now stand, no opportunity to the great mass of the people here to amend their representation in the Legislature, and, sir, we must give them that opportunity by so organizing electoral power in this city that they can secure it. Before we are done with this legislative article I hope that we will—and the committee of which I am a member will probably report to the Convention a proposition which will raise the question—provide that Representatives and Senators from this city shall be elected from large divisions not more than two or three for electing Senators, and not more, certainly, than five or six for electing Representatives. If you elected these Representatives now in districts with three members each, that, itself, would be a great measure of relief.

I repeat, then, that I was delighted that the President of this Convention, in his own inimitable and forcible manner, struck this subject, and portrayed to the Convention the great and abounding evils which result from the amendment of 1857 and gave to us that moral support, and I trust that general opinion in this Conven-

tion which will enable us hereafter to amend the Constitution in this particular.

A word upon the other point spoken of by the President of the Convention and I will close. He pointed out what was the main work of the Convention of 1838. It was to strip the Governor of the patronage and power which he had, before that time, held and exercised. Nearly all the offices of the State were cast into the popular elections. In my opinion that movement, which, to a certain extent, may have been justifiable, was carried to excess. We have loaded down our popular elections by accumulating upon them too great a mass of matter. I believe that we went too far, and, as the President has pointed out, the election of persons to these nominal or lucrative Executive offices is one of the main causes why our elections are now unsatisfactory, why they have to some extent become polluted; and I trust, sir, that we will not act in the direction which some gentlemen desire to go, to make the Secretary of the Commonwealth, the Attorney General and the Superintendent of Common Schools, and all other officers that still remain appointable, elected by the people. I do not even see any reason why the Surveyor General should be elected. The election system of the State then, we may suppose, requires too much to be passed upon by the people. They have been loaded down with matters that are not necessary for disposition at popular elections. I will, however, speak of this, if necessary, hereafter. My main purpose in rising was to give my views in regard to the representation of Philadelphia, and I have spoken upon this subject because the remarks of the President of this Convention re-called our attention to the action of the Legislature in 1857, in which I was a participant. When the pending question in relation to the limitation upon the representation of the city of Philadelphia shall have reached a proper stage in another form in the debate for consideration, I shall endeavor to submit some reasons in justification of what I stated yesterday; that I preferred a different arrangement in such a limitation, if the principle of a limitation is to be retained.

MR. D. W. PATTERSON. Mr. Chairman: I have not occupied much of the time of the Convention, and I hope I will be pardoned while I make a few remarks upon this question before the committee. I am decidedly opposed to any measure which shall increase the repre-

sentation of any city or county. I am in favor of the report of the committee if both the Houses of our Legislature are kept as they are now. I do not think that we are any wiser than our fathers, and the history of the Constitution of 1790 and of 1837-8 are doubtless better understood by many gentlemen on this floor than myself. I had the honor to know a great many of the members of the Convention of 1837-8 personally, and still a larger number by character and reputation, and I say that in my humble judgment there never was any Convention ever assembled in the Commonwealth of Pennsylvania that possessed more talent, more virtue, and more political and public experience than that Convention. Notwithstanding that fact, it has been intimated by the honorable President of this Convention that the question now before this committee, when acted upon by that Convention, was decided by a certain party under the influence of political excitement, and through the eloquence of probably one member. Far different from that statement is the fact. The political parties of that Convention were composed of sixty-six whigs and sixty-six democrats, and one so called independent whig, Hon. Walter Forward, from Pittsburg, and claimed to be elected as an independent candidate. There could have been no political partisanship, and no preference as to political views or predilections involved in the decision of this question, but, sir, it was the solemn and deliberate act of that Convention without respect to party.

The Journal of the proceedings attending the disposition of this question will show that the vote of a large majority decided that it was proper, under the circumstances, to limit the city of Philadelphia in her Senatorial apportionment. The arguments that were adduced in favor of that policy are hard to answer, if they have ever been answered. I have never heard them answered in this Convention, and in thus limiting the city of Philadelphia in her Senatorial representation, that Convention acted entirely consistently with the well known logical principle that no cardinal rules exist without exceptions. The exception proves the rule, and I hope this Convention, when the vote shall be cast upon this question, will follow the example of the Convention of 1837-38, and act in accordance with this well established principle, that all rules are proven by the exception, and that the

exception to the rule, in this instance, is the limitation in the Senatorial representation of the city of Philadelphia. If there were any necessity for an increase in the representation of Philadelphia at the time the last Convention was held, there is much more necessity for it now, because, in the mind's eye of that Convention, there was but one great and growing community subjected to all the corruption of city life; whereas, there has now sprung up on our western border a city, larger to-day than Philadelphia was on the day that the Convention of 1838 acted and voted upon this question. I have nothing to say against the city of Philadelphia, or the city of Pittsburg either. I glory in the prosperity and the greatness of the city of Philadelphia. I admire its public spirit in every department of humanity. I take pleasure in beholding its educational improvements, and enterprises of all kinds, and we all admit that it has vindicated itself by the regular march of its progress in all the great improvements that have assisted in making it the great city of the State. The city has, therefore, grown and prospered, notwithstanding the limitation upon its representation established by the Constitution of 1838. This is conceded; and even the gentlemen who take the opposite position upon this question must admit that the limitation to its representation, in this particular, has neither conflicted with the material progress of the city, nor thrown any obstacle in the way of its moral, educational and commercial advancement.

The large cities can always take care of themselves. This is clear and conclusive, when we see the number of champions which the city of Philadelphia has upon this floor without respect to political preferences or opinions. Their citizens are not likely to suffer by any provision we may insert in the Constitution. Now, while we must admit the general conclusion that great cities are great sores upon the body politic, we must all admit that Philadelphia is composed of as good, if not a much better, population than any of the other great cities of the country, and yet it is true, that being a city, there is more convenience and opportunity for combination of action, either by itself as a community or by representatives, and by which her power and influence is greatly increased in the legislative body. This fact is shown by the history of the legislation of this Commonwealth. The city of Philadelphia has always obtained,

not only what her citizens have demanded, but many measures have been originated by legislation in their behalf, and became laws through city influence, that they never should have had. Again, Mr. Chairman, while the Legislature has enough of its own sins to answer for, I regret that the honorable President of this Convention has placed upon it the additional sin of uniting the old county of Philadelphia with the old municipal government in one grand municipality. He did observe, however, that it was with the consent of a large portion of the inhabitants. Yes, sir; they asked it almost unanimously. Their own representatives asked it. Their own Senators, and their own great men of all parties asked it, and this sin should not be saddled upon the back of the Legislature and the country members of the legislative body blamed for it, as has just been strongly insinuated by the honorable President.

I am familiar with the history of the Legislature about that time, and I know there was no opposition to it. It was done at the request of the people, and Philadelphia, through their own representatives. And, sir, if we admit the principle of a representative system—a representative government—the Legislature of that day would have been faithful, and untrue to its character and its power if it had refused to comply with the request of the people of Philadelphia. Now, Mr. Chairman, in discussing this question, I hope we shall not forget that our fathers, who were wiser than we, thought it proper to incorporate this limitation in the Constitution. Let us not be led off by any feeling or by the allegation that this is a right which properly belongs to the city of Philadelphia, and that there must be no distinction or exception in this general rule of Senatorial representation. A general rule is worth nothing unless it is proved by exceptions, and I say if we do not restrain this representation, seeing the influences that combine in every great city, by reason of the representative and the people being in close contact, and seeing the controlling influence of city legislation—

[Here the hammer fell.]

Mr. DEFRANCE. Mr. Chairman: I move that the gentleman's time, be extended.

The motion was agreed to.

Mr. D. W. PATTERSON. Mr. Chairman: I thank the committee for the courtesy, but I was simply about adding that

while I agree with many things contained in the remarks of the honorable President of this Convention, and of those from the gentleman from Columbia, (Mr. Buckalew,) this morning, I do not concur in their argument that the Constitutional provision, dividing this city into separate districts, "was a mistake," "was a great mistake," was their language. Because the provision has proven not to operate well in the city proper, and since the legislative character of representatives has fallen in the scale of intelligence, and public integrity, to some degree, in the city representation, it certainly affords no proof that it is not a good rule. I need only point to Massachusetts with her very large representation in the lower House, to controvert this assumption, and to show the healthy working of the single district system. In that State where each town, equivalent to a township in the State of Pennsylvania, sends two and three representatives to the lower House of the Legislature, every voter in those small districts are, necessarily, conversant with the character, intelligence and honesty of their legislators. Their public fidelity and their private character are well known to every voter, and the consequence is they have, under the single district system, always secured honest representatives. There the man who seeks to be elevated to office by the people must be a fair and honest man, or he will not represent them in the public councils of the State; and we contend, and it is the opinion of many of the best minds among public men, that this is all the legitimate fruit of a large representation, and the single representative district system.

Yet, in the face of these examples, my friend from Columbia county says the district system "is a great mistake." I hope it will be adopted by this Convention and incorporated in our fundamental law, so that not only cities but every county that has more than one member will be required to be districted off, that voters may know who they are voting for by personal contact and individual knowledge. This is the safety of this State. This is the safety of all representative governments, in my humble judgment. It is because the good people of Philadelphia, the men of intelligence, of wealth and of morality have folded their arms and not gone to the primary elections, have taken no interest in either their city or State government, that all

these evils of which they speak has directly resulted. Sir, a few men may have committed wrongs in this city, for when you sift them out they are only a handful, compared to the intelligence, and honesty and purity represented in the general mass of the people of Philadelphia, only because these good people fold their arms and let these men rule by their absence. Let them go to the primary elections and select their officers and candidates; let them properly appreciate their citizenship; let them all faithfully perform their governmental functions, the only way to keep the ballot-box pure, and not come in here and make the complaint that they cannot get along; that there is so much corruption, so much fraud in the ballot-box and all that kind of thing. I say they ought to be ashamed of themselves. Why, sir, these complaints have been made on this floor by gentlemen who are among the leaders of the parties in Philadelphia who do these things.

I hope that we will consider well this subject; that we will not be like the thoughtless and inconsiderate young man in his teens, about budding into manhood, who thinks he knows everything; that he is wiser than his father, and that, although without experience, he knows everything about everything better than anybody else. Let us venerate the action of the Convention of 1838 and its predecessors, and be content to follow their wise example, and make this exception in the Senatorial representation of the city of Philadelphia, and thus prove the general rule, while we will, at the same time, secure a fair and equal voice in the legislation of the Commonwealth to the rural districts of the State.

Mr. JOHN M. BAILEY. Mr. Chairman: I shall ask the indulgence of this committee for a very few moments on this question. At the risk of disagreeing with the very distinguished gentleman from York, (Mr. J. S. Black,) and with the eminent President of this Convention, (Mr. Meredith,) I believe that the true foundation of apportionment does not rest wholly upon *number*, but rests fully as much, or more, upon *locality*. The interests of localities are as varied as the interests of citizens, and oftener come into conflict. There is always more danger of legislation to the prejudice of localities than to the prejudice of individuals. The interests of individuals are identical with their particular section, and whatever legislation is dangerous or prejudicial to a

certain locality, is prejudicial or dangerous to all the citizens of that locality, whether they be in number ten thousand or one hundred thousand. It is, therefore, in my view, a principle of location, rather than of numbers. The interests of *location* must be taken care of, at least, in one branch of the Legislature if we allow the people to be represented in the other according to numbers.

The first care, therefore, in my view, in making apportionments, is locality, for the greatest danger in legislation is to discriminate between localities, rather than between individuals. When the Constitution of 1838 was formed, the city and county of Philadelphia were entitled to four Senators, and in anticipation of this tremendous growth and enlargement of the city—in anticipation of the immense population that has centered here—the framers of that Constitution thought proper—and, I think, wisely—to limit their representation in the State Senate to what it was at that time. Now, sir, has the experience of the last thirty-four or thirty-five years demonstrated that that limitation was right or wrong? I take it that the observation of all of us has been, that these thirty-five years have demonstrated that it was a very wise provision, and I would ask my friends from Philadelphia on this floor where and when the interests of their magnificent and beautiful city have been prejudiced by this constitutional limitation? What legislation has ever this city asked that she did not receive? What has she ever opposed that has not been defeated? If the gentlemen from Philadelphia have any cause at all to complain, it is of their present strength in the halls of the Legislature, and not of their weakness. They should ask this Convention to save them from the power they now wield in the legislative halls at Harrisburg, rather than ask greater.

Why, sir, this obnoxious, iniquitous and fearful election law they have in the city of Philadelphia is due to the tremendous power that she now has in the Legislature. This election law that not only over-rides the will of the people of every other section of this Commonwealth, but is a blur and a blistering blot upon the statutes of this Commonwealth, only remains there a day because of the power of this city in the State Legislature. Let the delegation from this city to-day unite for the repeal of that statute, and does any man believe it would stand an hour in the

face of that delegation? If it was not for the power of this city at Harrisburg, this law would be repealed before the sun sets. I therefore repeat that these gentlemen from Philadelphia ought rather to ask to be saved from the numbers they have there now, than to ask us to increase them. Philadelphia has suffered nothing. Philadelphia has felt no wrong or injury from this constitutional limitation. What is the fact? When the act of Assembly was passed and submitted to the people whether or not this Convention should be called—whether or not the Constitution should be changed in any respect—whether or not it should be submitted to the investigation of the Convention—what was the vote in this city? Out of the one hundred and twenty thousand voters which this city contains, only a little over sixteen thousand voted for calling this Convention. They did not feel that they were wronged by that constitutional limitation, or they would have accepted this opportunity tendered to them to right that wrong. They were resting in a happy indifference to this terrible wrong (?) as gentleman would have us believe it is.

Now, sir, my view is that locality should be represented in the Senate, whether that locality is comprised of ten thousand people, or whether it is comprised of one hundred thousand people. That different localities have distinct interests, and that those interests often conflict, I beg to call the attention of the committee to a very noted example. The railroad corporations of this Commonwealth are permitted now by law to charge an exorbitant rate of transportation between intermediate stations, while they are allowed to ship the same class of freight two hundred or three hundred miles farther to get it to this city at a less rate of transportation; a discrimination in favor of the cities, a discrimination against the country. Now I ask you, sir, with that example upon our statute books, with that provision permitting railroad corporations, to so arrange their transportation rates, whether or not there are not varied interests, conflicting interests, between this city and other portions of the State? It is not a question of population entirely. It is a question as much of locality as it is of population, and I therefore shall vote, if the number of Senators is not increased, to preserve the present limitation as to the city of Philadelphia; and if the number of Senators be increased, to increase

their number just in the same proportion.

Mr. HOWARD. Mr. Chairman: I have but little to say upon this subject. But I shall support the report of the Committee on Legislature that recites, in the proviso that has raised so much controversy here: "*Provided*, That no city or county shall elect more than four Senators." In reading this I do not see that Philadelphia is named in it at all; and I read it because one delegate from Philadelphia stated that, under this proviso, Philadelphia would have but four Senators, and Allegheny county might, somehow, get six. It seems to read that "no city or county shall elect more than four Senators. No city or county. It includes both.

I presume, sir, the time will come, if it has not already, when gentlemen will get tired of hearing so much about Philadelphia. I confess that I have, although I concede to every gentleman on this floor the right to use his time just as he may think proper, provided he speaks to the subject matter before the Convention.

I rose, Mr. Chairman, for the purpose of entering my emphatic protest against the idea that the Senate of Pennsylvania is based upon the idea of population. The Senate is the conservative body. The Senate represents communities; and the question is, shall we surrender to one community, although that community may be large in numbers, packed upon a small territory, like the great city of Philadelphia—shall we surrender to her the power to govern a great and mighty Commonwealth like Pennsylvania? They talk about her want of influence, and say she is shorn of her political strength and her political rights; yet to-day she has one-eighth of the entire political power of this Commonwealth in the Senate, and one-sixth in the House of Representatives; and when you look over the broad acres of Pennsylvania, I would like to ask these gentlemen whether they do not think that, when they have one-eighth of the entire political power of this Commonwealth in the Senate, whether they have not been conceded, as a community, their full share of political right? It is true, Mr. Chairman, that we have said that communities shall be represented in the Senate, upon the basis of the number of taxable inhabitants. We have fixed upon that idea as a general one, but this general rule is always subject to exception. When we look upon the Senate of the United States, which has already been

alluded to here, and I will not discuss the subject again, there Pennsylvania stands by the side of Florida; but in the House of Representatives, in the popular branch, the representation of Pennsylvania is governed by her numbers, and has her full voice in proportion to her strength and her population.

There are reasons, great and grave reasons, why we should not agree in the organization of society, that a community—which may be supposed to act as a unit—should be represented in the conservative body by numbers that will surrender to it too great a power.

Gentlemen in Philadelphia seem to think that she is not only the Commonwealth, but that she has made all the balance of the State. They speak of her as though she was the heart, which furnishes the life-blood, and they suppose that the heart that furnishes the red blood that flowed out to the extremities should be recognized. Mr. Chairman, I never understood that cities were the heart of any Commonwealth or the heart of any State. I understand that it is the country, where the life-blood comes from. It is the country that flows *into* these cities that makes them what they are. Cities never made the country. It is the country that makes the cities. It is the country that supports them, and it is upon the country that all these interests rest.

When we look at Philadelphia the question is suggested, perhaps to some persons from my county: "What have we contributed to build this great city, a city that has used its power to discriminate against our people, trample upon and strike down our interests?" They have used it for that purpose at Harrisburg. For the great railroads of this Commonwealth we have contributed millions in Allegheny county, for which we have not a dollar to show, and every single pound of freight that comes to us comes with a discrimination upon it, and this city, being the end of the string, is the only city in the whole line that receives her freight and her passengers at the lowest rates.

I say there are reasons, good substantial reasons, why, in the organization of the Senate, we should say that one community should not have too great a voice.

In the House of Representatives the people are all represented. When we come to organizing the Senate, we organize a different body. Minorities are to be protected. It was intended to be a balance; it was intended to be a check; and

it was intended that the small communities might there have a voice equal to the larger ones. The small community has just as many rights in this Commonwealth as the greatest one, and the real principle of the organization of the Senate is, that it is organized upon the basis of communities. It is communities, and not the people, upon which we base the Senate, and the smallest community, that has a population of but fifty thousand, or a hundred thousand, has rights as great as the city of Philadelphia, and this is the plan upon which the Senate of the United States is organized. I say their rights are as great, and they should be protected; and the Senate was intended as a check upon the popular branch; and it was intended to protect minorities, and protect small communities against the oppressions of greater ones.

I do not wish to say anything by way of comparison between the country and the city; but if we come to a question of morals, I think there would be no great difficulty in striking the balance; but I desire, for one, here to enter my protest against the idea that the Senate is to stand upon population as the basis. Our honored President of this Convention, in the first part of his speech, stated the true principle, namely: That the Senate represented, properly, under our Constitution, "communities." That is the true idea, and we should adhere to it, so far, at least, as not to put it in the power of one great community to control the legislation of the State. [Here the hammer fell.]

MR. DARLINGTON. I move the gentleman be allowed to speak ten minutes more.

The motion was agreed to.

MR. HOWARD. I will not further occupy the time of the committee.

MR. CUYLER. Mr. Chairman: After the eloquent words which have fallen from the lips of the President of this Convention, and from the lips of the gentleman from York, (Mr. Black,) it seems to me scarcely necessary to say anything with reference to the proposition now under discussion. It would almost seem to me to state that proposition is to refute it. The thought that underlies our whole system of government is that of *equality of representation*, and yet this Convention sits here to-day, and sat here yesterday, gravely discussing the question whether nearly one half of the people of Philadelphia should be disfranchised, and wheth-

er that disfranchisement should continue in an increasing ratio for all time to come.

Now I would have thought, to state that proposition was to answer it. I would have listened with amazement to the statement that any gentleman should have been found upon this floor to urge reasons in support of such a doctrine; and I cannot but confess the surprise with which I listened to my learned brother from the city of Philadelphia (Mr. Woodward.) I felt that Philadelphia was stabbed in the house of her own friends. But I could not but feel, sir, that the remarks which were addressed to this Convention, by that gentleman, constituted the best argument which could be urged against the view he contended for; for, if a gentleman of his learning, his experience, his integrity, his standing in this Commonwealth, could urge no wiser reasons in support of the proposition of the committee than those he did urge, that it had little merit indeed, and could, by no possibility, command the approval of this intelligent Convention. But what were those reasons that were urged in support of this proposition?

First, they were that Thaddeus Stevens, in an eloquent speech, had been the father of this doctrine in the Convention of 1837. For the first time in my life, and with an amazement which passes expression, did I hear from the lips of that gentleman words of reverence for the memory of that departed statesman. But, Mr. Chairman, it is not by weight of names, however great, but by its merits, that this proposition is to be tried. Next, that the city of Philadelphia is a city of consumers and not of producers. What had that to do with the question, even if it were true in point of fact? Not a city of producers! a city that adds four hundred millions of dollars every year to the solid wealth of this Commonwealth; a city that employs two hundred millions of capital in manufacturing operations; a city that every year manufactures eighty millions of dollars more than the whole export trade of the city of New York, and thirty millions of dollars more than its entire import trade; a city that converts into ten dollars every one dollar that the country produces; are we to be told that such a city is not a city of producers, but a city of consumers? It matters not, even if it were true; I perceive no possible bearing that it can have upon the question now before the committee.

Now, Mr. Chairman, it is an undeniable fact that the city of Philadelphia, practically, is dwarfed in all the political relations of this Commonwealth. I believe that I am correct when I say that while the city of Philadelphia to-day has a fifth of the population, and a fourth, perhaps, of its wealth, that she has never had a Governor of the Commonwealth since the year 1808, and there has never been a United States Senator from Philadelphia with one solitary exception, I think, that of the late Mr. Geo. M. Dallas, since the year 1800.

But let us look, as we are invited to do, at the State Legislature. My friend from Huntingdon (Mr. John M. Bailey) has spoken to us of the power of the city in the Legislature, but I say to that gentleman that, except in questions which arise that are purely local in their character, and with regard to which the etiquette of the Legislature, alluded to by the President of the Convention in his remarks, is held to be controlling, the city of Philadelphia, is utterly powerless in the councils of the Commonwealth; and instead of his asking us to point to the measure of legislation which has failed to be passed, that the city of Philadelphia has asked for, I ask him to point me to a solitary measure of legislation which the city of Philadelphia, when interested in the general interests of this Commonwealth, has been able to have passed through the Legislature. I do not know where he can find it.

I am not going to say that the city of Philadelphia is not herself to blame for this thing. I have no doubt she is to blame for it. We can see how the representation of this city in the Legislature of the Commonwealth has steadily declined in the years that are past. When I see who have been sent there to represent this city, in each branch of the Legislature, I must feel, as a citizen of Philadelphia, that she is herself to blame for the whole result. I can express no wonder that the city is, practically, unrepresented in the Legislature, and, practically, possesses no real power there. But what is the reason for it? We have but to turn back twenty years, when the city of Philadelphia was represented in the Legislature by her foremost citizens. The best men of our city went there. That day has passed away. *The best men of our city cannot get there.*

It is not that the best men of the city of Philadelphia are not willing to go to the

Legislature, but it is that the best men of the city of Philadelphia cannot command a nomination for the Legislature. They cannot pull the wires, they cannot exert the arts, they cannot expend the money which must be expended to secure nominations for these places. That is the radical difficulty. What has caused it? The President of this Convention, with eloquent words and wise utterances, stated what the cause was. There is no longer any representation of the city of Philadelphia in the Legislature. It is a representation of little districts, small representative districts, that are manœuvered, and handled, and governed entirely by small factions of the smallest and the meanest of petty politicians. There is no representation of the city as an entirety. There is no representation of the wealth, and the power, and the intellect, and the intelligence of the city of Philadelphia to be found in its Legislature, and the reason is: That we have cut this city up into little representative districts, that are the property of the small politicians that control them and nominate and elect whom they will to office. That is the radical difficulty, and until we get rid of that we shall never have any proper representation of the city of Philadelphia in the Legislature. Is it not correct, as has been suggested by the last two gentlemen who have addressed this committee that there is a great corporate power—a great railroad power, which controls and administers the affairs of the city of Philadelphia, and does it to the disadvantage of the country, though I fail to perceive what that, even if it were true, has to do with the great question before us. I desire to speak, so far as I am concerned, with the utmost hesitation and prudence on this subject, but I have no relations here, and no relations elsewhere, that would control the freedom of my thought or the freedom of my action, did I for an instant believe that these gentlemen were correct in that which they have stated.

Why, sir, I listened with surprise to the gentleman from Allegheny, (Mr. Howard,) who gave us to understand that the city of Pittsburg had built the Pennsylvania railroad. I do not want—

Mr. HOWARD. Mr. Chairman: I believe I did not allude to the Pennsylvania railroad, at all. I stated that we had contributed over three millions of dollars to build the railroads of this Commonwealth—our county did—and the city, I believe,

two millions. We lost it all, and Philadelphia got the benefit of it.

Mr. CUYLER. Mr. Chairman: What I desired to state on that subject, and I did not misunderstand the gentleman, was, that it was true, indeed, in one sense, and utterly untrue in another. They contributed in their bonds, and they repudiated their bonds, and it was not until the county commissioners went to prison that they were compelled at last, not even then, to do their duty, but to compromise the obligations they had assumed. If that be building a railroad then the gentleman is entitled to the full force of what he has stated on that subject.

Nor is it true that these discriminations, to which the gentleman from Huntingdon (Mr. Jno. M. Bailey) referred, have existed any further than the natural laws of trade create these discriminations. I did not suppose that any law of trade or business requires that all customers are to be dealt with, from whatever locality they come, on precisely the same footing. I did not suppose that if a man has one store in the city of Philadelphia, and another store in the city of Pittsburg, that the price of any commodity which he has for sale is necessarily the same precisely in each of these two cities. I deny that there is any law of trade, or of morals, or of the State, which he is offending when he charges customers in the cities named prices which accord with the current market prices in these respective cities. I thought that the great laws of trade controlled these matters. I thought that competition, where it existed, always had a tendency to reduce prices, and where it did not exist prices were not so reduced. And I suppose these railroad corporations are governed by these great natural laws of trade and finance, that control other parties. I think, sir, that there is to be found a complete answer to anything expressed by the gentleman from Huntingdon, (Mr. Jno. M. Bailey,) or by the gentleman from Pittsburg (Mr. Howard.) This, however, is a digression from the main question before the committee.

The main, and the only, question existing before the committee, is this: "On what principle is it that one-half of the people of Philadelphia are to be disfranchised?" I listened, in vain, to hear an argument for it. The gentleman from Huntingdon says it is by reason of locality. Is there anything in this little piece of ground that we inhabit, here, that should take away from us political rights

we possess when we cross the boundary of the county and live in an adjacent township? On what principle is it? *Why is it* that the people of the city of Philadelphia are to be deprived of that great cardinal doctrine of republican institutions, that representation is to be equal in order that it may be fair and just?

[Here the hammer fell.]

Mr. CARTER. Mr. Chairman: I move that the gentleman's time be extended five minutes.

The question being upon the motion, it was agreed to.

The CHAIRMAN. The gentleman (Mr. Cuyler) will proceed.

Mr. CUYLER. Mr. Chairman: I am much obliged to the committee for the courtesy, but I have no desire to consume more of their time, except merely to say that I cannot agree to the thought that population is not the basis of representation. I cannot agree, even if locality is to be the basis, that different localities are to be placed upon a different footing. I cannot agree that we should discriminate against a particular locality or place, and not accord a fair and equal representation to each locality. I cannot agree to the propriety or justice of making that discrimination against the city of Philadelphia which the gentleman from Huntingdon (Mr. John M. Bailey) has attempted to show would be right and just.

Mr. MACVEAGH. Mr. Chairman: I would like to call the attention of the gentleman from Philadelphia and of the committee to one consideration that has been present to my mind from the beginning in this matter. I had not very settled convictions upon this proviso, and originally reported it simply because it stands in the present Constitution. I confess that one of the suggestions that fell from the gentleman from Philadelphia, behind me, (Mr. Woodward,) yesterday, had great weight with me, and that was the length of time this discrimination has existed. There is one other consideration, also, that has great weight in my mind. Either you must disfranchise the city to a certain extent or you must disfranchise the country. It is utterly impossible to allow the city of Philadelphia a representation according to population, and at the same time preserve the relative importance of the country representation. There never has been a time when eighteen men, representing a large territory and very diverse interests, could combine and act together as a unit as

eighteen men can do who represent a small section of territory. It is certain in the very nature of things, notwithstanding the opinion of the gentleman from Philadelphia, (Mr. Cuyler,) who last addressed the committee, that eighteen members in the House of Representatives of our State Legislature from this city are capable of three times as much force upon any question as any eighteen members from the country districts, simply because the diversity of interests does not exist among the former. A division does not exist; they work as a body; they move as a unit, and you cannot get a gentleman from Allegheny, a gentleman from Venango and a gentleman from Washington to work together as a unit. Political arrangements are arrangements of expediency; they are arrangements for public utility; and that is the best method of representation which tends to give the citizen of Philadelphia the same measure of weight in the representative body that the citizen of Chester, or of Dauphin, or of Washington possesses. And to-day each citizen of Philadelphia, if representation is restricted to population alone, has very much more share in representation of the State than any other citizen in any other portion of the State. I submit, also, that the gentleman from Huntingdon (Mr. John M. Bailey) presented a consideration of importance, a suggestion of very considerable weight, to this committee. Upon any matter of local consequence, these men are as one man, standing shoulder to shoulder and securing, by their united force, what they desire, and the representatives of the country districts are necessarily diversified in their duties of representation and incapable of acting *en masse*; and therefore, the eighteen representatives here have decidedly more weight, and more power in this Convention, than the same number of gentlemen from the country. So that in deciding this matter, the wisdom of the people has been heretofore persuaded that the best way was to put a limit upon the representation of the city. If you increase your number and do not insert any limit, the city of Philadelphia will absolutely control your State. No legislation, I venture to say, will be possible against her will, and no legislation can be resisted that she desires for the reasons that I have suggested to the committee.

Mr. MINOR. Mr. Chairman: If we at this question simply from the standpoint of Philadelphia, and the large coun-

ties, we would reason as these gentlemen do, and we would say, as they have said to us, that they are anxious to hear some reason why population should *not*, in every case, be made the basis of representation. If, however, sir, these gentlemen can step out of the influence that floats into their minds from their surroundings, they would find that there were great reasons for it; and I can suggest this idea in no better language than that of the poet, who was also a philosopher, when he said:—

"O, wad some power the giftie gie us,
To see oursels as ithers see us;
It wad frae many a blunder free us."

Now, sir, it is true, as a general rule, that the rights of one elector are equal to those of every other elector; and that the rights of any one amount of population are, as a general rule, equal to the rights of any other; and yet, it is also true, and an equally fundamental and necessary principle, that every right held by any citizen, by any elector, by any community, is subject to those modifications that are necessary for the public and general good. On that account, sir, it is that, in your apportionment, if there is a county that falls below the proper ratio for representation, you give it a representative notwithstanding, because it is necessary that it should be protected. You depart from the basis of population, because there is a special necessity for it, and make a special rule to govern it. By looking at the other end of the line, we will also see that, as the population exceeds a certain extent, there is reason why there should be a limit to its representation. I give that reason now. Part of what I intended to state has been given by the gentleman from Dauphin, who has just spoken, (Mr. MacVeagh,) and therefore I will omit most of that part. I now call the attention of every member to this proposition; that, as a rule, we know it to be true, from actual practice, and from everyday experience, that wherever in the world there is concentration—and I use the word in its strongest form—a concentration of wealth, a concentration of population, a concentration of commercial interests, a concentration of manufacturing interests, a concentration of railroad interests, and of other interests that might be enumerated, by virtue of that very concentration, they acquire a power and influence that the same interests precisely, capital and extent, the same population also, do not possess, and

cannot possess, when they are scattered over a large amount of territory.

Now, sir, we may theorize about population as we will, and about individual rights as we will, there is a consciousness in every man's heart, that concentration combination does produce influence. We have been told, from time immemorial, that in union there is strength, and I may add, that in concentration there is power.

It is well known, all over the world, that, for many purposes, Paris is France, Rome is Italy; that New York city is almost New York State; and that the cities of the world largely control the power of the world, by reason of their vast proportions, and concentrated population, and wealth.

These are, I apprehend, the main reasons which have exercised an influence upon the minds of our former law-makers in the discussion of this question of representation. Now, sir, apply it, and take, as an instance, the aggregated capital of the city of Philadelphia, or of any other great city or county, whether in the form of manufactures, or in other enterprises, and you will find that they exercise more power over the commercial interests of the State than the same number of manufacturing establishments or enterprises possessing an equal amount of capital would scattered over a wide extent of territory. This is obvious. If concentrated they can act as a unit, or exert their efforts in the same direction to preserve themselves, or build up the commercial prosperity of one particular locality. This same principle will apply to all the interests of this or any other State. Again, to take another illustration, if all the interests of the western part of the State were concentrated, their power and their influence would be vastly increased. Is it not evident to every thinking mind that if the greatest amount of power is desired to be obtained from a community of six hundred thousand people, that their interests must be concentrated, and not scattered over the country? This principle found an apt illustration during the late war. It was only when General Rosecrans massed his artillery that he was able to defeat the opposing enemy. When his guns were scattered, his army was driven from one point to another. In explaining this principle of political economy, I desire to call the attention of the Philadelphia and other members to the condition of affairs, as they exist in actual

everyday life. We have applied it to material interests, now apply it to men. Is it not true, and has it not been true in the past history of our State, that ten men from any one place holding their seats in our Legislature, or any deliberative body, have possessed more actual power and influence than any ten men representing different localities in the State? I care not whether Philadelphia has four or ten representatives in the Legislature. They are acquainted with each other, and representing, as they do, a community of common interests, they act in a solid body upon all questions connected with the interests of their county, and exercise far more influence than an equal number of men representing different interests or different portions of the State, and who may be entirely unacquainted and uninterested with each other.

Therefore if you place representation upon a basis of population, you give to the large cities and large counties an excessive amount of power and influence, instead of placing them on a level with the other counties of the State. Do the large counties and cities of the State deserve more influence and power than would be a fair proportion to the balance of the State? I think not; then the basis of representation must be different.

I think that this is the true view of this question, and I think the proportion of representation should give equalized results, no matter what ratio may be required to obtain it. I do not desire to enlarge upon this point. I rose simply to explain my objections to the arguments on the other side, on the ground of the disadvantage that would result from an undue Senatorial representation in the large cities and counties. Allow me to add that simply an arbitrary number I do not like, but would prefer an increase of representation, as large communities increase, yet on such an increased ratio as would result in equalized influence, and trust that such a basis will be proposed.

Mr. BAER. Mr. Chairman: I have no desire to inflict a long speech on this Convention; but, coming from the interior, I might say from the back woods, where it is supposed civilization does not reach, I cannot permit my vote to be cast on this question without making it possible for those who have an interest in me to know how I vote, because I consider it to be a question which vitally affects the very basis of our form of government. I shall,

therefore, with the greatest pleasure, vote against any proposition that is introduced in this Convention that shall tend to disfranchise any man in this Commonwealth. The citizens of Philadelphia are in every respect the equals of every citizen of the State of Pennsylvania, no matter from what quarter they come, and the people in the interior of the State are their equals, perhaps not in the extent of intelligence, but, at least, in good intentions. The people of the interior counties do not ask that Philadelphians shall be restricted in their representation because of their great city, and their vast and continual growing importance, for they are proud that they are Pennsylvanians, and they are equally proud that the city of Philadelphia is in the State of Pennsylvania. They are willing to concede that the greatness of Pennsylvania depends, in a large measure, upon the greatness of Philadelphia, and they will not consent for a single moment that its citizens shall be deprived of their representation because of the multiplied people assembled, and engaged within its limits in occupations that tend to the general interest and welfare of the State. The true doctrine is, that all men are equal. I desire to be consistent in all the votes I shall cast in this Convention, and therefore I shall vote to give to every man in Philadelphia the same right as every other man has anywhere else in the State; and I think it is high time that the Convention came to the conclusion that we are not here representing a Commonwealth of rascals and villains, and that all this sectional feeling and debate only tends to create the impression that the representatives of the interior counties have assembled here for the sole purpose of interfering with the future prosperity of the great city of Philadelphia, instead of representing an intelligent mass of beings who are honest in their intentions to promote the interests of all the sections of our State. It is only a miserable petty minority of the city of Philadelphia who are corrupt, and all that its citizens desire of this Convention is that we should give them wise and fundamental laws, with power to carry out their provisions, and they will take care of all these frauds and iniquities themselves.

I contend, therefore, that it is an act of injustice to base the representation of the city of Philadelphia upon the fact that every man she sends to the Legislature is a rascal, and that, in consequence, she is to be limited in her Senatorial rep-

resentation. The proper place to commence this duty of purifying the Legislature of the State is in this Convention, and if our work is performed in a thorough manner, no more rascals will go to the Pennsylvania Legislature, and no matter whether members are sent from the city of Philadelphia, or any other section, they will always have the interest of the entire State at heart. A man who has been elected a member of the Senate has no right to legislate solely for the interests of one particular locality, but as the representative of the interests of the entire State. It is a reflection upon the intelligence and the integrity of the people of the State, to say that they send representatives to our Legislature for the purpose of merely carrying out the wishes of a particular locality. The argument of the gentleman from Allegheny (Mr. Howard) may, perhaps, apply to the Senate of the United States, as its members represent the rights of sovereignties, and as they are not placed in that body by a popular vote, but it cannot apply to the Senate of Pennsylvania, for that body is as much a popular branch as is the House. The people vote directly for their Senators, as they do for members of the House. There can be no distinction, but it has always been held that it is a conservative body, and they should always take a wider and more liberal view of questions which come before them, than is expected of the members of the lower House.

Mr. MANN. Mr. Chairman : During the discussion of this question there has been a great deal said concerning the limitation of the Senatorial representation in the city of Philadelphia, and it is alleged that this restriction commenced in 1838. There is certainly some misapprehension in regard to this point. The honored President of this Convention has certainly not read the provision in the Constitution of 1790 very lately, or else his anxiety to serve the city of Philadelphia has blinded him in regard to the language of that instrument on this subject. For myself I am perfectly content to take the provision of 1790, on this question of the apportionment of Senators, for it provides that "the Senators shall be chosen in districts to be formed by the Legislature. Each district containing such a number of taxable inhabitants as shall be entitled to elect not more than *four Senators, and no city shall be divided in the formation of districts.* Now, Mr. Chairman, under the provisions of this section, if the Constitution had never been

changed, and if the city of Philadelphia contained five millions of people to-day, it could have but four Senators; for the provision distinctly says that no district shall elect more than four Senators, and that no city shall be divided in the formation of a district. There can be no mistake about this provision, and it has been the organic law of the State of Pennsylvania from 1790 to the present time. Members of this Convention, representing the city of Philadelphia, are now asking to have this wholesome provision set aside and a new one established; and that, Mr. Chairman, I may add, is a proposition which was not heard of during the pendency of the call for this Convention. It was not one of the evils that the people of Pennsylvania have asked this Convention to remedy, and I maintain, as I have on other occasions, that it is the sole duty of this Convention to remedy the evils which called it into being, and not to change those various constitutional enactments about which there is no complaint whatever.

There has never been any evil connected with this matter of representation. The people of Pennsylvania have felt no evil growing out of it, and when have the people of Philadelphia experienced any evil from it? For, as has been said here by other delegates this morning, Philadelphia has always exercised its due control of our legislation. Although it has never had, as was stated, a Governor of this Commonwealth, it has had something far more important than a Governor. It has had control of all the important committees of the Legislature from time immemorial, and it has secured this control by means of its consolidated vote in the Legislature in both branches. Its eighteen Representatives and its four Senators have been able to control every important committee. They have, therefore, no occasion to ask for anything more. There has not been a Committee on Railroads or upon Corporations formed for the last twenty years that has not been formed under the inspiration of Philadelphia. There has been no Speaker for twenty years that has not first had to ask the consent of Philadelphia for such position. There is, then, no evil felt by the people of Pennsylvania in consequence of this restriction, which we are called upon to remedy. Philadelphia itself has suffered nothing in consequence of it. If they have suffered at all, it is because of their own negligence in not sending such representatives to Har-

risburg as they desired; for the Philadelphia delegation in the Legislature of Pennsylvania practically controls it to-day, and has controlled it for twenty years upon every important question of legislation. There cannot be secured legislation of any kind for a country district unless the member from that district will get upon his knees to Philadelphia.

But it was not to speak upon that point that I rose. It was simply to refer to the fact that this proposition now pending is an effort to change what has been the organic law of Pennsylvania from 1790 to this time, and I repeat there was not a single demand before the meeting of this Convention, for such a change, not even in Philadelphia. That proposition, that method of representation, has been acquiesced in from the time of its adoption down to the present day.

And again, Mr. Chairman, it is not true that in Pennsylvania, or in any other State of this Union, is population the sole criterion of representation. This very Constitution of 1790 provides that *each county shall have at least one Representative*, no matter how few the inhabitants. It was communities, not numbers, that were to be represented in part. Every county, no matter how small its population, was entitled to a member of the House, and no city, however large its population, should have more than four Senators. The same principle is recognized in the Constitutions of nearly all the States, that communities and municipalities are represented as well as taxables. It is not true, it never was true, that United States population is the sole criterion of representation. The Senate of the United States is the pattern for Senates of States throughout the Union. That is the conservative body. It does not represent population. Its whole purpose and its mission is one of conservatism. It never was a principle in the organization of Senates upon this continent that population was to be the measure of representation.

We are not, therefore, those of us who are simply standing by the old law, striking at the old Constitution of 1790, which I venerate quite as much as the honored President of this Convention. We are standing by that document. It is they, who are seeking to carry this amendment, who are striking at it. I repeat, Mr. Chairman, that I am willing to take the Constitution of 1790, just as it stands, as our guide upon this question of representation. I prefer not to change it. I pre-

fer rather to take that document just as it stands than to take any Constitution which may be adopted with the amendment now pending. It was right in principle then, and it is right now; and the country districts of Pennsylvania are willing to take it, word for word, as it was adopted in 1790, for it nowhere contemplates —

[Here the hammer fell.]

Mr. PURMAN. Mr. Chairman: Representing, as I do, the State of Pennsylvania, —

Mr. MACVEAGH. If the gentleman from Greene will allow me, I desire to read an extract which has been placed in my hands by the gentleman from Columbia (Mr. Buckalew.) It is from the *Daily Legislative Record*, of 1856, and is an extract from the works of John C. Calhoun; and whatever opinions may have been entertained, by him, of the Constitution of the United States, certainly all students of political science regard him as one of the most profound thinkers upon that subject who has lived in recent years. I beg this committee to listen while I read a short extract that the gentleman from Columbia has put in my hand. He is speaking of the principle of the numerical majority, or of basing power upon population alone, and observes:

"It assumes that, by assigning to every part of the State a representation, in every department of its government, in proportion to its population, it secures, to each, a weight in the government, in exact proportion to its population, under all circumstances. But such is not the fact. The relative weight of population depends as much on circumstances as on numbers. The concentrated population of cities, for example, would ever have, under such a distribution, far more weight in the government than the same number in the scattered and sparse population of the country. One hundred thousand individuals concentrated in a city two miles square, would have much more influence than the same number scattered over two hundred miles square. Concert of action and combination of means would be easy in the one, and almost impossible in the other, not to take into the estimate the great control that cities have over the press, the great organ of public opinion. To distribute power, then, in proportion to population, would be, in fact, to give the control of government, in the end, to the cities, and to subject the rural and agricultural population to that description

of population which usually congregate in them, and, eventually, to the very dregs of their population. This can only be counteracted by such a distribution of power as would give to the rural and agricultural population, in some one of the two legislative bodies, or departments of the government, a decided preponderance. And this may be done, in some cases, by allotting an equal number of members in one of the legislative bodies to each election district, as a majority of the counties or election districts will usually have a decided majority of its population engaged in agricultural and other rural pursuits. If this should not be sufficient in itself to establish an equilibrium, a *maximum* of representation might be established, beyond which the number allotted to each election district or city should never extend." (Works, Vol. I, 398.)

Mr. MACVEAGH. I am thankful to the Convention, and to the gentleman from Greene, for allowing me to refer to this authority, the application of which is so direct to the subject now before us.

Mr. PURMAN. Mr. Chairman: As a representative of Philadelphia, as well as of the immediate section of the Commonwealth in which I reside, I should be very loath to cast my vote for, or to advocate any measure that would work injustice to, the city of Philadelphia, and I have no doubt, notwithstanding all that has been said here in regard to the bad character of the inhabitants of Philadelphia, that if the Almighty were to take it in his mind to deal with the city of Philadelphia as he did with the cities of Sodom and Gomorrah, that he could find the requisite number upon whom to serve the notice, as he did in those unfortunate cities. Therefore my views upon this subject are not formed by any opinion I have in regard to the peculiar character or condition of any portion of the city of Philadelphia, nor is it as a judgment or a punishment to the people of Philadelphia even to that higher and nobler and better class who have deemed it to be their duty, as we are told, to abstain from the polls, held away either by business engagements or reluctance to mingle with a class of persons who have seized upon the ballot-box and upon the control of the municipal affairs of this great city.

I would not, as has been said here, do justice to Philadelphia. I would do exact justice to Philadelphia, and at the same time take care of the rights and in-

terests of all the people, and all the interests of this great State. It is, as a general proposition, an undoubted principle underlying our institutions, that representation is based upon individuality, upon the individual man, and out of this principle has grown another, namely: The representation of municipalities or localities. Both of these principles underlie our government, both State and national. There is, therefore, something due to localities, as well as to the number of inhabitants within a particular locality. The general government is based upon this idea. The small sister State of Delaware has the same power in the United States Senate that the great State of Pennsylvania or the great State of New York has. This regulation of representation is founded upon the separate existence of the locality, or individual existence of the State, and therefore we cannot say, in fairness, that Pennsylvania is disfranchised in having only the same number of Senators in that branch of the government with the State of Delaware or the little State of Rhode Island.

Mr. Chairman, the general and fundamental principle of representation upon the individual man as a general maxim or principle is subject to exceptions and limitations. This principle is based upon the idea of equality of individuals, and equality of individuals in the government means equal power in the law-making of the State. And it is a maxim unquestionable that a compact population exercises a greater power than the same number of persons scattered over a vast amount of territory, and therefore representation upon the number of individuals, men would produce inequality of power in the individual man in the government. To avoid this, and to produce equality, and to do justice to all, we are compelled to declare that individuals hold the powers of government in a qualified sense. This, equally true of the several States, although the States are declared to be sovereign and independent, yet they are not strictly so in their individual character. Another general principle is that government is founded upon the consent of the governed. Now, as a general principle, this is true, and yet there are exceptions to it. In every State, although all persons are under the protection of this government, and obliged to conform their action to its laws, there are some who are altogether excluded from participation in the government, and are compelled to

submit to be ruled by an authority in the creation of which they have no choice. This patent fact suggests the inquiry who are the people in whom is vested the power of the State. When we talk about the people that constitute the government, we mean those who have the elective franchise, because only those who exercise the elective franchise are a part of the law-making, law-executing and law-determining power. The foreigners amongst us who have no votes are governed, and yet they have no voice in the government. All the minors in the Commonwealth are governed, yet they have no voice in the government. All the females are governed, and yet they have no voice in the government. Then when we come to talk about the people constituting the government, we come back to inquire whom the people are. Why, in the sense of that fundamental principle, they are the people that vote, the people who exercise the elective franchise. Hence it is evident that the whole population is not included in the maxim that government is founded upon the consent of the governed, and that in practice it is subject to exceptions and limitations. As founded upon individuals, it must be subject to necessary restrictions and qualifications such as sound public policy requires.

We come to another general principle that taxation and representation must go together. That, too, is subject to limitations. All the property of minors and the property of females, and of foreigners or aliens, persons who cannot vote, is taxed, and yet they have no voice in the representation. You cannot name a general principle which is not subject to exceptions, and must have exceptions. Sound policy always dictates exceptions to general rules. Thus we have the axioms of abstract rights of individuals and principles and practical injunctions and prohibitions, promulgated with a view to their safe administration, and intended as a guide and limitation to the government in the exercise of power; yet these rights and axioms are, in practice, subject to limitations in favor of the interests of the community. The good of the indi-

vidual must yield to the interest of the community. It is upon this maxim that we build all our railroads and other great public improvements. The limitation of general principles in practice from motive of public policy manifestly result. No maxim is more firmly established. Then all these general principles must be examined in the light of those necessary exceptions, and those exceptions are founded upon sound public policy.

When we come to great cities the same principle must be applied, not because of any particular wickedness, but because it is necessary that aggregated bodies of people should not have the *entire* control of the great affairs of the country; and in the application of this principle Philadelphia has never suffered. I have not heard from any gentleman that Philadelphia has suffered by reason of not getting any legislation that was necessary to the protection of the property, the lives and the liberties of the city of Philadelphia. Her representation in the lower House is equal to her population. In the Senate it is embraced in the idea of our federal government, which, it seems to me, is exactly just and proper.

[Here the hammer fell.]

Mr. WILLIAM H. SMITH. Mr. Chairman: —

Mr. KAINE. Mr. Chairman: If the gentleman will give way I will move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

IN CONVENTION.

Mr. HOPKINS. Mr. President: The committee of the whole has had again under consideration the report of the Committee on the Legislature, and has instructed its chairman to report progress and ask leave to sit again.

Leave was granted to the committee to sit again to-morrow.

Mr. BARDSLEY. Mr. President: I move that the Convention do now adjourn.

The motion was agreed to.

So the Convention, at one o'clock and fifty minutes, adjourned.

FIFTY-THIRD DAY.

THURSDAY, *February 27, 1873.*

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith, in the chair.

Prayer was offered by the Rev. James W. Curry.

The Journal of yesterday was then read and approved.

PROHIBITION.

Mr. DARLINGTON presented a petition of the citizens of Coatesville borough, Chester county, praying that the Constitution be so amended as to prohibit the sale of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. TURRELL presented petitions from the citizens of Great Bend and New Milford, Susquehanna county, praying for the same provision in the Constitution, which were referred to the Committee on Legislation.

Mr. LEAR presented a petition from the citizens of the Makefield meeting of Friends of Bucks county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. PORTER presented two petitions from the women of Indiana county, praying for the same provision in the Constitution, which were referred to the Committee on Legislation.

Mr. CLARK presented a petition from the citizens of Indiana county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

Mr. FULTON presented a petition from the citizens of Westmoreland county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

CAPITAL PUNISHMENT.

Mr. LEAB presented a petition from the Makefield meeting of Friends of Bucks county, praying for a provision in the Constitution against the infliction of the

death penalty, which was referred to the Committee on Judiciary.

Mr. DARLINGTON presented a petition from the citizens of Chester county, praying for the same provision in the Constitution, which was referred to the Committee on the Judiciary.

TWO SESSIONS OF THE CONVENTION.

Mr. MANTOR offered the following resolution, which was twice read :

Resolved, That from and after Monday, March 3, this Convention hold two sessions each day. The first session from ten o'clock A. M. until two P. M.; the second session from four P. M. to six P. M.

The question being taken on the resolution, the yeas and nays were required by Mr. Hemphill and Mr. Temple, and were as follow, viz :

YEAS.

Messrs. Achenbach, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bartholomew, Boyd, Campbell, Carter, Corbett, De France, Edwards, Fulton, Funck, Green, Hay, Hopkins, Howard, Lawrence, Lear, Long, MacConnell, McCamant, McCulloch, McMurray, MacVeagh, Mann, Mantor, Metzger, Niles, Palmer, H. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Purviance, Samuel A., Rooke, Kunk, Smith, Wm. H., Stanton, Struthers, Van Reed, Walker, Wetherill, Jno. Price, Wherry, White, David N., White, J. W. F. and Wright—48.

NAYS.

Messrs. Baily, (Perry,) Bardsley, Black, Charles A., Brodhead, Clark, Cochran, Corson, Craig, Curry, Curtin, Cuyler, Darlington, Dunning, Ellis, Ewing, Gibson, Guthrie, Hanna, Hemphill, Kaine, Knight, Lamberton, Lilly, McClean, Minor, Mott, Patterson, D. W., Pughe, Read, John R., Reynolds, S. H., Ross, Simpson, Smith, H. G., Smith, Henry W., Temple, Turrell and Meredith, *President*—37.

So the resolution was agreed to.

ABSENT OR NOT VOTING.—Messrs. Adicks, Ainey, Armstrong, Bannan, Barclay, Beebe, Biddle, Black, J. S., Bowman, Broomall, Brown, Buckalew, Carey, Cassidy, Church, Collins, Cronmiller, Dallas, Davis, Dodd, Elliott, Fell, Finney, Gilpin, Gowen, Hall, Harvey, Hazard, Heverin, Horton, Hunsicker, Landis, Littleton, M'Allister, Newlin, Palmer, G. W., Parsons, Patton, Reed, Andrew, Reynolds, James L., Russell, Sharpe, Stewart, Wetherill, J. M., White, Harry, Woodward and Worrell—48.

ADJOURNMENT SINE DIE.

Mr. STANTON. Mr. President: I offer the following resolution:

Resolved, That this Convention adjourn the third day of June sine die.

The question being on proceeding to second reading of the resolution, it was not agreed to.

LIMITED DEBATE IN COMMITTEE OF THE WHOLE.

Mr. DARLINGTON. Mr. President: I move to proceed to the second reading of the resolution I offered yesterday.

The PRESIDENT. The resolution will be read.

The CLERK. *Resolved, That the resolution limiting debate in committee of the whole to one speech to each member without leave be rescinded.*

The Convention refused to read this resolution a second time.

DEFINING EXTENDED TIME IN DEBATE.

Mr. WRIGHT. Mr. President: I move to proceed to the consideration of the resolution I offered yesterday.

The PRESIDENT. The resolution will be read.

The CLERK. *Resolved, That when in committee of the whole a motion is made to extend the time of a member in debate the length of time shall be fixed in the motion.*

The resolution was read a second time and agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, to further consider the report of the Committee on Legislature, Mr. Hopkins in the chair.

THE LEGISLATURE ARTICLE.

The CHAIRMAN. The committee of the whole have again referred to them the re-

port of the Committee on Legislature. When the committee rose yesterday the twentieth section was before the committee, and the question was upon the amendment to the amendment offered by the gentleman from Philadelphia, (Mr. Worrell,) which will be now read.

THE NUMBER OF SENATORS FROM PHILADELPHIA.

The CLERK. To strike out of the amendment offered by the gentleman from Chester (Mr. Darlington) the words:

"No city or county shall be entitled to more than six Senators."

Mr. W. H. SMITH. Mr. Chairman: To my mind the correct way to solve the question before us is to consider the broad principle of citizenship.

Mr. MACVEAGH. Mr. Chairman: If the gentleman will permit me I desire to make a suggestion. It has been stated by many gentlemen that it would, perhaps, be better to suspend debate on the proposition before the committee, postpone or vote down the section, and first discuss and decide how many members we will have in the State Senate and in the House of Representatives. Until that is decided, it is, perhaps, quite impossible to reach a satisfactory conclusion upon the pending proposition. I trust, therefore, unless there is some objection, unless the gentleman from Allegheny has some, or some other member of the committee, that by unanimous consent we will allow the portion of the report of the Committee on Legislature, now pending, to be postponed, and debate proceed on the question of the numbers of the legislative body. When that is determined we certainly will be able to vote much more intelligently upon the remaining propositions both of apportionment and whether any discrimination shall be made in one body or in both.

Mr. W. H. SMITH. Mr. Chairman: I have no objection to this course proposed by the chairman of the Committee on Legislature, but it hardly becomes me to anticipate what the action of the committee of the whole would be in that respect. Inasmuch as this debate has gone on for sometime, I do not feel like taking the responsibility of waiving the floor for such a purpose. The House will have to decide that matter.

["Go on!" "Goon!" "Proceed."]

Mr. W. H. SMITH. Mr. Chairman: I believe that the true way to settle this question is upon the broad principle that every citizen of Pennsylvania, or every fifty thousand citizens, have respectively an equal right to representation in the Legislature of the State, no matter where he or they may happen to reside. The attempt to limit the Senators from this city through all time, or through a single generation to four or to six, or to any number less than the census tables and the apportionment acts may from time to time indicate or prescribe, is a weak and temporary expedient that must fall, because it is invidious and unjust. We have had abundant reason to complain of the almost endless catalogue of "special laws" which have been made at Harrisburg, at the instance of Philadelphia, and which were intended to operate within her borders exclusively. But now you propose to offset this bad habit of the wise people of this town, who think they know exactly what they want, and every winter go to Harrisburg and help themselves, by cutting them off from the full share of legislators to which their numbers (if not their virtues) clearly entitle them.

Some gentlemen have not hesitated to say that because an uncertain portion of Philadelphia is very, very vile and sinful and corrupt, that therefore the fewer Senators she shall elect the better, for it is confidently presumed that bad men will elect bad Senators, and Philadelphia is to be punished for her manifold, repeated, atrocious and undeniable frauds upon the ballot, by refusing her a full and fair representation, or rather number of representatives. I confess I thought that Philadelphia's character for fair elections was materially damaged in the house of her friends. One of them, to be sure, characterized election outrages in that bland and gentle language that is so becoming in this charming city of brotherly love. He admitted that, perhaps, there had been slight irregularities at elections here. I will not be outdone by the gentleman in the generous frankness with which we all confess the sins of our neighbors. [Laughter.] And I will admit, with equal candor, that in our county very reprehensible things have been done in this regard and are yet unpun-

ished. But as I fully intended to do Philadelphia what justice I could, I now gravely make the tardy, but not the less truthful, acknowledgment that I really and truly believe there are other places in this blessed old Commonwealth where ballot-box stuffers are as bold, where repeaters are as expert, and where election officers are as purchasable as they are in Philadelphia. And sincerely believing, as I do, that there are as many frauds upon elections in Allegheny county, in proportion to the number of voters, as there are here, I cannot consent to depart from a broad principle and to punish Philadelphia for her fraudulent practices, and to give double reward to Allegheny, for perpetrating the same sort of political and moral iniquity—and this would be the case if things remain in this affair just as they are.

Mr. Chairman, this whole business of apportioning seems to be confused and ridiculous, and is not only marked by inconsistency and injustice, and this, give me leave to say, must always be the case as long as districting and apportioning the State are left to the miserable tricksters of both parties, who, for the last ten or fifteen years, have gerrymandered the State to make places for themselves. This Convention should itself apportion.

If you should divide the population of Pennsylvania in 1870 (3,521,791) by 33, the number of Senators, you will find that every Senator should represent nearly 107,000 of the people—no less, no more; and the districts should be adjusted to that number as nearly as may be.

Now let us examine, for a moment, how the districts are really apportioned, as things stand under the census of 1870.

Each Senator for Philadelphia represents 168,500 people; each Senator for Allegheny county represents about 87,400 people; the Senator from Montgomery represents 81,612 people; the Senator from Fayette and Greene represents 69,171 people; the Senator from Crawford represents 68,832 people; the Senator from York and Adams represents 106,444 people; and so the list goes on, without order or system, or common fairness. Gentlemen can examine for themselves.

Now why should it require nearly twice as many people to send a Senator from Philadelphia as it takes to send one from

Allegheny? I do not think that there is, on the whole, much difference between the average Senator that comes from Philadelphia and the one that comes from Pittsburg; surely they should not be counted as two for one, as is now the case. I may say that, for my own part, none of them are "officers of mine," for I have had nothing to do with electing Senators since William Wilkins was elected from Allegheny. My good and healthy ballot has been regularly sequestered, lost, or entirely overborne and outweighed by unscrupulous opponents or the dusky sons of Africa.

Therefore I am not desirous of increasing the Senators from this town, *because* the kind of Senators they send to Harrisburg are very superior. But it is manifest that the present allotment, and the one now proposed for the new Constitution, are alike unequal and unfair, and should not be made permanent.

But it has been said that Philadelphia has acquiesced in this number of four hitherto, and that she certainly ought to be satisfied with six hereafter. This argument is not sound. We are not starting now as they did when, in order to keep this city from an undue share of Senators, some adroit and sagacious person placed the limit of four upon the number of her Senators for all future time. When that limit was fixed, if it was done in 1838 or 1840, Philadelphia was probably not entitled to more than two Senators. Now if you keep the number of Senators at thirty-three, which it is now, and declare upon the census of 1870, it will give her, as before stated, one Senator for every 107,000 people, or about six Senators and a half for her 674,000 population. According to one of my respected colleagues, Philadelphia has always been a pet of our county, and it therefore seems to me that we of Allegheny should take care that she has fair play in this division of power, and this we should clearly do without permitting the cruel taunt of a member of Philadelphia, (Mr. Cuyler,) about the repudiation of our bonds some ten or twelve years ago, to influence our action. That was a shabby business, to be sure, and both political parties in Allegheny vied with each other in their zeal in the unworthy cause. There were only about three good men in the county who resisted

that attempt, and one of them, then the mayor of Pittsburg, and now within the scope of my vision, was one of the three. I will not now allude to any other of the three, because some might think allusion invidious, and comparisons odious; besides, modesty forbids. There was but one newspaper to help them.

But, Mr. Chairman, I find myself launching into irrelevant matters, and I will desist. I conclude as I began, that we must arrange this and all other questions here upon principles that must be just, permanent, fair, and to be comprehended by all men. If Senators are to be adjusted to populations, the count must be fair, and square, and uniform.

Let me add that if this manifestly proper plan is defeated, I shall then move a substitute to this effect: Leaving population and its increase or diminution out of the question, I shall propose that the Senate shall be composed for all time of four members from this city, two from Allegheny, and one from each and every other county in the State, now organized or to be erected hereafter, regardless of its population now or hereafter. Then Cameron and Forest, and Elk and Sullivan counties will hold equal power in the Senate with Philadelphia, as Delaware and Rhode Island counter-balance New York and Pennsylvania now in the Senate of the Union. In one of these two modes, as I conceive, it must be adjusted. But I suppose this restriction will be voted down, and that Philadelphia, reprobate and sinner as she has been, through her one-thirtieth, or one-eighth, or one-tenth of the wicked and worthless population (as variously estimated) cannot have a chance to send six or seven instead of four Senators to misrepresent her and sell out her rights and the rights of the State, at the seat of government, as I am sorry to believe too many of them have done.

Mr. Chairman, if you hold Philadelphia to her present quota of Senators, you must also, in fairness, restrain Allegheny and Luzerne—these are the most rapidly growing counties in the Commonwealth. But you cannot do this. If it could be so arranged that you could deduct from the sum of the voters all those who engineer the frauds at elections, and all the rich men who connive at their misdeeds and contribute large

amounts that are used in fraudulent operations, thereby sharing the crimes of the corruptionists without, perhaps, sharing in their plunder—if you punish them only, it would be right and proper. But this you cannot do. You must not punish the guilty and innocent indiscriminately by taking away a portion of their common rights in bulk. But you can, perhaps, make stringent election laws, and thereby save free government from the destruction that now seems to impend over it, even as a sword ready to fall.

Mr. DARLINGTON. Mr. Chairman: I ask, for a single moment, the indulgence of the committee to this fact. Unexpectedly to myself, and unexpectedly, I presume, to the chairman of the committee, the debate upon this whole proposition seems to have gone to the one point, that of the number of representatives to which Philadelphia shall be entitled. I agree with the gentleman from Dauphin, (Mr. MacVeagh,) that it would be wise if we could, by common consent, pass over this subject and go to the other point, leaving the number to which Philadelphia shall be entitled to be settled when we shall decide upon the number to which the Senate and House shall be entitled. I do not adopt the suggestion of the gentleman from Dauphin, (Mr. MacVeagh,) but if he, representing the committee, will propose to modify the report by striking out the number "four," I will modify my amendment by striking out the number "six," and let the blank be filled.

Mr. CUYLER. I trust the committee will not, for a moment, consent to postpone the discussion of this question. To do so will practically be to throw away the two days we have already spent in debate, for whenever the question shall present itself again, these arguments will all be heard, and will require to be heard to have their proper impression upon the minds of the members. I hope we will keep steadily on in the path in which we have been walking, and that there will be no postponement.

The CHAIRMAN. The gentleman has a right to withdraw the amendment if he sees fit to do so.

Mr. CUYLER. Mr. Chairman: Where that amendment is withdrawn for a purpose, and is not intended to dispose of the question finally before the committee, I

do not concede that right without the consent of the committee.

Mr. DARLINGTON. I have a right to modify it.

The CHAIRMAN. The gentleman has the right to modify or withdraw.

Mr. DARLINGTON. Mr. Chairman: I do not propose to withdraw, but to modify.

Mr. CAMPBELL. Is the amendment of the gentleman from Chester (Mr. Darlington) withdrawn?

Mr. DARLINGTON. Mr. Chairman: It is not and will not be, but it will be modified, if the gentleman from Dauphin (Mr. MacVeagh) will modify the report of the committee.

Mr. MACVEAGH. Mr. Chairman: I will do anything that it seems to the committee wise to do, and it does seem to me to be exceedingly wise, as I said, to proceed first and settle the numbers of the Senate and the House, and therefore, if that is the sense of the committee, I will, if the gentleman will withdraw his amendment, move to strike out the number "four" and leave it blank for the present, with an opportunity for the gentleman renewing his amendment after that is done.

Mr. DARLINGTON. The moment that the modification is made I will modify my amendment, by striking out six and leaving it blank.

Mr. LILLY. Mr. Chairman: Do I understand that the amendment to the amendment is withdrawn?

The CHAIRMAN. No, sir; it is not withdrawn.

Mr. LILLY. Is anything withdrawn?

The CHAIRMAN. No, sir.

Mr. LILLY. Then I presume the best way is to vote down the amendment.

Mr. WORRELL. I have an amendment pending, to the amendment, which I have not yet withdrawn.

The CHAIRMAN. Perhaps the Chair may be responsible to some extent for the discussion which has taken place. It occurred to the Chair, and he so intimated to the chairman of the committee, as well as to the President and several other gentlemen of the Convention, that it occurred to him that we were proceeding wrong end foremost, and that, as has been intimated by the gentleman from Dauphin, (Mr. MacVeagh,) the first question for this committee to settle ought to be what number of Senators and Representa-

tives will this committee and the Convention recommend? That being settled, then the question of the distribution of these numbers will come up as a legitimate consequence, and therefore the Chair intended to suggest to the gentleman from Philadelphia, (Mr. Worrell,) who offered an amendment to the amendment, and to the gentleman from Chester, (Mr. Darlington,) who offered the amendment, to withdraw their amendments and let the question of numbers be first settled, and then the pending question be disposed of.

Mr. MEREDITH. Mr. Chairman: As you have referred to what happened between ourselves upon this subject, I wish to state that I did think, and I do think, that it would be a much more logical mode of getting at the matter, to fix the number of Representatives and Senators separately, and, if the other subject of their distribution could be got rid of, to wait until we have fixed the number and then consider the distribution. If, therefore, this were a real withdrawing of the proposition, which is not palatable, I hope, to a large part of this House, to limit by arbitrary number a part of the representation from part of the State, I would be entirely satisfied with it; but this merely striking out "six," and striking out "four," leaves the proposition just as it was, and if it is to be left in that shape, I trust the question will be taken upon it, and we may decide finally whether we intend to adopt a course of that kind.

Mr. LAWRENCE. Mr. Chairman: I desire to make a suggestion to the gentleman from Dauphin (Mr. MacVeagh.) I agree with him in thinking that we ought first to understand what number of Representatives we will have in the Senate and House. That ought to be the first question to be decided. I suggest to the gentleman from Dauphin (Mr. MacVeagh) that the only way that I see of getting over this section, as the gentleman from Chester will not withdraw his amendment, is to vote down the amendment and the section, and take up the other section, and after we have done that, then re-consider.

Mr. CARTER. Mr. Chairman: It may be owing to my mental obtuseness, but I really cannot see any necessity, whatever, for postponing this debate. This is not a

question of numbers; nor do I consider it necessary, in my very humble opinion, with much deference to you, Mr. Chairman, and others, that we consider the question of numbers at all, at the present time. This is a question of proportion—a question of the *pro rata* share of representation which this city should have. It appears very plain to me that it is not necessary that we shall arrest the current of debate to take up a matter not absolutely connected therewith. We are now in the very current of this debate, and are prepared or being prepared to act intelligently upon it. It is not, as I have already said, a question of numbers, but of proportion; and hence I see no necessity for postponing the consideration of it and take up another, as suggested by the gentleman from Dauphin (Mr. MacVeagh.)

No man would propose to limit this great and growing city, which, in fifty years hence, will contain millions of people, to any specific number; but it might be quite proper to restrict it to a certain proportion of the entire representation of the State.

Mr. LILLY. Mr. Chairman: I desire to make a short explanation of my opinion of the position of this question. When this matter was before the committee—

The CHAIRMAN. Has the gentleman (Mr. Lilly) spoken already on this question?

Mr. LILLY. I do not know whether or not I have spoken on this particular amendment before. I have spoken on the general subject.

The CHAIRMAN. The gentleman from Carbon (Mr. Lilly) having spoken once on this question desires to speak again. The question is, shall he have leave?

["Aye!" "Aye!"]

The CHAIRMAN. The gentleman will proceed.

Mr. LILLY. Mr. Chairman: When this report of the Committee on the Legislature was under consideration, some two or three weeks since, it was laid aside, as I understand it, for the purpose of allowing the Committee on Suffrage, Election and Representation to report on this subject. That committee has had this matter under consideration, and have something to offer in the place of this very section, which the committee think will

cover the grounds a great deal better than any of the present amendments or the section itself. The chairman of that committee not being here, I presume the matter will be reported by one of the members of the committee when it is in order. I think it will meet all the difficulty that we have been talking about.

Mr. KAINE. Mr. Chairman: I do not know what may be the disposition of the committee upon the proposition or suggestion that has just been made by the gentleman from Washington, (Mr. Lawrence,) which was to vote down this entire section. The worthy President, I believe, has just proposed that this proviso be voted down, and that the section be proceeded with. Now, sir, I am opposed to this if it is to be any index of what is to be done hereafter by this Convention.

I am not willing, sir, to vote down this section in connection with the proviso, unless it be with the understanding that it will be taken up hereafter and acted upon in Convention or committee. All the arguments that I have heard upon this question of restriction and limitation in regard to the city of Philadelphia, and other cities and counties which may be larger than others in this Commonwealth, have failed to satisfy me that this section and proviso are not right. It was thought proper and right by the Convention of 1790, which, according to the opinion of our worthy President, made the best Constitution that has ever been enjoyed by any people. My friend on the right (Mr. Woodward) thinks that the Constitution of 1838 is perhaps the best, and I am not certain but what he is about right. The Constitution of 1790 contained, in principle, this restriction. The Constitution of 1838 contained it in plain, substantial English. It was put into that Constitution after a long, a learned and an elaborate debate by the ablest men, then, of this Commonwealth. I think that they were right, and I doubt very much the propriety of this Convention departing from the rules established by both of these former Conventions.

I find, sir, that the gentlemen from Philadelphia and the gentleman from Allegheny (Mr. Smith) have struck hands upon this question—that they are going against any restriction in the apportionment of Senators to large cities

and counties. The city of Pittsburg, in the county of Allegheny, which will soon absorb all that county as the county of Philadelphia was absorbed by the consolidation act of 1854, by the city of Philadelphia, they will rule this State. This thing of perfect fairness—of a government “of the people, for the people, and by the people”—which was proclaimed yesterday by the gentleman from York, (Mr. J. S. Black,) is all very liberal and patriotic, but, sir, I think it savors very much of an observation that was made by a distinguished gentleman of this Union, years ago, in regard to the Declaration of Independence, that it was a “string of glittering generalities.” Why sir, power always concentrates itself where there is wealth. Look at the city of Philadelphia, with its immense corporations, immense wealth, immense power; and, more particularly, the power of the press of Philadelphia. Look at the same thing in Pittsburg, in the county of Allegheny. Why, sir, what is their position now in the Legislature of the State? Philadelphia has both the Speaker and Clerk of the House of Representatives, while Allegheny has the Speaker of the Senate and the Clerk of the Senate both. They have between them all the important offices of the Legislature at the present session. Let them have the power hereafter, with their increasing population, and the rest of this State will be nothing but hewers of wood and drawers of water for these immense cities.

I would like to know what, when that thing should be accomplished, would become of the “worthy German farmers of the interior of the State,” who are not so worthily represented by the gentleman from York, (Mr. J. S. Black,) who I am sorry to see is not now in his seat. He says he is a farmer, and belongs to that worthy class—the hard-fisted yeomanry of the State, and he is here to protect their interests. He, I am sorry to say, has gone over to the enemy. He has deserted his “German farmers of the interior.”

Philadelphia, according to the remarks of the President of the Convention, yesterday, is all honest; her people are all honest, all virtuous, all right, and I dare not gainsay that, in the face of his re-

marks. I take it for granted that it is true; but that has nothing to do with this question. It is a question of government. It is a question of power. Equality! "Equal and exact justice to all," says the gentleman from York, (Mr. J. S. Black;) and he related the story of the preacher in New Jersey, who asked his congregation for leave to say five words more before they should go: "Let us all start fair." But, applying that story as it was intended to be applied, I ask how long it would be, (even with a "fair" start,) before some one would be ahead of the others? If the worthy gentleman from York (Mr. J. S. Black) were upon this floor this morning, I would remind him of a remark of his own, made in an opinion which he delivered while Chief Justice of the Supreme Court of Pennsylvania, when two men, in my section of the State, had got into controversy about a land warrant, and one had got ahead of the other, and had succeeded in getting his warrant first laid, and took the land, though he had started a little behind the other. The judge concluded his opinion upon that occasion by saying, that "it was no imputation upon the fairness of the race that the winner was behind at the start." So he would say with these people in Philadelphia, although they might start equal, and even and fair, with the rest of the State, yet he would say, that if they got ahead, as they undoubtedly would in a very short time, that fact would be "no imputation upon the fairness of the race, because the winner was behind at the start."

This restriction has always existed in Pennsylvania. It was a distinction taken by William Penn, in the laws agreed upon in England, and preserved in the Constitution of 1776. "Representation, taxation," is all well enough, and we do not desire to take it way from Philadelphia.

[Here the hammer fell.]

Mr. WOODWARD. Mr. Chairman: I move that the gentleman's (Mr. Kaine's) time be extended ten minutes.

The question being upon the motion, it was agreed to.

Mr. KAINE. Mr. Chairman: I am very much obliged to the committee, but I was about through. I was about to make a remark or two upon the question

in the case, because upon the question, as I consider it, I have said nothing yet. [Laughter.]

Under the Constitution of 1776—the first one formed by the people of the State themselves, and for the State—they had no Senate. They had nothing but an Executive council, and the principle of this government and of all State governments, as well as the principle of the Government of the United States is, that the lower House represents the people, while the Senate is part of the Executive department. We had the Executive council under the Constitution of 1776, and under the Constitution of 1790 we first had the Senate; but it was never intended to represent the people in their aggregate capacity. The Constitutions have left representation to the lower Houses alone, and they are the representatives of the people. With them originate all bills for the appropriation of money. The Senate of our State grew out of the Executive council of 1776. It was created with the intention of being a conservative body and of being a check upon the action of the representatives. Now this is all we propose here, to give to the people of the State, their just representation in the lower House, and to place the conservative power of the Senate in the hands of the people of the interior counties, who are without the power held by the large cities. The people of the interior have always held this conservative power, and very justly and properly they have held the scales of justice between the cities and the country upon a level, and Philadelphia had better entrust this power in the future with these who have held it in the past. I am therefore opposed to voting down this section. I am opposed to striking out the word "four" or "six" either. I would prefer, however, that this apportionment could be so arranged as to settle the number of Representatives and the number of Senators, and then I would be willing to vote for giving to Philadelphia a fair proportion of the Senate according to the principles I have indicated.

Mr. WALKER. Mr. Chairman: Before the vote is taken upon this question, I desire to submit my views to the Convention. I shall endeavor to be as brief as possible. Mr. Chairman, my mind is con-

trolled by the character of our government in the consideration of this question. We have heard, all over this body, that this is a government of the people, by the people, and for the people. It is a government based upon the will of the people, and whenever we wander from this principle we wander away from the basis of our government, and from the only sound basis upon which our government can stand or ought to stand—the will of the people, expressed by representation. That is our government. It is not a pure democracy, where all come up and vote their votes and take part in the discussion, but it is where the elements of the people, by their representatives, come forward and speak, not their sentiments, but the sentiments of the people, the voice of the government. In accordance with the great teachings of our government, I feel that I must ever obey the principles upon which they are founded, and that is to be governed either by the decision of the representatives of the people, or according to the decision of the people. If we cut loose from this principle in our government, whither will we be drifting? There is, then, no restraint. It becomes the mere will, the mere opinion of the individual, and that is not our government. It is an eternal established institution, built upon the voice of the people, expressed through their representatives. That is our government, and if we are not controlled altogether by that principle, then we have no government, though we may think we have. Now, Mr. Chairman, I believe I am a democrat, and I believe the people should rule. I think I am a republican, and I believe the people should rule, through their representation; and representation must either be based upon taxation or upon population. Now take this representation either way, and dare we say that Philadelphia shall not have her fair proportion. I dare not go within myself and ask: "Is it right?" and get the answer that it is not, and then in this Convention vote for a provision which neither my heart nor my intelligence can approve. I dare not.

Other gentlemen upon this floor may, but I am so constituted that I dare not do what my conscience dare not approve. It has been said that an increase in the representation of cities will not work well,

because large cities are great ulcers in the body politic, and Philadelphia has been instanced as an example. Words are easily spoken. A man may say anything, and in the heat of excitement and discussion, denounce the representation of this city but if it were denounced a hundred times it would not enlist my sympathy. I know as well as I know anything, that Philadelphians are not any more corrupt than any of the other legislators of this State or any other State. It has been said that we are corrupt. Well, if we are, it is because we have made ourselves so. If I give loose to my passions, and allow them to rule and control me, I would become but a corrupt scoundrel, and what God intended I should not be; but if I leave the better feelings of my nature gain the ascendancy, I am just what I want to be, and just what God intended I should be. I am unwilling to say that God made a blunder when He made me. He made no blunder. If I commit a blunder I alone am responsible; and so it is with regard to cities. If men are aggregated together, and they will not restrain these evil causes, and will not rule themselves as they ought to be ruled, they will, of necessity, become corrupt. Will I be told that mind brought against mind will not work together for the good of society, but that it will, in its aggregate, result in corruption? This may be said to occur in our large cities, but I cannot believe that the aggregate characters of the men and women in our cities only result in corruption.

I know it is true that in our large cities there must be crime and corruption, and the good of society requires that they shall be restrained; but in looking over this Union, wherever you please to go, do any of our States wholly ignore our large cities on account of this crime and corruption? Read the Constitution of the State of Massachusetts, and then can it be said that any of its citizens are ignored in their representation? Go to Illinois—that State from which we are drawing, as it were, the very life-blood of their Constitution—and do they say there that a man in Chicago is not the equal of a man in Springfield? Go to Cincinnati, and tell me is there anything in the Constitution of the State of Ohio that says a man in Cincinnati is not the

equal of a man in Columbus or Cleveland? Go to Missouri, and tell me is there anything in the Constitution of that State which says that a man in St. Louis is not the equal of a man in Springfield, down there on their southern line? Why nothing of the kind can be found in their Constitutions. A man in St. Louis is a man; in Chicago he is a man; in Cincinnati he is a man, and in Boston he is a man; and now, in speaking of the corruption of our cities, we come to that place where, if corruption exists on the face of the earth it does there—the city of New York; but does the Constitution of that State say that a man in the city of New York has not the same voice in the government of that State as a man in the county of Ontario, Oswego, Cattaraugus, or any other place in the State of New York? The Constitution of that State contains no such provision; and shall we say in this State, of which we brag as the land of Penn., that a citizen of Philadelphia shall be deprived of the right of representation in the State government? Look for a moment at the population and representation of the various counties in the State. Go to the county of Crawford, with a population of sixty-three thousand, and there they say they are entitled to one Senator. Go to the Tioga district, with a population of fifty-nine thousand, and there you will find that they claim one Senator; but the city of Philadelphia, with an immense population, is to be entitled to one to one hundred and sixty thousand. Now is this republicanism? Is it democracy? And does it accord with the theory of our government? I say I spit upon such a doctrine

[Here the hammer fell.]

Mr. CORSON. Mr. Chairman: I move that the gentleman's time be extended.

The motion was agreed to.

Mr. WALKER. Mr. Chairman: I thank you and the committee. I want to speak out what inwardly I feel, and I do not speak out here, on this or any other subject, anything else. I believe our government is right, and believing that it is right I mean to carry it out philosophically. I do not mean, for the purpose of securing cumulative voting hereafter, to roll one way and look another. I do not mean to do anything of that kind; I mean

to say that a man is only one man, and I do not mean to say that he may transform himself into ten or twenty men and then call that democracy. It is not my character of democracy, whether applied to the city or to the country.

But that is foreign to what we are on now. When that comes up we will discuss it. Mr. Chairman, it was said that Philadelphia is an ulcer. My friend, the Senator from the city, did not say exactly that but something approximating to it, and he also said that Philadelphia cannot produce a loaf of bread. Well, I know she cannot, and I know that there is many a field and many a thousand acres in Erie county that cannot produce Philadelphia. I know that they produce what is manufactured here and what I mean is this: You have the New England States; I admire them. They have built themselves up in spite of their climate and in spite of their soil, to manufacture largely and make their mark in this nation, and to-day there is more manufactured in this city of Philadelphia than in all the State of Massachusetts. Yet it is said that Philadelphia is an ulcer. God send to Erie county just such an ulcer!

Mr. WHERRY. Mr. Chairman: I did not intend to say a word on this subject, nor would I do so now, did I not feel called upon by the remarks of the gentleman from Erie, (Mr. Walker,) who has just taken his seat. Whilst approaching the same conclusion to which he has reached, I entirely differ with him in his premises. When the gentleman asserts that the theory of this government, and necessarily of any republican government, is wholly based upon the doctrine of representation by population or taxable, which amounts to the same thing, he makes, in my humble judgment, a very grave mistake.

I ask the gentleman from Erie to recall the history of constitutional law in the United States. When the founders of this Republic met, and agreed upon a fundamental law for our federal national government, in their wisdom they determined to divide the legislative power between two separate, yet co-ordinate branches, a Senate and a House of Representatives. Evidently they did that for the purpose of securing a check upon

hasty, inconsiderate, unwise legislation. But, to accomplish this purpose, in order to make the one branch of the legislative department an effectual check upon the other, found it necessary to incorporate and agreed upon essential differences in the organization of these two branches. Four possible and practicable points of difference in organization suggested themselves, and I desire to call the attention of the committee to those four points of difference.

In the first place the two branches were made to differ essentially in the basis of representation, the very point to which the gentleman from Erie has referred. The two Houses of Congress differ upon the principle of the basis of representation. In the organization of the Senate representation rests upon geographical districts, territorial lines, States, and not upon population, as the gentleman from Erie has said. It rests upon States, upon simple, geographical division, and has nothing to do with the question of population whatever, and consequently equality of representation secured to each State. I challenge the gentleman to contradict this statement. The House, on the other hand, was organized on the basis of population and proportional, not equal, representation granted to the several States.

The second essential point of difference in the organization of the two branches of the legislative department of the national government lies in the qualifications of the elections. The same electors who send delegates to the House of Representatives at Washington do not elect the United States Senators. The qualifications of the electors of members to these two branches are entirely different. United States Senators are elected by the State Legislatures. Members of the House of Representatives, on the other hand, are elected by the people of the several States, by ratio of population. Now what is the result of this? That equality of representation is obtained in the Senate, whilst proportional representation is obtained in the House of Representatives. And this result is wholly inconsistent with the theory of the gentleman from Erie who is entirely in error in his preliminary statements.

There are two other points of difference between the organization of the United

States Senate and that of the House of Representatives. They are immaterial perhaps, or less material than the two already referred to. They are the length of term of office, and the difference in the numbers which constitute the two Houses. I therefore pass them by, and call the attention of the committee to a historical fact. When the Colony of Penn wheeled into the line of United States, by the adoption of the federal Constitution of 1787, the people of Pennsylvania, at the earliest practicable moment, determined and agreed to modify their organic law, (notably in the legislative department, for under the preceding Constitutions there was but one House of Assembly,) modified it, I say, so as to harmonize in structure and design, in form and principle, with that great model charter under which freedom was won and liberty secured. But right there the Constitutional Convention of 1790, in my humble judgment, made a most fearful mistake. They accepted the form of the Constitution of the United States, and dropped from it the substance—dropped out the two most material points of difference in the organization of these two legislative bodies. They organized their State Senate, not on the basis on which the United States Senate was organized. They left out the two material and essential points of difference, namely, the difference in the basis of representation, and the difference in the qualifications of the electors. They retained the minor, almost trivial points of difference, viz: The difference in mere numbers, and a difference in the length of terms—retained the form without the substance, the shadow without the material, and our Constitution, in this particular, has been but a hollow sham, even unto this day. We, sir, to-day see and know and feel the evils of a Legislature organized wholly on the uniform basis of population. We are without an efficient check.

I will re-call another historical fact which the gentleman from Erie has either overlooked or forgotten. Of the thirteen original States, eight did not fall into this same error. Maryland, in her Constitution, adopted precisely the same principle which was incorporated in the national Constitution. So did Delaware, New Jersey, Connecticut, Vermont, Georgia, North

Carolina and Virginia. They all based the representation of their State Senates, not upon population, but upon mere geographical divisions. I call attention to this historical fact, that these eight of the thirteen original States did follow the Constitution of the United States to the very ultimate, and based their Senatorial representation not upon population but upon communities.

And it is worthy of observation that six out of eight of the original States still retain that provision in their Constitutions. I assert that the States of Maryland, New Jersey, Connecticut, Vermont, Georgia and Delaware still base their Senatorial representation not upon population, but upon territorial lines without regard to population at all.

These, Mr. Chairman, are facts of history. They represent the true state of the case in regard to the history of constitutional law in the United States. Now, sir, I do not know how far the people of Pennsylvania are prepared to go in the way of reform; nor do I know how far this Convention—this reform Convention—is prepared to propose radical changes. For one, I unhesitatingly say that we have reached that stage in our history that demands a change in the basis of representation in the Senate of the State. I am firmly and clearly of the conviction that no remedy for the bad legislation of this State can ever be found until the basis of representation in the State Senate is modified and changed. I have no theory of my own to offer. I have no project to lay before the Convention; but I was struck with the practical suggestion of the gentleman from Columbia (Mr. Buckalew) to district the State by a board of commissioners of apportionment. I do not know but I would agree to such a proposition. It has much in it to commend itself to my judgment; but I do say and insist that the time has come when the basis of representation in the State Senate of Pennsylvania must be something else than population. It may be territory without regard to population. It may be based upon a sort of civil service regulation, in which I am free to confess I have but little faith; or it may be based upon the higher qualification of electors, a principle in which I have the greatest faith; or it may be based on two

or all three of these or upon something else than these. All I plead for is that the times demand a change of the basis of representation to the Senate of this Commonwealth.

But I want to say, finally, in plain words, not to be misunderstood, that so long as the ratio of population remains the basis of Senatorial representation in the organic law, I will never give my vote to any proposition which aims at restricting or limiting the Senatorial representation of any section of this State.

Let me say to the gentleman from Erie, I am as consistent as he is. So long as population remains the basis of representation in the State Senate, so long by my vote shall Philadelphia, and Pittsburgh, and Berks and every other populous district in this State have all the representation to which they are fairly and justly entitled. However, with this exception, I shall vote to take from Philadelphia and Allegheny and other large districts that fair equivalent of their representation which they ought to be deprived of in consequence of the fractional losses of representation in the districts throughout the country.

Mr. Chairman, my ten minutes are expended and I am done.

Mr. CORSON. Mr. Chairman: I agree with the gentleman from Cumberland (Mr. Wherry) except in this. He says he has no theory by which we can escape from the difficulties in which we seem to be placed by the report of the Committee on Legislature. I have a theory which I propose to offer, but inasmuch as I understand an amendment to the amendment is now pending and it will not be in order. I desire to hear it read merely as a part of my speech which will only occupy two minutes.

Resolved, That every county in the State shall be entitled to one Senator, and the whole population of all the counties divided by the number of counties shall be the basis of Senatorial representation for all cities containing a population exceeding one hundred thousand.

As soon as we can get at this thing, either by voting down the amendments or the whole section, I propose to offer that. And this is the whole scheme of our government. It is the theory that every county, every portion of Pennsyl-

vania which rises to the dignity of a county shall have a Senator at the Capitol of the State. Every State in this Union has two Senators in the National Congress. Rhode Island as well as Pennsylvania, Delaware as well as New York. We hear no complaint from this method, and if in Pennsylvania every county in the State should have one Senator, and all the counties should be summed up in their population and divided by the number of counties, it would give the same representation to every city in the Commonwealth of Pennsylvania. It would give Philadelphia to-day seven Senators. It would give Allegheny and Pittsburg what she now has, and it would be the fairest and the fullest method of representation which I have yet been able to discover from all the schemes proposed. I hope, therefore, that the report of the Committee on Legislature will be voted down, and that my substitute will be adopted when it comes to that.

This will give every community which rises to the dignity of a county, a community, or county, representative, as such; and by proper measures, to be hereafter proposed and adopted, the equilibrium can be kept up by representation in the House of Representatives according to population. This will give all counties and cities, in their aggregate capacity, and all people according to population, a full, equal and fair representation. It is the plan which was adopted in the formation of our government by our forefathers.

Mr. NEWLIN. Mr. Chairman: I do not desire, at this time, and after the question now before the committee has been so long and so ably and so fully debated, by other gentlemen, to go over the ground upon which the opinions of the friends and opponents of this measure are based. I rise simply, sir, to protest against what I consider to be a rank injustice, and I am indebted to the gentleman from Fayette (Mr. Kaine) for his very honest speech upon this topic. I believe that he is the first gentleman upon this floor who has called things by their right names. I believe in calling a spade a spade, and I believe in calling jealousy jealousy, and I believe in calling fear of a greater power fear of

that power; and the gentleman from Fayette (Mr. Kaine) is the first one who has openly, avowedly and unequivocally stated that he is not in favor of fair play as between the city of Philadelphia and the interior. Other gentlemen have endeavored in various ways to defend this manifest injustice and wrong.

It is, I suppose, an evidence of the weakness of human nature, but it is, perhaps, an amiable weakness which induces men, when they do a wrong, to endeavor to persuade themselves and others that they are actuated by some different motive from that which is the moving power within their minds. Now I confess that of all the different excuses that have been made for this manifestly unjust proposition, the one made by the gentleman from Philadelphia who sits behind us (Mr. Woodward) is, perhaps, the best of the bad reasons, that is to say it at least has the merit of some appearance of plausibility, and some philosophical idea in it, though, I say a wrong one, I will never acknowledge, or put myself upon the record as being of the opinion that a producer of raw material is any better than the man who makes it up into a manufactured state, or is any better than a man of intellect who is no material producer whatever. I will never say that a plow boy is entitled to two votes and a man of parts, refinement and education is entitled only to one. I would give to each exactly what he should have—one vote.

I do not, as I said before, intend to go over the arguments. I have no doubt that every one has made up his mind, and to speak further, it strikes me, would be like addressing a wooden idol, to speak to eyes that see not and to ears that hear not. I rose simply to protest against a measure, which is dictated solely by jealousy of the city and which can be defended on no other ground and not on that. If gentlemen would really look down into the bottom of their hearts and see why they propose to vote in favor of this proposition they would be forced to acknowledge the truth of my charge.

Mr. EWING. Mr. Chairman: I was interested in the historical narrative which the gentleman from Cumberland (Mr. Wherry) gave us, and his reasons for believing as he does, with regard to repre-

sentation in the Senate, and I may say that I am opposed to this amendment for the reasons which the gentleman gives for being in favor of it. This matter of representation in the Senate and House, I take it, is, to some extent, at least, a matter of expediency, and it is a matter and a measure on which we may well be guided by the experience and wisdom of those who have gone before us.

Now, I take it, that the Senate of this State, has never at any time been based wholly upon population. The experience of republican governments, and of every government, has shown that two Houses of the Legislature, one to be a check on the other, one to some extent representing a different interest or a different constituency from the other, is a safe and necessary provision. I believe that we have no instance on record of any large nation or people existing as a free government, without some such arrangement as that. And as stated by the gentleman from Fayette, (Mr. Kaine,) when William Penn formed this government, he did not base representation, (nor did his people,) upon population alone, but as he says, the charter gave a different basis. Then in another provision emanating from William Penn in 1701, the assembly was composed of equal representatives from each of the counties, Philadelphia having a larger population, but the other counties, having with her, four representatives each.

In 1776, the Executive Council was formed of one member from each county. In 1790 the Convention which assembled in that year, (and whose wisdom has been so highly spoken of here,) after repeated discussions, after a great many amendments offered, finally settled down to the provision which they adopted, which limits Philadelphia to four members. It could not mean anything else; it is what it did mean, it was the only thing that it did mean, and the Convention of 1837 but followed it. Now the complaint is that injustice is done, if we do not give Philadelphia and Allegheny the representation to which each would be entitled according to population. Well, I say, we never have had representation upon population even in the lower House—we have usually had one member for each county, and the representation has heretofore been based on taxables. I would prefer

it now, at least for one of the Houses, and hope that some other basis than mere population will be established by this Convention for the Senate. I look upon it as a safeguard.

We have no jealousy of Philadelphia, and I may say, here, that while this provision has been debated as though it referred to Philadelphia alone, we think that in Allegheny county it will affect us within the next twenty-five years. The man is perhaps present in this assembly who will see Pittsburg a fair rival of Philadelphia, without any jealousy, even if she does not surpass her in population and in wealth within the life of men now living. I hold, then, that this provision will affect Allegheny, and lessen its representation in the Senate. I believe it to be just and right. I believe it to be a safe provision, and therefore favor it. I need not go over the arguments which have been so well adduced here and so well set forth in the article read by the gentleman from Dauphin, (Mr. MacVeagh,) from the pen of John C. Calhoun, showing how power concentrates with the wealth and the large representation of a city. It was so in those days, it was so in 1790, it was so in 1837, it is still more so to-day. The relative power of the cities is rapidly growing with the multiplication of railroads, with the concentration of capital, with the increased power of the press, which locates in the great central cities. They control and rule far beyond their population, far beyond their representation, and, to-day, Allegheny and Philadelphia combined, can rule the State. I think this, then, is a safe precedent. I would prefer limiting the proportion, say a certain proportion, not more than one-sixth of the Senate shall be given to any one county. They say to us, and I think I have heard the question asked a dozen times, "what would you do if put in our place?" It is a fair question, and I will answer it.

Let us see what we do when we have power in our own communities, among our own people at home. The city of Pittsburg has its legislative power vested in two city councils. Now, how do we elect them? We elect the lower branch by taxable inhabitants; we elect the select council, not by population, not by taxables, but by wards, and a ward with two thousand inhabitants has the

same representation there that a ward with twenty thousand has.

Now let us come home to Philadelphia. I have, lying upon my table here, presented by the courtesy of a member of councils, and an honored member of this Convention, the manual of councils for 1872, and it sets forth the manner in which elections are held. I find by this book that select council in Philadelphia, according to laws passed in 1854 and finally down to 1872, no objection having been made to it, elect their common councilmen by representation of taxables. Each ward has a common councilman for every two thousand taxables, and several wards have as high as five members in common council and some of them have but one. Then we turn to select council. It has precisely the same power as common council, and we find, not population, not taxation, not wealth, not taxables, but wards as the basis of representation; and each of the twenty-nine wards has one representative in select council, and I have not heard of any man in Philadelphia complaining of that as unjust, nor have I heard any man complain that it has ever resulted injuriously. On the contrary, I believe that the experience of every city is that while occasionally there may have been some apparent inequalities, it has been a wise and just provision, and one that should be retained.

Another thing with regard to this particular system of representation. We have seen what the history of representation has been in this State. It never has been based upon population alone. Is it wise now, with the increase of the power of the cities, with their concentrated wealth, and with the press and all the powerful influences that it has to-day, that it did not possess fifty years ago, to change that system? Then another thing; it appears to be pretty well decided, and it is the evident sentiment of Philadelphia, and of Pittsburg I may say also, and probably of all the other cities, that there should be some constitutional provision in regard to cities, which will very largely take away the power of the Legislature to legislate for cities, and that a large portion of that legislative power which, for the balance of the State, is vested in the Legislature

shall be vested in the city, in its own local legislature for its citizens.

[Here the hammer fell.]

Mr. J. R. READ. Mr. Chairman: I move that the gentleman's time be extended ten minutes.

The question being upon the motion, it was agreed to.

Mr. EWING. Mr. Chairman: I thank the committee, and will occupy their attention for but a short time further.

I take it that the legislation that will hereafter be enacted by the State Legislature will be much less for the cities than heretofore—that there will be more legislation for the balance of the State and less for the cities. Is that a reason for changing the law that we have had in regard to the Senate? Is it not rather a reason for still further limiting the powers of great cities—of great money-centres? In answer to the gentleman from Erie, (Mr. Walker,) for whose opinion I have a profound respect, when he speaks of other States, how is it, and how has it been? In the State of New York, up to 1821, the class of men who voted for Senators was a different class from those who were entitled to vote for members of the lower House, and the qualifications were entirely different, and representation was not based on population; and it never was based on population there until long after that date. In 1846, when they framed their new Constitution, while New York city had about one-fourth of the population of the entire State, they gave it but four Senators, but they provided that at the next enumeration the Senators should be divided in accordance with the population, and since that date New York city has had a much larger proportion of representation than it had before; and if we were to draw conclusions, as some gentlemen do, from particular facts, I would say that from that date commenced the degradation of New York legislation, and the power of the city of New York over it. New York city is the Legislature of New York.

I see also by the Constitution of Massachusetts that they do not permit any district in that State to have more than six men, but there is no other State, except Louisiana, Maryland and New York, that is situated as this has been—no other in which a great city so controls the State.

Mr. NILES. Mr. Chairman: I desire to say a few words in behalf of the report of the committee, of which I am a member. I am in favor of restricting the Senatorial power of our great cities; and while I say this I have no feeling, and, I trust, no prejudice against the city of Philadelphia or any other city in the State.

We are here to-day, sir, to amend the organic law of the State, and it seems to me that unless defects are pointed out in the old law, we should make no change in regard to it. I have been not a little surprised at the position that has been taken by the friends of this amendment, the dictatorial manner with which we, who are in favor of this limitation, have been assailed. Why, sir, it has been intimated to us, here on this floor, and by distinguished gentlemen whose leadership I, in the past, have been but glad to follow, that we are committing a great outrage and wrong upon the great cities when we attempt to preserve this restriction that has lived ever since we have had a State organization. And I undertake to say, that when we follow in the line of the Constitution of 1790, which was re-adjudicated or re-considered by the framers of the present Constitution of 1837, and when we follow in the leadership of such lawyers as the gentleman from Philadelphia, (Mr. Woodward,) the gentleman from Columbia, (Mr. Buckalew,) and the gentleman from Fayette, (Mr. Kaine,) I feel that I am in good company in desiring to preserve a few of the old landmarks and restrictions that have been thrown around our organic law for the preservation of the people living in the rural districts.

As I understand it, sir, this is no new theory. This idea of ours, to retain in the organic law of the State this restriction, is not a new idea. I understand that in the mother country, the land from whence most of us have come, and from which we have fashioned our government and taken many of our laws, all of her great cities are restricted in relation to representation in Parliament. The great cities of Ireland and Scotland and of England are restricted. London, including the adjoining municipalities, contains one-seventh of the population of England, and has but one-twenty-ninth of the representation in the House of Commons.

It has long been understood by our best and wisest men, as was shown by the extract read yesterday, from the utterances of that great man, John C. Calhoun, that it has ever been found necessary to preserve the government, that the representation of the population of great cities should be restricted.

A distinguished delegate at large, from Philadelphia, (Mr. Campbell,) said yesterday, if he is correctly reported—I had not the pleasure of listening to his speech—"this limitation"—I read from the newspaper account of it—"this limitation upon the representation of a large city is an anomaly peculiar to our State Constitution, no similar provision being contained in the Constitution of other States, nor having been even suggested in recent Constitutional Conventions."

That position has not been denied by any delegate on this floor, excepting the one or two that have spoken recently.—My purpose, and the only purpose that I have, in obtruding my remarks upon this Convention is, to say that this remark from a very distinguished delegate of this city, who is not only a lawyer, but a law-maker and a law-writer, is at fault, for in six of the great States of the Union to-day, where they have great and over shadowing cities, the same limitations and safeguards have been thrown around them, to protect the more sparsely populated portions of the State. Why, sir, the very State of Missouri, to which my distinguished friend—and I am glad to call him a friend—the delegate from Erie, (Mr. Walker,) referred a few moments ago, when he said that a man in Saint Louis was equal to any man in Missouri, has a limit; and if the committee will take the trouble to refer to the first volume of Hough's "Constitutions," page 793, they will find these words:

"The ratio of representation shall be ascertained at each apportioning session of the General Assembly, by dividing the whole number of permanent inhabitants of the State by the number two hundred. Each county having one ratio or less shall be entitled to one Representative; each county having three times said ratio shall be entitled to two Representatives; each county having three times said ratio shall be entitled to three Representatives; and so on above that number, giving one ad-

ditional member for every three additional ratios."

So that a voter living upon the northern or western borders of Missouri, according to the organic law of that State, is equal to three living in St. Louis, Springfield or Jefferson City.

The same safeguard is thrown around the representation of the State of Maine, and I refer to these facts to correct the record made by the distinguished delegate from Philadelphia, (Mr. Campbell,) whose speech has gone all over the country. Here is the language of the Constitution of Maine, on this subject: (Same Vol., page 513.)

"Each town having 1,500 inhabitants may elect one Representative; each town having 3,750 may elect two; each town having 6,750 may elect three; each town having 10,500 may elect four; each town having 15,000 may elect five; each town having 20,250 may elect six; each town having 26,250 inhabitants may elect seven; *but no town shall ever be entitled to more than seven Representatives.*"

Yet, sir, some gentlemen would have us believe that we are perpetrating an anomaly and an outrage and wrong upon the cities by the retention of the old constitutional limitation. Maine, in 1870, had a population of 626,000 people, of which Portland had 32,000. Each town of that State having 1,500 inhabitants has one Representative, "but no town shall ever elect more than seven" members, yet Portland, upon the basis of her population, would have at least seventeen members of the House of Representatives. So that Portland lacks, to-day, ten members to give her a full representation on the basis of population.

The delegate from Erie (Mr. Walker) said that a man in Boston was equal to any man in Massachusetts, and he cited this as one of the great States having a great city, where, notwithstanding, there is no constitutional prohibition of the nature referred to. What is the fact? By the Constitution of Massachusetts the Senators are limited to forty in number, and no district shall be entitled to more than six. Massachusetts, in 1870, had one million four hundred thousand inhabitants, of which Boston contained two hundred and fifty thousand. In Boston it takes forty-two thousand inhabitants

to be entitled to one Senator, while in the balance of the State it requires only thirty-four thousand.

Mr. WALKER. If the gentleman turn to the place where the Constitution of Massachusetts is shown to be amended, he will there find that Boston is represented just as any other portion of the State is.

Mr. NILES. Which section does the gentleman refer to?

Mr. WALKER. Whatever section it is that shows the amendment to the Constitution, referring to the districting of the State,

Mr. NILES. I have read from the body of the Constitution. If I find any conflicting paragraph I shall be glad to read it.

In the State of Maryland, where they have the large city of Baltimore, and Baltimore has overshadowed the State of Maryland, just as Philadelphia overshadows Pennsylvania.

[Here the hammer fell.]

Mr. H. W. PALMER. Mr. Chairman: I move that the gentleman's (Mr. Niles's) time be extended ten minutes.

The question being upon the motion, it was agreed to.

Mr. NILES. I thank the committee. I now read from the Constitution of Maryland: (Same vol. pages 569-570.) "Each county in the State, and each of the *three Legislative districts of Baltimore city*, as they are now or may hereafter be defined, shall be entitled to one Senator, who shall be elected by the qualified voters of the counties, and of the Legislative districts of Baltimore city, respectively, and shall serve for four years from the date of his election," &c.

Now, Maryland, in 1870, had a population of 780,000, of which Baltimore had 267,000. Each county in the State has one Senator, to an average of 15,000 persons, while Baltimore, with her 267,000, is restricted to three Senators, or one for every 89,000; so that 89,000 people in the city of Baltimore, so far as the Senate is concerned, is only equal to 15,000 in the rural districts. Had I time I should read further from the Constitution of Maryland, to show its provisions on this head, but I will content myself with a mere statement or summary of their operation. Every county in the State, having 18,000 inhab-

itants or less, has two members of the House of Representatives, being, say one for every 9,000, while Baltimore, with her 267,000, is restricted to eighteen delegates, (precisely what Philadelphia has to-day,) being one for every 15,000, or a little more than one-half her share if the representation were not restricted.

Rhode Island, in 1870, had a population of 217,000, of which Providence city had 69,000, being about one-third of the population of the State, yet Providence is, by the Constitution of the State, restricted to one-sixth the representation of the House of Representatives.

Providence is entitled to one Senator, and every town having a population of one thousand five hundred inhabitants has one Senator, and according to her population, upon this basis of fifteen hundred, Providence is entitled to thirty-seven Senators. The State of South Carolina has a population of six hundred and sixty-eight thousand, and Charleston, with a population, in the same year, of forty-nine thousand, is restricted to *two Senators*. That State gives to each one of her counties one member in her House of Representatives and one member in her *Senate*. Charleston is restricted to two Senators, and yet we have been told in this Convention, by the hour and by the day, that this provision of our fathers, restricting the Senatorial representation of the city of Philadelphia, which has existed ever since the State itself, is a thing unheard of. There is another subject I desire to refer to before I conclude, if the Convention will indulge me for one moment. Now it may seem unfair, Mr. Chairman, to limit the city of Philadelphia to four members of the Senate, when every county in the State obtains the precise number they are entitled to; but there is another consideration that I have not heard suggested in this Convention. Philadelphia, in the lower House, has no fractions. She loses nothing in the way of fractions, whereas some of the counties of the State lose fractions which almost entitles them to a member. Now the report of the committee, which we are considering to-day, gives a separate representation to every county of thirty-five thousand inhabitants, and a member to every county that has a ratio of three-fifths of the same, making fifty-six thousand. Now, upon the basis of the report which we are

considering to-day, the county of Armstrong, with a population of forty-three thousand, has an excess of eight thousand. Bradford county, which adjoins my own county on the east, having a population of fifty-three thousand, has an excess of eighteen thousand. Fayette county, represented by my friend, (Mr. Kaine,) has an excess of eight thousand. Lycoming county, lying upon the south, has an excess of twelve thousand. Venango county has an excess of twelve thousand. Mr. Chairman, your own county of Washington has an excess of thirteen thousand. So that in eighteen counties of this Commonwealth to-day, if we adopt this report of the committee, which has been represented as unjust and unfair to the city of Philadelphia, we have one hundred and seventy-five thousand of the people of this State who will not be represented in the lower House.

It will thus be observed that what we gain in the country by this constitutional restriction in the Senate, the city of Philadelphia re-gains by having no fractional losses in making up her representation in the lower House.

The national government recognizes this same principle in the organization of the United States Senate. Each State there has an equal representation without regard to population. Delaware and Rhode Island have the same vote as Pennsylvania and New York. The great States have suffered nothing from the equal representation of the smaller ones. Experience has demonstrated the wisdom of the men who devised our national Constitution. The Senate is the conservative, the House the popular branch of the government. One is a check and a balance upon the other. If the *basis* of representation is the same in the Senate and House of Representatives, why not dispense with one or the other? Why have both? One certainly is unnecessary.

I desire to retain this old time-honored restriction from no feeling of opposition to Philadelphia. For her I have nothing but respect. I remember that she is the great commercial centre of our great Commonwealth. I remember that she is the great manufacturing city upon this continent. I well remember that in all the great wars that have afflicted our land and our people, Philadelphia has been as true to freedom and the Union

as the needle to the pole. I admit that her wealth has done much to develop the great and hidden resources of the State, and the State in return has, by means of her iron, her coal, lumber, grain and oil, poured untold millions into the lap of this great city. I agree that there should be no antagonism between the city and country—that the true interest of the one is the best interest of the other.

I do not here and now make charges against the city of Philadelphia. During the many long weeks of our session here we have listened by the day, and almost by the week, to eloquent appeals of the very many distinguished delegates from Philadelphia in regard to the frauds perpetrated upon her ballot-box, to the intimidation of voters, to the almost total destruction of the elective franchise. Very many delegates have appealed to the country to save the city from her "rounders," "repeaters" and "ballot-box stuffers." We have attentively listened to the recital of the misuse of her representatives at the State Capitol. Our respected President (Mr. Meredith) told us yesterday, in his own inimitable language, that Philadelphia was *not* represented by her representatives. That for the last twenty years she had been *mis-represented* at Harrisburg. That the city was in the hands of irresponsible members "who represent nobody but the little knot of politicians to whom they look for protection."

If this be true (and upon this point I neither affirm or deny,) would Philadelphia be any better off with an increase of representation? If her true interests are sacrificed by her four Senators, would her condition, politically, be bettered by increasing her number to six? Would the condition of the patient be improved by increasing the character and extent of the disease?

Mr. Chairman, I do not admit that population *alone* is the *only basis* of representation. It may be the general rule. But there are exceptions. The population of our great cities, living in dense masses with a known and easily understood community of interest, controlled by a powerful and all pervading local press, have much greater strength and a larger degree of political influence than they would have if the same number

were scattered over a half dozen sparsely populated counties.

In my opinion no good reason has been shown for breaking down the barrier thrown around the people in 1790, and again re-affixed in 1837. Its repeal is not one of the reforms demanded by the people when this Convention was called. No one has called for its abrogation. No single petition has asked that it be annulled, and yet, without being asked, we propose to wantonly lay hands upon this old landmark of protection to the country. To-day Philadelphia has four Senators. In a few short years Pittsburg will have the same number, giving these two cities eight Senators or one-fourth of representation of the whole State. I submit, Mr. Chairman, ought a time ever come when these two cities shall have more than one-fourth of the representation of the whole State? Our city friends are not satisfied with the present ratio of representation. For all practical purposes the State to-day is absolutely under the control of Pittsburg and Philadelphia. One city organizes the Senate and takes the Speaker and Clerk. The other organizes the House, and takes the Speaker and controls a majority of the important committees. And if such be our condition to-day, I pray you, sir, what will be the situation of the people of the State when all limitations and restrictions are broken down and the country entirely in the hands and at the mercies of our great cities. In the name of the rural district that I have the honor, in part, to represent, I protest against the destruction of this *time honored protection* of the rural districts, and against the encroachments of the wealth and power of our great and growing cities.

Mr. BOYD. Mr. Chairman: I understand the proposition before the committee is the amendment which has been offered, inserting six Senators in place of four, as reported by the committee.

The CHAIRMAN. The amendment is to strike out the proviso.

Mr. BOYD. I was about to observe that if the city of Philadelphia claims only six Senators, she is, indeed, exceedingly modest in her demands, for I certainly shall vote for that number, and I think it quite likely that I shall vote to allow her the same representation as is accorded

to other portions of the State. It seems to me simply absurd to say, that the city of Philadelphia should be confined to the number accorded to her by the report of the committee. Why, sir, I understand that under the Constitution of 1790, and under the Constitution of 1837-38, she was allowed but four Senators. Now, if she were entitled to four Senators in 1790, it would seem to me that in 1837-38, she had grown up to a stature that entitled her to at least double that number, and surely if she were entitled to four Senators, and that was considered a just number in 1837-38, she has certainly grown, since that time, to proportions that would entitle her to a number vastly beyond that. I am not one of the members of this Convention ever to be governed by any jealousy of the city of Philadelphia. I have already indicated upon this floor that I can discover nothing in her greatness of which we need be jealous, because as she is great, so the State is great. She has contributed her material wealth and resources to make the State what she is, and so the State has helped to elevate the city of Philadelphia to the high position she now occupies. It has been a mutual benefit all around, and if it be said that because she has a larger number of representatives in the Legislature than come from other portions of the State, it seems to me that whatever mischief exists, is very much modified and corrected by the report of the Committee on Cities and City Charters, of which my friend, Judge Walker, is chairman. According to the report of that committee, and I presume it will be adopted by this Convention, the city of Philadelphia will be, so to speak, a law unto herself, because that committee have reported in favor of allowing her to enact her own local laws, and do her own local legislation for the government of the city.

Now that being the case, it seems to me that her Senators and Representatives are no longer in the condition or position they have been in the past, because it has been said that they have been obliged to trade around with members from the interior for the purpose of securing legislation necessary for the city of Philadelphia. I have no doubt that this has been true in the past, and now that this source of trouble is to be taken away from her legislators, and the city of Philadelphia is to

do her own legislation, as a matter of course it will not be necessary for her Senators, in the future, to descend to the means they have been compelled to resort for the purpose of securing that legislation for the city which was conceived to be wise and just; and if, therefore, she is to have the full representation she seems to be justly entitled to, her representatives can go in the Senate of the State and represent not only the city, but the State, because it is difficult to draw a distinction between the State of Pennsylvania and the city of Philadelphia. What is the interest of the one is undoubtedly the interest of the other, and hence if Philadelphia can send to the Legislature an equal number of Senators in proportion to the rest of the State, why she can take a broader and more comprehensive view of important questions that may arise, without being encumbered by this log-rolling system her representatives have been subjected to in obtaining for Philadelphia the legislation to which she was entitled. Therefore it is that I shall vote for the number six, or for whatever number she is fairly entitled to, and it does not make a particle of difference to me, one way or the other, as the gentleman from Fayette (Mr. Kaine) suggested, if she does elect both the Speaker of the House and the Clerk of the Senate. What of that? What a miserable little business it is for the members of this body, who are endeavoring to create a fundamental law for the State of Pennsylvania in the great future, to stand here and discuss questions which seem to involve the simple question whether the city of Philadelphia shall elect the Speaker of the House, and the city of Pittsburg the Clerk of the Senate. Why, sir, so far as I am concerned, I shall favor building up the city of Pittsburg, both by my vote and every act I perform while in this Convention. I would gladly make her the rival and the superior of this city; and, on the other hand, I would vote to build up the city of Philadelphia in all her greatness and in all her glory, so that she shall keep pace with the progress of her State. I shall never, so long as I have a seat in this Convention, ever belittle this city by depriving her of her just rights, and I will here observe that, so far as her Senators, at least, are concerned, she has maintained a respectability and character in those

representatives at least, that, considering all things, has been highly creditable to her citizens. The Senators with whom I have been personally acquainted, who have represented this city for the last twenty-five or thirty years, have been a credit to her, and they have been men that could be confided in for the most part. Now my friend from Allegheny (Mr. D. N. White) smiles at this.

Mr. D. N. WHITE. I was smiling "for the most part."

Mr. BOYD. It is to be expected in a city of this kind that the manner of managing their nominating conventions will sometimes produce a miscarriage in the kind of men they send to the Legislature; but the same thing happens in the interior of the State. I know men in the rural parts of the State to be set up by these conventions who have been wholly unfit for the position to which they have been nominated and elected; but it by no means follows as a rule that it is unsafe to resort to this mode of representation.

Now, Mr. Chairman, I am strongly inclined to favor the proposition of my colleague from Montgomery (Mr. Corson.) I shall spell it out a little more, and if I comprehend his idea correctly, and it is in substance to give to the city of Philadelphia her just proportion of representation, I shall support that proposition, or any other one that looks in that direction.

Mr. BARDSLEY. Mr. Chairman: The subject now under consideration is one that affects the people of the city of Philadelphia more particularly than those of any other part of our State, and as one of the representatives of this city I desire to impress upon this Convention the importance as well as the justice of meting out to the people of this city the same rights and the same privileges that they propose to take to themselves. I submit that equality of rights and equality before the law are the dearest privileges belonging to the American people, and that we are not carrying out the great principles upon which this government is founded, in preventing 800,000 people from exercising the rights that properly belong to them. When we propose to tax the people, and to prevent them from being represented in the legislative body of our State, we strike down the dearest principles which originated with the birth of the United

States; for the principal object that induced the United Colonies to sever their connection with England was taxation without representation. The city of Philadelphia pays into the Treasury over two-fifths of the entire yearly revenue of the State.

I submit it is right, or just, or proper, that Philadelphia shall be deprived of the right to have upon the floor of the Senate of this Commonwealth that full representation to which she is actually and legitimately entitled? This section now under consideration proposes that the Senate shall be composed of members in accordance with the population of the State, save only as one proviso, which applies only to Philadelphia, shall limit and restrain the representation of that city. If this Convention adopt any such system, Philadelphia, sir, will yield, but not entirely uncomplainingly. What other portion of the State would so patiently submit, in the face of the fact, that it is manifestly proper and right for both Houses of the Legislature to be composed of representatives according to taxables, as she has for the past sixteen years? This city claims only her just due when she asks, as her full and legal right, that she shall be represented like any other portion of the Commonwealth.

We are met here to form a new Constitution. The distinctions of the old Constitution, where they have operated in the past or operate now unequally upon any part of this State, are of no binding force or effect upon us. We are not to be guided by the existing organic law of this State, or of any other, save as the principles of those Constitutions have proved conservative of the public welfare and promotive of the general weal: The people of this Commonwealth, in calling us into convention, clothed us with their own sovereignty, and vesting in us that high privilege, called us into being to exercise a simple duty, to mete out justice to every citizen of the State.

We are not now, Mr. Chairman, in the possession of the proper representation that we at one time actually enjoyed under the present law on this subject. While to other communities the law afforded just representation, to us it has given less than we once enjoyed under its own restriction. In 1854 the city and county of Philadelphia were consolidated.

Prior to that time we were entitled to, and had on the floor of the Senate, five members. The next apportionment, after the passage of the act of consolidation, reduced that number to four, and to-day this great city, which has grown in wealth and in numbers every year with giant strides, has less representation in the Senate of this Commonwealth than it had sixteen years ago. And yet, during that time, we have steadily maintained our position as the second city in numbers in the Union, and have grown to be the first city of the country in the extent of our manufactures. In this city, annually, we produce \$400,000,000 of manufactures, we have 800,000 people, we have 160,000 voters, and I appeal to the justice of the committee, whether we ought to be ostracized because we have gathered within our borders all this immense wealth and this immense population. One thousand voters here ought to have the same right as a thousand voters in any other county of our State. By what right, sir, by what system of calculation can any gentleman say that we ought not to be represented as well as they, that the same number of population within the confines of Philadelphia should not have the same representation which that number would receive outside of this city?

It is only a question of justice; as such, and as such alone, we present it, and ask its decision. If Philadelphia claimed more than any other portion of the Commonwealth, no man here would vote against that claim more willingly than I. But she asks only for the same equality, that throughout this broad Commonwealth is questioned only when the application comes home to her. Is the representation to be equal everywhere else and here be unequal? I trust, sir, and I believe that the common fairness of the members of this Convention, and their innate sense of justice, will lead them to give to this city like privileges and like rights that they propose to give to themselves.

Mr. C. A. BLACK. Mr. Chairman: I did not intend to participate in the discussion of this really important proposition, but as two of the delegates who represent the district that I come from have indicated an intention to support the section as reported by the Committee on the Legislature, I desire to give, very

briefly, the reasons why I have come to a different conclusion. I regard this proposition as one of the most important that has been or will be presented to the Convention. So far, the advocates of this limitation have, in my judgment, made no serious effort to defend it on principle. The whole argument has been based upon expediency, or upon policy, and nothing else. Now, Mr. Chairman, I have been taught, and almost every man of both parties has been taught, that in a country like this, where the people are presumed at least to rule, where all power is supposed to come from them, the true democratic basis of representation is population, and population alone. It is not only the doctrine we have learned from our childhood, but all who have been here since the revolution have learned the doctrine, that the only true basis of representation in a democratic form of government is population. It is the doctrine that we have all learned from the books. From Bentham, from Mill, and others, who have felt and written upon the evils of a different system in England, and from Jefferson, and Madison, and Hamilton, who framed or expounded our admirable Constitution, and taught us to believe that the true basis of representation is population. I do not pretend to say, nor do I believe, that the doctrine of representation, based solely and exclusively upon population, can be carried out to its logical results. There may be, necessarily, some departure from the principle, for instance, where some arbitrary division or boundary of territory would interfere with its complete operation. But I do maintain, that wherever we can do so, we are bound to give every portion of the State a just and equal representation, independent of the accidents of wealth or density of population, or violate the principle upon which our republican institutions are founded. At least so it appears to me. I repeat, that the advocates of this invidious limitation have, in my judgment, failed to sustain it on principle. Indeed, so far, I think they have scarcely attempted to do so. The delegate from Fayette, (Mr. Kane,) and I refer to him the more willingly, though kindly, because we hail from the same district, grounds his argument in favor of the proposition upon the assumed fact that it has always been so. It is a bad argument,

even if the fact be so, for he and I have learned from the same authority that a vicious usage should be abolished. But has it always been so?

The accomplished President (Mr. Meredith) told us how it got into the Constitution of 1838, and as for that of 1790, I think it will require a very forced construction to find the limitation there. And as to the Provisional Constitution, if such it can be called, of 1776, it can scarcely be regarded as authority. The attempt to find any analogy in the Constitution of the United States, taken in connection with the history of its formation, is equally unfortunate. My friend, and the gentlemen who have spoken upon the proposition, seem to overlook the reasons which resulted in the incorporation in the federal Constitution of the principle which they regard as sustaining their position. The purpose of the framers was to establish an Union of separate States, of separate and independent sovereignties. Unlike our cities and counties, which are but parts of the whole, and separated, or rather divided, into communities for mere municipal purposes, the States were not only sovereign, but, as to each other, foreign sovereignties. The smaller States, such as Delaware, Rhode Island, New Jersey, and others, fearful of being absorbed or their independent sovereignty in some way abridged, refused to become members of the Union, unless they were, to some extent, made the peers of the greater States. This was effected by making them equal in the Senate, and it was done for that purpose alone. It was conceded, virtually, at least, by Mr. Madison, Mr. Mason, Mr. Wilson, and other leading members of the Convention, that in the absence of this reason, Senators would have been elected like members of the House of Representatives. If my recollection of this portion of the history of the formation and adoption of the federal Constitution be correct, and I think it is, it furnishes but little authority, I submit, for the position taken by the gentlemen.

MR. KATNE. Mr. Chairman: Will my colleague allow me to ask him a question?

MR. C. A. BLACK. Certainly!

MR. KATNE. Mr. Chairman: I want the gentlemen from Greene to say whether the old Continental Congress was not a merely representative body,

and whether there was any Executive authority during the existence of that body, and when the States came to form the Constitution of the United States, whether the Senate of the United States was not put in there simply as a check upon the representative branch?

MR. C. A. BLACK. No, sir! It was put in for the reason I have adverted to; to protect the smaller States, and nothing else. Mr. Madison expressly declared that if it had been a merely consolidated government, a homogenous government, if I may use such a term, then the representation would have been based upon population, and the members of the Senate would have been elected in the same way as the members of the lower House. He so expressly stated, on the floor of the Convention, and afterward in Virginia; and to my mind there could have been no other reason why the Senate was so constructed. If the government had been a consolidated one, I can readily see why the basis would have been population, and the upper branch of the national Congress not have been constituted in the manner in which it was done.

The Constitution of the Senate of the United States then, taken in connection with its history, should have but little weight, I think, in the solution of this question. It was a matter of policy, of sheer expediency, and did not contravene or affect the great principle of popular representation. The framers of the Constitution could not have so intended it. They were too fresh from the conflict of the revolution to forget that taxation without representation is tyranny; that all power emanating from the people, the right to be represented in the law-making body should be equally enjoyed by all. To my apprehension the weakest argument of all is the allegation that the Senate is necessary as a check upon the House of Representatives. Granting it to be the case, would the Senate be less a check, if all were elected from a single locality? The check, if necessary at all, arises from the existence of the body after election, not from the manner of the election or location of the members. Were it necessary, I think it could be shown that this idea of the upper House, being a check upon the lower, never had a legitimate existence, either here or in England, from whence the plan of two

Houses in Legislation was derived. In England the House of Lords existed centuries before the Commons were called into existence, and when it was done, it was for a very different purpose than to be subject to the check of the upper House. But this is of no consequence here.

It is urged in support of this limitation that cities, being non-producing, the preponderance of representation should be in favor of the rural or producing districts. But, sir, I have learned from writers upon political economy, if common sense did not teach me that much, that whoever contributes to the comfort and happiness of society is a producer; and that there are others besides those who produce grain and meat, and iron and coal that do this. The man who plans and builds a ship, a house, or a steam engine, is just as much a producer as he who furnished the crude material from the forest or the mine. Nay, the man who writes a valuable book, or the man who fashions a great invention, are just as much producers as he who by manual labor produces the food that sustains the life of the writer or inventor. I need not refer to what Philadelphia has done and is doing in these respects. Vast as her productions and creations are, the enumeration is not necessary to my purpose. Besides they have been already fully adverted to. Great cities, I know, have been regarded by many with apprehension. Mr. Jefferson likened them to great sores upon the body politic. I doubt, if living, he would apply the term to Philadelphia or any of our American cities. With our advanced civilization, I hardly think such a term can be justly applied; certainly not to such a city as Philadelphia. It need not be denied, if it could, that large cities naturally develop a large amount of crime, much more perhaps than the rural districts. The facility for concealment, and, perhaps, the increased incentives to crime resulting from the greater degree of luxury, and other causes, naturally induce such development. But then, they do a vast deal to prevent and punish crime; immeasurably more than is ever necessary in the country. They have much mendicancy, vagrancy, and perhaps suffering, far more than could exist in a rural population; but how much more munificent and efficient are

they than any country population could be for the alleviation of human suffering, and comfort and protection of the weak and helpless. There can be no more magnificent or interesting spectacle than that exhibited by our great American cities in providing means for educational, charitable and reformatory purposes. And in the great productive and industrial enterprises the great bulk of the necessary capital has undoubtedly been furnished by the more opulent and liberal cities. It is unnecessary, perhaps it would be somewhat invidious, to refer to the amount of taxes they furnish for the support of government; and especially by the city of Philadelphia. We should bear in mind, however, in this connection, that taxation has always carried with it the right of representation. The chairman of the committee that reported this proposition read the opinion of Mr. Calhoun, deprecating the power of great cities, growing out of their great facility for concentration. But granting the existence of this power of concentration, what antagonism can naturally exist between the city and the country? The members of the Senate from the city would have but their numerical strength. They would have the weight of their own members and no more. Other members of the body would have the same power of concentration in case of any concerted movement against any other part of the State, or in support of an improper measure. I cannot understand how such attempt, if made, could ever prevail.

Then if we intend to give up true democratic principles you can impose this limitation on the city of Philadelphia. I hold that every citizen is entitled to representation in the law-making power, and if that be a just and a sound principle, how can you say, as this section proposes, that you will give all of the State its proper representation except Philadelphia, which shall have but a portion of what it is justly entitled to.

[Here the hammer fell.]

Unanimous consent was given the gentleman from Greene to proceed ten minutes more.

MR. C. A. BLACK. Mr. Chairman: I thank the committee for their kindness. But I do not desire to say any more. I wished only to vindicate the reasons why I must differ with my friend from Fay-

ette (Mr. Kaine) and my friend from my own county (Mr. Purman.) I think. *they are wrong in their conclusion.* They have not attempted, in my opinion, to defend their position on principle, nor can it, I think, be defended on any just grounds.

Mr. M'CLEAN. Mr. Chairman: I apprehend we have reached one of the most important and vital questions that has arisen in this Convention, and I am glad to see a disposition on the part of the committee of the whole to extend the debate. For my part I am decidedly, and have always been, in favor of the principles as I find them incorporated in the present Constitution of Pennsylvania. In referring to that Constitution we find that representatives are distributed in proportion to the number of taxable inhabitants in the several parts of the State; and when we examine the mode of constituting the Senate, we find it is provided that Senators are to be chosen by districts. I have watched the course of this debate with a great deal of interest, and I have listened in vain to the able gentlemen who have addressed the Convention upon this subject for any valid argument for abolishing the important distinction between the formation of the Senate and the formation of the House of Representatives of Pennsylvania. The arguments of all the delegates from the city of Philadelphia, including the honorable President of the Convention himself, I might say, have been based throughout wholly upon the one ground that there should be representation according to population. I say I have listened in vain to hear one of these gentlemen refer to the manifest distinction between the two branches of the Legislature. For my part I am opposed to any restriction so far as concerns the House of Representatives. Let the House of Representatives be formed strictly according to population, and let there be no limitation upon Philadelphia or any other part of the State in that branch of the Legislature. But I apprehend that gentlemen, out of their warmth of affection for their city, have forgotten not only the history of the adoption of the Constitution of the United States, but of the former Constitution of our own State. I was deeply impressed with the remarks of the gentleman from Cumberland (Mr. Wherry.) I believe much light was

thrown upon this question by those remarks, and that he reached the very core of the question when he said that the representation of the people in the Senate should be by districts or territory, and not according to population. Sir, if that is not so, why should there be a provision made for an upper branch of the Legislature, if the Legislature is simply to be a representation of the people according to population? Why not abolish your Senate then? It is intended, I submit, as a check upon legislation, and is one of the wisest provisions placed in the Constitution of the United States, and of all the States in this Union. I say that it has seemed remarkable to me that the able gentlemen from this city and from other parts of the State, who are opposing a restriction upon their representation as an innovation upon their rights, do not reach this argument as to the essentially different theories involved in vesting the legislative power in the two branches of the General Assembly. I hope this body is not about committing a fatal and terrible error, as I fear it will do, if they forget and abolish this distinction between the two branches of the Legislature.

Mr. C. A. BLACK. Mr. Chairman: I desire to ask the gentleman a question. Was the Constitution of the United States, in reference to Senators, adopted upon this principle of limitation?

Mr. M'CLEAN. I understand it so, just as I have stated during the course of my remarks, and the scheme is a beautiful one. We are fatally destroying its basis, and great and peculiar advantages, by the amendment which proposes to strike out the proviso reported by the committee. I would appeal to the gentlemen from this city, and from other parts of the State, who are in favor of wiping out this limitation, to pause and reflect before they commit this fatal mistake, as I apprehend it will be. Unless the Convention places all the sections of the State upon the original basis and principle of representation in the Senate, the interior counties of the State, with all their interests, will be ground to powder, as between the upper and the nether millstone. I do not say this out of any sectional jealousy of the cities, but because I believe a blow is aimed at the fabric of the government under which we have so long prospered, and I hope, therefore, gentlemen

will reflect before they commit this appalling error.

Mr. CASSIDY. Mr. Chairman: After the elaborate discussion of the question now before this body, I hesitate to occupy the time of the Convention, and only do so because I feel that I would be derelict in my duty to a city where I have lived all my life, if I did not say a word or two in behalf of her claim to be considered, so far as representation is concerned, upon the same footing as other parts of the State. I have listened, attentively, to the speeches of those who have addressed the Convention to hear something in the way of reason in favor of this amendment or of any proposition that limits the right of a city or county to representation, and I confess that I have listened in vain. I think I do not speak lightly of the views presented, and do not fail to appreciate their full force when I say that no word has been uttered or sentence pronounced in this Convention that invalidates the fundamental proposition, without which free government cannot exist, that representation ought to be based upon population and that taxation without representation is tyranny. In calling your attention to an axiom of government as old as this, it may be considered unnecessary, and yet if we have paid any attention to the course of the discussion in this Convention we find that nearly all that has been said has been in direct violation of that principle of republican government. The gentlemen who have advocated this amendment, not being able to furnish any sound reason in support of their views, have endeavored to place the question of representation upon some other basis than that of population, and I confess again that I have not been able to understand the course of their remarks. If representation is not to be based upon population what is it to be based upon? Is it to be based upon wealth? I should very much regret it if representation was so based, but I need hardly say that Philadelphia and Pittsburgh would find in it no cause for complaint, but it would be anti-democratic and wholly unrepubli- can. Is representation then to be based upon the question of territory? I cannot say that I would object to such a representation. If all the counties of the State are to have each an equal number of representatives, I

cannot say that I would object, but it would not be based upon any rule of reason I know of or any rule of government that I ever heard of. Therefore the question of representation comes back to the only other basis upon which it can be safely rested, and that is population.

As far back as the Constitution of 1776, of which some of our friends are so fond, and to which they have been accustomed to refer during the course of this debate, we find the very sentiment uttered and reiterated, and impressed upon the Convention then, and circulated throughout the land, that taxation without representation is tyrannical. For the purpose of calling the attention of the Convention to this sentiment, in turning to a volume of the Debates of the Convention of 1837-38, in a speech made in that body by the honored President of this Convention, reciting a section of the Constitution of 1776, we find that Convention starting with the proposition I am now advocating: "Representation in proportion to the number of taxable inhabitants is the only principle which can at all times secure liberty and make the voice of the majority of the people the law of the land." Nobody in this State ever hesitated to endorse this doctrine till now, and now it is to be determined that this sentiment of self-government shall not apply to people gathering together in large numbers in our cities. This proposition, I have stated, underlies the very existence of our form of government. The people have nowhere suffered from the adoption of this principle, and what is to be feared at this day from the inculcation of this doctrine in our State? I know it has been said, and will be said, perhaps, hereafter, that the rural districts of our State have much to fear from the concentration of large numbers of people in a given place. Why, sir, in the light of the advancing civilization of the hour there is, practically, no concentration of people or persons anywhere. The telegraph, the railroad facilities, and the various means of inter-communication have wiped out of existence everything like the organization of numbers of people akin to each other in habits, feelings or sentiments, and the interests of one section of the State of Pennsylvania have become identified with the interests of the people throughout the State. There is not a pulsation of the public heart the beat of which

is not felt by all the people. If the tide of prosperity or reverse flows through the metropolis of the State its influence is felt not only in the extreme south-western counties of Fayette and Greene, but upon the shores of Lake Erie and along the eastern slopes of our mountains, as much as it is on the shores of the Delaware. If disaster overwhelms the people of Allegheny, are not its effects immediately felt in the city of Philadelphia? We are legislating for the people; not for cities, not for counties, not for large numbers concentrated here and there, but for the entire people of the State; and I submit, therefore, that the only fair and just way to reach the desires of the people of the State is to regard the question of population the only basis upon which an equitable representation can be made.

But, sir, a gentleman in this Convention, (Mr. Woodward,) who has earned a distinguished position in the history of this Commonwealth for learning and statesmanship, rises in his place and states, upon this floor, that the city of Philadelphia ought not to be treated like the rest of the State, for among other reasons, the remarkable one that "we are non-producers." Non-producers! I would like to introduce that gentleman to some of his constituents, if he thinks they are non-producers. Let me tell that gentleman, if he has not already heard it, that in one ward of the city of Philadelphia—the Nineteenth—more ingrain carpets are made than all England produces.

There are more shoes manufactured and produced in this city than in the famous marts of Massachusetts. Let me tell him, if he does not know it, that one establishment in the city of Philadelphia makes and exports more saws than formerly were imported from, and that the fame of that one establishment goes throughout the land, as one of the best producers of the world. The gentleman has forgotten, for he knows too much of literature not to know, that the house of J. B. Lippincott & Co., of this city, is the largest book publishing and distributing house in the world. Non-producers a term to be addressed to us when our productions annually exceed four hundred millions of dollars, and exceeds, by fifty millions every year, the importations of the city of New York, and exceeds its imports by one hundred millions every

year? I could go over what must be familiar to him, and call his attention to the iron interests, the dry goods interests and the woolen interests, with its millions of money involved in them, but it is surely unnecessary. I trust we shall not again hear the term non-producers applied to the city of Philadelphia. My friend from the State at large (Mr. Woodward) also said, I think, "what would the city be without the country?" They have built it up. Let me ask him, in a better spirit, I trust, what would your rural districts be without the markets of the city? Of what earthly value to your farmers would be their grain, if there were no place to sell it, and no place to take it! Is not the capital and enterprise and energy of the city, every day, opening markets for the sale of your goods, thus adding to your wealth, and does not that all prove that there is nothing for the benefit of city that is not for the benefit of the country, and that their interests are entirely reciprocal. Surely it is so, and assuredly it is true, that every dollar we earn, and every sentiment we originate by which the love of popular government is diffused, and struggling humanity throughout the earth aided, adds not to our fame, but to the glory of our grand old Commonwealth.

I have heard, I regret to say, some denunciations of Philadelphia on this floor. We are not without fault, and some grievous ones, too, perhaps, as I take it for granted can be found in every city of eight hundred thousand or a million inhabitants; but I am here to say, in behalf of this city, that a better governed city, and one in which there is less crime, and I say it advisedly, does not exist upon the earth. As compared with London, or Paris, or New York, or Chicago, or even Boston, the city of Philadelphia shows a greater exemption from crime than any of them; while the assaults and batteries and petty crimes that will be found always in large cities, the terrible offences against society and the law are almost unknown.

Beyond, Mr. Chairman, the wealth of this city, for which I am not here to speak, I appeal in behalf of the rights of that large number of toiling men and women who compose a large part of my constituents, hard-working, earnest people, about whom our President spoke so well the other day. These people who oc-

cupy a greater part of the one hundred and thirty-seven thousand houses of this city, most of which they have earned and own, I am here to ask that those men—freemen—the equal of any people of the globe, shall have the freeman's right, that of representation according to their numbers. Is there any hardship in this, Mr. Chairman?

[Here the hammer fell.]

Mr. JOHN PRICE WETHERILL. Mr. Chairman: I move that the gentlemen have leave to proceed.

The motion was agreed to.

Mr. CASSIDY. Mr. Chairman: I am very much indebted to the committee for their courtesy, but I feel that I ought not, in view of how much has been said on this subject, and so much better than I can hope to say it, to consume more time. I know, Mr. Chairman, that the desire of this committee is to do all that is right to do, and I can therefore have no fear of the committee being governed by the jealousies and rivalries that one of my colleagues spoke of. Such sentiments belong to the past. We live in the age where man has been able to direct the lightning and has practically annihilated space. The iron bands of the Commonwealth bind together all parts of the State, and the telegraph makes us all neighbors.

No, Mr. Chairman, the city and country are rivals in nothing except in good works. The question for our consideration is far beyond personal or local rivalry. It is one of grave principle. We are asked to place in the fundamental law, under which we and those who come after us are to live, a principle that is anti-republican and anti-democratic. In the name, Mr. Chairman, of the toiling people of this city, in the name of the people who bear the burthen of at least one-fourth of the expenses of this Commonwealth, in the name of one-fifth of the population of the State, I protest against the adoption of any rule that seeks to establish the proposition that the residents of cities are not the equals of the residents of other portions of the State.

Mr. GIBSON. Mr. Chairman: I will not detain the committee long, but as this debate has taken a wide range, I feel it my duty to offer a reason or two for the vote that I shall give. I cannot say, sir, that I am in favor of the report of the committee, but I must say that I am in

favor of a restriction upon the representation in the Senate of the larger communities, and I have endeavored to condense what I have to say as much as possible, so as not to consume the time of the committee.

The reasons for a vote in favor of the proposed restriction, and the reasons against such restriction, have each claimed their support upon principles of government. The representatives from the city say that the restriction is unjust, because they do not have a fair representation according to population, and some of their supporters from the country say that a man in the city should be the equal of a man in the country. Principles of democracy have been appealed to, and facts of population and taxation have been invoked, to uphold a full representation according to population. But, sir, what is government, which in this country consists principally in the legislative power? It is a system of compromises. This apothegm was uttered by the great Edmund Burke, who has been referred to by one gentleman from Philadelphia. The whole of his observation is as follows: "All government, indeed every common benefit and enjoyment, every virtue and every prudent act, is founded on compromise and barter. We balance inconveniences. We give and take." The question, sir, of the rights of Philadelphia is therefore to be considered, not abstractly, but with reference to the rights and interests of other communities.

This question has been argued as though the only object of a representation in the Senate of the State was to take care of the interests of the particular community the member represents, while it is forgotten that the representative is a member of the legislative power of the State, elected to legislate for the whole State, and to pass general laws. If the system of local legislation, which, it is universally admitted, has been abused is to continue, then I can understand why the city of Philadelphia should be so jealous to have what they call a full representation in the Senate; but if that is to be restrained, the members elected are to legislate for the entire State. Philadelphia sends her representatives for that purpose. In one House she has full representation; but what is objected to,

on the part of the country, is an undue preponderance in the other House when there may come up questions of antagonism of interests.

Why two legislative bodies have been deemed necessary is no longer a question. It was thought by the founders of our national and State governments, for the preservation of constitutional liberty, that an upper House should be constituted in some select manner to be a check upon hasty legislation. The question before us then is, how shall this upper House be constituted. It is a subject of compromise, a subject of barter. There is no question of popular sovereignty connected with it, in my opinion; but only as to the proper means to provide for the best government and best legislative system to protect the interests of the entire State. If gentlemen would take that view of the subject, the view that all government is founded on compromise, and that it is the province of government, and the object of the legislative system to protect the interests of the entire State, I do not think there ought to be any hesitation in supporting limitations or restrictions of any kind which may be necessary, so that the interests of the entire Commonwealth may, through the legislative power, be protected, and proper laws be passed for the greatest good of the greatest number.

Mr. WOODWARD. Mr. Chairman: Am I at liberty to address the committee again?

Mr. NEWLIN. I move that the gentlemen have leave to speak twenty minutes upon this subject.

The motion was agreed to.

Mr. WOODWARD. Mr. Chairman: I do not propose to take up much of the time of the committee, but I am obliged to gentlemen for their disposition to listen to me. I rise to refer, sir, very briefly, to the course of debate that has taken place. When the report of the Committee on Legislature was brought in, I found in it, sir, a provision that has been in all our Constitutions from the beginning of our history, and I heard a disposition expressed and a motion made on this floor to strike it out. It seemed to me that the reasons were entirely inadequate, and I took the liberty of expressing my hope that this venerable provision of our Constitution

should be permitted to remain. Nobody had complained of it, either in Philadelphia or out of it. I saw no reason for expunging it from the Constitution. I restrained myself very carefully in the observations which I submitted to the committee at that time. I said, expressly, as any gentleman will find who refers either to the notes of the stenographer or to his own memory, that I would not discuss the grounds upon which great municipalities were generally restrained in representation in legislative bodies. I said I believed there were reasons lying down in the foundation of our social structure that would justify such limitations; but I would not go down to develop them. One gentleman might find one class of reasons; another another. It was so with those who have restrained this provision in our Constitution. Their reasons may have been various. I did not enter into any invidious comparison of the city with the country.

In 1837 when this subject was under discussion, Mr. Thaddeus Stevens, in a speech to which I have referred, and which I have now lying before me, did assail Philadelphia most unjustly, and was replied to triumphantly by the President of this Convention.

Mr. Stevens charged that Philadelphia had opposed the internal improvement of the State, and had withheld her votes whenever the people of Pennsylvania wanted canals and railroads, unless they led directly to this city. The record was against him, and it was shown so to be. I knew that that was not a proper line of remark, and I did not pursue it. I do not believe in it. I made no assault upon the city of Philadelphia. Not one word escaped me that could be construed into an assault upon the city. My observations were few, and they were submitted with great deference, as my observations always are.

Among the replies which these observations drew forth was one from the gentleman from Philadelphia, who sits behind me, (Mr. Biddle,) in which he discovered in his researches into the anatomy of the body politic, that Philadelphia was the heart of the Commonwealth, and that from this fountain all the currents of health and strength flowed through the arteries and veins down to the extremities. To that speech I replied in

another speech. In replying to that observation made by a Philadelphian, a gentleman whose sympathies are exceedingly intense in regard to everything, Philadelphian, I say that in replying to that argument—if indeed it could be called an argument—my eyes lighted upon the venerable figure of the founder of Pennsylvania, as it hangs over your head, sir, and I remembered that that founder did not plant the heart of Pennsylvania in the city of Philadelphia, and I told the Convention that when he tried his English colonists and found them malecontents on his hands, he went into the German States and formed German emigrant societies in the principal cities of the continent of Europe, and brought them into this State and placed them in the limestone valleys of Pennsylvania, and they formed the basis of the population of Pennsylvania as it is to-day.

In the course of my remarks on that point, in reply to the gentleman's anatomical argument, I did say—the observation escaped me somewhat as Mr. Wallace's observation escaped him when he addressed the Supreme Court as *gentlemen*, and apologized therefore by saying the word escaped him in the "heat of debate"—did say that the seven hundred thousand people who inhabited Philadelphia could not raise their bread. I might have said—what I did not—that every citizen of this great city is warmed with the coal that the industry of the country sends to us, and that every man, woman and child in the city is fed with the bread and milk and butter and beef which the country sends us. I say I might have enlarged on this, but, surrounded as I am, by so many gentlemen of intelligence, and knowing as I do that hints are all they need, I did not enlarge upon the subject. I did suggest that one passage in our history, in replying to my friend from Philadelphia, (Mr. Biddle,) not by way of assailing Philadelphia, but by way of saying that the people who manufacture in Philadelphia are an inferior race of beings to the people who raise bread in Lancaster and Berks and Chester counties; that was not my argument. But I did refer to this historical fact in order to vindicate the truth of history, in order to show these gentlemen that Pennsylvania was not originally a manufacturing State; that it was not

founded as such, and that it *was* founded as an agricultural State; and, sir, William Penn, if he could speak from that canvas, would tell us that he brought men here to cultivate the soil, and he brought the best people for that purpose that the world ever seen. They knew what good land was, and they knew how to use it. They spread themselves over Pennsylvania, and laid foundation of the all our prosperity, social, economical and political. Now, sir, for this, as I thought, very innocent reference to the history of my native State, I have been held up here for two days, a spectacle for men and angels. [Laughter.] I have been denounced in every phrase in which the politeness of Philadelphia could allow itself to express itself; and with that ineffable wit which that famous "farmer" from York county (Mr. J. S. Black) knows so well how to use, that famous farmer who will tell you that his wheat costs him twenty-one dollars a bushel and he gets two for it. [Laughter.] Why, Mr. Chairman, I do not wonder that these gentlemen—my friend here (Mr. Cuyler)—who serves a corporation that rules Philadelphia and Pennsylvania, and which, I believe, is going to rule the whole Union if not the whole world—and the other gentlemen. I do not wonder that these gentlemen improve the opportunity to make speeches that will tickle the ears of Philadelphians. I do not blame them. They say: "Here, sir, you are one of our colleagues, and yet you have ventured to allude to a historical fact, that does not tend to prove that Philadelphia is the heart of the republic."

Now on that text I do not blame these urbane gentlemen for discussing Philadelphia—the glory of Philadelphia and the greatness of its manufactures. It is their vocation. I honor them for it. But these volunteers from the country, [laughter,] this famous "farmer" from York, and my distinguished farmer friend from Centre county, (Mr. M'Allister,) and other gentlemen, rush in to the rescue of imperilled Philadelphia. I wish they were all in their seats to-day, sir; I should have something to say to my friend from York county (Mr. J. S. Black) if he were here, but he shot his Parthian arrow at me and fled, in which there was more of discretion than of courage. I will, therefore, let him escape as he has escaped;

but what business has any farmer in the interior to arraign me for having aspersed Philadelphia, and cause a newspaper of last evening to state that "he replied, triumphantly, to the aspersions of Mr. Woodward on Philadelphia." I deny, sir, that I ever aspersed Philadelphia; but, in justice to myself, I will say that, since I have lived in Philadelphia, and long before, there never has been a movement of this great community with which I have not strongly sympathized.

Recently we have a project of ocean steamers, we have a project of municipal reform, we have a project of Centennial celebration. I, sir, am booked for all these, and have been, and shall continue to be. If any man chooses to eulogize the manufacturing interests of Philadelphia, I listen to him with satisfaction and pleasure. I said nothing on that subject. My course of remarks did not lead me to discuss manufactures. I was discussing the fundamental principle of the prosperity of Pennsylvania, and I found it in the agriculture of Pennsylvania. The gentlemen, however, have paraded statistics, and have shown the uncounted millions of the manufactures of Philadelphia. All well. I rejoice in the prosperity of Philadelphia as much as any man. It is all right for these gentlemen to talk of the greatness of Philadelphia in this regard. What I say is, that it is no answer to the history to which I alluded. It is no answer to the proposition that the foundation of the prosperity of Pennsylvania is to be found in the hard working sons of toil who have inhabited our valleys and mountains, who have disembowled our iron ore and coal, and who have made Pennsylvania almost equal to Great Britain, because Pennsylvania abounds in those very resources of wealth which has made England what she is. These are the fountains and the sources of our prosperity. It is from this source the life blood of all our industries has flowed.

The manufactures of Philadelphia, developed, founded and built upon this foundation, is a subject upon which I have not uttered one word by way of aspersion, and that editor or that member who charges me with having done so charges me with that which is false. So, also, in regard to the assertion that I had said that the people of Philadelphia were an idle and thriftless race of people. I

appeal to every gentleman on this floor to bear me out when I say that no such word ever escaped my lips. No such thought was ever in my mind. I know the contrary. I know right well not only what the vast manufacturing operations of this city are, but I know also that in no city, in ancient or in modern times, has there been such a development of the christian charities of life as you will find in this city of Philadelphia; and I believe now, and say so with great pleasure, that there is no city to be found, either in our own country or in any other, where there is less vice or wrong, or outrage, than in this city of Philadelphia. And, sir, when all that is conceded and said, what then? Shall every man in Philadelphia be counted in the basis of representation in the Senate? Shall every man in this vast community be counted? Why, I suggested that while population was the general rule in regard to representation, like all other general rules, it had certain necessary practical exceptions; and this had been found to be one, that great compact communities should not be represented in the same proportion in which rural populations should, the reasons for which I forebore, I repeat, from stating, and left gentlemen to explore these reasons for themselves.

Conceding that Philadelphia deserves all the eulogies that have been pronounced upon it on this floor by her admirers, domestic and foreign, [laughter,] conceding all this, I nevertheless say that she is a vast aggregation of population. And I am not responsible for the thought that humanity, like manure, cannot bear packing. [Great laughter.] If you look at the weeds that grow around a heap of manure, you see how entirely worthless, though rank, they are. But you scatter that manure and you fertilize the whole land, and you produce fruits that are pleasant to the eye and good to the taste. It is not Philadelphia, but it is London, it is New York, it is Paris—it is any city in which you pack human beings. You bring there the refugees of all the penitentiaries. You bring all the fraudulent practices that the ingenuity of man has invented. You bring them there, not because it is the city of Philadelphia, or some other city, but because these great cities are the hiding places of just such rogues and cut-throats and

thieves. You find them in all cities. Philadelphia is not peculiar, or if she be peculiar, she is peculiar perhaps in the smallness of that kind of population: but she has that population in common with all the other cities of the earth. It is in consequence of the aggregation of individuals that you find such burglars, and thieves, and counterfeiters and gamblers—but I need not enumerate the whole catalogue of vicious men. You all know them as well as I do, and I say, sir, that their tendency to cities is as sure, by some law, as the law of gravitation.

Now, when my friend, the famous farmer from York, (Mr. J. S. Black,) insists that every man of these fellows shall be counted in the basis of representation, and other gentlemen enlarge upon the intelligence and culture and virtue of most of the population of Philadelphia, what do you say? Is there any force in that argument? You don't find that class of people in country and rural districts, simply because they cannot hide themselves there. Exchange the rural population and the urban population of virtuous people, and the case will be exactly the same. It is not a comparison, nor is it fair for gentlemen to institute a comparison between the culture and intelligence and the virtue of this city, and say that these things are untrue, when it is notorious that in fact they are true. No, sir! I will take the testimony of the Reform association of this city, as respectable a body of Philadelphians as can be found anywhere, and I say that if what they have told us and laid on our desks be half true, Philadelphia is, if not the most corrupt city in the world, at least within the same general rule which applies to cities at large all over the world.

[Here the hammer fell.]

Mr. CUYLER moved that the gentleman's time be extended ten minutes. This was unanimously agreed to, and Mr. Woodward resumed.

Mr. WOODWARD. Mr. Chairman: I do not intend to occupy much more of your time; but these foundations of government were laid by our fathers, and are being re-laid by us. And, sir, a large experience governed them and must govern us. It is not a question of right. Some gentlemen argue it as if every one of the lazaroni that are found in our cities has a right to be represented. Sir, the

right of representation is exactly according to the fundamental law that a community agree upon; and when that much often quoted and much misunderstood expression in the Declaration of Independence is cited, "that all just government is founded in the consent of the governed," that is what it means. That in the origin and foundation of our political institutions, a community consent and agree upon the principles that shall regulate the State. It is to such fundamental rules the "consent of the governed" is presumed. It does not mean that every law that is proposed shall have the consent of all the men, women and children in the State. That is not the meaning of that maxim. It does mean that in the laying of these foundations the people shall not be required to submit to some foreign power, or some despotism, or some rule of the sword; but shall be required simply to submit to a Constitution of their own formation and agreement.

Well, now. The people of Pennsylvania are here in this Convention, by us, their representatives, to re-lay these foundations; and I say that when we come to a question of whether municipalities, great municipalities, shall have a limitation imposed upon them, we come to a question of expediency. Is it expedient? Is it well for the Commonwealth that this limitation should be imposed? What says the voice of history? Why the history of our own State is that it is well. That it is well, and why should it not continue? Because Philadelphia is a great manufacturing town? Because Philadelphia is a town of great wealth and of great corporations? These are the kind of reasons that are rendered to us for expunging this limitation. I think, and I think as a Philadelphian, that the reason upon which this original provision rests is just as good to-day as it was in 1776, and again in 1790, and in 1838. It is a reason which in the nature of things must continue as long as great cities continue; and the tendency of the Anglo-Saxon race is to towns and cities, and therefore they will grow; they will continue to increase, and so far as they contribute to the prosperity of the country, I am glad to see them growing and increasing. I do not believe that there is any part of Pennsylvania which is growing at this moment as fast as the city of Philadelphia is growing. I believe it is in-

creasing in population faster than any other district of the State, and while that is true other great cities are springing up in Pennsylvania. Harrisburg has become an incorporated city. In Luzerne we have three incorporated cities, all of which are populous and growing rapidly. Pittsburg, at the other end of the State, is a great city and a prosperous city, and a city whose manufactures will compare advantageously with the manufactures of this city or any other great city.

In the face of these circumstances, then, is it wise for us to let go this restriction upon these large municipalities, or is it wise to retain it? Why, look at the Legislature. If Philadelphia grows as she is growing, and as she has grown for a few years, and these other cities expand and grow as they are likely to do, the legislation of Pennsylvania will be in the hands of these cities entirely and forever. A combination between Pittsburg and Philadelphia gives Pittsburg and Philadelphia the control of this Commonwealth, for all purposes. Well, let any of these eloquent defenders of Philadelphia, from aspersions which have not been made here, tell me whether that was according to the original plan of the founder of this State, that Pennsylvania should be ruled by a great city at each end of the Commonwealth. I tell you, sir, these cities will rule the Commonwealth; the corporations will rule the cities; and who will rule the corporations remains to be seen. We are having some experience in this city at this moment, in regard to corporate power applied to the business of a large body of respectable inhabitants. When this time comes that these cities are Pennsylvania, may God save the Commonwealth! We shall need His protecting arm then, if we never did before.

Now, sir, I believe this in my heart of hearts. It has been wrung out of me by this course of debate. Am I worthy of death or bonds for expressing such sentiments as these? Well, wait a few years, and you will see the necessity of bridling corporations, municipal as well as private. I am here, a delegate at large. I am representing the people of Pennsylvania as well as I know how, and I do not mean that this fundamental guarantee of the rights of the masses of the people of Pennsylvania shall be taken away with-

out my doing what I can to defend it. If gentlemen have got a majority in this Convention ready to do that great wrong, why then I am sorry this Convention ever came to Philadelphia. The sooner it gets away the better. for I know not what other popular guarantee it may take away if we remain here.

Mr. Chairman, I have said enough to indicate the ground upon which, I believe, this provision of our Constitution rests, and ought to be permitted to rest. I hope I have said enough to vindicate myself from the slanderous aspersions that have been made against me, who made no aspersions against Philadelphia. It is not to be tolerated, sir, that, in a Constitutional Convention, like this, when we are considering the fundamental law, we are not permitted to speak of cities, and of the peculiarities of cities, without having this whole covey of Philadelphia admirers light upon one as if he were a common thief. That is not to be tolerated. I am here, sir, representing the people of Pennsylvania, and I have a right to refer to what no gentleman will undertake to deny, that the cities of the world do contain an amount of population that is less worthy of representation than any other equal communities that are to be found in the world. Why, sir, the city of London, a vast city, that has overspread four counties, and whose greatness Philadelphia may equal, if she continues to grow, is not represented in the House of Commons according to her numbers, if I am correctly informed, whilst in the House of Lords the people of London are not represented at all; and I think my venerable friend from Erie (Mr. Walker) failed entirely to prove that the city of New York is. I examined what he showed me, in the Journal that we have here, and I find that the Senatorial districts of the State of New York are of as nearly equal population as possible; but I do not understand that the city of New York has a representation in either House of the Legislature equal to her numbers; and I do not believe, sir, that it will be found to be the case in any city in our country or in foreign countries. On the contrary, this exception has been recognized, in all time, as a sound and salutary exception; and those men who planted it in this Constitution did not make a mistake. They understood exactly what

they were doing. We shall make a mistake if we strike it out.

Mr. STANTON. Mr. Chairman: I move that the committee rise, report progress and ask leave to sit again.

The motion was not agreed to.

Mr. BIDDLE. Mr. Chairman:—

Mr. BARTHOLOMEW. Mr. Chairman: If the gentleman will give way, as it is about the hour of adjournment, I will move that the committee rise.

The CHAIRMAN. That motion has just been voted down, and the Chair will not entertain it at present.

Mr. BIDDLE. I will not occupy the attention of the committee very long. If it is the pleasure of the Convention to go out of the committee, it is my pleasure to yield at once.

["Go on!" "Go on!"]

Mr. BIDDLE. Mr. Chairman: There is one advantage, certainly, that has accrued to the House from the debate that has taken place upon this question. It has enabled us to review and re-consider some of our opinions on social and economic questions, and to get, perhaps, a more accurate understanding of some things which are supposed to be involved in this debate; and if, in what I am about to say, the distinguished gentleman, who has just taken his seat, supposes I have the least intention of referring unkindly to him, I beg to say, in advance, that no such thought is to be found in my heart, and therefore no such thought shall receive utterance in words. I have for him not only the highest but the most cordial admiration. But I must speak out that which is in me; and if I deal with arguments as I think they ought fairly to be dealt with, the man who utters them is not to be regarded in the discussion. I am dealing with the argument, and not with the individual, and I shall so endeavor to do throughout.

Mr. STRUTHERS. Mr. Chairman: I move the committee now rise, report progress and ask leave to sit again.

The motion was not agreed to.

Mr. BIDDLE. Now I undoubtedly understood the distinguished gentleman from Philadelphia (Mr. Woodward) to say the other day, that out of the vast population whose hearts pulsate in this community, there was not a single producer, that our industry was not productive but consumptive. I confess that I was

astounded to learn that the greatest manufacturing city, not only in the United States, but on this continent, soon I trust in her mighty progress to be the first manufacturing city in the world, contained within its body no productive industry. I was amazed to learn that the loaf of bread which is, metaphorically, and, perhaps, literally, the staff of life, was not as much produced by him who forms and fashions the plow, and by him who forms and fashions the garments with which the husbandman is clothed, as by him who drops the seed into the hole where it germinates and fructifies to the profit of man. I was amazed. I am still amazed to learn it. I had supposed that every one who raises his hand or exercises his brain in lessening the difficulties which surround humanity in their encounter with rugged nature, in utilizing the resources which nature pours out before us, was equally entitled to the name of producer, and I felt amazed that any gentleman with an experience so vast, with a knowledge so profound, as that possessed by my distinguished colleague, (Mr. Woodward,) if he will allow me to call him my colleague, should not view this matter as all, yea the most elementary writers upon this subject, regard it. I regard no man as a mere consumer, save him who deliberately wraps up his talent in a napkin and buries it within the body of the earth. We are all alike in this respect if we faithfully use the powers entrusted to us, and this attempt to antagonize and array one section of the Commonwealth against another, or the agricultural portion of the State against the cities, in my mind is out of place economically, is out of place politically, is out of place socially, is out of place in every other way, and should have no consideration at the hands of the members of this body. I challenge any gentleman here to point to a single vote, to a single expression of mine, in which I have for a moment narrowed within sectional limits my duty to Pennsylvania as a Pennsylvanian, to the Commonwealth in which I too—although it is attempted to keep me out—claim to feel a deep and abiding interest, and of which I claim to form a part.

I deny, Mr. Chairman, that there can ever be any such antagonism of interests or of sentiments, unless they are selfishly

arrayed, not to subserve any true purposes of State policy, but to advance the narrow views of the partisan who utters them.

Now permit me, very briefly, to run over some arguments which have been used here, why cities—I shall not use the word Philadelphia—why cities should not have their just share in Senatorial representation.

Mr. LANDIS. Mr. Chairman: It is very evident that the gentleman will not finish his argument; and I think this Convention will gladly hear all that he has to say.

Mr. BIDDLE. I will not be over ten minutes. I think the committee will save time by hearing me out.

Mr. LANDIS. Then I move that the gentleman's time be extended until he finish his argument.

["Go on!" "Go on!"]

Mr. BIDDLE. It is a total misapprehension to suppose that Philadelphia claims her rights to Senatorial representation by reason of her being a great manufacturing community, or by reason of her wealth, or by reason of the large amount which she pours into the common treasury, or by reason of any consideration peculiar to herself. Such a view exhibits a total misconception of the subject. We demand our right, just as you, and you, and you demand your right; we claim that, though we are a city, though we do contain one-fifth of the population of the State, a much higher ratio of its wealth, to be treated just as each one of you is, or as the body of constituents represented by each one of you. Starting from the point, as I did the other day, that you attempt to make no distinction in the manner of representation in the upper House from the lower House, that it is not intended to be a representation of class interests, but simply of population. I put the question then, as I put it now, why, with the fifth of the population of the State, are we not entitled to a fifth of the representation in the Senate, and instead of argument in answer to this demand, we are treated with a discussion in regard to the non-productiveness of the community and a lecture upon the sins of our constituents. Mr. Chairman, large cities need no commendation at my hands. Their history is the history of freedom, of successful resistance to oppression. He who has

the slightest information upon the subject knows that cities have always been the refuge of the oppressed against tyranny of the oppressor. He who has the slightest information upon the subject knows that it is from cities—I do not speak of this particular city—it is from cities that the first germs of liberal thought go, disseminating themselves broadcast throughout the land, alimanted and nourished by those who take them up, and fructifying to this advantage of all, even to the remotest extremities of the body politic.

Do gentlemen forget the early history of this Commonwealth? Was it not—just here—almost on the very spot where we are now assembled, that the great founder of this Commonwealth who has been referred to to-day, planted the nucleus of the civilization that he brought from the mother country, and which, from this point as from a centre, radiated in all directions throughout the province. I claim no credit for this. I should as well think of claiming credit for the operation of the ordinary laws of nature. I should as well think of claiming credit for the fact, that after the darkness of the night the sun rises again in the morning. It is the natural and inevitable progression of things political and things social. It never can be otherwise. But what I do protest against is, that after this course of things has continued to take place—when, as I repeat, you can do no good to the centre without its being vivifying to, and being felt advantageously at the extremities, an attempt to assault the centre and insulate it from the rest of the body politic, should be made and urged upon this floor as argument.

I am surprised at such a course of remark. Why, sir, one would suppose that because communities are gathered into cities they no longer continue to form part of the body politic; and the woe of woes is prophesied, when the cities of Pennsylvania shall, in time to come, attempt to use the influence which their population, their wealth and their intelligence may justly entitle them to exert throughout the length and breadth of the Commonwealth.

I feel that I am trespassing a little too long in speaking on this subject—

["Go on! Go on!!"]

But I desire, in conclusion, just to call the attention of the committee for a moment

to a single topic. You may call it a topic in which sentiment is somewhat involved—nevertheless it occurs to me, that it may be advantageously referred to here.

At this very moment, while we are now here deliberating, the city of Philadelphia, as it were, by the common claim of every human being in the length and breadth of this great country, is designated as the proper place to which, three years hence, every man who feels the spirit of patriotism beating in his heart, may come and renovate and re-kindle that sacred fire at the altar of his forefathers, in the simple, modest, venerable hall, where the existence of this country as a separate nation among the nations was first proclaimed. Is this a time—is this an occasion—when, as it were, by a common outburst of patriotic feeling, every American turns his eye and his heart hitherward, like the pilgrim to the "Sacred city," that we, Pennsylvanians, some of us dwelling in the very heart of this community, should turn with averted gaze and with outward step from this place, and attempt to bring it into discord with the rest of the State? I cannot but think if a little of that sentiment which seems just at this moment to be warming the whole great American heart is present at our deliberations, we shall hear no more of this supposed diversity of interests, this talk about city and country, and this allusion to the farmer and the citizen; and with one accord—with a common spirit of fairness, we will unite in saying that Philadelphia has just the same rights as the rest of the Common-

wealth. She asks no more. She will willingly be contented with no less. Treat her fairly—treat her justly—and you will find her always ready to more than respond to the claims that may be made upon her. Treat her with injustice, and while she will not retort—she will not strike back—she will, as every generous breast cannot fail to feel, be keenly alive to the sentiment, that deliberate injustice has been committed against her in this regard. While Philadelphia will not retaliate, she will continue to discuss—to try to change unsound opinion, to endeavor to have this unjust discrimination removed, until the whole community is brought into accord with what she thinks herself entitled to, and without receiving which she will never be content—*justice*.

The question being upon the amendment offered by Mr. Worrell, it was rejected.

Mr. LILLY moved that the committee do now rise, report progress, and ask leave to sit again, which was agreed to.

So the committee rose.

IN CONVENTION.

Mr. HOPKINS. Mr. President: The committee of the whole has had under consideration the report of the Committee on Legislature, and has instructed me, as its chairman, to report progress and ask leave to sit again.

Leave was granted.

The Convention then, at two o'clock and eight minutes, adjourned to to-morrow morning at ten o'clock.

FIFTY-FOURTH DAY.

FRIDAY, *February 28, 1873.*

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith, in the Chair.

The Journal of yesterday was then read and approved.

PROHIBITION.

Mr. EWING presented two petitions from the citizens of Perryville, Allegheny county, praying for a prohibitory clause in the Constitution against the sale of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. JOHN M. BAILEY presented a petition from the citizens of Huntingdon county, praying for the same provision in the Constitution, which was referred to the Committee on Legislation.

SESSIONS OF THE CONVENTION.

Mr. LAMBERTON offered the following resolution, which was twice read:

Resolved, That on and after Monday next, the sessions of the Convention shall be held from ten o'clock A. M. until three o'clock P. M.

The yeas and nays were required by Mr. D. N. White and Mr. Temple, and were as follow, viz:

YEAS.

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Baker, Black, Chas. A., Brodhead, Carter, Corbett, Craig, Darlington, Ewing, Gilpin, Guthrie, Hay, Hemphill, Kaine, Knight, Lamberton, Landis, Lear, Lilly, Long, M'Clellan, Mann, Mantor, Minor, Patterson, D. W., Porter, Pughe, Purman, Purviance, John N., Reed, Andrew, Ross, Runk, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Struthers, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price and Meredith, *President*—47.

NAYS.

Messrs. Achenbach, Bailey, (Huntingdon,) Campbell, Clark, Cochran, Corson, DeFrance, Dodd, Edwards, Fulton, Gibson, Green, Hazzard, Howard, Lawrence,

MacConnell, M'Camant, M'Culloch, M'Murray, Metzger, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purviance, Sam'l A., Rooke, Walker, Wherry, White, David N., White, J. W. F. and Wright—32.

So the motion was agreed to.

ABSENT OR NOT VOTING.—Messrs. Adicks, Ainey, Armstrong, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Eiddle, Black, J. S., Bowman, Boyd, Broomall, Brown, Buckalew, Carey, Cassidy, Church, Collins, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Dunning, Elliott, Ellis, Fell, Finney, Funck, Gowen, Hall, Hanna, Harvey, Heverin, Hopkins, Horton, Hunsicker, Littleton, M'Allister, MacVeagh, Mott, Parsons, Patton, Read, John R., Reynolds, James L., Reynolds, S. H., Russell, Smith, H. G., Turrell, White, Harry, Woodward and Worrell—66.

LEAVE OF ABSENCE.

Mr. WHERRY asked and obtained leave of absence for Mr. Lamberton for a few days from to-morrow.

Mr. GUTHRIE asked and obtained leave of absence for a few days for Mr. Curry.

Mr. LAWRENCE asked and obtained leave of absence for Mr. Hopkins for a few days.

Mr. D. N. WHITE asked and obtained leave of absence for himself for a few days from to-morrow.

AUDITOR GENERAL'S REPORT.

Mr. LAMBERTON offered the following resolution, which was twice read and agreed to:

Resolved, That the Auditor General be requested to furnish, as soon as printed, for the use of the Convention, copies of his report for the fiscal year ending November 30, 1872.

PROHIBITION.

Mr. CORSON presented a petition from citizens of Montgomery county, praying for the insertion into the Constitution of a clause prohibiting the manufacture and sale of intoxicating beverages, which was referred to the Committee on Legislation.

LEAVE OF ABSENCE.

Mr. ALRICKS asked and obtained leave of absence for himself for a few days.

Mr. LILLY asked and obtained leave of absence for Mr. Gilpin for a few days from to-morrow.

Mr. ANDREW REED asked and obtained leave of absence for Mr. Wherry for a few days from to-day.

Mr. JOSEPH BAILY asked and obtained leave of absence for Mr. Stewart for a few days from to-morrow.

REPORT OF THE COMMITTEE ON EDUCATION.

Mr. DARLINGTON. Mr. President: I am instructed by the Committee on Education to present the following report, and, in doing so, I may say that it is as nearly harmonious as nine gentlemen can be expected to make it, although none of us pledge ourselves to absolute perfection.

The CLERK read:

SECTION 1. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth, above the age of six years, may be educated.

SECTION 2. They shall appropriate at least one million dollars for each year, to be annually distributed among the several school districts, according to law, and applied to public school purposes only.

SECTION 3. No money raised in any way whatever, for the support of public schools shall ever be appropriated to or used by any religious sect for the maintenance or support of schools exclusively under its own control.

SECTION 4. A Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

SECTION 5. Neither the Legislature, nor any county, city, borough, school district, or other public or municipal corporation, shall ever make any appropriation, grant or donation of land, money or property of any kind to any church or religious society, or to any university, college, seminary, academy, or school, or any literary, scientific or charitable institution or society, controlled or managed by any church or sectarian denominations.

SECTION 6. The arts and sciences may be encouraged and promoted in colleges,

and other institutions of learning, under the exclusive control of the State.

SECTION 7. The Legislature may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children.

SECTION 8. They may, by law, require that every child, of sufficient mental and physical ability, shall attend the public schools, unless educated by other means.

The PRESIDENT. The report will lie upon the table, and be printed for the use of the Convention.

THE LEGISLATURE.

The Convention then resolved itself into a committee of the whole, Mr. Chas. A. Black in the chair, for the purpose of further considering the article reported from the Committee on the Legislature.

The CHAIRMAN. When the committee last rose, the question under consideration was the amendment of the gentleman from Chester, (Mr. Darlingting,) to the twentieth section. The amendment will be read.

The CLERK then read the amendment as follows:

SECTION 20. The General Assembly shall apportion the State for the election of Senators and Representatives, according to population, as ascertained by the last preceding census, every ten years, commencing at the first session after the adoption of this Constitution. Senators and Representatives shall be chosen by single districts, composed of contiguous, and as nearly as practicable, compact territory, of equal population. When a city or county shall be entitled to two or more Senators, it shall be divided by ward or township lines. No city or county shall be entitled to more than six Senators. Each county shall be entitled to at least one Representative. But no county hereafter erected shall be entitled to a separate representation until sufficient population shall be contained within it to entitle it to one representative, agreeably to the ratio which shall then be established. When any city or county shall be entitled to two or more Representatives, they shall be divided by ward or township lines.

The number of Representatives shall, at the several periods of their apportionment, be fixed by the Legislature, and shall never be less than one hundred and fifty, nor greater than three hundred. The number of Senators shall at the same times be fixed by the Legislature, and shall never be less than one-fourth, nor

greater than one-third, of the number of Representatives.

Mr. NEWLIN. Mr. Chairman: I move to re-consider the vote taken yesterday upon the amendment offered by the gentleman from Philadelphia, (Mr. Worrell,) striking out the restriction in the amendment of the gentleman from Chester (Mr. Darlington.)

Mr. W. H. SMITH. Mr. Chairman: I second the motion. I voted in the minority. I was not here on Monday and did not hear the various amendments presented; and consequently did not fully understand the question.

The question being on the motion of Mr. Newlin, a division was called and resulted: In the affirmative, thirty-eight; in the negative, thirty-five.

So the motion was agreed to.

The CHAIRMAN. The amendment of the gentleman from Philadelphia (Mr. Worrell) will now be read.

The CLERK then read the amendment as follows:

Strike out the words, "no city or county shall be entitled to more than six Senators."

Mr. CRAIG. Mr. Chairman: There was a time when the citation of the great names of the past added great weight to an argument. But that time has passed away forever. If this age has any one feature which conspicuously distinguishes it from every other, it is its refusal to regard the utterances of great men as of binding authority. Every man stands now on his own pedestal of right or reason. His utterances must bear the test of re-examination, by the growing light of progressing events. The iconoclasm of the age invokes the spirit of truth in the words of the sacred poet, thus:

"The dearest idol I have known,
Whate'er that idol be,
Help me to tear it from its throne,
And worship only Thee."

It spares neither age nor sex, politics nor religion. It spares not John C. Calhoun. He was a great man, undoubtedly, but he was a man of one idea only, and that one idea was a Southern Confederacy. He was for a protective tariff, in 1816, but when he saw its effect, in building up the material wealth, and increasing the population of New England, much more rapidly than that of the cotton-growing and slave-breeding States, he became the champion of free trade. He poisoned the minds of the young men of the southern States with the political heresy of paramount

State allegiance, which, after his death, led them into the attempt, many of them against their better judgment, to separate from the northern States, and erect a separate government.

His views on the distribution of representation concentrate on the same point. He exhausted his great intellect in endeavoring to solve the problem of secession. Of all statesmen and political theorists that America has produced, he was the most dangerous. That he should find disciples and followers to-day, in this Convention, who have witnessed the disastrous results of his political teachings, is an unsolvable paradox.

If the limitation sought to be imposed on cities be a just and justifiable one, the same method of reasoning will compel us to apply it as between counties. We must put the severest bridle on Luzerne. We must handicap Schuylkill. We must shear the locks of Lancaster and Berks. But when so fine a mathematical point is put on the theory, all men exclaim against it. Placed in that strong light, its injustice is visible to all.

It is always safe to do right. Robt Philadelphia of a large share of her representation, and, smarting under a sense of wrong, she makes all things even, at last, by scrambling for and obtaining power and advantage in a hundred illegitimate ways.

Treat her honestly and justly, and she cannot afford to bear the blush of shame for an oppression of the remainder of the State. Treat her with justice, and she will respond, as she ever has done, in every cause ennobling to human nature. No man, however good, is wholly good. No man, however bad, is wholly bad. The same things are as true of communities as of individuals. Treat a man like a dog, and he will be *like* a dog. Treat him like a *man*, and he will be a man. The same things are as true of communities as of individual men.

But it is said that cities, by reason of their concentration, wield more power than the sparsely settled districts. That is true. But it is because it is the inexorable law of God; and whoever will not conform thereto only treasures up to himself wrath against the day of wrath; he fills his cup with many sorrows, and drinks it to the bitter dregs. The very statement of the complaint is its own best answer.

London is England; and England is proud of her. Paris is France; but France

is proud of Paris. Vienna is Austria; but Austria is proud of Vienna. Berlin is Prussia; but Prussia reverences Berlin. They may have their domestic jars; but let an outside enemy touch with hostile foot the most barren spot, or lay hostile hand on the humblest peasant of any of these realms, and he shall have grievous cause to complain *again* that London is England, Paris is France, Vienna is Austria and Berlin is Prussia. They may have the power to oppress; but they have, also, a proportionate power to resent and protect. So with the great cities of our own country. The equality of all men before the law is but another name for justice to all men. This equality of justice is founded in that faith which all men ought to have in one another; which communities must have in one another; that to do justice will produce a return in kind. If the city shall be provoked into injustice toward the country, it will be by the prior injustice of the country to the city. As sure as injustice provokes and breeds injustice, so surely will justice provoke and breed justice. Like begets like, morally as well as physically. But it is said the people have made no complaint against the old Constitution on this subject of apportionment, and, therefore, we should not alter its provisions.

Unfortunately, we are not without a witness on this subject—the last apportionment for Senators and Representatives.

The ratio for a Senator under that law was about 106,700 population. I use *population*, because its results are most astounding. Fifteen of the Senatorial districts have less than the ratio of population for the number of Senators apportioned to them. They elect nineteen Senators. The districts are, by numbers, the Sixth, Eleventh, Twelfth, Thirteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-seventh, Twenty-ninth and Thirtieth. They have a population of 1,463,185, electing nineteen Senators, while the remaining population of 2,058,606, elect only fourteen Senators. Leaving off the Thirteenth district, the fraud is still more palpable. The fourteen districts, with 1,275,632 population, being but a trifle over one-third of the population of the State, elect seventeen Senators, and the remaining two-thirds of the population (2,246,159) elect the remaining sixteen Senators.

Thus a majority of the Senate, a branch

of the legislative department of the government, without which no law can be enacted, is elected by about one-third of the population of the State, and yet we suppose this to be a government in which the majority rules! Such an infamous gerrymander, whereby nearly one-third of the population of the State are virtually disfranchised, ought to be impossible, under any Constitution worthy of the name of Constitution. Surely some amendment is necessary here, but if we depart from the inexorable republican law of equal representation we may tinker, and tinker, and mend, and patch, and all our shallow statesmanship will end in disappointment and trouble. We shall be compelled to return at last to the democratic rule of "equal and exact justice to all men."

Mr. TEMPLE. Mr. Chairman: I very much regret troubling the committee with any remarks at this time, after so long and interesting debate upon this important question.

And I desire to state in the outset that I claim for Philadelphia equal and exact justice in this discussion, as I shall in every other question which may hereafter arise. I do not, however, claim for her any special privileges or legislation. I do not believe that we should be actuated by any feelings of jealousy towards the rural districts of the State. I cannot believe that the remarks of some of the delegates from the city will be conducive to her interests. Why should there be a disposition upon the part of some gentlemen upon this floor to cast aspersions upon the Commonwealth? Do they forget that Philadelphia is a part of the State and that the interest of one is the interest of the other?

Are they unmindful of the fact that the greatness of Philadelphia—her immense manufacturing interest in particular—are dependent upon the vast resources of the rural districts of this grand old Commonwealth? Sir, no amount of argument can convince me that it is any part of the duty of delegates from the city to belittle the agricultural and mining products of the State. The people of this great metropolis are abundantly able to take care of themselves. They all recognize and appreciate that comity of interest which is necessary to the growth and greatness of both city and State. What would Philadelphia be without the great coal mines of Schuylkill, Lehigh, Carbon and Luzerne, without the oil regions of Venango and Tioga, without the hundreds of rol-

ling mills found in many of the counties of the interior, and the immense chains of railroads connecting her with every section of the State? Why, sir, withdraw all the products of the interior from us, cut off all the arteries which give us life, and substance and power, and you at once dwarf this great metropolis and make her a second class city. Mr. Chairman, I yield to none, here or elsewhere, in devotion to Philadelphia and all her interests. I am proud to be one of her citizens, and esteem it as a great honor to represent, in part, one of her districts in this body, but I also feel that I am a citizen of Pennsylvania.

Mr. Chairman, I have spoken thus for the purpose of showing to those gentlemen from the rural districts that the people of Philadelphia are not actuated by any feelings of jealousy towards the country, but, upon the contrary, we are willing to unite with them in so amending the Constitution that it will be adapted to the wants and interests of the people of the entire Commonwealth. Mr. Chairman, I am opposed to the amendment of the gentleman from Philadelphia (Mr. Worrell.) I do not believe that the number of Senators in our city should be limited for all time. Who can tell but that Philadelphia will, at a period not far distant, be entitled to more than six Senators. Suppose the number of Senators should be increased in other portions of the State, believing, therefore, it is the evident intention of the Convention to so apportion the State as to give to each district a limited number of Senators. I am in favor of dividing the whole State into districts, say ten, without regard to any of the large cities, and give to each district the number of Senators hereafter determined upon. I endorse every word of the speech of the distinguished President of this Convention (Mr. Meredith.) I believe that the sooner we get back to the old plan of dividing our State into communities the better it will be for the people. Why, sir, the eminent delegate from Columbia (Mr. Buckalew) openly admitted upon the floor yesterday, that the amendment of eighteen hundred and fifty-seven, of which he was the author, was a great and fatal error. He then spoke of the vicious effects it had had upon our legislation, and I agree with him that the question of apportionment is one of great difficulty; it is one about which men of learning and ability have differed. It is an easy thing to settle, so

far as relates to the House of Representatives, a body which is intended to represent the people directly.

It has been argued, by some of the most distinguished men of this and other countries, that the Senate is not, properly speaking, a legislative body, in the same sense that the House of Representatives is. They argue that it was established for the purpose of exercising, as it were, a supervisory influence over the other House—to act as a check upon its proceedings when the public good required.

Lord Brougham declared that “the House of Lords was the grand court by which the deliberations of the House of Commons were tried and judged.” I do not pretend to say that there is that similarity between the House of Lords of England and the Senate of our State as would warrant us in regarding it as a grand court of errors and review, but I contend that the Senate does not stand in the same relation to the people that the House of Representatives does—neither are their duties identical. Who doubts but that the Senate is intended as a check upon the actions of the other House? The Senators are differently chosen, and serve a different constituency, and for the purposes of legislation the voice of a Senator is three times as great as that of a Representative.

Mr. Chairman, I listened with a great deal of interest to the remarks of the gentleman from Pittsburg, (Mr. Ewing,) and I confess, I was somewhat undecided upon this question until I heard that gentleman's views, but I believe, in point of theory, he was right, and, in my humble opinion, he made one of the ablest arguments which has been delivered upon this question, and I do not say this in disparagement of other gentlemen who have spoken upon this subject.

I say that we cannot apportion the State into Senatorial districts with the same degree of preciseness and correctness that we can the House of Representatives. The apportionment must, of necessity, be different, and further from equality.

The idea which I suggest is demonstrated even in our city government—each ward has a common councilman for a certain number of inhabitants, or voters, thereby giving to some wards a much larger representation than others; while the select council is composed of one member from each ward, without regard to population. So we see there is a real difference in the formation and basis of representation, carried through all legis-

lative bodies; and the distinction is as great in the Legislature of the Commonwealth, as in any other body.

I shall not refer to the case of the Senate of the United States, which has been so often referred to in the course of this debate. Gentlemen have reminded us of the fact that each State has an equal representation in the Senate of the United States, without regard to either population or territory. I do not think such an argument is applicable to the question now under discussion. Each State is regarded in the light of an independent sovereignty; and entered into the compact forming the United States government, with the distinct understanding that each and every State should be entitled to an equal representation in that branch of the government. No such argument as this can be applied to the various counties of the Commonwealth; and I was surprised that any such a comparison should be made.

[Here the hammer fell.]

Mr. EWING. Mr. Chairman: I move that the gentleman's time be extended ten minutes.

The motion was agreed to.

Mr. TEMPLE. Mr. Chairman: I thank the committee, but I do not desire to occupy any great length of time. I see that my distinguished colleague (Mr. Littleton) does not seem disposed to listen to my remarks. I desire to say to him that neither he nor any other gentleman on this floor will take more pride in incorporating into the organic law of this State a provision which will protect the citizens of the city of Philadelphia, than myself; but I am not here—and I say it boldly—to take part in any measure that savors of jealousy. True, I am here representing, in part, a district of the city of Philadelphia, but I do not forget, sir, that my duty requires me to act in behalf of all the people of this whole Commonwealth, and not in the interest of any particular locality.

If my friend, Mr. Littleton, thinks it to be his duty to advocate such measures as are adapted to the particular district which he immediately represents, to the disparagement and disadvantage of the rest of the State, I suppose he will do so. I, for one, do not forget that I am a Pennsylvanian, and while I will be vigilant in behalf of our own city, I will do no act, knowingly, which will excite the prejudices and passions of the delegates from the other part of the State. I do not believe that the

action of certain gentlemen in this Convention, who have felt it to be a part of their duty to slur at the importance of the rural districts, is productive of any good. Already we see the effect of such a course. Some gentlemen who were disposed at the beginning of this debate to act with us, have arrayed themselves upon the other side, and say that Philadelphia wants everything. My object has been to harmonize all the interests of the Commonwealth if possible.

Mr. Chairman, I sincerely and honestly believe that the most practical and just basis upon which this vexed question can be settled is the one I have already suggested or something similar to it.

Why, it has been argued that if Philadelphia, Pittsburg, Scranton and other large cities were represented in the Senate according to population, they would soon control the legislation of the State. This seems to be the great fear of gentlemen representing the farming and mineral districts. They declare that they will never agree to a proposition which is likely to result in danger to them and their constituents. From the vote taken yesterday upon this question it is evident that there is a disposition upon the part of these gentlemen to limit our representation in the Senate. Therefore I suggest the plan spoken of a moment ago, so that we may all agree upon an apportionment which will secure to every section of the State substantial justice. I believe that the number of Senators ought to have been first settled, and then we could have discussed this subject more understandingly. I have heard a number of gentlemen upon the floor declare that they were against the whole of this section, as well as all the amendments, and that it was thought that another report would be agreed upon by the Committee on Suffrage and Election, favoring minority representation. If such a proposition is to be made I can see no good to be derived from this discussion, because that would involve an entirely different method of districting the State.

Mr. Chairman, I consider this one of the most important questions to be discussed by this body. The alarm which has grown up in the interior of the State, in regard to what our friends seem to think an encroachment upon their rights, is without the least foundation in fact. We ask nothing of them but an equal representation. We ask nothing but what we are willing to give. We beg of you, gen-

tlomen, to give Philadelphia, which belongs equally to you, and of which you should be proud, the same voice in the Legislature as you claim for the rural districts. Is there a delegate upon this floor who would underestimate the magnitude and importance of the old Quaker city? Is she not the great custom seat of all your products? Is she not one of the component parts of the very first States in the Union? New York, with all her importations, relies to a large extent upon the factories of Philadelphia. Will you then attempt to cripple her; will you curtail her strength and power in the halls of legislation, or will you join hands with us and permit your great metropolis to continue to increase in population; to grow in wealth? In one sense of the word we are consumers, and so are you. You can no more live without us than we can live without you. What special privileges do you require?

Mr. Chairman, the different delegates upon this floor have, with a singular unanimity, opposed everything like special legislation; and they cannot now, without being inconsistent, support a proposition which makes such an invidious distinction against the large cities of the Commonwealth. I contend that in apportioning there will necessarily be some districts larger than others, but it should be our duty to arrive at a conclusion which will do as near substantial justice as possible. I will vote for a proposition which will apportion this State in such a manner as will give to Philadelphia, at all times, all that she is now or hereafter will be entitled to.

Mr. SHARPE. Mr. Chairman: I desire to present at this time, with the indulgence of the committee, all the views that I shall, at any time, present upon this subject, and after I shall have said what I have to say, I shall hereafter content myself with voting upon the different propositions that will be presented to this Convention. It would be difficult to exaggerate the importance of the subject that is now before the committee. How one of the three co-ordinate branches of the government shall be made up, of what number it shall consist, how its membership shall be distributed throughout the State, is certainly a theme which well merits the calmest deliberation of every thoughtful mind. Within the limits of the Constitution the Legislature is absolute, and unless restrained by its own sense of expediency and justice, it may become des-

potic. The sweep of its power is co-extensive with the boundaries of our State. It can build up and cast down the material prosperity of the citizen. It can harmonize or render discordant all the domestic relations. It can invigorate or dwarf the growth among the people of art, science, wealth and education. If true to its high office, it can make this Commonwealth a prodigy of grandeur far outrivaling the vision of any Utopian dreamer. But if false, it can strangle the arteries which give health and vigor to the body politic until it will become paralyzed with the decrepitude of premature decay. The law-making power thus having centered in it the issues of grandeur and decay, of weal and woe, of life and death for the Commonwealth, will ever be held in popular estimation the supreme power of the State. Therefore to strengthen this branch of the government where it is likely to be too weak, and to weaken it where it is likely to be too strong, to make it, as near as may be, the true exponent of the interests of the people, to purify it and to perfect it, is the highest performance of statesmanship. Such is the duty that now presses upon us, and if in its discharge we suffer the mists of prejudice or the vapors of passion to cloud our judgment or pervert our consciousness of right, we will be unworthy of the occasion and the subject, and recreant to the high trust that devolves upon us.

Standing upon the threshold of this discussion, there are two questions for our determination. The first is, "of what number shall the Senate and House of Representatives consist?" and, secondly, "how shall that number be distributed throughout the State?" The able and intelligent Committee on Legislature has brought in a report in favor of adhering to the present numerical membership of the Legislature, and its eloquent chairman has laid before us the reasons which impelled him and his associates to the conclusion that a departure from the present practice of the government in this regard would be a change, but not an improvement. He has zealously insisted, on the contrary, that an increased membership would invigorate into ranker growth all the vices of the present system, because of the diminished individual responsibility which increased numbers would afford.

Now, sir, what are the vices of the present system of the Constitution of the law-making power of this State? The first

one lies upon the surface, and any man can read it or see it. It is the facility with which so small a body can be influenced by improper considerations. We have tried the experiment of a Legislature imposed of a Senate of thirty-three members, and a House of Representatives of one hundred members, and if we are to believe all that we have heard, that experiment has proved a signal failure. It has been said more than once in my hearing, by gentlemen on this floor, that the halls of both the State and the National Legislatures, are market places, where legislation is bought and sold; that money, offices, emoluments and stocks are the father confessors that purge the consciences of our public men; that the logic of truth is impotent and powerless before the logic of mammon; that our legislators gamble away the true interests of the people with a stoicism and indifference unsurpassed in all the annals of the past. I do not assert, sir, that this is true. But if it be true, if this great scandal rests upon our State and nation, then, sir, the Herculean task of cleansing the Augean stables may no longer be delayed with safety. There is a deep-seated conviction growing in the public mind that we must have reformation and purification in our governmental affairs, especially in the law-making power, if we would save our national character from disgrace, and our national institutions from decay. The gravest question for the solution of the statesman is, "how shall this great work be best accomplished?" Can we retain the present membership of the Legislature, and make it an incorruptible body? If we can, I am not sure that I would be so anxious about an increase in its number. But if we cannot, then I will vote for a large increase. To the question of the probability of this purification and reformation under the existing condition of our social affairs, I desire to devote a few remarks.

[Here the hammer fell.]

Mr. LANDIS moved that the time of the gentleman from Franklin be extended twenty minutes, which was unanimously agreed to.

Mr. SHARPE. Mr. Chairman and gentlemen: I thank you for the courtesy. If, sir, this can be done, as I have just stated, I am in favor of it. Now there is one way by which this consummation may be accomplished, and that is by an unflinching determination on the part of the people to entrust no man with legislative power who can be approached by im-

proper influences. To make this determination of any practical value, it must be backed up by decisive action. The people must be aroused to a sense of their duty, and alarmed by a sense of public danger. But have we any reason to hope that the people are going to waken up and act? I see no premonitions of such a revolution.

The excessive hungering after wealth is the peculiar madness that rules the present hour. Its attending evil spirit is an intense thirst for excitement and enjoyment. The man of business, and the man of pleasure, each intent upon his own pursuit, are both alike forgetful of the welfare of the State.

Now and then, it is true, the hurry of their eager foot-steps is arrested, for a moment, by some stupendous wrong—by some glaring betrayal of public trust—and they stop long enough to form a good resolution in behalf of the public weal, but to-morrow the wave of Lethe rolls over them, and they forget it before they have had a chance to execute it. But this is not the worst feature of the present aspect of public affairs. Whilst the best and most useful citizens have thus been turning their faces so exclusively to their private interests, and their backs towards the public interests, a dangerous enemy has stolen into the citadels of power. This enemy is the professional politician. He is the janissary of parties, whose sword is drawn for the cause that pays best, and who fights under the standard where victory is most likely to perch.

What stalwart arm shall strike off the shackles with which these men have bound us? What pillar of fire will appear in the political firmament to guide us out of this Egyptian bondage? Who will appear as a tribune for the people? Until the gross materialism of this age shall have become blended with greater humanitarianism; until the man of pleasure and the man of business come to realize the fact that the State is entitled to a part of their allegiance; until the honest masses of the people rise in their majesty and power, and drive these pirates out of the ship of State, and seizing the helm, direct her away from the rocks upon which she is now running, no effectual purification and reformation can reasonably be expected.

We will, therefore have to look in a different direction for relief. The project proposed, may, indeed, prove as abortive and deceptive as the system which our

past experience has condemned. That a largely increased membership in the Senate and House may not accomplish all that its sanguine advocates hope from it is quite probable.

But I propose to try the experiment for several reasons. If the hypothesis be true, which has been assumed very generally during the progress of this discussion, that Legislatures can be bribed, and legislation can be bought, then, I think, the argument in favor of a large legislative body is capable of a mathematical demonstration. If legislative jobbery cannot be entirely prevented, then, manifestly, the next best thing is to make it so expensive that it will become unprofitable. I hold it to be an axiomatic truth, that the price of legislation will go up—other things being equal—in the same ratio in which the number of dividends increases. It is simply a question of figures to say (which any one can understand) that if a majority of a Senate containing thirty-three members is venal, it will cost less than a majority of a Senate containing one hundred members.

But I leave this consideration of the advantages of a large legislative body, at this point, without further elaboration, because the subject is an exceedingly unpalatable one, and will proceed to allude, briefly, to some other reasons that seem to favor the experiment.

It cannot have escaped the observation of any intelligent member of this Convention that small bodies of men, assembled together for deliberative purposes, are peculiarly susceptible to the influence of improper combinations and rings. The facilities with which such confederacies can be formed, and the power which they do wield in such bodies, are notorious, and within the experience of all of us. These combinations are not necessarily corrupt, but may be created for the purpose of procuring special legislation to answer special localities, or general legislation to further some individual aim. But multiply the numbers of your legislators, and the conflicts of interest, the variety of temper, the disparity of intellect, the bickerings and jealousies, and the want of homogeneousness will make cabals and rings practically an impossibility.

But, sir, there is still another reason why the membership of the Legislature should be enlarged. Under the present infamous system of *gerrymandering*, which finds its chief vitality in the power of the Legislature, to link counties together in

the formation of legislative and Senatorial districts, the smaller counties have generally been practically without any representation at all at Harrisburg. Usually they are united in unhallowed political wedlock with some large and populous county, and if, by some lucky chance, they get a candidate on the ticket, the opposing candidates in the other county, by a combination among their friends and supporters, are almost uniformly elected.

Now, sir, the Constitution of 1790 guaranteed to every county of the Commonwealth, then existing, at least one member in the lower House. This was a just and wise shield for the protection of the populations of small counties. I trust this salutary provision, which has been lost sight of in our present Constitution, will be by us again restored to the organic law. No scheme, therefore, that does not contain a provision giving each county in our State at least one member in the lower House will meet with my approval. Let this be the foundation stone in defining the membership of the House of Representatives, and upon it erect such a superstructure as will give in that body to every city and county such further representation as their population will justify.

These reflections now bring me, finally, to the question, what shall be the basis of representation in the Senate? This subject is beset with much graver difficulties. We all admit that, theoretically, at least, the fundamental idea of all governments, whose law-making power is vested in two Houses, is that the lower House is the people's House, where they are represented according to their numbers. We assert that it is equally true that neither in theory nor in practice has any constitutional government recognized and adopted the principle that the upper House is also solely the representative of populations, and that its membership ought to be based upon populations alone.

He who asserts the contrary has not only the burden of proof upon him; but also the weight of the argument to show that such a basis of representation would be safe. The history of the formation of our national government, and all the analogies it furnishes, are against such an assumption.

The Senate of the United States does not represent populations, but States. In that august body the smallest has as much political importance and influence as the largest. This was one of the compromises of the Constitution, without which the

formation of the Federal Union would have been impossible.

Now, sir, the idea incorporated into the Constitution of the United States that the Senate is the representative of territorial districts and political communities, underlies all that is valuable in such a body. This principle I would have introduced, in some proper shape, into the organic law of this great Commonwealth. It is urged that, hitherto, such a basis of representation has been repudiated in our State Constitutions, and that Senatorial representation has been distinctly based upon population. A vicious practice, if, in fact, it does exist, ought never to be permitted to destroy a valuable theory. If such a practice has prevailed, let us, without delay, abandon it, whilst it is still in our power to do so.

Why have two legislative bodies at all, if they are to be made up exclusively as the representatives of populations? The value of the Senate is chiefly in its conservatism; in its being a check upon the crude and hasty legislation which the surging passions of the populace so often force through the lower House, upon which they are supposed to have a most direct and special influence. But, if you will insist that the people must be represented in the mass in the Senate, what will become of its conservatism, and how shall it be able to check the *gusty passions* of the popular branch?

Again there are certain other considerations which sharply define the distinction between the two bodies. The qualifications of Senators, the period of their terms and the peculiar functions imposed upon them, mark a strong contrast and difference, which have always existed, and, perhaps, always will exist in all constitutional governments.

The Senate is the advisory council of Governor in the matter of official appointments, and on occasion may sit as a high court of impeachment. These functions, it seems to me, conclusively detach and separate that body from the notion that it is, or ought to be, the representative of the masses of the people. Indeed, partly to prevent it from running too strongly in that direction, limits have been imposed in this State, upon the number of Senators which any city or county shall have. This was done in positive terms by the Constitution of 1838, and by necessary implication in that of 1790. Now, sir, we are asked to reverse this venerable practice, to surrender this conservative prin-

ciple in the construction of the Senate, and to throw its doors wide open that the populace may walk in. It is argued that all such restrictions are arbitrary, and cannot be supported by either reason or justice. The same charge can just as easily be brought against all constitutional restraints. Did time permit, it would be no difficult matter to enumerate many others, quite as arbitrary as this one, which is so eloquently denounced by distinguished gentlemen on this floor.

All governmental restraint is, in a certain sense, an arbitrary invasion of natural right. But if every man were suffered to do just as he pleased, no human government could exist. The safety the whole, therefore, becomes the supreme law of every State, and whatever restraint is necessary for that safety cannot, in any proper sense, be arbitrary or unjust, even though it may create gross inequalities. If, therefore, a limitation of the representation of any city or county in the Senate becomes a prudent or necessary shield against some danger, that may probably become imminent to and threaten the destruction of the prosperity and liberties of the people, it is fully vindicated by the maxim "*salus populi suprema lex.*" But to be fully justified, it must not be an unreasonable limitation beyond what the exigencies of the public safety require. Outside of this limit it would be tyranny; inside of it it is simply salutary restraint.

Doubtless the framers of our organic law, when they placed restrictions upon the Senatorial representation of cities, were influenced by sufficient reasons. They had prescience enough to foresee the immense growth to which this city was to come. They had read history, and had learned from it the stupendous and despotic power which lodges in concentrated numbers. The French revolution had taught them what Paris had done, and what she could again do, for France. They had read what London had done, and what she could again do, for England. They knew what the combined energies of city populations, moving as one body and inspired by one spirit, had done and what they could again do. With this knowledge came fear, and from fear arose the stern determination to interpose a constitutional barrier against this power, which, like the Alpine avalanche, grows as it rolls on.

Surely, if we take the lamp of experience as a guide for our feet, we will

walk in their foot-prints. The wisdom of those who have gone before us has been triumphantly vindicated by the events of the past. It is quite a notorious fact that Philadelphia, with her four Senators and nineteen members, has a predominating power already at Harrisburg.

With her present limited Senatorial representation, and her full popular representation in the lower House, she has, to our bitter grief, more than once dictated the legislation of this Commonwealth.

Mr. COYLER. Mr. Chairman: If the gentleman will pardon me for an interruption, I will state that he is in error in his statement of fact. The Constitution of 1837-8 did not limit the representation in the manner in which he supposes.

Philadelphia in 1854 had three Senators from the county, and two from the city, making five. She lost one Senator by consolidation, because the representation of cities was limited to four, and this city, then, became both the city and the county. We had then five Senators with four hundred thousand population; now we have four Senators with seven hundred thousand population.

Mr. SHARPE. Mr. Chairman: My recollection of the reading of the Constitution of 1793 is that it created the city of Philadelphia a Senatorial district and the county of Philadelphia a Senatorial district. Then came the Constitution of 1838, which restricted the Senatorial representation of any city or county to four Senators. It is now insisted by the earnest, able and eloquent delegates from Philadelphia that this is unfair, and that she ought to have no shackles put upon her Senatorial influence and importance. I, for one, cannot consent to this. I am not moved to this determination by any insane jealousy or distrust of this great city.

She sits here like a stately queen, with her sceptre stretched over the waters of the Delaware and the Schuylkill. Her manufactories, like great arteries, carry wealth and prosperity throughout the nation. Her public and her private buildings are the noblest triumphs of architecture; her benevolent and charitable institutions shine like jewels upon her brow; her devotion to art and science consecrate her; her merchant princes, her professional men, her accomplished and elegant gentlemen and scholars, and her honest, thrifty and industrious artisans are among the noblest of Pennsylvania's sons. About her grand old Hall cluster the hallowed

associations of the birthday of our national independence. The spirits of that devoted band of patriots still linger among these scenes. He would be an unworthy son of this Commonwealth who would be jealous of its metropolis. I claim my full share of her heritage of glory and grandeur. Reverencing her thus I will not needlessly oppress her; but I will not suffer my reverence to make me unmindful of my duty. I will not agree to tie her down to any arbitrary number of Senators. I am content to give her a liberal ratio of representation. I will give her one-sixth of the Senate at any time her territorial growth will justify it; but never shall my vote, in favor of unlimited Senatorial representation, lead her into temptation, or give to her the power to subvert, under the forms of law, the liberties of the noble yeomanry of Pennsylvania.

Again I thank the committee for its kind indulgence.

Mr. LEAR. Mr. Chairman: If the committee will pardon me for a few moments I will speak upon this branch of the subject which is now before the committee, and put myself upon the record as explanatory of the vote which I shall give upon the question of the amendment to the amendment offered by the gentleman from Philadelphia (Mr. Worrell.)

The gentleman from Franklin, (Mr. Sharpe,) who has just taken his seat, has referred to this limitation of the number of Senators in Philadelphia, which was in the Constitution of 1790 by implication, and which was in the Constitution of 1838 by positive provision, and seems to think that because this was a limitation by the Constitution under which we have lived, that is the reason why it should be under the Constitution that we propose to adopt or submit to the people.

There has been an idea prevailing throughout the State of Pennsylvania that her Legislature has not been one of the most perfect bodies that can be organized, and that there was room for improvement and reformation, and that this is part of the reason why this Convention is in session here to-day. We are supposed to have been called together for the purpose of reforming some abuses and imposing certain limitations and restraints upon the abuse of power, and the changes which have been heretofore made are not all that can be made for the improvement of the fundamental law of this State.

Of late we have heard a great deal said

about the representation of minorities, and minority representation will be one of the darling theories that will be ably handled and conveyed to this Convention during its session, as I have no doubt; but shall it be said that while the world moves forward, gentlemen talk about providing for the representation of minorities, that majorities, such as are concealed in great cities, have no rights, and that they shall not be represented.

That seems to be the foundation of the theory by which this proposition of limitation of the number of members of the Senate is set up and supported upon this floor. Why, Mr. Chairman, it is said that if we are simply to be represented in the Senate by a representation based upon population, then it is of no use to have a Legislature consisting of two Houses, and it is asked why not, in that case, have a Legislature consisting of a single body, like the Convention that is now revising the organic law of the State? Why should we have a Senate and House of Representatives, instead of having a single body constituting the Legislature, and embodying in it the legislative power which is now found in the General Assembly composed of *two* Houses?

Why, sir, it is simply, as Dr. Lieber says, because the bicameral system has been found to work better than the unicameral system. It is for that reason that we have two Houses; it is for that reason, also, that he have, in this body, committees, for the purpose of gathering up and arranging the work—the whole Convention consisting of twenty-seven standing committees, that are first to prepare the work before it is submitted to this committee of the whole, and the results of whose labors are discussed in committee of the whole before being submitted to the Convention for its final action. Why, sir, that system, as it has been well said, has traveled with the anglo-saxon race. Wherever they have tried the unicameral system it has been found a failure, and the illustration that has been presented here, of the Senate of the United States, which represents territory alone, is not a fair illustration as applied to the legislative body of the State of Pennsylvania. The Congress of the United States represents vast and conflicting interests, interests existing under all the different latitudes and climates of the world. While our nation does not exactly extend to the north pole, nor quite to the equator, yet all the products of all the climates of the

earth are produced upon territory comprised within the Union of these States. With an idea that there should be a preservation of all these varied interests and rights, was it, that every State came to be represented in the Congress of the United States by two Senators, that they should represent the peculiar and the particular, and the conflicting interests of the several States of the country, while the lower House should be based upon population. When an illustration is drawn from that source, it fails to be applicable to the condition of the State of Pennsylvania, which is a State bearing undoubtedly large and varied interests, but these so compact and so nearly allied, and one depending so much upon the other, that there is, as it were, but a single interest that is to be represented upon the floor of the Senate by a representation of the population of the State.

This was made part of the Constitution of the State, as we are told by its chief advocate here, by reason of the superior eloquence of the great commoner, Thaddeus Stevens, who made a remarkable speech in the Convention of that year in support of this idea. If provisions are to be advocated and supported here, and put into the Constitution which we adopt, by appeals of that kind—and probably appeals to the prejudices of the people of the country against those of the city—I say it is unworthy of this Convention to follow such a lead. We ought to act understandingly, and impartially, and not listen to that sort of argument. Why should the country be placed in contention against the city? Let me say to every member of this Convention, who represents a rural community, that he dwarfs himself and he dwarfs his constituency when he says that one Philadelphia member is superior to five country members in the Senate of Pennsylvania. If Philadelphia has a population of one-fifth or one-fourth of the people of this State, Philadelphia should have a Senator out of every five or every four of the Representatives of the State; and if members from the country cannot compete with members from the city, let them go down in the conflict. I am not afraid of it; and when we find exhibitions like that we saw here this morning, after having discussed this very question for three days—of gentlemen who made speeches in favor of it, showing that in the conclusion arrived at yesterday, they either forgot, or did not understand, how

they should vote, and voted against the measure which they had been supporting during the discussion, and when we allowed them to get out of their difficulty by re-considering their vote, this morning—it shows that after all they are not so stupid, but have all the wisdom and capacity to conduct a deliberative or legislative body like this, or the Senate of Pennsylvania.

I say, sir, that this bicameral principle lies at the foundation of republican and democratic institutions.

Here in Pennsylvania, and particularly in Philadelphia, which has been abused, perhaps to some extent beyond its deserts, and perhaps to some extent, according to its merits, there is no doubt of the fact that there is a class of the population devoted to politics, who make that their occupation and trade, and subsist by it, and who are not a very desirable class of the community; but, sir, even in this city, they are no more to the great ocean of the city's population than are the dregs that lie at the bottom of your Delaware river, to the great body of the clear water that flows in an unbroken tide to the sea. Here in Philadelphia, where we first put forth that grand principle upon which we now live, as a nation, the principle which gave us our existence and our birth, that "taxation without representation is tyranny;" where the protest went up in the name of this Commonwealth, that the people of these colonies were not represented in the Parliament of Great Britain; where we put forth that immortal document by which we now exist as a nation. Here in Philadelphia, where freedom first from her fairfeet shook off the old world's dust, shall we say that the scholars, and merchants, and manufacturers and business men of Philadelphia, who have intelligence, and power, and strength, and wealth, if you please, shall not have the same representation, according to its numbers, that the people of the other portions of the State have? Shall we, of the county, be afraid to compete with gentlemen from the city on the floor of the Senate—

"Where mind shall close with mind,
Free as the sunshine or the chainless wind."

[Here the hammer fell.]

Mr. TEMPLE. Mr. Chairman: I move that the gentleman's time be extended ten minutes.

The question being upon the motion, it was agreed to.

Mr. LEAR. Mr. Chairman I thank the

gentleman (Mr. Temple) and I thank the committee; but the Convention having made a Procrustean bed upon which the average member is compelled to lie, I am unwilling to be stretched out or lopped off to suit its dimensions.

Mr. GILPIN. Mr. Chairman: I chance to be a member of the Committee on Legislature, and from the various remarks that I have heard during the past few days I was at first inclined to think that that committees, by reporting the provision limiting the number of State Senators to be chosen by the great cities, had committed a grave error, or been guilty of tyranny, injustice, &c., as has been so eloquently charged by the gentleman from Philadelphia. Upon a little reflection, however, sir, and after having listened attentively to the arguments against the restriction for the past two or three days, I find that, in my judgment at least, the committee, by reporting this restriction, which is so much opposed, have been guilty of no such great tyranny or injustice after all, and that these very eloquent arguments which we have heard do not apply to the question in issue. They would have applied had there been any restraint put upon the city of Philadelphia, or upon any portion of the State, in the selection of members for lower House, that is, if that report had attempted to have limited the representation of the city of Philadelphia in the lower House, then the people of Philadelphia would not have been fully represented. But representation there has been given fully, and indeed it has been given more fully than to any other part of the State, because Philadelphia loses nothing at all in fractions. But it is asserted that because a full representation, according to population, is not given in the Senate, therefore comes injustice, tyranny, &c.; and this argument that would, as I say, have applied to the House, is sought to be applied to the Senate.

Now let us look for a few minutes, and see whether it does apply. What is the Senate? Is it a representative body of the people? Not at all. It is the council of the State, not of the people. The people are one thing, for some purposes, and the State is another. The people have their chamber or body for a council, and the State has its body for another. That is the theory, at least, upon which the Senate is organized. It is the theory upon which every Senate has been organized; it is the deliberative council of the State,

whether we take it in the United States, in Venice or in our own State.

Now, then, the question: "How shall those Senators be elected," is no question of right. It is but a question of expediency. It would have been the same kind of a body, if, instead of electing Senators by districts, here and there, we had elected them upon a general ticket by the whole State, the same as presidential electors are now chosen, but, as a matter of prudence, it was, by our predecessors, deemed best to give minorities in the whole State, who might be majorities in some parts, some representations, because, if Senators were elected, say thirty-three Senators, upon the general ticket all over the State, a small majority would then be able to place this council of the Commonwealth wholly in the hands of but one political party, and hence that council might become the council of the party rather than of the State. Therefore it was, by the framers of our present and former Constitutions, deemed expedient to divide up the area in which the elections were to take place into several small districts, not necessarily as to population, but for the mere purpose of forming more limited districts. When Senators are thus chosen they are not Senators of the district, but Senators of the Commonwealth of Pennsylvania; and a Senator elected from one district, say in the east, represents as much the district in the west as he does that from which he comes, or at least he should do so. He is there to counsel for the interests of the State, and not for the interest of any particular citizen or of a particular locality in the State. They are only scattered in order that the council might have the benefit of the views of persons from various parts of the State. As it was doubtless anticipated that in so large and varied a State, subjects would require action which would not be properly, by a person, who coming from and who had always resided in an entirely different section of the State.

That in theory there is supposed to be a conflict between the interests of the State, and the interests of the people is manifest, because the Senators who represent the State are subject to a restraint that is not placed upon the members of the lower House, for we know very well that in the upper House there can originate no revenue bills and nothing that touches the taxes of the people. I have remarked before that the councils of the State may

differ from the councils of the people—the interests of the State may differ from the interests of the people, and therefore, in theory, as I have intimated, the decision of questions of State is to rest with the councils of the State and not with the people as citizens of the State. To illustrate: Suppose, for instance, our Supreme Court was composed, say of nine judges, and that instead of electing them, as we do now, by a vote of the people through the whole State, we should divide the State into three districts, and declare that one district shall elect three judges, another district three judges, and the third district three judges, and when elected they should constitute the Supreme bench of Pennsylvania. If this were so, would any person pretend that of all these judges thus elected, some of their number would be compelled to decide in favor of or represent the people of the particular district from which they came? Not at all; and in applying the same principle to the Senate of the State, we conclude at a glance that its members are elected, not for the purpose of representing any particular class or section of people, but in order to form a council wherein the interests of the entire people of the State as a State shall be considered. The construction or rather the Constitution of the Senate is only for the purpose of having a deliberative body for the State, and whether it is formed one way or the other, whether by allowing all the parts of the State to select members proportionate to population or by restraining in some places the number to be selected in either event, there is no tyranny or injustice over or to the people; and our determination of the present pending question is nothing more nor less than the determination of a question of political economy, and is whether in the State council the densely populated communities should have power proportioned to their population merely without regard to their territory or any other requisite.

If this question is decided in the affirmative, then no restriction should be imposed upon the large cities of the State; but would this be prudent and would the best State council be obtained by such a decision? Let us glance for a moment at two notable examples which history affords us. We have, in the first place, the English system, where we find that London does not by any means have what would be considered a just and fair representation in Parliament according to her population. The power of the represen-

tation in England remains in the country districts, and we find as the beneficial result that the government is stable and conservative, because it is well known that faction and corruption work more rapidly, and easily, in densely populated communities. In France we find a notable contrary example. There the great cities are entitled to and have their full power and representation in their legislative body in proportion to their population. It was not, however, always the case there, but was so designed and brought about by Mazarin and Richelieu, about the reign of Louis XIV, who sought thereby to concentrate the power of the country, and thus make Paris France. What has been the result of this policy? Paris may be France, but how unstable did France become, and how feeble has her government been amidst the scenes of fraud and corruption which always prevail in densely populated communities, and which, if unrestrained, destroy the State and produce revolution?

[Here the hammer fell.]

Mr. NILES. I move the gentleman's time be extended ten minutes.

The motion was agreed to.

Mr. GILPIN. Therefore, Mr. Chairman, judging from these examples, and from what we know and have experienced of the actions of mobs, can we not fairly conclude that in our own State, also, the densely populated cities and districts are more hasty and radical than the country, and that among the crowded masses of their people, passion possesses more and reason less power than in districts where numbers are not so thickly concentrated? It was, doubtless, with some such view that our predecessors sought to restrain the representation, and the power, of the cities in the Senate of our State, because they did not deem it wise to permit the councils of the State to be as easily influenced as the members of the lower House. In the determination of this question now before the committee, I think the examples that history afford, and the conclusions which I have attempted to deduce, should have some weight with us in our determination of this question.

The gentleman from Tioga (Mr. Niles) has cited a number of Constitutions of other States that have determined this question by adhering to the exception to the general rule of representation, just as it has been determined by the report of the Committee on the Legislature. This question of representation was deter-

mined by our predecessors in the same way, and therefore, in the absence of any particular proof, bearing either one way or the other, it is fair to presume, and we must presume, that their determination was wise and correct. In conclusion, Mr. Chairman, I only desire to add, that the burden of proof rests with those who oppose the limitation contained in the report of the committee, because the same limitation is imposed in our present Constitution, and they must show, to the satisfaction of the Convention, that the true basis upon which our State Council should be constructed should rest, is to allow the citizens of densely populated communities to have full *per capita* representation therein; or, in other words, that the present Constitution, in this respect, is wrong, and is prejudicial to the interests and prosperity of our great State. Doubtless the wisdom of our State Council, *i. e.* Senate, has contributed to her past prosperity, and we should be well assured that we improve, ere we make any change in the organization of that body.

Mr. SIMPSON. Mr. Chairman; I would feel that I was derelict in the duty I owe to the district I represent if I did not express the views I entertain in regard to this question of representation before the vote is taken. I desire, however, to examine this question in the light of some remarks that have been made this morning upon the floor of this Convention. It has been asked that if population alone is the basis of representation in both branches of the Legislature, why is it that there should be two Houses of the Legislature? I propose to review that argument, and to give the reason why there are two Houses of the Legislature, rather than one, and why population should be made the basis of representation in both these branches.

If we turn to England, the country from which we derive all our institutions, we find two Houses of Parliament governing that country. One is called the popular branch, and yet, strange to say, it is not popular, as exhibited in its results, because it is a well known fact, that under the old borough system, which, to some extent, still prevails in parts of England, small localities have a larger representation than very large ones, and population is not really the basis of representation in the lower branch of Parliament. The upper House of Parliament represents, not the people, but the nobility of the land—the peers of the realm, and those who are

akin to them, the clergy and others.—Hence that body is separated and removed entirely away from the people, who have no choice whatever in the selection of a single member of the upper branch.

France, under the old regime, was in the same condition. There the nobility alone were represented in the upper House, and the people were not included in the representation at all.

In looking at the Legislature, as established in England and in France, we have no precedent to guide us, because we have no privileged classes here.

It has been argued that the composition of the Senate of the United States presents a reason for the establishment of two branches of the State Legislature. I deny the conclusion. I aver that it does not; that the two Houses of Congress cannot properly be compared with the two Houses of the Legislature of a State, for they were brought into being for very different reasons and for totally different ends; it follows, then, in the nature of things, that the basis of representation in the two bodies cannot be compared with each other.

Let us see if this is not so: The several States of the Union are in themselves, as to all those powers not delegated to the national government, supreme—foreign to each other as States. When, therefore, in the formation of the federal government, the limitation was agreed upon as to representation in the Senate of the United States, it was to preserve the rights of the smaller States; while population was made the basis of representation in the lower House of Congress, it was not made the basis in the formation of the Senate. In the latter body a totally different rule was adopted; to protect the smaller states, or rather to give them the power to protect themselves, an equal representation was given to each State; they could thereby prevent coalitions among the larger States to oppress the smaller by unequal and unjust laws, and it will be remembered that these Senators are not elected by the people at all; they have no direct voice in choosing Senators in the National Legislature, because they represent States and not people. Who pretends to say that any county in the State of Pennsylvania stands in the same attitude to the State at large as Delaware or Rhode Island, or any of the smaller States, stands to the general government? Counties always formed a part of the State itself as a unit; the territory com-

posing it was always within the lines of the State; for the sake of convenience or for political effect that territory has, from time to time, been sub-divided and new counties have been formed. How then can they be compared to the several States included in the Federal Union? It will be perceived at a glance that they cannot be said to stand in the same relation to the State of which they form a part, as the several States do to the government.

They do not, in any sense, present the same phase of affairs, and the rule that is applied in the one case ought not to be applied in the other, because they are very different in their public relations. I have already shown that there is no comparison between them.

Now when our forefathers established this Commonwealth and adopted the double system of two Houses of the Legislature, they had another view than that presented by the English or French Legislature, or that of the United States.

They made one branch changeable annually, so as to reflect the immediate will of the people, susceptible of change each year at the annual election, but in the event of a flood-tide sweeping over the State, as occasionally it does, in favor of some idea, before that should be stamped upon the legislation of the State by the first thought of the people, and to operate as a check, the other House stands as a barrier until the people can have time to think again. If one House should be swayed by such an idea, the other elected for a different term comes in as a check, and may prevent a possible wrong from being carried out, and affords the people an opportunity for their sober second thought before their will could have full effect. The upper branch of our Legislature was made changeable only by the elections of two years. One-third of the Senate being elected each year, it takes two elections in every three years to bring that body into accord with that tide of public opinion, which might operate injuriously, an opportunity was given to the people in the meantime for reflection. One election is insufficient to carry both Houses, and by our system the people may think twice before an evil is suffered that may be irreparable. It was for that reason, and for that reason alone, under the Constitution of 1790, as well as in the agreement of 1786, that it was determined to have two Houses in the Legislature, one elected annually, the

other changing but one-third each year, and taxable population was the basis of representation.

The intention, certainly, was up to 1838 that all parts of the State should have their equal representation upon the floor of the Senate as well as upon the floor of the House. In 1838 the taxable inhabitants was still continued as the basis in the Senate, with the limitation, however, "that no city or county should have more than four Senators."

Why, sir, just look at the anomaly of such a principle, as it stands to-day, in the light of the civilized world. Under the present apportionment of the members of the lower House of Congress, twenty-seven members are assigned to the State of Pennsylvania, and Philadelphia is entitled to elect, and will elect, five members, exclusively within its limits; and yet, when we come to our own State, in our own Senate, we are entitled to only four members out of thirty-three, while in the National Congress we obtain five members out of twenty-seven. Surely this is an important element in the discussion of this question. The immediate proposition, however, before the Convention is even more infamous than the present existing rule. The proposition is, as I understand it, that the Senate of the State of Pennsylvania shall be composed of not less than sixty members, nor more than one hundred; but that no city or county shall ever be entitled to more than six Senators. I believe it may always be conceded that in the division which may be made, the maximum number of representatives will be invariably adopted, and so, if the State is allowed to be divided into one hundred Senatorial districts, there will be one hundred Senators, and out of this number of Senators Philadelphia is to be allowed only six, one in sixteen, while now she has nearly one-eighth—four out of thirty-three. That is the present proviso before this House. That is the proviso that this committee is called to pass upon. Our friends upon this floor are not only asked to permit the injustice that was made in 1837 to stand as the law of the land, but whether they will intensify it by reducing our proportion of Senators even less than it was made by that organic law, making it just half of what it was then, and making the injustice double; increasing it two-fold. If it was wrong then, and I contend that it was, I have not heard any argument to the contrary; if it was wrong then, the

adoption of this proviso making the number not less than sixty, or exceeding one hundred, and allowing Philadelphia only six, will increase the evil, and make it double what it is now.

Another thought that I think has just been answered by the gentleman who has just taken his seat, (Mr. Gilpin,) is that the burthen of proof in this case does not rest upon Philadelphia. It does not rest with us to show that it ought not to be so. Either the Senate of Pennsylvania is the representative of the people of Pennsylvania or it is not. What is it, then? If, in the organization of our State government, they had adopted the system in vogue in New Jersey, declaring that each county should have but a single Senator, and if we had retained that as a part of the organic law, it would then be territory that was represented. But they did not do that. They made population the basis of representation, and kept it up until 1837, and even then and now, under the present limit, restricting, as it does, to a certain extent, the representation of one county, population was and is still the basis of representation. Even though there was a limitation in the organic law after 1837, that no city or county should have more than four Senators, I say that in the main population has been really the basis of representation in the State Senate from the foundation of the government to the present hour, with the single limitation of 1837, that there shall not be more than four Senators to any one city or county.

When I spoke the other day on this subject, I think I showed the reason why this limitation was imposed, and I think I showed that the reason upon which it was founded had long since ceased. Therefore I urge, in the language of the old law-makers, that when the reason of a rule ceases the rule ought to cease with it. I trust, sir, that under this view at least, this injustice will not be perpetuated, and I protest that we should have the same justice meted out to us as to any other portion of this Commonwealth, as will be meted out to Allegheny county, where Pittsburg is growing to be one of the first cities in the Union; to Dauphin, where Harrisburg is located, and may become a city with a large population; to Berks, with her Reading; to Lancaster, with her improving city; to Luzerne, with her thriving cities of Wilkesbarre, Scranton and Pittston; or to any other portion of

the State where there are no populous cities and only a sparse population.

On the question of agreeing to the amendment to the amendment, to strike out the proviso, a division was called, which resulted: Thirty-seven in the affirmative, and forty-nine in the negative. So the amendment to the amendment was rejected.

A STATE BOARD OF DIVISION.

Mr. LILLY. Mr. Chairman: I offer the following amendment, to strike out the pending amendment, and insert as follows:

"SECTION —. At the general election in the year 1881, and every tenth year thereafter, there shall be chosen, by a vote of the electors of the State at large, ten commissioners of apportionment, whose duty it shall be to divide the State into Senatorial and Representative districts, and assign to each thereof its proper representation, but any such apportionment, or report thereof, shall be concurred in by at least seven commissioners. In the election of said commissioners each voter shall vote for not more than five persons, and the ten persons highest in vote shall be declared elected. Any vacancy in the number of said commissioners shall be filled by an apportionment, to be made by such of the remaining commissioners as shall have been voted for by a majority of the same electors who shall have voted for the commissioner whose place is to be filled. The commissioners shall severally possess all the qualifications for office required of members of the State Senate, shall be sworn or affirmed, and shall be ineligible to an election to either House of the Legislature, under an apportionment made by them, for a period of five years.

SECTION —. In the formation of Senatorial and Representative districts, regard shall be had to compactness of territory, and to the convenience of intercourse and similarity of interests among the people proposed to be united in a district. But the general basis of every apportionment (except so far as the application thereof shall be controlled by this Constitution) shall be the returns of population contained in the most recent decennial census of the United States; and every apportionment shall be made to secure, as nearly as may be, the proportional full and present representation of each division of the electors of the State at large and of the several sections thereof, as exhibited in

the returns of popular elections. No city or county shall be divided in the formation of a Senatorial district, unless its population shall entitle it to two or more Senators.

SECTION —. The number of Senators and Representatives under any apportionment of the State shall not exceed sixty Senators and one hundred and eighty Representatives, nor be less than fifty-five Senators and one hundred and sixty-five Representatives.

SECTION —. As soon as conveniently may be after each decennial census of the population of the United States, an apportionment of Senators and Representatives to the several parts of the State shall be made by districts, and such districts shall remain unchanged until after the next decennial census, but no former apportionment shall in any event authorize the election of Senators or Representatives after the third year in any decennial period.

FOR SCHEDULE.

SECTION —. All terms of Senatorial service shall expire in the year 1875, and in that year Senators shall be chosen under the amendment to the Constitution, those from districts with even numbers to hold their seats for two year terms, and those from districts with uneven numbers for four year terms, and thereafter all Senators shall be chosen for four year terms; until 1875 Senators shall be chosen under the existing apportionment of the State, but for terms to expire in that year.

Representatives chosen in the year 1873, and afterward, shall be chosen under the amendments to the Constitution.

Mr. LILLY. Mr. Chairman: This amendment, although offered by me, is substantially a report from the Committee on Suffrage, Election and Representation, and I present it on account of the absence of the chairman of that committee. It embodies the action of that committee upon this subject, and was agreed to by that committee almost unanimously. We desire it to take the place of the present section under consideration, reported by the Committee on Legislature. We recommend a plan of apportioning the State which will take the great subject entirely out of the hands of the Legislature. And is not this necessary? Those of us who have had experience in Harrisburg know very well that the apportionment of the State into districts, whether Representative districts from which to select our State Legislature, or

into districts from which to choose our Representatives to the National House of Representatives, is a subject of degeneration and of contention. It has for years caused more corruption and log-rolling than any other matter which has required the action of legislation. Particular districts have been carefully framed to suit the ambition and the convenience of particular persons, and the ingenuity of the Assembly has been exerted as carefully to form other districts to exclude other members from returning to their seats under the new apportionment, while always the entire districting of the State has been designed to increase the interests and preserve the power of the political party which happened, at the time, to be in the majority at Harrisburg. The State knows, as a matter of record, how, when the last apportionment was made, the Legislature stood blocked for weeks, and important legislation was neglected, while the apportionment bill engrossed the attention of the Assembly.

By this proposition, which is intended to hereafter prevent any such legislation at Harrisburg, the entire subject of dividing the State into districts, from which the members of the Legislature shall be chosen, is left to a board of ten commissioners, into whose deliberations partisan influence cannot enter. They are proposed to be elected just as the members to this Convention were elected. We tried to divest the board of any party character, and so provided that while five shall be elected on one general ticket and five on another, dividing them equally between the great political parties, the concurrence of seven must be necessary to determine their decision. I am not pertinacious as to this number. If the Convention choose to make it eight, I will be entirely satisfied to say that the board shall not act officially unless eight out of the ten concur. The consequence of this will be that both parties must agree to the apportionment, and then when the districting is done it will be fair and not partisan.

We then, sir, presumed to fix the number of Senators and Representatives, but we did not fix it absolutely. We did not place it at an arbitrary number, because we wanted it to be flexible—

MR. DARLINGTON. Mr. Chairman: I rise to a point of order. The amendment of the gentleman from Carbon is not germane to the proposition before it.

The CHAIRMAN. The Chair cannot rule the amendment out of order, but it would, perhaps, be better if it were withdrawn, and the vote taken on the amendment of the gentleman from Chester, when, if it be voted down, the gentleman from Carbon can renew his proposition.

MR. LILLY. Mr. Chairman: I think it is entirely germane. It is a second amendment. It takes the place of the other exactly in case it is adopted.

The CHAIRMAN. While it may not be out of order, the Chair does not regard it as germane to the amendment already under consideration, and would suggest that it be withdrawn until a vote is had on the other.

MR. LILLY. Mr. Chairman: I do not know but the committee may vote in the proposition of the gentleman from Chester, and if it does we would have no control over it. So I shall insist on it.

We have then, Mr. Chairman, to resume my remarks, fixed the Senate in numbers at not more than sixty or less than fifty-five, and the House of Representatives at not more than one hundred and eighty or less than one hundred and sixty-five. We have named a limit of numbers and yet not an arbitrary limit. And for this reason: We want to give this board of commissioners, this board of apportionment, a little room to fix up the fractions that always occur in districting, and that under an inflexible number create unavoidable difficulty in determining an apportionment. The Senate may be sixty in number, or it may be fifty-five. The House of Representatives may be one hundred and eighty, or it may be one hundred and sixty-five. These numbers may not suit the committee. In fact some of the members of the Committee on Suffrage, Election and Representation desired larger numbers, and some of us are pledged to vote for the highest number that any one will propose in the Convention. But, without going into a discussion at this time upon that subject, I will simply state that the Committee on Suffrage, Election and Representation deem this is a better section than that reported by the Committee on Legislature. As I said before, in the commencement of my remarks, I have made this statement in the absence of the chairman of the committee who have drafted this amendment. It was placed into my hands by him with a request that I offer it as an opportunity occurred, and I make this explanation in his behalf.

Mr. Dobb. Mr. Chairman: Those who advocate an increase of Representatives expect to accomplish thereby certain objects which all will admit are desirable. If by increasing the number of the legislative body it will thereby become more elevated in character, more learned, more difficult to corrupt, better acquainted with the local wants of the people, and at the same time better able to comprehend the character of legislation required for the general well-being of the State, more earnest to do right, and with better knowledge of the right, by all means let the members be increased. Considerations of economy or conscience are of no consequence compared with results like these.

But those who assert that such results will spring from this measure are called upon to prove the fact. It will not do merely to say that the Legislature of some State is composed of a greater number of members than the Legislature of Pennsylvania, and is more honest. Admitting the fact, it yet remains to be proven that the honesty is on account of the great number. There are many States having Legislatures composed of fewer members than the Legislature of Pennsylvania, and yet more honest. The argument works both ways, and the mere number of members has as much to do with the honesty of the body in one case as the other. The advocates of this measure must establish their claim by better argument than this.

If in a body of one hundred men selected by the people there is found twenty per cent. of rogues who may be corrupted, and thirty per cent. of imbeciles who may be deceived, if the number is increased to two hundred, will the percentage of rogues and imbeciles be any less? No one pretends that it will. But it is said the actual number of capable and honest men will be greater in the larger body than in the smaller. Perhaps so; but remember that a legislative body, like a rope, takes its character from its weakest and worst parts. The absolute number of honest men in a body is of little consequence, unless they are in the majority. Ten are as powerful in a body of twenty as fifty are in a body of one hundred.

But by increasing the number you lower the dignity and importance of the body, and, as a consequence, men of less importance and character will gain admission to it and compose it. Office is sought

for by honorable men from motives of laudable ambition. Just in proportion as such office is exclusive and to be obtained by few will be the character of the men who seek after it. Make it so common that everybody can obtain it, and nobody of any consequence will have it. Hundreds of the best men in our State would not to-day accept a seat in the Legislature. Is it because the salary is so low that it does not pay? By no means. We have, in this body, evidence sufficient that public positions are not rejected by the best talent of the State because not remunerative. We have all over the State men in judicial positions on inadequate salaries, who might be winning fortunes with less labor at the bar. The best legal talent of the State seeks the position. And why? Because the office is still an honorable one. It has not yet, by small districts and short terms, been made altogether common and unclean. Increase the number of judges to such an extent that almost any lawyer can become a judge, and no lawyer of standing will accept the position. Make the office as common as that of justice of the peace, and it will be filled by men about as competent, as wise and astute as that class which Dogberry so well represented. But why dwell on this? It is evident from experience, observation, and the character of men, that the dignity and importance of any position is estimated in direct proportion to the number who may attain to it, due regard being had to the intrinsic importance of the position. Double the number of members of the Legislature, and the honor of being a member of that body will be considered about one-half as great as before. As a natural and inevitable consequence the dignity and character of its members will be lowered. It is a consequence you cannot escape. I do not say that necessarily the moral character of the members would be lowered. That would not follow, as a matter of course, because, unfortunately, as this country is now learning, to its sorrow, exalted morals is not a necessary attendant of exalted station or exalted ability. But I do say that the moral character would probably be lowered with the dignity and importance of the office. That would be the natural tendency. It would become a place for a lower grade of politicians, if in this lowest deep there is a lower depth.

But, it is said, that admitting the proportion of corrupt men is greater in a

large body, there is, nevertheless, a larger number to be corrupted, and the process becomes a more difficult and expensive one. This argument is extremely fallacious. The legislative market, like any other, depends upon the supply and the demand. When the supply is scarce each one may command his own price. When the supply is great, purchasers set their prices. I don't know what the price of a man is, now, at Harrisburg, but I know that if you throw another hundred on the market, competition will be wonderfully increased, the bears will rule the day, and legislators will become *dog cheap*.

But who supposes that a Legislature is corrupted by simply buying up a majority of its members. Every one knows this is not the process. When the Credit Mobilier undertook to corrupt the federal Congress, it did not propose to distribute its stock among a majority of the members. On the other hand a few of the most important, most influential men were chosen to be made recipients of the stock, the company trusting wisely to their commanding abilities and good influence to control other members. And so it is in all cases. Corrupt Legislatures are so common as to excite no surprise, yet I do not believe there was ever a legislative body assembled of which a majority of the members were corrupt men. I do not believe the majority of the members of the Pennsylvania Legislature ever was or ever could be bought. How, then, are corrupt measures forced through? Who does not understand the process? The weak are by these, and by a corrupt lobby, cajoled, flattered, deceived and driven into support of the proposed measures. Every man in a public body, worth buying, is able to control more votes than his own. His price is in proportion to the number he may control. Now the facility with which a Legislature may be corrupted depends not so much upon the number of men who may be bought as upon the number of weak, dependent and gullible men who may be controlled by shrewd, powerful and designing members of the House or lobby, and who blindly follow their leaders like a flock of silly sheep. The proportionate number of such men will depend upon the dignity and importance of the body. Double the number of members, and the number of such men will be more than quadrupled.

Vice, too, is contagious. A few scoundrels corrupt the whole body. Members

are sent to Harrisburg every winter who have borne good reputations, but, exposed to temptation and surrounded by an atmosphere impure and tainted, they soon become infested. Will increasing the number of members cure this disease? You might as well talk of driving the infection from a small-pox hospital by adding the patients of another small-pox hospital to it.

Now take into consideration another well known fact. By increasing the number of members you not only increase the number of scoundrels and imbeciles, the number of corrupt and corrupting men, the number of weak and credulous men, you not only lower the dignity and character of the body, by stopping the better class of men from accepting the position and rendering it more easily accessible to dirty ward politicians and political bummers, you not only increase temptation and add pollution to the already plainly polluted atmosphere—you also decrease in each member his sense of individual responsibility. Each man's sense of individual responsibility is weakened in direct proportion as the number is increased who share that responsibility with him. The idea of a double Executive, once strongly advocated, was rejected in this country, because the office was of too much importance to risk a divided responsibility. Two heads might be better than one, but one alone must bear the responsibilities of the position. In a Legislature, absolute individual responsibility is impossible, but the numbers should be so regulated as to preserve this to as great an extent as may be. It was said in the Federalist, and it may be said to be an axiom in government, "the smaller the number, and the more conspicuous the station of men in power, the stronger must be the interest which they will, individually, feel in whatever concerns the government." Just in proportion as this individual responsibility is diminished, the facility for corrupting the body is increased.

From this cause, combined with others, perhaps, it is a well known fact that a large body of men, no matter what their knowledge, virtues and character, more easily become the dupes of a few leaders than a smaller body. "In all numerous assemblies, of whatever character composed, passion never fails to wrest the scepter from reason." The famous saying of Cardinal DeRet, "that every public assembly consisting of more than one hundred

members is a mere mob," may not be absolutely true, but contains the germ of a great truth. But there is absolute truth in the saying of another wise man, that "had every Athenian citizen been a Socrates, every man assembly would still have been a mob."

Is it not true, then, that a large body of men is more difficult to corrupt than a smaller one? Within certain limits it may be true. But if a Legislature of one hundred and thirty-three men are corrupt, one of two hundred and sixty-six men, less in dignity and importance, with a greater proportion of designing knaves and weak fools, with less sense of individual responsibility, less care for the interest of the State, and less study of the public welfare, would certainly be no better.

Nor is it true that a larger representation than we now have is necessary to understand the interests of the people. One member from every county, or one from every township, might understand better some minor local and special interests. But I thought we had enough of local and special legislation. I thought we considered it time for members of the Legislature to cease to regard their own locality alone, and rise to the higher duty of making laws for the State. The very devotion to local views, and feelings and interests, naturally tends to a narrow and selfish policy, and has almost destroyed all consideration for the broader, greater and more important interests of the whole Commonwealth. It has long been a reproach, and why is it held up in this argument as a virtue. Give us men with liberal and enlightened views, with a broad and general knowledge of the wants of the whole people in all their political, social and business relations, and such men will comprehend our local and special needs much better than one who knows only that and nothing more.

I am satisfied we can do something towards securing purer Legislatures; but enlarging the representation is certainly a step in the wrong direction. If there is a change in the number at all, I would prefer to see it the other way. Destroy special legislation, and let it be understood the duty of the Legislature is to make laws for a vast Commonwealth, not for wards, townships and boroughs. Destroy the corrupt outside influence, take away temptation, punish fraud, increase the character and responsibility of the body by decreasing its numbers and increasing

its salary—in this direction true reform lies.

But after we have done all we can do, the responsibility for the character of their representatives rests with the people. Scoundrels must be kept out of office. Fools must be retained in the position for which nature destined them.

The people must cultivate a higher moral sentiment in political matters. When bribery and corruption in office sends a thrill of indignation through the whole community, as they should always do, bribery and corruption will be checked. No man can stand in public position against the moral sentiment of an outraged people. Party bondage must be broken. What can we expect of our representatives, so long as the people go blindly to the polls and vote for their party nominee, no matter what his character or attainments. How do we propose to keep scoundrels out of public positions so long as acts of villainy in office are hushed up for fear the party will suffer injury. How can we hope for wise and honest rulers so long as their choice is directed by a spirit of intolerance, that forgets everything but its own creed, or a spirit of party, that remembers everything but its own duty?

If the people will surrender to faction what belongs to the country, and allow "patronage and party, the triumph of a leader and the discontents of a day, to outweigh all the solid principles and institutions of government," a Constitution, however carefully prepared, can do little towards creating a just and pure Commonwealth. Who can preserve the rights of the people when they themselves abandon them? Who will keep watch in the temple when the watchmen sleep at their posts? "Republics," says a statesman, "fall when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded because they flatter the people in order to betray them." We have reached this point in Pennsylvania, and, as a consequence, our legislation is "wise by accident and bad by system." Let not the people trust to this Convention to remedy the evil which they alone can cure.

MR. BUCKALEW. Mr. Chairman: In the absence of the chairman of the Committee on Suffrage, I desire to interpose a motion at this stage of the debate. The amendment which has been submitted by the gentleman from Carbon (Mr. Lilly) raises two important questions, which

will be debatable, to wit: The number of members of which the two Houses of the Legislature shall respectively consist, and the very important question of how, and by what authority, appointments shall be made. Should that function or duty be continued in the Legislature itself, or should it be vested in some other independent authority?

The amendment raises, also, a third proposition, and that is, that a constitutional rule should be established by which apportionments shall be made. In order to the proper consideration of this amendment, and of the other amendments which may be offered, I suppose it would be proper for us to have them printed. I submit that it will be, therefore, a proper thing for the committee now to rise and report progress, and, in Convention, order the two pending amendments, both of which are of some length, and any other amendments which the members of the committee may informally desire to offer to this section of the report of the Committee on Legislature, to be printed. It will only take a few minutes. We can then go into committee of the whole again, and go through with the debate already begun upon the question of the number of Senators and Representatives that should hereafter be chosen. I suppose the discussion of that question will occupy a day or two, at least, and, in the meantime, this matter of printing can proceed, so that before we are called upon to vote we will have before us, in print, everything that has been proposed on this subject.

I move, therefore, sir, with the object of ordering the printing of this amendment, that the committee do now rise, report progress, and ask leave to sit again.

MR. J. PRICE WETHERILL. Mr. Chairman: It seems to me hardly worth our while to do that. I suggest that the Committee on Suffrage have power to order the printing of these amendments, and that it is not necessary for this committee to rise now in order to have these amendments printed. Let the committee have them printed, and let them be laid on the desks of members to-morrow. I do not see any necessity for dissolving this committee, at this time, for the mere purpose of printing the amendments, and fear that there may be some doubt as to the permission to be given to sit again. Let us go on and discuss that part of the amendment relating to the number of

Representatives and Senators, which I believe it is proposed to make sixty for the Senate, and one hundred and eighty for the House.

MR. BUCKALEW. Mr. Chairman: The Committee on Suffrage cannot order amendments to be printed; it cannot order the amendment of the gentleman from Chester (Mr. Darlington) to be printed, nor can it order the printing of any other amendment, and I have proposed, therefore, that the committee rise, in order that these may be ordered printed. It will not occupy more than five minutes, and then we can go on with the debate as to the number.

MR. J. P. WETHERILL. Mr. Chairman: The amendment of the gentleman from Chester (Mr. Darlington) seems to have been printed, and I suppose the Committee on Suffrage could do the same for the other amendments.

MR. STANTON. Mr. Chairman: I suppose by unanimous consent that could be withdrawn for the present, and when we get out of the committee of the whole it could be then ordered printed.

THE CHAIRMAN. The amendment to the amendment could be withdrawn.

MR. DARLINGTON. Mr. Chairman: I suggest that as the debate has commenced upon the number of members in the respective Houses, if the gentlemen will confine themselves by common consent to that, and debate it for to-day, I think it can be profitably discussed. Let us discuss that question, whether the House shall consist of one hundred and fifty or one hundred and eighty, or otherwise, and then have the printing done by to-morrow.

MR. SIMPSON. Mr. President: I ask the unanimous consent of the Convention to offer a resolution at this time.

THE PRESIDENT. The unanimous consent of the Convention can not be permitted to interfere with the regular order of business, or else it would be impossible to make any progress in the work now before the Convention.

MR. HANNA. Mr. President: If it is in order I move that the Convention resolve itself into committee of the whole, for the consideration of the report presented by the Committee on Cities and City Characters.

The question being taken, a division was called, which resulted as follows: Ayes, thirty-six; noes, forty-two.

So the motion was not agreed to.

The PRESIDENT. The next business in order is the report of the Committee on the Executive Department.

Mr. SIMPSON. Mr. President: I ask leave to offer a resolution.

The PRESIDENT. The resolution is not in order at this time, and especially while the Chair is putting a question. Is it the pleasure of the Convention to proceed to the consideration of the article reported by the Committee on the Executive Department?

The question being taken, a division was called, and it was not agreed to; ayes, thirty-eight; noes, forty-six.

Mr. SIMPSON. Mr. President: I now ask leave at this time to offer a resolution.

Leave was granted.

Mr. SIMPSON. Mr. President: I offer the following resolution:

Resolved, That the following proposition be printed for the use of the Convention:

TO DIVIDE PHILADELPHIA BY THE COURTS.

SECTION —. Until the apportionment be made under the next decennial census of the United States, the city of Philadelphia shall be divided into three Senatorial districts, each thereof to choose three Senators, and into Representative districts not exceeding — in number, each thereof to choose not less than three nor more than six Representatives, under the direction of the court of common pleas of the said city, in manner following, to wit: The said court, all the judges thereof concurring, shall appoint two commissioners of apportionment, who, after being duly sworn or affirmed to perform their duties justly and truly under this Constitution, shall divide the said city into Senatorial and Representative districts as aforesaid, and make report of their apportionment to the court, subject to its unanimous approval and confirmation, and upon the confirmation thereof the same shall be entered of record in said court, and a certified copy thereof shall be transmitted to the Governor of the Commonwealth, to be by him laid before the two Houses of Legislature to be entered on their Journals; each of the Senatorial and Representative districts as formed shall have a population proportioned as nearly as may be to the number of Senators or Representatives assigned to it, and shall be composed of connected, compact territory, but no ward shall be divided into the formation thereof; the said districts shall also be formed so as to secure the proportionate, full and just representation of each divi-

sion of the electors of said city, as exhibited in the returns of popular elections, and in choosing Senators and Representatives therefrom, each voter may distribute or concentrate his votes as he shall think fit, or bestow them in equal divisions upon candidates, and candidates highest in votes shall be declared elected.

SECTION —. Until the apportionment be made under the next decennial census of the United States, the city of Pittsburgh shall be entitled to choose one Senator and three Representatives, and the county of Allegheny three Senators and nine Representatives, and the Representatives from said city, and the Senators and Representatives from said county, shall be voted for and chosen in the same manner as the Representatives from the city of Philadelphia, under the preceding section.

The resolution was agreed to.

Mr. D. N. WHITE. Mr. President: I offer the following as an amendment, to be printed along with the resolution:

FIFTY SENATORIAL DISTRICTS.

"SECTION —. The State shall be divided into fifty Senatorial districts of compact and contiguous territory, and as of equal a number of taxables as possible, and each district shall be entitled to elect one Senator. No county shall be divided in the formation of a district unless such county is entitled to two or more members, and no city or county shall be entitled to more than one sixth of the number of members."

Mr. CORSON. Mr. President: I offer the following proposition as an amendment, to be printed along with the resolution:

EACH COUNTY TO HAVE A SENATOR.

"That every county in the State shall be entitled to one Senator, and the whole population of all the counties divided by the number of counties shall be the basis of Senatorial representation of all cities containing a population exceeding one hundred thousand."

Mr. S. A. PURVIANCE. Mr. President: I desire to offer the following proposition, mainly in connection with the amendment offered by the gentleman from Montgomery, (Mr. Corson,) and ask that it be printed along with the resolution:

ONE REPRESENTATIVE FOR FORTY THOUSAND INHABITANTS.

Every county shall be entitled to one Representative, and for every forty thou-

and inhabitants shall be entitled to an additional member in the lower House of Representatives.

The manner of ascertaining the population of counties shall be prescribed by law, and whenever it shall appear that any county has attained the requisite population for an additional member, the Governor shall make his proclamation of the same, and the additional member or members shall be elected at the next general election thereafter.

REPRESENTATIVE DISTRICTS.

MR. HEMPHILL. Mr. President: I offer the following amendment, and ask that it be printed:

"SECTION —. The Senate shall be composed of one Senator from each county.

"SECTION —. The House of Representatives shall be composed of three times as many members as there are members of the Senate; and the General Assembly shall ascertain the ratio of representation every ten years, beginning at its first session after the adoption of this Constitution, by dividing the population of the State according to the last preceding federal census, by the number of members required, and the quotient, excluding fractions, shall be the ratio of representation. The General Assembly shall, at the same time, apportion the State as follows:

"Every county having the ratio shall have one Representative; if double the ratio, two Representatives, and so on. Counties not having the ratio shall be formed into Representative districts by being united with a contiguous county or counties, and shall be entitled to representation in the same manner as is provided for single counties. But no Representative district shall be composed of more than three counties; nor shall any county be divided; nor shall any two counties, each of which shall have the ratio required to entitle it to one Representative, but united in one district. And those counties and districts having one or more Representatives, and the largest fraction of the ratio remaining, shall be entitled each to an additional Representative until the whole number required shall be obtained."

THIRTY THOUSAND INHABITANTS A BASIS.

MR. MANN. Mr. President: I desire to offer the following amendment, to be printed along with the resolution:

"Representatives shall be distributed throughout the State as follows: The

qualified electors of each county shall elect one Representative, and one additional for each thirty thousand inhabitants, as determined by the preceding census of the United States; and in counties entitled to three or more Representatives, each voter may cast as many votes for each candidate as there are Representatives to be elected, or may distribute the same among the candidates as he shall see fit, and the candidates receiving a majority of said vote shall be declared elected."

MR. CORBETT. Mr. President: I move that the Convention do now adjourn.

THE PRESIDENT. I hope the gentleman will withdraw that motion for one moment, while the Chair makes an explanation.

MR. CORBETT. I withdraw the motion.

THE PRESIDENT. The Chair desires to correct a decision made a few moments ago, that the Convention could not name a time for the committee of the whole to sit again to-day after it had risen. The Chair has evidently fallen into an error, and with the consent of the Convention, this decision will be withdrawn. At what time shall the committee of the whole, having under consideration the article reported by the Committee on the Legislature, have leave to sit again?

MR. STANTON. Mr. President: I move that the committee have leave to sit again to-morrow.

The motion was not agreed to.

THE PRESIDENT. Shall the committee have leave to sit forthwith?

The question being taken, it was agreed to.

THE COMMITTEE OF THE WHOLE.

The Committee then resolved itself into committee of the whole to further consider the report of the Committee on Legislature, Mr. C. A. Black in the chair.

THE LEGISLATURE ARTICLE.

THE CHAIRMAN. The committee of the whole have again referred to it the report of the Committee on Legislature, and the question before the committee is the amendment of the gentleman from Carbon (Mr. Lilly) to the amendment of the gentleman from Chester (Mr. Darlington.) The amendment to the amendment will be read.

THE CLERK:

SECTION —. At the general election in the year 1881, and every tenth year thereafter, there shall be chosen by a vote of the electors of the State at large, ten commissioners of apportionment, whose duty it

shall be to divide the State into Senatorial and Representative districts and assign to each thereof its proper representation, but any such apportionment or report thereof shall be concurred in by at least seven commissioners. In the election of said commissioners each voter shall vote for not more than five persons, and the ten persons highest in vote shall be declared elected. Any vacancy in the number of said commissioners shall be filled by an appointment, to be made by such of the remaining commissioners as shall have been voted for by a majority of the same electors who shall have voted for the commissioner whose place is to be filled. The commissioners shall severally possess all the qualifications for office required of members of the State Senate; shall be sworn or affirmed, and shall be ineligible to an election to either House of Legislature, under an apportionment made by them for a period of five years.

SECTION —. In the formation of Senatorial and Representative districts regard shall be had to compactness of territory, and to the convenience of intercourse and similarity of interests among the people proposed to be united in a district. But the general basis of every apportionment (except so far as the application thereof shall be controlled by this Constitution) shall be the returns of population contained in the most recent decennial census of the United States; and every apportionment shall be made to secure, as nearly as may be, the proportional, full and just representation of each division of the electors of the State at large, and of the several sections thereof, as exhibited in the returns of popular elections. No city or county shall be divided in the formation of a Senatorial district unless its population shall entitle it to two or more Senators.

SECTION —. The number of Senators and Representatives, under any apportionment of the State, shall not exceed sixty Senators, and one hundred and eighty Representatives, nor be less than fifty-five Senators, and one hundred and sixty-five Representatives.

SECTION —. As soon as conveniently may be after each decennial census of the population of the United States, an apportionment of Senators and Representatives to the several parts of the State shall be made by districts, and such districts shall remain unchanged until after the next decennial census, but no former apportionment shall in any event authorize the

election of Senators or Representatives after the third year in any decennial period.

FOR SCHEDULE.

SECTION —. All terms of Senatorial services shall expire in the year 1875, and in that year Senators shall be chosen under the amendments to the Constitution; those from districts with even numbers, to hold their seats for two-year terms, and those from districts with uneven numbers, for four-year terms, and thereafter all Senators shall be chosen for four-year terms. Until 1875 Senators shall be chosen under the existing apportionment of the State, but for terms to expire in that year.

Representatives chosen in the year 1873 and afterwards shall be chosen under the amendments to the Constitution.

MR. DARLINGTON. Mr. Chairman: In presenting, for the consideration of this Convention, the amendment to which the gentleman from Carbon has offered another amendment in the nature of a substitute, I purposely avoided saying anything on the subject of the number of the Senators and Representatives that should compose the Legislature of this State, except that in framing the amendment which I offered, conceding that an addition would probably be made to the number of each House, I put in a number which would preserve a proper proportion if the present number should be increased.

I think it expedient that this committee should now, if they will, by common consent, agree to do it, turn their attention to that subject, and discuss and settle this one question first: Of what number shall the two Houses, respectively, consist? I do not feel solicitous about it, myself, but for the sake of the preservation of order in the consideration of the questions which come before us as a committee, I suggest that we had better dispose of that question now, confining our observations to that particular subject alone until it shall be disposed of.

I do not mean to enter into that discussion further than to say that in forming my amendment I had in view what I knew to be a favorite idea of a large number of members upon this floor, which was to give to each county of the State, no matter of what size it may be, at least one Representative. And you cannot do that with justice to the larger counties, unless you increase the number so as to enable you to accomplish that object. It

was this that I had in view, and it was a strong reason with me in voting for an increase of Representatives. An increase of Representatives in the lower House properly and naturally calls for an increase in the Senate, also, and this was the main reason why I made provision for an increase in that branch.

This is all I have to say on that subject. I leave it, without further comment, for the members of this committee to say whether they will or will not confine their attention to that one question, and dispose of it first.

The CHAIRMAN. The question is upon the amendment to the amendment. Is the committee ready for the question?

[Calls for question from all parts of the House.]

Mr. DARLINGTON. In one sense, Mr. Chairman, I do not think that this committee is ready for a vote upon the amendment of the gentleman from Columbia (Mr. Buckalew.)

Mr. DE FRANCE. Mr. Chairman: I wish to correct the gentleman. The pending amendment was offered by the gentleman from Carbon (Mr. Lilly.)

Mr. DARLINGTON. Mr. Chairman: I know the amendment was offered by the gentleman from Carbon; but, for all that, I understood it to be the amendment of the gentleman from Columbia.

If it is the intention of the committee to act upon this question now, for the purpose of taking a vote upon that amendment as a substitute for the one I offered, then I do not think we are ready for that question. I would ask the indulgence of the committee, either now or at some other time, to say something on the general subject.

Mr. LILLY. Mr. Chairman: I desire to explain. The amendment under consideration is not my proposition, individually, and I so stated distinctly when I presented it. It is, substantially, a report from the Committee on Suffrage, Election and Representation, although it is not actually presented in that form. It was the result of the action of that committee, and was agreed upon almost unanimously. The Committee on Election, Suffrage and Representation was very desirous that when opportunity offered, this amendment should be presented to take the place of these two sections reported by the Committee on Legislature, and this being the only opportunity I had of submitting it, in the absence of the chairman

of the Committee on Suffrage, I forwarded it to the desk.

I may add one word to what has been said, by the gentleman from Chester, in reference to voting upon this question now. I agree with him that the committee is not ready for the question. The Committee on Suffrage, Election and Representation do not desire a premature vote taken upon this proposition. They desire to have it discussed, and a proper conclusion reached with reference to it. I have had no consultation with my colleagues of that committee, but if they thought proper to defer action upon it until it is printed and in more intelligent form for debate, I would be willing to withdraw it for the purpose of allowing the vote to be taken on the amendment of the gentleman from Chester.

The CHAIRMAN. The Chair would suggest either to have a vote or that the committee rise.

Mr. KNIGHT. Mr. Chairman: —

The CHAIRMAN. The gentleman from Chester has the floor, having only yielded it to the gentleman from Carbon, who desired to make an explanation.

Mr. KNIGHT. Will the gentleman allow me to make a suggestion, and have it read for information?

The CHAIRMAN. It is not in order. The question is upon the amendment to the amendment, and if there is no further discussion we must have a vote upon that or the committee must rise.

Mr. MANN. Mr. Chairman: The amendment of the gentleman from Carbon, now pending, raises, very properly, the whole question of the number of members that ought to compose the Legislature of this State. Believing that to be one of the most important questions which this Convention is called upon to decide, it seems to me that we ought to proceed with this discussion until that question is settled, before any other question is raised with regard to the Legislature.

How many members shall compose the Legislature? Various propositions have been made by different gentlemen, among whom there is a wide diversity of opinion. The gentleman from Venango, (Mr. Dodd,) who made a very able argument this morning against any increase of the members of that body, has evidently given this subject more attention than many of the rest of us. But it is a question that ought to receive the very earnest attention of every member of this Convention. While I entirely dissent from the conclu-

sions to which he came, I may not be able at this time to convince him or any other delegate that I am correct. I have, however, some reasons which convince my own judgment that the number of members of the Legislature ought to be increased.

The first is that it was deemed wise by our fathers, in laying the foundations of our organic law, when the States of this Union were mere colonies; when neither the numbers nor the wealth, nor the business of Pennsylvania was scarcely more than a drop in the bucket compared with the proportions which it now assumes.

If the present number was necessary at the time when it was fixed clearly a far greater number is necessary now. The measures, the questions which came before the Legislature at that time, were then simple, compared with those that come before it now; and if it required one hundred members at that time to represent intelligently and properly the interests of this Commonwealth, it requires a very great increase in that number now.

That is the judgment of all our sister Commonwealths. There is no State in this Union with so small a number of Representatives compared with her population. Not a single one. Now can this uniform action of our sister States be mistaken? Are they all mistaken in supposing that it does require a larger number of Representatives properly to take care of the interests of their people? I submit that this fact is an argument in favor of increasing the membership of our Legislature. This is the uniform testimony of our sister Commonwealths and ought to have weight with us.

I utterly dissent from the position assumed by the gentleman from Venango, that an increase in number will decrease the dignity of the Legislature. I affirm, on the contrary, that it will improve it. It will bring the Legislature nearer to the people, and enable it to reflect their wishes better than a smaller number possibly can. The truth is that the various counties of this Commonwealth have grown to such large proportions, have so increased in numbers, in wealth, and in the interests, that the Representatives are practically far removed from the people, very far removed from them. To bring them closer together is the way to increase the dignity of the office of legislator.

I again dissent entirely from the gentleman from Venango, when he asserts that as you increase the numbers in the Legislature you will thereby increase the power of its corrupt influences. I maintain, on the contrary, that the power of integrity and of honesty will be increased in a far greater proportion; that it will hold good in the Legislature as it holds good everywhere, that one honest man can chase one thousand rogues if he will but have the energy to do it, and that the combined influence of honest men will be effective in the same proportion. If we elect a Legislature for Pennsylvania with one hundred members, and you can elect but one-third of them honest men, who will stand up to their duty under any and all circumstances, the power they can exert for good cannot be questioned. But if you increase the number of Representatives to three hundred, and elect only the same proportion of honest men, you will increase the power and dignity of the House by a much greater proportion. One hundred men, standing together upon principle and honesty in the Legislature, will have greater power over a Legislature of three hundred men than thirty-three honest men would have in a Legislature of one hundred; a far greater power. Men, when they come together, as has been argued here on this question of limitation, are strengthened by a concentration of force, but in a small representative body there is little chance for such concentration. Take the case as it stands, and you have in the present Legislature but twenty-five or thirty such men, and they do not feel their strength. They do not feel that they have the power to move with that strength that they would feel if there were one hundred of them. It follows naturally that this class of men will be increased in the same proportion. If you make it three hundred men instead of one hundred, it follows naturally and logically that you will increase the representative intelligent men of integrity in the same proportion. I believe it would be greater, because you would bring these men home to the knowledge of the people more. The people do not re-elect dishonest men when they know it, and, besides, I do not believe what has been so often asserted here about the dishonesty and the corruption of the Legislature. I was sorry to hear again, this morning, the same old story that we heard in the early assembling of this Convention. I thought we had heard

the last of that kind of talk. There is no necessity of lugging it into any discussion coming before this body, and I do not believe in it. What I do believe, with regard to this matter, is that it is necessary for the proper representation of the people of Pennsylvania that the representatives should come home nearer to the people than they can come with a membership of one hundred men. They are too far removed. It needs more of the infusion of the people into that body, and that is to be obtained only by the increase in the number of the Representatives.

There are not to-day, in the Legislature of Pennsylvania, and there has never been at any time, as I firmly believe, any considerable number of Representatives who do not intend to reflect the will of the people, but they are surrounded with subtle influences, they are persuaded by men of great ability that certain measures will not be objectionable to the people, and they are so far removed from them that they do not feel the impulse of their constituents behind them, and they do feel the influence, and the advice, and the persuasion of these men around them, and they are led to vote for measures they would never have thought of voting for if they had felt the inspiration of an honest constituency constantly near them. I think it is a lesson worth reflecting upon and worth considering in this connection, that when the New England system of representation provides of one member to about four thousand inhabitants there has been less complaint of improper influences being brought to bear successfully upon members than in Pennsylvania under our plan of one Representative to thirty-five thousand inhabitants.

In Vermont, I believe, there is the purest democracy that has ever been established. The numbers are very much larger than ours—as it is in all the New England States; and in Massachusetts, with a population of less than one-half of Pennsylvania, there is a Legislature more than twice as large as ours, and we do not find that the dignity of the Legislature of Massachusetts is at all belittled by it. Nor do the people find any difficulty in calling to their aid, in the Legislature of that State, the very best talent that it has. They have had in their Legislature the historic names of the country—Cushing, and Adams, and Hoar, and Butler, and Phillips, and Boutwell—to represent them. There is no force, therefore, in the argu-

ment of the gentlemen from Venango on this point.

[Here the hammer fell.]

Mr. ALRICKS. Mr. Chairman: I move that the gentleman's time be extended.

The motion was agreed to.

Mr. MANN. I voted for the resolution restricting debate. I thank the committee for its kindness, but I believe the resolution ought to be enforced or rescinded, and therefore I close my remarks.

Mr. KNIGHT. Mr. Chairman: I rise with the view of making a suggestion, and finding no other way of getting it before the committee, I embrace this opportunity to make a few remarks. We have evidently been "swinging around the circle," and it seems that it is difficult for any gentleman in this Convention to determine exactly what we are driving at. We have three or four reports before the Convention, one on distribution, another on the number of members that shall be fixed for the two branches of the Legislature, and various amendments and suggestions have come before us, but it does seem to me that we are getting along very slowly. Now I think we are here for the purpose of improving rather than condemning what has been done in the past.

While I am not going to say a word against the members of the Legislature, or against the corporations of the State of Pennsylvania, and while I have no other purpose than to do them justice, I believe there is a very great reform required, and it is my opinion that the only way of getting at it is largely to increase the numbers in both branches of the Legislature, and I shall give you a few reasons why I have come to this conclusion.

In the first place we know very well when promoters of corporations go to the Legislature to obtain corporate privileges they ask them for a purpose which they suppose is to benefit themselves. The Legislature is the father of that institution, or corporation, and we know very well that the child scarcely becomes able to creep before its head is turned towards Harrisburg, and it goes there for an object. When it begins to walk and run you find it there, influencing legislation in some shape or other.

Now I contend that with a largely increased number in each branch of the Legislature, coming more directly from the people, we would have a better class of members, and it would be a great deal more difficult to pass bills through the Legislature, except upon their merits. Now we all know

very well the difficulties of the corporations of this Commonwealth keeping themselves from being controlled by the Legislature. If you had a larger number, this state of things, in my opinion, would not exist. The Legislature, to a certain extent, would be independent of the corporations, and the corporations independent of the Legislature. We all know that the railroad companies—I might as well speak out plainly—of the Commonwealth of Pennsylvania are constantly called upon by the members of the Legislature and the members of other public bodies, for passes, not only for themselves and their families, but for many of their friends. You cannot go into a railroad office in this city without finding a constant flow of applications, personally and by letter, for passes for everybody of any supposed influence, for trip and annual tickets all over the State. If you had some three hundred members in the lower House, and one hundred in the Senate, the railroad companies would come to the conclusion—if the Legislature itself did not pass a law prohibiting free tickets—that they could not afford it, and therefore they would do away with the system, and thus remedy a great and growing evil. Gentlemen of this Convention may not know it, but I have been credibly informed by a party who ought to know, and does know, that the free passes over the roads of one of the incorporated companies of this State cost the stockholders five hundred thousand dollars a year. Now this is a great evil, and you cannot extend this evil without it having other injurious effects. There have been cases, not in our own State, but in one of the neighboring States that I know of, where the Legislature has been positively tampered with, where but one vote was required to make a majority for a certain purpose. I am credibly informed of a case where twenty-five hundred dollars was paid for a vote. The opposing party heard of it, and said that they would do better, and agreed to give five thousand dollars. The party bribed returned the money he had received to the first party, but before he had time to see the second party, they compromised the matter, and he lost both sums. It served him exactly right, but the parties who heard of it took it as a very great joke, that this man should not have received either the twenty-five hundred or the five thousand. Now if you have a large representation the Legislature would not continue in session so long, and I am satisfied

that the State will be greatly benefited by the change. Before another Convention to revise our Constitution assembles, we will have a population in this State of at least ten millions of people, and then we will require a larger representation; and I think we had better commence the change at once.

I have drawn up my suggestion in the form of a resolution, but it not now being in order, I will simply read it for information:

Resolved, That the whole number of Senators and Representatives shall be determined by the Convention before considering the number of members that any city or district shall be entitled to.

If we confine ourselves to that one point we will be accomplishing something, and can progress with our business more rapidly.

Mr. SIMPSON. Mr. Chairman: Upon the subject of the number of members in the two branches of the Legislature, I confess that my thoughts have not run in the same channel with those of the gentleman from Venango (Mr. Dodd.) I took the trouble to examine the various Constitutions of the several States of this Union, and the Journals of the several Houses of the Legislature, as far as they were attainable, and I have made a table which I hold in my hand, showing the disparity of numbers as represented in the various Legislatures of the different States of this Union, and I propose to read them for the information of this Committee, that they may determine, perhaps, to some extent, upon the propriety of the proposed increase, or whether it would be better to retain the present number.

Alabama has a population of 996,992; she cannot have more than thirty-three Senators nor less than twenty-five. The thirty-three would give a ratio of one Senator to 30,213 of the population. The twenty-five would give a ratio of 39,876. Her Representatives number 103, which gives a ratio of one to 9,969.

Arkansas has a population of 484,471; she has 26 Senators, giving a ratio of one to 18,633. Her Representatives are 82 in number, giving a ratio of one to 5,908.

California has a population of 560,247; has 36 Senators, giving a ratio of one to 15,562. In her House of Representatives the minimum number is fixed at 30, which would give a ratio of 18,674, the maximum is 80, which would give a ratio of 7,003.

Connecticut has a population of 537,454; 12 Senators, ratio 44,789; Representatives 240, ratio 2,239.

Delaware has a population of 125,015; 9 Senators, ratio 13,981; 21 Representatives, ratio 5,953.

Florida: Population, 187,748; 24 Senators, ratio 7,823; 51 Representatives, ratio 3,681.

Georgia: Population, 1,184,100; 44 Senators, ratio 26,912; 175 Representatives, ratio 6,766.

Illinois: Population, 2,539,891; 51 Senators, ratio 49,802; 153 Representatives, ratio 16,601.

Indiana: Population, 1,680,637; 50 Senators, ratio 33,612; 100 Representatives, ratio 16,806.

Iowa: Population 1,191,792; 50 Senators; ratio 23,836; 100 Representatives, ratio 11,918.

Kansas: Population 364,399; 25 Senators, ratio 14,576; 75 Representatives, ratio 4,859.

Now, Mr. Chairman, I desire to call attention to the ratios for the House of Representatives in each State, prefacing with the remark that the Senators usually number about from one-fourth to one-third the Representatives, and will add this table as a part of my remarks.

There is one Representative allowed in each of the following named States for the number of inhabitants stated:

Kentucky	13,210
Louisiana	7,197
Maine	4,179
Maryland	9,080
Massachusetts	6,072
Michigan, not more than	18,501
“ not less than	11,840
Minnesota	5,496
Mississippi, not more than	8,279
“ not less than	6,899
Missouri	8,607
Nebraska	3,152
Nevada	1,180
New Hampshire, about	1,050
(One for every 150 registered voters, and one for every 300 additional.)	
New Jersey	15,102
New York	34,240
North Carolina	8,928
Ohio	26,653
Oregon	2,968
Pennsylvania	35,218
Rhode Island	3,019
South Carolina	5,690
Tennessee	12,712
Texas	9,095

Vermont, each town of 80 taxable inhabitants is entitled to *two* members; all others to *one*.

Virginia	8,814
West Virginia	9,404
Wisconsin, not more than	19,531
“ not less than	10,547

In the case of Vermont, if a town has 80 taxable inhabitants, its population cannot well exceed 800; that number is entitled two Representatives, so that in some of the larger towns the ratio for one Representative may be called 400, but in others it is much greater; the average for the State may, however, be set down as about 1 to 1,100 persons.

We see by this table that Pennsylvania has about one thousand more ratio than the State of New York; and those two States—leaving Ohio out—are rather more than double Indiana and Illinois, which are the next highest after these other three States.

Now, sir, my experience of the history of this country is, as was well stated by the gentleman from Potter, (Mr. Mann,) that the New England States have given less cause of complaint than any other of the States of this Union, in regard to the character of their legislation, as supposed to be swayed by corrupt motives, and we find that Connecticut is represented upon the floor of the House of Representatives to the extent of one member to 2,239 persons, and in the Senate one to 44,789; Maine is represented in the House of Representatives to the extent of one to 4,179 persons, and in the Senate one to 31,789; Massachusetts in its House of Representatives has one member to every 6,072 inhabitants, and one Senator to 36,544; New Hampshire has a Representative to about 1,050 of population, and a Senator to 26,525; Rhode Island has a Representative to 3,019 of population, and a Senator for each city and county; Vermont has a Senator to 11,018 of population, and a member in the House for an average of about 1,100.

I think the gentleman from Venango (Mr. Dodd) was mistaken in the conclusions he drew from his researches. I think an examination of the acts of Assembly of the various States of this Union will show that purer legislation will be found in those States that are represented by the largest number in proportion to population. I think no one can avoid coming to that conclusion from the very nature of the case. It will be still more curious to observe that the sessions of the Legislatures having the most numerous bodies

are the shortest in point of duration; while those that are the lesser in numbers, proportionately to population, are the longest in session. If the length of time occupied in making the laws, together, with the number of the laws, can be said to be an evil, as it has been said to be, then, I think, that upon the policy of having larger Houses and shorter sessions

we can get less evils than we have now. I am therefore prepared to vote for the largest number of Senators and Representatives that will be named on this floor.

For the purpose of reference, I now read and add the following table as part of my remarks:

NAMES.	Population.	No. of Senators.	Ratio.	No. of Represent ^s .	Ratio.
Alabama	996,992	25 to 33	{ 30,213 39,876 }	{ 100 82 }	{ 9,969 5,908 }
Arkansas	484,471	26	18,633	82	{ 18,674 7,003 }
California	560,247	36	15,562	30 to 80	{ 6,766 2,230 }
Connecticut	537,454	12	44,789	240	5,953
Delaware	125,015	9	13,891	21	3,681
Florida	187,748	24	7,823	51	6,766
Georgia	1,184,109	44	26,912	175	16,601
Illinois	2,539,891	51	49,802	153	16,806
Indiana	1,680,637	50	33,612	100	11,918
Iowa	1,191,792	50	23,836	100	4,859
Kansas	364,399	25	14,576	75	13,210
Kentucky	1,321,011	38	34,763	100	7,197
Louisiana	726,915	36	20,192	101	4,179
Maine	626,915	20	31,346	150	9,080
Maryland	780,894	24	32,537	86	6,072
Massachusetts	1,457,351	40	36,434	240	{ 18,501 11,840 }
Michigan	1,184,059	32	37,002	64 to 100	5,496
Minnesota	429,706	37†	11,884	80†	{ 8,279 6,899 }
Mississippi	827,922	33	25,089	100 to 120	8,607
Missouri	1,721,295	34	50,626	200	3,152
Nebraska	122,993	13	9,456	39	1,180
Nevada	42,491	18	2,360	36	
New Hampshire	318,300	12	26,525	§	15,102
New Jersey	906,096	*		60	34,240
New York	4,382,759	32	136,961	128	8,928
North Carolina	1,071,361	50	21,427	120	26,653
Ohio	2,665,260	35	76,150	100	2,968
Oregon	90,923	16	5,682	34	35,218
Pennsylvania	3,521,791	33	106,721	100	3,019
Rhode Island	217,353	†		72	5,690
South Carolina	705,606	32	22,051	124	12,712
Tennessee	1,258,520	33	38,137	99	9,095
Texas	818,579	30	27,285	90	
Vermont	530,551	30	11,018	||	8,814
Virginia	1,225,163	43	28,492	139	9,404
West Virginia	442,014	18	24,556	47	{ 19,531 10,547 }
Wisconsin	1,054,670	19	55,509	54 to 100	

* One for each county.

† One for each city and county.

‡ First numbers under Constitution.

§ One member for one hundred and fifty registered voters, and one for every three hundred additional.

|| Each town of eighty taxable inhabitants two members; all other towns one.

Mr. DE FRANCE. Mr. Chairman: I desire to add a few words to what has been said as to the increase of the number of members of the Legislature, as I have had the matter under consideration for some time.

I think experience is the best guide in a matter of that sort. If we had had no experience to refer to, the argument of the gentleman from Venango (Mr. Dodd) would have great weight with me, for he is an intellectual and highly cultivated

gentleman. The experience of the different States of this Union has been entirely different to that which could have been expected according to the logic of that gentleman. The practical workings of large Houses for legislative bodies and of small ones has been directly the reverse of what he seems to think. I agree fully with the gentleman from Potter (Mr. Mann) and those who have spoken on that side of the question. In furtherance of that side of the argument, I wish to read a letter which I have received from the Governor of Vermont.

EXECUTIVE CHAMBER,
STATE OF VERMONT.
MONTPELIER, *Februray 7, 1873.* }

Hon. R. M. De France:

DEAR SIR:—Your favor of 24th ult. was received in my absence. I hasten to reply.

We have in this State two hundred and forty-one incorporated towns, each of which is entitled to a Representative. Generally there are some towns unrepresented. The House seldom falls below two hundred and thirty for actual business. Our Senate consists of thirty members, elected by fourteen counties. We have often attempted to reduce the number of Representatives, but we have always failed. The main ground of failure—and I think so, too—is the security it gives us against corruption. I think to-day the reason against lessening the number is stronger than at any prior period in the history of this State. The experience of some of the sister States, for a few years past, I think has irrevocably established the wisdom of our policy in the minds of the people. I most heartily concur in this opinion, that it prevents fraud and corruption.

I am, sir, very respectfully,
Your obedient servant,
JULIUS CONVERSE.

I have also, Mr. Chairman, received a letter from Governor E. A. Straw, of New Hampshire, on this subject. I inquired specially as to whether he thought a large number of Representatives gave security against corruption. He says:

"There has never been any corruption charged in our House of Representatives."

That body is very large, consisting of three hundred and sixty members.

I have also a letter from the Governor of Connecticut, Governor Jewell, in which he says:

"In my opinion a large number of Representatives is a certain guard against corruption;" and, he goes on to say, "I am proud to say that there has never been any corruption of the Legislature. What is true of this is equally true, I think, of all the New England States."

There is an old saying that "the proof of the pudding is in the eating." Now what are the facts in this matter? That the Legislatures of those States who have had the largest representation have always been the most honest. Some men pretend to ascribe this to the fact that there is nothing to steal in New England—that therefore there was no incentive to bribery. Well, sir, Massachusetts is rich and Boston is rich. They have United States Senators to elect there just as we have, or as they have in Kansas or any where else; and we find that when the New England men come out here they are not very much more scrupulous than we are. They believe in getting all they can, and keeping all of it as long as possible. They are about as avaricious as the Pennsylvanians.

I have thought about this a great deal, and I have particularly endeavored to inform myself concerning the operations of this subject in other States, and from all the information I have received, as well as from my own consideration of the question, I do believe that the representation in our Legislature ought to be increased to the largest extent. I shall, therefore, vote for the largest proportion of representation for this State, and then, if I can not obtain that, I will have to come down a little. Mr. Chairman, I believe I have nothing further to say in connection with this question, and all I have said has only been by way of confirmation of what has been so ably argued in this Convention.

Mr. DARLINGTON. Mr. President: I move that the committee rise and report progress.

The motion was agreed to.

IN CONVENTION.

The committee then rose, and the President resumed the chair. The chairman of the committee of the whole reported progress, and asked leave for the committee to sit again, which was agreed to, and to-morrow was named.

Mr. NEWLIN. Mr. President: I move that the Convention do now adjourn.

The motion was agreed to.

So the Convention thereupon, at one o'clock and forty-five minutes, adjourned.

FIFTY-FIFTH DAY.

SATURDAY, *March 1, 1873.*

At ten o'clock A. M. the President called the Convention to order, and announced that there was not a quorum of members present.

Mr. MANN. Mr. President: I would suggest that the roll of members be called, in order to ascertain whether there is a quorum present, or whether there will be likely to be a quorum.

The CLERK called the roll, and the following members answered to their names:

Messrs. Achenbach, Alricks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Bowman, Boyd, Brown, Carter, Clark, Craig, Darlington, De France, Edwards, Ewing, Fulton, Guthrie, Hay, Howard, Knight, Lawrence, M'Allister, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Metzger, Minor, Niles, Purviance, John N., Purviance, Samuel A., Sharpe, Simpson, Smith, Henry W., Smith, W. H., Stanton, Struthers, Turrell, Walker, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F., Wright and Meredith, *President* —48.

NOT PRESENT. — Messrs. Addicks, Ainey, Armstrong, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bidle, Black, J. S., Brodhead, Broomall, Buckalew, Campbell, Carey, Cassidy, Church, Cochran, Collins, Corbett, Corson, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning, Elliott, Ellis, Fell, Finney, Funck, Gibson, Gilpin, Gowen, Green, Hall, Hanna, Harvey, Hazzard, Hemphill, Heverin, Hopkins, Horton, Hunsicker, Kaine, Lamberton, Landis, Leat, Lilly, Littleton, Long, M'Camant, M'Clean, MacVeagh, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Read, John R., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Rooke, Ross, Runk, Russell, Smith, H. G., Stewart, Temple, Van Reed, Wetherill, J. M., White, David N., Woodward and Worrell —85.

Mr. EDWARDS. [After some minutes delay.] Mr. President: I move that we

do now adjourn, since we cannot get a quorum.

The motion was rejected.

Mr. DARLINGTON. Mr. President: I move that the Sergeant-at-Arms be directed to bring in the members.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. PURMAN asked and obtained leave of absence for Mr. Charles A. Black for a few days.

Mr. STANTON asked and obtained leave of absence for Mr. Brown for a few days.

Mr. NEWLIN asked and obtained leave of absence for Mr. Bardsley for a few days.

Mr. WORRELL asked and obtained leave of absence for Mr. Addicks for a few days.

Mr. DARLINGTON asked and obtained leave of absence for Mr. Boyd for a few days.

DEBATE IN COMMITTEE OF THE WHOLE.

Mr. MANN offered the following resolution, which was laid on the table under the rules:

Resolved, That hereafter in committee of the whole no delegate shall speak longer than fifteen minutes at one time, nor more than once on the same proposition.

SESSIONS OF THE CONVENTION.

Mr. HOWARD offered the following resolution:

Resolved, That on and after Monday next this Convention will meet at ten o'clock A. M., and adjourn at one o'clock P. M., and will meet at three o'clock P. M., and adjourn at six o'clock P. M.

On the question to proceed to a second reading and consideration of the resolution, a division was called and it was not agreed to. Ayes, twenty; noes, sixty-five.

Mr. BAER offered the following resolution, which was laid on the table under the rules:

WHEREAS, All resolutions adopted by this Convention which operate as a change, alteration or modification of rule XXV, have thus far only impeded the progress

of the business of the Convention, and, in effect, are a dead letter upon the record; therefore,

Resolved, That all resolutions violative of rule XXV be and are hereby rescinded and annulled, and the rule re-instated as originally adopted.

THE REVISION OF THE CONSTITUTION.

Mr. J. W. F. WHITE offered the following resolution, which was laid on the table under the rules:

Resolved, That the following method be adopted in revising the Constitution:

First. That the articles and titles of the Constitution be as follow:

PREAMBLE.

- ART. 1. Declaration of Rights.
- ART. 2. Distribution of Powers.
- ART. 3. The Legislative Department.
- ART. 4. The Executive Department.
- ART. 5. The Judicial Department.
- ART. 6. Elections and Suffrage.
- ART. 7. Education and Labor.
- ART. 8. Municipal Corporations.
- ART. 9. Corporations other than Municipal.
- ART. 10. Taxation, Finance, Public Debt.
- ART. 11. Disqualification for Office.
- ART. 12. Official Terms, Vacancies, Salaries.
- ART. 13. Impeachment and Removal from Office.
- ART. 14. Miscellaneous.

SCHEDULE.

Second. That the standing committees make their reports under one of the above articles; and when two or more have subjects which should be embraced in the same article, they unite in reporting a full article.

Third. That section four of rule VII be stricken out, and section six be changed as follows:

I. The articles and sections shall be considered in consecutive order first in committee of the whole.

II. After all the articles and sections shall have been considered in committee of the whole, they shall be considered in the same order in Convention on second reading.

III. They shall then be considered in the same order in Convention on third reading.

Mr. HARRY WHITE. Mr. President: I have the honor to submit the report of the Committee on Legislation, and ask that it be read.

The CLERK read the report.

The PRESIDENT. The remaining section is one which the committee requests shall be submitted to a separate vote of the people. The Chair does not think that such section can properly form part of the article.

Mr. HARRY WHITE. Mr. President: With all due deference to the Chair, I would state that the Committee on Legislation incorporated that section in their report in obedience to the petitions received here from thousands of the citizens of Pennsylvania, asking for the submission to the people of a separate article of that kind. The majority of the Committee on Legislation thought it would be wise to place that section in their report.

The PRESIDENT. The section will be received as part of the article if the Committee on Legislation think fit to take out the words relating to the separate vote. That is a subject which belongs primarily to the Committee on Schedule.

Mr. HARRY WHITE. Mr. President: The understanding of the committee was that on this question the committee to which it should be referred should exercise their judgment as to the manner in which it should be reported to the Convention. After having passed from the hands of the Committee on Legislation it is, of course, the property of the Convention, and the Convention can require that subject matter to be submitted to a separate vote of the people or not, just as they deem fit.

The PRESIDENT. The Chair feels bound not to receive this in its present shape. He regrets it very much, especially as the chairman of that committee seems to think that it is in order.

There are two distinct subjects involved in the proposition. The first is whether this Convention will agree to the section proposed, and the second is if they do agree to it whether it should be submitted as a separate question to the people. Now these two cannot go together. The first question would be whether it is to be submitted as a separate article, and when the Convention agreed to that the section might be negatived. If the chairman will withdraw that part of his report the section will be read.

Mr. HARRY WHITE. Mr. President: I do not feel myself authorized to withdraw any portion of the report, inasmuch as I have been instructed to present it just as it has been presented by the majority of the committee, after full discussion and understanding. It was apprehended by

the majority of the committee that all questions which have been passed upon by the committee should be submitted at this time, and that the report, therefore, would be incomplete if this clause had not been put into it.

The PRESIDENT. The Chair regrets very much that he cannot receive the report now. He cannot receive a report that mixes up an article with a recommendation of what should be done hereafter. This article has now been read the first time. It will be laid upon the table and printed.

COPIES OF THE NINTH CENSUS.

The PRESIDENT presented a communication from the Hon. John Scott, Senator of the United States from the State of Pennsylvania, transmitting a copy of the first volume of the ninth census of the United States, for the use and information of the members of the Convention, which was laid upon the table.

PROHIBITION.

The PRESIDENT presented a petition of numerous citizens of Pennsylvania, praying that an amendment to the Constitution may be adopted prohibiting the manufacture and sale of intoxicating liquors.

LEGISLATION.

Mr. HARRY WHITE. Mr. President: Do I understand that the Chair declined to receive the report of the Committee on Legislation?

The PRESIDENT. No; the section at the end of that report, not being part of the article, but merely a recommendation of the committee, was not received.

Mr. HARRY WHITE. I feel it my duty, in deference to the instructions of the Committee on Legislation, who directed me to make this report, to see that the section is entered upon the Journal. I would therefore ask that the section, as it appears in the report, be read by the Clerk and entered upon the Journal.

The PRESIDENT. The Clerk will read the section.

The CLERK read:

TO BE SUBMITTED FOR A SEPARATE VOTE.

SECTION —. No license shall be granted to sell vinous, spirituous or malt liquors, or any admixture thereof, or any other intoxicating drinks, and any sale of such liquors, except for mechanical, medicinal or sacramental purposes, shall be a misdemeanor, and punished as shall be provided by law.

The PRESIDENT. The next business in order is the further consideration, in committee of the whole, —

EASTERN PENITENTIARY.

Mr. SIMPSON. I desire to ask a question. The Convention accepted the invitation of the inspector of the Eastern penitentiary to visit that institution, and assigned this afternoon for that purpose —

The PRESIDENT. The gentleman is not in order. The next business before the Convention is the further consideration, in committee of the whole, of the article submitted by the Committee on the Legislature.

IN COMMITTEE OF THE WHOLE.

The Convention then, as in committee of the whole, Mr. Charles A. Black in the chair, proceeded to the further consideration of the article reported by the Committee on the Legislature.

Mr. JOHN N. PURVIANCE. Mr. Chairman: I do not intend to speak on the question as to the representation of cities, which has been so elaborately discussed by the able and learned gentlemen who have addressed the committee, but to confine my remarks mainly to one of the propositions contained in the amendment now before the committee. That is the amendment providing that each county shall have at least one Representative in the House of Representatives, although it may not contain the requisite ratio of representation.

I am in favor of this amendment, because I believe that no county of the State should be without a representation in the popular branch of the General Assembly.

Population is taken as the basis of representation, not because it is wholly right, but for the reason that some rule must be established in order, as far as practicable, to secure equality of representation. It is absolutely necessary, too, that a number be fixed so as to provide for additional members where the population of counties exceed the minimum fixed for a member. Whilst this mode is the one universally agreed upon in every State of the Union, it is no violation of it, as a general rule, to give to each county a member, though the population may be less; it is only in such case an exception to the rule. Each county should have a member because of its separate and independent existence as such, and the wants of the people which could be best made known by one of their own citizens. Territory, as well as popu-

lation, should be considered in determining upon the right and necessity of representation. Counties, as such, are taxed, and have to bear a portion of the expenses of State government, and therefore have a clear right to demand representation, and voice and vote in all questions of taxation, as well as the location of county seats, the fixing and maintaining boundary, the location of State and county roads, the division of townships for school and other purposes, the regulation of wharfs, bridges, &c., in navigable streams.

It is well known that district representation does not confer the advantages to a new and sparsely settled county which is necessary to its development and prosperity. The district member may represent a number of adjoining counties as large as the State of Delaware; he may be, and generally is, a stranger to his constituents and their wants, and resident one hundred miles distant from them. Take, for example, the counties of Forest, Elk, Cameron, McKean, Sullivan and Potter, extending from the waters of the Susquehanna to the waters of the Allegheny. What now would the Representative from any one of the counties named know of the wants and interests of the other counties of such a district? One county may be entirely agricultural, the others mining, manufacturing and lumber. In fact such representation, as experience has proved, is almost equal to no representation whatever. In city government, in all the cities of the State, every ward, whether small or large in population, is represented in at least one branch of the city councils. No ward would be asked to submit to taxation without representation, and each ward has its own immediate representative. The regulations as to water, gas, street railways, buildings, private and public, the assessment and collection of taxes, the control and management of schools, the regulation of markets, &c., all demand representation in the councils of the law-making power for the government of cities. The same principle is carried out in the representation of Territories in Congress, each Territory having a delegate, who is entitled to a seat in the councils of the nation to protect the rights and interests of the Territory, though the population may be but a few thousand.

The principle of representation should be carried out to every county, as it is to cities and territories, without reference to population. They have their organization as counties, their courts, their

county officers and their county pride, only humiliated by their want of representation in the enactment of laws which they are bound to obey.

By giving to each county a member you protect the rural districts against the ever increasing representation from the cities.

This amendment is but restoring in the new or amended Constitution the same provision which was a part of the Constitutions of 1776 and 1790, stricken out by the Convention that framed the amended Constitution of 1838. Let us get back to the old land marks from which, in this respect, we never should have departed, and thus preserve the rights, and promote the safety and welfare of the people.

From the days of the Continental Congress down to the present time, it has been a recognized fundamental principle of our system of government, that representation should be allowed to each separate community, State or county, without reference to the number of population, though the increase in numbers of Representatives was enlarged by the increase of population.

Numbers, therefore, was not a primary principle in determining the right of representation, but rather settled upon as the rule to regulate the enlargement of it.

We should make counties the basis of representation, and fix a ratio for their increase in population, so as to equalize representation, and provide such checks and balances as are necessary for a just equilibrium of legislative power.

Mr. Chairman, with a view of ascertaining how far other States have gone in recognizing the principle of county representation, I have examined the Constitutions of many of the States. I now refer to the Constitutions of twenty States, and will read the provisions contained in each as to county representation. I quote from American Constitutions:

Alabama. Vol. I, page 67: "Each county shall be entitled to at least one Representative."

Connecticut. Page 161: "The number of Representatives from each town shall be the same as at present practiced and allowed."

Florida. Page 231: "Each county one Representative at large."

Georgia. Page 260: "To each county at least one Representative."

Illinois. Page 293: "Every county or district shall be entitled to one Representative when its population is three-fifths

of the ratio." Although Illinois did not go the whole length of making counties the basis of representation, yet she manifested her faith in the principle by adopting the three-fifth rule.

Iowa. Page 379: "Every county and district which shall have a number of inhabitants equal to one-half of the ratio fixed by law, shall be entitled to one Representative."

Louisiana. Page 481: "Each parish in the State shall be entitled to at least one Representative."

Maine. Page 513: "Each town having one thousand five hundred may elect one Representative."

Maryland. Page 570: "Each county in the State shall be entitled to one Senator, and each county at least two delegates."

Massachusetts. Page 632: "Every corporate town containing one hundred and fifty ratable polls may elect one Representative."

Michigan. Page 670: "Each county hereafter organized shall be entitled to a corporate Representative when it has attained a population equal to a majority of the ratio of representation."

Missouri. Page 793: "Each county having the ratio of representation, or less, shall be entitled to one Representative."

North Carolina. Volume II, page 118: "Each county shall have at least one Representative in the House of Representatives, although it may not not contain the requisite ratio of representation."

New Hampshire. Page 13: "Every town, parish or place, entitled to town privileges, having one hundred and fifty ratable male polls, twenty-one years of age and upwards, may elect one Representative."

New Jersey. Page 42. "Each county shall at all times be entitled to one member."

New York. Page 77. "Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the Assembly."

Rhode Island. Page 261: "Each town or city shall always be entitled to at least one member."

South Carolina. Page 285: "If in the apportionment of Representatives any county shall appear not to be entitled, from its population, to a Representative, such county shall, nevertheless, send one Representative."

Vermont. Page 406: "The House of Representatives shall be chosen by ballot by

the freemen of every town in the State respectively."

West Virginia. Page 891: "Every delegate, district and county, not included in a delegate district, shall be entitled to at least one delegate."

It thus appears that eighteen of the States referred to have, without qualification, adopted the principle of taking counties as the basis of representation, or in other words, of allowing each county a Representative in the popular branch of the Legislature.

Mr. DARLINGTON. What is the question up before the committee?

The CHAIRMAN. The proposition of the gentleman from Carbon (Mr. Lilly.)

Mr. DARLINGTON. Mr. Chairman: That question is rather broader than any yet discussed, and involves principles certainly of very great magnitude. I regret that it has been put before us in such a conglomerated form that it is difficult for the Convention, in the short time allotted for it in committee, to give any attention to the various departments of it, which are necessary to be discussed and understood by the body before any vote should be taken.

I did not suppose, sir, that we would be called upon at this early stage to go into the discussion of the general questions which the proposition of the gentleman from Carbon (Mr. Lilly) involves. It is nothing else, sir, than whether we shall adopt entirely a new principle in the history of this State—an unknown principle of minority representation—or whether we shall adhere, on the other hand, to the acknowledged, well-understood and long-tried principle of the representation of the majority.

True, each of these separate propositions, as now presented for the consideration of the committee, involves, necessarily, the consideration of the number of which each House shall consist. The proposition of the gentleman from Carbon (Mr. Lilly) proposes a Senate of sixty and a House of one hundred, with, perhaps, some modifications therefrom. The proposition which I suggest contemplates a Senate of fifty and a House of one hundred and fifty as a minimum, leaving it optional, however, with the Legislature to increase the Senate to one hundred, should they see fit, and the House to three hundred, thus leaving the proportions between the two precisely as they now are. In other words the Senate is never to be greater than one-third nor less than one-

fourth the number of the House of Representatives.

When we shall have arrived at the decision of the committee on this question, we shall only have advanced one step, and possibly we may not arrive at a satisfactory decision on this question as to how many the House shall consist of, or be able to vote intelligently upon it, without, at the same time, taking into view two plans which are now presented to us by the amendments which are pending.

Are we prepared to leave the landmarks which have been the guide of our ancestors down to this day, and which are recognized as the fundamental principles upon which all governments rest, and adopt a new and untried scheme, and experiment in government in the hope of gaining something better than we have before had?

Why, sir, all republican and all free governments necessarily rest upon the will of the majority. No other foundation can any man lay with safety for a free government, State or national, than the majority of the people. That was the principle which lay at the very foundation of our institutions, and it remains to-day. I trust it shall always remain so long as free governments shall exist. It is the only principle upon which liberty can rightfully rest.

MR. CUYLER. Will the gentleman pardon a question? How does the doctrine for which he now contends support the proposition in his own amendment, that no city or county shall be entitled to more than six Senators?

MR. DARLINGTON. That I have not discussed.

MR. CUYLER. Although not discussing it, the doctrines which the gentleman contends for lie at the root of his principle.

MR. DARLINGTON. That is precisely the principle of the debate, but with regard to its application to cities or counties, I say that is a question into which I have not gone. I have not done so because it has been so much better and ably discussed by others. It has received the sanction of this body. I do not, therefore, propose to re-open it.

However unjustly the principle may be found to work, as it may be thought by gentlemen living in the city of Philadelphia, or by those who advocate a principle which they do not believe, still it is the true principle upon which all forms of government must rest. How can we then best attain the sense of the majority? If

we could all be thrown into one universal Commonwealth for voting, and all vote one general ticket, undoubtedly we would in that way, having but two candidates, obtain the will of the majority, as we do in the selection of our municipal officers; but still we must bear in mind that representation must be by districts composed of communities or their divisions, as it may be thought best, and we are to so organize the government as to allow the majority in each of these communities, or divisions, to select those who are to make their laws. I said the other day what I believe is true, that in a republican government, such as ours, there will always be, and there always ought to be, minorities as well as majorities. The safety of the government requires it, while the duties of a community require that there should be no unbridled and uncontrolled majority. There should be both majorities and minorities, and the stronger, the more powerful and the more talented the minority the safer will be the government of the majority; but while I say that, I nevertheless am unwilling to yield a single jot of the principle that the majority must rule. It must be the majority of the people of the community who shall elect their Representatives, and that is the principle I advocate.

Now what is that other principle which has been proposed here by the gentleman from Carbon, (Mr. Lilly,) but which is more popularly and better known as emanating from the gentleman from Columbia (Mr. Buckalew?) It is that there shall be no representation if the district consists of two or more members of the majority, but there shall be representation of both parties in the district by a system of voting known as the minority system and the cumulative system. In either event the purpose is, that we shall elect, in districts composed of two or more parties, one from each political party. Now, sir, upon what is this idea based? It is based upon the idea that a gentleman, when elected to the Legislature in either branch, is no longer a representative of the people who sent him there, but of the party that elected him; and this evil, this mistake, lies at the very foundation of the whole system of minority representation. There is the wrong; there is the mistake committed by those who advocate the minority representation system; and I say it is a heresy in politics, and a heresy in government for any one to suppose that one who is elected to office, and bound by the duty he undertakes to

discharge the duties of that office, is, in any sense or in any extent the representative of that party who send him to a legislative body. He is the representative of the whole people. Was not the distinguished gentleman, who sits at my right, (Mr. Curtin,) the loyal and faithful war Governor of Pennsylvania, the representative of the whole people of the Commonwealth, and not of one particular party, when he held that office? Was my friend who sits near me, (Mr Woodward,) the representative of the party who elected him to that high position of a Supreme Justice, or was he not placed upon that bench to discharge his duty with "even-handed justice," amid all the interests of the people of this Commonwealth? Why the mere statement of the proposition refutes the notion that any man who enters a legislative body, judicial position, or assumes the gubernatorial chair, does so as the representative of his party. He holds these positions as the representative of the whole community, and it is rightly so. It could not be otherwise.

You may tell me that no man forgets his political antecedents; that no man who is elected to office as a republican ceases to be a republican, and no man elected as a democrat ceases to be a democrat. If true, and I admit that a man may form an opinion that the political principles which he advocates are the best for the welfare of the country, but he acts in accordance with his judgment and his convictions. I do not expect a man to forget that. I do not expect to be less a republican when I leave this Hall than when I came into it; but when I come here my duty is to assist in forming a Constitution that shall be equal in its benefits and its disadvantages upon all parties of the State. I say, therefore, that we must not forget the true theory is, that when elected, no matter by what party, the individual elected is the representative of the whole people who joined in his election, and not of the party who is successful in the election. Then, sir, what is gained by permitting the majority thus to rule? You have men chosen who are supposed to be the best qualified, though in point of fact, the choice of the people may not fall upon the best men, but they must be, at least, among the best men, because the majority have so decided, and hence, upon this principle was enunciated the old Roman maxim—*vox populi, vox Dei*—the voice of the people is the voice of God. In a republican form of govern-

ment this principle must be accepted, because it is the unalterable voice of the majority of the people upon which rests the responsibility of government. Are we about to attempt a new and untried scheme by which we shall not send into our legislative halls the men elected by the majority alone, but also the minority a proportionate representation? Is it safe to make such a radical change, and would it not be treading on untrodden ground, and inaugurating a perilous movement in government? When did this new notion originate, and where? It has been tried, I know, in England, to some extent; but as the British Parliament is composed of a large body of men, it is possible that the inconvenience of minority representation may not be perceived, and we know not what its operation may be there. In Illinois, I am aware, they have endeavored to put this system in operation, but with what success I know not, except that they have elected a body under its operations; but this I do know, that when the question of minority representation was submitted to the people of that State there was less than a majority of the whole people who voted in favor of the system. It was submitted, it is true, at a season of the year when the vote would necessarily be small, but there was a majority of between nineteen and twenty thousand in favor of it, while the whole vote cast upon the adoption or rejection of the amendments to the Constitution did not exceed, I think, one-half of the whole population of the State. There was less than one-half of the people of the whole State voting upon a question of changing the fundamental law of the State.

Where else has it been tried and with what success? It has been tried in the formation of this body. What has been the result? Not entirely in the formation of the whole of this body, but the principle has been adopted in the election of every member of the body. In the State at large a ticket was voted for by each party; in the city of Philadelphia the same; in the city of Pittsburg the same; in the various country districts the same, with what result we know. On the general tickets in the State and in the cities mentioned the delegates were divided equally between the two political parties, and in the Senatorial districts two of one party and one of the other were elected.

Now, in order to ascertain how nearly this answers to the popular will, let us inquire whether this House, situated as it

is, represents the popular will of the State? And just here I beg to be understood. I am here, Mr. Chairman, finding no fault with the election of anybody. I am here to act with friends and statesmen of all parties to do the best for the common good. But upon the distinct question, which I propose to consider, how does this Convention represent the will of the people who sent us here? It is well known that in the organization of this body there was a majority, I think, of five. I beg pardon for thus alluding to party; I do it in no invidious sense. There was a majority of five. Is that the majority which represents or should represent the great political party which is the controlling power in this Commonwealth, or should that majority be much larger? If I calculate aright there would have been in this body, had it been elected by majorities, as parties generally are, instead of a majority of five, a majority of eleven or as nearly eleven as possible—ten and a very large fraction. That would have been the result. I do not speak without the book, and if the committee will indulge me for a moment I will show what I mean. For instance, take the Senatorial districts alone, leaving out of consideration altogether the gentlemen who were elected upon the State ticket and in the city of Philadelphia and in the city of Pittsburg, all of whom received half the votes cast or thereabouts; take the Senatorial districts alone. You have of republican votes cast for the republican candidates elected to this Convention 554,753, and for the democratic candidates 302,532 in all the Senatorial districts of the State. The whole vote of the State, therefore, given for the members of this Convention, in all the Senatorial districts for the Senatorial candidates, was 657,285.

Now a moment's attention and a single moment only to this. The ratio of votes is $6,639\frac{1}{2}$ for each member, and this will give 53 republican members and 46 democratic out of the 99, a republican majority of 7. Or take the popular majority, which is 52,221 republican, and the same ratio will give 7 members and a large fraction, 7 and $57\text{-}63$, very nearly 8 members, as the republican majority. Now, sir, you may carry that out with the same result, but I will detain the committee with no further comments upon that subject. I take these figures from the official vote given at Harrisburg. Probably there may have been a few scattering votes not affecting the general result. Thus you will per-

ceive that even this body of as honorable men as ever were assembled, of both parties, leaving out myself—as my friend from Philadelphia (Mr. Woodward) would say. I am fond of speaking of this body as an honorable and very intelligent body, and leaving myself out, as honorable a body as ever were assembled, composed of the best members of both political parties—nevertheless even this body does not reflect the popular will by reason of this minority system of representation adopted by the Legislature in our election. Mind I am finding no fault whatever in the organization of this body. We are doing well enough. But what I do say is that it is no certain way of giving expression to the popular judgment, the public feeling of this Commonwealth. Had the true majority system been applied to the formation of this body, the republicans would have been, instead of in a majority of five, at least in a majority of seven, or eight or nine, the difference perhaps being of no consequence in the general result.

MR. DE FRANCE. Mr. Chairman: I desire to ask the gentleman from Chester if this Convention does not, in this way, represent more of the people of Pennsylvania than if it represented only the majority of the people.

MR. DARLINGTON. Mr. Chairman: I do not know how that can possibly be made out. How are you to ascertain the wishes of the people of Pennsylvania, but by taking the sentiment of the majority? I grant you it gives a larger representation to the minority, and therefore it is better for their wishes. But when you remember, and we must remember, that all republican governments rest on the will of the majority, we are not allowing to that will its scope and power, but we are giving to the minority a representation which does not belong to them. I do not know whether it is my friend from Mercer (Mr. De France) or my friend from Montgomery (Mr. Boyd) who is liable to this objection, but certain it is that a large number of republican votes have no votes here to represent them, and there are a number of democratic votes in this body who have no constituents. I am not objecting sir, to the composition of this body, but I am referring to the principle of whether it is right in organizing the government of this State, to provide any system which shall not reflect the will of the majority in the only way in which it can be reflected by giving the majority the right to choose the men that shall represent them.

One word further. What is the true purpose of the minority? What is the true object of a minority? What is the true business of a minority? Not to govern! Not to govern, because the government and responsibilities of the government must rest on the majority. The minority have no responsibility for the acts of the governed, nor should they have. It is upon the majority that this responsibility rests, and they cannot shrink from it. The good and the ill that flow from their acts must be fathered by them, and by them alone. What then is the office of the minority, admitting that a minority should always be represented? Represented! Yes, sir; and where? In the forum by public addresses. By the fire-side with argument. In the public press; in the Assembly that makes your laws. They must be represented in all of these, and they must watch and reason, and argue, to constrain and convince the majority. In the language of John T. Hoffman, while Governor of New York, in his veto message on the New York city charter bill, "their duty and their function is to watch the majority, to reason with them; to argue with them; to prevail with them to do no mischief, and by their power, by their talent, and by their combinations, prevent, so far as they can, any wrong." And when all this argument shall be exhausted; when the minority shall have been heard in every place in the land where they have a right to be heard; in private argument, in the forum, in the press, in public meetings, in the Assembly itself; and still they do not convince the majority. What then? Then the majority must rule and they must decide what measures of government are to be adopted and carried out. They must be responsible for it and the minority must not be.

That is the true doctrine as laid down by Governor Hoffman. Little as I may admire or follow him in other things, in this, allow me to say, he is sound. Then where are we? Shall we adopt an untried system beautiful in theory? Gentlemen in favor of it contend that the minority shall be represented. I grant you it is a very fine theory. It is a very pretty idea. It commends itself to all our bosoms and all our thoughts that the minority should be heard; that they should have the opportunity of submitting any views they may have to offer; that they shall not be crowded down; that they shall not be ignored, but that their arguments should

be listened to, and that they should be heard, weighed and judged with every regard to their full force and weight. But after all this is done, after they have used all persuasion, and all the talent, and all the reason they possess, if they cannot still convince the majority that their plans are wrong, then the majority must be allowed to carry out the government or their plan until the minority shall prevail with their arguments so as to create themselves a majority.

That is the correct way. Is there any danger that under our system a minority shall not be heard? Was there ever a case in the history of this government where the minority were not large enough to be heard, were not talented enough to be heard, and to use all the arguments that could be used in favor of their views? Did the time ever occur in the national or in the State government that there was not a minority to be heard? Was there ever a case where there was not a minority to watch the majority? There was never a time, and never will be a time, in which the minority cannot be heard. If, then, they can be heard, if they are able to perform all the proper functions and duties of the minority, to watch, to reason and to argue, to do everything except to take upon their shoulders the government, what complaint can they have?

Now, if that is the case, why should we devise any new scheme by which we should bring into power minorities in counties and cities where minorities are small? Take the case of my own county, for instance. Applying this doctrine to it, let us consider its effect. Suppose the county of Chester was entitled to three members in the House of Representatives of this Commonwealth, and one member in the Senate, and suppose some favorite principle upon which the people of that county were nearly all agreed was to be proposed, and the effort made to carry it out, what would be the effect of minority representation? Why, if you allow minorities where they are small to elect a member, in our case it would be to send a member into the legislative body to frustrate the will of nearly all the people of the county, to throw his force into the opposite scale, and thus prevent the will of the majority from being carried out.

Mr. WORRELL. Mr. Chairman: If the gentleman will permit the suggestion, under this system of proportional representation in any county, if the minority were as small as he indicates it would not

be able to secure any voice in the General Assembly. The system only gives representation to minorities sufficiently powerful to carry into effect the opportunity afforded by it. In a county, such as he supposes, having three members of the lower branch of the Legislature, the minority to secure one of those members would have to attain one-third of the voting population, or at least one-third of those who participate in the election.

Mr. DARLINGTON. Mr. Chairman: Probably that is correct, so far as regards the the minority representation alone. But still, that one-third of the people of Chester county should neither be allowed to frustrate a particular measure upon which the two-thirds of the people of the county were united, or yet in the Legislature, where the measure must be proposed to reduce her representative force by one. She ought to go to the Legislature with three united voices, instead of having these three neutralized by one of them being given to the opposite party, by any proportional system, 'as the gentleman terms it. And so all over the State. So everywhere. So in Berks county, which has been the bulwark of democracy from time immemorial. Why should we invade her and say to her, "you shall permit a minority representation of republicans when you are nearly united on your plan and system of government?" With what justice and what right shall we republicans claim that we ought to have a member in Berks, any more than my friend from Berks (Mr. H. W. Smith) should claim to have a member from Chester? The majority of the community, into what districts you shall divide the State, should still be the majority of the community, and as such represent and direct the State government. If they are democratic districts, they should be represented by democrats, and the republicans should have no voice in them.

Now, sir, passing from this, because I do not wish to detain the committee, I desire to say a word about another theory.

I understand from the gentleman who introduced the amendment (Mr. Lilly) that this is an amendment which is proposed to be introduced by the committee who have charge of the subject, the chairman of which is my friend from Centre (Mr. M'Allister.) They are not ready to report, and I understand that the gentleman from Columbia, (Mr. Buckalew,) who is not now in his seat, is not prepared altogether to agree with the com-

mittee. He is not prepared to stop where the amendment of the gentleman from Carbon (Mr. Lilly) would stop, but go further and take up the cumulative vote, and that that is the reason why the committee have not reported.

The subject of cumulative voting is to be the next project to be introduced. One idea is the representation of minorities, another idea is cumulative voting.

The cumulative voting system gives one man the privilege, where three men are to be elected, of concentrating his votes on one man, so that he can put all three of his votes on one candidate instead of giving one vote to each of the three. He may cumulate his votes. What is the argument? What is the reason? What is the ground on which this is to be done? It is that it enables the good men of the community to cumulate their votes upon good men on any special ticket, and thus force them on the community even against the majority of the people; but, sir, will it not at the same time enable bad men to cumulate their votes upon bad men who may get on the ticket, and thus force these bad men into office?

I am not disposed to make any invidious distinctions as to sections of country; but let us look, for a moment, at Philadelphia. I take it, as I have often heard it stated here, that Philadelphia is full of fraud. Now suppose a district to exist as districts did exist twenty or thirty years ago, and suppose there are three members to be elected to the Legislature, and one should be a horse-thief, or a gambler, or a robber, if you please, a representative of his class on the ticket. What is to prevent his class of people from cumulating their votes on him and sending him to the Legislature? You cannot keep out of the Legislature these bad men on such a system as that—these men who distribute the plunder obtained in legislation, if any plunder be obtained, to men of their own class. While, therefore, it is claimed on one hand that it will be a good thing to enable people to strike off bad men and put in good men, it will be productive on the other hand of more mischief, by far, by enabling bad men, who are the very men most likely to take advantage of the cumulative voting, to put their own friends in office. Neither minority representation nor cumulative voting belongs to republican government. Neither of these systems should receive the countenance of this body, where we are seeking to make such changes in the government

as will be to the advantage of the majority of the people, and will enable us to get at the true expression of the will of that majority.

What, on the other hand, have we proposed as the antipode of all these? It is the single district system, to divide the State into single districts for the choice of Senators and Representatives. What, then, will be the result? Each party, in a single district having but one man to put forward to office, will necessarily vote for that man, that each conceives to be best qualified to represent the district. If the parties do not do that they run the risk of having their opponents elected. In the single district system you can have but a single candidate on one side for office. All log-rolling and attempts to procure votes would be at an end. There would be no more interchanging of favors, getting your delegates to go for me and my delegates to go for you. There is still the choice presented to the elector of taking one or the other, whichever he deems best suited to the position. All the evils of "gerrymandering" in the State would be avoided, because it would be impossible for any, however disposed, to form these districts to suit of contiguous territory. If they carry out the amendment, as they say they will, as proposed this morning, it will be impossible to so "gerrymander" these districts as to destroy the will of the majority of the people. If Chester county should be formed into a district which should have a republican, and another district which should have a democrat, let it be so. If Bucks county should be divided up in the same way, let it be so. We have still a majority representation of the people of the district, and at the same time county or community representation, which is so great a favorite with our friend, the President, would be preserved.

One word with regard to the proposed plan of the gentleman from Carbon (Mr. Lilly.) He proposes to begin this system of minority representation by taking away all power from the Legislature to district the State. He would have a body of ten gentlemen elected, say every ten years, for this purpose; but how elected? By the minority system, each man voting for five. Thus you would have a number of men brought together who do not harmonize in political convictions, five being of one view and five of the other. Just imagine what sort of apportionment they would make? Do you suppose you would

have any agreement among these ten men? Five will be of one opinion and five of the other.

I object to the plan, because it is a putting into the hands of a few, selected for the purpose, and perhaps of different politics, all power to divide the State; and it is proposed to make these men a power superior to the Legislature itself. I do not believe you can get a body of that kind of ten men or of any other number that will have any superiority of intelligence or integrity to the Legislature of the State. Nothing is gained, therefore, by this anomalous, strange and complex proceeding that is proposed to be imposed upon the science of government.

Mr. CURTIN. Mr. Chairman: I do not propose to occupy the time of the committee more than a few minutes; but I regard it as proper that some of the arguments that have fallen from the learned gentleman, who has just taken his seat, should not go without a reply.

I have not found, in any printed paper, or any written one, submitted to this Convention, nor in the report of any committee, anything whatever about cumulative voting; but it may be of some advantage to the members of this Convention, when that subject does come up for discussion, that they shall have had the benefit of some prior debate on the subject.

Mr. EWING. Will the gentleman permit me to ask what this second section of the amendment of the gentleman from Carbon (Mr. Lilly) means? I have been at a loss to understand it, and it has not been explained. I want to know what "proportional representation" means.

Mr. CURTIN. I do not know. I do not pretend to discuss it specially, nor to insist on this section as proposed. I have not the time in which to go at length into it, nor do I care about it.

The learned gentleman from Chester (Mr. Darlington) says, with emphasis, "are we here to break down the time-honored customs established by our ancestors—to break down the great landmarks of our form of government?" I say: "Yes, we are; that is just what we are here for." If there is any custom—any tradition which has been abused—if there are any principles in our government which can be abused—which are found to work for the good of the people, and which do not aid the development and prosperity of the nation, we are here to break them down. It is not upon the examples of antiquity that we built

our government, although they may have been used in its construction. It is presented to the world in all the beauty of novelty, by wise and great men, and yet there is scarcely a principle which lies at the foundation of our government, save only that of liberty itself, and the equality of manhood, that has not been changed to suit the advancing times and the expansion of this nation—the increase of its population, the development of its vast physical and material resources. That has been amply proven in this body. This Convention is called to reform abuses, to amend the Constitution, so that these abuses that still cling to us shall be obliterated forever, and that the fair fame of Pennsylvania may be no longer tarnished by them.

If we were as old as the christian era, and covered with the dust of time from all the ages, and should still have some provision of Constitution or law that operated to the disadvantage of the people, this Convention is here to remove it, and to substitute in its place forms of government better adapted to the growing wealth, and power, and convenience of this great people. That, sir, is the purpose for which we are here; and, with a reverence for everything that is old, everything that is antiquated, I must, at the same time, say that I am not afraid of that which is new, merely because it is modern. We are a modern nation, an enlightened people. We are a State made up of a population so mixed, and of blood so varied, as was graphically described the other day by the distinguished gentleman from Philadelphia, (Judge Woodward,) who referred to the fact that we are made up of German and Scotch Irish, and English and Welsh; that we are a people of large common sense. I take for granted that this Convention of one hundred and thirty-three members about reflect the common sense of the State; and the delegates to this Convention, enjoying, as they do, a large measure of the confidence of the people, may rest assured that whatever they do, honestly appealing to their common sense, will be accepted by the people, because, while this is a very learned and intelligent body of men, it is no better than the men outside. After a man has passed the grand clinax, say about the age of fifty, he will come to one sage conclusion, and that is that one man does not know a great deal more than another, and that there is about an average amount of common sense, which, by the

laws of nature, is fairly distributed. Hence, I take it that the one hundred and thirty-three members of this Convention have got just about their share. It is true that many of them are learned and gifted, and they gild their ideas with the forms of rhetoric, and eloquence, and poetry; but they will find, if they go down to the mass of the people, that the plowman and the mechanic have thought of precisely the same thing, and will express them in their homely way, with as much force as if uttered in the polished language of the learned gentlemen who enjoy this right to this body.

Gentlemen need not say that the people of this State will reject this or that amendment which may be made to the Constitution. If this Convention acts honestly and appeals to its common sense, and if members do what their own sense of right demands, there need be no fear that the people of the State will reject our work.

Philadelphia is no longer on trial. I sat in my seat here and listened, day after day, to a trial of Philadelphia. I sometimes thought I was on a jury; and it really did look like a jury when an official, judicial charge came in, and was read from the Clerk's desk. Then I thought we were about to be asked to make up a verdict; and sometimes, from the quarrels of gentlemen from the city themselves, I thought we had better change the *venue*, and try the city somewhere out in the country. At first all the vices were found in Philadelphia; all the "rounders," and "repeaters," and "ballot-box stuffers" were discovered to be here, and we were asked to inaugurate some reform to save the people of this city from themselves; and when an effort was made by the delegates to this Convention to make reforms in the ballot system, so that the honest and intelligent men of the State could vote properly, and providing for a check on the ballot-box stuffers, and repeaters, it immediately inflamed some of the delegates from the country, and they seemed to forget that the frauds, which are admitted to exist in Philadelphia, might extend into the country.

When an epidemic, such as the cholera or small-pox, appears in Philadelphia, I presume the people in Lancaster and in Tioga and in Dauphin, and even in Allegheny, and, in fact, all over the State prepare for it, and cleanse their cellars and alleys or vaccinate themselves. If, then,

it be true that these great festering sores exist in the city of Philadelphia, take care or the virus may extend into the country. It may disturb the stern virtue even of Lancaster county, and the sweet republican simplicity of Dauphin, so graphically and beautifully described by the delegate from that county, who, I regret to see, is not now in his seat, (Mr. MacVeagh.) Aye, and even disturb the purity of the ballot in Allegheny county, so strongly and forcibly insisted on by gentlemen here as still exempt from the calamity of unfair elections, may be reached by this virus. It is to protect the purity of the ballot that we are here, and to protect the beautiful republican simplicity which prevails, according to the accounts of gentlemen, in Lancaster and Tioga, and in York and in Dauphin. I am not prepared to believe that radiating from Harrisburg all over Dauphin county there is the purity and virtue claimed by the delegate.

He who has lived for five or six years in that county can appreciate and realize that we should protect the ballot even in Dauphin county. Our learned and distinguished President—and I have become accustomed to accept all he says as true and wise—suddenly gives us a view of the reverse of the medal, and we are assured that the virtues prevail in Philadelphia. And gentlemen from Philadelphia and from the country fall in the most savage and violent manner upon my friend from the city, (Mr. Woodward,) who dares to say that the city was not the producer of bread. There is one thing, at least, for which we must be thankful to the gentleman who sits in front of me (Mr. Cuyler) and the gentleman who sits behind me, (Mr. Cassidy,) that we have been informed of the beauties of Philadelphia, its power, and its magnitude, and received a good deal of statistical knowledge that we would not have had but for the introduction of the subject of largest interest to Philadelphia. Yet I cannot see what the productions of that city, in manufactures, had to do with the question before this Convention. It was a question of representation.

Now, sir, for my part I would not cut off the city of Philadelphia from a fair representation; and, if I had my way, of course I cannot have it, because there is not theory enough in it for some of the gentlemen of this Convention, I would divide the State into one hundred districts; I would elect three members of

the Legislature in each district, making three hundred members, and let each voter vote for two. That would be minority representation. I do not think the Senate need necessarily be one-third or one-fourth the number in the House. I would dignify and elevate the character of the Senate. With three hundred members of the House sitting there, with their seats based on population, I would make the Senate to consist of only thirty-two members, elect them for four years, and by general ticket throughout the State. The House would thus have a membership based on population, and one giving the minority a fair representation; the Senate would represent the whole State. This system would invite the best men of the State into your Senate. You would make them a balance to and constraint upon the other governmental powers. You would dignify and elevate the body, and give to your government a new and strong element which is not found in it at present.

The theory that the Senate must be one-third of the House, or one-fourth of it, I do not agree with, yet I am prepared to vote for such a provision, provided we increase the number in the House.

My learned friend from Chester (Mr. Darlington) has spoken at length against the representation of minorities. What does he mean? Does he mean that we would be better off by putting one side or the other on a general ticket? Then the minority would not be represented. Then, surely, the majority would not be responsible. Does he mean that no minority is to be represented in council anywhere? Surely not. Now we desire to represent minorities in the Legislature for the very reason that he gives against it: That we shall break down the political character of the body. It is true the majority is, and always must be, represented; but the design is, that not only shall the majority be represented, but that the minority of the place where the majority representative comes from, shall be represented—that, for instance, the 7,000 minority republicans in Berks county shall be represented as well as the 15,000 democrats; that the large minority of democrats in Lancaster shall be represented as well as the majority of republicans, and that the minority of democrats of Chester shall be represented as well as the majority of republicans.

By such a system you break down the force of political combinations, as is wit-

nessed in the composition of this Convention. The gentleman from Chester (Mr. Darlington) does not say that this Convention should have been produced differently. On the contrary he admits that it is composed of very enlightened gentlemen; nobody can say otherwise. We all speak of it as such, and we would be false to ourselves if we did not. I do not accept it as any compliment at all; for I take for granted that if we were to take a vote of the Convention on the subject, we would "resolve" that this is the most enlightened body of men that ever sat for a great purpose in Pennsylvania. [Laughter.] There is great consolation in that thought, and there is pleasure in hearing it from the gentleman from Chester (Mr. Darlington.)

We were sent here, Mr. Chairman, to give the minority a representation. I do not care how it is done, whether by cumulative vote, or as I have indicated or as proposed in this amendment. We are here to give the minority representation, and representation in the Legislature—in the popular branch of the government, and I cannot see what harm can come from it. Instead of a minority representation by sections of the State, you give to each county or locality in the State a proportionate and proper minority representation. That is better than giving it to the whole State at large. Besides, there has been no scheme proposed yet by this Convention which would deprive the majority of the people of the State of their proper majority in the Legislature. As in the composition of this Convention, the party majority is only five, so it could be in the Legislature, and a majority of five would be just as effective for party purposes as a majority of twenty-five. Fortunately, however, there has been no occasion in this body for the exercise of party discipline. There has never been a body in Pennsylvania so free from political bias as this Convention. There is no record yet found of a vote in this body with any taint of political partisanship on it. That comes from the fact that the delegates were selected independent of party management. And but for the ingenious and commendable device, provided by the Legislature for the election of the members of this body, the learned gentleman in my front (Mr. Meredith) could never be nominated or elected to the distinguished position he occupies among us, if one-half of what is said about corruption in Philadelphia be true.

Neither could the learned gentleman from York (Mr. J. S. Black) be here. When we have such a Convention resulting from such a plan, I cannot see what gentlemen have to complain of; nor can I see any proper basis for opposition to a plain, straightforward proposition to give an increased number of Representatives to the Legislature, and to give the minority a proper representation.

I have deemed it proper, sir, to say this much in reply to the remarks of the gentleman from Chester (Mr. Darlington.)

Mr. M'ALLISTER. Mr. Chairman: Some weeks ago, when the report of the Committee on Legislature was under consideration, this subject was passed by consent, in order to receive the report of other committees upon the same subject. I was rather surprised, therefore, Mr. Chairman, at the proposition of the chairman of the Committee on the Legislature to call up sections twenty and twenty-one of his report, now under consideration, prior to the report of the Committee on Suffrage, Election and Representation being made. It may have been that committee was somewhat derelict in duty, and I did not, therefore, then ask a further postponement, but the five sections contained in Mr. Lilly's amendment and the two sections contained in Mr. Simpson's proposition were got up with the view of being moved, when occasion should offer, as a substitute, in order to get before the Convention the sense of the Committee on Representation upon this great subject. Now I desire to say, just here by way of explanation, that for the last two days I have been confined to a sick bed, and left it reluctantly this morning from the report I had in the papers of the evening that this subject was to be under discussion to-day.

And you may imagine my surprise this morning to find the gentleman from Carbon (Mr. Lilly) and the gentleman from Columbia, (Mr. Buckalew,) my colleagues in a committee, both absent. I am told they are absent because they believed the chairman of the Committee on Suffrage, Election and Representation would also continue absent, and that discussion upon this subject would be postponed.

I make these prefatory remarks in order that my position here this morning may be understood. I feel anxious to embrace this opportunity, weak as I am, to answer some of the fallacious arguments of the gentleman from Chester (Mr. Darlington.) I agree with him, Mr. Chair-

man, that we have under consideration a momentous question; a question more deeply involving the welfare of this people than any question which can come before this committee or this Convention. Much as I abhor notes, never using them when I can avoid it, yet from the great interest I find in the subject, and the fear entertained that without them I may occupy, if by grace allowed, too much of the time of the committee, I have determined to subject myself to the restraint imposed by their use, and this simply with the view of economizing time; and of this I assure the Convention I will occupy no more of their time, under any circumstances, than did the gentleman from Chester.

The subject which he discussed, and the great subject before this committee is, how shall the right of suffrage be exercised by those to whom it is committed? Shall the voting—now mark—shall the voting be free, so as to allow the voter to cast every ballot he holds for whom he will and thus secure a just representation of all parties and all interests? Or shall it be restricted so as to compel all voters, less than a mere numerical majority, to cast their ballots for so many candidates that their party can elect none? That is the proposition before this Convention, and now, sir, before we proceed in this discussion, allow me to mark some diversities that we may have a right understanding upon this subject, for the most bitter disputes that have ever occurred in the world have arisen from the disputants not properly understanding each others positions. The gentleman from Chester asked whether the distinguished gentleman on his right, (Mr. Curtin,) who occupied the gubernatorial chair of this Commonwealth for six years, was not elected by the people. Who denies that? Who ever denied that the Executive of the Commonwealth, each one of the Executive officers, and every ministerial officer in the Commonwealth, should be elected by a majority vote? Nobody, so far as I know. There is no dispute upon that subject.

Where, then, does this dispute arise? It arises in that class of officers who meet not to perform ministerial duties; not to discharge Executive duties, but to deliberate with each other with a view of *acting* after deliberation, for the welfare of the whole. And when they come thus to deliberate, they must come as the people would come. They must be an epitome

of the people themselves, and as representatives, their constituents are entitled in them to the same rights they would have if personally present. Now, Mr. Chairman, in order to reason at all, we must have some premises; some truths must be admitted, and upon what, in this Convention, can we agree as the basis from which to start? I think I may assume, as the united sentiment of this Convention, that all power is inherent in the people of the State, and that sovereignty resides in them except in so far as they have restricted themselves by the National and State Constitutions. This being admitted—I take it for granted nobody here will deny it—there are a few sequents bearing on the subject before us, to which I call the attention of the Convention.

And first, this Convention being the representatives of this sovereign people, regularly called and qualified, to ascertain and determine not what the Constitution is but what the Constitution should be, is not restricted in the adoption and submission of amendments by the existing State Constitution; nor otherwise except by the law of nature and the Constitution of the United States. These are the only restrictions that rest upon this Convention.

Then again, representation arising out of the utter impossibility of the people acting in mass, and thus being solely of necessity, is of right. This is the second sequent—*representation is of right*.

It therefore follows that the right to choose a representative is every man's portion of the sovereign power residing in the people of the State. The right of each to exercise his individual portion of this sovereign power is denominated the right of suffrage. It is a delegation by one man to another man of that portion of this sovereign power which, as a representative, he may exercise under the organic law of the State.

[Here the hammer fell.]

MR. METZGER. Mr. Chairman: I move the gentleman's time be extended without limit.

This was unanimously agreed to, and Mr. M'Allister resumed.

MR. M'ALLISTER. Mr. Chairman: The more nearly, therefore, the representative body is made to resemble the body represented, the more exactly the representative body becomes an epitome of the mass, the more fairly, justly and satisfactorily will those to whom sovereign power pertains be represented, the will of the peo-

ple be maintained and their interests promoted. In the years that are past has the representation from Lancaster borne any likeness to the population of that county, said to be represented? Has the representation from Berks borne any likeness to the population of that county, said to be represented? Each sends three members to the lower House and one to the Senate; the one all republicans, the other all democrats. Is it not manifest that the democrats of Lancaster and the republicans of Berks have not been represented, nay, that they have been misrepresented? In the gubernatorial election of 1869 in Lancaster, thirteen thousand eight hundred and four republican, and eight thousand three hundred and sixteen democratic votes were cast, making the whole vote cast twenty-one thousand one hundred and twenty. In Berks, thirteen thousand three hundred and thirty-one democratic votes were cast, and six thousand nine hundred and seventy-one republican votes were cast, making the whole vote cast twenty thousand five hundred and two. I have made a statement showing exactly how the free vote would have given the democrats of Lancaster and the republicans of Berks, respectively one member, allowing to the majority in each county two representatives, still more than their just share. But time will not allow me to dwell upon these illustrations, and I pass, therefore, to Allegheny county, and, if time permit, to Chester county. To Allegheny and to Chester, because I understand their members are exceedingly hostile to the free vote.

The latest vote to which I have had access, for, unfortunately, the Hand-Book that we ordered the other day has not yet come to hand, and I had to refer to the Hand-Book of 1871, the latest vote to which I have had access is the vote of 1870, as follows:

The Hand-Book of 1871, page 310, shows that the republican vote of Allegheny was seventeen thousand four hundred and thirty-seven, and the democratic vote, eleven thousand one hundred and sixteen, making the total vote cast twenty-eight thousand five hundred and forty-three; which, inasmuch as Allegheny is entitled to six members, must be divided by six, giving four thousand seven hundred and fifty-seven votes as the number justly entitling to a Representative. Give the republicans, therefore, a representa-

tive, and take the four thousand seven hundred and fifty-seven votes which entitle them thereto from the seventeen thousand four hundred and thirty-seven, the whole number of votes cast by them, and they have their first Representative, and have left twelve thousand six hundred and eighty votes, still larger than the whole number of votes polled by the democrats. We must, therefore, deduct another ratio of four thousand seven hundred and fifty-seven votes from the twelve thousand six hundred and eighty republican votes remaining, and assign them the second Representative, which leaves seven thousand nine hundred and twenty-eight republican votes yet unrepresented, greatly less than the democratic votes. We must, therefore, take the third ratio of four thousand seven hundred and fifty-seven from the eleven thousand one hundred and six, the whole number of democratic votes, and assign them the third Representative, which leaves six thousand three hundred and fifty-four democratic votes yet unrepresented, less than the republican votes unrepresented. We must, therefore, take the fourth ratio, four thousand seven hundred and fifty-seven from the seven thousand nine hundred and twenty-eight republican votes yet unrepresented, and assign them the fourth Representative, which leaves, three thousand one hundred and seventy-six republican votes unrepresented. But as the democrats have six thousand three hundred and fifty-four votes yet unrepresented, the fifth ratio of four thousand seven hundred and fifty-seven must be taken from the six thousand three hundred and fifty-four, and the fifth Representative assigned to the democrats, leaving, one thousand six hundred and twenty-two democratic votes unrepresented, against three thousand one hundred and seventy-six republican votes unrepresented. Therefore, the sixth and last Representative must be assigned to the numerical majority, thus giving the republicans four and the democrats two members, and leaving but one thousand six hundred and twenty-two democrats, instead of eleven thousand one hundred and six democrats unrepresented. Now can this be done? Is this scheme practicable? Can this end be accomplished? If it can, every member of this Convention should feel the blush of shame mantle his cheek if he did not assist in doing it. Can it be done then? Most unhesitatingly we say it can, in every election at which two or

more officers of the same grade are to be elected, and that not by imposing restrictions upon the voter but by giving him the liberty which every voter should have, that perfect freedom from restraint to which he can justly lay claim in the exercise of the natural social right of suffrage. Now let me premise just here that the distinguishing characteristic between the amendment offered by the gentleman from Carbon, (Mr. Lilly,) taken in connection with the proposition of the gentleman from Philadelphia (Mr. Simpson) and the section reported by the Committee on Legislature, is this: That the one scheme affords the opportunity of carrying into operation the free system of voting and the other does not. And now, to return to the argument, we assert that the free vote is not only practicable, but that it can be easily carried into effect by simply giving every voter as many ballots as there are officers to be elected, and removing those unnatural and arbitrary restraints upon their use which now compel him to choose between the alternative of not voting at all or voting for so many candidates that his party can elect none. The inevitable consequence of which injustice is to render the representative body wholly unlike the body professedly represented. The candidates elected not only do not represent the body of the people but misrepresent a large and in some instances the larger portion of their constituency. That is unfair, unjust, dishonest, and is eminently calculated to engender distrust, discontent and rebellion. It is the enlargement and aggravation of this principle of wrong and injustice which is now disturbing the monarchies of Europe, but I have not time to dwell upon that thought.

Any body of citizens so respectable in point of numbers as to elect, by the concentration of their votes upon one candidate, are entitled to their representation on the soundest principles of a free republican government. They are a component part of the sovereign power in the State, and entitled to be heard through their own representatives, the right to choose whom, I have already shown, is their own portion of sovereign power. Let us apply the system of free voting to some of those bodies in which reform is needed and most loudly called for by the people; and first and above all to the Legislature.

It is said that we are entering upon an untried scheme. Not so. The scheme

which I would inaugurate by the election of the lower branch of the Legislature on the cumulative or free vote system, in Senatorial districts, three Representatives for every Senator, or in the proportion that this Convention may determine, is the plan adopted by the Convention of Illinois. The first election came off in Illinois last fall under that system, and resulted to the entire satisfaction of the entire people, except the court house politicians. The lower House of the Illinois Legislature, elected by the free vote, is an exact epitome of the body represented. So they stand now; but not so the Senate, elected upon the old plan. The necessity which inaugurated, I may say the sense of justice which brought about, the application of the free vote to the lower House in Illinois is the same sense of justice that ought, in this Convention, to bring about similar results, looking to Lancaster, to Berks, to Chester and to Allegheny, and other counties, democratic and republican. From the time the republican party was formed in Illinois until the election last fall, the whole southern part of the State, called Egypt, came up a solid phalanx of democrats; the entire northern portion of the State, denominated Goshen, came up a solid phalanx of republicans. Not a voice was heard from the south coming from a republican source; not a voice was heard from the north coming from a democratic source. And just so has it been with Berks, and Lancaster, and Chester, and Allegheny, and the other districts, although the gentleman from Allegheny, before me, (Mr. J. W. F. White,) the other day took the greatest credit to himself for having, on one occasion, scratched a ticket without the knowledge of his friends and defeated some republican. [Laughter.] These are great evils. They are ulcers upon the body politic, to be borne, I admit, if there is no remedy for them. In the past, the people have looked upon this evil as though it could not be remedied. But let me say, Mr. Chairman, that the true principles of representation in republican governments are but in their infancy. A set of false principles upon that subject came down to us from our ancestors, tainted by the source from which they came, tainted by the false basis upon which they were made to rest. It is in the march of progress, it is under the advancement of the age in which we live, that the system, now proposed to be adopted by this Convention, is offered for its consideration.

There are various objections started to this scheme. One, and that seems to be the one that impresses itself most deeply upon the mind of the gentleman from Chester, is that the scheme of just representation to which I have alluded is undemocratic and unrepresentative. Is it so? He infers that it is because he asserts that the majority must rule. I concede that the majority should and must rule; and under the free vote the majority are to rule. Under this scheme the majority are left to rule, and are now ruling in Illinois; but they allow their political opponents a voice in their deliberations. How else can you satisfy the people? How else can you have a deliberate assembly? The gentleman is content with his three members from Chester all giving the same republican utterances. That satisfies him. He won't allow the democrats to squeak. In his opinion they shall not be heard, but should be satisfied by what satisfies him. But is it a just representation? Not at all. It is an iniquitous principle that can only be justified in morals or politics from necessity. Remove the necessity, as I have shown it can easily be removed, by the free vote, and you have no further excuse for holding on to an error which deprives man of his rights. The gentleman from Pittsburg with six Representatives, all uttering republican sentiments, unites with Chester, and all learnedly argue that it is the theory of republican governments that the majority are to rule, and that the majority have the right on the principles of justice to place their heel upon the neck of their political opponents, and not allow them to be heard even in a deliberative assembly. Is it right? I trow not. If it be right that Allegheny should continue to come with her six Representatives all of one party, would it not be equally right that Philadelphia should elect by a uniform ticket and send her entire delegation of one stripe? Who would tolerate that?

It could be no more tolerated than the iniquity which resulted in a representation to our national Congress years ago, when the States elected by general ticket on the majority vote, and the voice of one party was entirely suppressed at the national Capitol. That injustice cried out for relief and received it, and it is time that the oppressed parties, democratic and republican, in the several counties of Pennsylvania should cry out for relief and receive it at the hands of this Convention.

Again, it is said it is an innovation. An innovation on what? It is an innovation on injustice and wrong; but, Mr. Chairman, in the sense in which the gentleman from Chester (Mr. Darlington) would use that word, the establishment of our government in 1776 was an innovation, the greatest innovation that has ever occurred in the world; an innovation upon the divine right of kings, an innovation upon that principle of representation which is still continued in Europe—that representation is not of right, but an emanation of grace from the king, the sovereign power. That is the distinguishing characteristic between representation in Europe and representation in America. The one is claimed by the people in their sovereignty as a right; the other is a gracious concession by the crown to the people allowing them to have a pseudo representation. God forbid that such erroneous principles should longer continue to influence our action and our deliberation in the formation of this Constitution.

There is another obstacle in the way of the introduction of the free vote. And what is that? It looms up in the person of the truckling and court-house politicians, found here and there and anywhere over the length and breadth of this land. They are opposed to the principle of the free vote, because it strikes at their occupation as directly and positively as the worship of the true God struck at the occupation of Demetrius, the silversmith, who called together the workmen of like occupation with himself, and said: "Sirs, ye know that by this craft we have our wealth." If you inaugurate the reformed system of voting, and allow parties to be represented in proportion to their relative strength, thus maintaining the ascendancy of the party that has the majority, but giving a minority representation to the minority party, you take away the occupation of these men. Should their hostility prevent us from discharging our duty here? I think not. It may be that I do not fully appreciate the importance of these men. I must confess that I have no love for them, that all my life I have rather had a detestation for them. That sentiment, impressed upon my mind in my boyhood, was greatly strengthened by an address delivered by a distinguished Pennsylvanian, long in public life, before a literary college society, of which I was a member, in which the speaker described the truck politician as a man without

moral or political principles swayed to and fro for the promotion of his own interests, "stooping his ear to the very earth to catch the first distant sound of shifting footsteps." That sentiment made an impression upon my mind which has never left it. That day I determined never to be one of that class of men, and, thank God, I never have been. All I ask of this Convention is that it will not be swayed to and fro, in the discharge of duty, by any of them. Let us come up to the discharge of duty fully, and when we have done that, I am sure we will adopt the principle contained in these amendments.

MR. CARTER. Mr. Chairman: Yesterday, at the suggestion of the eminently practical gentleman from Philadelphia, (Mr. Knight,) we confined ourselves to the question of the numbers in the representative bodies, believing that we would understand the matter better, and make more progress by taking up one principle, or one thought or suggestion at a time, but the gentleman from Chester (Mr. Darlington) saw, in the proposition, as set forth in the first section, in regard to the election of a board of commissioners for the purpose of apportionment, a supposed snake in the grass, which excited his ire, and he then proceeded to base his argument chiefly upon the supposed dangers of this cumulative or free system of voting. I do not propose to follow the gentleman in the argument, because the gentleman from Centre (Mr. McAllister) has replied to him, nor am I as yet committed to its support. I merely wish to make a few remarks with regard to this matter of apportionment, and I wish to commend it to the serious consideration of all the gentlemen in this house, who have not given it the same amount of thought, perhaps, that the Committee on Suffrage have done. I intend to confine myself entirely to that one subject.

The gentleman assumes as a fact that which, I think, has been disproved by all history, viz: That no partisanship accompanies men into the positions that they assume when elected to office by the people. In theory, said he, a representative ceases to be a partisan, but he represents the people. Well, he means that he should represent the people, and be influenced by party considerations. But is it so in fact? It is not. It has never been, nor will it ever be so. This proposes that this partisanship, which does enter into all the apportionments of the State, shall cease, by taking away the

power now vested with Legislature, and entrusting it to a body into which the spirit of partisanship shall not enter. That is the provision.

Now let us see if it is calculated to effect that end, but, before I proceed to that examination, I will answer, briefly, some of the views of the gentleman from Chester (Mr. Darlington.) He thinks that it is the introduction of a novel idea, or a novel principle. I do not so consider it. The subject of limited voting, I think, was referred to in the Convention that met in 1837.

MR. DARLINGTON. By whom?

MR. CARTER. I think by Mr. Charles Brown, sir. And two years afterwards it was again agitated, and the truth of the principle was admitted, and a law was enacted that in the election of inspectors of elections two should be chosen, but no man should vote but for one. There is the same principle. And after a trial of thirty-four years, I ask what fair minded man, in the State of Pennsylvania, would say that we should go back to the old system? Not one, sir. Again; in the selection of members of the Constitutional Convention in the State of New York the same principle was also adopted, i. e. that a certain number of the delegates, to secure a non-partisan body in the formation of their organic law, the delegates at large were so chosen, as I understand it. So also of this body; it was constituted on a similar ground. It is not a novel idea, and I think, sir, that it is eminently proper that that principle should be incorporated into the Constitution with reference to the selection of these apportionment commissioners.

Now, Mr. Chairman, is this reform needed? I hold that it is. If there has been a glaring evil, one that stinks in the nostrils of all honest men, it has been the "gerrymandering" process. There has scarcely been one fair apportionment, I apprehend, in the past, because of this very spirit of partisanship entering into this question, to subserve party ends, and so it will be to the end of all time. The gentleman would say, and has said, that these men forget, or rather should forget, their party feelings when they are elected to positions of this kind; but the fact is they do not; they possess as much partisan spirit as ever.

It is proposed that there shall be ten commissioners, but that no person shall vote but for five, and the action of seven

of them concurring determines this question.

Now, as a matter of economy alone, this is worthy of our serious consideration. It was said by some gentleman that the last apportionment bill, estimating, I suppose, the time spent upon it at Harrisburg, cost the State something like seventy thousand dollars.

It is incumbent upon this board to meet and *perform this duty*. The provision is so hedged around that it is secure from all possible danger, not merely of a partisan nature, to which I have referred, but so that these men can, in no way, be swayed from motives that ought to influence them in the performance of their duty. It renders them ineligible to any office for the term of five years; they must have the same qualifications as Senators, according to the Constitution of Pennsylvania, in reference to age, and so on, so that you see every guard is thrown around the performance of their duty; and it rests upon a fair principle, one in which party considerations cannot enter, and they will have no other motive but a just and fair proportionment.

Now I am not one of those who believe that party should rule in all things. I am a party man, but I still more firmly believe than I ever did, that there are great underlying truths and principles of justice which no party, no nation, nor no individual can violate with safety; that they must act with justice, and justice will not be found in a body constituted as partisans, who, notwithstanding their plain duty, act as partisans, and not in the interest of the whole State.

I would provide in the organic law that this injustice done by partisan Legislatures shall never again bring to shame the apportionment of this State. I think that this provides for it fully and clearly.

I merely want to direct attention to the importance of this, and I will say, in conclusion, that I hope gentlemen will consider this section on its own merits. If it be a remedy, as I think it appears to be to prevent this gerrymandering, this gross injustice, why not adopt it? What do you fear from it if it be right in itself, and if the principle secures the result that it necessarily must secure—

[Here the hammer fell.]

Mr. JOHN R. READ. Mr. Chairman: As this is the day on which the Convention decided to visit the Eastern penitentiary, and the hour having been fixed at three P. M., I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

IN CONVENTION.

Mr. CHARLES A. BLACK. Mr. President: The committee of the whole has again had under consideration the report of the Committee on the Legislature, and has instructed its chairman to report progress and ask leave to sit again.

Leave was granted to the committee to sit again on Monday next.

Mr. DUNNING. Mr. President: I move that the Convention do now adjourn.

The motion was agreed to.

So the Convention, at one o'clock and twenty minutes, adjourned until Monday next at ten o'clock A. M.

FIFTY-SIXTH DAY.

MONDAY, *March 3, 1873.*

The Convention met at ten o'clock A. M. The President announced that there was not a quorum present.

At half-past ten o'clock A. M. the Clerk proceeded to call the roll, and the following members answered to their names:

Messrs. Achenbach, Andrews, Baer, Bailly, (Perry,) Baker, Bartholomew, Biddle, Bowman, Brown, Campbell, Carter, Clark, Corbett, Craig, Curtin, Darlington, De France, Dunning, Edwards, Elliott, Ewing, Fell, Fulton, Guthrie, Hanna, Hay, Hazzard, Hemphill, Heverin, Howard, Knight, Lilly, MacConnell, M'Murray, Mann, Mantor, Metzger, Minor, Newlin, Niles, Palmer, G. W., Purviance, John N., Purviance, Sam'l A., Reed, John R., Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Struthers, Turrell, Walker, Wetherill, John Price, White, Harry, White, J. W. F., Wright and Meredith, *President*—57.

NOT PRESENT.—Messrs. Addicks, Ainey, Alricks, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Beebe, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Carey, Cassidy, Church, Cochran, Collins, Corson, Cronmiller, Curry, Cuyler, Dallas, Davis, Dodd, Ellis, Finney, Funck, Gibson, Gilpin, Gowen, Green, Hall, Harvey, Hopkins, Horton, Hunsicker, Kaine, Lambertson, Landis, Lawrence, Lear, Littleton, Long, M'Allister, M'Camant, M'Clean, M'Culloch, MacVeagh, Mott, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Reed, Andrew, Reynolds, James L., Reynolds, S. H., Rooke, Ross, Runk, Russell, Simpson, Stewart, Temple, Van Reed, Wetherill, J. M., Wherry, White, David N., Woodward and Worrell—76.

MR. HARRY WHITE. Mr. President: I move the Convention adjourn until three o'clock P. M. I submit that many of our delegates, who left the city on Saturday for their homes in the country, will not be able to reach the city until about that time.

THE PRESIDENT. The Chair will state if a motion is made to adjourn it will have to be until the regular hour to-morrow.

MR. HARRY WHITE. Mr. President: I withdraw the motion to adjourn.

MR. JOHN R. READ. Mr. President: I move to adjourn until ten o'clock A. M. to-morrow.

The question being taken, the yeas and nays were required by Mr. Darlington and Mr. Corbett, and were as follow, viz:

YEAS.

Messrs. Baer, Bartholomew, Brown, Corbett, Dunning, Edwards, Fell, Hanna, Heverin, Newlin, Palmer, G. W., Purviance, Sam'l A., Read, John R., Sharpe, Walker and White, Harry—16.

NAYS.

Messrs. Achenbach, Andrews, Bailly, (Perry,) Baker, Biddle, Bowman, Campbell, Carter, Cassidy, Clark, Craig, Darlington, De France, Elliott, Ewing, Fulton, Guthrie, Hay, Hazzard, Howard, Knight, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Metzger, Minor, Niles, Purviance, John N., Smith, Henry W., Smith, H. G., Smith, Wm. H., Stanton, Struthers, Turrell, Wetherill, Jno. Price, White, J. W. F., Wright and Meredith, *President*—41.

So the motion was not agreed to.

ABSENT OR NOT VOTING.—Messrs. Addicks, Ainey, Alricks, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Beebe, Black, Chas. A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Carey, Church, Cochran, Collins, Corson, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Dodd, Ellis, Finney, Funck, Gibson, Gilpin, Gowen, Green, Hall, Harvey, Hemphill, Hopkins, Horton, Hunsicker, Kaine, Lambertson, Landis, Lawrence, Lear, Littleton, Long, M'Allister, M'Camant, M'Clean, MacVeagh, Mott, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Reed, Andrew, Reynolds, James L., Reynolds, S. H., Rooke, Ross, Runk, Russell, Simpson, Stewart, Temple, Van Reed,

Wetherill, J. M., Wherry, White, David N., Woodward and Worrell—76.

Mr. DARLINGTON. Mr. President: I move that the Sergeant-at-Arms be directed to bring in the absent members.

The motion was agreed to.

The PRESIDENT. The Sergeant-at-Arms will proceed to execute his duty and bring in the absent members.

Mr. HARRY WHITE. Mr. President: I move the Convention do now adjourn, and I would like to state that I make this motion by request, and upon the motion I call the yeas and nays.

Mr. BOWMAN. Mr. President: I rise to a point of order, and it is that a motion to adjourn is not in order, there not having been any business transacted since the previous motion to adjourn was made.

The PRESIDENT. The Chair will state that the Sergeant-at-Arms has been despatched for the absentees since the previous motion to adjourn was made, and the question of order is not therefore sustained. The Chair also desires to observe that it is in the power of the Convention to adjourn at any time for a want of a quorum without business intervening between motions made for that purpose.

Mr. HARRY WHITE. I withdraw the call for the yeas and nays.

Mr. DARLINGTON. I renew the call for the yeas and nays.

The question being taken, the yeas and nays were required by Mr. Darlington and Mr. Howard, and were as follow, viz:

YEAS.

Messrs. Baer, Baker, Bartholomew, Bidle, Brown, Clark, Collins, Dunning, Fulton, Gowen, Heverin, Knight, Newlin, Palmer, G. W., Purviance, Sam'l A., Sharpe, Stanton, Walker and White, Harry—20.

NAYS.

Messrs. Achenbach, Andrews, Baily, (Perry,) Bowman, Campbell, Carter, Cassidy, Church, Craig, Cuyler, Darlington, De France, Edwards, Elliott, Ewing, Fell, Guthrie, Hay, Hazzard, Howard, Lilly, MacConnell, M'Murray, Mann, Mantor, Minor, Niles, Purviance, John N., Read, John R., Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Struthers, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, White, J. W. F., Wright and Meredith, President—41.

So the motion was not agreed to.

ABSENT OR NOT VOTING.—Messrs. Adicks, Ainey, Alricks, Armstrong, Bailey,

(Huntingdon,) Bannan, Barclay, Bardsley, Beebe, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Carey, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Dallas, Davis, Dodd, Ellis, Finney, Funck, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Hemphill, Hopkins, Horton, Hunsicker, Kaine, Lamberton, Landis, Lawrence, Lear, Littleton, Long, M'Allister, M'Camant, M'Clean, M'Culloch, MacVeagh, Metzger, Mott, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Reed, Andrew, Reynolds, James L., Reynolds, S. H., Rooke, Ross, Runk, Russell, Stewart, Temple, Wherry, White, David N., Woodward and Worrell—73.

At eleven o'clock A. M. the President announced that there was a quorum present, the following members having taken their seats in the Convention:

Messrs. Woodward, Church, Brodhead, Broomall, Corbett, Curtin, Hanna and Lear.

JOURNAL.

The Journal of Saturday's proceedings was read and approved.

LEAVE OF ABSENCE.

Mr. NEWLIN asked and obtained leave of absence for Mr. Long for a few days from to-day, on account of sickness.

PROTHONOTARY'S REPORT.

The PRESIDENT presented a communication from the prothonotary of Chester county, which was referred to the Committee on the Judiciary.

LEAVE OF ABSENCE.

Mr. TURRELL asked and obtained leave of absence for Mr. M'Allister, on account of sickness.

Mr. CORBERT asked and obtained leave of absence for Mr. Purman, on account of sickness.

Mr. HOWARD offered the following resolution, which was laid on the table for one day, under the rule:

Resolved, That leave of absence shall not be granted in any case, unless the reasons shall be fully stated; and the Convention in every case shall decide upon the sufficiency of the reason, and in case of absence without leave the Sergeant-at-Arms shall be directed to bring in the absent members, and upon their appearing, they shall be reprimanded by the President, at the bar of the Convention.

DISCUSSION ON ADJOURNMENT.

Mr. LILLY offered the following resolution, which was read and laid upon the table under the rule :

Resolved, That hereafter all resolutions in relation to the time of adjournment and hours of the session of the Convention shall be open to amendment, and also the speeches on such resolutions shall be confined to three minutes, and no member shall speak more than once upon the same subject.

CAUCUSES.

Mr. CUYLER offered the following resolution, which was read and referred to the Committee on Legislature :

Resolved, That the Committee on Legislature be and they are hereby instructed to consider and report in what manner it is practicable to prevent the decisions of caucuses of members of the Legislature from controlling the judgment and action of members in the discharge of their duties.

ABSENT MEMBERS.

Mr. H. W. SMITH offered the following resolution, which was read and laid upon the table under the rule :

Resolved, That the names of delegates be called every morning at ten o'clock, and all who are not present and do not answer shall not be allowed to speak on that day.

SESSIONS OF THE CONVENTION.

Mr. NILES offered the following resolution :

Resolved, That from and after this date the Convention will meet at ten A. M. and adjourn at one P. M., and meet at three P. M. and adjourn at six P. M. of each day.

On the question of proceeding to the second reading of the resolution, a division was called for, and twenty-one members, not a majority of the quorum, voting in the affirmative, it was not agreed to.

REMOVAL TO HARRISBURG.

Mr. METZGER offered the following resolution :

Resolved, That after the adjournment of the Legislature *sine die* this Convention hold its sessions at Harrisburg.

On the question of proceeding to the second reading of the resolution, a division was called for, and twenty-two members, not a majority of the quorum, voting in the affirmative, it was not agreed to.

EXPENSES OF THE CONVENTION.

Mr. HAY, from the Committee on Accounts and Expenditures, submitted the following report :

The Committee on Accounts and Expenditures of the Convention respectfully reports :

That it has examined the account of J. M. Hafeigh & Co., for four dozen towels, purchased for the use of the Convention by direction of the Committee on House, and certified to be correct by the chairman of that committee, amounting to \$19.

Also, the account of Kay and Brother, for five copies of Purdon's Digest, purchased by order of the Convention, and certified by the Chief Clerk to have been actually furnished, \$67 50.

Also, two bills of the Philadelphia gas works for gas consumed at the Hall of the Convention, together amounting to \$204 29.

That said accounts are correct and are proper expenses of the Convention, and should, therefore, be paid.

The committee further reports that to enable the Chief Clerk to pay such expenses and accounts as he is or may be authorized to pay by the Convention, it is requisite that a warrant should be drawn in his favor for the sum of two thousand dollars.

The following resolutions are accordingly reported :

Resolved, That a warrant be drawn in favor of D. L. Imbrie, Chief Clerk of the Convention, for the sum of two thousand dollars, for the payment of such expenses and accounts as he may be authorized to pay by the Convention.

Resolved, That the accounts of Kay & Brother, J. M. Hafeigh & Co., and the Philadelphia gas works, mentioned in the foregoing report of the Committee on Accounts and Expenditures, be approved, and the Chief Clerk be directed to pay the same.

The resolutions annexed to the above report were severally twice read and agreed to.

DEBATE IN COMMITTEE OF THE WHOLE.

Mr. MANN. Mr. President: I move the Convention proceed to the second reading and consideration of the resolution offered by myself, on Saturday, in relation to restricting debate in committee of the whole to fifteen minutes.

The PRESIDENT. The Clerk will read the resolution for information.

The CLERK read :

Resolved, That hereafter, in committee of the whole, no delegate shall speak longer than fifteen minutes at one time, nor more than once on the same proposition.

The motion to proceed to the second reading of the resolution was agreed to, and the resolution was again read.

Mr. BAER. I move to amend, by striking out all after the word "resolved," and insert the resolution offered by myself on Saturday, in relation to rule twenty-five.

The PRESIDENT. The Clerk will read the resolution for information.

The CLERK read:

WHEREAS, The resolutions adopted by this Convention, which operate as a change, alteration or modification of rule twenty-five, be and they are hereby rescinded and annulled, and the rule reinstated as originally adopted.

The PRESIDENT. The Chair has some doubt of the relevancy of this amendment; he would prefer that the gentleman would withdraw it, and allow the question to be taken upon the resolution.

Mr. BAER. I withdraw the amendment.

Mr. DARLINGTON. I move, then, to strike out "fifteen," and insert "twenty," and add, "without leave of the Convention."

Mr. MANN. I call for a division on the amendment. So far as it restricts debate to twenty minutes, I have no objection to it.

The PRESIDENT. Does the gentleman modify the resolution accordingly?

Mr. MANN. Certainly.

The PRESIDENT. The question is upon the amendment to insert "without the permission of the committee."

Mr. MANN. Mr. President: I hope that amendment will not be adopted. Twenty minutes will certainly give any one opportunity to explain sufficiently on the provisions of an amendment which may have been pending before the committee, and the practical effect of it will be that any gentleman who feels constrained by rule to observe it, will be restricted to that length of time.

It operates awkwardly and very unpleasantly to have a rule restricting debate to twenty minutes, and then, when the time is up, having a motion made for an extension. If there should arise any such occasion as clearly calls for an extension of time, the Convention will give its unanimous consent. I hope the amendment will not be adopted.

The amendment was not agreed to.

The PRESIDENT. The question is upon the resolution of the gentleman from Potter (Mr. Mann.)

Mr. JOHN N. PURVIANCE. I move to strike out "twenty" and insert "fifteen."

Mr. HOWARD. I move to amend the amendment, by striking out "fifteen" and inserting "thirty."

The amendment to the amendment was not agreed to.

Mr. EWING. Mr. President: I confess to a very great ignorance to the parliamentary rules which will tend to facilitate business; but at the opening of the session of this Convention a committee was appointed by the Chair, consisting of fifteen gentlemen of large experience in parliamentary bodies. Several of them had been in the Convention of 1837; some of them were Congressmen, and some members of the Legislature and of other bodies. After mature deliberation they reported a series of rules, which the Convention adopted. We have spent, I think, on an average, one half hour every day undertaking to amend those rules. I do not know how many amendments have been adopted, all apparently intended to facilitate the business of the Convention. My observation is that instead of so doing they have lengthened our debates. I think there is no advantage in them, and the longer we have tried these amendments the better I am satisfied that the committee of fifteen gentlemen reported a good set of rules for the government of the Convention, and for that reason I shall vote against all these amendments; and if the gentleman from Somerset (Mr. Baer) brings up his resolution I shall vote for that. Let us restore the original rule, and stand by the committee of fifteen.

Mr. GOWEN. Mr. President: It seems to me that rule twenty-five, as adopted by the Convention, is a sufficient restriction upon the right of debate.

The PRESIDENT. It is no longer in force.

Mr. GOWEN. It is in force in a more restricted sense, by the amendments adopted by the Convention since. It was the understanding of the committee that reported these rules that there should be no previous question called in the committee of the whole. I do not think that we can adopt a Constitution to govern the State of Pennsylvania for the next fifty or one hundred years, an instrument the construction of which will be in the courts time and again, both as to its substance

and the meaning of the language, unless preparatory to its adoption we have a reasonable amount of time for debate allowed to us. If this amendment is adopted no one can speak more than once upon a subject. The chairman of the committee which reports the article may make an address in its favor, and may be prohibited from answering any arguments against it, although the time and reflection spent upon the subject in the committee room may make the members of that committee perfectly able, in a few minutes, to give abundant and cogent reasons why the article as reported should be adopted.

I do not believe in a matter of such importance as this, the adoption of the fundamental law of the State, we can properly discharge our duties unless members are allowed some latitude in debate. It may be said that there is too much speaking. That may be true; and sometimes in looking over the papers I am astonished to find how frequently I have been on the floor of the Convention, and I feel very much ashamed; but when I am convinced that the Convention is not disposed to listen to me I always sit down as quickly and as gracefully as possible. In the English Parliament they have a system of coughing members down, but I consider this very unparliamentary, not at all proper in this Convention, and I do not believe it will ever be adopted. I have heard that in the old Convention they had a wheel, and when a member grew tedious in debate it could be set in motion by means of a string, and the noise it would create drowned the voice of the orator. I think the adoption of some similar device would be better than to cut off debate. If it was clearly understood that the previous question should not be called in committee of the whole, and that there should be a thorough, complete and earnest debate in the consideration of every subject, when we return in Convention itself, the previous question can be called by eighteen members. While we are in committee of the whole we are frequently called upon suddenly to act upon an article we have never seen before, and which may have been in the committee for a week or two, and is thereby fully understood by every member of that committee, and I think the re-establishment of rule twenty-five will relieve us from the trouble. I believe it will really save us more time than all these new amendments are calculated to save, because we have taken more time every

morning or two in discussing this question, than would have been lost by adhering to the old rule.

Mr. J. W. F. WHITE. Mr. President: I trust that the Convention will adopt some rule that will be permanent—at least just for more than one day. I am in favor of limiting debate in committee of the whole to twenty minutes, and to fix that as the limit, with the understanding that a motion shall not be made to extend the time of the speaker. Our present rule is ten minutes, and if the gentleman who has just taken his seat (Mr. Gowen) had been in the Convention last week he would have found that almost every speaker had his time extended by motion after he had spoken ten minutes. That is our present rule. The proposition now is to extend the time to twenty minutes, and to limit the speakers to that time. The amendment to the amendment suggests fifteen minutes. I hope that amendment will not be adopted, but that we will extend the time to twenty minutes, with the understanding, distinct and explicit, that the time shall not be extended, and that a member shall speak but once on any question before the Convention. Now, sir, I am in favor of applying this rule to the chairmen of our different committees, as well as to every other member of the Convention. There is no necessity of a chairman of a committee taking up two hours of the time of the Convention in explanation when he presents an article to the consideration of the Convention. We have tried this plan, and we found that it did not meet the wishes of the Convention, and in consequence of that we adopted the rule limiting debate. Let the chairmen of the committees, when they present their reports for the action of the committee of the whole, explain the importance of the subject in a brief manner, for I apprehend that not a single proposition will come before the Convention but that the chairman of the committee can explain it fully and clearly in twenty minutes. In addition to this, the adoption of the resolution will give to other members of the Convention an opportunity of expressing their views. There can be no doubt but that there are members belonging to our various committees who are quite as competent to discuss the merits of a report of a committee as the chairman, and if we give an unlimited time to a few members to discuss the whole article, they will occupy so much time that the Convention will become

impatient, and those who desire to express their views will not have the opportunity to do so. I apprehend twenty minutes will be a reasonable limitation, and that every member of the Convention will be content if the resolution is adopted. I am in favor of adopting the resolution giving to each member twenty minutes in which to debate any proposition that may arise in committee of the whole.

The question being then taken on the amendment to the amendment, a division was called, which resulted as follows: Ayes, twenty-one; noes, seventy-six.

So the amendment to the amendment was not agreed to.

Mr. S. A. PURVIANCE. Mr. President: I move to amend the resolution, by striking out the word "fifteen," and inserting "twenty-five." In offering this amendment I desire to say a few words upon the subject. I am rather surprised to find gentlemen in the Convention who have occupied considerable time in the discussion of the various reports which have been presented to the consideration of this body, now making a proposition to limit those who have not yet intruded themselves upon the time of the Convention at all. I have abstemiously refrained from participating in the debates of the Convention, because I believed the most important question destined to come before us is the one now under consideration. It was my intention, if I should be so fortunate to obtain the floor, to submit some remarks, but if I am to be dealt with in the manner in which other gentlemen in the Convention have been dealt with, in the discussion of important questions, and if I am not allowed to explain the plan which I have in mind, I submit that the little explanation I can make in the limited time allowed to the members of the Convention, under this resolution, will be of but little avail. In introducing the suggestions which I shall have to make, I do not do it for the purpose of making a speech to go into the Debates, but I feel that the views I entertain in regard to this question would be trammelled if I considered myself confined to twenty minutes. I therefore ask that the debate in committee of the whole be extended to twenty-five minutes.

Mr. WORRELL. Mr. President: While this question is being discussed, I desire to read an article from the *Frankford Herald*, and it is this:

"The Convention was called to discuss and consider all proposed alterations of or additions to the Constitution, and we submit that that debate is not unnecessary which tends to demonstrate the propriety or impropriety of adopting the amendments suggested. * * * * * We say, therefore, to the Convention that the people are not uneasy and anxious to vote upon the amendments, and that they will not consider that time mis-spent or wasted which brings forth guarantees of official purity and the security of private rights."

Mr. HARRY WHITE. Mr. President: I do not desire to protract the discussion in regard to this question. I have always endeavored not to obtrude myself unnecessarily upon the time of the Convention; but it occurs to me there is unnecessary time consumed in taking up resolutions of this kind. I do not desire to repeat what has been so often said, that it is about time every member of the Convention should remember that we are making an organic law for the State of Pennsylvania to last, we hope, half a century. I certainly think that some scope in our deliberations should be allowed for discussion. I know I have profited by the discussions in this body, and that my mind has been changed during the debate upon the various questions which have been introduced in the Convention. I do not think the public will complain if, in the end, we submit to them a result achieved by due deliberation. I will therefore vote in favor of granting the longest time in committee of the whole for debate upon any question which may arise, trusting, of course, to the good sense and judgment of the members of the Convention in governing them in their discussions. I will vote, then, for the proposition of the gentleman from Allegheny (Mr. S. A. Purviance) to extend the time to twenty-five minutes. If I had it in my power, and if I could persuade this Convention, I would refuse to limit discussion at all in committee of the whole. I would leave it as it was reported originally from the Committee on Rules. The very object of the committee of the whole is to be relieved from that formality which obtains in the discussions in Convention.

The question being then taken on the amendment, striking out "twenty" and inserting "fifteen," a division was called, which resulted as follows: Ayes, sixteen; noes, fifty-six. So the amendment was not agreed to.

Mr. DARLINGTON. Mr. President: I move to strike out the word "twenty" and insert "thirty."

The question being taken, the motion was not agreed to.

The PRESIDENT. The question recurs on the resolution, which will be read for information.

The CLERK read as follows:

Resolved, That hereafter in committee of the whole no delegate shall speak longer than twenty minutes at one time, nor more than once on the same proposition.

The question being taken, the resolution was agreed to.

Mr. HARRY WHITE. Mr. President: I ask the unanimous consent of the Convention to offer a resolution at this time.

[Leave was granted.]

Mr. HARRY WHITE. Mr. President: I offer the following resolution:

Resolved, That sections twenty and twenty-one of the article reported by the Committee on the Legislature, together with the amendments proposed thereto in committee of the whole, be referred back to the Committee on the Legislature, with instructions to make a report thereon to the Convention at as early a day as is practicable.

The PRESIDENT. The Chair is of the opinion that the resolution of the gentleman is more properly a motion.

Mr. HARRY WHITE. Well, Mr. President, I do not persist in offering this resolution. I submit it merely for the consideration of the Convention. It is well known that when the President vacates the chair, the article reported by the Committee on the Legislature will then be considered by the committee of the whole. It must be manifest to every gentleman of the Convention that some confusion exists. The multifarious propositions submitted confuse a great many of our members, and I prefer very much to have all the various propositions which have been offered referred back to the appropriate committee, and have a formal report thereon. I desire to call attention to the fact that there is an arithmetical inaccuracy in the report of the committee, which I apprehend they can correct at once, and I apprehend the committee will not stand by the report. In deference to the committee, and in deference to what I believe is the interest of this very important subject, I hope that it will be re-committed back to the committee, and I apprehend that the whole article

will be reported to the Convention the day after to-morrow.

Mr. LILLY. Mr. President: If this report of the Committee on the Legislature is to be reported back to the committee, it is my desire that the sections indicated in the resolution of the gentleman should be referred to the proper committee, viz: The Committee on Suffrage Election and Representation. I therefore make the motion to strike out the words "Committee on the Legislature," and insert the words "Committee on Suffrage Election and Representation."

The question being taken, the motion was not agreed to.

Mr. DARLINGTON. Mr. President: I desire to ask for information whether the resolution which has been introduced purports to refer back to the Committee on the Legislature the article which was reported by that committee, and which has been under discussion for the past several days.

Mr. HARRY WHITE. That is the proposition, Mr. President.

Mr. DARLINGTON. Then I am opposed to it, for after spending several days in its consideration, and after the views of the members of the Convention have been obtained in regard to it, I must confess that I can see no propriety in referring it back to the committee from which it emanated.

The question being taken on the resolution, it was not agreed to.

THE LEGISLATURE.

The PRESIDENT. The next business in order is the further consideration of the article reported by the Committee on the Legislature. In the absence of Mr. Hopkins, Mr. Clark will please take the chair.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Clark in the chair.

The CHAIRMAN. The committee of the whole has again under consideration the article reported by the Committee on the Legislature. When the committee rose last they had under consideration the twentieth section, and the question is now upon the amendment offered by the gentleman from Carbon (Mr. Lilly) to the amendment offered by the gentleman from Chester (Mr. Darlington.) The Clerk will read the amendment and the amendment to the amendment.

The CLERK read the amendments.

Mr. SAMUEL A. PURVANCE. Mr. Chairman: I consider this the most important question that has yet been before the committee, and if the committee will give me their attention, although I am laboring somewhat from the effects of a cold, I will present what I believe to be a plan that has some merit, in reference to the structure of our Legislature.

In the first place, we should fix the character of our House; that is by far the most important body. It is a body which contains the reflex of the popular will, and if we *once* fix that body we will have no trouble whatever, in my judgment, in making the Senate correspond and bear to the House its proper relation, but first let us fix the House.

I have given this subject, I believe, considerable thought and reflection, and I have endeavored, sir, to bring within that thought and that reflection the elements which I consider would be essential in the structure of our Legislature. I have thought that if we could make the districts independent, if we could make them equal in representation—if we could equalize representation, if we could make the districts self-adjusting, and if we could put them beyond the reach of being gerrymandered, if, in other words, we could combine these four great elements or principles, it would be a structure such as would certainly possess merit. What I mean by *independent* is that a district shall not be overshadowed by having counties of diverse political sentiments connected so as to control it, and that this shameless gerrymandering of the State, that has hitherto been carried on, shall be stopped. What I mean by *equality of representation* is that there shall be no ground of complaint from one end of the Commonwealth to the other in reference to representation. What I mean by *self-adjusting* is that we can dispense with all apportionments, those apportionments that have been so disgraceful to the Commonwealth. What I mean by being free from gerrymandering is to place the districts beyond the reach of "apportionments" of any kind, to make a district adjust itself, and bring about its own independence.

Now, sir, when I say that my proposition is that each county shall have a member in the lower House, and that for every thirty or forty thousand the county shall have an additional member, and when I provide, as I do in that proposition, that the enumeration of the inhabitants shall

be taken as prescribed by law, I mean to set aside both State and federal enumeration, because that might require a county to delay too long before she would come into her rightful representation. I mean that the Legislature may pass a law providing that assessors, for instance, in taking taxables, may make an enumeration, also, of the inhabitants, and when that enumeration is certified by the commissioners to the Secretary of the Commonwealth, the Governor can issue his proclamation, and at the ensuing election an additional member can be elected. The working of that system would be this: Take a population of, say three million five hundred thousand, and divide it by forty thousand, and you get eighty-seven as the number of members, to which add the sixty-six members you give the counties, by concession, and it makes one hundred and fifty-three members in the lower House. In the first place, there will be some outstanding fractions, but these fractions will eventually come in and make the House one hundred and fifty-three. At first it will be about one hundred and thirty. If you reduce the ratio and make it thirty thousand, it would make the House one hundred and eighty-three. Whether that would be too many or not will be a matter for the consideration of this body.

Now I desire to say a word with regard to the concession to each county of one member each. I have in my eye the county of Forest, in the western part of Pennsylvania, through which the river Allegheny runs, and which is rich in pine and hemlock and cherry lumber, and rich in oil territory, owned by men residing in your city, and elsewhere, entitled to representation, and when I concede a member to that little county, I rob no larger county, because when I give a larger county a member upon the same principle, irrespective of population, that county has no right to complain of the concession to the county of Forest. Therefore this, as you see, would be what I say it would be, independent, equal in population, self-adjusting, and free from gerrymandering. These are the great elements which I wish to bring into this arrangement.

Then, if you choose to make your Senate correspond with your House, take the proposition of the gentleman from Montgomery (Mr. Corson.) That proposition concedes one Senator to each county, and the only objection that can be made to it is, that it might enlarge your Senate be-

yond its present limit too much. It provides that each city shall have also a Senator, and that with regard to cities having a population of one hundred thousand or over, the population shall be divided by the number of counties in the State, which would be sixty-six, and the result would give the proportion for the number of Senators to which she would be entitled. In a Senate thus constructed, that would give to a city like Philadelphia, in the Senate ten members; it would make the Senate, altogether, seventy-five. It is true the only objection that probably can be made to that is that it is too large; but when you consider that that makes the Senate remain stationary—it is made an inflexible rule by which it is not to be enlarged—it will have to remain seventy-five, and when your House grows, as it gradually would grow by the coming in of the fractions, on my proposition, to be about two hundred and twenty-five, the Senate would just bear the relation to the House that it does at present.

I submit to the committee whether, if we can adopt a plan of this kind, and dispense with the apportionments altogether, it would not be better to do so. I listened to the proposition submitted by the Committee on Suffrage, and it struck me as being a proposition that has not been well considered, and if well considered, and well analyzed, that this Convention will never consent to it. What is it? That the people of the Commonwealth shall elect a board of ten men, by what is called the "restricted suffrage" system. That would bring in five of one view and five of another; and, be it remembered, that a nomination there is an election. Suppose, now, that you bring into a board like that a few men like some of the representatives from Philadelphia, that have been described by our worthy friends from the city. Once elect such men, and although you may provide that a majority of seven shall be required before the apportionment can be made, yet if there are one or two men there who can be corrupted or purchased, would not they be bought over, or brought over, so as to make a majority? And may not an apportionment thus made prove a greater outrage upon the Commonwealth than ever has been made before? This is possible and even probable, under the condition of things to which I have referred. I admit, sir, that your Legislature have disgraced themselves, time and again, in reference to that matter. In the Congressional dis-

trict in which I reside, by a democratic apportionment, it once reached from within six miles of the Ohio to beyond the Susquehanna. The apportionments made more recently by the republicans in power are just as bad. They have selected democratic counties, and overshadowed them by republican counties, for the express purpose of repressing the voice of the people. In the first instance, if you examine the last gerrymandering of the State, you find Clarion county, which is represented on this floor by our friend, Mr. Corbett, overshadowed by Venango, and Mercer, and Crawford. Greene, which is represented by my learned friend on my left, (Mr. Purman,) with a majority of sixteen hundred, is overshadowed by Lawrence and Beaver. Luzerne, which has a population of one hundred and sixty thousand, has the will of its people repressed by attaching to it the county of Susquehanna. I refer to these facts, because it has been the practice of our Legislature, time and again, to produce this disgraceful state of things, and I want to put an end to it. If we can get a self-adjusting system, let us get it.

What is one of the other provisions made in this proposition of the Committee on Suffrage? It is that when this apportionment is made it so remains for ten years. It is in your organic law, and you cannot reach it by legislation, nor by judiciary process; and the most infamous frauds that we have ever had practiced in the Commonwealth may be practiced again, but must then remain there for a period of ten years. I submit to the committee whether it would not be best that this should be entirely rejected.

I desire to say a word or two in reference to another portion of this report, which now seems to be open to us, and I shall only refer to that which, I believe, has not been referred to by the committee before in reference to Senatorial restriction—city Senatorial restriction—and in that, sir, I beg leave to differ from my learned and esteemed friend from Philadelphia (Mr. Woodward.) I do not see why we should ever think of restricting the population of the State, unless we have some reasons for it other than any that I have yet heard on this floor. I was surprised to hear from the chairman of the Committee on Legislature the one and only reason—that combinations may be made by our Senators. Sir, Philadelphia or any other city has a right to make combinations in any matter that concerns her

interests. But what can result from this that would be injurious to the people of the Commonwealth? Take, for instance, a democrat elected in Lancaster county and two republicans; then take one republican and two democrats elected from Berks. They go to Harrisburg, and on a question of interest in relation to their county affairs they go together, but when it comes to a party question they adhere to their party. Hence it is that there is no combination that can be made that would be injurious.

There was another argument made to which I would briefly call the attention of the committee, and that is drawn from the supposed analogy of our State to the formation of our confederacy. Why, sir, it bears no analogy. Our confederacy was formed by sovereign States, standing out before that confederation was made as separate, sovereign and independent States; and when they made their bargain, they made a reservation that a small State should have the same power in the Senate that a large State should have. But a city, such as Pittsburg or Philadelphia, is an integral part of your Commonwealth; it has always been such, never less, never more, and, therefore, why make a step-child of one who was on the original platform of the organization of your State. It cannot and ought not to be done.

There is another argument which has not been adverted to, which I will now present to the committee. In the formation of our government, which is a republican government, as was clearly defined by the gentleman now in the chair, some short time ago, we have the right to select electors; we have a right to say from what portion of our citizens the electors shall come; but, sir, when we fix that, when we declare that a certain class of citizens shall be electors, it has been ruled by the Supreme Court of the State that we may regulate suffrage, but we cannot destroy it. I undertake to say, therefore, that when you say that this city, that a body of electors of say eighty thousand in number in this city, shall not vote for more than four Senators, whilst eighty thousand electors in another part of the Commonwealth shall vote for eight Senators, you are destroying suffrage; you are taking away the functions of an elector, a thing that you have no right to do. This is all I need to say on that subject. A word or two more and I have done.

It has been said in this Convention that much of the mischiefs which have resulted to the people of the Commonwealth have come from that Constitution in which my friend on my left (Mr. Woodward) took a very prominent part. I, sir, came to that Convention but a youth. I came there charged with a duty, and that was to strike down life-tenure on the judiciary, and to strike down Executive patronage. Up to that time this Commonwealth was rent asunder in all its social relations, father against son, brother against brother. The Governor possessed the patronage of ten or fifteen thousand appointees, and they increased, of course, in aspirants to probably one hundred thousand. I came there, sir, to stop that; but whilst I gave my votes in that way—votes that I never regretted, votes that I endorse to-day—I have here to say that I have no special attachment for that Constitution of 1838. I admit that thirty-five long years have rolled by. We fixed the House then at one hundred. I admit, and I am not insensible to the fact that our Commonwealth has, since that time, increased in population to a fraction beyond three and a half millions; that our hills and valleys are teeming with rich mineral treasure, demanding additional facilities for development, and that this development must come in the shape of corporations and companies, and combinations of capital and labor; and that there must come from this body authority for the exercise of additional checks and balances, to prevent encroachments upon the powers and liberties of the people, and these must come through your Legislature; and though you may strike down special legislation, and to a great extent I hope it will be done, yet, sir, these results will be effected by general laws, affecting the whole people. I care not, therefore, how conservative you make your Governor and Senate, but let your House, which is the reflex of the popular will, be made stronger, if possible, and be brought nearer to the people.

Mr. Ross. Mr. Chairman: From the remarks of my colleague, (Mr. Lear,) I learned that he and I differ in our views with reference to the question of Senatorial representation. Inasmuch as he thought it right that he should place himself upon record with regard to it, I have deemed it due to myself that I should express my own views upon the subject, that our mutual constituency may know just how we each stand in relation to this question. In the considera-

tion of the question of representation in our State Senate, we of this Convention approach the subject, bound by no organic law—bound to pay obedience to no fundamental rule, but we approach it as though it were a perfectly new subject; guided, it is true, by the light which the experience of the past organic rules, and of the Constitutions of seventeen hundred and ninety and eighteen hundred and thirty-eight may give us. But we approach it, as I have said, as a principle which we are to adopt for ourselves and which is, for the purposes of this discussion, bound by no organic rule.

It has been said that representation is the chain of communication between the people and those to whom they have delegated the governing power. Upon the constitution of each one of the links of that chain, upon the strength of that chain as a whole, depend the rights, depends the freedom, depends the welfare of the citizen, and depend also the limitations and the restrictions upon the governing power. It is therefore an all important question—it is a question in whose determination this Convention can do nothing which will more interest the people of this State or in which they are more deeply concerned. I am, sir, I confess, in a minority, so far as I can learn, in my views in regard to the matter of the Senatorial representation. I believe, sir, that the true theory upon which we should fill our Senate chamber—the true theory upon which the Council of the State—as that House was properly termed by a gentleman on this floor the other day—should be organized, is upon the basis of territorial representation, and upon that basis alone. I would, sir, if I had the power, elect but one State Senator from each county, whether it were Forest, or Cameron, or Elk, or the great city and county of Philadelphia, without regard to population. I would give a State Senator to each county, no more and no less; but as I have said, I am satisfied that that view will receive but little encouragement on the floor of this Convention, and as it is necessary in order that we should accomplish something, that we should all concede something, it will not do for each one of us to stand up inexorably rigid and erect in favor of his own peculiar views, yielding nothing and conceding nothing. As by such a persistence as that we never could arrive at any result. I am, therefore, prepared to modify my views on this subject to a limited extent. I am prepared to say that territory

and population *both* shall enter into the computation upon which the State Senator shall be elected throughout the State; and it has struck me that the proposition which was offered by the gentleman from Montgomery (Mr. Corson) best attains that object.

That proposition provides that each county in the State shall elect one State Senator, and that the cities containing a population of over one hundred thousand shall have a basis of representation, which will be arrived at by dividing the whole population of all the counties by the whole number of those counties. That proposition embraces within it the territorial idea, and also the idea of population, and *that* I am prepared to accede to. But here is where I differ from my colleague (Mr. Lear.) I cannot, and will not, vote in favor of unlimited representation from the great cities. I believe that this concentration of power, which we have heard referred to frequently on the floor of this Convention within the last few days, exists in our large cities, is injurious to the best interests of the people of this State. I have lived, not within the limits, but within the shadow, of this great city for the greater part of my life. As a Pennsylvanian I am proud of her—I triumph in her triumph, and I mourn in her defeat—but knowing, as I do, her great importance, knowing, as I do, the inestimable advantages which not only her own citizens, but those of the Commonwealth, and, indeed, of the whole Union, derive from this city; knowing all this, I still know what her power, badly exercised, may be. I know that when she stretches out her sceptre of power—her representatives in the large number in which they now are—if the question be one in which the great city should be interested, as against the country, her representatives, standing shoulder to shoulder, will fight for that particular movement which the city is advocating, as against any other section, and standing together, as they do, in the large number in which they are, and may hereafter be, they will be able to put such a measure through, no matter how vigorously and bitterly it may be contested by the other parts of the State.

There is nothing, as I conceive, in the argument, that to limit the large cities in their representation is open to the objection that the cities are subject to taxation without representation. Why, sir, the lower House is based upon the idea of population. The lower House filled, as

has been suggested by the amendment of the gentleman from Allegheny, (Mr. S. A. Purviance,) will give to the large cities all the power and protection which they can need, or which they will be entitled to. The State Senate adopts no laws—enacts no laws—it is bound hand and foot, unless it has the concurrence of the lower House in its action. Therefore, I say, there is nothing in the argument that the citizens of our larger cities are liable to be taxed without having themselves fairly and duly represented. There is nothing, again, in the argument, which my colleague (Mr. Lear) used, that a delegate from the country is dwarfing his constituency, and dwarfing his own intellectual stature, when he is apprehensive of the two large cities having a full Senatorial representation based upon population, that the country might suffer. It is not the contest of man to man that we are afraid of, nor the intellectual strife of mind against mind that we dread. Coming from the country, as I do, I say that there are to be found throughout the length and breadth of this State men who are able, and amply able, to compete with those gentlemen who come from the cities, in our legislative halls.

Sir, it is this overpowering of the multitude against the few, it is the rush of the many against the few that I fear; it is the concentration in the cities against the divided few throughout the country. Why it will not be pretended that the country members stand shoulder to shoulder as do the members from our large cities. Such has never been the experience of the past, and I have but little doubt that it will never be the experience of the future.

Now, sir, I have not intended to make any extended remarks on this subject. I thought that it was due to my constituency that I should define my position, inasmuch as my colleague and I differed on that subject, and therefore, in conclusion, as I said before, I am in favor of a territorial representation in the State Senate, modified to the extent of population being taken into consideration also, so that when the large cities come to have their representation in the State Senate, given to them, that such representation shall be, to a certain extent, limited. That limit may be fixed hereafter, in accordance with the sound wisdom and the judgment of this committee.

Mr. METZGER. Mr. Chairman: It is not my purpose, in rising, to discuss the

question of cumulative voting, inasmuch as I do not understand that the amendment offered by the gentleman from Carbon, (Mr. Lilly,) which is now under consideration, necessarily introduces that method. The first section introduces what might be termed minority voting, or electing commissioners of apportionment on the plan of limited voting. I am opposed entirely to this plan. It appears to me that the object which the author of this amendment intended to accomplish cannot be attained by the adoption of this amendment. It is evidently the intention that the apportionment should be removed from a political body and placed into the hands of a body that would not be partisan or political. It does not accomplish this purpose. It only removes this business from the people, or from the Representatives elected directly by the people, and places it, in my opinion, in the hands of parties who are nominated and appointed by partisan conventions. It is well known that certain rings in each political party control, in a great measure, the nominations made by the party. If this section were adopted, these political rings who had particular objects to serve, or wished to accomplish certain ends, would make it a point to secure such men on the ticket as they knew would carry out their purpose. This they could, in my opinion, more easily accomplish in the nominating conventions, than they could if these commissioners are elected by the people at large, in the same manner as other officers are elected. But as I said before, or at least intimated, I sympathize with the object which the author had in view in proposing this amendment, and therefore I shall favor any proposition which, in my opinion, will remove this question of apportionment from the political arena, and will so regulate it that it will not hereafter be a bone of contention in the Legislature. I apprehend that this can be accomplished by this Convention, and I believe that this Convention is the proper body to do it. I am under the impression, from what I have seen in this body, that it is probably the least partisan body that has ever sat in this State. I think the apportionment can be made by this Convention so as to meet future demands. I shall therefore favor any proposition looking to the attainment of this object. I believe that amendments have been proposed by gentlemen here, which, if adopted, will remove all necessity for future apportionment.

There is a proposition here to give to each county a Senator. There is another proposition to give to each county a member, and as many more as the county shall be entitled to in proportion to its population. If you were to adopt these propositions it would end this question. Now, while I am not going to argue, Mr. Chairman, that we should give to each county a Senator, my view is that we should either do so, or so parcel out this State that each territory, composed of a certain number of square miles, shall be entitled to one Senator. If we do this, without regard to population, the apportionment is accomplished. Now I think if this Convention will reflect for a moment they will see no injustice in this. If we but re-call to our minds the objects we should have in view of obtaining the creation of the Senate, (and this matter has been fully and ably discussed before in the argument upon a previous question,) we will come to the conclusion that the Senate is formed to serve several purposes. It is not intended merely for the purpose of getting a second House to represent the people, but one of its functions is to form a check to the hasty and indiscreet action of the popular branch. This we suppose to be accomplished when we provide that in the Senate we will require members of more experience, and will also give them a longer term, so that by uniting experience with considerable independence we will make them a conservative body adapted to revising the action of the popular branch. But there is another object for which the Senate is constituted, which cannot be accomplished so well in this way. It is to form a check to the tyranny of majorities over minorities. At the present time we find that our popular cities are increasing much more rapidly in population than are our rural districts, and the day is not far distant when a combination of Representatives of the populous districts will entirely overshadow the representation from the rural districts. If you base representation in the Senate upon territory this can never take place. The thinly settled districts will have an equal voice in the Senate chamber with the more populous districts, and they will form a check to what the popular branch representing the populous districts may do. I apprehend that this is necessary to the perpetuity of our republican form of government. There never could be a worse tyranny than the tyranny of the popular branch of the Legislature representing the populous sections of the State

over those that are thinly settled, in case the Representatives of the populous cities combined to pass laws without regard to the interests of the less populous sections of the State, and had the power so to do, by reason of their numbers.

So much in regard to the construction of the Senate. Now, as for the House, I heartily agree to the proposition of my friend from Allegheny (Mr. S. A. Purviance.) His proposition based representation not only upon population, but likewise upon territory. You have, if you adopt his amendment, a member from each county, and you give to the larger counties as many more as their population shall show them to be entitled to have. I apprehend that this is necessary for the purpose of preserving to the people of these smaller counties their rights, and to promote their improvement and their welfare. Under the present system, and the system which is proposed by this amendment under discussion, many of the smaller counties are unrepresented. The injustice that has been done in the past to these small counties cannot be estimated, except by members who have been so unfortunate, if I may use the term, as to represent districts in which small are attached to larger counties. How often does it not happen that a member is elected to represent a district in which smaller counties are attached to larger ones, who, coming from the larger county, as he usually does, scarcely knows a man, much less the wants, of his constituents who reside in the adjoining smaller counties which he is representing? The large county has its peculiar interests, and for that purpose it selects its peculiar instrument, regardless of what the smaller ones may require, and thus the smaller are left at the mercy of the larger ones. In order, therefore, to fully protect the interests of the smaller counties, I maintain that they ought to have a member conceded to them.

Is there any injustice in this method of representation? Will the larger counties lose much by it? No! They are not only entitled to one member, which is conceded to the smaller counties, but they are entitled to be represented by as many more as their population shows they ought to have. The cities, likewise, ought not to complain. They, too, will be entitled to representation according to their population, and all that I would do is to provide a check to prevent the smaller counties from being over-borne, down-trodden and oppressed. Gentlemen may argue that

this would increase too largely the number of the House and the Senate. I apprehend, from what I have seen of this Convention, that it is the opinion of a large majority of its members, and I believe that I am justified in saying that it is the opinion of a large majority of the people of Pennsylvania, that a reform of this kind is needed, and we should, therefore, increase the number of our representatives. It has been said that if you make the Legislature a larger body it will be less pure, less honest, less capable and composed of less honorable members. Is this true? Why, sir, if this were true the Pennsylvania Legislature should be the purest in the United States, because, with the exception of one single State, its representatives represent the largest constituency of any representative body of any State in the Union. The gentleman's argument is unfounded. The present history of the times ought to have taught him better. By referring simply to the history of those States in which the representative represents but a small constituency, and in which the States, though much smaller than Pennsylvania, largely outnumber in their representative bodies the Legislature of Pennsylvania, he would have found that in the latter there is, to say the least, less suspicion of corruption than attaches to our Legislature. I am not here to affirm that this suspicion of corruption, by which our Legislature is attainted in this State, is well founded. I only assert there is a suspicion, and if an increase in the number of members will but remove that suspicion we will have accomplished a noble work.

I say the people demand such a reform, because they have, for some reason or other, lost confidence in the House as at present constituted. Although I cannot say that that loss of confidence is well founded, I here affirm that the people demand an increase of representatives, and if increasing the number will satisfy the wishes of the people, and will allay their suspicions and lead them to believe that purity and honesty again reign at Harrisburg, we will have accomplished sufficient to have justified the calling of this Convention. If it will do this, who will not be proud to honor and respect the Legislature of this great Commonwealth? Who would not be proud to speak with the highest degree of respect for the character of our law-making power?

"Oh!" said the gentleman the other day, "if you adopt any plan by which the

number is increased you will have a mob." Why, sir, the House of Commons is composed of at least five times the number that composes our Legislature. So, too, the Legislatures of the eastern States, though much smaller States as I have said, are composed of a much larger number than is the Legislature of Pennsylvania. Are they mobs? The reference which he made by way of illustration to the Athenian democracy in his remarks, is totally inapplicable. That was not a representative government at all, but every citizen possessing certain qualifications was a law-maker, and participated directly in the making of the laws. This, it is true, would convert such an assembly of legislators into a mob.

But then again, Mr. Chairman, it is necessary that these Representatives should be brought nearer to their constituency. They ought to be elected by their neighbors and their friends; by men who know them and know their qualifications not only as regards their honesty, but their ability to represent their several districts. But, as I said, under the present district system and under the system proposed here by the gentleman from Carbon, this cannot be accomplished. Many a Representative is representing a territory and a people with whom he is not acquainted, and in whose county probably he has never set his foot. If you bring these Representatives right home to the people, will they be less honorable? I affirm here that you will then see a class of men elected who will do honor to the position instead of hoping to be honored by it.

It is said by gentlemen that the purity of our judiciary is owing to their long term and their independence. This may be true of the judiciary. It is also true of much less important officials. To what is the purity of our school boards and our councils in our small towns owing? Do not the very best men of the State fill these positions, although they do it without receiving any emoluments? I tell you there are men representing you in the town councils to-day who would not accept a seat in the Legislature. And why? They know it is sufficient to destroy a man's character to be accused of being a member of the Legislature, and that honorable men will not aspire to that position. Were the representatives of our ancestors, who, a century ago, represented much smaller constituencies, less honorable because they represented fewer men? Did they act less honestly? Did they do

less for the interests of the community they represented? I appeal to the members of this body to answer. There is, therefore, nothing in the argument against an increase in the number of our legislators, and I repeat, again, in conclusion, if there is any reform more imperatively demanded by the people than another, it is a reform of this kind, as well as in the manner of constituting the legislative body.

MR. J. PRICE WETHERILL. Mr. Chairman: I shall occupy the time of the Convention but for a few moments, and shall confine my remarks entirely to the resolution and the amendments offered by the gentleman from Carbon (Mr. Lilly) and the gentleman from Philadelphia, (Mr. Simpson,) and I will say, at the outset, that we have before us a question which, to fairly and properly adjust, is almost a matter of impossibility, and that the best we can do will be to approach that perfection which, from the nature of things, we can never entirely secure.

Now, sir, I object, in the first place, to the manner of selecting the commissioners to make the apportionment, as offered by the gentleman from Carbon. It is true, also, that the method of apportionment by the House and Senate is open to objection, for the reason that the experience of 1871 is such as to show clearly that the House and the Senate did not fairly and did not properly apportion the State. Why, just look at it, sir. In the county of Mercer, with a population of fifty thousand, in a ratio of thirty-five thousand, they have but one Representative; and right adjoining, the county of Green, with a population of but twenty-five thousand, in a ratio of thirty-five thousand, has one Representative. Mercer but one Representative with a population of fifty thousand, and Green one Representative with a population of twenty-five thousand. What fairness is there in that?

Take Washington county, with a population of forty-eight thousand; that county has but one Representative; and Butler, with a population of thirty-six thousand, two Representatives. Now, sir, can anything be more unfair than this sort of apportionment.

Perry and Dauphin counties, with a joint population of eighty thousand, have three members, whilst the adjoining county, Lancaster, with a population of one hundred and twenty-five thousand, against eighty thousand in Perry and Dauphin district, has but three Representa-

tives. This is the gerrymandering complained of under the present system, political entirely, because I imagine men of greater influence or ability in one county, representing that county in their own interests, were superior in diplomacy to those who represented other counties with, perhaps, not the same diplomatic ability. All this proves that it would be unsafe for us to allow the House and the Senate to apportion the State.

The objection to the ten commissioners has been stated by the gentleman from Allegheny, (Mr. S. A. Purviance,) clearly and unmistakably proving that either of the two political parties will control the ten commissioners, for, from the character of the proposed amendment, ten to be chosen and only five voted for, as the political parties decide, so will the result follow. And then we will have five democrats and five republicans, each with their political maps in hand, contending for supremacy. With these interests paramount, a proper apportionment for different counties throughout the State can never be secured, for as the temptation will be great to secure the end, so will the efforts be great to attain it, and the gerrymandering so much complained of will be equal in the one case as in the other.

Now, Mr. Chairman, what is the remedy for this? In my opinion the remedy is that we should, ourselves, so carefully and prudently prepare an article in the Constitution that neither the House or Senate, or the ten commissioners, should we see fit to select them, be able to so gerrymander the State and improperly apportion it. To accomplish this all-important result, it seems to me that we could very properly adopt the plan as presented by the gentleman from Carbon, and first fix the House at one hundred and eighty members. To this I suppose that there would be no objection, for as far as I can judge, the members of this Convention agree that the House of Representatives should be a large one. If you fix the House at one hundred and eighty members, and adopt the system of ratios, and where necessary three-fourths of ratios, so that these excessive fractions, which have been so hard to dispose of shall be utilized, then I contend that this State would be by our own act independent of any commission; independent of either Senate or House, fairly and properly apportioned.

It will be observed that if you adopt the plan of one hundred and eighty members in the House of Representatives, that the full ratio of representation for each member will be twenty thousand; twenty thousand times one hundred and eighty being three millions six hundred thousand in round numbers, about the population of the Commonwealth. Now the ratio of twenty thousand would perhaps require some sub-division in order to use up these fractions which we find so difficult to handle, so as to give each county a Representative. But if we would adopt an amendment giving each county having three-fifths of this ratio of twenty thousand, say twelve thousand, one Representative, and giving each county having a full ratio of twenty thousand, and three-fifths of a ratio, twelve thousand, which together would amount to thirty-two thousand, two Representatives; that plan, worked throughout the State, would give us just as fair and just as honest an apportionment as could be made, and as we all acknowledge the basis of representation, as far as the House of Representatives is concerned, to be population, and not by the acre, every one would be satisfied.

I have taken some trouble to work out this plan of one hundred and eighty members for the House of Representatives. Twenty thousand would be a full ratio, and three-fifths of a ratio, or twelve thousand, would entitle a county to a member, and one full ratio and three-fifths of a ratio, or thirty-two thousand, would entitle a county to two members, and I find this to be the result:

Twenty counties, each entitled to one Representative.

Twenty-one counties, each entitled to two Representatives.

Eight counties, each entitled to three Representatives.

Four counties, each entitled to four Representatives.

Three counties, each entitled to six Representatives.

One county, entitled to eight Representatives.

One county, entitled to thirteen Representatives, and

One county, entitled to thirty-four Representatives.

In all, fifty-nine counties with a joint representation, on that basis, of one hundred and seventy-six members, leaving out of the calculation Sullivan, Pike, Fulton, Forest, Elk and Cameron, six coun-

ties and four Representatives over to divide among these small counties to make up the full number.

Now if we can apportion the State by this plan, and the calculation I have made is a correct one, what fairer method can we adopt? These six small counties have a joint population, I believe, of about thirty-five thousand, and to divide among that population we have four Representatives. Surely it would not be difficult to do that.

This proposition meets the idea of the gentleman from Allegheny, and will give every county in the State of Pennsylvania its full and fair representation; and will give these six smaller counties, of an average population of about six thousand each, four Representatives. And what more could they ask for?

By this plan, in a clear, distinct and unmistakable manner, we say to whatever commission we may see fit to make: "This you must do; by these directions you must be governed." And then I care not whether it be the House of Representatives or the Senate, or whatever body may be selected for that purpose, they cannot gerrymander, for they must obey the Constitution of the State. It matters not in that case if we have five commissioners from either party, all anxious and eager to contend for their own advantage; we give them an article which they must live up to; we give them an article to which they must subject themselves; we give them an article by which they must be governed, and if it is violated they subject themselves to open censure. Adopt this method, and every county in the State will be fairly and honestly represented.

I now propose to state my objections to the plan as offered by the gentleman from Allegheny (Mr. S. A. Purviance.) He desires to give every county, great and small, in the State a Representative, and for forty thousand population an additional Representative. How will this work? A county having a population of thirty-nine thousand would be, by his plan, entitled to but one Representative, and Forest county, a county with but seven hundred taxable inhabitants, a county with this spare population, containing three hundred thousand acres of land, thus having nearly five hundred acres of land to every taxable, a Representative. Surely, is this not the borough system? Surely, is this not voting by the acre, and not by the elector? Surely, is this not voting by

pinus and hemlocks? Surely, this is not either democratic or republican in its character.

That county pays a tax to the State based upon personal property, valued at the enormous sum of forty thousand dollars. Just look at it—a county with a taxable population of seven hundred! In one of its townships it polled the extraordinary vote of fifteen for one candidate, and two for the other, at the last election; and a personal wealth of forty thousand dollars exerting the same influence in the House of Representatives as a county with many millions of personal property, and thirty-nine thousand population. Now I ask, in the name of justice, in the name of fairness, in the name of everything that is right and proper, should this proposition be submitted to, where, by this plan of ratios as proposed, we can fairly and honestly give to every county a full and proper representation?

Again, sir, by this plan a population of thirty-two thousand would entitle a county to two Representatives. In the State about sixteen counties would come up to this ratio and would have two Representatives.

Now if you adopt the plan of the gentleman from Allegheny, (Mr. S. A. Purviance,) to give a county two Representatives, it must have a population of forty thousand. Therefore, if we adopt the plan of the gentleman from Allegheny, and reject the amendment of the gentleman from Carbon, we exclude these sixteen counties from their fair and just representation, and give them but one Representative, and placing them upon a footing with a county of four thousand population. Adopt the plan of the gentleman from Carbon, and these counties would be entitled to two Representatives, their full and proper share.

With regard to a plan for the Senate apportionment, that, of course, would be a more difficult matter to work out. Take, however, a Senate consisting of sixty members, and on the same plan of ratios thirty-six counties would have one Senator each, and over, leaving but thirty counties to be districted. The plan would be simple. More than one-half of the counties would be fairly represented by its one Senator, and the other counties it would be a very easy thing to form into proper Senatorial districts. I claim, sir, that no subject can come before us of more vital importance than the one under consideration. Every voter in the State feels a

deep interest in securing a fair and just representation. To deprive him of this is to do him an injury, which will, if carried on, imperil our republican institutions. Let it not be said that by our action the power of an elector upon a dividing line is three times as powerful as any other. Taxation without representation can never be sustained. To repel this evil British tea was thrown overboard in Boston Harbor, and Valley Forge, years ago, was the scene of suffering and death. Full, fair representation is demanded by the voters of the State. Equal, exact, even-handed justice to all, without special or sectional advantages to any, should be secured, and to do this effectually and fairly, it seems to me, will be to vote for and adopt the amendment of the gentleman from Carbon.

Mr. HOWARD. Mr. Chairman: The several amendments under consideration involve a large number of subjects. To-day the question which has principally been discussed is the apportionment of the State. Last Saturday gentlemen seemed more disposed to direct their arguments to the question of limited or cumulative voting. I shall confine the few remarks I shall make to the latter questions. That subject is raised by the first proposition of the amendment offered by the gentleman from Carbon, (Mr. Lilly,) and as I consider this a very important, and one involving legal questions, I have prepared my argument, and shall read it from my manuscript. I believe it conflicts with the Constitution of the United States, in at least three of its provisions.

In the first place, I hold that electing a man to participate in the sovereignty by a minority is no election at all, within the meaning of the Constitution of the United States.

In the next place, I hold that it is a violation of the fundamental principle of republican government; and in the next place, that it violates the fourteenth amendment, in that it both *denies and abridges the right of the voter*.

That amendment requires that the right of voting shall not be denied or in any way abridged, and that must be interpreted as we find the practice of the States to be in regard to that right at the time of the adoption of that amendment. I say it violates that provision of the Constitution which guarantees a republican form of government. Under the Constitution republican government is to be

guaranteed. This supposes a form of government already established, and the established form is what is guaranteed. Now in no State was there a form where the minority could elect its officers *against the will of the majority*, to participate in the exercise of the sovereign power.

I take it, sir, that that is a fact that cannot be controverted, that at the time of the adoption of the Constitution of the United States in no State in this Union could a minority of its voters, against the will of the majority, elect persons who could or did participate in the exercise of the sovereign power of the State.

I cannot see my way clear to support this plan of either limited or cumulative voting. The general rule, and that is fundamental, in our State and general government, is that in all matters submitted to the people for their votes the majority, plurality or highest vote shall decide and govern, and there has been no single notable exception to this rule.

In the case of choosing inspectors of election, where two are to be chosen, the voter is *limited* by law to one vote. These officers are mere clerks, without any powers of government whatever.

The friends and advocates of the limited vote and the cumulative vote start out upon a false theory, a political heresy, and they rear a structure that to some minds appears fair and reasonable, and that might be applied practically and with good effect to affairs of government. Their base of operation is that the *minority* is not only not represented in the government, but is practically disfranchised, and that society is the loser by the majority rule, and will be the gainer by throwing it overboard and accepting their new political plan whereby all will be represented. In the first place they propose to do what is impossible; by their own theory and plan *all* will never be *actually* represented, unless they can devise some plan of dividing society into just two divisions—one the majority and the other the minority. We know practically that is not the case now, never has been and very likely never will be.

Our voting population is now divided into numerous divisions. First, the republican majority; second, the democratic minority; third, advocates of female suffrage; fourth, of temperance; fifth, of anti-temperance; sixth, those who desire to compel the recognition of God in the Constitution; seventh, the Quaker, who is opposed to bearing

arms or paying taxes for the purpose of warfare; eighth, the labor reformers. And these are only a part of the strongly marked political divisions into which society is divided now, each one firmly believing they are right and anxious to have their several political opinions incorporated into the government. If it is true that the fundamental principle of our government is a *lie*, viz: That the majority duly chosen does represent all the people of the country, and are *bound* to look to the "general welfare" of all, then it is time to look for a remedy; but is the limited vote or cumulative vote a remedy? The evil complained of is that minorities are not represented. Will their plan secure *actual* representation to even a majority of the minorities? Where is the genius that can devise a plan whereby all factions, fragments and political divisions can be actually represented? In the first place, in nearly all the districts there would not be one-quarter enough offices to go around, and the only consistent plan will be to go on creating offices, so that all divisions can be supplied, because so long as there is a division not supplied there is a minority not represented; then, really, the plan to be at all practical must, in *truth* and *fact*, be nothing more or less than a scheme to divide the offices between the real majority and the strongest minority, and the weaker minorities are all left out in the cold. This must be so, because to carry it out to its legitimate results, of procuring representation to all minorities, it is wholly impracticable. But is it true that minorities are not represented in our representative government?

The first rule is that the majority shall administer the government for the benefit of all, and so far as society, in general, is concerned, this rule has, in practice, worked for the benefit of all, and the clear evidence of this lies in the growth and general prosperity of the whole country. The only real point of difference is that one party of men have the offices and the others do not, for the time being; but the "outs" live in hopes, and this makes them vigilant and watchful of the "ins," and this is one of the strongest securities the people have for honest and good government. The limited vote or the cumulative vote would take this away, because the majority and the strongest minority would have all in their own hands—there would not even be a struggle before the people except for the nomination, because the election would be a matter of course;

there would be no one to growl but the small minorities. But are minorities represented and protected now? I think they are as fully as it is possible and consistent with the responsibilities of good government. The majority party in power must be held responsible. This plan weakens this responsibility. State and national Constitutions are made to limit and control majorities, and by that limitation and control protect minorities; and the theory of government is, that the majority, administering the government under the limitations and restrictions imposed, cannot injure either the minority or majority of society. All power to do injury is supposed to be taken away from the majority by the Constitution, and the powers granted or permitted are supposed to be such, and such alone, as are for the good of society. To this end the greatest and best men the world has produced have labored. It is to be hoped that all their labors have not been in vain. Under the rule above stated, questions of policy will arise as endless and diversified as the wants and judgments of our people—and no plan of government, or voting or representation can prevent this or ever meet all the demands and caprices of faction or individuals in society.

If all men were honest, this cumulative plan of voting might practically work no great mischief, although it should violate the fundamental principle of government; but suppose we have a corrupt, ambitious and grasping minority, backed by corporate power and combinations of money, and in all States there has been and will be a corrupt minority, more or less strong, according to circumstances, and the weakness or incapacity of society to close up the places that lead men into temptation, that invite them to do wrong by putting it in their power, and this plan will put it in the power of that corrupt minority to secure seats in every department of the government. It will lead to corruption, to a certainty, in the city of Philadelphia for members of the Legislature, if the single district system is abolished, that has worked so badly, and the old system restored, it will give each voter the right to cumulate twenty or more votes on one candidate, and in Allegheny county at least eight; in Lancaster, five, and so on through the State, wherever more than one candidate shall be entitled to be elected in a legislative district. The voter will consider himself

worth selling, and candidates will consider him worth buying.

The people believe, and no doubt rightly, that a majority of the Legislature has always been honest, and a minority, more or less strong, always dishonest. This minority are generally smart and enterprising, working under the strong and exciting stimulus of personal interest, working by all manner of schemes and devices to overcome and deceive enough to gain a majority, and we all know that honest ignorance is too often overcome and outwitted. The truth is, the Legislature is a bad place for honest ignorance, because he not only appears to disadvantage himself, but unwittingly votes away the dearest rights of his constituents.

The first section of the amendment now under consideration provides for electing ten commissioners to apportion the State for Representatives, and prohibits the voter from voting for more than five.

Do the advocates of this plan intend to apply it to national as well as State officers? If so there are obstacles in several provisions of the Constitution of the United States.

First, the House of Representatives shall be composed of members chosen every second year by the people of the several States, and the elector shall in each State have the qualification for an elector of the most numerous branch of the State Legislature.

Under this clause the House of Representatives will have to decide what is meant by the words "chosen by the people," and the legal qualifications for an elector; and the first one will be whether an elector can duplicate himself. If he cannot then there is an end of cumulative voting for members of the lower House of Congress.

The Constitution of the United States requires that the United States shall guarantee to every State a republican form of government. A republic is defined by our best writers to be a "State in which the supreme power is vested in the people, in a well constituted republic as administered in the United States, by representatives chosen by the people."— *Worcester's Dictionary*.

State society in a republic like ours cannot lawfully vest the exercise of the sovereignty in a minority. It would be in direct conflict with the Constitution of the United States. If you cannot lawfully vest the whole State sovereignty in a mi-

nority of the people, you cannot lawfully vest the exercise of any part of it in an officer, notoriously and under the form of law, chosen by a minority of the electors. This is anti-republican, and so completely and thoroughly destructive of the fundamental principle of republican government that the United States would be bound to declare such pretended laws, whether in statutes or State Constitutions, null and void.

Then, again, by the fourteenth amendment, second section, the Constitution of the United States declares that, "When the right to vote at any election for choice of electors, * * * the Executive or judicial officers of the State, or the members of the Legislature is denied to citizens, *or in any way abridged*," representation shall be reduced in proportion, &c.

If you allow the minority voter to duplicate and multiply himself, you not only abridge but you deny the right of the elector belonging to the majority; you compel him to submit to a rule wholly unknown in the formation of the government; an anomaly so singular that it could never have been, in the remotest sense, contemplated. Worcester and Johnson define "abridge," "to make shorter, to contract, to diminish, to deprive of." Each of these definitions covers the case, as I claim it.

This provision must be applied as the *right of the voter stood when it was adopted*. How did the *right of the voter* stand then? He had a clear right to vote for as many candidates as there were offices to fill. If there were three or a dozen members of the Legislature to be elected in the voter's district, he had a clear constitutional right to vote for *all* of them, and to say he shall not, is to abridge his right. If you can lawfully declare that a minority can elect one-third of the Legislature, you can give that minority power to elect all. This is revolutionary and subverts the government. You can apply your plan to co-partnerships, and corporations organized for the private emolument of individuals—their acts all relate to the management of their own property—they do not in any sense touch acts of government—the sovereignty in which the whole of the society that composes the State are interested.

The minority are as fully and fairly represented now as the wisdom of men can provide, and yet support the principles of republican government.

By the old plan, representatives in Congress were chosen by the whole State;

this gave the entire delegation generally to the party having the majority in the State; but in order to give minorities, all that could be lawfully given, the State was divided into single districts, but still preserved the rule that only a majority of the votes cast in the district should elect.

And this plan of districting the State for legislative purposes, for the Senate and House, was to give minorities all the rights that could be conferred without violating the fundamental law of republican government, by allowing an elector to count two, three or more.

How would this plan work in practice? Suppose that instead of single Congressional districts, we had created double districts, and allowed the voter to not only cumulate, but also apply the limit, that but one candidate should be voted for. Suppose in the double district there were thirty-three thousand five hundred votes, and two members to be chosen, and the minority party had a fraction over one-third of this number, say twelve thousand votes, and should cumulate on one, they would poll twenty-four thousand votes. The majority, say have twenty-one thousand five hundred votes, and they cumulate on the other one, they would poll forty-three thousand. Under this plan the majority are practically disfranchised nineteen thousand votes. Is that an equal election? But the friends of this plan will say, we propose to cumulate where there are not less than three candidates, and then it will not work so much injustice to the majority. Would Congress ever say a member was *duly chosen* in that way? To be "elected" or "duly chosen by the people," within the meaning of the Constitution of the United States, the candidate must have the highest number of votes cast. No doubt the States have the right to prescribe the qualifications of their voters, but this plan *enlarges* and diminishes the capacity in rightful power of the voter. It is not conferring, or requiring an additional qualification, which the State may do, but it is *increasing* the political power of a minority, or a class of voters which the State cannot lawfully do. It exalts the minority from defeat to success, in devising a plan whereby a minority shall elect its candidates *against the will* of the majority.

And the advocates of this measure, in calling the minority a second majority, abuse well defined terms and subjects. Is it an election as understood in framing

the government? Is it republican? Or is it not in conflict with the several clauses of the Constitution of the United States referred to? What is an election by the qualified electors in the meaning of the Constitution of the United States? It is the choosing of public officers by a majority, or the largest number of votes, each voter being entitled to one vote, and no more, for each candidate to be chosen; and it never was understood that a minority could *elect*; but, on the contrary, that all minority candidates were defeated. The voter has a clear constitutional right to vote *one* vote for each and all the candidates to be chosen, and any limitation of that right, like saying that where three officers are to be chosen the voter is limited to two, is both "denying and abridging" the right. Or, suppose the voter is told: "You can vote for all three, but if you do it will be under the *penalty* of losing your choice, because your neighbor can duplicate himself, and vote twice for one, and once for another, or vote three times for one." Either plan forces the majority to yield to a minority.

The fundamental principle, well understood by all the people in regard to our government, is that in all elections by the people, or upon all questions submitted to the qualified electors, the majority, or the highest vote must elect or decide, but never the minority. As before stated, minorities are now represented by dividing the State into Congressional and Legislative districts, and by wards for the choice of city councilmen. It could be made lawful to elect members of Congress and the Legislature by the vote of the whole State, or city councils by the vote of the whole city. This was once the practice in the State, and the object of districting was to give minorities in localities a chance of representation.

There will always be parties in a free government, and the party "out" *should* watch the party "in." By this plan, practically, all contest before the people is taken away, the caucus or nominating convention will put their men in the field, and the voters will simply endorse what has been settled between the parties. Neither side will be in fear of the people—it will be a sure thing. The two strong parties, instead of acting *against* each other, will take what the law has assigned them. The struggle that cleanses, the contest that purifies, the watchfulness of a hungry minority, will all be taken away, because all hands will feed at the public

crib just in proportion to numbers, and then who can complain? Who will watch? Who will tell tales, when each party are sure of a suck at the public teats, just in proportion to numbers? The sentinel, that should be hungry and watchful, with full belly, will sleep at his post. The strifes, struggles and watchfulness of *minorities out of power* (and anxious to get in) are among the strongest safeguards of a free government.

And right here opened the door for corruption. In districts where every voter can be made to count from three to twenty-three votes, money and rascality will be pretty sure to elect, at least, some officers. The law will make the voter of such value that the corrupt candidate will be certain that he is worth buying.

Because the person voted for by the minority voter is not elected, the advocates of the limited or cumulative vote say he is not represented. This is not true, either in theory or practice, as applied to our governments, State or national. It is asserting false premises upon which to build their whole structure. When a majority of the people decide upon a certain line of public policy, permitted by the grants of power to the national government, or not withheld from the State Legislature by the Constitution, that majority has the right, and it is its duty to administer the government in accordance with that line of policy, being responsible to the people. This plan destroys responsibility by *partitioning* the power between the majority and the largest minority. Better stick to the old plan, that the majority shall rule. It is the only safe plan by which you can administer republican government.

Mr. W. H. SMITH. Mr. Chairman: I do not think the amendment of the gentleman from Carbon, (Mr. Lilly,) or the report of the committee he represents, begins exactly where it should in the matter of apportionment. It says that "at the general election of 1881," &c., commissioners to apportion shall be appointed, and now I would *prefix* to his amendment these words:

"The State shall be divided into Senatorial, Representative, Judicial and Congressional districts, and the first apportionment of members of the Senate, of the House, and for members of Congress shall be made by this body and continue in force

This is not my own idea. The proposition till 1881, and at the general election," &c., as it is written in the amendment. I am so fully persuaded that this body

should make the first apportionment that some weeks ago I offered a resolution that this body, by its Committee on Suffrage, should make the first apportionment of members of Assembly after the number of them shall have been fixed upon. That resolution is printed on page 142 of the Book of Amendments, on the desks of members. There is not only abundant reason why we should make this apportionment, but there is precedent for it, if that be essential. In the following States apportionments were made by Constitutional Conventions, some, as will be seen, for Senators alone, some for judicial purposes only, and some for members of both Houses:

In Georgia, in 1868, for both Houses.

In Louisiana, in 1868, for Senate.

In Virginia, in 1870, for both Houses.

In Texas, in 1869, for both Houses.

In New York, in 1867, for Senate.

In Illinois, in 1870, for Judicial.

In Arkansas, in 1868, for both Houses.

In California, in 1862, for Judicial.

In Minnesota, in 1868, for both Houses.

In Ohio, in 1850, for Senate and judges.

In West Virginia, in 1872, for both Houses.

In Nevada, in 1868, for Judicial.

In Mississippi, 1868, for both Houses.

All these apportionments were made by the Conventions who authorized them, and who knew better than any Legislature could, the purposes such Convention had in view. It will be more necessary for this body to apportion the members if it shall increase their number. And here I may say that I do not approve the proposition of the gentleman from Indiana (Mr. Harry White) for the protection of our present State Senators in the remainder of the terms for which they were elected. But, happily, there is a way out of that dilemma. It is simple: As many of the Senators, who may have one or two years to serve, and are not re-elected under the new Constitution, can be paid for the term they would be entitled to have served under the present Constitution. This cannot cost the State over \$30,000, at the most. This is all they could possibly ask, and all that can be done for them, I think.

But, it may be asked, why should they be paid at all? The formation of a new Constitution is a great public event, an emergency which demands the cheerful aid, the forbearance, and even the self-sacrifice of any or all of the citizens of a State. Is it not a great matter, Mr. Chair-

man, if, to harmonize and effectually organize a great reform, some ten or twenty gentlemen should forego, for the general good, a small portion of the official honors to which they may be entitled? To them the fraction of a Senatorial term would seem, or ought to be, a very small matter indeed, compared to the importance of our presenting a completed edifice of organic government, instead of having to wait till 1875 before it can be entirely finished. Mr. Chairman, I do think that the Senators who can justly claim, if they demand the tenor of their bond, to serve one or two years longer, will offer any factious opposition to this Constitution if it shall ordain that their official terms shall end in 1873, instead of in 1874 or 1875. I think there is too much public spirit, too much lofty patriotism among these gentlemen to permit this. Many, perhaps most of them, if they desire it, may be re-elected under the new Constitution. And if they should not be they must even accept the fate of other citizens whose daily callings have been rendered useless to them—whose occupations may have been swept away from them by the skill of ingenious inventors and the almost limitless power of steam. Yet the coopers and the hatters, and the nailmakers, and the shoemakers received no sympathy from the inexorable army of purchasers when they were deprived of the means of making a livelihood by machinery which quadrupled products, and lessened their price one-half. And should law-makers ask any advantages over the brickmakers or any other division of the people whom they profess to love so dearly?

And why not, Mr. Chairman, insert "Congressional" before "Senatorial and Representative" in the second line of Mr. Lilly's amendment? The commissioners would be just as able and more competent to make Congressional districts than the Legislature. Why divide the duty with the Legislature?

I have shown, Mr. President, that in many of the Constitutional Conventions this most important and necessary duty of making the first apportionment has been performed by the Convention itself. We have been called together because abuses and corruption had become unendurable, and it would seem to me to be our duty, not only to check these abuses and corruptions, as far as we can, but to provide against their recurrence in the future. In other and plainer words, to "turn over a new leaf" in the management of our State

affairs—to reform things altogether—to organize a new departure. Let the adoption of the Constitution we are making mark the advent of a new era, an era of purer political habits and morals.

But, Mr. Chairman, our proceedings here have been marked by a sad want of coherence. We have talked on every possible subject, but to no effective purpose. Now, in order to try and settle *something*, I propose we take, as soon as possible, a vote on the question of how many members shall compose the Senate and the House. Let us fix that at one hundred and eighty in the House, and sixty-five in the Senate, as the amendment has it, or some other number. But let us do something definite. Let us get at some starting point, from whence we can proceed with some sort of order or certainty in the business of the Convention.

MR. FULTON. Mr. Chairman: I do not presume to take the place of the chairman of the Committee on Suffrage, Election and Representation, from which this amendment emanated; but, as a member of that committee, I desire to make a little explanation on the amendment that was presented by the gentleman from Carbon. I may say that this amendment, while it was recommended by the Committee on Suffrage, Election and Representation, was not fully digested by them. It was prepared in a hurried manner the evening before it was offered in the committee of the whole, for the purpose of having it ready to offer while section twenty of the report of the Committee on Legislature was under discussion; and if some gentleman will make the motion I will favor the reference of it either back to the committee from which it came or to the Committee on Legislature, who reported that twentieth section. I say this in defence of the Committee on Suffrage, Election and Representation, of which I have the honor to be a member, and because I believe that committee has now given this subject sufficient attention to be able to digest and report a section that will, perhaps, meet the approbation of the Convention. But I desire to say that I think several propositions in this section have sufficient merit to be put in proper shape for the Convention, and I will say but a few words in regard to the merits of the proposition.

The objection has been made to the first section in this amendment that it leaves the subject of apportionment in a politi-

cal body, and that that would be disastrous, and to prove it we are referred to the apportionment made by the Legislature of 1871. Now I desire to call the attention of this committee to the fact that that apportionment was a compromise apportionment, made by the Legislature when one of the Houses was republican and the other democratic, and was not a political apportionment at all. I do not know whether the individual interests of the members of those two bodies may not have entered largely into that apportionment, at least that was the conclusion reached by the members of the Committee on Suffrage, Election and Representation, and they proposed to remedy it. For the purpose of preventing any act of that kind they say, explicitly, in this amendment that none of the members of this board of commissioners shall be eligible to an election to either House of the Legislature, under an apportionment made by them, for a period of five years. I call the attention of the committee specially to that fact, that this provision will take away the inducement from the members of this board of commissioners to gerrymander the State in the apportionment which they may make.

And further, Mr. Chairman, there seems to be a disposition on the part of some of the gentlemen of this Convention to take this power away from the people. They show a want of confidence in the people of the Commonwealth. Now I confess, as a member of this Convention, that I, for one, do not feel the necessity of arrogating to ourselves that we are the only body in this great Commonwealth that can be entrusted with the apportionment of the State, and I do not think that the duty is imposed upon us of constructing such a machinery here as will apportion the State for all time to come, or during the time of this Constitution, independent of the people of the Commonwealth. If such be the fact, if it be true that the people cannot be trusted with this as well as with any other branch of our government, I then deplore the condition of our great State. But, sir, I have confidence in the people, and in their honesty, and I undertake to say here that if ten men are selected to apportion the State of Pennsylvania under the provisions of this section that it will secure a better apportionment than we can get in any other way. I will not undertake to argue the constitutional objection that has been raised to this section. I will leave that for others who take more interest

In this mode of voting than I do; but I desire to say this, that if there is any merit in this new system of voting, that seems to have so many friends in this Convention, this is one of the particular cases that it is adapted to, a case in which there is no great political question involved, a case that requires nothing but a simple calculation, and while I say that I do feel favorable to its adoption in a case of this kind, I do not mean to commit myself in favor of it generally.

I have only one remark further to make, and that is with regard to the proposition made here by the gentleman from Allegheny (Mr. S. A. Purviance) with regard to the third section of this amendment. Perhaps the most serious objection that was made to this section in the Committee on Suffrage, Election and Representation that reported it, was that it increased the Representatives to too great a number, and the amendment suggested by the gentleman from Allegheny makes a still greater increase, and that it does not seem to me would be wise.

Now, Mr. Chairman, I cannot understand the force of the argument that by an increase of our representation in the State Legislature we are to get greater purity than we have at the present time. It occurs to me that it is more a question of quality in our representation than of quantity; and how is this to be arrived at? The gentleman from Carbon proposed but a moment ago, that a select committee would be chosen out of this Convention to which this whole matter should be referred. What was his expressed object in making that suggestion? It was for the purpose of getting the very best talent in this Convention to work at this section. Does not the same rule hold good all through our whole political machinery? Is it not the rule that the fewer the number of men you select to fill any position, the more care is taken in their selection? Let me ask the members of this committee to go into one of our township conventions and look at the class of men that are found in those conventions. Not that I desire to say anything disparagingly of the people who make up these conventions, because they are the honest bone and sinew of the country on which we must rely.

But when they come to elect one of their number to represent them in a State Convention, what man do they select? They select the man with the clearest head and the most ability of any man of

their number. Then just compare the township convention, where you have, say fifty to one hundred men taken from a small district in some corner of the State, with the men who are selected, perhaps, one or two from each county, to assemble in State Convention, and from which of those bodies of men would you expect the most in making laws to govern our State? I say, sir, that we will gain nothing by increasing the number of our State Legislature.

Then here is another practical objection, that might seem to many gentlemen to be beneath the notice of the members of this Convention. Still I do not know but we had better pay attention to it as we go along. It is well known to every gentleman in this hall that our present legislative hall is about large enough to accommodate one hundred men. Now if we increase the Legislature above that number, it involves the expenditure by the State of Pennsylvania of several millions of dollars, for the purpose of erecting a new Capitol.

If nothing is to be gained by the increase, we are certainly not justifiable in imposing this large expense upon the people of the State.

The question then simply resolves itself to this: Will it justify us to involve the State in that expenditure if nothing is to be gained in the character of our representation.

But, sir, I did not intend to occupy the time of the committee more than a few minutes. I hope this matter will be referred to one or other of the committees from which these two sections come.

Mr. NILES. I move that the committee do now rise, report progress and ask leave to sit again.

The question being upon the motion, a division was called, which resulted: In the affirmative, thirty-six; in the negative, twenty-four.

So the motion was agreed to.

IN CONVENTION.

Mr. CLARK. Mr. President: The committee of the whole has had under consideration the article reported by the Committee on Legislature, and has instructed their chairman to report progress and ask leave sit again.

Leave was granted.

The PRESIDENT presented to the Convention a copy of the "Ninth census (Vol I,) statistics of the population of the United States," received from the Hon.

John Scott, United States Senator for Pennsylvania, which was laid on the table.

Mr. LILLY. Mr. President: I ask, if it is in order, to make a motion to refer the matter that the committee of the whole has had under consideration to the committees that it came from.

The PRESIDENT. The Convention having just granted the committee leave to sit again, it would not be in order now to discharge it. This article cannot be referred to any other committee until the committee of the whole shall have been discharged from its consideration.

Mr. HARRY WHITE. Mr. President: I move that the motion, by which the Convention gave consent to the committee of the whole to sit again to-morrow, be reconsidered for the purpose of making a motion to re-commit this to the Committee on Legislature again.

The question being upon the motion, a division was called for, and resulted: In the affirmative, thirty-four; in the negative, twenty-one.

So the motion was agreed to.

The PRESIDENT. The question now is upon granting the committee of the whole leave to sit again.

Mr. HARRY WHITE. Mr. President: I move that the article now under consideration, together with all the amendments reported by the committee of the whole, be referred to the Committee on Legislature, to be reported at as early a day as practicable.

The PRESIDENT. The question just now is upon giving the committee of the whole leave to sit again. The Chair would observe that the legitimate effect of the discharging of the committee will be to put the bill on the next stage of its consideration—second reading, when again reported by the committee. The Chair will also observe that, of course, all the amendments that have been made in committee of the whole fall, unless they should be reported again.

The question being, shall the committee of the whole have leave to sit again, it was agreed to.

Mr. DARLINGTON. Mr. President: I move that the Convention do now adjourn.

It was agreed to.

The Convention then, at two o'clock and seven minutes, adjourned.

FIFTY-SEVENTH DAY.

TUESDAY, *March 4, 1873.*

The Convention met at ten o'clock, A. M., the President, Hon. Wm. M. Meredith, in the chair.

The Journal of yesterday was then read and approved.

A QUESTION OF PRIVILEGE.

Mr. TEMPLE. Mr. President: I rise to a question of privilege, for the purpose of making a personal explanation.

On Friday last, when the committee of the whole had under consideration the subject of Senatorial apportionment, I took occasion to submit a few remarks. I see that some of the papers of this city have reported me as being opposed to allowing the city of Philadelphia the same representation in the Senate, according to her population, as was to be given to other portions of the State. I am reported as having said, "that if Philadelphia and other large cities were allowed an equal representation in the Senate with the other counties of the State, the large cities of the Commonwealth would soon control all the legislation of the State." Mr. President, I used no such language. I merely said that such had been the argument of some gentlemen upon the floor. I then stated that I was in favor of dividing the State into Senatorial districts, without regard to the large cities, and of giving to each district the number of Senators to which it was entitled according to population. This suggestion was made by me in order to harmonize the action of the entire delegation of the Convention. I was then, and I am now, in favor of giving to Philadelphia an equal voice in the legislation of the Commonwealth, and for that right I will always contend.

PROHIBITION.

Mr. BROOMALL presented petitions from the Radnor and Goshen monthly meeting of Friends of Delaware county, praying for a prohibitory clause in the Constitution against the sale of intoxica-

ting liquors as a beverage, which was referred to the Committee on Legislation.

THE DEATH PENALTY.

Mr. BROOMALL also presented petitions from the same societies, praying for the insertion in the Constitution of a clause erasing the death penalty from the statutes, which was referred to the Committee on the Judiciary.

EXEMPTION FROM MILITARY SERVICE.

Mr. BROOMALL also presented petitions from the same societies, praying for the insertion in the Constitution of a clause erasing the provision requiring Friends to bear arms, which was referred to the Committee on the Judiciary.

SESSIONS OF THE CONVENTION.

Mr. HOWARD offered the following resolution, which was twice read:

Resolved, That on and after Monday next this Convention will meet at ten o'clock A. M. and adjourn at one o'clock P. M., and meet at three P. M. and adjourn at five o'clock P. M.

Mr. LILLY. Mr. President: I move to amend, by striking out the word "three," and inserting "five," for the afternoon sessions.

Mr. DARLINGTON. Mr. President: Is the resolution debatable or amendable?

The PRESIDENT. Under the rule lately adopted by the Convention the resolution is neither debatable nor amendable.

Mr. EWING. Mr. President: If it is in order, I desire to move a suspension of the rules, in order that the resolution which has been offered can be debated and amended if it becomes necessary. I do not desire to debate the resolution myself, but it is very evident—

The PRESIDENT. The Convention has precluded all debate upon this question. The motion to suspend the rules will be taken.

The motion to suspend the rules was agreed to.

Mr. LILLY. Mr. President: I now renew my motion, to amend the resolution, by striking out the word "three," and inserting "five."

The amendment was not agreed to.

Mr. EWING. Mr. President: In making the motion to suspend the rules, for the purpose of considering this resolution, I stated I did not desire to debate it, but I desire to give my reasons for making the motion. There is evidently a very great diversity of opinion among the delegates as to the most convenient hours in which to hold our sessions. While I prefer a single continuous session of the Convention, I am willing to agree in any plan that may be suggested that will conform with the wishes of all our members, and I hope, by discussion, we shall ascertain the most convenient hours for holding our sessions. In order, therefore, to settle this question, and to avoid the repetitions of these motions day after day, I have made the motion to suspend the rules, so that a full discussion may be had upon the resolution.

Mr. DARLINGTON. Mr. President: I suppose it is the design of the resolution to obtain the utmost possible work out of the Convention. The resolution passed the other day provides for sessions of five hours, from ten A. M. to three P. M. The resolution now pending does not propose the holding of a longer session, but merely to divide the hours in order to enable some of our delegates to obtain their dinners at noon. Is it not the experience of every member in the Convention, that we can do more work in a continuous session from ten o'clock A. M. to three o'clock P. M., than we can possibly do by dividing the time into two sessions each day? With the facilities afforded in the ante-room for obtaining lunch, I think we will be able to obtain more work out of the Convention in a continuous session than by any other plan.

Mr. LITTLETON. Mr. President: I move to amend the resolution, by striking out the words "three" and "five," and inserting "four" and "seven."

Mr. KNIGHT. Mr. President: I offer the following amendment to the amendment:

"Resolved, That on and after Monday next the Convention will hold sessions from ten A. M. to two P. M., and on Mon-

days, Wednesdays and Fridays from four P. M. to eight P. M."

Mr. KNIGHT. Mr. President: At the suggestion of several members I withdraw my amendment.

Mr. COCHRAN. Mr. President: It seems to me it is very unadvisable to adopt such a course as the resolution contemplates. I think the members of the Convention should remember there are several committees that have not yet reported to this body, and I would like to know what time those committees will have to meet and act upon the business entrusted to them if this resolution is adopted. If the entire day is taken up in holding two sessions of the Convention, it will be impossible to arrange any time for the meeting of the committees. I desire merely to call the attention of the Convention to this fact.

The question was then taken on the amendment, and it was not agreed to.

The PRESIDENT. The question is on the resolution.

Mr. MANN. Mr. President: I hope this resolution will not be adopted. A majority of this Convention have expressed themselves on various occasions, on every occasion, in fact, when the proposition has been made, in favor of one session. I take it, therefore, to be the judgment of a majority of the delegates, that we can do more work in a continuous session of four hours, than by having two sessions a day of five hours. I believe that it is the judgment of every gentleman who has had any experience in legislative bodies, that we can do more work in the hour from two to three, if we will have the patience to remain here during that time, than we can do in a series of two hours in the afternoon, after we shall have adjourned, gone away, dined and returned. I believe that is within the experience of every gentleman who has had any experience on this subject. It is certainly more convenient. We are in much better condition to work intelligently and thoughtfully, coming here in the morning and continuing on at our work, than we shall be after having adjourned, and returned after dining. Every person feels the energy of his system relaxed after dinner, and we shall make a great mistake by adopting this resolution, for we shall prolong the sittings of this Convention far

beyond the time in which our work should be completed by doing so. If we will simply continue on with the hours as we have fixed them, we shall soon begin to make progress. I cannot understand this restlessness, this desire to change the hours, after we have fixed them deliberately. It seems to me it is not a healthy spirit. It shows a want of willingness to settle down to hard work. In my judgment, we shall not settle down to hard work until we are willing to sit here five hours, or, if necessary, six hours, in one session. When we have made up our minds to do that, we can begin to hope for the termination of the labors of this Convention and not before.

MR. MANTOR. Mr. President: I offered the first resolution that was offered in this hall for the purpose of commencing the sessions of this Convention at ten o'clock, to end at two o'clock, and commencing again at four o'clock, to end at six o'clock. I offered the resolution in good faith, and at the time was in favor of it, but I discovered immediately afterward that the sentiment of the Convention was in favor of a continuous session. The suggestions made upon that subject were so numerous from different gentlemen on the floor, that I was convinced one session was the more appropriate and convenient, and the next morning I voted with the majority of the Convention on the subject. The following morning the gentleman from Dauphin (Mr. Lamber-ton) offered a proposition that we should sit from ten o'clock A. M. to three o'clock P. M., and to that resolution the House agreed. From very good authority in this Convention it was supposed that the Convention would do more work in a continuous session than in these adjourned sessions. And so I believe. "If the Convention will consider this matter properly, we will do more work under one continued session than under two sessions, with a brief adjournment between them.

MR. CURTIN. Mr. President: I desire only to say a word in reply to the gentleman from Potter, who complains that there is a restlessness in this Convention on the subjects of adjournment and on the questions of how long we shall sit in our daily sessions, that have been constantly occupying our attention. The reason of that restlessness is, that we are

violating the laws of nature. Nature has provided that at stated times all men must rest. The laborer, the lawyer, and on the Sabbath day the minister of the gospel, rests at noon, and members of this Convention are subjects of the laws of habit. I do not believe that a continuous session of five hours is likely to accomplish more business in this body than two sessions making together an equal length of time.

If we adjourn at noon and go to our lodgings, and take the refreshment which nature demands, we will return here refreshed and ready to proceed with our work. Surely the session of yesterday must not be taken as an example for continuous sessions. We were an hour or two getting ready, because of the restlessness of gentlemen who dislocate the laws of nature by compelling the presence of members of the Convention at the very time when they ought to take the rest of noon-day. There are many of the members of this Convention who are in private lodgings in this city, and they are restless because you hold your sessions at the very hour when they ought to get their dinners; and those who are in that condition, if you persist in holding your sessions at three o'clock, will be driven back to the discomforts of a hotel. I cannot understand why you should debate and discuss this question so long. If you come down to the practical part, and adjourn at the very time that it is the habit of the members from the interior of the State for a time to cease their labors, and take natural rest and refreshment, I insist upon it we will do more business in a day with two sessions of the same number of hours than we will do if we sit that number of hours at once.

MR. STANTON. Mr. President: I call for the reading of the resolution.

THE CLERK. *Resolved*, That on and after Wednesday next this Convention will meet at ten A. M. and adjourn at one P. M., and meet at three P. M. and adjourn at five P. M.

MR. STANTON. Mr. President: For the purpose of getting to work, I move the indefinite postponement of the whole matter.

MR. HOWARD. Mr. President: A motion to indefinitely postpone is debatable?

THE PRESIDENT. Certainly.

Mr. HOWARD. Mr. President: I hope this motion will not prevail. While I concede, undoubtedly, that a majority of this Convention have a right to fix the hours for its sessions, and they have a right to determine how long we should remain in session, I submit it is not fair to exact unreasonable hours. There is a question of fairness, there is a question of what is reasonable, of what is right. Very many gentlemen in this Convention have been in the habit, for a long life, to take their dinner at a reasonable hour, and who do not consider four o'clock a reasonable or natural hour at all. If we are to sit here until three o'clock, it will be about four o'clock before the members of this body can get their dinners. The result is, that those who are in private boarding houses must get them in a hotel or in some saloon, or go without. I am perfectly willing to work all that I am able. I have been here at every meeting of this body since it commenced. I have never lost but one hour, and that was when we changed the hour of meeting from eleven o'clock to ten, and with many other gentlemen, on that occasion, I mistook the hour at which we were to meet.

For myself personally, it is not right for me to sit here after two o'clock, my dinner hour, because I feel it injuriously. It affects my health, and therefore if the Convention will adopt a rule, or will continue the present rule, requiring me to be in my place until three o'clock, it will impose upon me a rule that I cannot submit to without inconvenience. Another thing, the habits which men have acquired at their homes, they should continue here if they wish to preserve their health. Therefore, as a question of health, we ought to adjourn so that we can get our dinners at least by two o'clock.

As to this idea that we can do so much work in one session, allow me a word. We know that in the Legislature at Harrisburg, at the first of the session, when they have leisure, they meet only two or three hours a day; when they get down to the dead work, they meet in the morning, work and adjourn—meet in the afternoon, work and adjourn, and then meet and work at night. That is the way they do. Sir, when they find the work begins to press them, and they wish to accomplish the work that is before them, they

hold three sessions a day, and I am perfectly willing to meet at ten o'clock and adjourn at one, leaving a reasonable time for dinner; and then meet at three and sit until six—a reasonable time for supper.

For the reasons I have given, I hope the Convention will adopt some rule of that kind, so that we can adjourn to get our dinner at a reasonable hour, and have also a reasonable hour for supper.

Mr. DARLINGTON. Mr. President: The very reason given by the gentleman from Centre, (Mr. Curtin,) that it is necessary to get dinner before we can work, is the reason which was assigned in this Convention in the early sessions of this body, why we should begin at twelve o'clock, because no man after he got his dinner was fit to work. Therefore, it was urged that we should not meet until twelve o'clock noon, so as to allow the committees the entire morning. No man was ever fit to work after dinner, and I put the question to you, Mr. President, if you can answer it, whether more labor cannot be got out of such gentlemen as we are, in one continuous session of five hours, than in two sessions of five hours, even if we have to meet at nine o'clock and adjourn at two.

Mr. GOWEN. Mr. President: In reply to the delegate from Potter (Mr. Mann) that it is evidence of an unhealthy spirit, that many of us are in favor of this proposition, I desire to say that the spirit indeed is willing, but the flesh is weak. There are among us many gentlemen who have been accustomed to take a little refreshment in the middle of the day, and if the hour of two or half-past two arrives without that refreshment being taken, we have very decided premonitory symptoms of a dyspeptic attack. I have found that all the acerbity of debate, and the bitterness of spirit which have characterized some of our passages of arms, generally occur when we have empty stomachs, and I think that those gentlemen who are afraid that if they get their dinners in the middle of the day, they will be overcome by the lean and hungry Cassuses who have not taken their noon-day meal-time, will probably be satisfied with the fact that their temper will be in a better condition.

I really believe that we would do more work. I really believe that the trouble

which occurred yesterday about one or two o'clock, although the hour of adjournment was three o'clock, resulted from this cause. It was noticed that at two o'clock there was a decided majority in favor of the committee of the whole rising, and after the committee rose, the Convention adjourned, although it was not within three-quarters of an hour of the time of adjournment. Let us meet at ten o'clock and adjourn at one. Those of us who want to eat something at that time can do it, and we can all get back at three o'clock and sit until five, and do a great deal more work, I think, than we are doing now. Certainly that work will be done without the danger of ill-health to the members, that must be incurred if we violate the standing rule that many of us have adopted for a great many years to preserve our health.

The PRESIDENT. The question is on the indefinite postponement. On agreeing to this question a division was called, resulting thirty-six in the affirmative, and forty-four in the negative. So the motion to indefinitely postpone was rejected.

Mr. KNIGHT. I offer the following amendment:

"Resolved, That on and after Monday next the Convention will hold sessions from ten A. M. till two P. M., and on Mondays, Wednesdays and Friday afternoons, sessions from four to eight P. M."

This will give us four hours a day for three days of the week, and eight hours a day for the other three. We are now holding sessions from ten till three, which is five hours a day, and the proposition that I make will give us an average of six hours a day throughout the week.

The question being upon the amendment of Mr. Knight, it was rejected.

Mr. W. H. SMITH. Mr. President: I move to amend, by adding "for ten days from to-morrow," so that we will not be disturbed every day by motions to rescind resolutions already passed.

The amendment was rejected.

Mr. BRODHEAD. Mr. President: I move to amend, by adding the words "and there shall be no sessions on Saturdays."

The question being upon the amendment, the yeas and nays were required by Mr. Corbett and Mr. Darlington, and were as follow, viz:

YEAS.

Messrs. Andrews, Baer, Baker, Bannan, Bartholomew, Brodhead, Broomall, Buckalew, Corson, Curtin, Davis, Ewing, Funck, Gibson, Gowen, Green, Hanna, Harvey, Lilly, Mann, Rooke, Ross, Simpson, Smith, H. W., Stanton, Van Reed, Wetherill, J. M., Woodward and Meredith, *President*—30.

NAYS.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Biddle, Bowman, Brown, Campbell, Carter, Church, Clark, Cochran, Corbett, Craig, Cuyler, Darlington, De France, Dunning, Edwards, Elliott, Fell, Finney, Fulton, Guthrie, Hazzard, Howard, Knight, Lawrence, Lear, Littleton, MacConnell, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Jas. L., Sharpe, Smith, Wm. H., Struthers, Turrell, Walker, Wherry, White, Harry, White, J. W. F., and Wright—56.

So the amendment was rejected.

ABSENT OR NOT VOTING.—Messrs. Adicks, Ainey, Alricks, Bardsley, Beebe, Black, Charles A., Black, J. S., Boyd, Carey, Cassidy, Collins, Cronmiller, Curry, Dallas, Dodd, Ellis, Gilpin, Hall, Hay, Hemphill, Heverin, Hopkins, Horton, Hunsicker, Kaine, Lamberton, Landis, Long, M'Allister, M'Camant, M'Clean, MacVeagh, Mott, Parsons, Patterson, T. H. B., Porter, Pughe, Purman, Read, Jno. R., Reynolds, S. H., Runk, Russell, Smith, H. G., Stewart, Temple, Wetherill, Jno. Price, White, David N. and Worrell—47.

Mr. MANN. Mr. President: I move to amend so as to make the hour for meeting on Monday morning at eleven o'clock. I make this motion because we were unable to secure a quorum yesterday morning until eleven o'clock, and I apprehend there will be that difficulty every Monday morning.

The amendment was agreed to.

Mr. MANN. Mr. President: I move now to add, that there shall be no session on Saturday afternoon.

The amendment was agreed to.

The PRESIDENT. The question now is on the resolution as amended. It will be read for information.

The CLERK then read the resolution as follows:

Resolved, That on and after to-morrow this Convention will meet at ten A. M. and adjourn at one P. M., and meet at three P. M. and adjourn at five P. M., except on Monday, when the Convention shall meet at eleven o'clock A. M., and on Saturday afternoon there shall be no session."

Mr. BROOMALL. Mr. President: Before the vote is taken, I desire to say that that resolution shortens the work in a week by about four hours.

The question being on the resolution as amended, the yeas and nays were required by Mr. Corbett and Mr. Joseph Bailly, and were as follows, viz:

Y E A S.

Messrs. Achenbach, Andrews, Bailey, (Huntingdon,) Bannan, Bartholomew, Bowman, Brodhead, Buckalew, Carter, Craig, Curtin, Davis, De France, Dunning, Elliott, Ewing, Fell, Fulton, Funck, Gibson, Gowen, Green, Hanna, Harvey, Howard, Lawrence, Lear, M'Murray, Minor, Newlin, Niles, Palmer, G. W., Rooke, Sharpe, Smith, Henry W., Temple, Van Reed, Wherry, White, Harry, White, J. W. F., Worrell and Wright—42.

N A Y S.

Messrs. Armstrong, Baer, Bailly, (Perry,) Baker, Barclay, Biddle, Broomall, Brown, Campbell, Church, Clark, Cochran, Corbett, Corson, Cuyler, Darlington, Edwards, Finney, Guthrie, Hazard, Knight, Lilly, Littleton, MacConnell, M'Culloch, Mann, Mantor, Palmer, H. W., Patterson, D. W., Patton, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, James L., Ross, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Struthers, Turrell, Walker, Wetherill, J. M., Woodward and Meredith, President—45.

So the resolution was rejected.

ABSENT OR NOT VOTING.—Messrs. Addicks, Ainey, Alricks, Bardsley, Beebe, Black, Charles A., Black, J. S., Boyd, Carey, Cassidy, Collins, Cronmiller, Curry, Dallas, Dodd, Ellis, Gilpin, Hall, Hay, Hemphill, Heverin, Hopkins, Horton, Hunsicker, Kaine, Lamberton, Landis, Long, M'Allister, M'Camant,

M'Clean, MacVeagh, Metzger, Mott, Parsons, Patterson, T. H. B., Porter, Pughe, Purman, Read, John R., Reynolds, S. H., Runk, Russell, Stewart, Wetherill, J. Price and White, David N—46.

THE ARTICLE ON LEGISLATION.

Mr. HARRY WHITE offered the following resolution:

Resolved, That the committee of the whole be and is hereby discharged from the consideration of the article reported from the Committee on Legislation, and the same, together with the amendment added and proposed thereto by the committee of the whole, be referred back to the Committee of Legislation, with instructions to report at as early a date as practicable.

The PRESIDENT. It is not necessary to introduce a resolution to that effect. The same end can be reached by a motion.

Mr. HARRY WHITE. I make that motion.

Mr. LILLY. I move to amend the motion, by referring the subject to the Committee on Suffrage, Election and Representation.

The PRESIDENT. The gentleman can attain his object by moving to amend the motion, by adding "and that the Committee on the Legislature be instructed to confer upon these subjects with the Committee on Suffrage."

Mr. HARRY WHITE. I accept that as a modification of my motion.

The motion, as modified, was agreed to.

DIVISION OF COUNTIES.

Mr. DUNNING offered the following resolution, which was read and referred to the Committee on Counties, Townships and Boroughs:

Resolved, That the Committee on Counties, Townships and Boroughs be requested to take into consideration the propriety of reporting a section providing that all counties having a population exceeding one hundred thousand the Legislature shall have the power to make sub-divisions thereof, establishing in each sub-division all the necessary courts pertaining to counties, with exclusive or concurrent jurisdiction, and offices for recording deeds, granting letters of administration and proving wills: *Provided*, That such sub-divisions shall not contain more than forty thousand inhabitants.

DEBATE ON ADJOURNMENT.

Mr. LILLY. Mr. President: I move to take up the resolution I offered yesterday.

The PRESIDENT. The resolution will be read for information.

The CLERK read:

Resolved, That hereafter all resolutions in relation to the time of adjournment and hours of session of the Convention shall be open to amendment, and all speeches on such resolutions shall be confined to three minutes, and that no member shall speak more than once on the same.

The motion to proceed to the second reading of the resolution it was not agreed to.

RULE TWENTY-FIVE.

Mr. BAER. Mr. President: I move that the resolution relating to rule twenty-five be taken from the table and considered.

The PRESIDENT. The resolution will be read for information.

The CLERK read:

WHEREAS, All resolutions adopted by this Convention which operate as a change, alteration or modification of rule twenty-five, have thus far only impeded the progress of the business of the Convention, and, in fact, are only a dead letter upon the record; therefore,

Resolved, That all resolutions violative to rule twenty-five are hereby rescinded and annulled, and the rule reinstated as originally adopted.

The motion to proceed to the second reading and consideration of the resolution was agreed to, and the resolution was again read.

The question recurring upon the original motion it was not agreed to.

LEAVE OF ABSENCE.

Mr. HOWARD. Mr. President: I desire to call up the following resolution I offered a few days ago, in relation to leave of absence:

Resolved, That leave of absence shall not be granted in any case, unless the reasons shall be fully stated to the Convention, which, in every case shall decide upon the sufficiency of the reasons; and in case of absence without leave, the Sergeant-at-arms shall be directed to bring in the absent member, and upon their ap-

pearance, they shall be reprimanded by the President at the bar of the Convention.

Mr. HOWARD. I move the Convention proceed to a second reading and consideration of the resolution.

The motion was not agreed to.

THE EXECUTIVE DEPARTMENT.

The PRESIDENT. The next business in order is the consideration of the article reported by the Committee on the Executive Department. Mr. Woodward will take the chair.

COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Woodward in the chair.

The CHAIRMAN. The first section of the report will be read.

THE OFFICERS OF THE COMMONWEALTH.

The CLERK read as follows:

SECTION 1. The Executive Department of this Commonwealth shall consist of a Governor, a Lieutenant Governor, a Secretary of State, Attorney General, Auditor General, a Secretary of Internal Affairs and a Superintendent of Public Instruction.

The question being taken, the first section was agreed to.

The CHAIRMAN. The second section of the report will be read.

THE EXECUTIVE POWER.

The CLERK read as follows:

SECTION 2. The supreme executive power shall be vested in a Governor, who shall take care that the laws be faithfully executed. He shall be chosen on the day of the general election, by the qualified electors of the Commonwealth, at the places where they shall respectively vote for representatives; the returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Senate, who shall open and publish them in the presence of the members of both Houses of the Legislature; the person having the highest number of votes shall be Governor, but if two or more be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law.

Mr. BOWMAN. Mr. Chairman: I move to amend, by striking out the word "Speaker," occurring just before the words "of the Senate," and inserting the word "President." The reason I offer this amendment is that it must be obvious to every one there is no such officer as Speaker of the Senate. The Senate is to be presided over by the Lieutenant Governor, and whenever he shall be called upon to exercise the duties of Governor then a President of the Senate shall be elected.

The amendment was agreed to.

Mr. HARRY WHITE. Mr. Chairman: I desire to say in connection with this amendment that—

The CHAIRMAN. The amendment was agreed to.

Mr. JOHN R. READ. Mr. Chairman: I move the vote to be re-considered by which the amendment was agreed to.

["No." "No." "No."]

The question being taken upon the motion to re-consider, a division was called which resulted as follows: Ayes, thirty-seven; noes, twenty.

So the motion was agreed to.

Mr. HARRY WHITE. Mr. Chairman: I understand the motion is to strike out the word "Speaker," and insert the word "President." I move to amend that motion, by striking out the word "President," and inserting "presiding officer of the Senate." My reasons for this motion are simply these: It has been said, among other things in this Convention, that all changes are not reforms, and I think there are some things that are and ought to be dear to Pennsylvanians, and among some of them I think is the practice which obtains in our Legislature by which the presiding officer is addressed as "Mr. Speaker." There is no reason why this practice should be changed. I do not think the sentiment of the subject requires that it should be changed. If it is the intention of the Convention to create the office of Lieutenant Governor, let it be so, but it is not necessary to change the style of addressing the presiding officer of the Senate while that body is in session transacting its business. If the presiding officer of the Senate is called the President in accordance with the Constitution, of course that will be beyond and far ahead of any rules which that body may adopt. If the

words "presiding officer" are inserted in the section the Legislative body can then regulate this matter in due season; and they can continue the style of addressing the Chair as "Mr. Speaker." It is for the purpose of preserving this peculiarity in the legislative system of Pennsylvania that I have offered the amendment striking out the word "President," and inserting the words "presiding officer."

Mr. BOWMAN. Mr. Chairman: I think a reference to the whole report of the committee will convince every delegate that this amendment will be improper. It will be observed that the word "President" occurs in the fourth section, and also in the fifteenth section, and of course they will have to be changed.

The question was then taken on the amendment to the amendment, and it was not agreed to.

The question was then taken upon the amendment, and the amendment was agreed to.

Mr. EWING. Mr. Chairman: I move to amend the section, by striking out all after the word "Houses," where it occurs the second time, and inserting the following: "Contested elections for Governor and Lieutenant Governor shall be determined by the Supreme Court in such a manner as shall be prescribed by law."

Mr. EWING. Mr. Chairman: The section reported by the committee leaves this matter to be determined by a committee selected from both Houses of the Legislature, and I suppose it is intended to constitute the committee something like the committees now chosen to determine contested elections of members of the Senate and House of Representatives are selected. When that plan was first adopted in the English Parliament, and at the time of its adoption in Pennsylvania, it was supposed to meet the objections that had arisen to the methods in which contested elections were formerly determined, and that it would be entirely fair. I believe the experience of the English Parliament and the experience of the two Houses of the Legislature in Pennsylvania has demonstrated that it is the worst possible method that can be followed in the determination of contested elections. Now I would very much prefer to entrust this subject to a joint

session of the two Houses of the Legislature than to a committee; but it seems to me the best method is to determine all such questions by a judicial proceeding before the Supreme Court. Let the Legislature pass a law which shall direct the manner in which such cases shall be determined, as any other judicial proceeding would be. I cannot see any reason why the legislative branch of the government should settle the question of contested elections for the Executive rather than the judicial department. I prefer, therefore, that all such questions should be settled by the highest court in the State, in accordance with the rules and regulations prescribed by law.

Mr. BUCKALEW. Mr. Chairman: This motion to strike out and insert is, I suppose, to be indivisible. I am in favor of striking out this clause in the section, but not of inserting the new matter proposed by the pending amendment. Our Committee on Suffrage have had the general question of contested elections before them for consideration, and they agreed upon the general form of a section upon this subject, covering not only the case of a contested election of Governor, of electors of President and Vice President, of members of the Legislature, but of the various State officers and all other officers of the State.

We do need a constitutional provision on this subject. Now the Committee upon the Executive Department have not proposed anything new. This clause is simply a clause of the present Constitution retained in their report, and I am strongly opposed to retaining it in the Constitution, and that for a reason which will appeal to every gentleman who has ever been a member of the Legislature, or has been observant of legislative proceedings in contested election cases. By the existing statute of 1839, based in part upon this clause of the Constitution, it is provided that a committee be drawn by lot from the two Houses of the Legislature, assembled in joint convention for the purpose. Well, sir, under the experience we have had, an experience which was not before the men who placed this provision in our Constitution, we know perfectly well, that in three cases out of four, to speak within bounds, of a contested election for Governor, the result will be determined by the composition of

the committee drawn. Every intelligent man familiar with public affairs can judge, or will be able to judge at once, how a contest will be decided, when he knows what is the composition of the committee. These committees will be purely political, as to the constitution of their majority, and in three cases out of four will decide in favor of their political party or of the candidate representing it.

One marked inconvenience is encountered in drawing these committees. As a matter of course, challenges are freely allowed. The number is very great compared to the whole number of names drawn. What is the inevitable result? Why that each party to the contest will object off all the strong men on the opposite side, politically, and the committee will ordinarily be composed of the weakest members of the Senate and House—men of little capacity—men who are not dreaded by their political opponents, when their names come to be drawn, by reason of their conscientiousness, and you will therefore always get a committee composed of comparatively weak and incompetent members of the Senate and House; and these men, lacking intelligence and independence, will vote dead for party in committee on all questions which arise; so that I consider that this clause of the Constitution, as we have it now, and as it is proposed to continue it, is a very bad provision. It should be stricken from the Constitution, and this question of contested elections should be vested in some tribunal which shall possess in the first place more capacity, and next possess independence, and lastly have something of a judicial character—for a contested election presents a purely judicial question, and the members of the Legislature, acting as they ordinarily do with reference to party considerations, claiming for themselves a wide discretion in the exercise of their authority, will not decide anything judicially, and you must make a change. But I agree, sir, with one of the gentlemen who has just spoken, that it is not perhaps expedient to charge this duty upon the Supreme Court. At all events we ought to consider this question in Convention, and the other questions of contested election which will be before us on a separate report, which in due time will be presented by the proper committee. At present I am in favor of

striking out this clause, and as the pending amendment proposes to insert new matter, and it is indivisible, I do not know what gentlemen who feel as I do can do but vote down this amendment, and afterward vote to strike out the clause, because I believe in modern practice, after a motion to strike out and insert has been rejected, you can still move to strike out the same clause.

Mr. HARRY WHITE. Mr. Chairman: I move to strike out the amendment offered by the gentleman from Allegheny, and insert the following amendment:

"Contested elections shall be tried and determined only in the manner the Legislature shall prescribe by general law."

Mr. HARRY WHITE. Mr. Chairman: It is very manifest that the Committee on the Executive have considered this subject, and have determined to repose the power to try contested elections in the Legislature; and I observe from the report, that they have left the Constitution just as the statute of 1839 left it. I assume that is the sentiment of the committee. I agree with them to a certain extent, but I differ entirely from the gentleman from Allegheny, (Mr. Ewing,) who offered the amendment to refer this matter to the Supreme Court. I agree with the report of the committee, in so far as they would allow the Legislature to determine this matter, and take the responsibility of passing a general law to determine the question, but I differ entirely with the report of the committee, in reposing the power to try and determine this question in a committee to be drawn by lot. If this committee of the whole will take the trouble to look at the report of the Committee on Legislation, they will discover that this question of contested election has been passed upon. That committee have seen fit, in their report, to provide that contested elections, in the Legislature, shall be tried and determined by a court of common pleas of the county in which the returned member lives, in such manner as shall be prescribed by law.

Mr. BIDDLE. Mr. Chairman: If the gentleman will allow the interruption, I desire to say that there is nothing in the report of the Committee on Executive Department that requires a committee to determine a contested election to be drawn by lot. Nothing whatever.

Mr. HARRY WHITE. I am aware of that fact, Mr. Chairman. But from the language of the report, you will discover "contested elections shall be determined by a committee to be selected from both Houses of the Legislature."

Mr. BIDDLE. "In such manner as shall be prescribed by law."

Mr. HARRY WHITE. Mr. Chairman: That is true; and this evidently contemplates some measure of lot in the selection of the committee. This report is evidently predicated upon the existing rule on this subject.

I reiterate the experience which the gentleman from Columbia (Mr. Backlaw) has uttered on this subject. Contested elections in our Legislature have, to a certain extent, been a mockery upon its legislative and upon its judicial tribunals. The Legislature of 1839, in following the Constitutional Convention of 1799, thought they were wise in following the precedent which George Granville adopted in the English Parliament in 1770, and thought, when this matter of lot was agreed upon and secured for trying these cases, a panacea for all excitements resulting from political contests had been secured. But the experience of the past few years in Pennsylvania, where this system only obtains, has been to contravene this conclusion, and it is true, in the main, that the result of a contested election in the Legislature of Pennsylvania, if not elsewhere, depends upon the political complexion of the committee that is selected to try the case. I speak from experience, and I speak from observation upon this subject.

I would change this rule Mr. Chairman; I would break up the system of selecting a committee by lot and allow them ultimately to determine this question. Heated partisan politics, the tenor of party rule, the control of party caucuses if you please, affect the individual members of these committees, and fill not only the atmosphere around the Legislature with scandal and corruption, but the whole Commonwealth, and breed that discontent and want of confidence in the law-making power that is perilous to our institutions. I see no remedy for it but to repose this power in the Legislature; not in the committee, but in the legislative body. Let a committee be selected, in the first place, in such a man-

ner as shall be provided by law; let them be elected upon the limited or upon the cumulative plan, I care not what; require them to make their report to a joint convention of the Houses, or, respectively, to each body, but let that report be passed upon in the Legislature and be scrutinized, and if it cannot be sustained by argument, if it cannot withstand the scrutiny of Senators and Representatives from both sides of the House, why let the report of the committee go under. But I hope the time will come, and that this Convention will mark the period when we have ceased reposing the ultimate power to dispose of contested elections in committees drawn as is provided for by the act of 1839. My amendment, Mr. Chairman, seeks to let this matter be regulated by law, and not to bind the hands of the Legislature to repose it in the power of a committee to determine this question. Let the Legislature pass a general law as in their wisdom they shall see fit, but do not let them say when they select a committee to examine into a case of contested election that such a committee shall have the ultimate determination of the question. The amendment that I offered opens the door and allows a general law to be passed, which will determine all these cases.

MR. CURTIN. Mr. Chairman: The Committee on the Executive Department found the language of this section in the Constitution as it is, and, as no contest has ever occurred in the election of a Governor, there was no abuse to correct, and the committee very properly concluded to let the Constitution remain as it is. For I presume that this committee is called to correct abuses, and not to provide against evils that have not been complained of in our experience. The Committee on Executive Department have, therefore, left the matter with the Legislature, and whether they will determine a contested election for Governor, if one ever occurs, by drawing a committee by ballot, or by the joint action of its two bodies, is entirely immaterial. If the gentlemen from Columbia (Mr. Buckalew) and Indiana (Mr. Harry White) are correct, then the political majority in the Legislature, whether found in a committee or in the body of the two Houses at large, will control the result. It is very unfortunate, indeed, that contests grow-

ing out of our elections for officers, and carried into the Legislature, would not be determined fairly.

The delegate from Columbia has said that the committee, of which he is a very useful member, have adopted some plan bearing on contested elections, which, in a few days, will be submitted to the Convention. Now, Mr. Chairman, so far as I am personally concerned—not speaking for the committee—I am quite indifferent upon this subject. Finding there was no evil that had grown out of this old section of the Constitution, we incorporated it into the proposition for the amended Constitution. It is alleged by the gentleman from Indiana, (Mr. Harry White,) who has had quite experience enough in the Legislature of the State, as a member of the highest body, and surely enough as a member of committees on contested election, to know, and we must accept as true what falls from his lips, that notwithstanding the oath of office and the obligation to the people, contested elections are decided by the politics of the contestants and the political complexion of the committee. It is a frank and candid acknowledgment on the part of the delegate, which is very creditable to him, indeed, and may be very useful to this Convention in their future deliberations.

The learned and distinguished delegate from Columbia (Mr. Buckalew) has said that they propose to lodge the subject of contested elections with the court—the Supreme Court, or the court of common pleas. In this deluge of political sin which seems to be visiting this State and finds so many ready and eloquent exponents in this body, had we not better take care that in giving too much power to the courts we do not carry the judiciary itself down into the very gutter of politics, in the unhappy and deplorable condition described by the delegate from Indiana (Mr. Harry White) in which we find the committees of the Legislature. I do not believe that it is judicious to give to the courts too much power. I do sincerely think that all these appointments of commissions made in the city of Philadelphia degrade the judiciary. The Supreme Courts are designed to be an abstraction, and to sit there to decide judicial questions of rights of property and person, and I doubt very much whether it would improve the

character of that exalted tribunal to give to them the power of meddling with all the political squabbles which occur at Harrisburg, and place them in danger of the taint which may follow them from the committees of the Legislature; but it is a matter of perfect indifference to me as a member of the committee, and I am quite sure I speak the sentiments of the others. It will be for the committee to decide whether it would not be better to amend this section of the article or to pass it for the present, and when the committee have reported on the subject of contested elections that can be changed on second reading.

MR. DARLINGTON. Mr. Chairman: I am not able to concur with my friend from Allegheny (Mr. Ewing) on the subject now before the committee, for the reason which has been briefly stated by the gentleman who has just taken his seat (Mr. Curtin.) I feel myself constrained by the reflection that I have given to the general subject, to endeavor to mark out to myself a general plan of action on this general question, and that is, not to add to, but to take from the judiciary all political power. Relieve them from all political labor—let them give the whole of their time and talents to the proper discharge of the functions of their judicial office. I would take from them all political power that has heretofore been committed to them, all power that is of a political character, such as deciding upon contested elections in the city or county of Philadelphia, or other powers of that kind.

I think it would be objectionable on two accounts: First, the imposition of unnecessary labor upon them which they ought not to have; and then the danger of bringing them into the political arena.

How should the contest of an election for Governor be decided? What better can we do, with the lights we have before us, than to leave it precisely where the committee have left it? They found this provision in the Constitution of 1790, and the Constitution of 1838. No better plan has as yet been suggested. If any better plan should be suggested by the gentleman from Columbia, (Mr. Buckalew,) when his committee shall bring in their report, it will be time enough to be enlightened by it, and act upon it in ref-

erence to matters of this character when it comes before us. What better can we do now than to leave the provisions of the Constitution as they are? I submit that there has been no improvement. I suggest that we ought not to undertake a change merely for the sake of change, without being very sure that it is an improvement.

MR. ARMSTRONG. Mr. Chairman: There is much force in the suggestion which has been made by the gentleman from Columbia, (Mr. Buckalew,) and, perhaps, that may be a wise and proper disposition of this question, when it comes properly before the House. We are not yet informed what particular provision the Committee on Elections may present to the consideration of the House, as a substitute for this, and which will embrace the whole question of contested elections, not only of the Governor, but of all inferior officers. I would suggest, however, that in the absence of such report, the provision now under consideration should be adopted as it stands. The question received much consideration from the committee, and it was our judgment that it would be better to follow the Constitution as it now stands, until some definite and distinct proposition is reported from the Committee on Elections, which would cover the entire ground. If they present such a report as will fully cover the contested election of Governor, the Committee on the Executive Department would have no objection, whatever, to its adoption, and that it should then become a part of this article of the Constitution; but as this section is pending only in committee of the whole, and will be fully and entirely within the power of the Convention, when it comes up upon second reading, I would suggest that it would be judicious, for the present, to pass it as it is, and after we have had full opportunity to consider the report of the Committee on Elections, we may then amend this section of the article under consideration, or strike it out upon second reading, if that report should be satisfactory. For the present, therefore, I hope that the amendment will not be agreed to, and that the report of the committee, as they have presented it, will be adopted.

MR. EWING. Mr. Chairman: By the consent of the House, I withdraw my amendment.

The CHAIRMAN. If the amendment be withdrawn, the amendment to the amendment goes with it. The question then will be on the section as amended.

Mr. CUYLER. Mr. Chairman: I move to strike out the words "a committee to be selected from," so that the section shall read, "shall be determined by both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law."

Mr. HARRY WHITE. That is what I offered.

Mr. CUYLER. Mr. Chairman: I understood the gentleman from Indiana (Mr. Harry White) to be opposed to a committee to be selected to be regulated by law; but to favor leaving in the section the proposal that it should be got at by the committee of both Houses.

Mr. HARRY WHITE. Mr. Chairman: For the purpose of testing the sense of the Convention, I moved my amendment to strike out and insert as proposed.

Mr. CUYLER. That leaves in the words, "the committee to be selected from."

Mr. HARRY WHITE. No, I beg pardon. If you will observe, the amendment speaks of striking out all after the word Houses, in the eleventh line, and insert —

The CHAIR. The question will be upon the amendment of the gentleman from Indiana, (Mr. Harry White,) to the amendment of the gentleman from Philadelphia (Mr. Cuyler.)

Mr. CUYLER. Mr. Chairman: The amendment of the gentleman from Indiana (Mr. Harry White) correctly expresses the view that I had in my mind. I therefore withdraw my amendment. I would like to ask the gentlemen who have had experience in contested election cases in our courts—and I have had some—and my friend from Philadelphia, who sits behind me, (Mr. Biddle,) has had more, when we have ever regarded the contested election cases, in the courts of Philadelphia, as doubtful? I want to ask any gentleman here, who has had experience, whether the result of a contested election in our courts has not uniformly been predicted by the bar before the decision was made? I must say, so far as my experience has gone, and so far as my observation has gone, I have never entertained a doubt. I have never erred in my

prediction as to what the result of a contested election case in our courts would be. And just so long as our judges are elected by the popular vote, will that be the fact. Just so long as a judge is taken from the body of the people, and nominated by a political convention, and elected by a political party, just so long the decision of our judges in contested election cases, will be founded upon their political predelections. I charge no corruption, but the influence upon the mind of the judge is so irresistible that he struggles against it in vain. The existence of this influence is perhaps unconscious upon his mind, but it is no less the truth, that his opinion is influenced by his political predelections.

This question has been discussed in the Judiciary Committee. It is the feeling of the committee, and it is certainly my feeling as a member of that committee, that it is one of the most solemn duties resting upon us, to take away from the courts all connection with this question. I would not pollute our courts by bringing contested election cases into their tribunal at all. Some other method must be found. I cannot suggest what, but it must, or certainly should be found, by which these questions can be determined without submitting it to the decision of the courts. This decision of contested election cases has done more to shake the confidence of the people of Pennsylvania in the purity and integrity of their courts than any other class of questions that has come before them. I am far from supposing that the remedy in this section is faultless. I agree with the gentleman from Indiana, (Mr. Harry White,) whose experience is vastly greater than mine, that the result of the experiment in the Legislature has not been such as to encourage the hope that their decision would be free from party bias, or uninfluenced by partiality; but I accept it as a choice of evils. Let us follow it until something better is devised, as I am sure there will be before we close our labors, but still of the two evils it is the lesser. Rather than deposit the decision of such questions with the courts of justice, and impair the old confidence of the people, would I leave it with the Legislature with all the disadvantages and all the reasons that attend the decision of such questions by that body.

Mr. J. N. PURVIANCE. Mr. Chairman: I will remark that the section under consideration received the very deliberate consideration of the committee, and I should regret very much that any change should be made in it in committee of the whole, but if the suggestion of the gentleman from Lycoming (Mr. Armstrong) be adopted, if upon careful examination in Convention it may be deemed advisable to make a change, it can be better done there. I would remark that this section and the language now objected to, is precisely the words of the Constitution of 1838. We have lived under this Constitution a period of nearly forty years, and no citizen of this Commonwealth, from the Delaware to the lake, has ever complained of this clause in the Constitution. It would be unwise, perhaps, on the part of this Convention to strike it out and adopt a new section, because uncalled for, and perhaps it might lead to bad consequences. As it stands now, it is probably as good as we can get it. It is not one of the subject matters that the people have sent us here to correct, and if we go on correcting everything, if we are satisfied with nothing in the Constitution of 1790 or the Constitution of 1838, we shall make such a Constitution as the people of the State will vote down almost unanimously.

Now, I take it that we must trust some tribunal in this State. The whole people of this Commonwealth are not corrupt. If you remove from the Legislature a jurisdiction over its elections and lodge it in the Supreme Court, you may have a tribunal just as likely to be swayed by partisan feeling and by political excitement as the Legislature. The Legislature has, thus far, been the safe repository of that power; let us keep it there, at all events, until there shall be some reason for the change as reported. I trust the section will pass the committee, then in Convention it may be reviewed and more fully considered if it is deemed proper so to do.

Mr. BUCKALEW. Mr. Chairman: There has been but one Governor in this State who was elected by a very small majority since my recollection. I refer to the election of Wm. F. Johnson, and I submit that because it has not heretofore happened that we have had a contested election for Governor, it does not follow that

we ought not to make careful provision for such an occasion in the future.

Mr. HARRY WHITE. Mr. Chairman: At the suggestion of several members I have drawn up my amendment in proper shape, and I desire to have it read.

The CLERK read:

"Contested elections shall be determined by both Houses of the Legislature, in such manner as shall be directed by law."

The amendment was agreed to.

Mr. GOWEN. Mr. Chairman: I move to amend the section, by inserting after "power," in the first line, the words "of this Commonwealth," so that it will read, "the supreme Executive power of this Commonwealth shall be vested in a Governor," &c.

Mr. BIDDLE. Mr. Chairman: We are only legislating, I presume, for the Commonwealth of Pennsylvania.

Mr. BOWMAN. If the gentleman from Philadelphia (Mr. Gowen) will look at the first line of the first section he will see that his amendment is entirely unnecessary. The reading of that line is: "The Executive department of this Commonwealth shall consist of a Governor," &c. Now, the first line of the section under consideration, which the gentleman proposes to amend, reads: "The supreme Executive power shall be vested in a Governor," &c. What power? Of what? Of this Commonwealth.

The amendment of Mr. Gowen was not agreed to.

The question recurring on the adoption of the second section, it was agreed to.

The CLERK read section third, as follows:

The Governor shall hold his office during four years, from the third Tuesday of January next ensuing his election, and shall not be capable of holding the office for the term next succeeding the term for which he was elected.

Mr. BRODHEAD. I move to amend, by striking out the words "capable of holding office," and inserting the words "eligible to." The difficulty will arise in case of the Governor going back to the Senate, or of his becoming Lieutenant Governor, of his being unable to hold the office of Governor in case of the Governor's death; but by striking out the words "capable of holding office," and

inserting "eligible," the true intent of the committee will be carried out.

Mr. ARMSTRONG. Mr. Chairman: The purpose which the Committee had in view was to prevent the Governor from holding two terms successively. It was thought that the word "eligible" might prevent his being a candidate at the second succeeding election, as the word "eligible" takes hold upon the qualification at the time of the election, and would operate to prevent his nomination for the second succeeding term, which would practically exclude him from the office for two instead of one term. The Governor's term commences in January. The election will be held in the November preceding. He might not hold the next term, but he would be enabled to run at the election which would fall in November preceding the time when he would take office, and be eligible for the next succeeding term, if the phraseology of this report is preserved, but it will practically exclude the Governor for two terms if he is to be eligible at the time when the election is held. We sufficiently guard it by the phraseology, which prevents him from holding office for two terms in succession, although we permit him to be elected at the election preceding the time when he would come into office. The phraseology was used with that intent.

The amendment of Mr. Brodhead was not agreed to.

Mr. BUCKALEW. Mr. Chairman: I move to amend, by striking out all after the word "election," in the second line. The provision in the present Constitution is, if I remember it correctly, that no person shall hold the office of Governor more than six years in any term of nine years. I am in favor of allowing that provision to stand. In short, sir, I have never been captivated with this general idea which some gentlemen seem to think popular, of one term for all sorts of people in public office. I think that it is against the public interest.

Now it is true that a considerable amount of opinion has grown up in the country, or at least has been indicated by the press and otherwise, in favor of limiting the President of the United States to a single term, and that opinion, to whatever extent it may have gone among the people, is founded upon a reason which

does not exist in the case of the Governor of this Commonwealth.

The President of the United States has very large powers of appointment. His patronage is positively fearful, in the judgment and opinion of those who have considered the question of the organization of our general government carefully. He appoints an enormous mass of men to fill and discharge the duties of the public offices of the United States, and, of course, he has enormous powers grasped in his hand, and mostly without accountability to any earthly power, which he can use for the purpose of re-nominating and re-electing himself to that high office. The check of the Senate upon him, with reference to some of the high offices, goes but a little way in lessening the force of this general statement; therefore there may be fair argument, I grant you, made in favor of limiting the holding of the Presidential office to a single term. But how different is the case with reference to the Governor of this Commonwealth! In 1838 he was stripped of nearly the whole power of appointment which had been theretofore vested in him. He now only appoints his own Secretary and Attorney General, and he fills certain offices for fragments of terms, when they become vacant, throughout the State, and I believe appoints a few inspectors in the city of Philadelphia, and some notaries public here and elsewhere. This power of patronage in his hands is quite insignificant, and his possession of it will not enable him to re-nominate himself, or re-elect himself as Governor of the State, or exercise any considerable influence to that end. Therefore there is no reason, in my opinion, for limiting the people in this matter of their choice of Governor for a second term.

When a man has been placed in that office, and has proved himself to be a man of singular ability, and by his integrity in the discharge of his high office has won the confidence of the people, why deny him the privilege of serving the people for a second term, and compel the people to select a raw man to fill that office and discharge its important duties? If there were great abuses to be apprehended from continuing a Governor in office a second term, I would say nothing against this clause reported by the com-

mittee; but as no such abuses seem reasonably to be apprehended, and as our experience in this State has not shown any abuses or mischief in that quarter, I hope no such provision as this will be inserted in the Constitution. I think it would have been a cause of regret during the last twenty-five years, if the people had not been permitted to re-elect several men who have filled the office of Governor of this State with rare ability; and as there seems to be no reason or necessity for the change, I hope we will leave the Constitution as it is.

MR. BIDDLE. Mr. Chairman: This clause was a matter of anxious consideration in the committee, and as it stands reported to the Convention, I believe I am entitled to say that it received the endorsement of every member. Now, undoubtedly in theory there is no good reason why you should limit the choice of the people at all, because, theoretically, I suppose constituents are able to take care of themselves; but our Constitutions, both State and federal, are full of limitations. We have limitations as to age, as to the qualifications of President, Governors and Senators; and yet it might be said, with a good deal of force, "why make any limitations, and why, if the people choose to elect Senators of the age of twenty-one, are they not just as good as men of twenty-five years of age?" It is difficult to argue and answer these questions on theory alone, and yet I think in practice we find a certain amount of value in these restrictions. Now it is the same in regard to what is called the one-term principle. In regard to the Chief Executive of the federal government, the sentiment is becoming very strong indeed as to limiting him to a single term of office. Whether truly or untruly, it has been believed that during the last year of the first term of office the whole patronage and the whole force of the government is carried in one direction, and that direction is the direction which is supposed to secure the re-election of the incumbent. Now, measurably, this will be the same in the Commonwealth; not to so great an extent, of course, because the patronage is much less, but so far as the whole machinery of the government, the passive and the active machinery, may be diverted in one direction, it may be used to accomplish this same end. I

know there are many illustrious instances to the contrary, but it was supposed that where the term was lengthened it would be wiser to restrict the Governor to a single term. The thought of the people at large is undoubtedly running in that direction, and the committee therefore reported this section as it stands. I cannot say that I am absolutely wedded to it, but I think I am entitled to say that, so far as that committee could obtain what they supposed to be the sentiment of the Commonwealth, they had it. We were also fortunate in having most important aid in the large experience of the chairman, himself a former and distinguished occupant of the gubernatorial chair. The sentiment was a general one.

Of course this Convention will do what it pleases, but I think we are leaning in the direction of a salutary change when we report the section and pass it in the shape in which it now stands.

MR. WRIGHT. Mr. Chairman: I offer the following amendment to the amendment: Strike out all after the word "office," and insert the words "for more than two successive terms." I ask for the reading of the section as amended.

The CLERK read as follows:

The Governor shall hold his office during four years from the third Tuesday of January next ensuing his election, and shall not be capable of holding office for more than two successive terms.

MR. HARRY WHITE. Mr. Chairman: I have no desire to intrude upon the time of the Convention unnecessarily in this matter, but my experience and observation in regard to this question of the re-election of the Executive is the very opposite from that of my friend from Columbia (Mr. Buckalew.) I feel like standing by every word of this section as reported by the Committee on the Executive Department. If there is one change—I was going to say reform—I will certainly say if there is one change that is required by many of our citizens who are familiar with this subject in the Commonwealth this is certainly one of them. It has been remarked that there is no reason why there should be any incompatibility to the immediate re-election to the office of Governor in a person who has worthily occupied that position. Without any reflection upon any distinguished occupant of that position, the

result of experience and observation is that few men have occupied the gubernatorial chair who would not use its privileges and its opportunities to make capital for their re-nomination. In the matter of pardons the Governor has large power, and it is said that it is the intention to change the Constitution in this respect, but in what manner? If you glance over the report of this committee, you will find that in section ten that power is proposed to be vested in the Governor to remit fines and forfeitures and to grant reprieves, &c., but it is proposed by the committee that this pardoning power shall only be exercised upon the recommendation of the Attorney General, Secretary of the Commonwealth, or other officers in immediate relation to the Executive. Why the Attorney General is the appointee of the Governor, and the Secretary of the Commonwealth is his appointee, and both of these officers are interested in his perpetuity in office. One of the objects, then, in placing this restriction upon the Executive is to secure him independence of character in this important matter of granting pardons. The gentleman from Columbia (Mr. Buckalew) has said that the Governor has no power in this Commonwealth. Why, sir, in addition to the great power of pardon he has the vetoing power, and in the matter of legislation affecting different interests in different parts of this Commonwealth, hereafter as heretofore, the Governor will be tempted to exercise his power of veto in the interests of his re-nomination and re-election. I agree with the distinguished gentleman from Columbia (Mr. Buckalew) that experience in public office and experience in legislative matters is invaluable to the people, but there are some offices where re-election would not secure that independence of action which is necessary to the faithful discharge of the duties of a public officer, and the limitation upon the term of office of the Executive, I think, is the most salutary change that has been suggested in the report of the committee.

Mr. DARLINGTON. Mr. Chairman: I desire to add simply a word or two in regard to this question. It certainly should be the object in dealing with a section of this character to provide the means by which the mind and attention

of the gentleman who may occupy the Executive chair shall be exclusively directed to the discharge of the duties of that office, and I hold it to be a great evil if any gentleman should obtain that office with any expectation or purpose of continuing himself in that position. I would remove the Governor as far as possible from the danger of seeking something higher and further, to which all men are liable. I would take from him all motive in the conduct of his office that should be in any way calculated to continue him in that position. Nay, I would go further, and, if it were possible, I would remove from him all temptation to seek a higher office. I think the office of Governor of this Commonwealth is exalted enough for any man to look to as the sun of his ambition, and no man should be sent to occupy that high office for the purpose of seeking a still higher position, as, for instance, the collectorship in Philadelphia, which one of our ex-Governors once accepted. I would make the office of Governor in this great Commonwealth so dignified and so honorable that no man should care to look beyond it. Nay, more. For the purpose of removing all possible motive from his mind to attend to any other matters, I would discourage him, so far as it is possible, from any kind of speculation with the view of making money. I would not let his mind be distracted from the discharge of his public duties by anything of that kind, and I would allow him to grant pardons. I do not suppose any man ever granted a pardon for the purpose of making use of a thief as a voter. I suppose all Governors are beyond and above all that. I would not allow him to exercise his office in any way, or for any purpose, with a view to his own advancement. He should look solely to the conscientious discharge of the duties of his office.

The CHAIRMAN. The Chair is of the opinion that the motion of the gentleman from Luzerne (Mr. Wright) is not in order at this time. The amendment of the gentleman from Columbia (Mr. Buckalew) was to strike out all after the word "elections," in this section. If that motion prevails, the amendment proposed by the gentleman from Luzerne (Mr. Wright) would form part of the section stricken out, and hence it is out of order at this time.

Mr. BUCKALEW. Mr. Chairman: I withdraw my amendment for the purpose of allowing a vote to be taken upon the amendment offered by the gentleman from Luzerne (Mr. Wright.)

The question was then taken on the amendment, and it was not agreed to.

Mr. BUCKALEW. Mr. Chairman: I now renew my amendment, to strike out all after the word "election."

The CHAIRMAN. The question is upon the amendment.

The amendment was rejected.

The CHAIRMAN. The question is upon the section, which will be read.

The CLERK:

SECTION 3. The Governor shall hold his office during four years, from the third Tuesday of January next ensuing his election, and shall not be capable of holding the office for the term next succeeding the term for which he was elected.

The section was agreed to.

The CHAIRMAN. The fourth section will be read.

The CLERK:

SECTION 4. A Lieutenant Governor shall be chosen in the same manner, at the same time and for the same term, subject to the same provisions; he shall be President of the Senate, but shall have no vote, unless they be equally divided.

The section was agreed to.

Mr. ARMSTRONG. Mr. Chairman: At this point I will ask unanimous consent of the committee to go back to section one, for the purpose of inserting after the words "Auditor General," the words "a State Treasurer." These words were inserted by the committee, and were omitted in the printing. I did not observe it until this moment, and they should go in to make the report uniform. The section as drafted read:

SECTION 1. The Executive Department of this Commonwealth shall consist of a Governor, a Lieutenant Governor, a Secretary of State, Attorney General, Auditor General, a State Treasurer, a Secretary of Internal Affairs and a Superintendent of Public Instruction.

Mr. HARRY WHITE. Mr. Chairman: While the gentleman from Lycoming is making that correction, I will suggest that he change the words "Secretary of State" to "Secretary of the Commonwealth." That is the term used now.

Mr. ARMSTRONG. Mr. Chairman: The office is named in the report of the committee, as the committee intended it should be, "Secretary of State," which is a more appropriate and shorter phrase than "Secretary of the Commonwealth."

The CHAIRMAN. The correction suggested by the gentleman from Lycoming will be made.

The question is on the fifth section, which will be read.

The CLERK:

SECTION 5. No person shall be eligible to the office of Governor, or Lieutenant Governor, except a citizen of the United States, who shall have attained the age of thirty years, and have been seven years next preceding his election an inhabitant of the State, unless he shall have been absent on the public business of the United States or of this State.

The section was agreed to.

The CHAIRMAN. The next section in order, the sixth, will be read.

The CLERK:

SECTION 6. No member of Congress, or person holding any office under the United States, or of this State, shall exercise the office of Governor or Lieutenant Governor.

Mr. TURRELL. Mr. Chairman: I move to amend as follows:

To insert after the word "shall" the words, "be eligible to or."

The section will then read:

No member of Congress, or person holding any office under the United States, or of the State, shall be eligible to, or exercise the office of, Governor or Lieutenant Governor.

Mr. ARMSTRONG. Mr. Chairman: That is right. That was the intention of the Committee on Executive Department, and this amendment expresses that intention more clearly. We intended that a candidate should not even run, desiring to make any person holding a national or State office, or a member of Congress, entirely ineligible.

Mr. TURRELL. Mr. Chairman: I have offered this amendment in order to definitely settle the question, that no member of Congress shall be eligible to the position of Governor or Lieutenant Governor. The confusion and disorder which have prevailed of late years in Louisiana have been mainly due to the eligibility

of members of Congress to the office of Governor. I wish to avoid any possibility of such a scene in this Commonwealth.

Mr. WORRELL. Mr. Chairman: I desire to ask the gentleman from Susquehanna when the question of eligibility to office is to be determined, and if it is not when the person elected presents himself to be qualified for office?

Mr. TERRELL. Mr. Chairman: The intention I had in offering the amendment was to prevent any person disqualified by the provisions of this section from accepting a nomination for either the office of Governor or of Lieutenant Governor. If, as the question of the gentleman from Philadelphia would intimate, the amendment does not do that, I will modify it by using another phrase, in place of eligible to.

Mr. CORSON. Mr. Chairman: I think we ought to adopt this section as the Committee on Executive Department have reported it. If anything should be stricken out it should be the four words "member of Congress or," because why we should select a member of Congress as the standard of an officer in the United States government I do not understand. The better way to word the section would be:

"No person holding any office under the United States or this State shall exercise the office of Governor or Lieutenant Governor."

Mr. ARMSTRONG. Mr. Chairman: I will state that the view of the committee is that a member of Congress is not essentially an officer of the United States. The design was to exclude members of Congress and officers of the United States. A member of Congress is not essentially such an officer.

Mr. BIDDLE. Mr. Chairman: If the gentleman from Montgomery will allow me a suggestion, we have retained in this section the language of section five of the existing Constitution, which shows that at least there was a doubt in the minds of the framers of that Constitution. I think it is better to leave it as it is, and not strike out the words "member of Congress or."

Mr. CORSON. Mr. Chairman: If that seems to be the view of the Convention, that this office of member of Congress is no office at all—I never had an idea it

was much of an office—I am satisfied with it; and it does seem to me that this proposition, with the explanation which has been made about the members of Congress, is exactly right as it has fallen from the hands of the committee, that no person holding any office under the United States or this State shall exercise the office of Governor or Lieutenant Governor. There is no necessity for an amendment such as has been offered by the gentleman from Susquehanna. A very worthy man might be a member of Congress, or might hold some office under the United States government or under this State government, who would make a most excellent Governor, and we have a right to elect him while he holds that office. But he cannot exercise the office of Governor or Lieutenant Governor until he has resigned the other office. Now if we incorporate any such principle as this which is proposed by the gentleman from Susquehanna, we will cripple the people in the exercise of the right of selection. They cannot elect a man who is, perhaps, Chief Justice of the Supreme Court of Pennsylvania, because he shall not be eligible while he holds that office. Now my position is, that no matter what office a man holds, let him go out of it before he enters upon a new office. That is the law as it stands to-day, and therefore I hope that this section will be adopted exactly as it has been framed.

Mr. SIMPSON. Mr. Chairman: While I heartily approve of the theory of the gentleman from Susquehanna, that a person holding the office of member of Congress, or any other office under the United States or this State, ought not to be a candidate for the office of Governor or Lieutenant Governor; to make it effective, I think there should be some other words inserted than those proposed by him, and I am reminded that the gentleman himself proposes to make his language stronger. It was suggested by my colleague, (Mr. Worrell,) a few moments ago, that a question might arise when that eligibility began. A man might be elected while holding the office of member of Congress, or some other office under the United States or of this State, who, for the reason that his term has expired at a time when he presented himself to be sworn in, would claim eligibility. The question might

arise, and in order to prevent any trouble, I would suggest that the words, "during his term of office," be incorporated into the amendment.

Mr. TURRELL. Mr. Chairman: I will try to satisfy the gentleman in a way that will, perhaps, meet his approval more than his own suggestion. At the instance of several gentlemen around me, including the gentleman from Columbia, and in order to make this matter more certain, I will change my amendment from "eligible to" to "elected."

The CHAIRMAN. The section as amended will be read.

The CLERK: No member of Congress, or person holding any office under the United States or of this State, shall be elected to or exercise the office of Governor or Lieutenant Governor.

Mr. WORRELL. Mr. Chairman: Just at this point I would like to say that this very question of eligibility arose when you, sir, were nominated for Governor in 1863, and it was then the judgment of the people of this Commonwealth that this question was to be determined at the time the gentleman presented himself to be qualified for the office. It has been so determined in Congress that eligibility under the constitutional provision in regard to age is to be determined when the party presents himself to be qualified for the office. Therefore the word "eligible" would not secure what the gentleman from Susquehanna desires, but the word "elected" seems to meet the whole question.

Mr. EWING. Mr. Chairman: I look on this proposed amendment as a matter of considerable importance. While it may be true, as suggested by the gentleman from Montgomery, (Mr. Corson,) that occasionally a congressman, a man actually in Congress, or holding some other office under the United States, might make a very good Governor, I do not think it will ever occur that we cannot find other citizens of the State, who are not members of Congress, who would also make good Governors. We will not be limited to congressmen, and I think that the prohibition proposed is a proper one. I hope that we will, so far as possible, keep our State government as an independent and distinct government, in its sphere, from the United States government. As a matter of experience, and as

a matter of fact, in quite a number of the States in this Union, have we had examples of members of Congress, and officers of the United States government, using their power and their influence acquired from that office, to elect themselves Governors and other officers of the State government. We saw examples of that in Louisiana. It has occurred in several of the western States, and may occur again. Now, as a matter of fact, many of the Congressmen in large districts in this State, and in other States, have more power, more patronage, and more ability to use their office to get men to work for them and for their election to State officers, than the Governor of the State has. Under the present system, and as it has stood for many years, the Senators from a State, or the Congressman from his district, controls absolutely every appointment to a federal office within that district. He has large powers, and I think it is a wise provision to put in here, that while a member of Congress, or an officer under the United States, a man shall not be a candidate for Governor or Lieutenant Governor. If it is desired by the people that he should run for the office, and should be Governor, let him resign his United States office; that is easily done. The section may be further amended, so as not to apply to officers under the State government. I would be willing to see that amendment made, but, so far as officers under United States government are concerned, I hope to see them excluded, even from candidacy, for these important State offices.

Mr. D. W. PATTERSON. Mr. Chairman: I should like to ask why we should get up machinery here to prevent the people from nominating a man who had been in Congress, and whose term would end in November, say the day after the gubernatorial election. Is it on the ground that we could get no good and honest material from that source? I do not think we should go so far as that. It might be that a Congressman from this State who, by his integrity in Congress and his straight-forward action, has especially recommended himself to the people. Hence I think the section, as it stands, is eminently wise. It contemplates that a man cannot exercise the office if he is a Congressman; but he may be nominated and elected, and if elected, and his Congress-

sional term ends within the proper time, it enables him to exercise the office, if the people select and elect him. It seems to me we ought to adopt the plain words of the section, and adopt no amendment, unless we think we have so many citizens in the Commonwealth of Pennsylvania who have had public experience that we will not, on any occasion, have to look to a member of Congress, whose term is about expiring, when the gubernatorial election is coming on.

Let us leave the section as it is. I think it is eminently wise, and should be retained and adopted by the committee.

The question being on the amendment of Mr. Turrell, it was rejected.

The question then re-curring on the section as amended, it was agreed to.

The CHAIRMAN. The seventh section will now be read.

The CLERK read as follows :

SECTION 7. The Governor and Lieutenant Governor shall, at stated times, receive for their services a compensation, which shall be neither increased nor diminished after their election, nor during the term for which they shall have been elected.

Mr. WHERRY. Mr. Chairman : I offer the following as a substitute for that section :

"The Governor shall receive for his services five thousand dollars annually, and the Lieutenant Governor three thousand dollars annually."

The question being on the substitute, it was rejected.

Mr. ANDREW REED. Mr. Chairman : I offer the following as a substitute :

"The Governor shall, at stated times, receive for compensation for his services the sum of six thousand dollars, and the Lieutenant Governor the sum of four thousand dollars, which compensation may be increased or diminished by the Legislature, but not so as to increase or diminish the compensation of any one after his election or during his term of office.

The question being upon the substitute, it was rejected.

The question recurring upon the section, it was agreed to.

The CHAIRMAN. The eighth section will now be read.

The CLERK read the section as follows :

SECTION 8. The Governor shall be commander-in-chief of the army and navy

of this Commonwealth and of the militia, except when they shall be called into the actual service of the United States.

The question being upon the section, it was agreed to.

The CHAIRMAN. The ninth section will be read.

The CLERK read the section as follows :

SECTION 9. He shall nominate, and by and with the advice and consent of two-thirds of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, and such other officers of the Commonwealth as he is or may be authorized by law to appoint. He shall have power to fill all vacancies in offices to which he may appoint that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session. He shall have power to fill any vacancy that may happen during the recess of the Senate in the office of Auditor General, State Treasurer, Secretary of Internal Affairs, Superintendent of Public Instruction, in a judicial officer, in any other elective office which he is or may be authorized so to fill. If the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before their final adjournment, a proper person to fill said vacancy. But in any such case of vacancy in an elective office, a person shall be chosen to said office at the next annual election of Representatives, unless the vacancy shall happen within three calendar months immediately preceding such annual election, in which case the election for said office shall be held at the second succeeding annual election of Representatives. In acting on executive nominations the Senate shall sit with open doors, and in confirming or rejecting the nominations of the Governor the vote shall be taken by yeas and yeas, and shall be entered on the Journal.

Mr. ARMSTRONG. Mr. Chairman : I propose to strike out the words "the Commonwealth," in the third line, and insert in lieu thereof the word "State," for the purpose of harmonizing it with the first section.

Mr. DARLINGTON. Mr. Chairman : If it is the design of the committee to use the term "Secretary of State" all the way through the Constitution, so as to

make it harmonious, that is all right. We have, however, already passed over some sections where we used the expression, "Secretary of the Commonwealth," instead of "Secretary of State." In the Constitution of 1837-8, and in that of 1790, sometimes one expression is used, sometimes another. If it be the design of the committee to adopt the latter expression altogether, it can be arranged by the Committee on Revision and Adjustment.

Mr. ARMSTRONG. Mr. Chairman: It is the design of the committee to use, uniformly, the term "State," instead of "Commonwealth," and therefore this amendment should be made in order that it may harmonize with the first section.

Mr. HARRY WHITE. Mr. Chairman: I am going to vote to retain the old expression of the Constitution. I am opposed to changing the expression from "Secretary of the Commonwealth" to "Secretary of State." I have no special feeling about it, but I see no particular reason why it should be done. I call the attention of the committee to the fact that the expression "Secretary of the Commonwealth" is all through our acts of Assembly. It was in the Constitution of 1790, and that of 1838, and all subsequent legislation is careful to observe the expression. Furthermore, the processes of our courts are all done in the name of the "Commonwealth," not of the "State." I would like to see the harmony of the Commonwealth in this respect preserved; hence I am opposed to any change.

Mr. J. N. PURVIANCE. Mr. Chairman: I concur with the gentleman from Indiana (Mr. Harry White) that we had better preserve the old fashioned term—the "Secretary of the Commonwealth," which has been used in our legislation and in all our judicial proceedings—even down to summonses, for a period of a hundred years. The term "Secretary of State," as it strikes me, is more national. The nation is called the "State." The several States of the Union are called "Commonwealths"—as portions of a great State or nation. I therefore hope the word "Commonwealth" will be retained. It conforms to all our legislation and to the seal of the Commonwealth; and for so long a period of time that it should not be altered without some good reason, and I certainly have heard none.

I may here remark that when Mr. Secretary of the Commonwealth Jordan came into office, he signed all his official documents, "Secretary of State," for a period of about a year, but I then noticed that a sudden change to the old expression of "Secretary of the Commonwealth." He no doubt thought the first term he used more expressive of dignity of position, but for the reason that he found all the records to be signed "Secretary of the Commonwealth," and that the very seal of his office so put it, he fell back upon the old title. I trust the older term will remain as heretofore.

Mr. CURTIN. Mr. Chairman: I agree with the gentleman who has last addressed the committee (Mr. J. N. Purviance.) I think we had better suffer the title of Secretary of the Commonwealth to remain. It has been a long time in existence, and it is, withal, a dignified and elevated title. It is a pure Saxon expression; "State" has vastly too much Latin in it for ordinary purposes. I think "Secretary of the Commonwealth" a dignified and elevated title, and I believe it should be retained.

Mr. J. W. F. WHITE. Mr. Chairman: I shall vote for this amendment, sir, to change the word "Commonwealth" to "State," not only in this instance, but throughout our entire Constitution. I shall also vote, when it comes up, to change the words "General Assembly" to the word "Legislature," and harmonize our Constitution. In our present Constitution the word "Commonwealth" is used about half the time, and the word "State" about as many times.

If I remember correctly, the word "State" is used a few times more than the word "Commonwealth." Frequently these words are used in the same article. Now, sir, I think we had better harmonize by using one expression throughout the entire Constitution. The same remark applies to the words "General Assembly" and "Legislature."

I cannot see why we should retain the word "Commonwealth," a part of the time in the Constitution, because we have been in the habit of using it for so many years. I believe there are but two States in the Union whose Constitutions retain the word Commonwealth. If I remember correctly, Kentucky and Massachu-

sets are the only two States that use the word Commonwealth, and all the States that have recently formed Constitutions have put themselves in harmony with the general government, as well as in harmony with the other States of the Union, by using the word "State," and also using the word "Legislature" instead of "General Assembly." It strikes me that it is, if anything, a more elegant and more dignified expression to say "Secretary of State" than "Secretary of the Commonwealth." As for our laws now containing that and "Constitution," there will be no inconvenience, no trouble, no difficulty arising from using the word "State," because we now frequently use that word in the Constitution, and in the laws interchangeably with the word Commonwealth.

Mr. ARMSTRONG. Mr. Chairman: I believe that no very high degree of importance attaches to the question now before the committee. It is not very important whether the officer designated is called the "Secretary of the State" or the "Secretary of the Commonwealth." There is nothing to commend the use of the phrase "Secretary of the Commonwealth," except the long continued use of that expression. It is a cumbersome and not a very natural designation. The word "Commonwealth" means the public weal, the public welfare. There seems to me no especial propriety in entitling this officer by this designation. "State" is the distinct corporate designation, recognized and known to all judicial proceedings and to all laws. The Secretary is an officer of the State, as an organization, and not an officer having any especial charge of the public weal or welfare. The expression is cumbersome.

As has been already stated, the expression "Secretary of State" and "Secretary of the Commonwealth" are used interchangeably in the State very frequently. The committee has already passed upon the question, possibly by inadvertence, in the first section, and called this officer the "Secretary of State." The article must be harmonious. Either in the first section or in this and others we must make a change. I have no choice upon the question, and rather incline to the continuance of the designation, "Secretary of the Commonwealth." My purpose is

to have the same designation consistently carried through the whole article.

Mr. HENRY W. PALMER. Mr. Chairman: It has been said that this change of name is a matter of no great importance, but simply a question of taste, and that there is no disputing about tastes. To me it is something more than a question of taste. It is a question of ancient usage, sanctified by lapse of time, and it seems to me a little curious to find so many lawyers, who, from habit and education are conservative, favoring a change without assigning anything that can be dignified by the name of reason. I believe nothing can be gained, but something lost by change. Let us not tear up every association and destroy every reminiscence connected with the old Commonwealth. I feel prouder for being a member of the Commonwealth of Pennsylvania.

In the State of New York, process runs in the name of the people of the State—here it issues in the name of the Commonwealth. All patents for our lands bear the broad impress of the Commonwealth—all commissions are thus issued—the great seal bears that inscription. I would not follow New York in anything pertaining to her State administration, nor deface our process nor break our seal.

A desire for uniformity is urged by the gentleman from Allegheny (Mr. J. W. F. White.) He says two States only besides Pennsylvania retain or have adopted this word, viz: Massachusetts and Kentucky—if not another State in the Union kept the good old Saxon word, I would cling to it. If uniformity is desired, let the rest come to us, and, if they do not see fit to do that, Massachusetts and Kentucky are good company to stand with. Let no change be made merely for the sake of change, but cling to the traditions, usages and memories of our grand old Commonwealth, until necessity forces change upon us.

Mr. WALKER. Mr. Chairman: According to my recollection of what transpired in the committee, we took a vote upon it, and we agreed that "State" should not be the word to be used, but "Commonwealth," because the old Constitution and all our laws contained that word.

Now the gentleman from Allegheny (Mr. J. W. F. White) says that the Con-

stitution of 1838 has here and there the word "State" interchanged with "Commonwealth." I would like the gentleman to turn to that page of the Constitution of 1838 where "State" is used in that connection. I cannot call it to mind.

Mr. J. W. F. WHITE. I did not mean to say that it is used in reference to the Secretary of State. I was using the words "State" and "Commonwealth" synonymously.

Mr. WALKER. I cannot call to mind where the word "State" is used in connection with the Commonwealth. It is "Commonwealth" always in the Constitution of 1790 and in the Constitution of 1838. We took a vote upon it in committee, and my recollection is that we were united, every gentleman on the committee voting for retaining the word "Commonwealth" instead of "State."

Mr. ARMSTRONG. Mr. Chairman: I will withdraw my amendment, and I will add a word or two of explanation for introducing it. Finding the words "Secretary of State" in the first section as adopted by the committee, my purpose was to harmonize the article. I have no tenacity whatever about it.

Mr. HARVEY. Can we not change the wording of the first section by general consent?

Mr. ARMSTRONG. If it be the sense of the committee. I have no objection.

The CHAIRMAN. No objection being heard, the change will be made.

The question now recurs upon the ninth section.

Mr. BROOMALL. Mr. Chairman: I desire to ask the committee which reported this article whether they properly considered the effect of the words "two-thirds of all the members" in the second line.

["Yes, yes."]

Whether they considered the probable consequence would be that no appointment would be made at all, and that the result of that would be, by the after provisions of the section, that the appointment would be given to the Governor session after session, without any reference to the Senate at all.

Mr. MANTOR. Mr. Chairman: I move to strike out, in the third line, the words "and the Attorney General."

I call for the reading of the minority report, which is to be found in the Journal, page 347:

The CLERK read:

I concur in the report of the majority of the Committee on Executive Department, in all respects, except as to Attorney General. In my opinion that officer should be elected.

If he were exclusively the legal advisor of the Governor, it would be proper and right that he should be appointed by the Chief Executive officer, but as he is the law officer of the Commonwealth, and, as such, is required to give his opinion on all legal questions affecting the interests of the people of the State, especially upon questions of taxation, legislation and revenue laws, it is believed that his election by the people would place him in a position of greater independence of thought and action, than if he held his office upon any uncertain tenure.

In times of political excitement, when grave constitutional questions require deliberate consideration, and when the Governor would desire to be sustained in his views, which might be wholly of a partisan character, a difference of opinion between him and the Attorney General might result in the removal of the latter, that his place be filled by one more pliable and less conscientious in the performance of his duties.

The Attorney General, in the discharge of his duties as to constitutional questions arising from the power of the Legislature to grant corporate privileges and acts on other subjects, many of which may conflict with the rights and interests of the people, should not be restrained or influenced by partisan sympathy, or the power of removal from office.

It may happen, too, that partisan zeal and activity, rather than fitness and honesty, may prompt the dispensation of patronage; and combinations of factions, operating as well in the concentration of power in nominating conventions, as in the popular sentiment, may control appointments prejudicial to the general welfare.

Respectfully submitted,

JOHN N. PURVIANCE.

Mr. MANTOR. It is not my purpose, at this time, to attack this report. I regard the report, in general, as a very able and

a very fair one. But, sir, I believe there is a desire on the part of many people of the Commonwealth to elect all the officers that belong to the government; and the minority report, which has just been read, is all the argument that I desire to offer on this occasion.

The amendment of Mr. Mantor was rejected.

The question being upon the adoption of the ninth section, it was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 10. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment, but only upon the recommendation, in writing, of the Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs, or any three of them, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the Department.

Mr. NEWLIN. Mr. Chairman : I move to strike out " Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs," and insert " Auditor General and State Treasurer." I have no desire to press my particular view at any length upon the committee. My simple object for making this motion is this : The Secretary of the Commonwealth, and the Attorney General, and the Superintendent of Public Instruction, I believe all of them to be appointed by the Governor.

Mr. BROOMALL. But two are to be appointed.

Mr. NEWLIN. That will give the Governor the majority of the board. Now the Auditor General is elected by the people, the State Treasurer is elected by the people, and so is the Governor, and if the power of pardon is confided to these three, they will be a check upon each other. They will be jealous of each other's powers and their standing in the community, and they will be a very wholesome check upon the actions and views of each other. I have no desire to press this view at any length. I merely suggest it. If the idea is a good one, it will commend itself; if not, it will be voted down.

Mr. JOHN R. READ. Mr. Chairman : I offer the following as a substitute for the section :

The Governor and Lieutenant Governor (or the persons acting as such) and the Chief Justice of the Supreme Court, or the major part of them, of whom the Governor or person administering the government shall be one, shall have power to remit fines and forfeitures, to grant reprieves and commutations of sentence, and to grant pardons, after conviction, in all cases except impeachment.

Mr. JOHN R. READ. Mr. Chairman : I have but a few words to say in connection with this subject, and it is that I believe that the exercise of the pardoning power in the past has been grossly abused. I think upon this subject there certainly must be an unanimity of sentiment on the part of this Convention. I believe if this pardoning power is clothed with more sanctity than it has been in the past, that it will be exercised in a manner better calculated to promote the interests of the people at large. If gentlemen will refer to the Constitution of New Jersey, they will find that the pardoning power of that State is vested in the Governor, a Chancellor and six judges of the court of error and appeals. In no State in the Union is it more difficult to obtain a pardon, and in no State is a pardon granted more properly or refused more often. I believe if this pardoning power is vested in the Executive, in the manner provided in the section reported by the committee, that it will be almost as easy to obtain an improper pardon as it is now, for we all know how loath we are to refuse signing an application or recommendation to the power that exercises this right, while we might be reluctant to exercise that same power if we were clothed with the same responsibility of granting pardons, and remitting forfeitures. It seems to me that if this Convention would provide for a court of pardons, and thus make the approach to the mercy seat of this Commonwealth more tortuous than it is now, that this power would be exercised in a more beneficial manner in the future than it has ever been in the past.

Mr. WALKER. Mr. Chairman : Before the vote is taken I would like to say but one word in regard to this question. It has been demonstrated to a certainty that a court of pardons is necessary to be fixed

somewhere. Now the object the committee had in view in fixing the court of pardons was to make it consist of gentlemen who were already elected to office, and whose offices were located at the seat of government. The necessity of creating any additional tribunals outside of those already established was thereby avoided. The committee wisely concluded a court of pardons had become necessary, and I concur most heartily in their action. In arranging this matter it should not be rendered impossible, however, to exercise the pardoning power. An opinion seems to prevail in the minds of some of our members that there must be a tribunal created by means of which it shall be impossible to grant a pardon. Now, although I am in favor of granting pardons as seldom as possible, yet it will not do to say that a tribunal not harmonizing or sympathizing with the Executive shall be established, and thus render the granting of pardons impossible. The officers of the four departments of State on the hill at Harrisburg are in sympathy with the Executive. Two of them are his appointees, and two of them are elected by the people. It will be necessary for three of them to recommend a pardon, and that recommendation must be in writing, and set forth the reasons why the pardon should be granted, before the Governor can consider the matter of pardon at all. Now I think we have sufficiently hedged in the pardoning power of the Governor by this provision, without creating a single additional office, and we think it has been done as cheaply and efficiently as it can be done. I hope, therefore, the amendment will not prevail.

Mr. CURTIN. Mr. Chairman: The committee in considering this section of the article had also in view the protection of the pardoning power, because after all the abuse of the pardoning power by an Executive generally arises from impositions practiced upon him, and notwithstanding all that may be said of the abuse of that power, and it may have been undoubtedly abused, more than one half of the cases in which an Executive is censured for the exercise of this prerogative can be traced back to an imposition practiced upon him. In a recent instance, which has been spoken of in this Convention more than once, of Executive clemency whereby a man named

Brown was pardoned for an offence committed in this city, the evidence that the Executive was imposed upon is found on the face of the pardon itself, because the man is there described as having been a soldier, and he is now but twenty-three years of age, and as having a family, while in reality he is a single man. The Executive should not be blamed for granting pardons in instances like this. It is only those who have practised imposition upon the pardoning power who should receive the censure. In the discussion of this question the aim of the committee was to avoid, if possible, the creation of any new offices. There are enough already in existence in Pennsylvania, and the committee supposed that it were best to require the Executive to call to his council only gentlemen of the first ability in the Commonwealth, such as the Secretary of the Commonwealth; and abolishing as the report does the office of Surveyor General, and creating in its place an office of large power and of great importance, and requiring the discharge of such duties as would claim the services of almost any citizen in this Commonwealth, with a Superintendent of Public Instruction, elected by the people. The committee, while it did not increase the expense of the Commonwealth, or multiply the public officers, named four persons to consider applications for pardons, and required a recommendation in writing of at least three of these officials containing the reasons why the pardon should be granted before the attention of the Executive can be called to the application at all.

Now this provision was designed by the committee for the protection of the Executive power, for I would not degrade the office of the Executive of Pennsylvania in surrounding him by any board or council of pardons, to interfere with the discharge of any of his official duties. This provision which the committee has reported does not lessen the dignity of the high office of the Executive, but it provides that this extraordinary power of pardon shall only be exercised by that officer after the application, the names of the applicants and the reasons for the application have been sifted through an examination by four of the most distinguished citizens of the Commonwealth. My young friend (Mr. John R. Read) is

mistaken in his views as to the exercise of the pardoning power. I would not make the power inaccessible, except through difficult and tortuous ways. I would not surround the Governor of Pennsylvania and take from him part of the Executive power by means of advisers who shall assume part of the responsibility of the discharge of his official duties as an Executive; for this exercise of the pardoning power, although often abused and the Executive continually imposed upon, contains in itself the mercy side of our form of government. There is a period in the history of almost every criminal confined in your prisons when a proper exercise of the pardoning power may restore him to usefulness, and give him a future life honored and respected; when, if he remained within the prison walls, he turns out a hardened villain, abandoned by society, and ready for the commission of new crimes. In addition to this, the exercise of the pardoning power is often called suddenly into requisition. Criminals confined in your prisons become deranged; they are seized with disease, and grow infirm under the solitary system of confinement which, I am sorry to say, is a reproach to the humanity of the people of Pennsylvania. The pardoning power must, therefore, be sometimes suddenly exercised. I would not vest the pardoning power in the courts; it is not a judicial proceeding. It is a subject which appeals solely to the conscience of the Executive, and its exercise does not require a judicial inquiry and decision. When a judge has discharged his duty in sentencing a criminal, after conviction, his connection with the destiny of the criminal should terminate for ever, and he should not be recalled to sit in judgment upon his pardon. I would not select the Auditor General and the State Treasurer as members of this advisory council, although their relations are intimate with those of the Executive; because they are chargeable with the monied interests of the Commonwealth, and it is their duty to attend to the collection and distribution of the public revenues. As proposed we select those officials intimately connected with the Governor—his Attorney General and Secretary of the Commonwealth, and repose in them the duty of examining pardons before they reach the Executive. With them

we associate the Superintendent of Public Instruction, who is elected by the people, and as yet none other than the first minds in the State have ever occupied that position. The fourth citizen charged with this duty is the incumbent of the new office we create, which invites to the importance and high responsibility of its duties the first talent and the highest integrity of the State, and we shall then secure such an examination into the merits of applications for pardons that the deserving cannot fail to receive Executive clemency which they are entitled to under our Constitution and our laws.

Mr. JOHN R. READ. I desire to ask the gentleman whether it is not the custom to refer all questions of pardon to the Attorney General's office.

Mr. CURTIN. The Attorney General has nothing whatever to do with the granting of pardons. If it is the pleasure of that officer or the Secretary of the Commonwealth to assist the Governor in the examination of applications for pardons, they can do so, but they are not bound to do so by law.

Mr. JOHN R. READ. I simply asked the question if it was not the custom to refer the subject of pardons to the Attorney General's office.

Mr. CURTIN. I cannot answer the question as to what the custom is now, or was years ago; but I can answer that it was not the custom during the six years I exercised the pardoning power. The question of exercising the pardoning power was not referred to the Attorney General. It was considered a question for the conscience of the Executive alone, and it would be hard to conceive a more painful and unpleasant duty than that of hearing applications for the exercise of this most delicate and useful—nay, necessary power. It is true that the four officials offered by your committee will relieve the Executive of all this inquiry and examination, but it will occasion them serious inconvenience. They must expect, when they travel either for pleasure or business, to be waylaid at their hotels and in their journeys, by constant applications for pardons, and expect to share in the annoyance and inconvenience of the hue and cry raised against the Governor in the exercise of this the most important duty of his office, and I

take it this hunting down, this pursuit and importunity of the Governor, which disturbs his peace and confuses his mind, will cease. Your committee purposes to transfers to four officials the responsibility of this duty, and designate them in the Constitution as the persons who shall first examine and report upon the pardons, and then the Executive will not be troubled to grant or refuse pardons, until he is requested by them in writing to do so; and the reasons given for this recommendation, and even then I would keep the dignity of the office, so high that the Governor can refuse to grant a pardon. This section of the article was very fully considered by the committee, and it met the entire approbation of every member of it, and I trust it will meet the approbation of this Convention.

Mr. ARMSTRONG. Mr. Chairman: This section received, at the hands of the Committee on Executive Department, more careful and anxious consideration than perhaps any other, and they have reported it to the Convention after the most careful deliberation. The pardoning power must be vested somewhere, and ought to be vested where it can be easily reached and shall be most carefully exercised. The committee has, in this section, endeavored to surround it with what they believe to be necessary and safe restrictions. The persons who are here appointed are required not only to act with great deliberation and care, but it is imposed upon them that they shall express, in writing, the reasons which have influenced their judgment, and that a permanent record shall be made in the department, not only of the pardon, but of all the reasons that have been given for granting it. This action of the persons designated is advisory only and not conclusive. It is still left in the discretion of the Executive to grant the pardon or to withhold it, as he may deem best. We believe that the power has been carefully and sufficiently guarded against abuse, and that at the same time it has not been placed so high as to be out of the reach of those for whom it ought to be properly exercised. I will not detain the committee by any farther discussion of the question. I rose only to state, that after the most anxious consideration, the report, as it stands, received the unanimous approbation of the committee, and

we hope it may commend itself to the favorable judgment of the House.

Mr. JOHN R. REED. Mr. Chairman: In offering my substitute I was actuated by the purest motives. I did not wish to make any hypocritical criticism of the report of the Committee on the Executive Department; but I did not suppose, from a careful reading of the amendment which they had offered to the Convention, that they had provided the best means for granting pardons. The report of the committee, in some respects, commends itself to my judgment, but in others I think it could be amended with advantage. It provides that the power to grant pardons is still reposed in the Governor. With that we can find no fault. To be sure, before any pardon shall be granted he shall have, in writing, the recommendation of the Secretary of the Commonwealth, the Attorney General, the Superintendent of Public Instruction, the Secretary of Internal Affairs, or any three of them. Now who does not know, as I said before, how easy it is to get the recommendation of a public officer to another public officer to do this or that, as the person recommending desires him to do? Two of the persons alluded to in this report are officers appointed by the Governor himself. One of them only is elected by the people. We all know that most of the pardons that have been granted in this Commonwealth, within the few years last past, have been made upon the recommendations of public spirited citizens, both in private life and in public life, by members of the Legislature, by district attorneys and by other prominent citizens. Yet we all know how that power has been grossly abused, and it is not necessary for me, on the floor of this Convention, to allude to instances that have been particularly mentioned during the debates of this Convention.

These are some of the considerations which in good faith induced me to offer my substitute. I am not, however, so wedded to it as when I find that the sentiment of this Convention is not in favor of any particular change, as to insist upon its being put before them; and as the Committee on the Executive Department seem to be determined about it, and as they have no doubt given it a careful consideration, and as they may have had before them the very proposition which I

submitted to this committee, I shall withdraw my substitute.

The CHAIRMAN. The substitute is withdrawn. The question recurs on the amendment of the gentleman from Philadelphia.

Mr. DARLINGTON. Mr. Chairman: I move to amend as follows: By striking out all after the word "impeachment," and inserting the following:

The CHAIRMAN. There are two amendments pending.

Mr. NEWLIN. Mr. Chairman: I ask permission of the Convention to say a single word, inasmuch as I offered this amendment, my whole object is to test—

Mr. BIDDLE. Mr. Chairman: I did not hear the amendment; I would like to have it read.

The CLERK: The amendment is to strike out the words, "Secretary of the Commonwealth Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs, or any three of them," and insert "the Auditor General and the State Treasurer."

Mr. NEWLIN. Mr. Chairman: The single word I desire to say to the Convention is this: I offered this amendment. I do not press particularly for any special shape of putting it in, but I offered it for the purpose of testing the sense of the Convention upon the general proposition of leaving to the Executive the unrestricted power of pardon; because I take it that inasmuch as two members of the advisory board, with the Governor, must constitute the majority of the pardoning tribunal, that practically the power is left just where it is. In any case, where there is any public clamor or any political force or power brought to bear upon the officers of the government to exercise the pardoning power in a particular case, in all these instances the officers appointed by the Governor, who are to advise him in this regard, will, by rumor and common gossip, know exactly what influences are brought to bear, and will know what effect those influences will be likely to have in another quarter. Therefore, though there will be no concert of action, there is that *esprit du corps*, that feeling that exists, and is well known to exist, in these cases, which will enable each officer, in any case of moment, to know how the others will be affected. So that I say, practically, to my mind this leaves the

pardoning power just where it is now; and I am strengthened, Mr. Chairman, in that view of the question by the remarks of the distinguished gentleman who sits on my left, the chairman of the committee, (Mr. Curtin,) because his argument, to my mind, is not so much an argument in favor of this particular form of an Executive council, but it is an argument against all restrictions on the Executive; not so much in favor of the detail, but against the principle embodied in this very report; and therefore I take it that the proposition comes up fair and square before the Convention on this amendment whether they will really and substantially restrict the Executive by joining with him those who are in no way subject to his influence, but who come direct from the people, or whether we shall let him name his own advisers.

It has been suggested that the accounting officers of the government are not the proper persons to share with the Governor the clemency of the State on account of the nature of their duties. I conceive that the other officers, who in the committee desire to join with him, are equally, in the nature of things, remote from a court of pardons, and that the duties of their offices are as incompatible with the exercise of the power of a court of pardons as would be those of the Auditor General or State Treasurer. There is nothing in that objection. These two officers are quite as suitable as advisers to the Governor as the others named. The question before this Convention is, whether they will restrict the power of the Governor, or whether they will appoint the semblance of a council, which has no existence in point of effect, as a check upon the exercise of the prerogative of mercy.

Mr. LILLY. Mr. Chairman: The gentleman who has just taken his seat seems to be in error in his entire presentation of the question. He is all wrong in the premises of his speech. He has assumed what is not in the section at all. He says that the Governor would, under this report, substantially have the control of the pardoning power in his own hands. The simple fact is that the matter is taken partially, and in the initiatory stage entirely, out of the hands of the Governor, and referred to four officers distinctly and specifically named, the Secretary of the

Commonwealth, the Attorney General, the Superintendent of Public Instruction and the Secretary of Internal Affairs, three of whom, sir, have to sign a recommendation to the Governor before he can touch it at all. He has nothing to do with it until after the thing gets into the hands of the officers who must examine into the matter and recommend it to him, and the whole argument of the gentleman from Philadelphia, (Mr. Newlin,) based upon false premises, therefore falls to the ground.

Mr. BIDDLE. Mr. Chairman: There are two widely divergent opinions on this subject. One is that no limitation or restriction whatsoever should be placed upon the Executive, but that the section should be left as it stands in the present Constitution. To gentlemen that entertain that opinion, I shall not attempt to offer any argument. I feel satisfied that a change is demanded by public opinion. Now, assuming that some change is demanded, where shall the power of recommendation or of pardoning be lodged? There are several theories upon this subject. You may place it in a tribunal purely judicial; you may delegate it to a board of commissioners, specially chosen with reference to this subject, or you may attempt to place it, as is attempted in this tenth section, in the hands of a body of public servants, who are supposed, from position and from previous training, to be entirely competent to give advice to the Executive upon the subject.

Now let us consider the first two modes. I feel a deep conviction myself that the very moment you impose upon the judiciary any functions apart from the distribution of justice according to law, you impair their efficiency and ultimately break them down. Why is it that we have the painful contrast, drawn more than once in our debates, between other bodies connected with the government and the judiciary? Simply because the judiciary attend to the duties exclusively devolved upon them; and the moment you fasten upon them other duties, to that extent you injure them. As was said by the chairman of this committee, when the judge has pronounced the ultimate judgment of the law, his function with the case is, or ought to be, ended forever. If there are good reasons for a modification of the judgment, they ought not to

be addressed to him who is, or who ought to be, as we say proverbially, blind.

But you may delegate this power to a body of commissioners specially selected for the purpose. There are two objections to this: One is, you create a new body of officers, who must be paid for their services, and to the extent of their being paid you impose upon the public treasury an additional burden. Perhaps that is not a very strong objection, if their work could be done efficiently. What particular guarantee have you, however, that by electing or appointing four, or six, or ten commissioners, you get a better body than the body named in this article? You want men of character, men of intelligence, and men of a certain amount of experience. You not only want such men, but you want men who sympathize, measurably, with the people's feelings. Do you think, apart from the question of additional compensation, that you are more likely to get so good a board as by taking the four that are offered by this section? Who are they? Two of them come directly from the people, by election. One of them is the Secretary of Internal Affairs, who, it will be observed, by reference to a section a little lower down, must be a man of pretty broad mind and large experience, if he is at all competent to discharge the duties imposed upon him. The other is the Superintendent of Public Schools, necessarily, to a considerable extent, a trained man—necessarily a man of character—necessarily a man familiar with the youth of the Commonwealth. Upon one point my colleague from Philadelphia (Mr. Newlin) fell into an error; these gentlemen are not appointees of the Governor—they are not subject to his influence—directly or indirectly.

Mr. NEWLIN. Mr. Chairman: I hope the gentleman will permit himself to be interrupted just a moment. I desire to say that both my colleague from Philadelphia (Mr. Biddle) and the gentleman from Carbon (Mr. Lilly) have misunderstood the purport of my remarks. They have accused me—

Mr. BIDDLE. Oh, I make no accusation.

Mr. NEWLIN. I understand that. They have, I should prefer to say, suggested that I have not properly considered the

phraseology of this section. It is true that this "advisory board" is composed of four members, and that it requires a majority to recommend a pardon to the Executive; and that without this it cannot ever come before him for action. What I contend for is this: Two of the four are appointees of the Executive and subject to the influence of which I have spoken. They are in favor of what? Simply of submitting the application for pardon to the Executive, with their formal assent. The third man can be readily got by the very plausible argument that this is not a granting of the pardon, but simply a decision in favor of permitting the case to go before the Governor for the exercise of his discretion upon his own responsibility.

Mr. BIDDLE. Mr. Chairman: I will answer here the objections of one gentleman which are entitled to weight. He thinks that the Superintendent of Public Instruction is not an elective officer. If he turns to section twenty-two he will find that these officers, the Secretary of Internal Affairs and the Superintendent of Public Instruction, "shall be chosen by the electors."

Mr. NEWLIN. I never said they were not.

Mr. BIDDLE. No; but another gentleman came to me while you were making your suggestions and mentioned that. It would be a very valid objection, but it does not exist. I should like to know why these two men—I do not speak now of the Attorney General and the Secretary of the Commonwealth—are not as well qualified as the two gentlemen suggested by the gentleman from Philadelphia (Mr. Newlin.) He suggests the Auditor General and the State Treasurer. Now, assuming that they are men of equal character, standing and experience, for their respective offices—which I feel bound to assume—I do say that the particular duties entrusted to the Auditor General and Treasurer of the Commonwealth have not the slightest relation to the question now before the Convention, whilst the duties imposed upon the other two officers, also elective, have some general connection with it. The first are purely the fiscal officers of the Commonwealth; the second have a general supervision of its economic affairs and of its education; and if you are to take two existing elective

officers, I do not know any two better qualified.

In addition to that you have the law officer of the Commonwealth, appointed by the Governor; and his own Secretary. Is it possible that these men thus appointed will be no better than a mere body of petitioners, without any duty imposed upon them, without any obligation resting upon them, in recommending the pardon of a person?

There can be only two valid reasons for a pardon. There may be indirect reasons—there may be suppositions and assumptions; but there can be only two really valid reasons for a pardon. One is, where innocence is discovered after conviction. I suppose we would all agree that a pardon could not be granted too soon, after such a discovery as this. The other is, where there are extenuating circumstances. These circumstances may arise sometimes from the age, sometimes from the sex, and sometimes from the associations and surroundings of a criminal; he or she may have been made a tool of by others, or some other extenuating circumstance may enter into the case which commends it to consideration.

The guarantee you have for proper action on the part of this board is found in these facts: That these men live in the public gaze; two of them are elected and two appointed. Their reasons are obliged to be given to the Executive in writing. This is certainly an additional guarantee, but it is not all. They might be given in writing and they might be thrust aside, where they would never be seen. But this section requires further that they shall be filed, and, in addition, that a permanent record be made of them, which I presume means transcription into a book. These reasons, therefore, if improperly given, will rise in judgment at a future period against these men, and no man who has any regard for self, no man cherishing reputation, will subscribe his name to improper reasons, which will form a part of the records of the Commonwealth.

In addition to this, as was very well said by the chairman of the committee, the Chief Executive is not bound to accede to the request for the pardon. He still reserves his own judgment. He may pardon on this recommendation, but he is not bound to do so.

Now, unless we wish to say one of two things: First, that we desire no change at all, or, second, that we wish a conviction to be irrevocable, and that no circumstance—which is hardly consistent with civilization, not to say christianity—shall ever induce a pardon to be granted to any offender, no matter what the extenuating circumstances may be, I do not see how you are going to do much better. By adopting any of the other plans, I do not see how you remedy the evils pointed out. I see a great many other good points in this plan, which, however, it is hardly worth while developing to the extreme point of development.

The question being upon the amendment of Mr. Newlin, it was rejected.

MR. NEWLIN. Mr. Chairman: I move to strike out "Secretary of the Commonwealth and Attorney General."

The motion was rejected.

MR. HENRY W. PALMER. Mr. Chairman: I move to amend the section under consideration, by adding the following words: "No pardon shall be granted except after full hearing in open session, by the persons aforesaid, or a majority of them, of petitioners and exceptants, if such desire to be heard."

The practical operation of this section, if adopted as it stands, might not materially improve the existing state of things. An attorney or agent seeking a pardon would be likely to lay his bundle of petitions, letters and reasons before the officer who happened to be his personal friend, and after securing his signature on personal and friendly grounds, claim the signatures of the other officers named for the reason that one officer had already examined and approved the application. In most cases the reason would not be urged in vain. Members of the pardon board would, from time to time, need favors from each other in the pardon business, and in the end the endorsement of either would be sufficient to secure the rest and obtain from the Governor a pardon. This, we can easily imagine, would prove to be the practical operation of the section.

Should we not guard against such abuse by adopting a proviso requiring an open hearing, before the board, or a majority of them, of the petitioners and exceptants, if such desire to be heard?

Many of the abuses of the pardoning power have sprung from the secrecy attending its exercise. It has not been customary to give notice of the time and place of soliciting a pardon, and undoubtedly many have been granted upon gross misrepresentation, forged letters and petitions. To secure the authorities against fraud, and to afford persons who object an opportunity to be heard, some such provision as that suggested would seem wise.

A further advantage would result in securing the persons named in the section from private importunity. Few men can resist the pleadings of woe-clad women with brimming eyes, and many an improper application has been approved at the behest of mistaken sympathy.

The awful infamies or woeful errors connected with this pardoning business have aroused general public indignation, and if we were not bound by the maxim, "*De mortuis nil nisi bonum*," a tale might be unfolded which would hasten this Convention on the pathway to reform.

MR. ARMSTRONG. Mr. Chairman: The idea embraced in this whole amendment strikes the committee rather favorably. I confess that it meets my personal approbation. I do not entirely like the manner in which it is framed.

MR. H. W. PALMER. I am not at all particular as to the phraseology.

MR. HARRY WHITE. Mr. Chairman: I have but a word to say in answer to what the gentleman who has just taken his seat has so well said. I am one of those who, if I had it in my power, would entirely leave the responsibility of the pardoning power in the hands of the Executive. It seems to me that the people of the Commonwealth should elect a man to the position of Governor who has the character and the firmness to say no, even at the risk of sacrificing personal friendship, or political support, when his conscience and his judgment tell him he should do so, and I conceive the propriety, the philosophy and wisdom of requiring that this responsibility shall be somewhat divided, and that the character of some other gentlemen, who occupy conspicuous posts in the Commonwealth, shall be put in the scale, and required to support the Governor in every act that

he does. In other words, I think it is wise that no pardons shall be granted, as we find things constituted, without they are recommended in writing by a gentleman who occupies the position of Attorney General, Secretary of the Commonwealth, or one of the elective officers.

If I had it in my power, and could make this report *de novo*, I would not insert the name Superintendent of Public Instruction; I would exclude him. Education is of such a delicate character, so closely identified with the moral status and prosperity of the people of this Commonwealth, that I would not subject that officer to the temptation, which must necessarily follow to those who listen to the eloquent appeals in behalf of convicted scoundrels. I would save this office from that temptation; I find it in the report, however, and shall not attempt to interfere with it.

I think there is much force in the remark of the gentleman from Luzerne, (Mr. H. W. Palmer,) in requiring that this tribunal shall be organized as a board, for the purpose of greater regularity in the performance of their duty, but we are not here for the purpose of codifying laws, and we are to assume that these gentlemen, when they are elevated to their new positions, and clothed with this power, will appreciate the responsibility, and by virtue of their power and of their office, and of their responsibility, will organize themselves into a board, and make their own rules in this regard, to hear parties, publicly, in behalf of pardon. If they fail to do this, if they fail to organize and establish rules for this purpose, it is in the power of the Legislature, after the light of the experience of years, to make a statute to meet this necessity. I would not have this provision in the Constitution; I would let it be as it is, and trust these gentlemen to recognize the propriety of the course. If they fail to do so let the Legislature provide for it by statute.

Mr. ARMSTRONG. Mr. Chairman: After full discussion with my friend from Luzerne, (Mr. H. W. Palmer,) who offered the original amendment, I propose to amend his amendment, by adding after the word "them," "after full hearing of the party, upon due notice and in open session."

Mr. H. W. PALMER. I will accept that modification, and withdraw my amendment.

Mr. GOWEN. Will the gentleman from Lyco (Mr. Armstrong) permit me to suggest the addition of the word "public" after "due?"

Mr. ARMSTRONG. I accept that.

Upon the amendment of Mr. Armstrong a division was called for, and being taken, resulted: Affirmative, sixty; negative, twelve.

So the amendment was agreed to.

Mr. WHERRY. I now call for the reading of the section as amended.

The CLERK read:

SECTION 10. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence, and pardons, except in cases of impeachment; but only upon the recommendation, in writing, of the Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs, or any three of them, after full hearing of the party, upon due public notice and in open session, and such recommendation, with the reasons therefor, at length, shall be recorded and filed in the department.

Mr. DARLINGTON. Mr. Chairman: I move to amend, by striking out all this section after the word "impeachment," in the third line, and inserting the following:

The CLERK read: "Judges of the Supreme Court shall, from time to time, appoint eight discreet persons, who shall compose the council of pardons. They shall serve without pecuniary compensation, their expenses only being paid by the Treasurer. They shall be convened at the seat of government, whenever required by the Governor. No pardon shall be granted without the consent of at least four of the council, and in no case shall a pardon be granted before conviction."

Mr. DARLINGTON. Mr. Chairman: I shall ask the attention of the committee for a very few moments. If gentlemen wish to see the substance of this amendment they will find it upon page eighty-three of the "Suggestions."

If there be any question which the people of this Commonwealth have most emphatically expressed their opinion

upon, it is that there must be some limitation of the power of pardon. No one who gives any attention to the course of public opinion can close his ears or his eyes to the fact that these-called and supposed abuses of the pardoning power have been so enormous and so great under many administrations that it calls loudly for remedy. I do not pretend to say how far these cries are justified. I have no censure to cast upon any of the preceeding Executives. That is not my business here. It is enough for me to know that there is a thoroughly imbued sentiment in the public mind everywhere; that the power of pardon, in our experience, has been so far abused as to require to be restrained by some other means than those which have heretofore been adopted. Assuming this to be the case, and that I take to be the sentiment of the committee which reported the proposition embodied in the report now under consideration.

If they have proposed to limit the power of the Governor, the question for the Convention to consider is how shall that best be accomplished? Can we safely confide this power to those in intimate and immediate relations with the Executive? Has not the public mind become so poisoned, if you please, with the state of things in and about the Executive Chair in all past time that no confidence will be felt in the limitation which anybody in the vicinity of the Capitol at Harrisburg shall be able to throw around the exercise of that power? Now, whether rightfully or wrongfully, I submit to you such is the admitted fact. There seems to be an entire want of confidence in the pardoning power. I am sorry to admit it, but such is the state of the public mind, and the public mind cannot be satisfied without placing restrictions around the exercise of this power of the Governor. It will be impossible to satisfy the public mind by combining together the very men who are supposed to be connected with the interests of the Executive, and who may partake of the same political opinions. Now can this Convention devise a better plan than the one already in existence? If it is impossible for us to establish a council for the Governor in this body that shall be free from the general taint of public suspicion, we had better abandon our work and return to our

homes. If, on the other hand, we can organize a body of men at Harrisburg in whom the public would have confidence it is our duty to do it. I submit that I am ready, for one, to go with any one else here in the Convention in adopting the best plan. I do not pretend to say that the one I have originated is necessarily the best that can be adopted. I can only say that it is the result of my best judgment and consideration. I would not, therefore, entrust the pardoning power to the Executive alone. I would not entrust it to him and to those who surround him, but I would allow him to exercise this power under the limitations and restrictions of other men selected from the various communities in the State. How, then, shall this council be constituted? I have suggested that it shall be constituted by appointments made by the judges of the Supreme Court. While I am opposed, in general, to giving to the judges of our courts any other than judicial functions, yet there are cases in which it seems expedient, because the difficulty that will be experienced in forming this council will be in selecting the men who shall command the entire confidence of the public. The appointees for such a council should be chosen from among those throughout the State in whom there shall be no guile. The men selected should be renowned for their integrity and position in society, and the men above all others to be entrusted with the selection of the members of this council, I think, are the judges of the Supreme Court. This council could be composed of eight, ten, or any number of men, and they could be selected from the neighboring counties around Harrisburg, from Cumberland, York, or Lancaster county, and certainly gentlemen could be found whose characters and integrity are far removed from all suspicion, who would be willing to serve the State of Pennsylvania when called to Harrisburg to discharge a public duty of this kind without pecuniary compensation and upon the mere payment of traveling expenses. I think there would be no difficulty in selecting such a body of gentlemen, who will be ready to devote their time to the public service, and I do not hesitate to say that they can be found in every county. It is not necessary for me indicate who they shall be. Now why should we not trust

the judges of our Supreme Court with the power to make these appointments? There is no money in it, to use a popular phrase of the day. There is nothing to be made by these appointments, and there can be no other motive than properly to discharge a public duty; neither would the appointees be influenced by any motive except to discharge their public duty. My friend on the right (Mr. H. W. Smith) might be appointed as one of the members of this council, and who would dare approach him with a bribe, or any gentleman who might be selected from the body of this Convention? The members of this council, when appointed by the judges of our Supreme Court, could assemble at Harrisburg once a month, or oftener if necessary, and the Governor could lay before them all applications for pardons. I would not give to any council, however, the right to pardon, but simply the right to counsel and advise with the Governor when he might be in doubt. I do not know, however, that anything I can say will be listened to by some of the members of this Convention, but it is not of much importance whether it is or not. If gentlemen have no mind to look into this question, or if they have formed their opinions unchangeably, why of course they are as much entitled to them as I am to mine. I do not know that I can instruct the Convention, but I think the question which should commend itself to the individual mind of every member of this body is what is the proper limitation of place upon the pardoning power—on the one hand to guard it from abuse, and on the other hand to aid the Executive in the exercise of that delicate and important trust. I should think that any well constituted mind filling the Executive Chair would be glad to have the advice of a council so selected and so chosen in every case in which he might be called upon to discharge his duty. There is no question but that it is a very high and holy duty. It must rest somewhere, and it cannot rest any where so well as in the hands of the Executive. Whatever difference of opinion may exist in regard to the formation of this council, our opinions concur that there must be a limitation to this pardoning power. I have endeavored to give the reasons I entertain in offering

my amendment, but if any plan can be proposed which will accomplish this purpose in a better manner than my amendment contemplates, I shall most cheerfully accept it. The loudest complaints we have heard in reference to the exercise of the pardoning power have been in times of political excitement, when the Governor has assumed to turn loose a man under a recognizance to appear and stand his trial for a criminal offence. I think the wheels of justice should not be obstructed by such unwise exercise of Executive clemency. If a man proves to be not guilty when brought to answer at the bar of justice, be it so. If he proves to be guilty, it will then be time enough for the Executive to interfere with the pardoning power. These remarks contain a brief statement of the principles I entertain in offering my amendment, and I therefore have submitted them for the consideration of the Convention.

The question was then taken on the amendment offered by Mr. Darlington, and the amendment was not agreed to.

MR. GOWEN. Mr. Chairman: I desire to say a few words in regard to this question, and I shall endeavor to be as brief as the importance of the question will permit. The question of the pardoning power in this Commonwealth has attracted a great deal of public attention during the last two or three years. It may be very well in theory, and probably in practice, to admit the fact that mercy is one of the most graceful attributes that can deck the Executive office of this Commonwealth, but at the same time we cannot help admitting that the stream of mercy has flown in such copious volumes during the last two or three years, that if the public can reach this question they will be very apt to take the pardoning power out of the hands of the Executive altogether.

In favor of vesting it with the Executive, that is to say, in favor of vesting it in but one person, there is this powerful argument: That where one person is called upon to perform any public function the sense of responsibility in any well balanced mind is so great that the public is more apt to be protected than when the responsibility is divided among a great number.

In other words, there is no case of responsibility at all attached to the people if they exercise their power by election, for the share that each one bears in the act is so small that it affects him little or nothing. If there is but one man to do it, it is probable that a sense of responsibility will lead him to do his duty. On the other hand the danger to be guarded against is this, that where there is but one person to act, the likelihood or probability of getting a pardon is so great that many people are led, by the ease with which it can be acquired, to seek for a pardon which they would never dare to ask for if they were to attach some publicity to the act of asking. Therefore I think it is well to follow the suggestions of the committee for some advisory board, and I think three or four are enough.

Now, Mr. Chairman, there is an objection urged against the report of the committee which is certainly entitled to some weight, and which the amendment of the gentleman from Chester was, I think, intended to cure, and that is this: That this board appointed or suggested by the committee is composed of four people, two of whom are appointed by the Governor himself, and one of whom, the Secretary of the Commonwealth, is in such intimate relations with the Governor as to be almost the Governor himself in many cases, especially in such cases where it is not possible for the Governor to give his own personal attention to the subject. The amendment of the gentleman from Chester, which was voted down, would have cured this; and yet that amendment was accompanied with this, which is to me a very great objection, the objection of vesting in the Supreme Court or in any judicial tribunal of the Commonwealth, for any purpose whatever, except for the administration of justice, in a particular tribunal the appointment of any officers at all. I conceive, as I said before, that nothing can so surely, in the long run, degrade the judiciary of the Commonwealth as to vest in them the power of appointment to office. Reflecting, therefore, upon what has been said, it seems to me that if this section were amended, by striking out the words "Secretary of the Commonwealth," and striking out the word "three," and inserting the word "two," you would then have a board of three

persons. Two of them would be elected by the people, over whom the Governor would have no control whatever, the third one would be a member of the bar, by common custom and consent occupying the position which gives to him the leadership of the bar of Pennsylvania, and surely, sir, it cannot be doubted in this Commonwealth that such a man as that, occupying the proud position of Attorney General of the Commonwealth, will be honest in any motive or act of his official position and in the exercise of any pardoning power will be governed only by his sense of right and justice. And the other two are persons elected by the people, with the sense of responsibility which attaches to a position founded upon an election.

I therefore propose to make that amendment, and while I am upon the floor, I desire to say that I propose to suggest another amendment in the shape of a proviso, namely: That no pardon shall be issued prior to the conviction and sentence of the person to whom it is granted, the object being to prevent what we have often seen in this State, and which sometimes may have been granted for most excellent reasons, but which, in my opinion, has been a great abuse—the issuing of a pardon secretly and quietly to a person charged with an offence, who goes into court with the pardon in his pocket, hoping that he may be acquitted, but relying, in case of conviction, upon his pleading the pardon in opposition to his sentence. The amendment I propose, therefore, is this:

To amend, by striking the words "Secretary of the Commonwealth," and by striking out the word "three," and inserting the word "two," and by adding to the section the following proviso:

Provided, That no pardon shall be issued prior to the conviction and sentence of the person to whom it is granted.

In regard to the last proviso there may be many cases, especially in the heat of political excitement in some particular counties of the State, when a person charged with crime may be in danger of conviction on account of political feeling, and in such a case it is proper and right that the man should be pardoned, probably, as quickly as possible after sentence. It can be done the same day. It can be

done an hour afterward. But do not let us have the exhibition in our criminal courts of a man coming in before a jury of his countrymen, asking an acquittal, when he knows that he has in his pocket the ammunition that will destroy their conviction.

Mr. LEAR. Mr. Chairman: There has been an argument with regard to this matter, based upon the assumption of a fact which has not yet been established by proof. With regard to these officials, I rise not so much to object to the pardoning power being vested in these officers, as for the purpose of forestalling what seems to be regarded as a foregone conclusion, that the Superintendent of Public Instruction is to be elected by the people. That officer; it is provided in one of the sections reported by the Committee on Executive Department, shall be elected by the people. But there is another committee of this body, that I think has just as fairly jurisdiction of this subject as the Committee of Executive Department, and that is the Committee on Education, a report from which has been made, and of which the gentleman from Chester (Mr. Darlington) is chairman. In that report we provide that the Superintendent of Public Instruction shall be appointed by the Governor, with the advice and consent of the Senate, I think two-thirds of the Senate agreeing thereto. Now that officer, when he is provided for by the Constitution, when we shall consider upon this subject, it will be time enough for us then to assume the fact he is to be elected by the people. We think that the Committee on the Executive has undertaken to do too much when they have undertaken to provide how the Superintendent of Public Instruction shall be elected, and we think our committee is more appropriate than they to consider that subject, and we recommend that he be appointed by the Governor. We do not think that at all times the people of the Commonwealth are the best qualified to judge of the fitness of a man for that position, or that the people are at all times the proper tribunal in which to repose the selection of such an officer as this, if for no other reason, because they are unfitted to judge of his qualifications. I therefore desire to protest, at this time, against an argument being based on a fact which has not yet been established.

Mr. LILLY. Mr. Chairman: I call for a division of the question.

The CHAIRMAN. The question will be read.

The CLERK: To strike out the words "Secretary of the Commonwealth;" to strike out the word "three" and insert "two," and by adding at the end of the section a proviso, as follows:

"Provided, That no pardon shall be issued prior to the conviction and sentence of the person to whom it is granted."

Mr. LILLY. Mr. Chairman: I call for a division of the question, to take place at the proviso.

Mr. ARMSTRONG. Mr. Chairman: Before that question is taken, I desire to say that the exercise of the pardoning power is essentially and necessarily the exercise of a discretionary power. It is eminently proper to limit it. It would be disastrous to destroy it. Where you take it away or render its exercise almost impossible you take from the Executive one of the most useful powers with which he invested, and the deprivation of which would be dangerous to personal liberty. The proviso which the gentleman has proposed would take from the Governor the exercise of a power which ought to be vested in his discretion. We cannot foresee all the circumstances which might require the exercise of the pardoning power, even before conviction and sentence. We have already so guarded its exercise that we believe it will not be unwisely nor unfairly exercised, and cannot be used for any other than proper purposes. To say that the Governor shall not pardon at all before sentence, is taking from him a discretionary power, which, under the restrictions of this section, it might be very necessary he should exercise. Guarded as it is, I think it would be unwise to provide that it should not be exercised at all until after sentence.

As to that part of the amendment which proposes to strike out the words "Secretary of the Commonwealth," there should not be any antagonism between the Governor and the persons appointed by this section to consider the question of pardons, and it is eminently right and proper, as it occurred to me, and as it seemed to the committee, that the Governor should have some person in this board of which he is not himself a member, who should represent him, at least in

part. It would seem proper that the Governor's views, if he entertained any, upon any particular case, should be expressed before the court of pardons. I think, therefore, that neither of these amendments would improve the section; on the contrary, I think it renders it cumbersome and would exclude the exercise of this discretionary power in many cases in which it ought to be exercised, and which, under the restrictions here provided, will be safely and judiciously exercised.

Mr. DARLINGTON. Mr. Chairman: I would like to ask the gentleman from Lycoming if it would be right to issue a pardon in a case before conviction?

Mr. ARMSTRONG. I could imagine very many such.

Mr. DARLINGTON. What are they?

Mr. ARMSTRONG. Mr. Chairman: It would be a very unwise way of legislating on a question of this importance, to propound an inquiry on the floor and ask for a horse-back opinion. I might not, at this moment, be prepared to give instances, but one has occurred to me in Lycoming county, which Gov. Curtin will well remember, in which a large number were charged with riot in times of great political excitement. Warrants were issued against some eight or ten persons, who would have been put on trial, when it was plain to all impartial persons that the entire proceedings were malicious, and closely akin to malicious prosecution. And I can readily conceive that many instances might occur when, from the malice of the prosecutor, by the easy process of swearing out a warrant, persons plainly appearing, after commitment, to be innocent, might be, as often has been done, placed upon trial, when justice would require that they should not be subjected to any such public disgrace as a criminal prosecution always and necessarily involves. I can very readily imagine many such instances, in which I believe the pardoning power ought to be, and under the restrictions of this bill, would be, wisely exercised before conviction.

Mr. S. A. PURVIANCE. Mr. Chairman: If the gentleman will permit me, I desire to express one thought upon this subject of pardon before conviction. Is not every

man put upon trial, for any crime, presumed to be innocent until proved guilty? And if presumed innocent, upon what is the pardon to rest?

Mr. ARMSTRONG. Mr. Chairman: Of course every man charged with crime is presumed to be innocent until convicted; but when convicted the sentence of the law is imposed upon him, and he suffers for the crime of which he has been adjudged to be guilty. But before conviction there is another punishment, and a severe one, which rests in public sentiment and in the popular presumptions of guilt which too frequently attach to the mere accusation. Nor is such punishment to be lightly regarded. On the contrary there are many cases in which the person accused is subjected to harsh, unreasonable, and very frequently unjust, accusations, and, under proper restrictions, it would seem reasonable that he should be relieved promptly, instead of being subjected to the successful malevolence of an enemy. When such instances occur, it would be in the highest degree advisable, under the recommendation, say, of the board, which must recommend the exercise of this discretionary power, and without which it cannot be extended to any case whatever. It is a conservative power, to be exercised in the interests of public justice, public order, public peace and private happiness. The power to release against oppression should be clear, and its exercise prompt in proper cases. There should be as much reliance upon the clemency of the government as upon its justice, and both should be exercised with equal regard to the rights of the citizen and the peace of the community. I hope the amendment will not prevail.

Mr. J. N. PURVIANCE. Mr. Chairman: The section has now, through the amendments offered, got into bad shape, and in order that the committee may have an opportunity of examining it further, in connection with the amendments, I move that the committee of the whole do now rise, report progress and ask leave to sit again.

The motion was agreed to.

IN CONVENTION.

Mr. WOODWARD. Mr. President: The committee of the whole has had under

consideration the article reported by the Committee on the Executive Department, and has instructed its chairman to report progress and ask leave to sit again.

Leave was granted.

Mr. STANTON. Mr. President: I move that the Convention do now adjourn.

The motion was agreed to.

The Convention then, at two o'clock and forty-eight minutes, adjourned.

FIFTY-EIGHTH DAY.

WEDNESDAY, *March 5, 1873.*

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith, in the chair.

Prayer was offered by the Rev. James W. Curry.

The Journal of yesterday was read and approved.

PROHIBITION.

Mr. PARSONS presented a petition from citizens of Williamsport, praying for the insertion of a clause in the Constitution prohibiting the sale of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. S. A. PURVIANCE presented a petition from citizens of Allegheny county, praying for the insertion of a similar provision in the Constitution, which was referred to the Committee on Legislation.

Mr. DARLINGTON presented a petition from the Longwood monthly meeting of Progressive Friends, praying for the insertion of a similar provision in the Constitution, which was referred to the Committee on Legislation.

Mr. WRIGHT presented a petition from the citizens of Luzerne county, praying for the insertion of a similar provision in the Constitution, which was referred to the Committee on Legislation.

DIVISION OF COUNTIES.

Mr. PARSONS presented the petition of Hon. A. C. Bush, of Tioga county, remonstrating against any change being made in the Constitution in relation to creating new counties or dividing old ones, which was referred to the Committee on Counties, Towns and Townships.

SENATORIAL DISTRICTS.

Mr. BAER offered the following resolution, which was read and referred to the Committee on Legislation:

Resolved, That the Committee on Legislation be requested to take into consideration the propriety of reporting a section which shall substantially provide:

I. That the State shall be divided into six Senatorial districts, upon the basis of

population, of which Philadelphia shall always be one.

II. Each district shall elect six Senators. Each voter shall vote for not more than four persons, and the six persons highest in vote shall be declared elected.

III. The House of Representatives shall consist of two hundred members, to be elected from districts based upon population.

IV. Districts shall be formed of compact and contiguous territory.

THE LEGISLATURE.

Mr. BROOMALL offered the following, which was read and referred to the Committee on the Legislature:

The General Assembly shall apportion the State for the election of Senators and Representatives according to population, as ascertained by the last preceding census, every ten years, commencing at the first session after the adoption of this Constitution. Senators and Representatives shall be chosen in single districts of contiguous territory, and, as nearly as possible, of equal population, the boundaries being county or city lines where practicable, otherwise by township or ward lines. The number of Senators shall be thirty-three, and the number of Representatives one hundred.

LEAVE OF ABSENCE.

Mr. HAY asked and obtained leave of absence for himself for a few days.

Mr. DARLINGTON asked and obtained leave of absence for Mr. Hemphill for a few days.

EXECUTIVE ARTICLE.

The Convention then resolved itself into committee of the whole, Mr. Woodward in the chair, for the further consideration of the article reported from the Committee on the Executive.

The CHAIRMAN. The Clerk will read the pending section and amendments.

The CLERK read:

SECTION 10. He shall have power to remit fines and forfeitures; to grant reprieves, commutations of sentences and pardons, except in cases of impeachment.

but only upon the recommendation, in writing, of the Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs, or any three of them, after full hearing of the parties upon due public notice and in open session, and such recommendation, with the reasons therefor at length, shall be recorded and filed in the department.

The CHAIRMAN. The gentleman from Philadelphia (Mr. Gowen) moved to strike out "Secretary of the Commonwealth," and strike out "three," in the fifth line, and insert "two."

The gentleman from Carbon (Mr. Lilly) called for a division of the amendment, and the immediate question before the committee is upon the first part of the amendment of the gentleman from Philadelphia (Mr. Gowen.)

Mr. MANN. Mr. Chairman: I move to amend the amendment, by inserting in lieu of the words stricken out, "the ex-Governors of this Commonwealth." The motive will be to add those gentlemen to the pardoning board. I am in entire accord with this section. I believe it is the judgment of the committee, that in the main the section is a necessary one. The developments that have been made in the last two or three years, the dissatisfaction with the matter of pardons, show that in justice to the Executive of the Commonwealth, something of this kind is necessary to satisfy the public demand. But I apprehend there are very few delegates who are quite satisfied with the officers named in this section to co-operate with the Governor, and advise with him upon this subject. I therefore make the motion to add to them the distinguished gentlemen who have filled the office of Governor.

This is not my own idea. The proposition was submitted to the Convention in the early part of its session by a distinguished member of the bar, representing the Dauphin district. I claim no credit for the idea, therefore; but when I heard it announced it struck me as the most satisfactory proposition that had been made or has been made to the Convention at any time upon this subject.

Mr. BOWMAN. Mr. Chairman: Will the gentleman allow himself to be interrupted?

Mr. MANN. Certainly.

Mr. BOWMAN. In case there should be no ex-Governor, what would be done?

Mr. MANN. The section will not be affected. It provides for certain other officers, any two of whom can make the recommendation required. The addition which the amendment proposes to make will not interfere in any way with the successful operation of this section; but it is hardly probable that we shall ever be in the condition of having no ex-Governor. We have three now living, in the prime of life, and I believe any delegate, who for a moment refers to these gentlemen, will be satisfied that this is a wise proposition. They have had great experience upon this very question; they were selected because of the confidence which the people reposed in them, and they will, necessarily, always be entirely independent of the Executive, sustaining no such intimate relations with him as could, in any way, affect their judgment upon propositions pending. They would be, Mr. Chairman, the most independent board we could select. They would be selected without any machinery, without any action on the part of the people. They would come naturally and properly to the discharge of these duties, because their attention had been given to them for years. They would have all the information upon this question of pardon of crimes that is possible for any gentleman to have, and in addition to that, it would be paying a proper respect to the gentlemen who have been called to exercise the duty of the Governor of this Commonwealth; and I have no doubt, should this amendment be adopted, and the section become part of the Constitution, we would forever remove this question of pardon from all suspicion of improper influences being brought to bear upon the Executive.

I feel great confidence that the adoption of this amendment would lift this question of the pardoning power out of all suspicion, and remove it from all the unpleasant rumors that we have heard for the last few years.

The CHAIRMAN. The Chair is doubtful whether the amendment of the gentleman is at present in order.

Mr. MANN. Mr. Chairman: There is a motion to strike out, and I move to insert.

The CHAIRMAN. The question before the committee is this: The gentleman from Philadelphia (Mr. Gowen) moved an amendment with two parts. The gentleman from Carbon (Mr. Lilly) called for a division of that amendment, and that brought us to the question of the first part of the motion of the gentleman

from Philadelphia, (Mr. Gowen,) which is, to strike out "Secretary of the Commonwealth." The Chair now understands that the motion of the gentleman from Potter (Mr. Mann) is, not to strike out "Secretary of the Commonwealth" and insert "ex-Governors," but to add "ex-Governors" to "Secretary of the Commonwealth and other officers."

Mr. MANN. The gentleman from Philadelphia (Mr. Gowen) moves to strike out; I move to amend, by inserting.

The CHAIRMAN. But you do not move to strike out.

Mr. MANN. I have a right to move to amend a motion to strike out by moving to insert in place of the words to be stricken out.

The CHAIRMAN. The opinion of the Chair is that the motion of the gentleman from Potter (Mr. Mann) will be in order if the committee shall vote down this amendment of the gentleman from Philadelphia, but that in the present posture of the amendment of the gentleman from Philadelphia, (Mr. Gowen,) the Chair is of the opinion that the motion of the gentleman from Potter (Mr. Mann) is not in order.

Mr. MANN. I am then placed in this position: There is a motion to strike out "Secretary of the Commonwealth." I desire to vote in favor of that proposition; but suppose it is voted down? Then I cannot make the motion which I desire to make. I want to make a motion to strike out "Secretary of the Commonwealth," and insert in place thereof, "the ex-Governors." How am I to reach that end in any other way than the one which I am now striving for? If the motion to strike out is defeated, it precludes my motion to strike out and insert.

The CHAIRMAN. It precludes a motion to strike out, but it does not preclude a motion to strike out and insert, which is the substance and essence of the gentleman's motion.

Mr. MANN. I understand that; but I take it that every member has a right to have his motion in that form, to strike out the "Secretary of the Commonwealth," and insert in the place of that. I think that motion will be stronger than to insert it as a separate proposition. However, I waive my own opinion and accept that of the Chair.

Mr. TURRELL. Mr. Chairman: I have listened to the discussion that has been had upon this section yesterday and this morning, and to the suggestions that have

been made. They have failed to satisfy me that we shall be able very materially to improve this section as it stands now, with the amendment adopted yesterday at the suggestion of the gentleman from Luzerne (Mr. H. W. Palmer.) It seems to me to have been well considered in all its bearings, and constituted in such a manner as will give confidence to the public that those questions which arise upon the granting of pardons will be considered and not hastily disposed of.

Now the proposition of the gentleman from Potter, (Mr. Mann,) to add ex-Governors to it, it seems to me, would be only to make it cumbersome and inconvenient, as well as open to the objection that it must impose an additional expense. As at present constituted, a leading feature that the committee had in view, in framing this section, was evidently convenience and economy, as well as promptitude of action. The board is composed of officers already elected and at the seat of government; therefore, whenever an application for pardon came before them it could be readily considered and disposed of, and without adding to the expenses of the Commonwealth. To ask the ex-Governors to go to the capital of the State and sit there in session, as provided for in this section, to examine these cases, from time to time, without compensation, would be unreasonable.

So that one view which the committee had in making this economic would be frustrated. These gentlemen would of necessity be called there from time to time. They might have a case under consideration one day, go home the next, and some poor mortal who may be under sentence of death would require their attendance immediately again, to consider his case before he should be launched into eternity. It would put upon those gentlemen an exceedingly unpleasant and onerous duty, to which, doubtless, they would strongly object. This, to my mind, is a serious and conclusive objection. The other arguments which have been presented, in relation to the constitution of this board, have been so fully gone into that I will not take up time to repeat them. It seems to me that we should do well to take this section as it stands, and adopt it.

Mr. CORBETT. Mr. Chairman: I think the amendment offered by the gentleman from Philadelphia (Mr. Gowen) very objectionable, that the pardoning power cannot be exercised before conviction. There are cases of that kind where the par-

doning power is necessary. Take cases of riot and of insurrection. It might be a very salutary power for the Governor to exercise the pardoning power by a general proclamation. This proviso would prevent the exercise of that power in a case of that kind; and I think it would be very doubtful policy for the committee of the whole to adopt that second division of the amendment.

Mr. ARMSTRONG. Mr. Chairman: What is the precise question upon which the Convention is now to be called upon to vote?

The CHAIRMAN. That the words "Secretary of the Commonwealth" be stricken out from the third and fourth lines, and the word "three," in the fifth line, be changed to "two."

Mr. ARMSTRONG. That is the first division?

The CHAIRMAN. Yes.

The question being upon the first division of the amendment, it was rejected.

The CHAIRMAN. The question is now on the second division of the amendment, that no pardon shall be granted before conviction.

Mr. ARMSTRONG. Mr. Chairman: Is it competent, at this time, to discuss the question? The committee have not been heard from as fully on this point as they would probably like to be, and I trust the Convention will hear the chairman of the committee (Mr. Curtin) on this question.

The CHAIRMAN. The Chair believes the question open for discussion.

Mr. CURTIN. Mr. Chairman: I did not desire to intrude upon the Convention again on the article reported from the Committee on the Executive Department, but the change proposed by the gentleman from Philadelphia, (Mr. Gowen,) and embodied in the amendment now before the Convention, is, in my judgment, one of such grave importance as should demand the serious consideration of every member of this body. It is to take from the Governor the power of pardon before conviction and sentence.

It is quite true that what is called "previous pardoning" is by no means free from abuse, and the Executive who has the courage to exercise that power generally falls under the displeasure of a large portion of the people, and always the denunciation of the press. I doubt very much whether that power has been often abused; and of all the official functions given to a citizen under our form of government, notwithstanding all that has

been said, and the current of abuse and denunciation which has been running for many years against the Executive for the exercise of that power, I do not believe there is any delegated authority or official function less abused than it has been.

For when a man who has the pardoning power approaches its exercise, conscious of its delicacy and alive to the criticisms which will follow, his act will be cautious, and, after all, sir, we must trust men. You may put into your Constitution whatever restraints you can devise and give expression to your disapprobation of the abuse of the pardon in the most positive words the English language affords. You may surround the Executive with threatened pains and penalties, trammel him with restraints and restrictions on his legitimate and necessary powers; nay, you may create armies, if you please, to see that the people are protected in their just rights, and to compel the Executive of the State to perform his duties, and to restrain him from violating or exceeding his duties, and yet we come down, after all, to the plain, practical fact that in our form of government, and indeed in every government upon earth, you must trust men; and all men are alike, mortal and may err. If the men you place in power abuse their trust, our form of government provides the means of getting clear of them. Our prosperity is so marvelously great, and our people are so enlightened, that the ingeniously devised machinery of government runs on, notwithstanding it may sometimes be badly administered. You must have an Executive, and when you elect a citizen to the high position of chief Executive Magistrate of your State, and give him the pardoning power at all, he may abuse it, and it is possible it has been abused, but not to the extent commonly charged, and in a large measure believed by the body of the people. In fifty cases out of every hundred, however, where pardons are granted, your Executive is abused, and no one halts to ask if he has not been imposed upon by his friends, and those who have pecuniary interest in obtaining pardons or those who have some relationship to the prisoner, or special interest in case.

You give your Governor the pardoning power; therefore the power to exercise mercy; and clothed with this beneficent attribute of Government, the properly constituted man will take care that he does not violate his conscience when he is

to answer to that monitor in the exercise of a high official authority, and if he is not to have the power to pardon, or if it be not lodged in some official—in some part of the government—then the office of Governor ceases to be of dignity; and you turn away from the mercy side of humanity, and your form of government in this respect will be tyrannical and barbarous. You will suffer courts and juries to inflict punishment; and whether the citizen accused be convicted by mistake from some local excitement, prejudice or jealousy, by any of the passions which so fill the human breast, you turn yourselves away from humanity, and you deprive your fellow-citizens of a positive natural right—the right to demand mercy from man as he can pay for it to God. An Executive may err, it is true, in exercising this power of pardon, but if he errs in exercising that power, he has the sweet consolation of knowing that he is using that beautiful attribute—that sweet inspiration of the human heart, the most precious gift of Providence—*mercy*! Mercy to a fellow-being, mercy to the poor, mercy, especially, to the poor unfortunate man who may have been convicted of, or charged with, crime by the designing and the cruel, the wicked and the powerful.

Now, Mr. Chairman, how often has it occurred in your experience in life, as a member of the bar—why it has occurred in the experience of the youngest member of the bar holding the honor of a seat in this Convention—that a man is arrested and imprisoned, charged with crime, and his accuser seeks to punish him by the accusation and imprisonment before trial, without the slightest expectation that the trial will result in conviction. He has his personal revenge to gratify. Would it be proper to leave the State without the power to relieve a man thus imposed upon? That is one of the evils in the contemplation of the Constitution when it grants the power of “previous pardon.” You suffer citizens to be arrested and incarcerated in times of high political excitement, against whom there may be prejudice, against whom a hue and cry has perhaps been raised, founded on falsehood and pursued with malice, and if they have committed no act to warrant such incarceration, it is eminently proper that the Executive should be appealed to for relief. It is to meet such and kindred cases that the power of “previous pardon” is granted. If you take away the right to pardon be-

fore trial you take away from this section of the article on the Executive department one of the essential attributes of the pardoning power.

It is to be noticed that before the Executive can pardon a criminal, as proposed in this section, the application is to be considered and examined by the gentleman we have named in connection with the Executive department. Now, Mr. Chairman, full one-half the applications for pardon in the State of Pennsylvania are made on account of the character of the sentence. I read in the newspapers the other day that four men were sentenced to the penitentiary for a term of two years and a half, having been found guilty of keeping some kind of a gambling saloon in this city. I have no doubt of the integrity of the court in pronouncing that sentence, and there can be no question that that learned and enlightened court, in sentencing those criminals, believed the sentence was just, but will any member of this Convention tell me that the newspaper clamor and the public excitement on the arrest of these men had nothing to do with influencing the mind of that court in passing a sentence so much heavier than the crime seemed to demand? I venture to say before a year runs around, the jury that tried these men, the newspapers that made the attack, and many virtuous and intelligent people of this city will unite in an application to the Executive to grant a pardon to these men, on the ground that the sentence was too severe for the crime, and it is in such cases as these that the pardoning power should be exercised. Courts err as well as the Executive, and the power that sentences does not always measure the crime, and it is for this reason many, very many, applications for pardon are made, and this tribunal is proposed to be created. By the committee full and just consideration can be given to all applications for release. If the Executive cannot be trusted with the exercise of this power we had better abolish the office. I was surprised to hear the amendment of my friend from Potter county (Mr. Mann) read by the Clerk. I have been speaking of mercy, and I hope that gentleman will be a little merciful. A man who has passed through the pardon mill would like to be in peace the remainder of his life, and when Executives have held the pardoning power and have been subjected to criticism, abuse and misrepresentation, when they have retired from their office,

I beg the gentleman, my good friend, do not persecute them to their graves, for while a man may have held that important trust to the satisfaction of the State in all other respects, he shivers as if he was in the cold shower after a hot Russian bath, when he thinks of the annoyance he suffered through the exercise of the pardoning power, and threatened with it again. If you want ex-Governors to live, in the name of mercy do not place this burden upon them. There are three ex-Governors now living, and I do not think either of them would live under the persecution they would be compelled to endure. I hope, therefore, the gentleman from Potter (Mr. Mann) will withdraw his amendment, and that the section will then be adopted as it is reported by the committee. The section was fully considered by the committee, and I do think has preserved in that section of the article the only means of securing the impartial exercise of this power of the Executive. Mr. Chairman, I regret that some one proposes for me to address the committee again upon this question. I am obliged to the committee for its indulgence, and shall not trouble them again.

MR. LAWRENCE. Mr. Chairman : I am very well aware that the discussion of this question has been quite full, and I have not desired to occupy the time of the Convention, and had it not been for some remarks addressed to the Convention by the last speaker (Mr. Curtin) I should not have said a word in regard to this section. It is very natural that a gentleman, situated like the distinguished chairman of this committee, should be desirous to speak upon this subject, and, I think, he more fully comprehends the subject than any member of the Convention. I infer, however, from the gentleman's argument, that he would, if he had the individual power, continue the pardoning power in the Executive alone. I say that this seems to be the force of the gentleman's argument. Now, Mr. Chairman, if I understand the feeling of the people of this country in regard to this question, not only within the limits of our own State, but in almost all the States of this Union, and under the general government, it is that there ought to be some restraint upon this power which has been abused. It will not do for the gentleman who has just spoken, or anybody else, to say that the pardoning power has not been abused in this State, in the State of New York, and under the general government. Why,

much has been said in this Convention, by gentlemen of distinguished ability, against the President of the United States for having abused this power within the last few months, and it is only recently that he has been censured for having pardoned a most miserable scoundrel named Brown, who repeated at a late election in this city. When I was in Washington, the other day, I found, just as my friend, Mr. Curtin, has said, the President had been imposed upon in the same manner as Governors of this State have been imposed upon, but still this is no argument against the propriety of limiting this pardoning power. I found, in Washington, that a democratic member of the House of Representatives, a most distinguished and upright man, had been endeavoring, week after week, to introduce a resolution before that body, calling upon the Attorney General and the President to produce the papers which accompanied the pardon, and the reasons why the pardon was granted. "Why," said that member of Congress, "I do not desire to implicate the President in anything that was wrong in granting that pardon. I want to exonerate him." He said he knew that the Attorney General had been imposed upon, and that the President usually referred such cases to that official, as happened to be done in this particular instance. Upon inquiry, I learned that gentlemen of standing in this city, whose names I do not know, and I would not repeat if I did, went to Washington and laid the papers containing the application, with forged names attached, before the Attorney General. The Attorney General, who is a very just and upright man, and of decided ability, doubtless sent the papers to the President, who, after an examination of the recommendations and the request positively made, pardoned Mr. Brown. The pardon ought not to have been granted, but it was granted, and only obtained by means of a fraud practiced upon the Attorney General and the President.

Now I have mentioned these facts in justification of the President, because he has been referred to by my colleague from Washington, (Mr. Hopkins,) who is not present in the Convention on account of illness, and by the gentleman from Philadelphia, (Mr. Gowen,) who censured the President severely, the other day, for granting this very pardon. The distinguished chairman of the Committee on the Executive Department (Mr. Curtin)

has, himself, admitted that the Executive of this State has been occasionally imposed upon, but these facts and instances of the unwise exercise of the pardoning power do not form an argument against its limitation.

I repeat, Mr. Chairman, that there is a wide-spread sentiment, all over this country, prevailing in the public mind that this pardoning power ought to be restrained. Why, sir, has not this power been abused in New York? It is well known that Governor Hoffman, who is a man of decided ability, has been traduced and censured because he exercised this power probably too often; and now you will read in the papers of to-day that that stern old patriot, Governor Dix, of New York, is in the city of New York conferring with some of the judges about the propriety of pardoning Foster, who was convicted of murder. Governor Dix has refused to pardon some of the criminals in that State; and we must conclude that it will not do to look only to the side of mercy in such cases. Why, I recollect when the chairman of this committee was Governor of the State of Pennsylvania I went to him and sought a pardon for a man in my county, who had been convicted of arson. I narrated the circumstances to the Governor, how the crime had been committed at the instigation of others and through whisky, and the Governor pardoned him. Now he is one of the best citizens in our county. He is an upright, honest man, sustaining his family in the western part of the county, and he exhibits his gratitude on all occasions by voting for Governor Curtin ever since, as he does for your humble servant; so that I do not say that there are not cases wherein this pardoning power may be properly exercised. I would not remove it entirely from the Executive, but I say it ought to be restrained; and when I arose I intended to say that I congratulate the committee in presenting the very best board that could possibly be preselected under the Constitution. This power must either be committed to one man or to several men, and the committee proposes to constitute a board composed of officials already in office; but as my friend from Chester, (Mr. Darlington,) who is very prolific in his imagination, yesterday proposed to amend the section by giving the Governor the power to appoint a board, consisting of eight or ten persons, —

Mr. DARLINGTON. No; I proposed giving the power to the Supreme Court.

Mr. LAWRENCE. Well, I concurred with the Convention in voting down the amendment, as I think our courts should not be encumbered with any such duty; but I thought there was something honest in the proposition, because, coming from a Quaker neighborhood, it is not to be supposed the gentleman could be influenced in any way. [Laughter.] I admit, Mr. Chairman, that there is force in the argument presented by the gentleman from the city (Mr. Gowen) yesterday, in reference to the motion which he made, to strike out the words, "Secretary of the Commonwealth," in the section, for he is an officer directly under the control of the Governor, and will almost invariably obey what the Governor dictates, and *vice versa* the Governor may obey what the Secretary of the Commonwealth dictates. There is much force in the argument used by the gentleman, but it is a question in my mind whether you can devise a more suitable board for the purpose named in the section than by constituting it in the manner devised by the committee. The pardoning power must be placed somewhere, and as it is impossible to destroy it altogether, or remove it entirely away from the Executive, the committee have proposed to entrust the power with the Governor, the Attorney General, the Commissioner of Public Instruction, &c., and then the gentleman from Luzerne (Mr. H. W. Palmer) has suggested that the hearing of applications for the granting of pardons must be in open court, or in other words, "openly." I think, however, this suggestion may be attended with serious personal difficulty to some poor men who may be applicants for pardon; but still, after all, it is the better plan if it is designed to throw additional safeguards around the pardoning power. I do not charge the gentleman from Centre (Mr. Curtin) with having abused the pardoning powers, and I do not desire him to so understand my remarks. I do not know that he ever did, although he has been charged with so doing, as well as his successor; and I think if the history of pardons which have been granted improperly in this State could be examined, it would be found that they were obtained through the influence of the friends of the Governor, or as has been remarked, through imposition or an error in his judgment. This is precisely the trouble. We are naturally kind-hearted, and we do not desire to occasion an injury to any person, and we many times suffer our friends to

advise with us in matters of charity. I remember Governor Geary, a short time before his death, told me that he received as many as twenty-five applications for pardon in one day, and that he considered their attention involved more inconvenience and annoyance than any other duty of his office, and I think Governor Curtin will testify to the same effect. The section which the committee proposes, if it is adopted, will relieve the Governor, in part, of the weight of this obligation, and it will divide the responsibility. The only difficulty in the way of this plan reported by the committee working successfully is the one suggested by the gentleman from Luzerne, (Mr. H. W. Palmer,) that special pardons might be obtained by sending the application from one commissioner to another, and thus obtain the individual consent of each commissioner to grant the pardon; but this would not, in all probability, occur very often, and under the amendment proposed by the gentleman from Luzerne (Mr. H. W. Palmer) it will be rendered impossible of occurrence at all.

I do not want to detain the committee, but I say that the people will sustain us if we restrain this pardoning power. And if we do not do it—if we do not pass some provisions here—if we do not put some provision in the fundamental law restraining this pardoning power, thousands of men in this State will vote against your Constitution, and they ought to do it. I assert again that this power has been miserably abused all over this country, in all the States of the Union. You will find that when men have been called together to frame a fundamental law, as they have been in some of the States, that this is one of the subjects which always engages their attention; and in all the States which have acted upon this subject they have formed some board which has restrained the power which had been in the hands of the Executive. I trust, therefore, that the clause, just as it is, will pass without the amendment of the gentleman from Potter.

MR. TEMPLE. Mr. Chairman: I rise simply to say a word in this regard. It is with great diffidence that I assume to make any suggestion in opposition to the distinguished gentleman from Centre, (Mr. Curtin,) who is chairman of this Committee on Executive Department. But I have three points which I deem to be of importance on this question.

First. If the amendment is not adopted, it takes away, to a certain extent, the right of trial by jury.

Second. The Governor will be pardoning a person for an offence for which he has not been convicted, and about which the Executive is presumed to know nothing at all.

Third. I believe that public necessity requires it.

First, then, it has been suggested here that criminals are often arrested and confined in our jails without an opportunity of trial. I merely beg leave to submit to the committee that the opportunities for trial by jury under our judicial system give every man an opportunity of proving his innocence much easier and with greater facility than he could by an appeal to the tribunal of which the Executive constitutes a part. It cannot be denied, in speaking upon this branch of this question, that the pardoning power has been greatly abused. There is no doubt about that, and the distinguished chairman of the Committee on Executive Department has not undertaken to deny it. He says that it is the exercise of that mercy which pertains to every human being, and he goes on to say, in justification of his statement, that the Executive is not to blame, and that the friends of the prisoner and the friends of the Executive are the persons to blame. Well now I beg leave to say that this is the greatest reason why this amendment should be adopted. If the Executive has heretofore been imposed upon by reason of the pressure brought to bear upon him by friends of the criminal, or by reason of pressure of his friends brought to bear on him, is it just, is it right to the community that Executive clemency should be exercised for such reason, without giving the Commonwealth an opportunity to have the guilt or innocence of a man charged with crime proved regularly before court, and his case passed upon by a jury of his peers? I submit that this is the strongest reason in favor of the adoption of this amendment. It has been admitted by the gentleman from Centre himself, who so long and so honorably filled the chair of the Executive of this State, that the Governor of the State is likely to be imposed upon by the friends of the criminal and the friends of the Executive. I submit that this is the strongest reason why this amendment should be adopted.

Again it has been asserted that very frequently a man can be arrested and

thrown into prison, and there would be no disposition on the part of the courts to try his case. In the city of Philadelphia, I presume it is so all through the State, there are regular terms of court. When a man is arrested who is charged with crime, if his offence be trifling, or if he is not a noted criminal in the community, it is easy for him to obtain bail to appear at the next term of court. His case is then submitted to the action of a grand jury, which passes upon his offence. If the majority of that grand jury find a bill of indictment against the prisoner he is taken into an open court, under the same conditions as attach to any other citizen of the Commonwealth. He is surrounded by eminent and learned counsel. He comes before the court and, under the instructions of that court, he has a fair trial, and, more than that, he is given the benefit of any reasonable or rational doubt that may be thrown into the scales of justice, and if that doubt is in his favor, and I do not mean by a doubt any mere figment of the imagination, but any good, substantial reason why the accused shall not be convicted, he is at once discharged. And even after that, if he is improperly convicted, he can go before the tribunal which tried him, and if he can satisfy the court of that fact, under our rules in the city of Philadelphia, and I presume it is the same throughout the State, there is a limited time given to the court to pass upon the sentence of the person convicted, and if evidence of a proper character be submitted to the court, and the court is satisfied that the sentence is harsh, or if it appears that the party convicted has been improperly dealt with, the court can re-consider its sentence, if they see proper and think justice requires it.

How would this operate if the Executive department of the government, constituted as it will be under this section, had the right to pardon criminals before they were tried? Why, you would constitute this very board a board for the trial of criminal cases. It would be run down with business. Its whole time would be occupied by persons coming before this board and asking to have their cases tried before they had been submitted to the scrutiny of a grand jury or been judged of by a petit jury; but, more than that, as the proposition was stated by me in the outset, this court of last resort is not the proper tribunal to try a criminal.

Some instances have been referred to where a pardon has been granted a criminal before conviction. I beg leave to refer only to one. I was not in the hall when the gentleman from Philadelphia (Mr. Gowen) spoke upon this subject. I do not know what he said. But I submit that in one instance, at any rate, which occurred in the city of Philadelphia, where Executive clemency was awarded to a criminal prior to trial; it was a great abuse of the pardoning power. It was abused so far that the whole community was up in arms against the Executive for the exercise of that clemency prior to the trial of the criminal. I refer to a person who lived on North-Sixth street, in this city, and because some boys coming along pulled his door-bell, as boys will do, on Hollow Eve night, he shot one of them with a pistol in a most reckless and brutal manner. He was indicted by the grand jury; the day for the trial was fixed but he fled to Europe, and his bail was forfeited, and because he wanted to come back to this country and engage in a lucrative business, an appeal was made to the Executive to pardon him and to remit the forfeiture of his recognizance, and the Governor who last filled the Executive chair of this Commonwealth pardoned him before he had been tried, and there has never been, to this hour, a reason given for what I consider to be such an extraordinary and unreasonable exercise of the Executive power.

Well now, Mr. Chairman, why should we do this? Is there any necessity for it? Is it not forfeiting, to a certain extent, the confidence we have in our court? Why the distinguished gentleman says that in many cases a whole jury will sign a recommendation that a pardon may be issued to a criminal. I do not deny this. I have known cases where I have been retained professionally, in which the signatures of the whole jury have been secured to a petition that the criminal might be pardoned, but they have been rare cases, and I do not think that these rare exceptions should cause us to depart from what I believe to be a cardinal principle in our government, that we should maintain the right of trial by jury, thereby preserving the forms of law, and also give every defendant an opportunity to come before his peers, and have them decide whether he is guilty, and then if the court sees fit to exercise what might be considered a vin-

dictive spirit in its sentence, we can then appeal to this pardoning board.

I am decidedly in favor of this amendment and trust it will be adopted. I could go on and narrate instances of this kind, where I have personally known that the use of the pardoning power has been violated. But, inasmuch as the subject has been somewhat fully discussed, I rest my argument here.

Mr. BOYD. Mr. Chairman: I do not think that an hour or so more spent in the consideration of this question will be wasted time, because if the people of this Commonwealth expect one thing more than another, it certainly has reference to a change and a reform in the pardoning power. There is no gentleman on this floor but who can bear testimony that his constituents are deeply impressed with the conviction that there is some remedy needed in this quarter. I desire to say, that if no other means shall be adopted than that reported by the Committee on Executive Department, it will fall far short of the public expectation in this regard.

Now, sir, it is known that the Executives we have had for several years past have desired a change with reference to this matter, and I know that the present Executive of this Commonwealth is exceedingly desirous that a change should be effected, and would rejoice to be wholly and entirely relieved from that function of his office. Now the committee's report, as I understand it, proposes to leave the pardoning power just where it has always been, because that is the effect of their report. It is true they have provided that the Governor, Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction and the Secretary of the Interior shall be a board of pardons. Well, it will be observed that every one of these gentlemen are appointed by the Governor. These places, therefore, will be all filled by him.

Mr. BIDDLE. Mr. Chairman: I desire to correct the gentleman. Two of these officers are elected, two appointed.

Mr. BOYD. Mr. Chairman: I understand that there is to be a board of pardons. The Governor is to be one.

[Several delegates. No! No!]

Mr. BOYD. The section says:

"He," that is the Governor, "he shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment, but only upon the recommen-

dation in writing, of the Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs, or any three of them, and such recommendation, with the reasons therefor, at length, shall be recorded and filed in the department."

Now I understand that it is proposed to take out the Secretary of the Commonwealth, and that it is the amendment pending.

Mr. BIDDLE. That is already voted out.

Mr. BOYD. Very well. Then as it stands, the Attorney General, Superintendent of Public Instruction and Secretary of Internal Affairs shall be the board.

I intend to move, at some time, when it will be in order, to refer this section back to the committee, with instructions, having in view some mode by which this thing can be improved. I shall propose to take it away from any officers connected with the State government, and have it lodged in an independent body.

There will be no impropriety in having the Governor president of such a board but to have it constituted of members of his cabinet would be precisely the same as we have had in it in the past. I have always understood that heretofore the Attorney General and the Secretary of the Commonwealth, the cabinet of the Governor, have had pretty much all to do with granting pardons. This I know has been the case in the recent past, that almost every application for a pardon has been considered in the manner stated, and, as a matter of course, if the Governor is desirous that a pardon should be granted, or issued, his cabinet is very apt to defer to the wishes of the Governor, so that, at least, it becomes the act of the Governor himself; and what I contend for, and mean to insist upon here, will be: That this mode shall be changed, and a board of pardons, constituted either by appointment or election, I do not care which, with the Executive of the State as president of it, the other members to be wholly independent of him, so that there will be no responsibility of one to the other, by virtue of their position in the Executive department of the State; and unless something of that kind is done, I am perfectly convinced that our work here in this behalf will fall very far short of public expectation. I have no doubt that every Governor who has exercised this pardoning power believes he has exercised it in a conscientious manner; but we all know that pressure has been brought

to hear upon them of such a character, that is has been found impossible to resist. It is all nonsense for any gentleman to rise here and point out individual instances of the abuse of this power. To relate such instances which have come under the personal observation of the members of this body alone, would simply overwhelm us in the length of time it would take us to recapitulate them. Influences of a political and personal nature are brought to bear, and all that sort of thing always result in a pardon. I therefore shall vote against this section altogether, and against any amendment short of the mode and manner which I have indicated, to wit: An independent board of pardons, of which the Executive shall be the president.

Mr. J. N. PURVIANCE. Mr. Chairman: I think it would meet the approbation of this Convention to let this section pass in committee of the whole, and then if there be any material objection to it, it can be corrected on second reading. Now the amendment offered by the gentleman from Luzerne (Mr. H. W. Palmer) is not accepted by the Committee on the Executive, at least not by a majority of that committee, because, I take it, it would almost exclude every application for pardon. If an applicant for a pardon were compelled to go before a board, a kind of a court, and have his attorneys there, and his witnesses, and undergo a kind of a second trial after that due public notice, I apprehend that it would be almost a complete bar to all applications for pardons. Therefore I trust that the amendment will not prevail, but that the section will be adopted as reported by the committee.

Now, I would say, Mr. Chairman, that this section was very fully considered by the Committee on the Executive Department. There were various propositions before that committee; one was, as suggested by the gentleman from Montgomery, (Mr. Boyd,) to have a court organized, to be appointed by the Governor, composed of some five or six or seven citizens of the Commonwealth, entirely outside of the officials of the government. Another was to confide it to the judges of the Supreme Court. Another was to confide it to four or five president judges of courts of common pleas, and other courts. Another was to confide it to the ex-Governors. All of these propositions were well considered in committee, and none of them met with the favor which the pro-

position as reported met with. The reasons why the Attorney General and the Secretary of the Commonwealth and the Superintendent of Public Instruction, and the Secretary of Internal Affairs were agreed upon as a board of pardons mainly was, that they are officials of the government already, if this Constitution be adopted. Their residence is principally, and their official duties entirely at the seat of government. They are gentlemen selected generally with reference to their high character for integrity and intelligence, and would be a competent board to represent, properly, the important branch of the dispensing power of the government.

I believe, Mr. Chairman, if there be any abuse of the pardoning power it consists in the fact of its non-exercise. It has not been materially abused in the exercise of it, but it has been, perhaps, from a fear of public clamor, and from other causes that have existed in the State, abused in the fact that it has not been exercised in many cases where it should have been. It has been withheld, perhaps, in meritorious cases, because the Governor desired, as far as practicable, to avoid public abuse which was generally brought upon him for the exercise of this power.

I will refer to the number of pardons heretofore granted by Governors, from Gov. Mifflin down to Gov. Geary, inclusive. I find that the average number of pardons per year was as follows:

Gov. Mifflin, 132; Gov. McKean, 212; Gov. Snyder, 177; Gov. Findley, 434; Gov. Heister, 262; Gov. Shultz, 136; Gov. Wolf, 83; Gov. Ritner, 160; Gov. Porter, 120; Gov. Shunk, 81; Gov. Johnson, 126; Gov. Bigler, 108; Gov. Pollock, 53; Gov. Packer, 72; Gov. Curtin, 127; Gov. Geary, 71.

Now, sir, I take it there has been no abuse—

Mr. LILLY. I would like to ask the gentleman a question. Has he any record, or knowledge of any record, of how many convictions there were in those days. I take it that these statistics, without you have the number of convictions and the number of persons in prison, amount to nothing. The pardons granted by Gov. Curtin and Gov. Geary are a very small percentage compared with the rest.

Mr. J. N. PURVIANCE. I agree with the gentleman that they were a very small percentage as compared with the other Governors, because convictions were much more numerous; but we will suppose that in a long period of time, such as I have

gone over, three-quarters of a century, that the average of convictions were about the same, proportionate to population, except in times of war, except during the rebellion and other times of war, because, no doubt, on occasions of such extraordinary kind, there were more convictions and more offences, and of a less aggravated character.

I wish, however, to make one remark. The gentleman from Luzerne (Mr. H. W. Palmer) in his remarks yesterday took occasion to speak in terms very denunciatory of the late deceased Chief Magistrate of this Commonwealth. How he intended the remark exactly is not to be misapprehended. He cited that ancient Latin maxim, "*De mortuis nil nisi bonum*," but he used it in villification of the memory of the deceased Governor. He refrained from remarks in reference to him, because his tongue is silent in the grave and his earthly career is ended. Now I beg to say that, so far as the record shows, that Chief Magistrate of Pennsylvania stands as high upon the record, in regard to the exercise of the power of granting pardons, as any other Executive that ever filled the gubernatorial chair of this State. Therefore the remark, perhaps, should not have been made, and the few words that I have said in vindication are but just and right to the memory of the deceased Governor.

Then, Mr. Chairman, so far as the committee of the whole is concerned, it is to be hoped that it will adopt the section as we have reported it. If there be any changes thought of they can be made when we are considering this at a subsequent time in Convention. With these remarks I will close, trusting the committee will see the propriety of adopting the section.

MR. BUCKALEW. Mr. Chairman: I sincerely hope that this amendment will not be adopted by the committee. I am in favor of regulating the pardoning power, but I am not at all disposed to impair it, and one of the most important and salutary regulations possible will be to make the proceeding upon the consideration of the granting of pardons public, so that parties necessarily and properly concerned in can be heard by the persons who shall be charged with this duty of recommending and granting pardons. Now, sir, pardons before sentence or before conviction are occasionally necessary in every government upon the earth. In case of a riot it may be necessary that your chief magis-

trate, who has and always ought to have control of the military power of the State, should, by proclamation or otherwise, extend amnesty and pardon to the persons who may be in the act of violating the law, misled by excitement or by the operation of some transient causes. It may sometimes be indispensable to the restoration of the public peace that the chief magistrate shall say to all turbulent persons concerned: "Return to your duties under the law, and you shall not be punished for what has already occurred." This power is also necessary in case of a revolution, and every State is liable to that; we have had one or two in a small way even in our State. We saw the necessity of this power recently in the government of the United States; it was exercised by two late Presidents during and after the late war.

In the case of a revolution in this State this power would be indispensable—a power to act at once, and speak with authority—to conciliate the disaffected element in society that may be in revolt, or in a condition of turbulence. Then, again, how necessary is this power in the Executive, in order to obtain necessary evidence for purposes of public justice?

When persons have been engaged in some criminal transaction, some of whom may be only subordinate agents, and not principals in guilt, it may be important for the purposes of public justice that a pardon should be extended to some of them, in order to obtain evidence against the principal offenders.

With such a limitation as is proposed in the pending amendment, which, in effect, provides that under no possible circumstances, in this government, shall a pardon be extended, or even promised, (because that is the effect of it,) before not merely a trial, but an absolute conviction, or until the end of judicial proceedings, you will cut off all these opportunities for Executive interposition to which I have referred, and, possibly, many others. How can we foresee all the exigencies of the future? Any attempt to narrow—to curtail—this proper Executive power of pardon, as proposed by the amendment now before the Convention, would, in my opinion, be a grand mistake. All that we are required to do, and all that public opinion demands of us, is to regulate the exercise of this power, so as to meet any abuses which may have been developed in our past experience, or are likely to attend upon our future pro-

gress. Let us leave the power, unimpaired, remain under such regulations as we may think proper to surround it with. I hope that, eventually, upon deliberate reflection, every gentleman will come to the same conclusion that I have come to, that this power, like all the other leading powers of the government, is a necessity, and that its full and complete existence, under the Constitution, ought to be guaranteed by most ample and certain provisions.

Mr. DARLINGTON. Mr. Chairman: Neither the argument of my learned friend from Centre (Mr. Curtin) or of my other learned friend from Columbia, (Mr. Buckalew,) as to the necessity for the exercise of the pardoning power previous to conviction, have influenced my mind in the least in favor of their side of the question.

If there could possibly arise, as no doubt there will arise, cases where it may be necessary to guarantee immunity from punishment to one person charged with crime, in order to convict another or others, it is not necessary that the pardoning power of the Executive should be resorted to.

It is a well understood principle of common law, applicable in the administration of justice here and elsewhere, that there is an implied understanding, given by the prosecuting officer to the man who becomes a witness for the Commonwealth, that he shall not be convicted; and no instance has occurred, within my knowledge, either in history or in practice, and, I apprehend, not within the knowledge or experience of any gentleman on this floor, in which it ever was necessary to call upon the Executive for a formal pardon in such a case as that.

I do not conceive that it is necessary that it should be exercised in the case put by the gentleman from Columbia, (Mr. Buckalew,) when in case of a mob, or a general condition of disorder or revolt, it would be proper to grant amnesty.

Whatever may have been the practice of the general government in the time of the rebellion, it has never had any application, and is not likely to have application, to the case of a State of this Union.

When a body of men rise in riot against the constituted authorities of the State, in violation of all law, and make themselves criminals, I would not entrust to a single Executive, who must belong to one or the other of the political parties, the power to grant amnesty to all his friends

who may be engaged in this attempt. I would not put it in his power to say: "If the rioters are political enemies of mine I will not pardon them, but if they are friends I will." That would put the law into the hands of the Executive without examination of the offence, without trial and without conviction? Are the liberties of this people to depend upon the fiat of any Executive? If a man assail or invade my home or burn my property I have a right to demand that the Commonwealth shall do justice upon him, and I have an equal right to demand that no man shall interfere with the administration of the law between the offender and the Commonwealth. It is time enough for him to be freed from the consequences of his crime after he is adjudged guilty by the verdict of his peers, and the sentence of the court is pronounced. What would be the effect of allowing the Executive unlimited sway to grant a pardon to any man and every man previous to conviction? Why, sir, it is impeding the wheels of justice; it is interfering with the administration of justice; it is equivalent to saying that a judge, whose function it is to see that the man has a fair trial before a jury, is not an impartial judge; that he is influenced by other considerations than the facts and the law of the case, and that that man has had an *ex parte* trial; but it is said that "the prosecutor, who has attempted to inflict this punishment, ought not to be allowed to prosecute this defendant, because he is actuated by malice or other improper motives."

It is also said "there are times of high political excitement when this right must necessarily be exercised." That is equivalent to saying that "the offender was in a minority, and had no business to interfere with the mob; so the mob shall not be tried at all for their offence. I will pardon them at once." What kind of law would that be under which we would be asked to live? Is it necessary, let me ask the gentleman for a moment, that the Governor should interfere to protect the alleged criminal from trial because the prosecution may have been actuated by malicious motives and without probable cause? Why the party accused has ample redress in the courts, by civil action, for malicious prosecution, or malicious arrest, in which a sufficient guard will be held over any man who attempts a prosecution unwisely or improperly. The law is open to him. If any man be improperly

charged and is acquitted, there is no danger of any punishment being inflicted upon him. He has his redress in an action for the injury inflicted upon him. Shall it be said that the Executive of the State, on a one-sided hearing, and without listening to any man but one, knowing nothing of the facts but those which the friends of the criminal put before him, shall be at liberty to impede the administration of the law? "High political excitement!" I would allow that excitement to find its quietus in the proper administration of justice in the courts. Whoever is guilty of riot must take the consequences of it, and let not the Governor interfere. If, after conviction, it appears that it was unjust, if it can be made to appear beyond all doubt that conviction was improper, through perjury or fraud, or from any other cause, I would not withhold the mercy of the Governor, but give some chance to the man who institutes a prosecution against another to prove, before a jury and a court, that the man whom he charges is guilty, and if he be guilty, no previous good character, no previous high standing in the community, and no previous association with eminent men, should save him from the consequences of his crime. For these reasons it is inexpedient, in my judgment, to provide for the exercise of the pardoning power prior to conviction for any cases that cannot arise, or for cases of supposed riot where it is not necessary to interfere, and I submit that it is not necessary for such a power to be exercised at all before conviction. For the reason, then, that it is inexpedient it is also improper to allow a Governor to interfere with the course of justice, before justice is begun to be administered, and I would deny him that power.

Mr. DE FRANCE. Mr. Chairman: I have just a few words to say on this subject. I am in favor of the amendment of the gentleman from Philadelphia (Mr. Gowen.) I believe that pardons should not be granted before conviction in any case. The gentleman from Columbia (Mr. Buckalew) said it was a necessity. If it is a necessity, sir, it is a necessity that is dispensed with in a majority of the States of this Union. You may take the State of Kentucky; there they do not grant any pardons until after conviction. Massachusetts, I believe, is in the same position. So are Rhode Island and New York, and a majority of the States of this Union. They do not give the Executive the right to grant pardons until after conviction.

Is it a necessity? The only case that has been mentioned is that of times of high political excitement or rebellion. I judge that the Governor, at such times, has the right to issue his proclamation, not, perhaps, of pardon, but exercising his authority as commander-in-chief of the army and militia of the State.

At any rate it does not amount to much, in my judgment. I have failed to see the necessity for this power being in the hands of the Governor, and after hearing the arguments of the gentlemen, especially of the gentleman who has been Governor of the State for six years, (Mr. Curtin,) and of other gentlemen who have held high political honors, I cannot see any reason why Pennsylvania should allow her Governor to grant pardons before conviction, when nearly all the States in the Union deny it to them.

Mr. S. A. PURVIANCE. Mr. Chairman: I desire to make a few remarks directly to the point now before the committee.

I have listened, sir, in vain to the gentleman from Centre (Mr. Curtin) and the gentleman from Columbia (Mr. Buckalew) for any reasons why we should not place this restriction in the Constitution. I listened in vain to those gentlemen for an illustration of a case, such as should call for the exercise of the pardoning power previous to conviction and sentence.

Now, sir, as I said yesterday, and asked the gentleman from Lycoming, (Mr. Armstrong,) is not a criminal, when he is placed in the box, presumed to be innocent until he is convicted; and if that be true, my further inquiry is: If the prisoner is innocent, upon what is this previous pardon to rest? It is an anomaly in our jurisprudence, and should not be recognized by the wisdom of this Convention. There is only one class of cases to which it should ever be applied, and that is the class intimated by my friend from Clarion, (Mr. Corbett,) in cases of insurrection and rebellion, and not in case of riot, as claimed by the gentleman from Columbia, (Mr. Buckalew,) because a riot may not rise to the dignity of a case, such as would invoke the exercise of a power like that of an insurrection or rebellion, and hence there is no difficulty in appending to the proposition offered by the gentleman from Philadelphia (Mr. Gowen) that which will make the exception in the case of rebellion and insurrection.

Now in twenty-two States, a list of which I hold in my hands, it is provided, in some instances, that the Governor shall have power after conviction to grant reprieves, commutations of sentences, and pardons for all crimes and offences, except treason and in cases of impeachment. Again, in other instances, it is provided that the Governor shall have power to grant reprieves, pardons and commutations of sentences after conviction for all offences, except treason, and so on.

This provision is made in twenty-two of the States of the Union, and they are the States of Alabama, Iowa, Nebraska, Ohio, Arkansas, California, Michigan, Wisconsin, New York, North Carolina, Illinois, Missouri, Tennessee, Oregon, Indiana, Rhode Island, Connecticut, South Carolina, Texas, Virginia and Maine. Now, sir, are we going to make a departure from what has been the recognized wisdom of the whole nation?

Mr. SIMPSON. Mr. Chairman: I trust the committee will not adopt the amendment. The limitation proposed to be placed upon the Executive power by this amendment has been exercised in a very few cases, indeed, in this Commonwealth. While I am aware of the fact, as suggested by my colleague, (Mr. Temple,) that in one instance it was, perhaps, exercised where it ought not to have been, I am also cognizant of the fact that in another case it was exercised where it ought to have been exercised. I am clear upon this subject, for I know the parties, and I know all the surroundings of the case. The party should not have been permitted, and called upon to stand his trial, for every lawyer who practices at the bar knows the uncertainty attending jury trials. It has been said that the Lord knows everything, but I doubt if the verdict of a petit jury can ever be predicted with any reasonable degree of certainty. In the case I refer to, the party ought not to have been called upon to run the risk of a jury trial and a conviction before applying to the Executive for a pardon. As the instances have been so few in the Commonwealth, and creating, as the proposed plan suggests, a body independent of the Governor, to examine into and report before a pardon can be issued, I am sure the pardoning power can be exercised without much fear of its being abused. I trust, therefore, the pardoning power will not be taken away from the Governor in cases like these, that his power in the premises will not be emasculated,

but that it may continue to be exercised whenever the public interest and justice shall require, in accordance with the provisions contained in the section reported by the committee.

Mr. HOWARD. Mr. Chairman: I desire before the debate closes to say a few words in relation to this question. It seems to me the plan as proposed is as good as anything that can be devised by the Convention. It seems to me, in listening to the arguments that have been made, that gentlemen have conceived an idea that they can create, in some way, a tribunal that will not be liable to the same errors, the same temptations, the same feelings and the same impositions that have afflicted those who have heretofore exercised pardoning power, but I think this is a very serious mistake. If the Convention could by any magic power create some tribunal that would be composed of a superior order of beings, who were higher and above common humanity, I certainly should at once support such a plan; but in no possible way can we escape trusting men. The Governor is the highest officer in the Commonwealth, and he is chosen by the entire voice of the people. He is responsible to the people, and it seems to me that there is no person in whom this pardoning power can be more safely entrusted, especially when it is guarded in the manner provided in the report of the committee. It has been suggested that it would be wise to strike "the Secretary of the Commonwealth" from the section, because he is an officer appointed by the Governor; but that is the very reason why I would retain him as one of the members of this board. The Secretary of the Commonwealth is supposed to be the friend and counsellor of the Governor, and it is not to be supposed he would advise the Governor to grant a pardon when it was not proper that it should be granted, and I think, therefore, by all means the Secretary of the Commonwealth, as the friend and counsellor of the Governor, should be retained, as the committee has reported. The section reported by the committee also further provides that "this board shall also consist of the Attorney General, the Superintendent of Public Instruction and the Secretary of Internal Affairs." If this provision is adopted it will possess this additional advantage, which I hope will not be overlooked: That the pardoning power thus entrusted to the Governor shall be exercised by and with the advice of gentlemen already occupying offices in the

Commonwealth, and officers that we consider indispensable to the State. I am opposed to the creation of other offices. How could any better tribunal be created, and especially when we consider that the people will know that the pardoning power will enter into their duties, and they will select men to fill these offices with the idea of obtaining talent and integrity, suited to this as well as other duties. I have said, and I repeat it again, that if this tribunal we propose to create could be composed of a higher order of beings, I would be willing to endorse the plan, but as we cannot do this I can see no reason for shifting about and originating devices for the creation of new offices. It is for these and other reasons, Mr. Chairman, that I shall support, most cordially, the report of the committee.

Mr. COCHRAN. Mr. Chairman: Before the gentleman from Lyeoming (Mr. Armstrong) closes the debate upon this question, which I presume is his intention, I venture to submit a few remarks. I came to this Convention deeply impressed with the belief that it was the conviction of the public mind that this power of granting pardons vested in the Executive should be, in some way or other, guarded by the action of this Convention; and I have not yet been fully satisfied that this provision, reported by the committee, has that effect. I have listened to the whole discussion upon this question, and the result produced on my mind has been to leave me still under the impression that the provision reported by the committee is not adequate. I think, sir, this matter of granting previous pardons, although the power has not been so very frequently exercised, is one which has attracted towards it considerable public attention and considerable public disapprobation, and I believe the general sense of the community is that that power ought to be abolished, and therefore, as the question now stands, I shall be in favor of abolishing it; though if this council of pardons were differently constituted, notwithstanding there seems to be something illogical in pardoning a man who is presumed to be innocent, I would, nevertheless, be in favor of retaining the provision in the Constitution. My own idea has been that this council of pardons should be constituted of some different material than that mentioned in the report of the committee. I have never been able to fully satisfy my mind as to what persons should be selected to constitute

this council, but the conclusion I have come to is to incorporate a provision something like the following, which I will read in connection with the section now pending:

"The Governor shall have power to remit fines and forfeitures, and to grant reprieves, commutation of sentence and pardons, except in cases of impeachment, but only upon the recommendation, in writing, of the majority of the members of the council of pardons, to be composed of the chief justice of the Supreme Court, the president judge of the court in which the applicant for pardon in each particular case was convicted," and the several officers mentioned in the section reported by the committee.

With the addition of this element I would be willing to commit the whole question of pardon to the Governor and the council so constituted; but I believe it is a defect, that possibly may be irremediable, to leave this power of pardon entirely in the hands of gentlemen who are elected to offices in themselves distinctly political, and who are liable to be influenced by partisan considerations.

Now if you introduce the judicial element, it is not for the purpose of causing the pardon to be granted on legal grounds, but because it would bring into the consideration of the question a class of men who will look at it from a cooler and more considerate standpoint. In the Constitution of the council of pardons, in the adjoining State of New Jersey, the chief justice and the chancellor, either or both, act as members of the council, and I have never heard that the action of that body has not been satisfactory to the community and the people of that State. Now in addition to the chief justice, by introducing the president judge of the district, before whom the trial is had, as a member of this council, all the facts involved in the case will become known to the other members of the council. He can inform the council whether or not the Governor will be justified in exercising the pardoning power. If that amendment were made in this section, I would vote against the proviso, because I could then have confidence in the impartiality of the tribunal; but without this amendment I am in favor of the proviso and against permitting this council so constituted to grant pardons before conviction and sentence, which form a class of pardons that have excited more public dis-

approbation than any other that have been granted in the Commonwealth.

Mr. ARMSTRONG. Mr. Chairman: That the pardoning power has been greatly abused in this State there can be no question. It is by reason of this admitted fact that the Committee on the Executive Department have given to this clause of this article so careful and anxious consideration. That there has arisen in the public mind an idea that it is a dangerous power is, I think, too clear for argument. It pervades the entire public mind on this subject. This also was clearly in the minds of the committee when they came to the consideration of this subject. This prejudice has arisen from the fact that the pardoning power has been exercised in the sole discretion of a single person, who, from his position, was necessarily, more or less, under the influence of political considerations. At the same time that I make this remark I am prepared to say that the pardoning power has been exercised in this Commonwealth, as a rule, with exceeding great carefulness.

The gentleman from Pittsburg (Mr. John N. Purviance) has read in the hearing of the committee a statement of the number of pardons which have been granted by the successive Governors of this Commonwealth for many years past. But he overlooks the fact that until the act of 1830 a sentence which was served to the end was followed by political disability, and that up to that time pardons were granted in great numbers, in many instances the day before the sentence would expire, in order that the political disabilities, which attached to the serving out of the full sentence, might be removed. It happened, therefore, that a large number of these pardons were for the simple and only purpose, not of diminishing the weight of punishment, but of relieving the political disabilities which would ensue if the full term of sentence were served out. This was corrected by the act of 1830, and since that time the serving out of the sentence has not been followed by any such disability.

But my friend from Pittsburg (Mr. S. A. Purviance) referred also to the various provisions of the several States with reference to the pardoning power. In a majority of the States where they refused to permit pardons to be granted until after conviction and sentence, it is where the pardoning power is vested solely in the discretion of the Executive, and not where that power is vested in the Executive

subject to the recommendation of a council of pardons. The rule in the States is not uniform, but it is the prevailing rule that where there is a court of pardons, or a council of pardons, which must first pass upon the expediency of granting the pardon, the right of pardon before sentence does exist.

We are not considering this question in the position in which it stands in the public mind, as a power to be exercised by the Executive, in his sole discretion, but as a power hedged around with defences which are calculated to, and which, in the judgment of the committee, will effectually prevent its abuse. It does not follow that all of the four persons designated as a court of pardons will be of the same political party. But if they should be, as possibly they may be, they will be gentlemen of such standing, presumably, from the position which they occupy, and so regardless of their personal reputation and character, that from the necessity of spreading the reasons which induced them to recommend a pardon, before the people in a record, which is perpetual and accessible to the public, that they must be constrained to exercise this discretion with exceeding care. No sufficient reason has been suggested why a power, which is essentially discretionary, shall be exercised after conviction, but shall not be exercised before. It is, when properly exercised, in the nature of government clemency, based upon sound and sufficient reasons, and it would be very hard to draw a line of distinction, which should admit its exercise in the one case and exclude it in the other. Nor has it been indicated in this debate by what rule, or for what reasons, it would, for the public interest, that pardons after sentence may be granted, but before sentence shall not be. It is, in its whole entire compass and effect, an appeal to the discretion of the Executive, bounded and circumscribed by the provisions for a council of pardons, in such manner that in no case can it be exercised hastily and indiscriminately. As the section stands, an application for pardon before sentence must take the precise course, and be subjected to the same limitations, as application for pardon after sentence. It would seem, and it did seem to the Committee on the Executive Department, to be extremely unwise that we should fix, by an immutable law, by an organic provision in the Constitution, a limitation upon the Executive power, which is not at all likely to be abused. And when many in-

stances have occurred, and many must suggest themselves, to the minds of members on this floor, in which it ought to be exercised, and in our past history has been exercised with very marked advantage to the public peace, and with equal and admitted justice to the accused. Reference has already been made to the case of an insurrection, and it is proposed to break the force of this illustration by saying that it shall be made a special exception. This assumes that the discretion of pardon ought not to be exercised, except in this particular case. We cannot take in the whole scope of criminal law, nor can we anticipate the contingencies of all criminal administration, nor undertake, as a Convention, to provide for all cases that may occur. The most we can do, is to so construct the organic law that grants the discretionary power we confer shall be exercised with such discretion, that it shall be always with great care and consideration, and with such proper and sufficient safeguards that, whilst we preserve the power, we take care that it shall be so carefully guarded that it shall work no wrong.

The Committee on Executive Department have given to this section, as I have before remarked, their most careful and anxious consideration. They believe that this power ought to be exercised, but that it should be hedged around with such defences as will prevent its abuse. But that to go so far as to provide that no pardons shall be granted prior to conviction and sentence is withholding the exercise of a power which may often be necessary to prevent great injustice, and in many instances seriously and injuriously affect the public welfare. I do not now propose to detain the committee by any enlarged discussion of this question. It has been ably and fully discussed. I desire only to impress upon the Convention, if I can, that the Committee on Executive Department has most earnestly given their attention to this entire subject, and after the most minute and careful consideration have presented this section as the result of their unanimous judgment upon this subject. I hope it commends itself to the favorable consideration of this Convention.

The CHAIRMAN. The question is on agreeing to the amendment.

Mr. S. A. PURVIANCE. Mr. Chairman: I call for a reading of the amendment.

The CLERK. The amendment to the amendment is to add to the end of the section, as follows:

"*Provided*, That no pardon shall be issued prior to the conviction and sentence of the person to whom it is granted."

Mr. FUNCK. Mr. Chairman: I ask for a division of that question, so that there might be a pardon granted after conviction and before sentence.

On the question of agreeing to the amendment to the amendment, a division was called, resulting in twenty-six votes in the affirmative. Not being a majority of a quorum, the amendment to the amendment was rejected.

The CHAIRMAN. The question is on the amendment of the gentleman from Potter, and the amendment will be read.

Mr. MANN. Mr. Chairman: The persuasive speech of the gentleman from Centre (Mr. Curtin) has induced me to withdraw my amendment. [Laughter.]

Mr. JOHN M. BAILEY. Mr. Chairman: Before the vote is taken on this question I have one amendment to suggest which, I think, will strike every member of the committee favorably. It will be observed that since we have added the amendment suggested yesterday by the gentleman from Luzerne (Mr. H. W. Palmer) the Governor could not grant a reprieve until after due public notice and a full hearing in open session. This difficulty might arise; there might be a case where a reprieve should be granted without the delay of a single day. Pending the execution of a death sentence, for instance, it may be demonstrated in a day, even the day before execution, that the criminal be innocent, but under the operation of this section as it now stands, it would be impossible for his innocence, though demonstrated to a certainty, to save him from the execution of the sentence. For it would be impossible to give due public notice and have a hearing in open session before a reprieve could be granted, even under such circumstances. I would, therefore, move to amend this section further, as follows: By striking out the word "only," in the third line, and adding after the word "but," in same line, the words: "No pardon shall be granted nor sentence commuted, except," so that the provisions for recommendation in writing, and public notice and hearing shall only apply to the granting of pardons and commuting of sentences, and not to reprieves.

Mr. CURTIN. Mr. Chairman: I would just remark that under our system an execution cannot occur without a death warrant, and the death warrant must be signed by the Governor.

Mr. JOHN M. BAILEY. Mr. Chairman: I was aware of that. Still it strikes me that a warrant might be issued before the innocence of the man was shown, and the day even fixed for the execution, and the day immediately preceding the time for execution it might be demonstrated that the man was innocent. It is to meet such a case as that that I have offered this amendment.

Mr. CURTIN. Mr. Chairman: It strikes me that it is a good provision. I make no objection to it.

Mr. ARMSTRONG. Mr. Chairman: I would like to hear the section read as it is proposed to amend it.

The CLERK read:

SECTION 10. He shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment, but no pardon shall be granted or sentence commuted except upon the recommendation, in writing, of the Secretary of the Commonwealth, Attorney General, Superintendent of Public Instruction, Secretary of Internal Affairs, or any three of them, after a full hearing of the parties, upon due public notice, and in open session; and such recommendation, with the reasons therefor at length, shall be recorded and filed in the department.

Mr. SIMPSON. Mr. Chairman: I suggest that the gentleman from Huntingdon had better include the remission of fines and forfeitures as well as reprieves.

Mr. JOHN M. BAILEY. Mr. Chairman: I prefer the amendment as I offered it.

The amendment was agreed to.

Mr. SIMPSON. Mr. Chairman: I now move to amend, as follows:

By inserting the words "fines and forfeitures" after the word "reprieve."

The amendment was rejected.

The CHAIRMAN. The question now recurs upon the tenth section, as amended.

The section was agreed to.

SECTION 11. He may require information, in writing, from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

The eleventh section was agreed to.

The CLERK read:

SECTION 12. He shall, from time to time, give to the General Assembly in-

formation of the state of the Commonwealth, and recommend to their consideration such measures as he shall judge expedient.

The twelfth section was agreed to.

The CLERK read:

SECTION 13. He may, on extraordinary occasions, convene the General Assembly, and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

The thirteenth section was agreed to.

The CLERK read:

SECTION 14. In case of the death, conviction on impeachment, failure to qualify, resignation, or other disability of the Governor, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, shall devolve upon the Lieutenant Governor.

The fourteenth section was agreed to.

The CLERK read:

SECTION 15. The Senate shall, at the beginning and close of each regular session, and at such other times as a vacancy may occur in said office, elect a Senator President *pro tempore*, whose duty it shall be to preside over the Senate during the temporary absence of the Lieutenant Governor; and in case of a vacancy in the office of Lieutenant Governor, or on his conviction on impeachment or disability, the powers, duties and emoluments of the office for the remainder of the term, or until the disability be removed, shall devolve upon the President *pro tempore*, and he shall, in like manner, become Governor if a vacancy or disability shall occur; his office of Senator shall become vacant when he becomes Lieutenant Governor, and shall be filled by election, as any other vacancy in the Senate.

The fifteenth section was agreed to.

The CLERK read:

SECTION 16. Every bill which shall have passed both Houses shall be presented to the Governor; if he approve he shall sign it, but if he shall not approve he shall return it, with his objections, to the House in which it shall have originated, which shall enter the objections at large upon their Journals and proceed to re-consider it; if after such re-consideration two-thirds of that House shall agree to pass the bill, it shall be sent, with the objection, to the other House, by which likewise it shall be re-considered, and if approved by two-thirds of that House it shall be a law; but,

in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the Journals of each House respectively; if any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he has signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

Mr. EWING. Mr. Chairman: I move to amend that section, by striking out in the last line, after the word "unless," and inserting "he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give public notice thereof by proclamation within thirty days after said adjournment."

The amendment was agreed to.

Section sixteen, as amended, was agreed to.

The CLERK read:

SECTION 17. The Governor shall have power to disapprove of any item or items of any bills making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

The seventeenth section was agreed to.

The CLERK read:

SECTION 18. If the trial of a contested election of Governor or Lieutenant Governor shall continue longer than until the third Monday of January next ensuing the election of Governor or Lieutenant Governor, the person who is then exercising the authority of the office in reference to which this contest is pending, shall continue therein until the determination of such contested election and until his successor be qualified.

The eighteenth section was agreed to.

The CLERK read:

SECTION 19. The Secretary of the Commonwealth shall keep a fair register of all the official acts and proceedings of the Governor, and shall, when required, lay the same, and all papers, minutes and vouchers relating thereto, before either branch of the Legislature, and shall perform such other duties as shall be enjoined upon him by law.

The nineteenth section was agreed to.

The CLERK read:

SECTION 20. The Secretary of Internal Affairs shall exercise all the powers and duties devolved by law upon the Surveyor General; and the office of Surveyor General shall cease when the Secretary of Internal Affairs shall be duly qualified. His department shall embrace a bureau of industrial statistics, and such duties relating to the charitable institutions, the agricultural, manufacturing, mines, mineral, timber, and other material or business interests of the State as may be by law assigned thereto. He shall, annually, make report to the Legislature, and at such other time as may be required by law.

The twentieth section was agreed to.

The CLERK read:

SECTION 21. The Superintendent of Public Instruction shall exercise all the powers, and perform all the duties devolved by law upon the Superintendent of Common Schools; and the office of Superintendent of Common Schools shall cease when the Superintendent of Public Instruction shall be duly qualified.

The twenty-first section was agreed to.

Mr. DARLINGTON. Mr. Chairman: In reference to the office of Superintendent of Public Instruction I wish merely, at this time, to state that the Committee on Education had that subject in charge, and after a great deal of consideration and many meetings, and consideration of the views of all the members, finally united upon it. They have recommended that there should be such an officer, and upon the question whether he should be elected by the people or appointed by the Governor, by and with the advice and consent of the Senate, the committee finally came to the conclusion that the latter was the better plan. Believing that the Superintendent of Public Instruction was an officer who should be as far as possible removed from the political arena, and possessing, as he must possess, all the varied qualifications to enable him to discharge the duties of that office properly, it seemed to the committee eminently wise that he should be selected by the Governor and confirmed by the Senate. That being the conclusion of the Committee on Education, it seemed but right that I should bring it to the attention of this committee at this time, as we have not yet arrived at the consideration of the report of the Committee on Education. It will be for the Convention to decide whether the one or the other will

be the better mode. The committee whose report is now before us proposes the election of this officer. The other committee recommend that he should be appointed by the Governor, by and with the advice and consent of the Senate; both committees agreeing in the length of his term—four years.

With this explanation, which is all that I need to make, I wish to say, merely, that I prefer, myself, and I think the committee also prefer, the appointment of the officer instead of his election.

MR. LILLY. Mr. Chairman: I would like to make a suggestion to the gentleman. Would not it be better to so frame the section that the Superintendent of public schools should be elected by the county superintendents at their annual assemblage, or, say every three years, or at any fixed time. If that plan were adopted I think it would be better, perhaps, than to have them elected by the people or appointed by the Governor.

MR. DARLINGTON. Mr. Chairman: The Committee on Education thought over that plan also, but did not approve it, because it was neither election nor appointment, but a half-way measure that did not strike them as at all wise to adopt.

MR. MINOR. Mr. Chairman: I move to amend the section, by striking out the words, "and Superintendent of Public Instruction," for these reasons:

In the first place, it is a very strange place to fix any thing bearing on the subject of education in the department of the Executive. It is certainly the last place in which one would think of looking for it. It would seem that the provisions relating to this officer should be under the head of education, and the committee having charge of that subject, of which I have the honor of being a member, taking that view of the case, have provided for that officer.

In the next place, the mode of selection of this Superintendent of Public Instruction is one which is open to discussion. Some favor election by the people, as reported here; others favor nomination by the Governor and confirmation by the Senate, as the Committee on Education have reported. Others favor election by the county superintendents, as suggested by the gentleman from Carbon (Mr. Lilly.) Others, again, prefer other modes. That subject will of course be fully discussed, as there is a diversity of views upon it. I suggest to this committee whether the proper place for it is not when

we take up the subject of education; we can then take it up in connection with all the other particular branches of education.

It is not for the purpose of committing any one in his opinion as to how he would vote on the question of the appointment or election of the School Superintendent, that I make this motion to strike out; but for the purpose of placing the matter in its proper position in the report of the Committee on Education.

MR. CURTIN. In deference to the Committee on Education, I would say that we have now passed, in the article on the Executive Department, all the powers which the Committee on the Executive specially desire, and as a member of that committee I, for my part, see no objection to striking out the name of that official. I do not know what may be the views of my colleagues on the subject, but I see no objection to it myself.

MR. WHERRY. Mr. Chairman: I have the honor to be a member of the Committee on Education, and I do not feel at all alarmed about this section as it stands reported by the Committee on the Executive Department. I think this is eminently the proper place for this officer, with his duties, to be designated, because he is especially an Executive officer of our State government. This committee has reported upon the other Executive officers; upon the Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, State Treasurer, Secretary of Internal Affairs, and why not also upon the Superintendent of Public Instruction? Why not, I ask? Is he not an Executive officer of the government as much as the Secretary of the Commonwealth, Attorney General, State Treasurer and Secretary of Internal Affairs, all whom are designated in this report? Is he not very properly classified with them? Now as to another point, which the gentleman from Chester (Mr. Darlington) has raised. How shall this officer be selected? My colleague has left the committee under the impression that the Committee on Education was unanimous in the report which they have made to this Convention, so far as it relates to the appointment of the head of the Educational Department.

I beg to say, sir, as a member of that committee, that we were not unanimous at all on that subject. For myself and three others of that committee, I can say we

are emphatically in favor of making this officer elective and not appointive.

Mr. J. PRICE WETHERILL. Mr. Chairman: The argument this morning and yesterday in regard to the pardoning council was that the power was divided—the people electing two of the board and the Governor appointing the other two, and therefore the majority of the board could not in any way be manipulated by the Governor. Now if this section is adopted you place the board entirely in the power of the Governor; as in a board of four he will have the appointing of three. I hope we will hesitate before adopting a section of this sort. If I understand at all the feeling of those whom I represent on this floor, it is that the pardoning power ought to be removed as far as possible from the one-man power, and that the board ought certainly to be out of the reach of this objectionable one-man power; and I do hope, therefore, we will be extremely careful how we vote upon the amendment now under consideration.

Mr. BUCKALEW. Mr. Chairman: In my opinion the organization of our Common School department is a very much more important question than any question of the organization of the pardoning power. Our common schools constitute a sort of neutral territory, if I may use that term, where all our people stand on common ground.

I would inquire of gentlemen, has there been any complaint made since the organization of the present system of common schools in this State as to the manner in which the School department has been conducted? None whatever. Our common school system has been administered to the satisfaction of the people, and every year we are increasing our appropriation for them, and I believe an amendment is now reported to fix the appropriation at a minimum of one million. There are no abuses in the department of Public Schools; there is no question of politics in it. There are no political considerations connected with its action in any part of the Commonwealth. It stands clear and free from complaint, and always has. With, then, no abuse to correct—no evil to remove—why will gentlemen throw this department into the general pool of election matters, to be managed in political conventions throughout the State, and to be mixed up with political agitation. I trust, whatever else may be done in the other departments and other officers of this government, the School

department and its head will be left just where they are. They are now popular and satisfactory to the people, and there is no reason, in my judgment, for this change, except an insane or mistaken notion of symmetry—throwing everything to the people to be voted upon. The same sentiment, vague, indefinite, ill-considered, would throw the offices of Secretary of the Commonwealth, and Attorney General, and every other State office into the popular elections. You have thrown so much into your elections that they have almost broken down; and the great work of this Convention is to brace up, and amend, and strengthen our system of popular election, so that it can carry the enormous load put upon it.

Why throw the common schools also into the elections? Let gentlemen consider what we have been doing in Convention, and refrain accepting this panacea of superficial thinkers, who, whenever they do not know exactly what to do about filling an office, throw it to the people.

I trust, sir, we will leave this department of our government where it is now. Do not let us make any change in our existing Constitution as to any department that has worked well—when there is no complaint—merely for the sake of change. The men in this State who are connected with our common school system are legion. The persons who are directly and indirectly connected with the operations of our educational system are innumerable; and I doubt whether you could make a single change in the Constitution that would be less popular or acceptable to them than this.

Mr. LEAR. Mr. Chairman: It seems to me if we adopt the provision contained in this section, relating to the election of the Superintendent of Public Instruction, we will be taking a step backward. This question as to the manner in which this office should be filled was carefully and well considered in the Committee upon Education, and although there were some gentlemen who did not agree with the report of the committee, there were reasons given why this officer should be appointed by the Executive of the Commonwealth, which, it seems to me, should prevail in this committee and before the Convention. The gentleman from Philadelphia (Mr. Wetherill) is opposed to having this officer appointed by the Governor, because he is made one of the board by which the questions of pardons shall be

decided prior to their being finally acted upon by the Governor; and if he is appointed by the Governor, and he desires to grant a pardon, concerning which the rest of his advisory council do not agree with him, he has only to remove that particular member of the board obnoxious to him, and appoint another member in his place. Now that objection may be of some validity in some cases, and such cases may possibly occur, but whenever they do occur the Executive of this Commonwealth will have been found of a lower grade than has ever yet existed among the Governors of this Commonwealth; but the gentleman from Philadelphia, (Mr. Wetherill,) when he speaks about the election of the Superintendent of Public Instruction, may speak of it and may vote upon it with perfect impunity, so far as regards the position of the officer himself, for the Superintendent of Public Instruction has none or very little supervision over the public schools of the city of Philadelphia.

Philadelphia was carefully protected, in the report of this Committee upon Education, against any innovation by which the general school laws of the State should apply to her. They are not adapted to the wishes and requirements of the educational interests of this city, but we can arrange a system that will be consistent with the interests of all the people. The people of the rural districts concede this much to Philadelphia, and we hope this city will concede as much to us. The person who shall be selected to fill this important position of Superintendent of Public Instruction should be characterized by official purity. When I speak of his official purity, I refer to his purity from all the contaminating influences of political manipulation and management. This official will be compelled to traverse our State from one end to the other, outside of the city of Philadelphia, in superintending the schools in the different townships and counties, and he will be brought into contact with the school directors in the various local districts all over the State. What an exhibition it will be when the candidates for Governor of the Commonwealth, the Superintendent of Internal Affairs, and the Superintendent of Public Instruction, nominated upon a common ticket, shall take a ride around the Commonwealth, stumping the State in behalf of their own election, stirring up the bitter feeling of partisan admiration upon the one side and hostility on the other? What a dis-

advantage it will be when the candidate who happens to be elected as Superintendent of Public Instruction, in his official capacity, happens to visit the counties where these old substantial, party-bound school directors reside, who think if a man is against them in politics, he is against them for some impure and unworthy motive? It is impossible to eradicate this idea from the minds of some of the people in this State. It does not prevail here in this Convention, of course, but there are numbers of people in the State who believe that a man who is opposed to them in politics is a man unfit to attend to that business, and unfit to be the Superintendent of Public Instruction, or to exercise a general supervision over the school and educational interests of this great State. Now, Mr. Chairman, if this provision in regard to the Superintendent of Public Instruction is adopted, he will have to enter the arena of politics before he is elected, and then, if elected, in the administration of the functions of his office, he will be required to traverse the State again and be compelled to submit to all this personal animosity which the election shall have engendered. Philadelphia, however, will be exempt from this inconvenience and difficulty, because her educational matters will require no immediate supervision. I say, therefore, that this official should be placed beyond the influence and range of political management of a State Convention or elsewhere. He will belong to a party, of course, and he will belong to the party to which the Governor is attached.

There can be no question about that, unless he is controlled by the provision made in our report respecting the confirmation of his appointment by the Senate, but still he will be further removed from contact with the political prejudices of the people. Now, it has been said, that the services of better men are obtained by submitting questions of election to the people. I deny that principle, and the Convention yesterday testified, by the vote they gave upon the question under discussion, that they did not believe that the question of elections should at all times be submitted to the people. When the vote was taken in committee of the whole upon the provision contained in the report of the Committee upon the Executive Department, that the Governor's office shall be limited to a single term, the members of this Convention testified that they were not in favor even of this idea

of civil service reform, by permitting him to so serve two terms, and that they were not in favor of the idea that a man who has served in the position of Governor is better qualified by reason of his experience, other things being equal, to fill the office for another term. The Convention, by its action upon this question, announced that it was inexpedient to allow the people, by a constitutional provision, to re-elect a man to the office of Governor after he had served a single term, even though he may have served the State with rare ability. The Governor may be as pure in character as the driven snow which now covers the mountains of Pennsylvania. He may possess all the wisdom and experience necessary for the discharge of the important duties of that office, and yet the Convention has voted in the committee of the whole, upon the article which proposes to remove from the people the power to re-elect a man who, by the purity and ability of his official career, may be the very man most worthy to occupy that distinguished position; and why? It is because we believe that the Governor will be surrounded by political parasites who will control the patronage and manage the affairs of his office for the purpose of securing his re-nomination and re-election for a second term; and therefore the Convention has decided to remove all this temptation for a re-election in order to protect the people against the designs of such men. The Convention does not mean to say that the Governor may not be a wise and prudent officer; but it says that this political management has such a demoralizing tendency, that it shall be removed from the power of those around the Governor to re-nominate him for a second term of office. It is, perhaps, well enough to indulge the pride and gratification of the people by saying that they shall elect every officer of the Commonwealth, but the decision of the Convention has been, and I believe it is an eminently wise and proper one, that the people are not at all times the judges of the qualifications of an officer of our government. Now, in connection with this subject, the person who shall be called upon, in particular, to fill the office of Superintendent of Public Education, should be a man of eminent ability, and not a politician by any means. He should be a person acquainted with all our educational interests, and possessing all the requisite acquirements appertaining to this important

public office. He should not be a man who would condescend to enter a State Convention, and by entering into political combinations for the purpose of securing a political nomination, for it is well known that such combinations would invariably sacrifice the public school interest of the State of Pennsylvania.

It has always been found that whenever a particular evil of a particular nature has prevailed for a certain time, public clamor has become rampant, and the excitement which is occasioned demands a strong remedy to correct the evil. Let not this Convention, then, be carried away by any public excitement that has been created against any particular class of evils. Let the tide of public prejudice sweep over this State, if it will, carrying with it the people in their excitement, but when it reaches the door of this hall, let it stop there, and not expect to find an entrance into this body.

Mr. CARTER. Mr. Chairman: I agree most heartily with the remarks of the gentleman from Bucks, (Mr. Lear,) and also of the gentleman from Columbia (Mr. Buckalew.) The most important interest requiring attention in our State is unquestionably that of education. We have in this State one of the best educational systems, perhaps, in the whole Union, and for many years past it has been under the management of gentlemen most eminently qualified for the purpose. The system has produced most excellent results, and I should regard it as a great public calamity if the office of Superintendent of Public Instruction, which has heretofore been filled by means of the appointing power, should be made elective. I can see no possible good that can arise from changing the manner in which that office has been filled, because no harm has arisen from the selection of this officer in times past. I am therefore ready to vote to retain the present system in force, because there has been no request or indication on the part of the people that this office should be made elective. If there is any office that should be entirely disconnected from the excitement of political matters, it is this office, which embraces all those questions which appertain to the educational interests of the children of the State.

I remember, sir, that about two years ago, when it was proposed to take away the special appointment of the Superintendent of the Orphans' School, that when it was suggested by some gentleman in

the Senate that the present Superintendent of Public Schools should have charge of it, it was admitted that he had filled the duties so faithfully that by unanimous consent the charge of them was transferred over to him, where it remains at the present time. Now this man, filling the duties of this most important position thus well, would be subjected at the expiration of his term, just when he had come to understand the position and its requirements thoroughly, because it is not a place which a man can fill without much previous knowledge, to have by the candidate of a nominating convention. This would most certainly be regarded as one of the offices not to be filled by a politician. Its petty salary of \$2,500 or \$3,000 a year might make it a boon to be sought after by political managers, and at once it would be put into the arena of politics, to the detriment, most unquestionably, of the great educational interest of the State. The man who holds such a post may be most eminently qualified for it, but if his party happens to be in the minority he will be removed, though all the school interests of the State suffer, even though it bring detriment to that system, which, above everything else that comes before this Convention, we should most sedulously protect.

With regard to the suggestion of the gentleman from Carbon, (Mr. Lilly,) that the choice be made by the county superintendents, a great objection seems to arise in my mind in regard to that. It seems to me that these men are necessarily somewhat dependent on the officer they would select. They are under the control of the Superintendent to some extent, or under his supervision, and it would be inexpedient to entrust that power to them. I see nothing to be gained whatever by any change in that direction, but the gentleman from Philadelphia (Mr. J. Price Wetherill) suggests that it destroys the balance of the elective and appointed persons in this board of pardons, and of course that may require some consideration, and a change be made in the matter of choosing one of the others; but for Heavens be cautious of doing aught that might injure this great and most beneficent system.

MR. J. PRICE WETHERILL. Mr. Chairman: I desire to say just a word on this subject. I favor the report as it comes from the Committee on the Executive Department, and for this reason: They, af-

ter a careful consideration of the matter, reported that they believed the Superintendent of Public Instruction should be elective. The Committee on Education, on the other hand, believes the reverse of this. Now it is for the Committee on the Executive Department to defend that portion of the section. I do not feel called upon to do it. But if they are right then I contend that the amendment should be voted down, as offered by the gentleman from Chester, (Mr. Darlington,) because it affects the position of the board of pardons just passed.

Now, sir, continue the line of argument as offered by the gentleman from Lancaster (Mr. Carter.) Every word that he has said in regard to the appointment of the Superintendent of Public Instruction might also be said in regard to the appointment of the Secretary of Internal Affairs. For why? We charge the Secretary of Internal Affairs—according to the section which we have just passed—with all the public charities of the State, as I understand it. Thus every prison board throughout the State must report to him, if we carry out the idea of this section, and give him charge of the public charities, which I understand will be his duty. Shall we make that man elective? The same argument applying to either case, shall the man who has charge of the reformatory institutions of the State, shall the man who looks after the poor convicts of the State, shall the man to whose charge is committed the prison reformation of the State, go from county to county and from city to city, electioneer and endeavor to control this combination and that combination, in order that he may secure his office? Just as strong an argument may be offered in regard to his appointment as was offered in regard to the appointment of the Superintendent of Public Instruction. The people elect their school directors, and they are the ones who come in direct contact with the teacher and the child. They are the ones who control your schools. They elect the county superintendents, and this Superintendent of Public Instruction, throughout the State, is simply supervisory in his duties; and if the arguments apply forcibly in the one case, they will also apply forcibly in the other. We should make the Secretary of Internal Affairs appointive instead of elective, and thus let the board or council of pardons be entirely under the charge and control of the Governor.

Mr. STRUTHERS. Mr. Chairman: I wish to submit the following amendment to the amendment:

To insert after the word "election" the words, "except the Superintendent of Public Instruction, who shall be chosen by the county superintendents of schools in the State."

Mr. STRUTHERS. Mr. Chairman: It seems to me to be very properly arranged in the first section that this Superintendent of Public Instruction is made a member of the Executive department. It seems to me very appropriate that it should be so. It is necessary that, as a member of the Executive department, he should be at the seat of government. He may, therefore, with great propriety, serve as one of the advisers of the Governor in regard to the pardoning power. That all appears to be very right. It also seems to me to be important, as the gentleman from Columbia (Mr. Buckalew) so well expresses it, that you keep the direction and management of the schools as far aloof from every political influence as possible. I understand that now the Superintendent of Schools is elected by superintendents of the different counties. I see no impropriety or inconsistency, therefore, in letting that remain just as it has been, and let the superintendents of the schools of the several counties select or appoint this officer. The school directors elect the county superintendents of the several counties, and the superintendents of the several counties elect this Superintendent of Public Instruction.

Mr. LANDIS. Mr. Chairman: I desire to inform the gentleman that such was the case, but the Superintendent of Public Instruction is now appointed by the Governor.

Mr. STRUTHERS. Mr. Chairman: I beg pardon, then. I am mistaken about that. But still, I would adhere to my amendment, and let the county superintendents who have been elected by the directors of the several townships in the county meet together and select a Superintendent of Public Instruction. You then would have the office entirely separate from these political influences. I hope, sir, that that view of it may be regarded and considered by the committee, and it does seem to me to be a very salutary one to adopt.

Mr. DARLINGTON. Mr. Chairman: One objection to the election by county superintendents may be that this office is one which it is not certain will always exist. In some counties I know there is a dispo-

sition to abolish it, and it would not be wise to place an appointing power in a power that may be withdrawn.

The amendment to the amendment was rejected.

The CHAIRMAN. The question recurs on the amendment.

Mr. J. PRICE WETHERILL. Mr. Chairman: I call for the reading of the amendment.

The CLERK. To strike out the words, "Superintendent of Public Instruction."

On agreeing to the amendment, a division was called, which resulted forty-seven in the affirmative and twenty-eight in the negative.

So the amendment was agreed to.

The CHAIRMAN. The question is on the section as amended.

The section as amended was agreed to.

Mr. CLARK. Mr. Chairman: I perceive that the committee has made an error in the adoption of the twentieth and twenty-first sections, and I therefore move to reconsider the twentieth section.

I will state the ground upon which I make that motion. It will be observed by the reading of the twentieth section that we give to the Secretary of Internal Affairs the right to exercise all powers and duties devolving, by law, upon the Surveyor General. These duties and powers are designated in various acts of Assembly of this Commonwealth; and the effect of this section would be to crystallize these acts of Assembly, defining and designating these various powers and duties, into the Constitution of the State. Thus forming part of the organic law of the State, the Legislature could not either repeal any of the provisions of these various acts of Assembly or withdraw from the Secretary of Internal Affairs any of these powers, or amend or abridge them. They would become permanently crystallized into the fundamental law of the State. I think it is proper that this Convention should institute the office, and allow the Legislature to transfer the powers and duties of the office from the Surveyor General to that of the Secretary of Internal Affairs. The same principle has application to section twenty-one, and if this amendment prevails I shall then offer an amendment to the twenty-first section.

Mr. ARMSTRONG. Mr. Chairman: I may add, in this connection, that, while the committee is not prepared to accept the criticism of my friend from Indiana (Mr. Clark) as being a necessary conse-

quence of the language employed in the section as it stands, the purpose we had in view is precisely that which he intended to present by his amendment, and if it removes any possible doubt as to the construction of it, the committee will have no objection to it.

The motion of Mr. Clark to re-consider section twenty was agreed to.

The CHAIRMAN. The question is now upon the twentieth section :

The CLERK read :

SECTION 20. The Secretary of Internal Affairs shall exercise all the powers and duties devolved by law upon the Surveyor General, and the office of Surveyor General shall cease when the Secretary of Internal Affairs shall be duly qualified. His department shall embrace a bureau of industrial statistics, and such duties relating to the charitable institutions, the agricultural, manufacturing, mines, mineral, timber and other material business interests of the State as may be by law assigned thereto. He shall annually make report to the Legislature, and at such other time as may be required by law.

Mr. CLARK. I now offer this amendment: Strike out the words "devolved by law upon the Surveyor General," and insert in lieu thereof the words "which shall be prescribed by law."

The amendment was agreed to.

Mr. CLARK. Mr. Chairman: I now move to re-consider the vote by which the twenty-first section was adopted, upon the same ground.

The motion was agreed to.

The CHAIRMAN. The question is now upon the twenty-first section.

The CLERK read :

SECTION 21. The Superintendent of Public Instruction shall exercise all the powers and perform all the duties devolved by law upon the Superintendent of Common Schools; and the office of Superintendent of Common Schools shall cease when the Superintendent of Public Instruction shall be duly qualified.

Mr. CLARK. I now move to amend that section, by striking out the words "devolved by law upon the Superintendent of Common Schools," and inserting the words "which shall be prescribed by law."

Mr. LILLY. Mr. Chairman: After the action of the committee on the twenty-second section, it would be well to strike out the whole of this section.

Mr. BROOMALL. Mr. Chairman: I would like to inquire of the gentleman from Indiana (Mr. Clark) what he proposes to do with the duties of the office of Superintendent of common schools before the act shall be passed putting those duties upon the Superintendent of Public Instruction? He provides for the abolition of one office, and then provides that certain duties may by law be put upon another office. What does he propose to do with the duties of the office in the interval? My remark will apply just as well to the amendment of the other section.

Mr. CLARK. Mr. Chairman: The powers and duties which devolve upon the Superintendent of Common Schools are only found in the various acts of Assembly respecting that office. We have no such officer designated in our present Constitution; his office is the creature of statute, and the powers and duties, therefore, devolving upon him must be defined in those acts of Assembly, and nowhere else.

It certainly must be admitted that if you create the office of Superintendent of Public Instruction, and define his powers and duties in the Constitution, it follows, as matter of course, that none of these can be taken away, abridged or impaired by any subsequent legislative enactment. His authority and jurisdiction in such case would be as independent of the Legislature as the power and jurisdiction of the Legislature is independent of him. Now whilst it is not proposed to recite specifically and in detail, in the Constitution, the powers and duties to be conferred, yet it is proposed to grant to this officer "all the powers and duties by law devolved upon the Superintendent of Common Schools," these duties and powers being given in detail in various acts of Assembly, and divers decisions of our courts. Is not the grant as specific as if these "powers and duties" were copied in detail into the Constitution? Is not the effect of the general grant of powers equivalent to a recital in the section under consideration? It is clear that the ascertainment of these various powers and duties, indicated in the section, as much involves an examination of these acts of Assembly as the comprehension of a legal document involves the reading of the exhibits attached and referred to. I regard the constitutional grant proposed in this twentieth section to be commensurate with the powers and duties heretofore by law conferred on the Super-

intendent of Common Schools, and the policy of its adoption a very bad one. The Constitution should be complete in itself; there is no necessity for references therein to any other paper, or any other instrument, act of Assembly or law to define the extent of the powers therein conferred.

As the material interests of this great Commonwealth shall expand, and its educational institutions enlarge, it may be found to be for the best interests and policy of the State to transfer some of the powers thus conferred to some other department of the government, or, perhaps, to dispense with a portion of the same altogether. In such a case we would find the Legislature powerless to disturb the grant, and nothing less than a constitutional amendment would or could effect the purpose.

It seems to me that the duty of this Convention should be, and is, simply to create the office, with such general designation of its objects and powers as to enable the Legislature to carry the same into effect. After the adoption of the Constitution, containing such general designation, it would be in the power of the Legislature to transfer these powers, and then the evil now complained of could not exist.

Mr. BROOMALL. Mr. Chairman: I do not see that the gentleman has answered my question. I do not wish to crystallize into the Constitution, as the gentleman calls it, laws that now impose duties upon the Superintendent of Public Instruction, but I do not want to leave an intermission between the destruction of one office and the enactment of the law which will put the duties before that time performed in that office, upon the officer substituted by our action. I would ask the gentleman whether or not the end could not be better attained by an amendment which I will suggest, to insert after the words "common schools" the words, "subject to such change as shall be made by law," so that the section shall read: "The Superintendent of Public Instruction shall exercise all the powers, and perform all the duties, devolved by law upon the Superintendent of Common Schools, subject to such change as shall be made by law; and the office of Superintendent of Common Schools shall cease when the Superintendent of Public Schools shall be qualified."

I ask whether that would not cure the evil which the gentleman speaks of, without creating the evil of which I complain.

In order to bring the question up, I will move as an amendment, that after the words "common schools" in the third line, we insert the words, "subject to such change as shall be made by law."

Mr. BIDDLE. I think that is an improvement. I am not certain, upon reflection, that the criticism which was made after the vote was re-considered was valid, but if there be a doubt, it is better to remove it as we are changing it. I think I prefer the change suggested by the gentleman from Delaware (Mr. Broomall.)

Mr. MANN, Mr. Chairman: I would simply suggest that the Committee on Schedule will relieve us of all this difficulty. There will be various matters of this kind to be remedied, and the Committee on Schedule can accept the suggestion of the gentleman from Delaware (Mr. Broomall.) Therefore we ought to adopt the best phraseology, without regard to the effect of creating an interim.

Mr. LEAR. Mr. Chairman: There is one thing to which I would like to call the attention of the committee, in connection with the subject of the schedule, the proper place for this section. We have a section here which seems to be in its proper place, and which, I think, provides for all that is wanted by this amendment.

"A Superintendent of Public Instruction shall be appointed by the Governor, by and through the advice and consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law."

That is the section reported by the Committee on Education. Now, with that section, why should we have this section twenty-one at all? Would not the object of the gentleman from Indiana (Mr. Clark) be just as well accomplished by voting down this section and leaving it out altogether, and then leaving the question of grafting upon this Constitution, the law as it now exists, and provide in the schedule for the time when the duties of the Superintendent of Common Schools shall expire, and then allow the section which I have just read from the report of the Committee on Education, to take its place when it comes to be passed, and do without section twenty-one in this report entirely? I make that suggestion. I think it will answer every purpose.

Mr. ARMSTRONG. Mr. Chairman: The second sober thought is usually the correct one, and upon reflection I am satisfied that the judgment of the committee is correct. The purpose of the committee

was not to invest this officer with any power which should be beyond the control of the Legislature, but simply that he should be vested with the powers now exercised by the Superintendent of Common Schools. The word was carefully chosen, and the House will observe that it reads "all duties *devolved*;" it does not say *now* devolved; nor is there anything in its construction which would exclude legislative changes in the law. I believe that the judgment of the committee, which was very carefully formed, and in which this expression was very carefully considered, was correct.

I do not, at present, see any particular objection to the amendment of the gentleman from Chester (Mr. Broomall.) It, perhaps, would make still more clear that which seems to be sufficiently clear already, and in this view I see no especial objection to the amendment. But I cannot perceive any sufficient reason for radically changing the section as has been proposed by my friend from Indiana (Mr. Clark.) The phraseology which he proposes leaves it open to the criticism that no duties be devolved upon the new officer until after the Legislature had declared what duties he shall exercise; and it was part of the purpose of the committee to avoid just that calamity, and clothe the new officer with all the powers and duties of the old and preceeding officer. I believe the language was carefully selected, and that it is not open to the criticism suggested.

As the section has been re-considered, and is now before the committee, I would have no objection to the amendment of the gentleman from Delaware, (Mr. Broomall,) and I think the section should then stand as reported by the committee with that amendment.

Mr. CLARK. I will accept the amendment of the gentleman from Delaware (Mr. Broomall.)

Upon the adoption of the amendment of Mr. Broomall, a division was called, which resulted: Affirmative, fifty-eight; negative, thirteen.

So the amendment was agreed to.

The twenty-first section as amended was then agreed to.

Mr. BROOMALL. Mr. Chairman: I desire to ask unanimous consent—I do not know whether it will be granted—to make the same change in the previous sentence for the same reason. It cannot be re-considered if unanimous consent is not grant-

ed, and in that case I will wait until the bill comes up on second reading.

The CHAIRMAN. Is there any objection to going back and re-considering the section that has been agreed to?

["No!" "No!"]

Mr. BROOMALL. Then I make the corresponding motion with respect to that section (the twentieth.) After the word "general," in the second line, insert "subject to such change as shall be made by law."

The question being on the motion to amend, it was agreed to.

The CHAIRMAN. The section as amended is now before the committee.

The question being upon the section as amended, it was agreed to.

Mr. MANTOR. I now offer the following as an additional section:

SECTION 23. The Attorney General shall be chosen by the qualified electors of the State at the time and places at which they shall vote for members of the General Assembly, and shall hold his office for the term of four years.

Mr. BIDDLE. Mr. Chairman: Is not that inconsistent with section nine, already adopted?

The CHAIRMAN. It is, and is therefore not in order at this time.

Mr. BRODHEAD. Mr. Chairman: I offer the following as an additional section. I am not sure, however, that this is the proper place for it.

SECTION 23. The Secretary of the Commonwealth, Attorney General, Auditor General, State Treasurer and Secretary of Internal Affairs shall be entitled to seats in the House of Representatives, and may speak upon questions which shall arise therein relating to their several departments, and may be questioned concerning the same, but shall have no right to vote.

Mr. CURTIN. Mr. Chairman: I would suggest to the mover that that should be an amendment to the article on Legislature.

Mr. BRODHEAD. I had some doubts about its being in order here. I withdraw it.

The committee then rose.

IN CONVENTION.

Mr. WOODWARD. Mr. President: The committee of the whole has had under consideration the article reported by the Committee on Executive, and has instructed me to report the same back to the Convention, with amendments.

The PRESIDENT. The committee of the whole has had under consideration the article reported by the Committee on Executive, and has instructed its chairman to report the same back to the Convention, with amendments. The amendments will be read.

The CLERK then read the amendments.

The PRESIDENT. The amendments will be entered on the Journal.

WOMAN SUFFRAGE.

The President presented a communication from Adelaide M. Murdock, dated Philadelphia, March 5, 1873, inviting the members of the Convention to be present at a lecture she proposes delivering in opposition to woman suffrage, on Saturday, March 15, 1873, which was laid on the table.

CITIES AND CITY CHARTERS.

The PRESIDENT. The next business in order is the consideration, in committee of the whole, of the article reported by the Committee on Cities and City Charters.

The Convention then, as in committee of the whole, Mr. Darlington in the chair, proceeded to the consideration of the report submitted by the Committee on Cities and City Charters.

The CHAIRMAN. The first section of the article will be read.

The CLERK read the first section, as follows :

SECTION 1. The Legislature shall pass general laws, whereby a city may be established whenever a majority of the electors of any town or borough voting at any general election shall vote in favor of the same being established.

The question being upon the section, it was agreed to :

The CHAIRMAN. The second section will be read.

The CLERK then read the second section, as follows :

SECTION 2. Every city now existing, or hereafter established, shall be governed by a mayor and a select and common council, in whom the legislative power shall be vested.

The question being upon the section, it was agreed to.

The CHAIRMAN. The third section will be read.

The CLERK then read the third section, as follows :

SECTION 3. The mayor shall have a qualified veto on all the acts and ordinances passed by the council, shall see that the duties of the several officers are

faithfully performed, but shall exercise no judicial functions, civil or criminal.

Mr. LITTLETON. Mr. Chairman : I move to amend, by adding after the word "shall," in the second line, "appoint all heads of departments not elected by the people, and shall," so that it shall read, "shall appoint all heads of departments not elected by the people, and shall see that the duties of the several officers are faithfully performed," &c.

Mr. PARSONS. Mr. Chairman : I move to amend the amendment, by striking out the words "heads of departments," and inserting "officers." In the city I come from we have no "heads of departments," but we have "officers."

Mr. LITTLETON. I accept the amendment.

Mr. J. PRICE WETHERILL. Mr. Chairman : Before that amendment is adopted I should like to hear from the mover of the proposition, or some one else, some good and sufficient reason why we should give to the mayor in the city of Philadelphia, without consent of either branch of the council, supreme power in the indirect expenditure of many millions of dollars annually. It strikes me, sir, that that is giving the mayor of the city of Philadelphia a little too much power. Power, I know, must rest somewhere ; but, at the same time, it seems to me that if it be proper that this Convention should delegate power over the expenditure, directly and indirectly, of so much money, it ought to be by and with the consent of either one or both branches of the council. For my own part I favor the section just as it is reported from the committee. The gentleman who offers that amendment is a member of that committee. I admit his experience is large, from the position that he occupies in the city government, and he knows, perhaps much better than I do what would be for the benefit of large cities, but I should like to hear a reason for lodging with the mayor of any city so much power and so much patronage.

Mr. PARSONS. Mr. Chairman : I desire to amend the amendment, by adding after the words "heads of departments" the words "or other officers."

Mr. LITTLETON. Mr. Chairman : I accept that amendment.

Mr. CUYLER. Mr. Chairman : I am in favor of the amendment as proposed by the gentleman from Philadelphia (Mr. Littleton.) I do not agree with the remarks of my friend Mr. J. P. Wetherill.

I have had large experience in the municipal affairs of the city of Philadelphia, extending over a period of nine years' membership in its select council, and three years as its presiding officer, and I must say, with the experience I have had, I think the suggestion of the gentleman, who is now president of the select council, is full of wisdom. The mayor of the city of Philadelphia to-day is practically powerless. He sees constantly abuses—and growing abuses—and yet he is powerless to remedy them. The reason is that he has no control over the selection or removal of the heads of departments of the city government. They are selected by a joint convention of the select and common councils of the city, purely through political motives and political considerations. They are selected purely for party services rendered in the past, and for those which they may be capable of rendering in the future, and the consequence is, as a practical result, that while our streets are wretchedly paved, while our highways are unclean and filthy, and while many of the departments of the city government are as slipshod as they can possibly be, our mayor, though a gentleman of the highest virtue and largest intelligence, is simply powerless to apply any remedy. It is high time that we should have some redress for this condition of affairs, and I know of no method by which that redress can be obtained except by making the head of the department feel that he is responsible to the mayor of the city, and the mayor of the city responsible to the people of the city for the manner in which his duties are discharged. It may be that some little detail in the amendment of the gentleman from this city (Mr. Littleton) may be desirable. It may be that these heads of departments should receive the confirming vote of the majority of the select council of the city, or something of that kind; but that the mayor of the city of Philadelphia should be held responsible to the citizens for the manner in which the city is governed, and that power should be placed in his hands commensurate with that responsibility, I think is a crying necessity. I am amazed my friend Mr. Wetherill should doubt that it exists. He, too, has had large experience in the municipal affairs of this city, and I am sure his own reflection will confirm what I say, that the mayor is powerless to redress the wrong which he sees constantly before his eyes. I am in favor of a system

that shall clothe the chief executive of the city with the largest power and responsibility—a power commensurate with his responsibility and a responsibility commensurate with his power. I do not believe in any other system of efficient administration. I cannot conceive it possible that the city could be wisely governed or its citizens could enjoy, as is their right, the blessings of good police, pure air, and water and light, and clean highways, except there be placed in the hands of the chief magistrate of the city power equal to the responsibility which rests upon him. I therefore shall readily vote for the amendment proposed by the gentleman from the city (Mr. Littleton.) I would suggest that the appointments made by the mayor be confirmed by a vote of the members of the select council, and the amendment offered by the gentleman will then be in harmony with our usual system.

MR. LITTLETON. Mr. Chairman: I will accept the suggestion of the gentleman from the city, (Mr. Cuyler,) and incorporate it as part of my amendment.

MR. JOHN PRICE WETHERILL. Mr. Chairman: I then withdraw the motion I made.

MR. LITTLETON. Mr. Chairman: My object in offering this amendment is simply to place the responsibility of these appointments where it certainly ought to rest. Now, under the present elective system by councils, the responsibility is so divided that it is impossible to ascertain upon whom the blame should fall in the event of an improper person being selected to fill an official position. I think the mayor of the city, chosen, of course, as he must be for some good reasons, naturally supposed to be upright at least, should be charged with this duty of appointing the proper heads of departments, and be required to assume the entire responsibility, so that if he appoint improper persons to office he can be held to a strict accountability.

It should be borne in mind that a city does not deal with the natural or civil rights of an individual, but manages exclusively the municipality, and it practically is a question of business and entirely a question of dollars and cents, and the plan which we shall adopt should be that one which shall secure the most effective service in our officials. Now I apprehend that in a large corporation no one would think of selecting its officers by means of a system of popular suffrage. People

would scout at the idea, and it would be simply ridiculous. I believe there would be a direct responsibility vested in the mayor of the city by the adoption of this amendment, and I think the interests of the community will thereby be better promoted.

MR. GUTHRIE. Mr. Chairman: I desire to amend the amendment, by inserting after the word "shall" the following words: "Nominate, and by and with the consent of the select council, appoint all city executive and administrative officers, except the city treasurer and city controller."

MR. WALKER. Mr. Chairman: The section originally drawn and submitted to the committee contained the amendment suggested by the gentleman from the city, (Mr. Littleton,) and also other of the views of some of the members of the Convention. The section as first written read somewhat in the following manner: "The mayor shall nominate, and with the advice of the select council, appoint and remove all the municipal officers not herein made electible." The balance of the section read as it has been reported by the committee. It was originally drawn and submitted to the committee by myself, and the committee called before it a number of gentlemen from the city to advise with its members upon the subject. The result of their advice and our deliberations was to strike out the words I have referred to. I am free to say, however, that they were not stricken out entirely with my approbation; but inasmuch as the city of Philadelphia was more interested in this article than any other portion of the State, I assented to the proposition. I think the section itself is a good one, but the amendment which has been suggested, I think, will be an improvement. The amendment I would propose to the section would be the section as it was originally drawn, together with the suggestion offered by the gentleman from Allegheny (Mr. Guthrie;) but the object of the members of this committee, coming, as they do, from all parts of the Commonwealth, was to consult the interests of the city of Philadelphia and the city of Pittsburg. These cities were the most interested in the questions presented for the consideration of the committee, and believing it would best subserve their interests to report the section in its former shape, it was drawn up and submitted to the committee, but after consultation with the city authorities of Philadelphia

it was amended as it is now presented in the report of the committee. I desire to state, however, that I would have preferred the section in its original form.

MR. CUYLER. Mr. Chairman: I have not seen this section as it was originally submitted to the committee, and I prefer it to the one reported by the committee. I desire to ask the gentleman from Allegheny (Mr. Guthrie) to withdraw his amendment, in order that I may offer the original section as a substitute for the one reported by the committee.

MR. GUTHRIE. Mr. Chairman: I withdraw my amendment.

MR. CUYLER. Mr. Chairman: I desire the Clerk to read the section as amended, by the addition of the original section.

The CLERK read as follows:

"The mayor shall nominate, and with the advice of the select councils, appoint and remove all municipal officers not herein made electible. He shall have a qualified veto on all the acts and ordinances passed by the council, shall see the duties of the several offices are faithfully performed, but shall exercise no judiciary functions, civil or criminal."

MR. CUYLER. Mr. Chairman: I offer the section, as read by the Clerk, as a substitute for the section reported by the committee.

MR. EWING. Mr. Chairman: I hope the amendment will not pass in the form it is at present. From hearing it read over I understand the amendment gives to the mayor the power of the appointment of all officers of the city, excepting those made electible by this Convention. Now it is the latter clause of the section to which I object. I am in favor conferring the power on the mayor, with the advice and consent of select council, to appoint all officers, not made electible, but I think there is a large number of officers in a city, who from time to time it may be found better to elect than to leave to be appointed by the mayor. I do not know what officers the article makes electible. It seems there are none, but I am well satisfied that the wisdom of this Convention cannot determine what officers should be made electible and appointable. I prefer, however, some amendment which shall leave this whole question to the Legislature. I believe the city councils to be the worst possible depository for the appointing power, and although conferring the exercise of this power upon the mayor, with the consent of one of the city councils, is a decided improvement, yet

I think the people are the best depository for the appointing power in our cities, and that one-half or more of those officers now elected by the city councils should be elected by the people.

I would be glad if the chairman of the committee would modify the proposition, by inserting the words, "except such officers as shall by law be made elective by the people."

Mr. CAMPBELL. Mr. Chairman: I agree with the gentleman from Allegheny (Mr. Ewing) in his criticism upon the language of the amendment proposed to be inserted here. We have in Philadelphia, for instance, several officers who are now elected by the people, and among these are the receiver of taxes and the city treasurer. This report of the Committee on the Executive, I believe, does not provide for the election of these officers. I would not like the mayor of this city to have the power to appoint the receiver of taxes and the city treasurer—the men who have charge of the city's money. I think we had better, if the amendment is to be inserted at all, have its language so qualified as to except all those officers who are either now elected or who may be hereafter elected by the people.

Mr. GUTHRIE. Mr. Chairman: I think there is an error here in the word vote. It is a misprint. The amendment reads, "he shall have a qualified *vote*." It ought to read, "that he shall have a qualified *veto*." I desire to offer an amendment to the amendment, as follows: To strike out the word "qualified," and change "vote" into "veto."

Then, if the amendment be adopted, it will leave the mayor with a veto without qualification.

Mr. CUYLER. Mr. Chairman: I will state, for the information of the gentleman, that the word "vote" was only a misprint, and has been changed to "veto," which was intended—

Mr. GUTHRIE. Then, Mr. Chairman, I will withdraw my amendment. I am advised by many gentlemen to let the word "qualified" remain, and I will therefore withdraw my amendment on that subject.

Mr. CAMPBELL. Mr. Chairman: What is before the committee?

The CHAIRMAN. The amendment to the amendment.

Mr. BIDDLE. Mr. Chairman: I would like to have it read again, because I take an interest in this subject, and really do not know what we are considering.

The CHAIRMAN. If the House will come to order, and gentlemen refrain from conversation, the amendments will be read.

The CLERK: The gentleman from Philadelphia (Mr. Littleton) moves to insert, after the word "shall," as follows:

"By and with the consent of the select council appoint all heads of departments, and municipal officers, not elected by the people, and shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal."

To this the gentleman from Philadelphia (Mr. Cuyler) offers the following amendment: To strike out the section and insert:

"The mayor shall nominate and, with the advice of the select council, appoint and remove all municipal officers not herein made elective. He shall have a qualified veto on all the acts and ordinances passed by council, shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal."

Mr. CUYLER. Mr. Chairman: The amendment to the amendment is open to the criticism made by my brother from Philadelphia (Mr. Campbell.) For instance: There are certain heads of departments elected by the people, and who, for wise reasons, should not be appointed by the mayor, and certain other officers, such, as for example, the city treasurer, the auditor of the city accounts and the receiver of taxes. They ought not to be appointed by the mayor. They are now, and, it seems to me, should be in the future, elected by the people. Therefore the proper reading of this section should be, in my judgment:

"The mayor shall nominate and, with the advice of the select council, appoint and remove all municipal officers not herein made elective. He shall have a qualified veto on all the acts and ordinances passed by council, shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal."

That would seem to express it, and if the gentleman would accept that as a substitute for his amendment, I think it would meet the difficulty.

The CHAIRMAN. Does the gentleman from Philadelphia accept that as a modification of his amendment?

Mr. EWING. I think the amendment originally offered by the gentleman from

this city (Mr. Littleton) covers it completely, and there is no necessity or propriety in naming any officer.

Mr. BIDDLE. I am not certain about that.

Mr. CUYLER. Mr. Chairman: I think this substitute much more explicit and definite.

Mr. EWING. Mr. Chairman: I wish to leave it as it is. I do not object particularly to any provision which will leave it to the Legislature to provide by general law for the election to any office that may be created in the State.

Mr. CUYLER. Mr. Chairman: I confess I do. I have never been able, in my experience in the affairs of the city, to conceive how leaving it to the Legislature would work out a wise result. I think it ought to be specially provided for in the Constitution itself. With the permission of the committee I will read this section again.

"The mayor shall nominate and, with the advice of the select council, appoint and remove all municipal officers not herein made elective; he shall have a qualified veto on all the acts and ordinances passed by councils, shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal."

That does not permit the Legislature to take away from the mayor the power to appoint a commissioner of highways, a commissioner of city property and other heads of departments. It does not permit the Legislature to do that. The Constitution itself specifies that the mayor shall have this certain power of making appointments. They are excepted from legislative control; but the Legislature is left free to control the election of receiver of taxes, the city controller and the city treasurer and any others than heads of municipal departments.

Mr. HANNA. Mr. Chairman: It appears, from the explanations of a large number of the members of this Convention, that they seem to think this measure is intended only for and will affect only the city of Philadelphia. I do not so consider it. I consider that we are preparing some plan for the general regulation of the State, and not for one particular city.

With due deference to the chairman of the Committee on Cities and City Characters, and to some of my colleagues, I desire to say that I entirely differ with them on this subject. In my opinion this

matter is altogether foreign to the Constitution of the State, and has no place here whatever. It should be entirely a question of general law. Now we can readily see from the suggestions made here that hardly two gentlemen upon this floor agree upon any provision contained in this report, and that we are all trying only to form some plan which will suit the city of Philadelphia. I agree with my colleague (Mr. Cuyler) in regard to the question of reposing more power in and of placing more responsibility upon the mayor of this city. But at the same time I am jealous of the rights of the people. Now in the first place this is, to my mind, special legislation. The Committee on Legislation have, in their report, provided for this very case. If this committee will turn to the report of the Committee on Legislation, on page three, they will find that it reported as follows:

"That the Legislature shall not pass any local or special law regulating the affairs of counties, cities, townships, wards or boroughs or school districts."

By general law, therefore, I submit to the committee that this subject should be regulated by the Legislature. That is the proper place for it. Why, sir, this provides that we shall exempt from legislation in the city of Philadelphia the offices of city treasurer, city controller and the receiver of city taxes. No offices of the kind are mentioned in this respect, but what city outside of the city of Philadelphia will ever have such offices? And how are we to provide for all the wants and necessities of the different cities throughout the Commonwealth? I submit this view. Perhaps the people of Harrisburg, or of Lancaster, or of Williamsport may not require more than one branch of municipal legislature. Yet we undertake to say that every city shall be governed by a select and common council. Philadelphia may need this double council. It may be more convenient to this city. Pittsburg may find it more convenient to be thus governed, but Scranton, Wilkesbarre and Lancaster may not find it so convenient, and may be satisfied with one branch. Why should we impose upon them, then, the conditions as reported by the committee? At any time that they desire a double body in the municipal legislature the people themselves can obtain it through the Legislature. They will regulate for all the cities of the Commonwealth. Had we not better let the people of each particular city determine for them-

selves, under the provisions of a general law, how they shall be governed? If that is done, we in Philadelphia can provide, by general law, what officers shall be appointed by the mayor of the city, and what shall be elected by the people. So in other cities. Our friend says that the mayor of Philadelphia is only a chief of police. So he is, but that was in the act of consolidation; that is under the very charter that the people of Philadelphia asked for and received at the hands of the Legislature. And if it does not suit us can we not, under a general law, ask the Legislature to give us other provisions? Cannot a law be passed authorizing the mayor to appoint other officers? I certainly submit it can, and why should we embarrass and encumber the Constitution of the State by such petty details as that the mayor shall appoint all the officers of the municipality but the city controller, the city treasurer and the receiver of taxes. Why they may not have these officers in other cities, and in order to carry out the plan suggested by my colleague we ought to have a section saying that Philadelphia shall be governed as follows.

I do submit to the Committee on City and City Characters, and to my colleagues who differ with me, that this is not the place for any such plan of municipal government.

MR. LITTLETON. Mr. Chairman: I will add but one word. The gentleman from Philadelphia, who has just spoken, (Mr. Hanna,) says that this section should be provided for by a general law. That, undoubtedly, should be the case, if there was any opportunity of ever securing such legislation. It is very easy to talk about, but very difficult to obtain. I contend that anything, no matter whether it is for this city or for any other part of the State in which we can make a general improvement, is proper in this Constitution. It does not do to say here that this is special legislation; but if special legislation for a particular class, or for particular communities, will be a benefit generally to the State, then we should put it in here, and not trust to the chance or mischance of future legislation. My colleague says that this interferes with the rights of the people. I have all respect for such rights, but I maintain that it does not infringe upon what we generally call the rights of the people, the rights which are protected by a nationality or by a State. What have such rights to do with the question of street paving, or the question of water

pipe, or any of the many other questions which come before a community like a municipality.

These are questions, as I said before, of business management, purely of dollars and cents, and each community should be placed in a condition to have these services best done and at the cheapest price. You cannot do it, in my judgment, under your general system of municipal management as it exists at the present time, at least that is the result, right or wrong, of my experience. I believe that we should have direct and positive management and responsibility, even if it does take away some of the assumed rights, in a general sense, of the community. I shall be glad, sir, to surrender mine upon that subject, I assure you.

The only objection that I have to the amendment of the gentleman from Philadelphia (Mr. Cuyler) is that it renders impossible any change. I am willing to leave to the Legislature, by general enactment, the discretion to say which offices shall be filled by the people. I think it is wiser not to trammel it too much, but I am willing to accept either; but if we prohibit the Legislature from passing special laws affecting this or that locality, of course they cannot change one without changing all; and all over the State the different cities will exercise a supervision upon these questions. It will not be whether the city of Philadelphia is affected or not, but whether all the cities are affected, and therefore I think it better to have it upon the broad principle that the mayor shall have the responsibility placed upon him of selecting all officials, heads of departments and otherwise, who are not elected by the people. If he exercise that power improperly the Legislature has the power to place the selection in the hands of the people throughout the State, not simply in one locality. Therefore, I think, looking at the objection urged by my friend from Philadelphia, (Mr. Cuyler,) it will be better to leave it in that condition; but, so far as I am individually concerned, I have no special preference. I think the amendment, as proposed by myself or by my colleague, (Mr. Cuyler,) should be adopted.

MR. CUYLER. Mr. Chairman: I have already spoken too often upon this subject, but I trust the committee will bear with me for a moment. I confess that I listened with a great deal of surprise to that which fell from my friend from Philadelphia (Mr. Hanna.) No man knows bet-

ter than he does the wishes of the people of the city of Philadelphia, and that the Legislature of the State has utterly refused to listen to or recognise the councils of the city. No man knows better than he does how utterly powerless those councils are to-day in Harrisburg, to obtain any legislation they ask for. No man knows better than he does, the fact that if the city of Philadelphia asks she is to be refused, because she asks. Our streets are taken from us and handed over to private corporations. The city councils, with almost entire unanimity, entreat the Legislature not to do it; but the Legislature is silent. So it is with almost everything that is asked from the Legislature of Pennsylvania which has the endorsement of the councils of Philadelphia. To ask it is to be sure to be refused.

Now I do not recognize the distinction which disturbs the mind of my excellent friend from the city (Mr. Littleton.) This Convention is but the embodiment of the people of Pennsylvania. This higher law called the Constitution, which we are to make here, is but an enactment of the people of Pennsylvania, which they shall approve by their confirming vote hereafter, when it is submitted, and will be just as much a law and an enactment of the people of the State as an act of the Legislature would be.

A word as to the particular amendment. The thought that underlies the amendment is, that there must be individual responsibility in these matters that come so closely home to us as the police of the city, the protection of our lives and our property, the enjoyment of pure water, good light and pure air, and a thousand and one things having more to do with the happiness and the comfort of the people of the city than any legislation of the Legislature, or any legislation of the Congress of the United States. If we are to have these blessings, we are only to have them by depositing a large power in the hands of a responsible public officer. Elect him by the people, hold him to a rigid responsibility as to the manner in which he discharges his duties, but give him a power that is commensurate with the responsibility you deposit with him.

I have another reason that moves my mind that might affect the judgment of many members of this Convention. I think that many of the laws that afflict our city have arisen from overburthening our popular elections. We send too

many things to the people; we should elect, by popular vote, the chief or leading officers of the State and of our municipalities; but, as for electing the immense number of officers that we have been accustomed to do, I think it is to destroy the value of the popular vote itself, to multiply temptations and incentives to dishonesty in the manipulation of elections, and tends seriously to damage the rights of the citizen which I would exercise in the popular vote not more than the proper administration of the republican system of our government would simply and reasonably require.

I would give the mayor the appointment of these various heads of departments, to lay our pavements and water-pipes, and provide pure air and good gas for the consumption of our citizens. I would give him all these appointments, because I would clothe the citizen with the power to look to some one individual for the manner in which this thing is done, and to hold him responsible for the proper discharge of that duty. If you do that, you must give him power commensurate with his responsibility.

Mr. GIBSON. It is evident, sir, that the committee is not prepared to act upon this article. The differences that exist among the gentlemen from Philadelphia show that the measure has been sprung upon them prematurely. Therefore, sir, in order to give the gentlemen from Philadelphia and the gentlemen from other cities an opportunity of coming to some understanding upon this question, which is, perhaps, of considerable importance, I move that the committee now rise, report progress and ask leave to sit again.

The motion was agreed to, and the committee rose.

IN CONVENTION.

Mr. DARLINGTON. Mr. President: The committee of the whole have had under consideration the article of the Constitution relating to cities and city charters, and have instructed their chairman to report progress and ask leave to sit again.

Leave was granted to the committee to sit again to-morrow.

Mr. LILLY. Mr. President: I move that the Convention do now adjourn.

The motion was agreed to.

So the Convention, at two o'clock and twenty-five minutes, adjourned.

FIFTY-NINTH DAY.

THURSDAY, *March 6, 1873.*

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. James W. Curry.

JOURNAL.

The Journal of yesterday's proceedings was read and approved.

DEATH OF MR. HOPKINS.

The PRESIDENT. The Chair has the painful duty of announcing to the Convention that yesterday afternoon, shortly after the adjournment, he received a telegraphic dispatch from Pittsburg announcing that our late colleague, Col. Wm. Hopkins, died at two o'clock yesterday. It is with sincere pain and regret that the Chair makes this announcement. He presumes some gentleman is ready to offer a resolution upon the subject.

Mr. LAWRENCE offered the following preamble and resolutions, which were read :

WHEREAS, This Convention has been informed of the sudden death of Hon. William Hopkins, of Washington county, a delegate from the Twenty-sixth Senatorial district ; therefore,

Resolved, That it is with the deepest feeling and most unaffected regret that we have heard of the sudden death of Hon. Wm. Hopkins, a member of this Convention, so universally esteemed and so highly respected.

Resolved, That in his death this body has lost a faithful and honest member, a useful and intelligent citizen, and his family a tender and devoted parent.

Resolved, That in this hour of deep affliction and grief we tender to his family, so deeply stricken, our most sincere condolence and profound sympathy.

Resolved, That as an evidence of our respect for the memory of the deceased, we do hereby appoint a committee of this Convention to attend his funeral at Washington, Pa.

Resolved, That the Chief Clerk be directed to forward to the family of the deceased a copy of these resolutions; and that we do now adjourn.

By unanimous consent the Convention proceeded to the second reading of the resolutions.

The first resolution was read the second time and agreed to.

The second resolution was again read.

Mr. LAWRENCE. Mr. President: The most certain, and often the most unexpected messenger, *death*, comes to take us one by one away from these earthly scenes, and whether among the humble and lowly, or the honored and esteemed of the world, the messenger is alike inexorable. He is as a thief in the night, sometimes stealing stealthily, yet slowly and unexpectedly, upon his victims, and then again he attacks boldly and suddenly the vital powers of the system, when the clay tenement yields, and is robbed, by tender and sympathizing friends, in the habiliments of the grave.

When I asked this Convention, on last Friday morning, for leave of absence for my highly esteemed colleague, Hon. William Hopkins, for only a few days, that he might visit his family, to whom he was always so ardently attached, and to whose welfare he took such an undisguised interest, how little did you or I imagine that in five days I should here perform the most melancholy duty of announcing his death, and speaking very briefly of his virtues?

On his way west to Pittsburg he contracted a cold, and was compelled to take his bed at the Union hotel, utterly prostrated, on Friday morning last. Physicians were at once called, and pronounced his disease pneumonia of malignant type, and after a very few days of suffering, surrounded by members of his family and sympathizing friends, at two o'clock yesterday he died.

The deceased was born in the southeastern part of the county of Washington, in the year 1804, and was now in his sixty-eighth year. He was a tanner by trade, but did not pursue the business very long; was appointed justice of the peace by Governor Schultz and re-appointed by Governor Wolf, and served acceptably for several years; was elected to the Leg-

islature, I believe, in 1834, and for several years thereafter, and served as Speaker of the House for three sessions, and was esteemed an impartial and judicious presiding officer; was appointed Secretary of the Land Office by Governor Shunk, and served two years; was a candidate for Congress in 1848, in the district composed of Washington and Beaver, and was beaten less than one hundred votes. He was elected Canal Commissioner in 1852, and served three years. In 1862 he was again elected to the House of Representatives, and in 1863 to the Senate, from Washington and Greene, and served a full term; and then at the last election was elected as a member to this Convention from the Twenty-sixth Senatorial district.

This long and almost continuous service will show that he retained the confidence and esteem of his constituents, and they are equal in intelligence and integrity to any found in the State.

Since my boyhood, the name of Col. William Hopkins has been as familiar to me, and to every man raised in his native county, as that of any public or private citizen, and now, that he is gone, thousands of his early and late friends will express sincere condolence with his family and friends, and cherish the memory of his public and private life.

In politics he was an ardent democrat, having, in early life, embraced the principles of the then dominant party. He clung to them in his early manhood, and in his later years with great firmness, and on all proper occasions was ready to defend and elucidate them before the public.

Personally, he was much esteemed for kindness, his manner to all was (as you know) exceedingly pleasant, and his political opponents could always admire his manly and dignified bearing. He was a member of the Presbyterian church, consistent and exemplary in his deportment, and faithful in the performance of every duty. No man could excel him in his attachment to his family, and at home he found his greatest enjoyment. For a somewhat delicate wife (who still survives) he expressed the most constant and tender solicitude, and his children—how could he have loved them more? I trust a kind Providence will enable them calmly to submit to the fate they cannot control.

Here we have lost a faithful and useful member, one esteemed by us all for his ability, his integrity and devotion to the public welfare. It is a solemn and im-

pressive lesson, which must tend to divert our thoughts from these worldly honors, to the rewards of a higher life.

Mr HAZZARD. Mr. President: It is with profound and sincere regret I have heard of the sudden death of my friend and colleague, the Hon. William Hopkins, of Washington.

I have had the pleasure and honor of a long and intimate acquaintance with him and my poor words will fail to convey to this body a full appreciation of his many excellencies and virtues. These few words of praise and eulogium will only be proper upon this sad occasion as a remembrancer in memoriam, for his public acts have gone into the history of his native State, and will remain there as a lasting monument to his wisdom, integrity, and unswerving and patriotic devotion to the best interests of the Commonwealth. He has been often elevated to stations of honor and responsible trusts, by a confiding constituency, and the public never regretted their choice, for when his work was done, and the trust was executed, and he surrendered these trusts back into the hands of those who gave them to him, the universal acclaim of a grateful people was: "Well done, thou good and faithful servant." The slanderous tongue has been silent before his immaculate integrity, and his spotless life and public deeds are as pure as snow, and white as wool. William Hopkins goes to his grave with true nobility stamped upon his brow—the noblest work of God, an honest man.

His domestic virtues were as noteworthy as his public services. He was an affectionate and true husband, a kind parent, a considerate neighbor, a faithful friend, a sound and wise counsellor, and an exemplary christian gentleman. He was charitable to the poor, and foremost in all benevolent and christian enterprises. By his death, his immediate neighborhood will lose the inspiration of his public spirit, his interesting, highly respectable, and intellectual family his kind words of wisdom and advice, and the rich gifts of his social and genial nature, and the State his invaluable services in this Convention.

Mr. W. H. SMITH. Mr. President: Although it was not my privilege to know Colonel Hopkins very long, nor very intimately, I hardly remember the time when his example, as an honest, firm and faithful public officer, was not held up before young men who aspired to political distinction. As his home was some thirty

miles from mine, I have only met him as long intervals—and, unlike many here, who have shared with him legislative labors—thus I had no opportunity to know him until I met here, and for a few weeks have enjoyed the privilege of a seat next to his. Yet I claim the mournful privilege of saying a few words in the praise of a man so excellent, that it may be truly said he needs no praise.

I would then beg leave to add my sorrowing testimony to the virtues of the deceased, and to join in the general expressions of regret that come from all sides of the Hall, and evidently from the inmost hearts of those who have spoken—whether they were of his own political faith, or opposed to him in their political views.

I can add nothing to the eloquent eulogies that have been uttered. But his manly virtues have not been too warmly portrayed—his pure and consistent life well deserves all that has been said in its commendation. Among all civilized nations it has been forbidden to speak ill of the dead. And it has too often happened that more good has been ascribed to the departed than was warranted by the course of their lives. But in the case of our lamented co-laborer, nothing like this would happen. Happily for his family, his friends and his brethern in religious and in political association, no tribute to his memory could possibly say too much of his sterling honor and high integrity. A tender and kindly remembrance of his many virtues will long survive him.

It is a consoling circumstance to his bereaved family that nothing can diminish the veneration in which he will ever be held by his fellow-citizens, for it must always be, notwithstanding the unjust apportionment of praise and of blame to those who die, that

“Only the actions of the just,
Smell sweet, and blossom in the dust!”

Mr. PATTON. Mr. President: We are again called upon to mourn the loss of a dear friend. Again we are reminded that in the midst of life we are in death. A noble and honorable member of our Convention has been removed from among us by the stern decree of omnipotent power—called home to his reward. Mr. Hopkins, of Washington county, was a gentleman standing high in the estimation of this Convention in intelligence and integrity; a member beloved by us all.

This sad and unexpected event, so shocking in its character, has cast a dark shadow over this assembly, and temporarily

unfitted us for the discharge of our respective duties in the contemplation of so appalling an event.

The many bright and honorable positions held by our deceased friend in public life attest the estimation in which he was held by a great army of ardent and devoted friends.

He was a representative man, and has left a proud record in the annals of the Commonwealth, to be inherited not only by his family, but by every Pennsylvanian who admires genius and integrity. The personal relations existing between us were of the most gratifying and pleasant character, and no one will mourn his loss in this body more sincerely than your speaker. It seems to me eminently proper that out of respect to the memory of our departed friend the Convention should adjourn.

Mr. JOHN N. PURVIANCE. Mr. President: I second the motion of the gentleman from Washington. Why the sadness depicted upon the countenance of every member of this Convention? It is that our number is one less than when we adjourned yesterday.

William Hopkins, an honored member of this body, is no more. But a few days ago he was in our midst, apparently in the enjoyment of his usual good health, and an active and useful participant in the proceedings of this Convention. As chairman of the committee of the whole, filling the place now occupied by your honor, he was clear in his perception, sound in judgment and impartial and prompt in his decisions, commanding the respect and admiration of every member of the Convention. His death but adds another instance of the great truth, that “in the midst of life we are in death,” and admonishes all to be prepared for the one great event which is the common lot of all mankind.

Hon. William Hopkins was a gentleman of eminent worth, endeared to all who knew him for his sterling integrity, his manly honor, and his exemplary christian virtues.

It should be the pride of our public men to emulate his bright example. His record as a faithful public officer is without a stain of dishonor, and without the charge or suspicion of a dishonorable or dishonest act. In saying this I but utter the heartfelt sentiment of the thousands of Pennsylvanians who knew him well, and

now with us lament and deplore his sudden death.

For over a quarter of a century I have enjoyed an acquaintance with him, and during all that time our relations of friendship were cordial and sincere. As a member of the Legislature and Speaker of the House, as Secretary of the Land Office and Canal Commissioner of the State, and all other public positions which he held, he sustained a character for purity of motive and action which placed him high in the estimation and confidence of the people of this State. His record is that of a faithful public officer, who performed every duty with an honest purpose to promote the public good. As a citizen he was kind, generous and just; as a christian, sincere and consistent in his walk and conversation, and as a husband and father, kind and affectionate. Such, in brief, are the characteristics that strongly marked the life of our deceased brother.

Whilst we deeply sympathize with his bereaved family, and in view of his sudden death, let the great truth be impressed upon each one of us, and sink deep in every heart, "I too must die." And when we look upon the opening tomb let us improve the present hour, for to-morrow death may come.

Mr. J. W. F. WHITE. Mr. President: Born and raised in the same county with the deceased Colonel William Hopkins, I would do violence to the promptings of my own heart, and seem to desert an old friend, if I remained silent upon this mournful occasion, and did not speak at least one word in memory of a distinguished member of this Convention. I well remember the first time I ever saw him. It was in my early boyhood, and he was then in public life, and a man of mark and distinction. His fine personal appearance, and his gentlemanly manners, won my admiration as a boy, and made an impression upon my mind that has never been effaced. The acquaintance and the intimacy of subsequent years only tended to increase my admiration and to deepen that impression when I found that the generous qualities of his heart corresponded with his manly and commanding personal appearance. For nearly forty years Colonel Hopkins had been one of the most prominent politicians of the State of Pennsylvania, but, while ever faithful in the discharge of a public trust, he never neglected the performance of any duty in the private walks of life. In

all the relations of domestic and social life he was an exemplar, whose footsteps could be followed with wisdom. As a friend, he was always true, and never failed in the hour of need; as a neighbor, kind and accommodating, and to the poor abounding in deeds of mercy and charity; as a citizen, liberal and public spirited; as a public officer, always honest and faithful in the discharge of the duties of the numerous high and responsible positions he filled. The recollections of his many acts of kindness will linger long, as sweet fragrance in the memory of those whom he benefited. The influence of his example as an honest and incorruptible public officer will be felt years after he shall be laid away in his long resting place, and his name, appearing often in the annals of our State, always without a blot or stain, will be handed down on the long roll of Pennsylvania's honored sons to generations yet to come. It has been but a few days ago since he was here in our midst, moving around with that genial smile and pleasant manner that always characterized him. This day one week ago he presided over this Convention as chairman of the committee of the whole. Now, sir, he is numbered with those who have been. On the evening of that day he was here in this hall making arrangements in reference to his report as chairman of the Committee on the Declaration of Rights, which was then about finished and ready to be reported to the Convention. As he was about to leave the Hall for the cars, a few of us who were here bade good-bye, little dreaming that that was the last time we should see him. He went, to return no more. Soon all of us shall follow him. Follow him "to that undiscovered country, from whose bourne no traveler returns." May we all imitate his virtues while living, and when gone, leave as fair a record behind.

Mr. BOWMAN. Mr. President: Again are we admonished of the uncertainty of our earthly existence. Quick as the lightnings flash has the intelligence of the sudden and unexpected death of one who was an honored and prominent member of this body, been communicated to every part of our beloved Commonwealth. Less than one short week ago his manly form graced these halls. To day it lies wrapped in the cold embrace of death.

Our deceased colleague was by no means an obscure man. For nearly half a century he had taken a very prominent

part in the official administration of the affairs of the State.

Mr. President, I first became acquainted with the subject of this resolution at the commencement of the session of the Legislature of 1863. He was one of the oldest members of the House of Representatives, while I was one of the youngest. He, at an early period of the session, saw my embarrassment, resulting from inexperience, and well do I remember, and ever shall I with gratitude re-call the disinterested counsel, aid and encouragement I received from him. And, sir, it is because of the unsolicited favors that I then received at the hands of a stranger, that I, too, ask to join in the deep and heartfelt sorrow that pervades this Hall.

While it was my fortune to differ with him politically, and especially upon some questions growing out of and connected with the rebellion, then in progress, I never, for one moment, doubted his honesty, integrity, or the purity of his motives.

Sir, I did not know the deceased as long and as well as you did, or as well as other gentlemen who have paid a just tribute to his memory; but, sir, I knew him long and well enough to appreciate his kindness of heart, urbanity of manner, and purity of character, upon which he has left neither blot nor stain, the most valuable legacy that can be transmitted to posterity.

Mr. President: How true it is that "in the midst of life we are in death." We should bear in mind that we have no guarantee for the future. The wind that sings a silent requiem as it passes in mournful cadences through the tall grass that shades the graves of dearly loved but now departed ones, should admonish us that life is short, and that now is the time to prepare for the great hereafter that awaits us all.

Mr. WRIGHT. Mr. President: I would claim the privilege of a few words on this painful Providence that has cast a gloom over this Convention. We can yet scarcely realize, as intimated by the gentleman from Allegheny, (Mr. J. W. F. White,) that the man whose seat is vacant to-day, so lately wielded the gavel of authority in the committee of the whole on that platform. To me, sir, very suddenly and unexpectedly came the intelligence over the wires that the man I had parted with at the hotel on Thursday evening had been stricken down by disease at Pittsburg the next

morning. Not so unexpectedly, but a severe blow, came the intelligence yesterday that the connection between us and him had been suddenly terminated by death.

Many years have I learned to venerate the memory of this distinguished man; living, it is true, as I have, at the other end of the Commonwealth; but fame always brings us intelligence of the great, and of him who does good deeds. I have regarded him ever as a man of the most inflexible integrity; a man of peculiar tenacity of purpose. The rock of faith or principle on which his feet rested to-day, you found them resting upon to-morrow. Not changeable of purpose but inflexible in his position as the polar star. I was glad to renew my acquaintance with this man when the Convention met at Harrisburg; doubly gratified to renew it again here in the city of Philadelphia; and I shall always remember with gratitude and pleasure that for the last two months it has been my privilege to sit in the adjoining chair to Colonel Hopkins, at the same board in that hotel where we had our lodgings. I shall remember always his courteous manner, the ardent and affectionate way in which he demonstrated his friendship. Many times was it my privilege to go to his room, (ever open to my reception,) and be greeted with words of kindness; and there it was that I passed many pleasant hours.

But, sir, aside from the position in public life that has given to him his reputation and his fame, there is another light in which I have lately come to regard the man, and which, in my estimation, places him upon a more elevated platform than anything which political life can. I remember but a few weeks ago when I went into Colonel Hopkins' room one evening. I was informed by him that he had just closed the reading of seven chapters in that sacred volume, the great Book of books. It elevated the man, in my estimation, to a higher degree. I came, then, to look upon him in a new light; not only as a man elevated in political life and favor, but in the higher character of the christian.

And it here does my heart good to believe that that faith which had sustained him through a long life, carried him to that place intimated by the member on the other side of the Hall, (Mr. White,) "that undiscovered country from whose bourne no traveler returns." I have a grateful sense of pleasure now, in the op-

portunity afforded me of bearing a word of testimony to this man, who stood so high in the estimation of his fellows as a man of industry, a man of morality, a man firm and inflexible in his purpose, honest in the discharge of every trust communicated to him, and, above all, a man firm in his christian principles; and to-day I believe that he is reaping the reward of that faith that thus far had led him on.

Mr. WOODWARD. Mr. President: It has been my privilege to know Colonel Hopkins, both in public and private, for some thirty years, and I cannot consent that this melancholy occasion shall pass without bearing my testimony, feeble as it may be, to the high virtue of the deceased. We all knew him in his public career. You, sir, and most of the members of the Convention, will refer to a period in our civil and political history of great interest, when, but for the wisdom and the firmness of this man, our Commonwealth might easily have been involved in the horrors of civil war. I have always felt that the public owed more to those qualities of that individual man, for averting those calamities, than to all other influences which were in operation at the time.

We have all seen him in the Speaker's chair, at Harrisburg, at times of high political excitement. I remember, sir, a political convention, in which he had been chosen to preside, but had not arrived, when another gentleman was called to the chair. The body, under the administration of an inadequate presiding officer, rushed into utter confusion, and it was on the point of breaking up, when Colonel Hopkins entered the hall, went up and took possession of the chair, and instantly order and peace reigned throughout the tumultuous assemblage. His presence, his presence, and his reputation were sufficient to restore order where other men had failed to enforce it.

I have seen Colonel Hopkins in his own house; I have been his guest; I have seen him in the domestic circle; I have sat by his fireside and at his board, and I do know that the virtues of this man were not more conspicuous in public life than in private. I do know that Colonel Hopkins has been the friend of education and of all social reforms in the community in which he dwelt.

During all this period of more than thirty years a warm personal friendship betwixt us has never been interrupted for an hour. Our sympathies upon pub-

lic questions were so identical, and our views of public questions and of public men were so similar, that we were drawn together by an electric affinity that was irresistible.

For the last few years I have not had the privilege of seeing much of him, but when I met him in this body I was pleased to see that none of the force of his early years had abated; that he brought here the same solid judgment which characterized him in every other sphere of life, and that he came richly laden with the experiences of a large and varied public service.

It has been said by other gentlemen that he was a man of inflexible integrity. That is true; and, Mr. President, I wish to say that that was the fountain of all the force of his character. It has seemed to me, in contemplating the character of Colonel Hopkins, that he belonged to that august age of the republic when those men of whom we read and have heard of by tradition flourished, and who were men of such position and character as to feel a stain as they would a wound. I have wished that we had more such men in public life. This taking off of Colonel Hopkins is, in this aspect, a great public calamity, the magnitude of which overshadows all private griefs, and all Pennsylvania will and ought to mourn the loss of such a man.

Solon enacted, as a law of Athens, that only that which was good should be said of the dead, and the Roman maxim that grew out of it is familiar to all ears: *De mortuis nil nisi bonum*. Dr. Johnson made a criticism upon this maxim, and said that instead of *bonum* it should read *verum*, nothing should be said of the dead except that which is *true*, instead of that which is *good*. Now what I wish to say, is that here is an instance in which Dr. Johnson's reading of that maxim may be applied with safety. We need not insist that nothing shall be said of the dead except that which is good. We may challenge the world, sir, and bid it to say anything of this man which is true, and that which is most true will be his highest eulogy.

I agree, sir, that the crowning quality in this man's character was his christianity. He was a firm and an humble believer in the christian religion, not an obtrusive and intolerant propagandist, but an humble and rational christian man; and, sir, to-day, when he is gone, and when we are mourning his loss, it becomes us to re-

member that these great public virtues which distinguished his life had, super-added, this grace of a christian character, and thus completed as high a model of manhood as it is possible for us to contemplate. Indeed, I have long thought of Colonel Hopkins, as a model Pennsylvanian. I know not when we shall look upon his like again.

These, Mr. President, are the words which have come to my lips upon the occasion of this melancholy reminiscence. I hope the resolutions that have been submitted will be adopted. I hope, sir, that a committee will be appointed to attend the funeral of Colonel Hopkins, and I hope that this body will bear testimony in all possible forms to the merits of this most honest and most excellent citizen.

Mr. BIDDLE. Mr. President: It is with profound sorrow that I rise to unite, in behalf of the city of Philadelphia, in paying this last tribute of respect to the memory of our deceased brother. Knowing Mr. Hopkins well by reputation for many years—for his public life was part of the history of our Commonwealth—I had never had the pleasure of personal acquaintance with him, until we met as members of this body. I well recollect of being struck with the commanding figure and strongly marked countenance of a gentleman, in the lineaments of which were unmistakably written simplicity and directness of purpose, integrity, and unswerving firmness, and I asked who it was. Upon learning the name of this man, with whose external presence I had been so impressed, I immediately sought his acquaintance; and during the two or three months that we have been assembled here, in the discharge of a common duty, it has been my pleasure and my privilege to enjoy as close an intercourse with him as was permitted to me in the discharge of my duties here. The early impression made upon my mind has been strengthened and confirmed by this constant intercourse.

Mr. Hopkins, sir, was no ordinary man. He belonged to a class of men from which the very best specimens of American public characters are drawn. Feeling a deep obligation to dedicate to the service of his country the talents and the industry with which he was endowed, he was almost constantly in the public service, in some capacity. We have heard here to-day, from those who knew him intimately, how the lad, drawing from a simple education the elements of knowledge, began

early to improve himself, until, by the choice of his fellow-citizens, he was raised in successive steps from one office to another, finally uniting to assist in the performance of the great work for which we are now assembled.

The youthful justice of the peace, for he must have become so before he was thirty, since then it was he first began to represent his section of the country in the halls of legislation, ripened into the statesman, and without anything like sudden, violent advance, his growth was a slow, steady, mature one. He had many of the physical, and, it strikes me, many of the moral and mental attributes which belong to the class of men who are gradually developed. Sturdy, strong and deliberate, he may not inaptly be compared to the deep-rooted, slowly growing oak, whose very power and beauty are, to a great extent, attributable to its tardy development. He was a prudent man, a man not hasty in the formation of an opinion, but when once formed and adopted, slow to yield, requiring always good reason to induce a change. He was not easily swayed. He was a man of tenacity of purpose, and of tenacity to that which is right. He clung to his convictions, because these convictions being of slow growth, and, perhaps, of tardy adoption, he valued them highly; and hence that firmness which we have all more than once witnessed, and which was so remarkably impressed upon his face.

Indeed, with him, as I believe it always is with true men, the face was the mirror of the soul. You would have felt a great moral shock if you had heard that anything like duplicity, subterfuge or indirectness had been found lurking under that countenance. In fact, it would have been a solecism in nature. Such a thing was almost, if not altogether, impossible.

Well, sir, he is gone. He has gone in the fullness and ripeness of years, and, so far as his fellow-citizens could do him honor, in the fullness of honor. We feel keen pain at the severance of the tie which has united us so closely to him during the past winter; but would any one of us, had we the ability to do so; call him back? "After life's fitful fever he sleeps well." He has rounded off a life of great moral beauty, of great usefulness, of great dignity, by a fitting end, and he has fallen before decay had begun to impair his faculties. While to his family, his wife and children, the loss is irreparable; while to the community in which he

lived, his loss will be very great; while to us it is considerable; while to the whole Commonwealth it cannot easily be supplied. I esteem him a fortunate man to have passed away as he has passed away, after this short, this sudden illness, well prepared—for we have had testimony, and valuable testimony, on that subject—to receive from his Master the reward for the good he has done in this life.

Mr. J. S. BLACK. Mr. President: I can not be entirely silent on this melancholy subject; but I have no words to express my deep grief for the loss we have sustained. If I had the words I fear I would be prevented from uttering them by that choking sensation which I have felt ever since I heard of the death of Mr. Hopkins last night.

I do not underestimate the very high qualities of my surviving associates in this body. I do not think, indeed, that any man here appreciates their various abilities and virtues more than I do; but I devoutly believe that there is no man in this Convention that we could not have spared better than him who has gone.

We shall miss very sadly and seriously his wise counsels and the influence of his high character. His death certainly diminishes the chances which we would otherwise have had of performing the duties which we owe to our constituents acceptably and well.

I do not propose to give an analysis of his character, and it is not necessary to repeat his history. I may say, for I know it, that he was, in all respects, the best balanced man that it was ever my good fortune to know. He was born with a temper somewhat ardent and with impulses rather strong, but his sterling good sense always kept him within the bounds of perfect propriety. His moral and personal courage were often tested; he was one of the most fearless men that ever lived, yet all his measures were in favor of peace, and every one who knew him testifies to the gentleness and kindness of his manner.

He was a most devoted friend of popular government; he believed in the rights of the people and conceded those rights upon all occasions, and yet he had less of the demagogue in his composition than anybody I ever knew. He revered legal authority, and was always submissive to those who rightfully wielded it, but he never fawned upon power, nor begged a favor of patronage. No man could possibly be more faithful to his political convic-

tions; and he was as true as steel to the men with whom he was associated in supporting them. Yet we all know that he never allowed himself to be tempted into any party excesses, nor stained himself with any act of extravagant opposition to his enemies. His religious faith was as firm as the "foundation of the everlasting hills"—it never wavered for one instant, but he was wholly unobtrusive with it; he propagated his faith by example, and proved it by his works. It is fit and proper that the dignity of such a character should be vindicated, and that the value of it should be made widely known.

Mr. MACVEAGH. Mr. President: I trust it will not be thought improper that on behalf of my colleagues upon the Committee on the Legislature, of which Mr. Hopkins was by far the most experienced member, I should give expression over his open grave to the sincere regret with which every member of that committee has heard of his untimely loss. Mr. President, his loss is untimely only in that it has occurred before this Convention has reaped the full benefit of his long life of stainless honor, and of his varied experience in the public service. It had not been my privilege to know him well before we met here, but it has been my privilege, since this Convention has assembled, to have seen much of him, and to have learned to esteem him, and to agree in the opinion of his moral worth, which has been given by those who have known him longest, and therefore who esteemed him most. Such a man, here and now, I am sure every member of this Convention feels, is not easily to be re-placed; and our hearts are all bowed down, not only with sincere sympathy with the afflicted and sorrowing family of our brother who has gone before us, but also with hearty regret that the people of the Commonwealth have lost his services, and that our labors are to lack the advantages which his ripe wisdom, his conscientious regard for duty, and his devotion to the interests of the people, as he understood them, would have given to them.

Mr. TURRELL. Mr. President: I should not, at this time, attempt to add a word to what has been already spoken—and so well spoken—in regard to the life and character of Colonel William Hopkins, were it not for the fact that I am the only member of this Convention who served with him in the Senate of this State. I would do violence to my own feelings of respect for him if I should fail, at this mo-

ment, to say a word in testimony of his character. My acquaintance with him commenced in 1863. He was then a member of the lower House, and during the next two years we served in the Senate together. It is well known that we both occupied different sides in politics, and the political feeling at that period in our country's history was accustomed to run very high. Men differed widely and radically in their views, and often upon the floor of the State Senate we met in all the acerbity of sharp debate. But I have this to say of Colonel Hopkins: That never, for one moment, did any of those bitter feelings, so often engendered by political differences, affect the cordiality and the courtesy of his intercourse with me. Colonel Hopkins was a man of a very even temperament, and of great self-command, and through all my intercourse with him never once was there the slightest unpleasantness or ungentlemanly feeling. I became impressed in that acquaintance with his character as a man, with his great honesty of purpose, with his firmness and decision of character, and I ever found him eminently a courteous, christian gentleman.

Mr. T. H. B. PATTERSON. Mr. President: It seems to me that upon an occasion like this, when a christian gentleman, such as William Hopkins, has died in our midst, it is but right that the youngest and the oldest members of the Convention should unite in bearing their tributes to his memory, and in expressing those strong feelings of respect for the goodness and honesty of his life, in order that we, his colleagues and his fellow-citizens, may, if possible, lessen the sorrows of his bereaved family. On a sorrowful occasion like this it is eminently proper we should give our testimony in behalf of a distinguished member of this Convention by re-calling the past services he rendered to the State, and the positions he so honorably occupied. In order that those of us who remain behind him may be more fully impressed with the importance of the duties which have been committed to our care, I have felt to-day I could not utter any appropriate tribute to his memory, but I feel that I would be false to myself and to a personal friend if I did not endeavor to give my humble testimony to the friend and bright example of my early boyhood. Although I have been called here to this Convention to represent another district than that in which Colonel Hopkins resided, yet the county which he repre-

sented so ably in this Convention, and the town wherein he resided, is the ancestral home of many generations of my family. All the pleasant memories of my school-boy days will ever be connected with pleasant recollections of Colonel Hopkins as a true, manly and simple christian gentleman, and representative Pennsylvanian, and as I stand here to-day in my place in this Convention, it seems to me as if it were but yesterday that I first became acquainted with him. Although his memory and his name have been associated with my life from my earliest infancy, and though it seems but a short time since I was first introduced to him upon one of the streets of Washington, in front of his mansion, I can never forget the vivid impression which that meeting has left upon my mind. I remember well that he presented the appearance of a model American citizen, dressed in the old fashioned genteel manner, just as we last saw him here in this Convention. At the time of which I speak he was engaged in driving home his cow from the pasture lot, retaining all the simplicity of the customs of his early boyhood, although then a man grown up and covered with honors, and amply endowed by fortune.

He had not forgotten, and, I may say, never forgot, even down to the last day of his life, when at home, those simple customs which he was used to when a child. And often, after my first acquaintance with him had begun, I have seen him driving backwards and forwards his cow in the same old fashioned manner. It is to draw the attention of the Convention to this humble trait in his character, and one which is so rapidly being swept away from among us, that I have adverted to this homely incident in his life. When surrounded by all the honors of public life he still clung to the old fashioned customs of his younger days. His character as an upright and self-made man exercised an influence over my life as I grew up, even in my college days, that I can never forget. And to-day I therefore stand here to add my tribute to his memory, and to express my gratitude for the lesson which his life affords to those of us whom he has left behind to complete his work in this Convention.

It seems to me, Mr. President, that we can never forget him as he stood here among us, such a short while ago, in the earnest discharge of the highest duties the people of any land can entrust to a

mortal being. He was sent here as a delegate to this Convention to assist in amending the organic law of the State. And he proved himself an example to every one of us in the simple, earnest and straightforward manner in which he attended to all his duties and listened to all the debates, however trivial in their character, that have occurred upon this floor.

I re-call with pleasure and sadness the last time I remember seeing him in this Convention. In the discharge of his duty as chairman of the committee of the whole, he manifested a deep interest and anxiety in the debate upon the article reported by the Committee on Legislature. And after many days had been consumed in its consideration, I remember well the shade of disappointment that passed over his face like a premonition of his approaching end; when, on the last day he was present with us, the committee rose and the final vote had not been taken. Let those of us who remain behind him, to complete the work which has called us together, remember the character of our departed friend and member, who never forgot the simplicity of the good old time life amidst all the storms of innovation and corruption which have swept over our State. And if we follow the bright example of this noble man in the future, Colonel Hopkins will not have lived in vain, and will not have died in vain.

Mr. CRAIG. Mr. President: I desire to drop my tear to the memory of our departed friend and fellow-member. It was not my privilege to have known him personally until within a very recent period, but being a native of the same county, and having been surrounded by the same influences which moulded his noble character, I feel that in his loss I, too, have lost a brother. I have known of him, and I have known him by sight and by reputation since the period of my earliest recollection. I have known that he was a man whom the great county of Washington delighted to honor, and that he was one of her foremost citizens; and since it has been my pleasure and my duty to become acquainted with him I have not valued him so much for the public service he has rendered as for the private virtues and character which he possessed.

I esteemed him, sir, as a friend in whom there was no guile nor deceit; a man whose friendship attached itself to you with hooks of steel; a man who when he once gave you his confidence gave it

wholly and entirely. But he is gone, as we shall all go. One by one the scythe of the Mower shall overtake us all. Grief shall fill all our heads in death. Sorrow shall fill all our hearts, and when it shall pass we, too, shall have passed to be numbered no more on earth. These thoughts are sad, but they should make us improve the friendship and the blessings of the hour as they pass. We shall have our day. We shall be mourned by friends. Our virtues shall be remembered, and our vices and our weaknesses shall be forgotten. We shall be carried to the narrow house and others shall take our place.

We may regret, sir, that the virtues of the deceased cannot be transferred to other and younger men. Though that cannot be, they shall remain as a sweet incense in all our hearts. I remember him as a friend. I know and have felt the sincerity of his heart. I, too, was one of that little circle, now broken, which has sat by the same table since this Convention convened. He was the central figure. He was the keystone of that little arch; but it has been broken. Ah! before there were three of us. There are now but two.

I know, sir, the tenderness of his heart, because I have heard him speak of that which no man can speak of and yet be insincere. I have heard him speak frequently of the tenderness with which he loved a little grand-child, whose absence and separation from him was the great grief of his life.

With him there is a lesson for us all. Let us improve it. While we must mourn over the departure of our friend, we know that our turn shall come.

"Forever shakes this mortal urn,
And soon or late
Stern death shall beat
With equal feet
At palace and at cottage gate."

Mr. BUCKALEW. Mr. President: I desire to add a few words, on this occasion, before these resolutions shall be submitted to a vote. It is rare, indeed, that I have found myself upon occasions of this kind able and disposed to endorse all that is said in commendation of a departed associate or friend. But here and now I am able to approve and endorse all that has been said by the several gentlemen who have preceded me, in commendation of our deceased associate and colleague. His memory deserves all these tributes which have been paid to him, and all over this Commonwealth, wherever our pro-

ceedings go, the hearts and the intellects of the people will endorse what we have said, and what we shall do, when we adopt, by a unanimous vote, these pending resolutions.

This man, who has left us, all his life followed the dictates of duty. Whether its performance was agreeable or painful, he stepped forward steadily and firmly in the path of duty, and he has his reward, not merely in what we say here, or in what will be said abroad by others, but in those tender and cherished recollections which will remain in his own home and among those by whom, in life, he was immediately surrounded.

I will mention one instance of the performance of duty, his latest act as a member of this Convention. You assigned him to the chairmanship of the Committee upon the Declaration of Rights, the ninth article of the Constitution. On Thursday of last week, he insisted that that committee should conclude its work before he left for home, that nothing should be left unattended to which demanded its attention, and that its work should be made complete. His views prevailed. The article was revised and its final form assigned to it, and the same afternoon he left for his home, never more to return and mingle amongst us. It would seem as if a presentiment was upon his mind, that he would be no longer able to work with us and for us in this Convention; that it was necessary before he left on that journey homeward, that the task assigned to him by our presiding officer should be fully discharged.

Mr. President, I have known Mr. Hopkins for twenty-five years, and known him very well, and have enjoyed with him relations of friendship and of intimacy during a great part of that time. What I desire to say, now, is this: That hereafter, in looking back over my little career in public life, it will be among my most cherished recollections, that during his lifetime I held the confidence and enjoyed the friendship of William Hopkins, of Washington county.

Mr. CORSON. Mr. President: I desire to say but one word, and that is supplemental to what has been just said by the distinguished member from Columbia (Mr. Buckalew.) It is true that the chairman of the committee, on which I have the honor to serve, did have the work of that committee completed and printed before he left; and I desire to call atten-

tion to the fact, which henceforth will become historical, that he was the author of these simple words, in the preamble of the Bill of Rights, which he proposed to make the first article in the Constitution:

"Recognizing the sovereignty of God, and humbly invoking His guidance in our future destiny."

The second resolution was unanimously agreed to.

The PRESIDENT. The question is upon agreeing to the third resolution, which will be read.

The CLERK:

Resolved, That in this hour of deep affliction and grief we tender to his family, so deeply stricken, our most sincere condolence and profound sympathy.

Which was unanimously agreed to.

The PRESIDENT. The question is upon agreeing to the fifth resolution, which will be read.

The CLERK:

Resolved, That as an evidence of our respect for the memory of the deceased, we do hereby appoint a committee of this Convention to attend his funeral at Washington, Pa.

Which was unanimously agreed to.

The PRESIDENT. The question is upon agreeing to the last resolution, which will be read.

The CLERK:

Resolved, That the Chief Clerk be directed to forward to the family of the deceased a copy of these resolutions; and that we do now adjourn.

Which was unanimously agreed to.

The PRESIDENT. The resolution providing for the appointment of a committee to attend the funeral of our deceased associate contains a blank to be filled with the number of the committee, and a blank as to how the committee shall be appointed. How will the Convention fill these blanks?

Mr. LAWRENCE. Mr. President: I move that the blank in reference to the number be filled with five, and that the Chair appoint.

The motion was agreed to.

The PRESIDENT. I will name as the committee Messrs. Lawrence, John N. Purviance, J. W. F. White, Guthrie and M'Clean.

The PRESIDENT. The Chair will state that he will direct the passage of these resolutions to be entered on the Journal as having been unanimously agreed to; and will also ask unanimous consent, in-

formally, to say that the Journal shall be so recorded as to say that the committee of the whole asked and obtained leave to sit to-morrow on the subject of the report of the Committee on Cities and City Charters, so as to save the lapse of the commit-

tee, which would otherwise be passed over.

Unanimous consent was given, and at twelve M. the President declared the Convention adjourned until ten A. M. to-morrow.

SIXTIETH DAY.

FRIDAY, *March 7, 1873.*

The Convention met at ten o'clock A. M.

Prayer was offered by Rev. James W. Curry.

JOURNAL.

The Journal of yesterday's proceedings was read and approved.

PROHIBITION.

Mr. MANN presented a petition from citizens of Potter county, asking for an amendment to the Constitution prohibiting the manufacture and sale of intoxicating drinks, which was referred to the Committee on Legislation.

Mr. MANN also presented a petition from certain citizens of Westmoreland county in reference to the same subject, which was referred to the same committee.

CUMULATIVE VOTING.

Mr. W. H. SMITH presented a memorial from Andrew W. Foster, of Pittsburg, asking this Convention to make some provision for cumulative voting, which was referred to the Committee on Suffrage.

PROHIBITION.

Mr. DUNNING presented a petition from citizens of Carbondale, praying for an amendment of the Constitution prohibiting the manufacture and sale of intoxicating liquors, which was referred to the Committee on Legislation.

Mr. CURRY presented a petition from citizens of Altoona upon the same subject, which was referred to the same committee.

Mr. CORBETT. Mr. President: As the Committee on Legislation has acted on that subject, I move that these memorials be laid upon the table.

The motion was agreed to.

Mr. WRIGHT presented a petition from certain citizens of Luzerne county relative to the same subject, which was laid upon the table.

Mr. HORTON presented a communication from the citizens of Wyoming county, praying for a provision in the Constitution against the sale of intoxicating

liquors as a beverage, which was referred to the Committee on Legislation.

SPECIAL ELECTION ON THE CONSTITUTION.

Mr. JOHN PRICE WETHERILL offered the following, which was referred to the Committee on Schedule:

The amendments proposed by this Convention shall be submitted to the qualified electors of this Commonwealth, at a special election to be held on the — Tuesday of — next.

The said election shall be held, regulated and conducted in the several counties of this Commonwealth according to existing laws. The said election shall be held, conducted and regulated in cities of 100,000 population under the authority and supervision of three commissioners of election, to be chosen by this Convention, which said board of commissioners, or a majority thereof, shall appoint for each election division, in the said cities, two canvassers to register voters and one judge, two window inspectors and two return inspectors, to hold the said election, in the said division, respectively.

If the said registers shall differ in opinion as to the right of any citizen to be registered, the said board, or a majority thereof, shall decide. No registry shall be conclusive evidence of the residence or other qualifications of any registered citizen, and no name shall be erased therefrom after registration. Nor shall the omission of any name therefrom disqualify any citizen legally entitled to vote. The returns of all the elections herein authorized shall be certified by the officers thereof respectively, in duplicate originals, one whereof shall be forthwith transmitted to the Secretary of the Commonwealth, and the other thereof shall be filed in the office of the prothonotary of the court of common pleas of the proper county. The said board of commissioners, or a majority thereof, shall have full power to make all necessary rules for the making and publishing the said register, and when and how the same shall be done, and all other proper rules as to the details thereof, and shall receive

such compensation for their services as the Legislature shall hereafter provide. The canvassers and officers of election aforesaid shall be paid according to the existing laws providing for the compensation of such officers.

LIABILITIES OF MUNICIPAL CORPORATIONS.

Mr. BARCLAY offered the following preamble and resolution, which were read and referred to the Committee on Municipal Corporations:

WHEREAS, It has been held by the Supreme Court of Pennsylvania, as a general rule of law, that a municipal corporation is not liable for consequential damages to private property by reason of any act done in pursuance of any change or alteration in the grade of any street, even though such private property should be altogether destroyed by such act; therefore,

Resolved, That the committee to whom this resolution shall be referred be instructed to inquire into the expediency of providing in the new Constitution that in all cases hereafter when private property shall be injured in consequence of any act done by any municipal corporation, in pursuance of any alteration or change of the grade of any street, such corporation shall be liable for such consequential damages to the party injured, in the same manner as when private property is actually taken for public use.

MEMORIAL PROCEEDINGS ON THE DEATH OF COLONEL HOPKINS.

Mr. H. W. PALMER offered the following resolution, which was twice read:

Resolved, That the Committee on Printing be instructed to procure the printing of the proceedings of the Convention, on the occasion of the death of Hon. William Hopkins, in memorial form, and that five hundred copies be furnished the members for distribution.

Mr. BRODHEAD. Mr. President: I move to amend, by inserting "one thousand copies" instead of "five hundred copies."

The motion was not agreed to.

The question was then taken on the resolution, and it was agreed to.

ADJOURNMENT.

Mr. BAER offered the following resolution, which was twice read:

Resolved, That when this Convention adjourns on Wednesday, the twenty-sixth of March, it will do so to meet again on Thursday, the sixth day of April.

Mr. HARRY WHITE. Mr. President: I rise for the purpose of making a correction in the date.

The PRESIDENT. The resolution cannot be amended.

The question being taken on the resolution, the yeas and nays were required by Mr. Corbett and Mr. Temple, and were as follow, viz:

YEAS.

Messrs. Achenbach, Addicks, Baer, Barclay, Biddle, Curtin, Gibson, Hall, Hunsicker, Long, MacVeagh, Porter, Pughe, Russell, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stewart, Wherry, White, Harry and Wright—22.

NAYS.

Messrs. Andrews, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bowman, Boyd, Brodhead, Broomall, Clark, Corbett, Corson, Cronmiller, Curry, Darlington, Davis, De France, Dodd, Dunning, Edwards, Elliott, Ellis, Ewing, Finney, Funck, Green, Hanna, Hazzard, Horton, Howard, Knight, Landis, Lear, Littleton, Lilly, MacConnell, M'Camant, M'Culloch, Mann, Mantor, Minor, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Purviance, Sam'l A., Reed, Andrew, Reynolds, James L., Rooke, Ross, Smith, H. G., Stanton, Struthers, Temple, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, White, David N., and Meredith, *President*—63.

So the resolution was not agreed to.

ABSENT OR NOT VOTING.—Messrs. Ainey, Alricks, Baker, Bardsley, Bartholomew, Beebe, Black, Charles A., Black, J. S., Brown, Buckalew, Campbell, Carey, Carter, Cassidy, Church, Cochran, Collins, Craig, Cuyler, Dallas, Fell, Fulton, Gilpin, Gowen, Guthrie, Harvey, Hay, Hemphill, Heverin, Kaine, Lamberton, Lawrence, M'Allister, M'Clean, M'Murray, Metzger, Mott, Patterson, D. W., Purman, Purviance, John N., Read, John R., Reynolds, S. H. Runk, Van Reed, White, J. W. F., Woodward and Worrell—47.

RECESS FROM MARCH TWENTY-NINE TO APRIL FOURTEENTH.

Mr. DE FRANCE. Mr. President: I offer the following resolution:

Resolved, That when this Convention adjourns on Saturday, the twenty-ninth of March, it will be to meet on the fourteenth day of April, at ten o'clock of said day.

On the question of proceeding to the second reading of the resolution, a division was called, resulting: Thirty-nine in the affirmative and thirty-three in the negative.

So the resolution was read a second time.

On the question of agreeing to the resolution, the yeas and nays were required by Mr. Corbett and Mr. Gibson, and were as follow, viz:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Baer, Brodhead, Clark, Cochran, Corson, Curry, Davis, DeFrance, Dunning, Funck, Gibson, Green, Hall, Hunsicker, Lear, Littleton, Long, MacVeagh, Metzger, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purviance, Samuel A., Read, John R., Rooke, Ross, Russell, Sharpe, Simpson, Smith, Henry W., Smith, William H., Temple, Wherry, White, Harry and Wright—45.

NAYS.

Messrs. Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bowman, Boyd, Broomall, Corbett, Cronmiller, Darlington, Edwards, Elliott, Ellis, Ewing, Hanna, Hazzard, Horton, Howard, Knight, Landis, Lilly, MacConnell, M'Camant, M'Culloch, Mann, Mantor, Minor, Niles, Reynolds, James L., Smith, H. G., Stanton, Struthers, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, White, David N. and Meredith, *President*—40.

So the resolution was agreed to.

ABSENT OR NOT VOTING.—Messrs. Ainey, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, Charles A., Black, J. S., Brown, Buckalew, Campbell, Carey, Carter, Cassidy, Church, Collins, Craig, Curtin, Cuyler, Dallas, Dodd, Fell, Finney, Fulton, Gilpin, Gowen, Guthrie, Harvey, Hay, Hemphill, Heverin, Kaine, Lambertson, Lawrence, M'Allister, M'Clean, M'Murray, Purman, Purviance, John N., Reed, Andrew, Reynolds, S. H., Runk, Stewart, Van Reed, White, J. W. F., Woodward and Worrell—47.

PRINTING REPORTS OF COMMITTEES.

Mr. HARRY WHITE. Mr. President: I offer the following resolution:

Resolved, That the official reporter be directed to furnish the State Printer, as reported matter, the reports of all standing and select committees of the Conven-

tion, and that the State Printer print the same in the Debates.

It seems it was the understanding, I do not know whether correct or otherwise, by the Committee on Public Printing, that the State Printer was not to print in the Debates the reports from the standing and select committees of this body. It must be apparent to every delegate of the Convention that it is entirely proper to have, in their proper places, the reports of the standing committees of this body; otherwise the reading of the Debates may not be intelligible. For the purpose of having these reports inserted in the Debates this resolution is offered.

Mr. NEWLIN. Mr. President: As the Committee on Printing has been referred to, it is, perhaps, proper for me to state to the Convention that when this matter was first called to their attention the committee was of the opinion that there was no authority for the State Printer to print in the Debates the reports of the standing committees. He prints them in the Journal. The committee expressed no opinion upon the abstract question of the propriety of printing them in the Debates, but was of the opinion that, as the matter stood, there was no authority from the committee to so print them. I say nothing whatever as to whether they should go in or not; I simply make this explanation on the part of the committee.

Mr. DARLINGTON. Mr. President: If these reports should be furnished by anybody I suppose it should be by the Clerk of the Convention. The official reporters, I apprehend, do not take down the reports of the committees. They are furnished in writing, and the official reporters have nothing to do with them. They are excluded from the Debates, and properly so. I do not see what the advantage is of putting them in among the debates. They are certainly no part of the debates or discussions of the Convention.

Mr. HARRY WHITE. Mr. President: There is probably a misapprehension upon this matter. Let it be understood that it is not the intention to increase the compensation of the reporter by reason of the insertion of this matter in the Debates. The delegates will understand that the mere purpose is to have the articles, when reported from the different standing committees, put in the proper place in the Debates, so that when the Debates are read in turning over the pages, reference can readily be made to the subject matter under discussion. If it is not

so, reference must be made to the pages of the Journal which may not be at hand. It will be valuable in the future, and I call the attention of the honorable delegate from Chester (Mr. Darlington) who was a respected member of the Convention of 1838, to the fact that the report of every standing committee and select committee is inserted in the proper place in the printed Debates of that Convention.

Mr. DARLINGTON. Mr. President: I believe that that is to some extent true, and it is understood to be a perfect nuisance in the Debates to have these reports of the committees inserted. What was intended at the commencement of the session of this Convention was that our Debates should reflect the consideration given to the various questions by the members. If any one wishes to study the whole history of course he will be supplied or he can supply himself with the Debates and with the Journal, but these reports certainly have no place in the Debates.

Mr. COCHRAN. Mr. President: I wish to say but a single word in regard to this matter, because I think that there is a misapprehension in relation to it. The reports of the committees, as I understand it, are proposed to be included in the Debates at the time these reports are made to the Convention, on the ground that unless they are so included, the reading of the Debates will be unintelligible. Now I refer to page 718 of the volume of Debates to which any gentleman here can refer and satisfy himself. I take this merely as an example. The first section of the report of the Committee on Suffrage was adopted, and the form in which it was adopted is printed on this page. Then it states "the first section as amended was agreed to." Then what follows? "The Clerk read the second section as follows," and the second section is put into the body of the Debates verbatim, as it was reported by the committee, and in direct connection with the discussion upon the subject. Now, sir, does that not bring the whole question of what was under discussion before the reader of the Debates? Here is the section and the debate upon that section immediately follows. The debate is set at full on the section of the debates.

Mr. H. W. PALMER. Mr. President: It seems to me to be entirely useless to duplicate the reports of these committees. It looks as though the State Printer had drawn up some resolution to add some-

thing to his fat job. I am opposed to giving him any more plunder out of this business. So far from any advantage accruing from the printing of these reports, it seems to me mainly a botch. A copy of the Debates of 1838 was sold in open market here, in Philadelphia, a week or two ago, for five dollars, and, if we judge from that, of what the value of these Debates will be, it, perhaps, will not be found necessary to spend several thousand dollars in duplicating the reports of these committees. Therefore I hope this resolution will not be adopted.

The question being upon the adoption of the resolution, a division was called, and but fifteen members, not a majority of a quorum, voting in the affirmative, it was not agreed to.

ADJOURNMENTS.

Mr. STRUTHERS offered the following resolution:

Resolved, That the eighteenth rule be amended, so that motions for adjournment beyond the next meeting day may be adopted.

The resolution was laid on the table under the rule.

STATE PRINTER'S ACCOUNTS.

Mr. ARMSTRONG offered the following resolution, which was twice read and agreed to.

WHEREAS, It is impossible for the accounts of Benjamin Singerly, State Printer, to be settled by the Convention, because a great portion of the work must be done after the Convention shall have adjourned; therefore,

Resolved, That in the judgment of this Convention it is expedient that the Legislature provide for the settlement of his accounts by the proper accounting officers of the State, on the terms and conditions of his contract with this Convention, and for the payment of such sum as he may be entitled to receive.

DEBATES ON ADJOURNMENT.

Mr. LEAR offered the following resolution:

Resolved, That the resolution which prohibits debate on a resolution fixing the time for the adjournment of the Convention be and the same is hereby rescinded.

The resolution was laid on the table under the rule.

THE EXECUTIVE ARTICLE.

The PRESIDENT. The next business in order is the second reading of the article

reported by the committee of the whole upon the Executive Department. Is it the pleasure of the House to proceed to the second reading of this article?

The Convention agreed to proceed to the second reading thereof.

The PRESIDENT. The first section will be read.

The CLERK read:

SECTION 1. The Executive Department of this Commonwealth shall consist of a Governor, a Lieutenant Governor, a Secretary of the Commonwealth, Attorney General, Auditor General, Secretary of the Treasury, a Secretary of Internal Affairs, and a Superintendent of Public Instruction.

The first section was agreed to.

The CLERK read the second section as follows:

SECTION 2. The supreme Executive power shall be vested in a Governor, who shall take care that the laws be faithfully executed. He shall be chosen on the day of the general election by the qualified electors of the Commonwealth at the places where they shall respectively vote for Representatives; the returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Senate, who shall open and publish them in the presence of the members of both Houses of the Legislature; the person having the highest number of votes shall be Governor; but if two or more be equal and highest in votes, one of them shall be chosen Governor by the joint vote of the members of both Houses. Contested elections shall be determined by a committee to be selected from both Houses of the Legislature, and formed and regulated in such manner as shall be directed by law.

Mr. J. M. BAILEY. Mr. President: For the purpose of testing the sense of the Convention upon whether the words General Assembly or Legislature shall be used in the Constitution, I move to amend, by striking out the word "Legislature" wherever it occurs in this section, and inserting in lieu thereof the words "General Assembly."

Mr. BIDDLE. Mr. President: The amendment strikes me as being entirely unnecessary. The word Legislature is a common and very comprehensive term. It is quite common in England, where we know the Houses of Parliament are designated as the House of Commons and the House of Lords, and they are spoken of, practically, as a Legislature. It seems to

me there is no necessity for substituting a double word in place of a single word, all through this section.

Mr. DARLINGTON. Mr. President: I consider it a mere question of taste, which might as well be settled now as at any other time. If we use the term "General Assembly," then the amendment would have to be made all through the section.

Mr. HARRY WHITE. Mr. President: The Committee on Legislation had this subject under consideration, and it was the unanimous opinion of the members of that committee that the word "Legislature" should obtain in our Constitution in lieu of the words "General Assembly." I will not repeat the arguments, which must be apparent to all, that can be made in favor of this term; and in reading the report of the Committee on Legislation, it will be observed that this expression prevails through the whole article.

Mr. JOHN M. BAILEY. Mr. President: I suppose it is proper I should say that I am not particular whether the term "Legislature" or "General Assembly" is used; but I think we might as well finally settle this question as to the term we propose shall be used throughout the whole Constitution. If it is the opinion of the Convention that the word "Legislature" should obtain throughout the whole Constitution, I will withdraw my amendment, and I do withdraw it.

["No." "No." "No."]

Mr. JOHN M. BAILEY. Then I renew the amendment.

The question being then taken, the amendment was not agreed to.

Mr. EWING. Mr. President: When this section was under consideration in committee of the whole, I offered an amendment to make contested elections of Governor and Lieutenant Governor determinable by the Supreme Court. After discussion, and with the understanding that the Committee on Suffrage was preparing a section relating to this matter, I withdrew the amendment. I may say that the section, as amended, suits my views now much better than as it came from the Committee on the Executive Department, but I think we should not pass this section finally without allowing an opportunity for amendment, and before we have received the report of the Committee on Suffrage. If I am correct, I understand if the section is passed now, it cannot be amended at any future stage of our proceedings, without unanimous consent. I would, therefore, move to

postpone the further consideration of this section.

The question being then taken, a division was called, which resulted as follows: Ayes, fifty-three; noes, twenty-three.

So the motion was agreed to.

CITIES AND CITY CHARTERS.

The PRESIDENT. The next business in order is the further consideration of the article reported by the Committee on Cities and City Charters.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Darlington in the chair.

The CHAIRMAN. When the committee last rose the question was upon the substitute offered by the gentleman from Philadelphia, (Mr. Cuyler,) for section three as reported by the committee.

Mr. WALKER. Mr. Chairman: I move that the committee rise and report progress.

Mr. JOHN PRICE WETHERILL. Mr. Chairman: Before the question is taken I should like to make a single remark. I desire that the consideration of this article should be postponed for the present, for the reason that two members of the committee are absent from the city. One of them, the gentleman from Pittsburg, (Mr. Guthrie,) who takes a deep interest in this article, is absent on official business, and I deem it a duty we owe to him, that the consideration of this article should be postponed, at least until his return. The gentleman was formerly mayor of the city of Pittsburg, and possesses considerable experience and information in regard to this question, and for this reason I hope the committee will now rise and report progress.

The question being taken, the motion was agreed to.

IN CONVENTION.

The committee then rose, and the President resumed the chair. Mr. Darlington, chairman of the committee of the whole, reported progress and asked leave for the committee to sit again, which was granted, and next Wednesday was named as the time.

Mr. LILLY. Mr. President: I move to re-consider the vote by which the consideration of the article reported by the Committee on the Executive was postponed.

The motion was not agreed to.

THE EDUCATIONAL ARTICLE.

The PRESIDENT. The next business in order is the consideration of the article reported by the Committee on Education. Is it the pleasure of the Convention to proceed to the consideration of the article?

The question being taken, a division was called, and it was agreed to, a majority of a quorum voting in the affirmative.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, to consider the report of the Committee on Education, Mr. Curtin in the Chair.

THE EDUCATIONAL ARTICLE.

The CHAIRMAN. The committee of the whole have under consideration the article reported by the Committee on Education. The first section will be read.

The CLERK read:

SECTION 1. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated.

Mr. DARLINGTON. Mr. Chairman: I do not design to detain the committee of the whole but for a few moments in explanation of the general objects and scope of this article. It will be remembered that the only provision in the Constitution, as it now stands, is that the Legislature shall take care that the poor be taught gratuitous, and the arts and sciences flourish in one or more seminaries of learning. We have out-grown that state of things long since. The Legislature, with the entire sanction of the people of this Commonwealth, has gone far in advance of the constitutional injunction placed there in the early history of the Commonwealth. Perhaps the subject might be safely left to the Legislature still. Indeed there cannot be any absolute necessity for the expression of an opinion on this general subject of education by this Convention; but inasmuch as we might be said to be on the backward road if we said nothing on the subject, we felt that it was better for this Convention that it ought so to recognize the existence of that admirable system of public schools which now prevails all over the Commonwealth as the existing state of things require. It will be therefore perceived that, instead of depending upon the Legislature to establish a system of education, the phraseology of

the first section, now before us, we think shall provide for the maintenance and support, merely recognizing the fact as it exists, and merely changing the phraseology from common schools to a system of public schools. This is the general purport of the first section, in which the committee have also introduced the limitation of age at which a child may be educated, and made it at the age of six years. They have named six years as the minimum age at which a child shall be maintained. For myself I feel, as an individual, I will be entirely satisfied to leave that also to the Legislature.

We have made in the second section, it will be perceived, an appropriation for carrying into effect this system of free schools in the State. Whether this will be wise, by the committee of the whole and the Convention remains also to be decided. It is higher than the appropriation made up to this time, as the Committee on Education have named the sum of \$1,000,000. But I am glad to say that the wants of the community have been met by the Legislature from time to time, as the system has grown and the ability of the people have increased, and if this sum should be considered insufficient in the future, I have no doubt that the Legislature will be found equal to the occasion, and meet any increased demand upon the educational system of the State.

Now whether the sum which we have named is the proper amount or not, this committee or this Convention will have to determine. And whether it is wise to name a sum or not, it will also be for the Convention to decide. As a general rule, I am opposed to the insertion of any specific sum in the Constitution, whether as salary for an officer or for any other purpose, because of the fluctuating value of money. What would be sufficient to-day may be insufficient to-morrow, or may be entirely too great if there is any change, either upwards or downward, in the currency of the country. But the Committee on Education have agreed to report the sum of \$1,000,000 as a sum to be annually distributed among the several school districts as the Legislature may provide, and that question will be for the determination of the Convention.

We have provided further, and this by way of restriction put upon the Legislature in reference to this school system, that no money raised for the support of the public schools shall be appropriated or used by any religious sect for the support

of sectarian schools. Inasmuch as we design this system to be a free one, and a universal one, we do not think it wise to permit the Legislature to appropriate the public moneys, raised by taxation, for the exclusive use of any sect, no matter by what name it may be called.

In the fourth section we have provided for a Superintendent of Public Instruction, to be appointed by the Governor, by and with the advice and consent of the Senate. This will be inserted either here or in its proper place in the article relating to the Executive. The Committee on Education provide that the Superintendent of Public Instruction shall hold his office for the term of four years, as the committee on that subject have already suggested, and that his duties and compensation shall be prescribed by law.

Such is the tenor of the fourth section. In the fifth section, which we have also recommended in another report, it is provided that neither the Legislature, nor any county, city, borough or school district, nor any public or municipal corporation shall make any appropriation for the support of sectarian establishments. That is its general character and I need say no more than that.

In the sixth section we have endeavored to supply that which exists in the seventh section of the present Constitution: "That the arts and sciences may be encouraged and promoted in colleges and other institutions of learning under the exclusive control of the State." That the arts and sciences and all the varied interests of the State may be encouraged and promoted. We have somewhat varied the phraseology, but this is the purport of the section.

In the seventh section the Committee on Education have provided that the Legislature may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children. I suppose there is no one branch of this whole subject that commends itself more steadily and primarily to the public mind than some means by which those who are without the care and direction of guardians shall be made the wards of the State in this regard. It is evidently the duty of the State to provide for the education and provide also subsistence, and provide it abundantly, for those unfortunate children who are neglected or abandoned, without parents, without care and with no means. Hence it is that we have suggested this for the careful consideration

of the Convention to establish industrial schools where children so circumstanced may be educated and instructed in the useful arts.

And in the eighth section, which is the last that we have reported, we have proposed that the Legislature may, by law, require that every child of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

In other words, we have in this section adopted, or recommended to the consideration of this Convention, the system of compulsory education. In that respect, I beg to say, I am ready to go as far as the farthest. I will say to you, Mr. Chairman, and that the man who so far forgets himself, so far forgets his duty to society and himself, so far forgets his duty to the public as to leave his children uneducated, shall be compelled to send them to school. I beg leave to say that the word "may," in the first line, should be "shall," in my judgment. I take it that this committee, that the public, that the whole community have a deep interest in the education of every child in this community, and if, unfortunately, there should exist any man in this community, who fails to send his children to school, or who undertakes to say that his children shall not be educated, it is the duty and the policy of the State to, by proper legislation, compel it. That is a matter all admit ought to be done. If we are all agreed upon any one thing it is, that the perpetuity of free institutions rests, in a large degree, upon the intelligence of the people, and that intelligence is to be secured by education. We provide the means whereby a parent, who cannot pay for the education of his children, can have them educated, and if a parent will not have his children educated, let him be compelled to do so.

This much, and this much only, I will say in explanation of the general views of the Committee on Education in reporting the article.

Mr. WHERRY. Mr. Chairman: I am about to make a motion, and before I do so I desire to say a single word in explanation. The Convention suddenly, and to the surprise of a majority of it, went into committee of the whole on this subject. One of the most valuable members of the Committee on Education is unavoidably absent to-day, and he has, to my certain knowledge, some valuable and important suggestions to make with reference to the report of this Committee, as well as im-

portant amendments to offer after consultation with a majority of the Committee on Education. I am very desirous, on account of the gentleman from Lehigh, (Mr. Runk,) as well as for other reasons, that this committee shall now rise, report progress, and ask leave to sit again.

I therefore make that motion.

Mr. LILLY. Mr. Chairman: I trust that the motion that the committee rise will not prevail. We have been sitting here half of the morning and just as we are getting to work it is proposed to cease business. The committee should not rise on account of the absence of any gentleman. It is the gentleman's duty to be in his seat.

Mr. WHERRY. Mr. Chairman: I will state that the gentleman from Lehigh is absent on account of illness.

Mr. LILLY. Mr. Chairman: Well I am opposed to this Convention coming to a stand still on account of the absence of anybody. I hope that this committee will refuse to rise, but will go on with this bill. We are just as able to do it to-day as we will be when the gentleman from Lehigh is here. When the report of the committee comes up on second reading he can make his suggestion then, and if he has any amendments to offer he will have all the opportunity that he needs.

Mr. HARRY WHITE. Mr. Chairman: I trust the motion of the delegate from Cumberland (Mr. Wherry) will prevail. The section on education is second in importance to no other section to be submitted to this Convention. It has been explained fully and ably by the able chairman of the committee. It is short, it is comprehensive, it is understood, and can be acted on at any time. But there are some subjects in it that necessarily dovetail into the report of the Committee on Legislation. That committee has reported, and the report is before the Convention for its action. I hope, then, in view of the fact of the brevity of the report of the Committee on Education, and the fact that some of its features dovetail into the report of the Committee on Legislation, and also in view of the absence of some of the honored members of the Committee on Education, that the committee of the whole will now rise, and that the Convention will immediately afterward consent to set in committee of the whole, so that we can proceed to the consideration of the report of the Committee on Legislation, which is now printed.

Mr. DARLINGTON. I hope the committee will not rise. It will take but little time to go through with this section. I would be very glad if the members of the committee were here to express their views upon it, but an opportunity will still be afforded in the Convention after we have reported the article back. I think we had better proceed with the article.

Upon the motion to rise, a division was called for, which resulted: Affirmative, thirty-seven; negative, forty-two.

So the motion was not agreed to.

The CHAIRMAN. The first section of the article is before the committee.

Mr. DARLINGTON. Mr. Chairman: As a matter of form I suggest that we strike out "Legislature," and insert "General Assembly."

["No! No!"]

The CHAIRMAN. Does the gentlemen make that motion?

Mr. DARLINGTON. I am not anxious to press it if it is not the wish of the committee.

Mr. MINOR. Mr. Chairman: I desire to offer an amendment: In the second line, before the word "thorough," to insert the word "uniform," so that it will read, "the support of a uniform, thorough and efficient system of education." I will say but a few words upon the subject. It will be noticed by members, if they will read that section carefully, as it now stands, that there is no limitation whatever to the extent or variety of schools that we may have in this State. It is not required that they shall be limited to any age, except that they shall not go below six years, and it is not required that there shall be any limit to education. You see, then, that this section, if it is adopted, will necessarily authorize the Legislature to introduce a different system of schools into every county in this State, and they may provide for the education of persons during their entire lives in one county, and limit them in another. They may provide for an education running through all the departments of learning in one place, and limiting it to the first four rules of arithmetic in another.

I call the attention of the committee to these propositions. I re-state, then, that they may be understood. Take this section as it stands. There is no limitation upon the power of the Legislature, as to uniformity, or its counterpart, variety in the location, in the time, in the degree of schools, or of education. Now, sir, are we prepared to leave it in that form? Are

we prepared to say that one county, one city, or one town, shall have one system, and another shall have another, and so on, all over the State? If we are prepared for that, then we are prepared to vote for this section as it stands, otherwise not. A "thorough and efficient system," I repeat, is entirely unlimited.

I will not now enlarge upon the other two points as to age and extent of education. I simply refer to them in this connection as throwing light upon the amendment which I offer, that is to insert the word "uniform," so that the system shall be the same all over the State, so far as it is carried out. Every citizen, no matter where he lives, shall be under the same system as to education in the public schools, as every other citizen, no matter where he lives.

Mr. HAZZARD. Will the gentleman allow me to ask him a question?

Mr. MINOR. Certainly.

Mr. HAZZARD. I want to know if the word uniform would apply to uniformity of text books?

Mr. MINOR. No, sir, not necessarily. It is to be a uniform system. Whatever system the Legislature adopts it should adopt the same for the whole State. It may be that every part will not be acted upon at the same time, or extend down to temporary minutiae; but the point now is uniformity of general system. That is my idea.

Mr. LILLY. Mr. Chairman: I hope this amendment will not prevail. If I understand what it means, I do not think it will be proper. If uniformity means uniformity in everything, it is very impracticable. Take a district in the woods where there are only ten or twelve children, and school but three or four months in the year. To make a law for such a district that will apply to Philadelphia would be entirely improper and impracticable. They cannot have the same system of education at all. That may be an extreme case, but you will find that different regulations will have to be made for different parts of the State.

I hope that this word "uniform" will not be inserted, that is if it means, as I believe it does, to bring it down to just one system, and that system be carried out all over the State. In Philadelphia they have female and male schools which we cannot have in the country. We cannot separate them, they must be together. Hence they have certain grades of schools which in most of our country districts

would be improper and impossible to carry out in consequence of the expense. I really hope the section will be adopted as it stands.

Mr. HAZZARD. Mr. Chairman: This word that is introduced is susceptible of construction. A uniform system may embrace the same kind of text books. I think it will bear that construction. If that be so, it will be improper to adopt it. In the rural districts they may need one class of books, and in the cities another. If this system is uniform they must introduce the studies of all the higher branches in the country. In some of our schools they teach algebra and the natural sciences. They may not be ready to do that in the country. They may be unable to obtain competent teachers for that purpose. I think this word would bear this construction.

Now there are different systems, although they amount to the same thing. There are different systems of mathematics. They call them systems. The truth is, they are about the same thing, for the multiplication table in one arithmetic is the same as the multiplication table in another. At the same time these authors call their works an improvement. Hence the introduction of the word now proposed would create confusion among the schools. There cannot be a uniformity, for in some of these districts teachers cannot be obtained to teach some of the branches which will be required to be taught in other parts of the State. I have had some experience in this matter, and I know if the amendment necessitated the introduction of the same class of books for all the schools, it would create considerable dissatisfaction in the school districts. The section reads well enough, as it is, "thorough, efficient system." That will admit of some construction also, but I do not see how we can better it. If we make it "uniform" we will find it impracticable, I think.

Mr. LANDIS. Mr. Chairman: The word uniform was considered in the committee, and the majority of its members thought the introduction of the word, if not fraught with some danger, would, at least be attended with considerable inconvenience. The word "system," of itself, suggests sufficient symmetry, and a sufficient measure of uniformity, without annexing to it so rigid a word as "uniform," because if the Legislature provides for the State a thorough and efficient system of education they will certainly have accomplished all

that a constitutional requirement should ask of them. Now, sir, when we affix to that the word "uniform," you require the Legislature to so legislate that they shall create a system which shall be unbending in all its features; and no matter what may be the requirements of any part of the State, no matter what may be the length of school terms required in one part over another, no matter what may be the kind of books which one district may require, no matter, in short, what may be the different local requirements throughout the State, by the use of the word "uniform" you compel the enactment of an iron law.

The committee, therefore, I think very discretely, came to the conclusion that the word uniform should be rejected, and that enough would be attained by the use of the word "system," and when you have affixed to that the adjectives "thorough and efficient," it seems to me you have accomplished all that is necessary to accomplish, and I therefore trust that the committee of the whole will hesitate before it consents that the word "uniform" shall be inserted, as required by the amendment.

Mr. SIMPSON. Mr. Chairman: I desire to say that I trust the amendment of the gentleman from Crawford (Mr. Minor) will not be adopted, for the reason that it will either, on the one hand, prevent our having graded schools, or, on the other, it will reduce them.

I have had some experience in this school system. I have been connected with it for the last thirteen or fourteen years, and I find that even in this city it would be impossible in the nature of things to adopt a uniform system. We have in the more densely populated portions of the city, graded schools—the primary, the secondary, grammar, normal and high school, and in the sections of the city where the population is more sparse it would be impossible to establish and maintain crowded schools, as they are in what is called the thickly peopled settlements.

We must either have graded schools, or else we must have consolidated schools in which the children will be taught everything, from their "A B C's" upward. If it is the idea of the gentleman from Crawford (Mr. Minor) that the "three R's" only are to be taught, then the expression "three R's" ought to be sufficient and ought to be embodied in the section; but if the system is intended to give an

opportunity to every child in the Commonwealth to get an equal chance for a good and proper education, the word "uniform" ought not to be put into it."

Mr. WHERRY. Mr. Chairman: The word "uniform" has no such limited meaning at all, as the gentleman from Washington (Mr. Hazzard) and the gentleman from the city (Mr. Stanton) attach to it. It is simply meant to prevent special legislation in the matter of the common schools. It means "uniform law" with regard to the age at which children are to be admitted; it means "uniform law" with regard to taxation for school purposes; it means "uniform law" in relation to the taking of property for school purposes; it means "uniform law" with regard to all those matters that are of equal importance to all the schools and school districts of the Commonwealth. Only this and nothing more. It has nothing to do with text-books, or teachers, or school houses. These questions are left, as they are now very properly left, entirely to the local school authorities. It simply affects the character of the legislation made under this article of the Constitution, (if it be adopted,) and does not affect in the slightest degree the matters referred to by the gentlemen who opposed this amendment.

There are good reasons, Mr. Chairman, why this amendment should be adopted. To illustrate this, I will refer to the county in which I live. There is there an "independent district," which, though its schools are of the highest order and an honor to the borough sustaining them, nevertheless has been a constant source of irritation, and jealousy. When two independent authorities undertake to do the same work, friction is unavoidable. With us frequent collisions have occurred in supervision, in the organization of county institutes, and in the creation of the committees which examine and fix the status of teachers. But this district is an old monument of the intelligence of our citizens, and we have no desire to destroy it. But if this word "uniform" is not placed in the education article of the Constitution, there is nothing to hinder any portion of the people of this State from, at any time, attempting to have up, and getting themselves set off, as an "independent" district.

I ask whether gentlemen are willing to give this right to any little section of the State; the right to get itself cut off into an independent district and set up, not

in conformity with this constitutional provision, but in conformity to some special law which the Legislature may pass in its behalf? Do gentlemen propose to strike down special legislation on every other subject, and leave it have full swing in the affairs of the common schools?

Surely if there be any matter of pride and glory in our State, it is to be found in our system of common schools; and if there be one thing in it of more value than another, it is this uniformity—this rigid, equal and impartial system. Our common schools are the great, broad leveler by which all the children of the Commonwealth are placed in one common arena. Whatever we do let us so fix this educational system that it will remain the honor and the pride of the Commonwealth; let us adopt this amendment, so that whatever there is in it that is good shall be enjoyed equally by all.

Mr. STANTON. Mr. Chairman: I did not intend to say anything on this section, as I think it is right as it stands. It calls for "a thorough and efficient system of common schools," in which all the children of the State, above the age of six years, may be educated. I cannot, for the life of me, understand what the gentleman is driving at by his amendment. It would certainly diminish the usefulness and efficiency of our common schools in Philadelphia. This whole subject was thoroughly discussed in the committee, and a majority of the committee thought the section, as recommended, would be the best form in which it could be put. If you insert the word "uniform," I can tell, gentlemen, that it will be construed to mean, among other things, uniform text-books; and that is where the difficulty will commence.

Again, there are graded schools instituted throughout the State, but there are certain school districts wherein it would be utterly impossible to establish the same classes and grades of schools as those which we have in Philadelphia. Here are our high schools, for instance, for educating in the higher grades, the children of engineers, mechanics and others—and it would be well to have such a high school in every county, but pupils enough could not be secured to fill such a school were it established.

There is a high school near Lancaster, I believe, which is accomplishing a great deal of good in educating teachers, and children of artisans and others, but the thickly populated district in which the

school is located secures to it results, which in sparsely settled counties could not be effected, for the reason previously stated—the *want* of a sufficient number of pupils. To remove or overcome this difficulty, it would be necessary to provide that a high school district shall include contiguous counties or portions of counties; and such a regulation would be equally objectionable, because the distance of the school, from the residences of a majority of the pupils, would render the system practically inoperative.

If, then, the word “uniform” is inserted, one of two results must follow—every school district in the State must have its system of primary, intermediate, grammar and high schools by mandate of law, whether such system can be established and rendered operative or not, or, on the other hand, those districts like Philadelphia, in which this system already obtains, must abolish so much of it as will reduce the system and the grades of the various schools and departments as will make them come within the provision of the article and place them upon a “uniform” although a lower basis.

If any gentleman can devise a plan by which a more efficient system of public schools and a system of higher education in the public schools can be established and carried into effect, I will be the most earnest of its advocates and will use, in its favor, both my voice and my vote.

I oppose the amendment proposed, because I believe that its adoption would tend to degrade materially the public schools from that high standard which they have attained in this and other cities, and to which they are so rapidly tending throughout the State. These are my reasons, Mr. Chairman, for opposing the amendment.

Mr. TEMPLE. Mr. Chairman: I desire to ask the gentleman whether he considers the Philadelphia high school a common school, under this section?

Mr. STANTON. Certainly it is a common school.

Mr. WHERRY. Does the gentleman mean to leave the committee under the impression that the word “uniform,” if left in that section, would necessarily imply that every district must establish “uniform schools?”

Mr. STANTON. Certainly.

Mr. WHERRY. Certainly not, it refers to uniform legislation.

Mr. STANTON. If it is for uniform legislation, let it say so.

Mr. RUSSELL. Mr. Chairman: Would it not be better to put an article on this subject, if it is for uniform legislation, into the article on Legislation and let this article stand as it is; then it will not be mis-construed.

Mr. HAZZARD. Mr. Chairman: For the very reason assigned by the gentleman from Cumberland (Mr. Wherry) that this amendment should be adopted, I hope it will not be adopted. It would be very improper to insist, by “uniform” legislation, or in any other way, that our common schools in the country should have a “uniform” system, as that would compel those who wish to study the higher branches of education to go to academies and high schools. We, who live in the west, have no such institutions of learning, and we sometimes organize, in the common schools, a class in the higher studies. We have, in that way, introduced chemistry, natural philosophy, history, algebra and the other higher branches. We give our children the benefit of these studies, under our common school plan, and we do not want it altered. We ask no aid from the State in that regard. We pay our taxes and are content.

Mr. WHERRY. I would ask the gentleman whether every child in the school district enjoys the advantages he refers to, or only a few?

Mr. HAZZARD. All may enjoy them who desire.

Mr. WHERRY. All do not enjoy them.

Mr. HAZZARD. The gentleman might as well ask whether all have the benefit of the colleges of the country.

Mr. WHERRY. The gentleman evades the question; for it must be apparent, on his own statement, that a large number of people in his section are taxed for the benefit of a few.

Mr. HAZZARD. There are a very large number of persons who do not care that their children should go to college; but they will send them to a common school which the State supports from the taxes of the citizens. With a competent teacher in the common school we can have all the advantages of a high school: I have sent my son to such a school in my own neighborhood in preference to sending him to an academy in some other part of the State. They tell me that the system has also worked well, and that it is thorough and good, in the city of Erie.

We do not want to have a “uniform” system. We want to have the right to introduce when and where we please some

of these higher branches into our common schools, so that our children who can not go to colleges and academies away from home may go into their own schools, paid for and sustained by the people of the State, and study these higher branches with a teacher of competence. We do not want this word "uniform" here for it may be construed so as to lead to a conclusion on the part of school directors and others that we are to have only the elementary branches so as to be "uniform" with similar schools elsewhere in the country. It will admit of that construction. Why, this word would operate even as against the introduction of chemical or philosophical apparatus into one school because in another school they could not afford to have it.

Let those of us who prefer the plan of giving our children the benefits of the higher studies in their own district, and near their own homes, be allowed to do so. As to the school tax, we can, in any event, only get our share of that; and if we choose to pay something more for the privilege I speak of, over and above the tax, let us have the right to do it. Let us have a higher class of studies where we want it. If you put this word "uniform" into the section, school directors will hesitate and discuss whether they have a right to do anything of this kind or not.

Our common schools, sir, are the pride and boast of Pennsylvania. Do not let us restrict or limit their operations too much. Let it be known that even the ragged boy out of the mine may go in there and get a good education. I am afraid of this word "uniform." I think it would work trouble. Let us in the country have some liberty about these matters. Of course, everybody knows we must keep the common branches of education uniform; that must be so, of necessity; but do not let it be said that we cannot, even if we want to, introduce the higher branches into our common schools.

The question being then taken, the amendment to insert the word "uniform" before the word "thorough," was not agreed to.

Mr. WHERRY. Mr. Chairman: I move to amend the section, by striking out the words "above the age of six years." I offer this amendment, Mr. Chairman, because I think we have reached that standard of civilization in the Commonwealth of Pennsylvania which condemns as inhuman the practice of confining children of six years of age in the common school-

houses of this State. I desire that it should be fully understood throughout this whole Commonwealth that six years is the minimum age at which children can be received in our common schools.

The amendment was not agreed to.

Mr. HOWARD. Mr. Chairman: I offer the following amendment to, come in at the end of the section: "And the Legislature shall prescribe by law the kind and number of books to be used in the public schools; and changes in books shall not be made oftener than once in ten years."

Mr. HOWARD. Mr. Chairman: I have offered this amendment for the purpose of taking the sense of this Convention upon a subject that has attracted the attention of the people of the State as much as any other in connection with the system of common schools. The frequent changes which have been made in the text books of our schools has been a source of constant complaint among the parents of children throughout the Commonwealth. It has also become a matter of public scandal in many places in the Commonwealth that the agents of rival publishing houses constantly approach our school directors, and in fact are nominated and elected as school directors through the influence of prominent publishing houses in different parts of the country. The effect of such a practice as this has been to supersede certain text-books which have been used in the various schools throughout the State, and to introduce another and probably less desirable quality of text-books. There can be no possible doubt but that there should be some authority given for the purpose of prescribing the kind and number of books that should be used in the schools of the Commonwealth.

This, in my estimation, is a very important question, and one well worthy of the consideration of this Convention. We are now engaged in prescribing a system of education for the children of this Commonwealth, and one which is destined to provide a place for those higher schools that have been heretofore filled by the children of parents who have been unable to give them a collegiate education. The system which we now contemplate adopting, is designed to take the place of our colleges. It is intended to be a system in which all the children of the Commonwealth can acquire the highest branches of education, and, for myself, I would like to see some provision adopted that should prescribe the kind and number of

books that are to be used in our schools, so that there should be some uniform system, and that we might escape the continual annoyances by which our schools are subjected, in the daily change that is made in the books that are used in our schools. I desire to say, however, that it is immaterial, as far as I am personally concerned, what the Convention does with the amendment which I have offered. I have offered it for the consideration of the Convention.

Mr. DE FRANCE. Mr. Chairman: I move to amend the amendment, by striking out "ten years," and inserting "five years."

Mr. DARLINGTON. Mr. Chairman: I regard any limitation whatever upon a subject of this kind entirely inappropriate to a fundamental law. It would be a strange spectacle if a Convention engaged in revising the Constitution of the State should stop in its work to say what sort of books shall be used in our common schools, because we do not know ourselves. A book that may be a valuable school book to-day may be entirely superseded in a month or so hence.

Mr. MANTOR. Mr. Chairman: I merely rise to say that I am in favor of the section as it has been reported by the committee, and opposed to the amendment offered by the gentleman from Allegheny (Mr. Howard.) It seems to me the amendment would have been very appropriate had it been offered thirty years ago in the Constitutional Convention, but we live to-day in an enlightened age of improvement, which certainly cannot approve of any proposition which shall prevent the selection by the schools of the various books for the instruction of their pupils. I can see no necessity whatever for such a provision in the Constitution, and I shall therefore vote against it.

Mr. WOODWARD. Mr. Chairman: If I fully understand the amendment which has been offered by the gentleman from Allegheny, (Mr. Howard,) I consider it a most valuable suggestion, though I think it is out of place. I had prepared an amendment to come in at the end of the fourth section, which I had intended should accomplish the same object which I understand is the purpose of the amendment which has just been offered. I do not care in what part of this report the amendment is inserted, but that it ought to be inserted somewhere I am very confident. Indeed I see nothing in this whole report that is as valuable as a provision that would require the Legislature

to make a law compelling the Superintendent of Public Schools to prescribe uniform school books throughout the State of Pennsylvania. Now, sir, I desire that such a provision should be placed in the Constitution. I do not care where it is inserted, but I do not desire that it should be left to the Legislature. If it is insisted that this would be legislation I agree that it is, but, as surely as you leave it to the Legislature, this provision will not be made. It is of vast consequence to the parents of this Commonwealth that this provision should be made in the Constitution. If you go to New York or Boston, you will find there large mansions and store-houses that have been built out of the money Pennsylvania parents have paid to the publishers of these school books.

Mr. HARRY WHITE. Mr. Chairman. I desire to remind the gentleman that the Legislature of Pennsylvania has passed a solemn statute which prevents the school directors of any district from changing the school books oftener than once in three years.

Mr. WOODWARD. That does not accomplish the object of this amendment, which is to prescribe, as I understand it, uniform school books for all the common schools of Pennsylvania. I do not see why the school books should be changed every three years. The multiplication table does not change every three years, and the rules of syntax and prosody do not change every three years. I do not know what rule does change every three years. If there must be a change made, I hope the change will be made uniform. But if they must be periodically changed, let that change be uniform, so that if a man moves from one school district into another school district, the books that he has been obliged to buy for his children will serve him in that district to which he goes. I want the same school books to be used in all the districts of Pennsylvania. I want the children of Pennsylvania to be educated in the same manner, and this scandalous speculation, which has been carried on at the expense of Pennsylvania parents, I want stopped.

I do not know that there will be any impropriety in my illustrating my argument by a fact. I raised a family of children and educated them, and I will say to the advocates of the female sex who are about us, that I gave my daughters as excellent an education as I gave my sons. One of my daughters wanted a Latin grammar

and I took one down from the shelf and gave it to her. She took it to school and came back with the information that it would not do. She must have Bullion's Latin Grammar. Well I bought this famous grammar, price 75 cents, and examined it, and I found that it was the same Latin Grammar that I had first given my daughter, transposed and a little changed, but essentially and substantially the same grammar. But it was paid for. By and by she must have a Latin reader. I took a Latin Reader down from a shelf and gave her one. She took it to school and it would not do. She must have Bullion's Latin Reader. I bought it for \$1.50, and to my horror I found it was Bullion's Latin Grammar bound up in Bullion's Latin Reader. I had bought Bullion's Latin Grammar twice. By and by my daughter must have Caesar's Commentaries. I have a standard edition of that, and I gave it to her. She took it to school and it would not do. She must have Bullion's Caesar's Commentaries, and when I bought it I found that some worthless Latin grammar was bound up the third time in Bullion's Caesar. Thus I was made to pay three times for a Latin Grammar that never ought to have been printed, because the school master was the agent of the publisher of Bullion's school books. That is the way I was operated upon, and I suppose any other man so situated shared the same fate. Then I inquired who this famous Bullion was, and I learned that he was a Methodist minister at Albany, who was making school books, and through this system of local agents and pliant Legislatures the balance of the world were being made to pay again and again for a Latin grammar, which, again and again I say, ought never to have been printed. There is not a thing in Bullion's Latin Grammar that is not found in Latin grammars that were made and printed before Bullion's was born.

Mr. Chairman: I have no interest in this question. I am a man over twenty-one years of age, at which a man can select his own books. I have no children to educate; but there are numerous people who have, and I want to save them, my fellow-citizens and fellow-parents, from the impositions which were successfully practiced on me through this system of school books, and that is why I am prepared to vote for the amendment of the gentleman from Allegheny, (Mr. Howard,) although I would prefer that that

amendment should come at the close of the fourth section and read in this way:

The fourth section reads:

SECTION 4. A Superintendent of Public Instruction shall be appointed by the Governor, by and with the consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

I would add to that section these words: "which shall require him, among other things, to prescribe the school books to be used in all the common schools of the State."

I trust that either here, or in the fourth section, or some other part of this bill, some such provision will be introduced. I trust that this Convention will not let this bill pass through their hands without guarding the parents of Pennsylvania from the gross impositions which I do know have been practiced upon them, and which I have no doubt, will be continued to be practiced upon them if we do not put in some such conservative provision.

Mr. LANDIS. Mr. Chairman: I did not suppose, sir, that the amendment suggested by the gentleman from Allegheny (Mr. Howard) was really to be seriously considered by this Convention, because from its terms it would impose so much inconvenience upon the people of Pennsylvania, it would subject the directors of the public schools all over the State to so much trouble that it would be found to be entirely impracticable. It is a proposition that we embody in our Constitution a provision requiring that all the school books throughout the State will be uniform. I think that a very little reflection on the part of any gentleman will convince him that it would be almost impossible, certainly impracticable. Why, sir, the wants of every locality differ. The directors are the only ones who should determine what are the wants of the scholars of the schools in their district. They alone understand what the children there require. They have made it a study, and it is for them to ascertain what the peculiar necessities of their district are, what books they will need, besides what particular branches they will study. And who shall pretend to determine the kind of text-books to be used as those who have charge of the schools themselves?

In various parts of the State, under the system of common schools, there are organized and in operation very large German schools. In other districts there are

Welsh ones. Now, sir, imagine the inconvenience of the Superintendent of Public Instruction determining that a certain text-book should be used throughout all portions of the State. Why the gentleman from Philadelphia (Mr. Woodward) expressed himself as surprised when, on different occasions, his children brought home to him this and that kind of a book. I submit if he would not have been still greater surprised if, on sending children to school, they would bring home to him a Dutch book or a Welsh book?

This proposition is one which scarcely admits of argument. It ought to suggest itself to every one that it should not be adopted. The idea of embodying into the Constitution, which cannot be altered without great difficulty, a proviso of this kind is one that cannot be seriously considered and entertained by the members of this committee. I therefore hope it will be voted down.

Mr. H. W. PALMER. Mr. Chairman: I entirely agree with the gentleman who has just taken his seat (Mr. Landis.) I do not see why this amendment should be adopted, or why any change should be made in the present system of selecting text-books. The present statute on the subject, which seems, in my judgment, to meet the case fully, is as follows:

"The board of school directors of any district, the controllers in cities and boroughs, shall not order, or direct, or make any change in the school books or text-books used in any school under his or their superintendence, direction or control, more than once in every period of three years."

Certainly the directors of any district know better what the children in their district need than the Superintendent of Public Schools, or the Legislature of the State of Pennsylvania. They fix the series of books once in three years. At the end of three years if any improvement has been made in the school books during that time, by any of the persons who direct their attention to such matters, then another change may be made. It does not follow as a matter of course, that the system of books is to be changed every three years. The way is only opened if improvements are made that makes it desirable to change the books of any district, for the directors to make the change. And if any change is to be made they are the proper parties to make it. They certainly know more about it than anybody else.

Mr. WOODWARD. Mr. Chairman: I would like the gentleman to state a reason why the school books of one district should be different from the school books of another district, so that when a man emigrates from one district the books his children used there will not answer in the other, and he must be forced to buy new ones. Can the gentleman state a reason?

Mr. H. W. PALMER. Mr. Chairman: Certainly I can. It would be perfectly apparent to the gentleman, if he had served as a school director during the last forty or fifty years, that the wants of one school district are quite different from the wants of another, and that nobody can understand them so well as the directors themselves.

I have no doubt that Kirkham's Grammar, Duball's Arithmetic and Cobb's Speller, and the other books which the gentleman studied when he was a boy, were, in his judgment, the best books that ever were made. But I beg him to recollect that the world moves, and there has been an advance since the days when he studied his edition of Anthon's, Cæsar or whatever author he did study. I suppose his experience on the subject of Latin books is unfortunate. His experience with reference to Bullion's Grammar, must have cost him as much as one dollar and twenty-five cents, and all the extra expenses.

Mr. WOODWARD. Mr. Chairman: I beg the gentleman to answer my question. My question was, why should one school district require different school books from another school district? That is the question I ask him!

Mr. H. W. PALMER. Mr. Chairman: Simply because the wants of one district differ from the wants of another district. What would suit the Philadelphia high school, would not suit a district in the mining regions of Luzerne county. That is perfectly evident. And what would suit a primary school in the intelligent and cultivated agricultural regions would not suit a primary school in some precincts of Philadelphia. These matters can be better regulated by the school directors, those who are elected by the people who have children to send to school and who take an interest in these matters and who are better qualified to regulate the books to be used than anybody else.

On the subject of the boring of school agents and the interest of school superintendents, I desire only to say that it is made a high misdemeanor for a man connected with the public schools to be in any

way engaged in furnishing them with supplies of any kind. I do not suppose such persons are interested in supplying schools with books. I suppose they do their duty, and I believe that all this clamor which is raised about school books, is mainly attributable to the penuriousness of people who do not like to buy books for their children, either old or new, and, by this, I do not mean any personal allusion to the gentleman from Philadelphia. Having had four or five years' experience as a director of schools, in a somewhat flourishing section of the State, where the schools have acquired prominence. I can speak by the book upon this subject.

MR. LILLY. How often were your text-books changed in that time?

MR. H. W. PALMER. We changed books but once in six years.

MR. LILLY. Then, Mr. Chairman, the amendment does not touch the gentleman's case at all.

MR. H. W. PALMER. We adopted a uniform system of books and changed it but once, because more frequent change did not seem desirable, but we should have deemed it a great hardship if debarred from making a change for the better in our school books, when change became necessary.

MR. LILLY. Mr. Chairman: I am rather peculiarly situated in reference to this question. I have no children of my own to send to school, and therefore, the purchase of new books does not effect me. But I hear this clamor every time the series of school books is changed in my region of the State, where it is alleged that the change is made in the interest of school directors or others who have the books changed because there is a profit for themselves in the transfer.

The gentleman from Luzerne (Mr. H. W. Palmer) says that it only costs a dollar and twenty-five cents to make the changes in Latin grammars that were required by the daughter of the gentleman from Philadelphia (Mr. Woodward). Let me tell him that the cost of books is, in my section of the State, a tax of sometimes fifty dollars and sixty dollars a year to get all the text-books required. And it is a crying shame that these changes are allowed to be made. I have seen these book agents traveling around, and I have seen them with the school directors, taking them out to hotels, feasting them and treating them and all that sort of thing, and the first thing we know is that when these agents get home the system of text-

books is changed, and the expense put upon the taxpayer and the people who have children to send to school.

As I said, I speak entirely independant of that, because it does not touch my pocket, but I speak of it, because I hear this clamor every year, and sometimes twice a year. If in some districts, where some gentlemen here may be school directors, the books are only changed once in three or four years, the clamor does not reach them; but I will guarantee that in the county of Carbon there is not a school district in which the books are not changed three times in three of four years.

MR. H. W. PALMER. You should look after your school directors.

MR. LILLY. Well, we do, but we cannot keep looking after them all the time, and we cannot always keep them right.

MR. STANTON. Mr. Chairman: I should regret very much to see this amendment prevail. I cannot, for my life, see the advantage of it. In our city we have a system of school books, and have been obliged to take, frequently, an old book, because the act of Assembly prevents us from changing, except once in three years. The author of the book may have revised and improved it, and a revised edition is by us considered a new edition, therefore we are obliged to take the old edition. In reply to the gentleman from Philadelphia, (Mr. Woodward,) I would say that there is a law absolutely prohibiting any teacher from having anything to do with the sale of books, or to act as agent for them. We will not even permit an agent to go into our schools and solicit the teachers for the sale of books. What it is in the rural districts of the State I am not able to say.

MR. LEAR. We have the same law.

MR. STANTON. I presumed so; I presume it is an act of the Assembly. In our grammar schools we have supplementary grades called the senior class, in which departments the children receive almost the same grade of education and use the same books as those in the high or Normal schools. We do that because of the absolute demand for it by the necessities of the community. I should be sorry indeed if the school directors who are elected under the act of Assembly cannot grade their schools and select such books as they please. I think it would be utterly impossible for the Superinten-

dent to go all over the State and ascertain properly the wants of the schools. In the city of Philadelphia we have over eighty-seven thousand children in our schools, and the Superintendent could not go around and see these schools and all other schools of the State properly attended to. Therefore the act of Assembly has wisely provided that each school section or ward may have from twelve to twenty directors, whose duty it is to go around and ascertain the wants of the section and represent these wants to the board of education.

The gentleman from Carbon (Mr. Lilly) is mistaken if he supposes that the wants of the school districts remain the same all the time. Additional wants are always being discovered, and with regard to the publishers, these men seek the sale of their books all the time, and you cannot make them stay at home. If the eastern men can get up a book cheaper than those nearer home, we will have to take the cheaper book. I would very much like to see a Philadelphia house supply the whole State with school books, but it cannot be done. We are obliged by act of Assembly to advertise for proposals, and to describe in our advertisement what we want. The publishers put in their bids, and we have bids from Boston, New York, Chicago, and from other cities, and there are sometimes books which are printed and published in Philadelphia which we can buy in Boston cheaper than we can here. It is no fault of ours. It is no fault of the directors of the public schools or of the board of education. If there is a fault at all it is in the law. For my part I do not think there is any fault, and I do trust the amendment will not prevail.

Mr. CORSON. Mr. Chairman: I am satisfied the prevailing opinion of this body is to incorporate into the Constitution the spirit of the amendment proposed by the gentleman from Philadelphia (Mr. Stanton) and the gentleman from Pittsburg, (Mr. Howard,) and, by an arrangement between these two gentlemen, the gentleman from Pittsburg (Mr. Howard) proposed to withdraw his amendment to the section, so that the two ideas may be incorporated into one, which I have drawn up to be proposed as an amendment to section fourth.

There is a settled conviction in the minds of the people, especially all those of us who have any children, or ever expect to have, to have some settled law in regard to school books, and there is no reason in the world why they should be changed, and, if we can settle this question for ten years, that will help me out, and the rest can take care of themselves.

Mr. TEMPLE. Mr. Chairman: I have but one word to say, in answer to the gentleman from Philadelphia (Mr. Stanton.)

He remarked that the law as it now exists operates an inconvenience to the board of school directors in our city; because there are some editions, and various classes of school books coming out within the three years. I beg leave to say to the gentleman and to the committee, that my opinion is that if a constitutional provision, something like this, was adopted, the various editions of which the gentlemen have spoken would not be issued by the publishers. The desire upon the part of the school directors, or those who have the charge of these matters to change is, really, because of the frequent editions brought before the community by these various publishers. It is not the fault of the law; the act of Assembly prohibiting these changes within three years is all very well if lived up to; but I know it is not lived up to in the city of Philadelphia, and there are other persons whose experience in the city of Philadelphia agrees with mine in that respect. It is a very common subject of complaint with people, that their children going to the public schools are obliged to change the books every two or three years, and I understand that in some schools, the teachers have the books there for sale, and are acting as agents for them. I believe, sir, that such a provision as this should be in the Constitution.

Mr. STANTON. Mr. Chairman: I would like to ask the gentleman (Mr. Temple,) if he can name a single instance where the board of public education of the city of Philadelphia have changed a single book since the act of Assembly.

Mr. TEMPLE. Mr. Chairman: I only know, as my friend the gentleman from Philadelphia (Mr. Stanton) knows, that

it has not been two years since certain investigations were going on in the city of Philadelphia in regard to the purchase of books, by, I believe, the board of control, the complaint being, if I mistake not, that they had made a contract with somebody for a larger consideration than the books could have been got for elsewhere. I am not here to answer conundrums or to make reflections, but the gentleman knows as well as I do that such complaints have been made. I do not know that he has any reason to complain on account of his own children, but it is certain that the complaints have been made.

MR. STANTON. If the gentleman puts a conundrum, and we give it up, he ought to answer it. [Laughter.]

I will simply say here that as I have the honor to preside over the board of public education of the city of Philadelphia, who alone have authority to change the text-books used in our public schools, I assert positively and absolutely that no such changes as intimated by my colleague (Mr. Temple) have been made. The penalty for making such changes is, I believe, a fine of five hundred dollars and imprisonment. Now if such change had been made by the board of education of this city I should not, probably, have the honor of sitting in this Convention at this time. [Laughter.]

MR. PROCHÉ. Mr. Chairman: I have had the honor of being a school director for some fifteen or sixteen years in my section of country, and I look upon this question of the frequent changing of books as one of the great pests of the State. My colleague said he spoke by the books. I, too, speak by the book; because, there is scarcely a year passes that there is not some new school book issued by some publishing firm. They send their agents all over the State to canvass for that book, and how do they do it? In the rural districts they ascertain the names of the school directors and make them friendly calls, and they have no objections to loitering with them over night, provided it does not cost anything. They will go to each director and teacher, offer them an inducement, saying: "If you will adopt my book I will furnish you with books for your own family for so long a time; we will take your old books and furnish our new ones without any

extra charge for the first year." Why? So that they can introduce their books into the school district or county. It is a very profitable business. School books at present prices are, I think, the dearest books published, while they ought to be the cheapest, in order that the common people may not find them burdensome.

This does not apply, perhaps, to the city of Philadelphia, for the reason that the board of control furnishes each scholar with all necessary school books free; it is in the rural districts, and in the mining districts, that this vexatious and onerous burden is felt, where the poor laboring man has to buy books for his children. Every new teacher or board that comes in makes a change in the text-books and imposes in that way an onerous tax and burden upon the people. I have heard more complaint from parents, mechanics and working men upon this point than upon any other. I believe that we ought to engraft into the organic law a provision that the text-books should not be changed within five years. We have that arrangement now, for three years, and I think it would be an improvement to make it five, or at least some method adopted by which this constant change of text-books in our common schools should be abated.

MR. BROOMALL. Mr. Chairman: The difficulty with this amendment is that it is out of place in the Constitution. However proper it may be in a code of school laws, it seems to me that it has no business whatever in a Constitution. That the Legislature will enact a law in this direction is shown by the fact that they have done it, and the only difficulty lodged with the law now in force is that the time is not long enough. That, however, is a question for the Legislature. I am of opinion that these things had much better be left to the people themselves, who are much better capable of judging of what they want than either the Legislature or this Convention; and if not left to the school districts, it should certainly be left to the Legislature to fix from time to time what they may need.

It looks to me monstrous to put a provision in the Constitution that a particular school district, although every person in it may vote to have Bullion's Latin Grammar in use in their schools, cannot get it for ten years, and even then not

without the consent of the Superintendent of Public Instruction and the Legislature. It is said that there is a belief that the people are imposed upon by book agents. If we are going to sit here until we can protect all the people of Pennsylvania against book agents, we will have a very long session indeed.

We cannot do better than by leaving this matter to the people or the Legislature, under the penalties imposed by the act which was read by my friend from Luzerne (Mr. E. W. Palmer.) Why should we set about remedying all the difficulties of school directors in the State of Pennsylvania? Why should we suppose that school directors are capable of being tampered with, that the Legislature is capable of being tampered with, and that we ourselves are not?

I sometimes have felt ready to propose that we should resolve ourselves into a continuous body, inasmuch as we contain all the integrity of the State of Pennsylvania. I did not believe that this proposition was going to be seriously pressed until the remarks of the gentleman from Philadelphia (Mr. Woodward) were made, showing that he was really in earnest; he has a grievance, not a very extensive one, one I believe of the extent of a dollar and a half, and I am sorry for him, as I would not have him imposed upon even to that slight extent, but I do not want a provision in the Constitution of Pennsylvania, placed there for the purpose of preventing some book agent from imposing upon my associate or somebody else. I would leave this to the people of the school districts themselves, acting through their superintendent. I would certainly not go farther than to allow the Legislature the power that it already has without this amendment to regulate the matter under the penalties prescribed.

MR. RUSSELL. Mr. Chairman: I do not think that the gentleman from Delaware (Mr. Broomall) understands exactly the amendment offered by the delegate from Allegheny, (Mr. Howard,) as I understand it. There is no law touching the point spoken of by the gentleman from Philadelphia (Mr. Newlin.) The law on the subject is in these words:

"The board of directors of any district, the controllers in cities and boroughs, or any school superintendent, shall not order

or direct, or make, any change in the school books or series of text books in any school under his or their superintendence, or control more than once in every period of three years."

That is the act of May 23, 1871, and that is the act to which the gentleman from Delaware (Mr. Broomall) refers. It does not cover the point referred to, at all.

MR. BROOMALL. The gentleman will allow me to say, that the amendment suggested by the gentleman from Philadelphia, (Mr. Newlin,) has not been offered. I was speaking to the amendment offered on the other side of the House.

MR. RUSSELL. As I understood the amendment offered by the gentleman from Allegheny, (Mr. Howard,) it was to the same effect. This law allows a change of school books every three years in every school district in the State. That is just what we wish to prevent. Here, for instance, is a board of school directors in the borough in which I reside. That board establishes a certain set of school books. Only a few steps from that school is a township with a different set of school books; and if a man moves from the borough of Bedford into the township of Bedford, he is obliged to buy for his children a new set, each, of the set of books.

There is nothing in what the gentleman from Luzerne (Mr. H. W. Palmer) said that touches the point. I do not think that he fully or fairly answered the question propounded to him by the gentleman from Philadelphia (Mr. Woodward.) We are not legislating here with regard to the high schools of Philadelphia, or to the series of school books that should be used there, but we are legislating with regard to the common schools of the State; and the act provides that it shall be the duty of each county superintendent to see that in every district there shall be taught orthography, reading, writing, English grammar, geography, and arithmetic, as well as such other branches as the board of directors or controllers may require.

The purpose of the common school system of Pennsylvania is to instruct the children of the State in these common branches of education, and not in the higher branches; and what we wish is that there shall be a uniform series of school books in every district of the

State, so that we shall not have in the twenty odd districts of any county twenty odd different series of school books.

I am in favor of the amendment of the gentleman from Allegheny, (Mr. Howard,) but would prefer that it should come in at the end of the fourth section, so as to make it the duty of the Superintendent of Public Instruction to say that the same series of school books is adopted in each district, and in every district of the State.

Mr. HOWARD. Mr. Chairman: As this amendment seems to attract a good deal of attention, I will withdraw it for the present.

Mr. NEWLIN. Mr. Chairman: Inasmuch as there has been considerable debate on this section, and as perhaps sometime may be saved, if it can be disposed of now, I offer the following amendment, to come in at the end of the section:

"The Governor, Attorney General and Superintendent of Public Instruction, shall constitute a board of education. They shall have supervision of public instruction, and shall prescribe what school books shall be used, subject to such regulations as may be prescribed by law."

There seems to be an acknowledged evil just here, which it is difficult to meet. Now, it seems to me, that it is improper to leave to the local boards of a township or a section, a small and unimportant body like that, the settlement of a question of this magnitude, and the difficulty arising from it has been very aptly stated by the gentleman from Bedford, (Mr. Russell,) where, within the same county, in different public schools, different textbooks are used upon the same subject. Again, with regard to the Legislature, it would perhaps be improper to give to it the power alone, of regulating all these matters.

Now, my proposition is to leave it in a general way, subject to such regulations as may be made by law to the proposed board, composed of the Governor, Superintendent of Public Instruction and the Attorney General. Let them prescribe, under such regulations as may be indicated by law, the general course of instruction, let them have a general supervision, the details to be fixed by the Legislature from time to time.

This matter of what books shall be used is, I think, properly left to a board of

this kind. I would not leave it entirely to the Superintendent of Public Instruction for fear that officer, having so much to do with the mere details of education, his mind might, to a certain extent, be contracted, his views might be somewhat those of a pedagogue, and by joining with him in this general supervisory power two other officers, the Governor and the Attorney General, it seems to me that perhaps such a general course of instruction might be mapped out for the whole State, the details, of course, as much as possible, being left to the local authorities, as would accomplish general good, and meet with general approbation. Perhaps this amendment ought, more properly, come in at the end, as a new section; but, inasmuch, as there has been extended debate on this subject, it might be as well to take the sense of the body upon the resolution. A board, such as I have proposed, though the officers are varied, exists in the Constitutions of a number of the States, leaving the details for the Legislature to arrange.

Mr. BROOMALL. Mr. Chairman: I would suggest to the gentleman from Philadelphia (Mr. Newlin) that he add to his amendment a provision that this same board shall prescribe the food which the children shall eat. [Laughter.]

Mr. DARLINGTON. Mr. Chairman: I rise to a point of order. Is this amendment german to the first section?

Mr. RUSSELL. Mr. Chairman: I was going to suggest to the gentleman, (Mr. Newlin,) that he put it in at the proper time rather as a new section than to offer it now.

Mr. STANTON. Mr. Chairman: If we were not in committee of the whole, I should move the reference of the resolution to the Committee on the Executive Department of the government, as it mainly seems to affect that department; I think, however, that you are laying upon your Executive and his cabinet more labor than they will ever be able to get through with.

Mr. NEWLIN. Mr. Chairman: I withdraw it for the present, in order to offer it at a subsequent period as a separate section.

The question being upon the section, it was agreed to.

The CLERK read:

SECTION 2. The Legislature shall appropriate at least one million dollars for each year, to be annually distributed among the several school districts, according to law, and applied to public school purposes only.

Mr. EWING. Mr. Chairman: This section strikes me as being not only unnecessary but improper in the Constitution. The excellence of the school system of Pennsylvania, or one of its greatest excellencies is the fact of it being so completely localized, that the control and superintendence of the schools in any immediate neighborhood is under a board chosen by the people who support those schools and who send to the schools. The State supervision is a mere incident of the system. Now in the past the Legislature has made an appropriation from the State treasury, raised from State taxes and distributed among the various school districts of the State, in proportion to the number of taxable inhabitants, if I recollect rightly, either so or in proportion to the number of children in the schools. The object, and the only object that there can be in that provision, or in this appropriation, is this: The wealthy communities, such as Philadelphia, Lancaster, Chester, and other districts, can support their schools more easily than the people in the more rural districts, and where the population is sparse, and where there is less wealth. By these appropriations, made each year, for every one hundred thousand dollars taken out of Philadelphia by State taxation, you perhaps, would return to them twenty-five thousand, so with other districts; Lancaster, I venture to say, pays two dollars for the State tax for one dollar that it gets out of any State appropriations. Now I am entirely willing that this shall continue to be the policy of the State through its legislation. Heretofore, I think, the highest appropriation that has been made for this purpose is about seven hundred and fifty thousand dollars. It is not long since it was only three hundred thousand. This section under consideration provides by a constitutional provision that it shall be at least one million dollars. It is a very large increase in an appropriation to be made at once. It is an increase in the expenditures of the State that will have to be met by increased taxation, and I am not willing that it shall come in here

as a constitutional provision. The State has heretofore contributed as liberally as was necessary to support common schools throughout the State, and it may be necessary for many years to continue these appropriations; but I hope the time is coming when each community will be able to support its own schools from its own taxes in the immediate neighborhood, and then this provision will be unnecessary. It is the taking of money from each county, putting it in the State Treasury, and then spreading all over the State. It is a waste of money in the collection and disbursement of it, and should not be encouraged any further than is necessary. I do not see the justice and propriety of it; I think it is improper here, and as a constitutional provision is inexpedient.

Mr. LEAR. Mr. Chairman: I desire to say a few words with regard to this system of State appropriations, because there are some reasons in its favor which are not known to those who have not lived in peculiarly constituted communities. In many portions of the rural districts, the school law was put in operation only because of these State appropriations. In the county from which I come, there are certain townships or school districts, where they embraced the common school system with avidity, and the public schools are open for a period of ten months in the year. There are many townships in the county that, for a long time refused to put themselves within the provisions of the common school system. Finally they were induced to adopt it, when the matter was elective with them, by reason of this form of State appropriations, and although it may first have been taken from their own pockets and placed in the State Treasury, they thought, because they got this bonus from the State, that it was an inducement to adopt the common school system in their districts, and they adopted it, and common schools went into operation. At this time, although there is no election upon the question, as to whether they will have common schools or not, yet they cannot get this State appropriation in the various districts, unless the schools have been in operation for a period of five months. If it were not for that limitation, there are townships, even in the intelligent counties of Montgomery, Bucks and others

around us, where they would only have a school law in operation for a period of three months in the year.

As long as we have a bureau of education in the State, presided over by the Superintendent of Public Instruction, it is necessary that the statistics of the public schools can be collected and gathered together; and there is a provision, now in the school law of Pennsylvania, that, until the county superintendent has made his report, the amount of appropriation shall not be made, and until the district directors have made their reports there shall be no appropriations; and it is the only way in which the State has control over the local boards of directors, by which they are compelled, in order to get this State appropriation, to furnish their reports of the working of the school system in the respective localities, and it is, therefore, a whip to be held over the heads of unwilling school directors in those districts where the public school system is not popular, that this becomes of great importance, for the purpose of giving vigor, energy and motive power to the public school system of Pennsylvania. For this reason, alone, we should have the State appropriations; and besides that, it enables the districts where they are not wealthy, because wealth does not always go with population, and where we have our farms of many hundred acres, and the population is sparse, the people are more wealthy, but when we get into our mining and manufacturing communities, where there are little huts filled with children—because poverty and population, at least the multiplicity of children seem to go hand in hand, there it is, that the appropriations from the State in accordance with population, or in accordance with the number of children in the schools, as the case may be, is an assistance and help to these localities where children prevail to a greater extent than wealth.

For these reasons the appropriation from the State is of the highest importance to the efficiency of the public school system of Pennsylvania, and we should have a minimum below which this appropriation shall not go, for the reason given by the Superintendent of Public Schools of Pennsylvania to this committee. He said he annually had to go before the committee of the Legislature

and beg and implore, and threaten and argue, and use all the means and the devices in his power to get a respectable appropriation. It can be as well and as profitably expended, and for the benefit of the State as any other, and if we are making appropriations for improvements at all, let us make this appropriation for the improvement of the public mind of the State. This subject is probably of more importance than any other one that will receive the attention of this committee, and we should give it a thoughtful consideration.

Mr. BOYD. Mr. Chairman: I offer the following amendment: Strike out the first line and insert: "The Legislature shall appropriate such amount as they shall deem proper each year, to be annually distributed."

It is only necessary to remark, with reference to this amendment, that this section allows the sum of one million of dollars, and it seems to me that this amendment will meet any exigencies that will arise from time to time, and the Legislature at last is the place where the sum must be appropriated, and it can well be the place for fixing the amount. The section stands substantially as it is, with the exception of the sum one million being left out.

Mr. MANN. Mr. Chairman: I hope this amendment will not prevail. I look upon this section, as it stands, the most important one that has been proposed to this Convention. I believe that its adoption will give more encouragement, and aid more to commend the Constitution to the people, than any other one section which we can prepare. In addition to the very satisfactory and conclusive arguments made by the gentleman from Bucks, (Mr. Lear,) in favor of this section, I will make one suggestion which he did not make, in favor of a large appropriation from the State, and in favor of its being certain and fixed in the Constitution, a point beyond which the Legislature shall not go, which, in addition to the statement of the gentleman, show how this appropriation will enable the Superintendent of Public Instruction to reach out to every board of school directors in the Commonwealth, his hand, and hold them up to the support of the law. I would require every school teacher in the Commonwealth, to receive a certificate

from the County Superintendent, and it is only through this appropriation throughout the State, that the school boards, and teachers are held up to a high standard. If it were not for the State appropriation, partisan boards of school directors might select teachers without the proper qualifications. I believe in the county in which I reside, the school directors are as earnestly in favor of a school law as those of any county in the Commonwealth, and yet, even there, where education is a great necessity, there are some districts where the boards of school directors are influenced by petty feeling, and they have occasionally sought to put into the schools, teachers who could not secure the certificate of the county superintendent, and who had not the proper qualifications, according to the standard of law now fixed by the Legislature to teach school, but when it has been found that the State appropriation has had to be taken into consideration, and requires a certificate from the county superintendent that the applicant is properly qualified, it has worked a decided and very salutary influence. Teachers, often of an improper character, or an improper standard of morals, would have been installed in our schools were it not for this salutary influence which the superintendent controls by means of this appropriation. In addition to this, the appropriation enables the Superintendent of Public Instruction to extend his influence to every district in the State, and to keep them up to a better standard in regard to instruction, which would entirely fail with a smaller appropriation. When an appropriation of only half a million dollars is divided up, it becomes so small that it cannot possess much influence in the various districts, but if it is provided that the appropriation shall not be less than a million dollars, it then becomes a very considerable item, and furnishes an inducement to every board of school directors in the State to attain all the requirements prescribed by law, in order to secure a portion of its benefits. This is the argument in favor of retaining this provision in the Constitution, and the Committee upon Education have reported it simply because it will give a new impetus to the educational system in Pennsylvania, and it will give the Superintendent of Public Instruction far more influence throughout the various counties, because

there will be a larger inducement held out everywhere to school directors to comply with the law. There is now considerable difficulty in securing prompt reports from some boards of school directors, which delays the appropriation, because in sparsely settled communities the appropriation is so small, but as the section proposes the sum of one million dollars to be divided among the various counties of the State, the appropriation will be large enough for every district to secure a prompt compliance with the law, in regard to making reports to the county superintendent. Above and beyond all this, I submit that this increased appropriation will give a new impetus to the cause of education throughout this Commonwealth. It will make the people in every district of the State, personally interested in the cause of education, and feel more energetic than ever before in educational matters. I have no doubt if this section is adopted, that we shall soon become, beyond all doubt, what many of the friends of education earnestly hope, the leading State of this Union upon this question, and that we shall set an example to all the other States, of devotion to our educational interests.

Mr. MINOR. Mr. Chairman: I simply rise for the purpose of stating that by the returns for the year 1872, the children returned as enrolled amounted to eight hundred and thirty-four thousand, three hundred and thirteen. The average attendance was a little over six hundred and thirty-six thousand. The sum of a million dollars was fixed, therefore, because it was thought that the appropriation of the State towards education would be so fixed as to range from one dollar to one dollar and a quarter per scholar.

Mr. HARRY WHITE. Mr. Chairman: I will not intrude long upon the valuable time of the Convention. I do not think we can over-estimate the value of this provision reported by the Committee upon Education. If the original provision passes hundreds of people in the poorer parts of this Commonwealth will say, "God bless the Convention." I trust that in view of this, delegates of this Convention will hesitate before they adopt the modification proposed by the delegate from Montgomery (Mr. Boyd.)

When Thaddeus Stevens, with his matchless eloquence, arrested the atten-

tion of this Commonwealth, and succeeded in establishing a common school system for Pennsylvania it was the intention that this great State should reach out its arms as a Commonwealth to take charge of all its children, and give them a proper education, and it was only because of the factious opposition and the blindness of ignorance in some parts of this Commonwealth that the common school system of Pennsylvania was not made a State system; and if I had it in my power to-day, and the majority of the people of this State were to construct a system *de novo*, I would establish a State system, by which a tax of from three to five mills should be assessed upon all the taxable property, taken into the State Treasury, and paid out thence to the different regions of the Commonwealth, in proportion to the number of children to be educated. That would be fair, and it would be in harmony with the original design of the great system of common school education. I fear the time has gone by for success to be attained by means of this great system, unless an annual appropriation is made from the common treasury for the assistance of all parts of this Commonwealth. Delegates living in the richer parts of this Commonwealth do not realize the struggle which the people in the newer parts of Pennsylvania make to educate their children. Our school tax reaches, in some instances, to one, two and three, and I have known it to reach as high as five per cent. This is oppressive, and the difficulty in collecting these taxes makes the system burdensome and interferes with its harmony while it increases the jealousies that are inconsistent with the true prosperity of our educational system.

The only way then, Mr. Chairman, that the Legislature of the State can inaugurate now, an improvement in our educational system, is by increasing, from year to year, the annual appropriation which shall be equally and equitably distributed. Delegates from the rich old counties in the east, you will receive the benefit of it. Delegates from Philadelphia, you will receive the benefit of it. In the great populous part of the Commonwealth this fund is distributed, according to the number of children, and it may be that you get more than the poorer parts of the

Commonwealth. I was surprised when the gentleman from Allegheny (Mr. Ewing) called the attention of the Convention to this fact. He said it is unwise to fix a minimum sum in the Constitution, and leave it to the discretion of the Legislature. Mr. Chairman, I do not desire to legislate in this Convention. Year after year there has been a conflict in the Legislature upon the amount of annual appropriations. Let this Convention, representing as it does, the free sovereignty of this Commonwealth, indicate its wish, that in no event shall the Legislature, for all the great benefits and purposes of education, appropriate less than a million of dollars, and you will have accomplished a mighty thing. It is an important matter, and a proper subject for Constitutional enactment; aye, Mr. Chairman, it is fundamental, for it goes to the education of the people. Nine hundred thousand children to-day, are the wards of the Commonwealth. Your Superintendent of Common Schools is educating them under the system you have adopted. Do not be insensible to the great principles that I know he is not.

It is said by the delegate from Allegheny, (Mr. Ewing,) that we will have to increase the revenue, increase the taxes upon the people, if this greatly increased appropriation is made. Such is far from the truth. Such is a mistake, Mr. Chairman, unwittingly made, I know, by the honorable delegate from Allegheny. Last year the Legislature appropriated, for common schools alone, seven hundred thousand dollars, the first step they had made to that large sum. They appropriated, furthermore, four hundred and fifty and odd thousand dollars for the education of the soldier orphans of this Commonwealth, in propogation and support of that system which you, Mr. Chairman, inaugurated for that purpose, when you occupied the Executive chair of this Commonwealth. The time is coming when all these wards of the Commonwealth will be educated and sent forth in the struggle of life, and this one fund will be relieved from that purpose. Turn it not back to remain as a fund in the treasury! Turn it not back to be appropriated to this charity, and that charity, confined to one section of the State! Let it go into the common fund, which is an-

nually appropriated to the support of the common schools. Then the rich and the poor—those who have been favored by birth, and those who have not been favored—will all get the benefit of it. No increased revenue is required. No increased burden is called for from the people.

Mr. Chairman, I tell no secret when I remark that the Committee of Ways and Means of the House of Representatives of Pennsylvania have, to-day, by solemn vote, resolved to put in the appropriation bill eight hundred thousand dollars! In view of these facts, tell me not that we have no revenues in Pennsylvania! This great growing State; this God blessed Commonwealth is able to educate its children, and educate them liberally.

Delegates, I hope you will stand by the report of the committee, and refuse the amendment offered by the gentleman from Montgomery.

Mr. RUSSELL. Mr. Chairman: I was very much gratified to find that the Committee on Education had reported this section. During the sittings of the Convention at Harrisburg, I offered a resolution that the Committee on Education should be instructed to consider whether such a section should not be introduced, and I have the pleasure of seeing that they have carried the idea into execution. In that resolution, as originally written, the sum of two millions of dollars was named, but upon reflection, I thought that it would be better to fix it at the sum named in the report of the Committee on Education, one million, and therefore named that sum in the resolution.

Such a section should be incorporated into our Constitution. I am looking forward to the time when every school in the State will be a State institution; that is, in other words, that every school will be supported by an appropriation from the State treasury, sufficient to keep every school in every district in the State, in operation during the full term fixed by law. I concur in every word which the gentleman from Indiana (Mr. Harry White) has said on the subject, and in the argument which the gentleman from Potter (Mr. Mann) has made, in favor of having this section passed in this committee, and inserted by the Convention, in the Constitution, and I hope with him that you will not pass the amendment of

the gentleman from Montgomery (Mr. Corson.)

The CHAIRMAN. The question is now on the amendment, which will be read.

The CLERK. To strike out the words "at least one million dollars," and insert "such amount as they shall deem proper."

The CHAIRMAN. Read the section as it is proposed to amend it.

The CLERK. They shall appropriate such amount as they shall deem proper each year, to be annually distributed among the several school districts according to law, and applied to public school purposes only.

The amendment was rejected.

The CHAIRMAN. The question is upon the section, which will be read.

The CLERK read:

SECTION 2. They shall appropriate at least one million dollars for each year, to be annually distributed among the several school districts, according to law, and applied to public school purposes only.

The section was agreed to.

The CHAIRMAN. The third section will be read.

The CLERK read:

SECTION 3. No money raised in any way whatever for the support of public schools shall ever be appropriated to or used by any religious sect for the maintenance or support of schools exclusively under its own control.

Mr. STEWART. Mr. Chairman: I was about proposing to amend this section by moving to strike out the word "exclusively," when it occurred to me that perhaps the Committee on Education, that made this report, had some good and sufficient reason in introducing that word, which had not suggested itself to my mind. I will therefore defer offering the amendment until I can hear from that committee.

Mr. DARLINGTON. Mr. Chairman: The object of inserting the word "exclusively," if I understood it aright, was to preclude any portion of the public money being appropriated to the support of exclusively religious schools, whether Quaker, Catholic, or what you will. In other words, that every school to which money should be appropriated, no matter how raised, whether by the State or by taxation in a district, should be for the

public schools, which would be open to all alike, without regard to sect or religious feeling. That is, I believe, all the object we had in view. It was to make the provision of the section so clear upon that point that there could never be any question upon it in the future, but that it would always be understood to mean that it excluded none but those who are exclusively under the control of sect.

Mr. STEWART. Mr. Chairman: I am glad to discover that the gentleman from Chester, chairman of the Committee on Education, and myself, agree fully in what would be proper under the circumstances to do. But it seems to me that the language used by the Committee on Education in this section would entirely defeat the purpose intended. As I understand it, it requires that money raised for the support of public schools shall not be used by any religious sect for the maintenance of an institution of education *exclusively* controlled by that sect. I agree with the gentleman that we should restrict this fund in its application to public schools alone. I would not include any school which would be under the regulation or control of any sect or denomination, in any measure. My objection to the word "exclusively" is that it defeats the purpose which was in the minds of the committee, and which governed its action. For instance, certain schools which are chartered institutions and governed by a board of directors or trustees composed of individuals, all representing one religious sect or denomination, can, without prejudicing their own interest or control, introduce into their boards one or two members who disagree with them in their religious principles. This would exempt them from the operation of this clause, and allow them to partake of this fund, because the control of the sect could not be said to be exclusive. The word "exclusively" enables them to evade the purpose that should govern in this matter, and allows the Legislature to give their school some portion of the money raised for the public schools.

I, therefore, move to amend this section, by striking out the word "exclusively."

Mr. MINOR. Mr. Chairman: I agree with the suggestion that has been made, and I confess my attention had been

called to it by the chairman of the Committee on Education. I believe the section would be better without the word than with it.

The amendment was agreed to.

Mr. H. G. SMITH. Mr. Chairman: It occurs to me that the language of this section is indefinite in another respect. It reads, "no money raised in any way whatever, for the support of public schools." What public schools? There are public schools in the State which are not controlled by the Commonwealth.

I move to amend as follows: To insert after the word "of," where it first occurs, the word "the," and after the words, "public schools," the words, "of the Commonwealth," so as to make it read, "the public schools of the Commonwealth."

Mr. DARLINGTON. Mr. Chairman: I have no objection.

Mr. BAKER. Mr. Chairman: How would the section read as it is now proposed to amend it.

The CLERK:

"No money raised in any way, whatever, for the support of the public schools of the Commonwealth, shall ever be appropriated to or used by any religious sect for the maintenance or support of schools under its own control."

The amendment was agreed to.

Mr. W. H. SMITH. Mr. Chairman: I propose to amend further, as follows:

By adding to the section the words, "and no board of school directors shall issue the bonds of any township, or ward or borough, or sub-division of either, to be sold and the proceeds expended in the buying of lands and the building or furnishing of school houses.

The amendment was rejected.

Mr. LEAR. Mr. Chairman: I move to amend as follows: To strike out the word "own."

The amendment was agreed to.

The CHAIRMAN. The question is on the section as amended.

The section as amended was agreed to.

The CHAIRMAN. The fourth section will be read.

The CLERK read:

SECTION 4. A Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his

duties and compensation shall be prescribed by law.

Mr. CORSON. Mr. Chairman: I now offer the amendment which was withdrawn a little while ago, when proposed by the gentleman from Allegheny, (Mr. Howard,) incorporating the idea which was explained by the gentleman from Philadelphia (Mr. Woodward.)

My amendment is to add to the section, "Which shall require him, among other things, to prescribe the school books to be used in all the common schools of the State, and changes in such books shall not be made oftener than once in ten years."

Mr. NEWLIN. Mr. Chairman: I renew my amendment, as an amendment to the amendment, to add to the section, "The Governor, Attorney General and Superintendent of Public Instruction shall constitute a board of education. They shall have supervision of public instruction, and shall prescribe what books shall be used, subject to such regulations as may be prescribed by law."

Mr. WHERRY. Mr. Chairman: I rise to a question of order. In the report of the Committee on Executive Department, in section one and section twenty-two, the office of Superintendent of Public Instruction, with his duties is already prescribed, and this Convention in committee of the whole have adopted those sections. The only thing we can do is to vote this section down, as it has been already provided for.

The CHAIRMAN. There is an amendment and an amendment to the amendment before the committee, which must be disposed of before we can reach the section.

Mr. WOODWARD. Mr. Chairman: I am opposed to the amendment of the amendment offered by the gentleman from Philadelphia (Mr. Newlin.)

A system, or a State, that has not a head is in anarchy. This bill provides a head for the common school system of Pennsylvania, and calls him Superintendent of Public Instruction, and that is very nearly the name of a cabinet officer in France and in various other countries. It is a proper thing to have a head for this great interest of public instruction, and the fault of the amendment is that it

furnishes three heads—a board—instead of one.

Now, if we have the Superintendent of Public Instruction, who is competent for his place, I submit that the multitudinous affairs of the common school system of Pennsylvania will be better supervised by a single, competent man than by a board composed of officers whose duties lead them to other and entirely different subjects. The Governor and Attorney General are not necessarily interested in the subject of education. The Superintendent is supposed to be devoted to nothing else. Certainly he ought not to be.

Then, sir, the amendment of the gentleman from Montgomery (Mr. Corson) recognizes the headship of this system in the Superintendent of Public Schools, and requires him to prescribe, from time to time, the school books that shall be used in all the common schools of the State. That seems to me to be a principle of order and decorum, and a fit theory for this Convention to introduce into the Constitution.

The views suggested by the delegate from Bedford, (Mr. Russell,) when the subject was up a little while ago, struck me as perfectly conclusive upon this subject—a demonstration. It answered the gentleman from Indiana (Mr. Harry White) in regard to the act of Assembly, showing that that act—and no legislation that we have—reaches the point which it is desirable for us to secure. The gentleman from Luzerne gave us his experience on this subject, and undertook to speak authoritatively, because he has been a school director, but he failed to answer the question which I put to him, as to why the children of one particular school district should need any different school books from the children of any other school district. Why should a man be compelled, when he removes from one school district to another, to furnish his children with another set of books? The personal allusion which the gentleman made was no answer to that. It was a question germane to that point—it was pertinent and direct—and it has not been answered.

The gentleman from Delaware (Mr. Broomall) undertook to answer it, but failed. It has not yet been answered. Why not? Because, there is but one

answer that can be made, and that was suggested by my friend from Luzerne, (Mr. Pughe,) and by other gentlemen—that this thing of furnishing different districts with different school books is a job—a great job, in which the publisher, the Appletons, of New York, or somebody in Boston, has an interest; in which their agent has an interest, and in which the school director and even the teacher is made to have an interest. It is a job, set up and running, in its ramifications, all through society. But upon whom does it fall? Who foots the bill? The parents of the State. The parents of Pennsylvania are enormously taxed to put profits into the pockets of this whole class of speculators, from the publisher of these books down to the peddler, who forces them into a school.

But, say gentlemen, what are you going to do with regard to school books, in the case of German and Welsh children? Why, sir, the very object of having a Superintendent of Public Schools is to see to that—to provide German books for German scholars, and Welsh for Welsh. A Superintendent who understands his business, would not force an English school book upon a German or a Welsh child, any more than he would a German or Welsh school book on an American. There is no force in such arguments. They do not commend themselves to my understanding, nor to the understanding, I hope, of this Convention. The question is, shall we protect the people of Pennsylvania from this fraud and imposition, practiced upon them in relation to school books. The gentleman (Mr. Broomall) need not speak about the “loss of a dollar and a half.” That may be very witty, but it is not a very cogent reason why the people of Pennsylvania should not be protected against this enormous tax, that is building up princely fortunes for the book sellers in New York and Boston, but is impoverishing and harrassing the parents of Pennsylvania. My friend on the left (Mr. Russell) says, as I can say, that our houses are full of worthless school books that have been purchased for children, and have been superseded by new books no better than the first.

As one gentleman (Mr. Stanton) has undertaken to speak for the board of control of Philadelphia—and I suppose they are the most intelligent body of citizens

engaged in the conduct of the school system in Pennsylvania—he reminded me of a fact, which, if he will go back a few years, he will find to have happened. When Worcester's Dictionary was about to be published, the then controllers of the common schools of Philadelphia passed a resolution that Worcester's Dictionary should be introduced into the common schools of Philadelphia. Well, sir, on looking into the subject a little, I found that meant a series of five dictionaries. I cannot give you the names of them now, but I believe one was a “pronouncing” dictionary, another a “defining” dictionary, another “comparative” or “comprehensive” dictionary. At any rate there were five of them, five separate and distinct books under the one name. “Worcester's Dictionary,” that got into the schools, and the parents of the children had to pay for them. This resolution of the distinguished board of controllers of the city of Philadelphia was carried by the book agents into the country and shown to the school directors there, and of course it was conclusive to their minds.

What higher authority could a country board want than that; the city board had resolved to use Worcester's dictionary. Now when you consider what a dictionary is, I ask gentlemen whether they have any clear idea of how a dictionary is to be split into five separate books? What sort of a dictionary of our language will that be, that is not at once a pronouncing and defining dictionary? What sort of information or education will your children get from a dictionary that has none of these qualities? Why, sir, it was simply a stupendous job. Worcester's dictionary is, undoubtedly, an excellent book, and I do not mean to find fault with the controllers for getting it. I got a copy of it myself, direct from the publishers; and I use it; and the more I use it the better I like it. I prefer it to Webster's; but why trifle with it? Either place Worcester's dictionary—if it be one book—in the schools, or get a dictionary that will be contained in one book, not five. The parents of Philadelphia had in that case to pay *five times* for one dictionary. When I last addressed the Convention I told you how I had to buy and pay for, three times, Bullion's latin grammar. Gentlemen may speak about this as an

"incredibly" matter, and of the money thus spent as an "inconsiderable" sum, but I see no reason that can be assigned, why we should not say that the head of our common schools in Pennsylvania, shall prescribe the same school books for all the children that are to be taught in the schools of Pennsylvania. Some gentleman suggested that he could not attend to it; that it would be beyond the scope of his powers to furnish every child with the right school book. But, surely, the Superintendent has not to do that. He can issue his proclamation, prescribing the books to be used for certain classes in the common schools of Pennsylvania, and he can do that in *one hour*. This order goes down through all the schools, and is carried into effect by the various local officers and teachers, and the parents are thus protected from fraud and imposition. Then if a man removes from one district into another, he knows he will not have to buy new sets of school books.

We must have a head to the system of common schools. He should be and will be a competent man; and this duty of prescribing the text-books falls right in the line of his duty. Let us, therefore, repose that duty on him. If the scholar to be provided for is a German, he will get German school books; if an English scholar, English school books; if a Welsh scholar, Welsh school books. Will gentlemen say that there is anything peculiar in the education of the children of one district that requires them to have any different school books from the children of any other district? Do gentlemen really mean that the books used in one district are not fit for another district? What is wanted is education—the cultivation and development of the mental faculties of the children. I would like to know what there is that is peculiar in the districts of Pennsylvania that requires in one district a different kind of education from that given in another.

I think, as to rudimentary education, it ought decidedly to be alike throughout the State, so as to give us a population educated upon the same principles. Will any gentleman tell me that the principles of English grammar, and the operations of arithmetic, are different in different districts, and are to be taught on different plans and principles? That seems to be

the assertion here, and it offends a man's common sense to hear it. What do you mean by it? Do you mean that the children of Philadelphia are any better or any worse than the children of any other part of Pennsylvania? That they should have a different class of school books? Why, I apprehend not. I think that humanity is pretty much the same everywhere, and that it is not bounded or classified by county lines or the lines of school districts. There is much more danger that we will not educate our children at all, than there is that we will educate them upon a common standard. For my part, I would have a common standard; and I would have it rising higher and higher every year; and I would have all our children educated upon the same basis, and with the same set of books.

It has been suggested that ten years is too long at which to fix the changes of books. I hope the mover of the amendment will consent to the reduction of the term to five years, and I hope it will then be adopted.

Mr. CARTER. Mr. Chairman: I think it must be apparent to all that from the first of our assembling we have been desirous, as a general principle or rule of action, to establish guards to prevent abuses and in consonance with the same idea to keep temptations from our public functionaries. It seems to me that the proposition which the gentleman from Philadelphia (Mr. Woodward) is advocating looks too much in the direction of affording too great temptation to any individual intrusted with the selection of books for this great State. If he were not a perfectly pure and incorruptible man it would make him in the term of his office a perfect nabob of wealth. There would be nothing to do but to approach this man to get his influence to direct a certain set of school books for the State, and he could become one of the richest men in the State if he held the office for four years. The school book interest is so vast I would not submit any man to such a temptation, and if the choice of all the books be submitted to the Superintendent of Public Instruction, I certainly would adopt the suggestion of the gentleman to my left from Philadelphia, (Mr. Newlin,) that is, I would divide the responsibility with some three or four advisers, and not leave it exclusively to one

man to determine. It has been proposed in this State to take away the fees of certain officers on the ground that they secure such immense fortunes that it leads to corruption, the proposition being that there should be some stated moderate salary instead. And in conclusion—we most certainly should not do any thing here which may be a means of or lead to, as it certainly would, such gigantic corruption and fraud, and would make this highly important office, which should be held only by one of our first citizens, to be sought after by the most corrupt politicians.

Mr. H. W. PALMER. Mr. Chairman: The argument of the gentleman from Lancaster (Mr. Carter) might be extended with advantage. It seems to me if delegates stop to reflect a moment on this subject they will certainly never put this power of prescribing school books for a period of ten years together for the Commonwealth in the hands of any one man. Apart from the danger of corrupting that individual, and apart from any tenderness about his virtue, the question of what the people of the State would have to pay for these books may well be considered. I would give a half million of dollars for the privilege of supplying the people of Pennsylvania with school books for ten years, and I would make half a million dollars more out of the job. One gentleman from Philadelphia (Mr. Woodward) talks about jobs of book agents. Does he not understand that it is easier to buy one man than twenty thousand school directors, if there be so many? Would not these small jobs that he alludes to be overshadowed and swallowed up in this great job that would put upon the people of Pennsylvania a tax that they could not endure? Practically how would this amendment operate? The book agents of one book concern, I do not care whether in Philadelphia, Baltimore, or New York, would get the ear of a State Superintendent, and, by the use of proper appliances, obtain the introduction of a particular system, which could not be changed for ten years. There would not be power enough in the Commonwealth to change the system for ten years. Nothing short of a Constitutional Convention called on purpose could change the school books for that period. What would be the re-

sult? The publishers, instead of building marble palaces in Boston and New York, as complained of by the gentleman from Philadelphia, (Mr. Woodward,) would be able to build golden palaces, because these books are copyright books, and they would put such price on them as they pleased. A book that costs a dollar to-day would cost a dollar and a half to-morrow, and under this constitutional limitation, and by virtue and force of this constitutional provision, there will be nothing to restrain the book publisher from charging what price he pleases for his books after his system has been designated by the Superintendent. Now I would like that job. It seems to me that it is infinitely a bigger job than any spoken of by the gentleman from Philadelphia (Mr. Woodward.) Let us consider this proposition for a few moments. Are we ready to farm out to any publisher the monopoly of furnishing school books for this State for ten years, five years, or any other period? If the people of the townships and the boroughs and wards of this State are not competent to elect their own school directors and manage their own school affairs and select the kind of school books they desire their children to study, in the name of God what are they competent to do? Now if by any resolution this Convention can provide that the millennium shall dawn within sixty-five days after it adjourns, I might vote for this proposition, but as men are men, and as they will continue to be men after this Convention shall have adjourned, and after this Constitution shall have been adopted, if it is adopted, I shall not go for putting into the hands of any one man more patronage than the Governor of the Commonwealth has, and more patronage than any dozen other State officers have. I certainly shall never vote for putting patronage such as that into the hands of any one man, or extending to any one book concern, be it from Boston, against the publisher of which the gentleman from Philadelphia (Mr. Woodward) seems to have a particular antipathy, or from New York or Philadelphia or anywhere else.

Mr. DUNNING. Mr. Chairman: A few thoughts have come into my mind in reference to this subject. From the little experience I have had in the country, in connection with school boards and the

management of schools, I know something of the manner in which books are furnished to schools. The gentleman who has just taken his seat has told us that the greatest job that could possibly be thought of is embodied in the proposition now before this Convention, and that under it the school book for which we pay one dollar to-day, we would pay one dollar and a half to-morrow, and the expense would become so outrageous as to be unbearable. Now what is the experience of the past? I appeal to gentlemen who have had experience in country districts, in reference to the manner in which school books are furnished to the different schools. You rarely find a new teacher coming into a district but what a new set of books must be introduced. Every new school board that comes in introduces its own regulation, and introduces a new set of books, and for every change of teachers that you have and for every change of school boards that you have you find a change in the books. I believe it should be the policy of this Convention to fix upon some principle by which we shall have uniformity of books, and that the scholars throughout the length and breadth of this great Commonwealth of ours shall be instructed in the same rules, upon the same principles and in the same books, so that they will be enabled to spell alike, a thing that is almost impossible in the variety of books that are introduced. You find different forms and styles of spelling, taught by different books, and you can hardly find scholars of two schools spell the same words alike.

Let us educate them upon a common principle; let us have them understand that the principles which are fixed are fixed, not for one district, but for the great Commonwealth of Pennsylvania, and there will be some uniformity not only in books, but in the manner of educating our children.

Mr. HAZZARD. Mr. Chairman: For three mortal years I was kept in the old Webster spelling book, and I know it by heart. I can begin with words of two syllables and spell down column after column, right here, and I can repeat the most extraordinary pieces of composition in that book. One, I recollect, was about the boy that got up an old man's apple tree, and the old man tried to get him to

come down. I might as well repeat it here: "An old man found a rude boy upon one of his trees stealing apples. He told him to come down, but the young sauce-box told him plainly he would not. 'Won't you?' said the old man, 'then I will fetch you down.' So he pulled up some tufts of grass and threw at him, which only made the youngster laugh, to think the old man would beat him down with grass only. 'Well, well,' said the old man, 'if neither words nor grass will do, I will try what virtue there is in stones.' So he pelted him heartily with stones, which brought the young man down to beg the old man's pardon."

Now, sir, for three years I studied over that, trying to find out the hidden and deep literature of this extraordinary composition of that melancholy story.

I tell you there is a great deal in this matter of changing books. I would say to the intelligent gentleman on my right, (Mr. Woodward,) that his argument would be good if it applied to the case; but what has Bullion's Latin grammar to do in the common schools? Does he intend that we ought not to change these books, but keep every child at the story of the boy and the apple-tree, year after year? I was an apprentice at that time, and I was to have, for my indenture, three months' of schooling each year. The first year I commenced to study in Daball's arithmetic. At the end of the term I got as far as the rule of three, and the next term I was put back to fractions. I would work through as far as the rule of three again, and the next term I would have to commence at fractions. So it was, until I had an opportunity of going to school where they changed the books. These books should be changed. The children get tired of them, and if the people are too stingy to pay for new books, they ought not to have any children.

I used to teach school myself, and I used to think that teachers ought to be as well paid as bar-keepers, but they are not, as a general rule. Now we have been making speeches about changing the books, and they cannot be changed at all in less than three years. The gentlemen who have spoken in this Convention, in regard to this subject, have forgotten that a restraint has been placed by law upon this matter of changing school books. I know considerable about the

book selling business, and I tell you a man is about correct when he says that the Secretary of the Commonwealth will soon become the richest man in the State if this power is given him to prescribe what books shall be used in the common schools of Pennsylvania. I was offered two hundred and fifty dollars once myself to introduce a geography into our school alone.

Mr. H. G. PALMER. Did you take the offer?

Mr. HAZZARD. I have not said that I did, but if that was a fair bid for one book, what would be the bid for several books that required to be changed? I say it is a power that must not be placed in the hands of any one man. It is evident, however, that the school books will be required to be changed; but the only difficulty that confronts us is the exact time when they shall be changed. It may be three years or five years. Let it be five years, and then there will be no trouble during that time, and, perhaps, by that time the necessity for a change will be made apparent. Various reasons have been urged in support of this provision, and, perhaps, they all may be true; but can it be supposed that a school whose sessions are held only four months in the country, requires the same kind of books used in schools in the large cities, whose sessions continue for eight and ten months? In the schools in the country from which I come, there have been introduced all the appliances necessary for instruction in the natural sciences, and we certainly do not need the same school books used in a little school away out in the country, whose sessions are held only four months? Not by any manner of means. There can be no practicable uniformity in our school books; because, if it was so, the pupils of schools whose sessions are held for ten months can only learn as much as those who attend schools only four months in the year.

The Superintendent of Public Schools can understand nothing about this matter. Let the whole subject rest precisely where it is now, and that is in the hands of the directors. The law now prescribes for a change, and when a book is placed in the hands of a child, let him humdrum it by heart, and I tell you he will learn pretty near everything he can carry in his mind. There may be some sciences

in which he should be instructed, and my experience, as an old school-master, has been that after a child has read a book through he ought to have a new one. It is evident that the same books are not required in all schools, and I think where it is directed by law there should not be a change made in the books oftener than once in three years.

Mr. CORSON. Mr. Chairman: I think it is well enough for us to consider, perhaps, just exactly how this section will read when adopted. Strictly speaking I think that the discussion of this question should be confined to the amendment proposed by the gentleman from Philadelphia, (Mr. Newlin,) but somehow or other all the delegates who have preceded me have overlooked that amendment, and have come directly to the one which was suggested by the gentleman from Philadelphia (Mr. Woodward). I therefore propose to read this section as it will be when that amendment is adopted, as I hope it will be: "The Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his duty and compensation shall be prescribed by law, which shall require him, among other things, to prescribe the school books to be used in all the common schools of the State, and changes shall not be made oftener than once in ten years." Five years, I believe, is the proposed time. The gentleman who last addressed the Convention, (Mr. Hazard,) and who taught school seventeen years and still lives, supposes that there ought to be a change in our school books. Of course there will be a change of books, as well as a change of garments in all these years. We do not propose to keep a man always in his boy's clothes. We do say, however, that grammar is grammar in the same language all the wide world over, and we do say that the principles of mathematics are the same upon the Allegheny mountains that they are in Philadelphia, and that from the loftiest heights of our language the principles are the same; and we say, too, that so far as the ten-months and the four-months schools are concerned, the argument does not follow the gentleman who makes the proposition because the children in all these schools study the

same books until they attain to a certain age; and then they are promoted to the study of others, but children attending the four-months schools cannot be educated in the same manner as those who attend the twelve-months schools. We all know that, but we commence with the alphabet, and I believe the gentlemen from Luzerne (Mr. H. G. Palmer) and Washington (Mr. Hazzard) will admit that it is the same alphabet. It is not necessary that grammar should be edited by Smith first, and then by Brown, and then by Jones. It is the same alphabet, and it is the same grammar, the same arithmetic, and the same geography. The little book the gentleman from Washington studied he will find now to be superseded by one not half so good. If he takes up his arithmetic to-day he will find that it does not contain the single rule of three—that favorite rule of all of us, and he will also find that it does not contain anything about old tare and tret, over which “we used to swear and sweat.” He will find that it does not contain many things which we would willingly go back twenty or forty years to have reinstated. Now, Mr. Chairman, I say that there is no fear of danger about which gentlemen in this Convention have expressed so much solicitude—that the Superintendent of the Public Schools will by reason and by virtue of his office have in his hands a gigantic job, which will make his office worth half a million dollars, because he is to be appointed by and with the advice and consent of the Senate, and his duties are to be prescribed by law, and the Legislature shall have to do something to aid in carrying out this fundamental principle that in the State of Pennsylvania there shall be some sort of uniformity about our educational system. The lawyers are all educated alike in Pennsylvania, although we do not attain to the same eminence, but we are schooled in the same books. Our preceptors place Blackstone before us and we start with that, and then we go back to those old law books, and throughout the State of Pennsylvania, so soon as we can get rid of this curse of special legislation, there will be uniformity in the law as there should be uniformity in the education of the lawyers of Pennsylvania. Now, how about the mechanic? How about the school

teachers? Ought not a man who can teach school in Montgomery county be able to go across the line with his family for the purpose of farming, and teach school in Bucks county? It seems that he would not, and that he would have to commence again and re-read his entire studies. How often is a man constantly thrown into the midst of new school books, new systems, and new rules, and all the old rules abandoned. Now let us make this standard firm at least for a period of five years. I would much prefer that it should be ten years, but I am willing to accept the modification.

If we adopt this, then Pennsylvania will outstrip all the other States, in the matter of the education of the rising generation. Because here the people, by this nursery system which will be created, will be a mutual help to each other. No matter whence comes the boy, whether from the far west or from the east, he goes to the school, and he carries in his satchel the same books that he had in his own county, and which are not required to be changed every time a man in one county moves into another. I apprehend, Mr. Chairman, that if we can ever get the Convention to examine this question, that this proposed amendment will be adopted, but it is a very hard piece of business in this Convention to get the delegates to take up any single amendment that is proposed, just because they have an abhorrence of speeches.

MR. G. W. PALMER. Mr. Chairman: I do not desire to occupy the attention of the committee but a single moment. I regard this question as one of as great importance as any that have been brought before it, and perhaps one of the most important that we shall have. I simply desire to say that the gentleman from Philadelphia (Mr. Woodward) has met my view of this case completely, with reference to a uniform system of text-books throughout all the counties of the State. I also desire to say that the young gentleman on my left, my colleague, (Mr. H. W. Palmer,) has also met my view of the case, so far as manipulating the school directors in the interest of big jobs is concerned. I hope we will have uniformity in the system of text-books, and do away, if possible—and I think it is possible—with all big jobs. I hope both of these questions will be fairly and earnestly met

by this Convention, and the desired end attained in each instance. That is all I have to say on the subject.

Mr. BOYD. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

On the question of agreeing to the motion, a division was called, which resulted twenty votes in the affirmative; not being a majority of a quorum voting, the motion was not agreed to.

Mr. RUSSELL. Mr. Chairman: I do not wish to detain the committee, but I concur with the gentleman from Luzerne who has just spoken, (Mr. G. W. Palmer,) that this is a very important question, and ought to be well considered by the committee before it is decided. I am in favor of the amendment offered by the gentleman from Montgomery, (Mr. Corson,) but I think that the time ought to be limited to five years, and he has accepted that amendment, so that will take away any difficulty in regard to that.

Now, Mr. Chairman—

Mr. NEWLIN. Mr. Chairman: If the gentleman will allow the interruption. The amendment of the gentleman from Montgomery is not before the Convention. The amendment to the amendment is under consideration.

Mr. RUSSELL. Mr. Chairman: The amendment to the amendment embraces, to some extent, the same subject as the amendment offered by the gentleman from Montgomery, and therefore both are before the committee, and in speaking of one, I must speak of the other.

I am opposed to this board of instruction, for the reasons which have been stated by the gentleman on my right, (Mr. Woodward,) and therefore I will say nothing more on that branch of the subject.

I do desire to speak of the other branch, and that is uniformity of books in our schools. But, before doing so, I wish to say that there is nothing in the objection started by the gentleman from Cumberland, (Mr. Wherry,) that this matter was already provided for by an article which has just been adopted in the report of the Committee on the Executive Department. That article provides that: "The Superintendent of Public Instruction shall exercise all the powers, and perform all the duties, devolved by law upon the Superintendent of Common Schools, and the office

of Superintendent of Common Schools shall cease when the Superintendent of Public Instruction shall be duly qualified." There is nothing there that imposes upon him the duty of regulating the books which are to be studied in our public schools. I know something about this business myself. I have been, in years gone, and I am now, a director of a school district in our county, and I understand fully the difficulties attending this subject, where they relate entirely to the board of school directors.

When I was up before, I referred to the act of Assembly, which had been spoken of by the gentleman from Luzerne, (Mr. H. W. Palmer,) who addressed the Convention on the subject. I did not read one section to which I wish to turn the attention of the Convention especially at this time. It is the twenty-fifth section of the act of 1854, and provides that:

"Immediately after the annual election of teachers in each school district of the State, and before the opening of the schools for the ensuing term, there shall be a meeting of the directors or controllers and teachers of each district, at which meeting the directors and controllers shall decide upon a series of school books in the different branches to be taught during the ensuing school year, which books and no other, shall be used in the schools of the district during said period."

Under the law as it existed prior to the passage of the act of 1871, the school directors had the right to decide what books should be used during the current year, but these books might be changed every year. Under the act of 1871, they can only be changed every third year; but as I said before, that act did not meet the point which the amendments now offered propose to put into the section we are now considering. What we want is a uniform system of school books throughout the State, not in each particular district, not in each particular county, but a series of uniform school books in each district of the State. If we adopt the amendment of the gentleman from Montgomery, we adopt a uniform series of books throughout the State, and the objection which has been mentioned by my friend from Washington (Mr. Hazzard) will be obviated, because a scholar will not be kept for three years studying in the same book.

He will pass regularly from one book to another in the series, until if he has been long enough in the school, he will have gone through the whole series.

There is an obvious propriety in putting this matter into the hands of the Superintendent of Public Instruction. I remarked that I knew how these books were selected by the board of school directors. The board meets. They are gentlemen who are engaged in other business and have not time to carefully examine the books submitted to them. An agent comes along with a set of books and lays them before the board of directors. He says it is a good series of text-books, presents each of the board with copies, presents the county superintendent with copies, and they will be induced to adopt the series without examination. The propriety of putting this important matter into the hands of the Superintendent of Public Instruction consists in this: That he will make it his business to examine the book, and he will not adopt any book which it is not proper to go into the hands of the scholar. As to the objection of the gentleman from Luzerne, (Mr. H. W. Palmer,) that this would be a job for the Superintendent of Public Instruction it is only necessary to say

that the Constitution which is to confer upon him the duties of his office, provides the punishment for the betrayal of that trust, and if he violates his duty he can be impeached, removed and punished.

I am decidedly in favor of adopting a uniform system of text-books throughout the State.

Mr. DUNNING. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

The motion was agreed to. The committee rose, and the President resumed his chair.

IN CONVENTION.

Mr. CURTIS, chairman of the committee of the whole, reported that that committee had considered the report of the Committee on Education, and had instructed him to report progress and ask leave to sit again.

On the question, when shall the committee have leave to sit again? To-morrow was named and agreed upon.

Mr. KNIGHT. Mr. President: I move the Convention do now adjourn.

This was agreed to, and at two o'clock and forty-five minutes P. M. the Convention adjourned until ten o'clock to-morrow morning.

SIXTY-FIRST DAY.

SATURDAY, March 8, 1873.

The Convention met at ten o'clock A. M., Hon. Wm. M. Meredith in the Chair.

The PRESIDENT. There does not appear to be a quorum present. The Clerk will call the roll.

The CLERK then proceeded to call the roll, and the following members answered to their names:

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Baker, Bardsley, Beebe, Black, J. S., Bowman, Boyd, Buckalew, Carter, Church, Clark, Cochran, Cronmiller, Curry, Curtin, Darlington, De France, Dodd, Dunning, Edwards, Elliott, Ewing, Finney, Hall, Hazard, Horten, Howard, Knight, Lilly, McCulloch, Mann, Mantor, Metzger, Minor, Mott, Newlin, Niles, Palmer, G. W. Palmer, H. W., Parsons, Pughe, Purviance, Sam'l. A., Reed, Andrew, Reynolds, James L., Rooke, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Struthers, Temple, Walker, Wherry, White, David N., Worrell, Wright and Meredith, *President*—64.

ABSENT OR NOT ANSWERING.—Messrs. Addicks, Ainey, Bailey, (Huntingdon,) Bannan, Barclay, Bartholomew, Biddle, Black, Charles A., Brodhead, Broomall, Brown, Campbell, Carey, Cassidy, Collins, Corbett, Corson, Craig, Cuyler, Dallas, Davis, Ellis, Fell, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Guthrie, Hanna, Harvey, Hay, Hemphill, Heverin, Hunsicker, Kaine, Lamberton, Landis, Lawrence, Lear, Littleton, Long, MacConnell, M'Allister, M'Camant, M'Clean, M'Murray, MacVeagh, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Read, John R., Reynolds, S. H., Ross, Runk, Sharpe, Simpson, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, White, Harry, White, J. W. F. and Woodward—68.

Mr. BOYD. Mr. President: I move that the Sergeant-at-Arms be despatched in search of the absentees.

The motion was agreed to.

The PRESIDENT. The Sergeant-at-Arms will proceed to execute his duty and bring in the absentees.

A QUORUM.

Messrs. John Price Wetherill, M'Camant, Cuyler, Simpson and Addicks having entered the Hall, the President announced that there was a quorum present.

Prayer was then offered by the Rev. James W. Curry.

The Journal of yesterday was read and approved.

JURY ASSESSMENTS.

Mr. BARDSLEY offered the following resolution, which was read and referred to the Committee on the Judiciary:

Resolved, That the Committee on the Judiciary be requested to frame a section authorizing the courts of quarter sessions of each county, on the application of parties in interest, to appoint a jury to assess damages for the taking of adjoining lots, for the purpose of squaring up irregular tracts of adjoining land fronting on any streets laid down on the plan of any city or borough: *Provided*, The whole sum of such damages shall be assessed on the property thus benefited.

PRINTING REPORTS OF COMMITTEES.

Mr. ARMSTRONG offered the following resolution, which was twice read, considered and agreed to:

Resolved, That every report from standing committees, considered in and reported from the committee of the whole with amendments, shall be printed in bill form with the amendments, for the use of the Convention.

AMENDING THE EIGHTEENTH RULE.

Mr. STRUTHERS. Mr. President: I move that the Convention proceed to the second reading and consideration of the resolution I offered yesterday in relation to amending the eighteenth rule.

The PRESIDENT. The resolution will be read for information.

The CLERK read as follows:

Resolved, That the eighteenth rule be amended, so that motions for adjournment beyond the next succeeding day may be debated.

The motion to proceed to a second reading and consideration of the resolution

was agreed to, and the resolution was again read.

Mr. LILLY. Mr. President: I move that as an amendment, that the speeches in the debates be limited to two minutes and that no member shall speak more than once upon the same question.

The amendment was not agreed to.

Mr. PARSONS. Mr. President: I move to amend, by limiting the speeches to five minutes.

The question being taken, a division was called and the motion was agreed to, a majority of a quorum voting in the affirmative.

The PRESIDENT. The question is upon the rule as amended.

The amended rule was agreed to.

THE EDUCATION ARTICLE.

The Convention then, as in committee of the whole, Mr. Curtin in the chair, proceeded to the further consideration of the article reported from the Committee on Education.

The CHAIRMAN. The Clerk will read the section under discussion.

The CLERK read:

SECTION 4. A Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

Mr. CORSON moved to amend, by adding to the amendment of the section these words: "Which shall require him, among other things, to prescribe the school books to be used in all the common schools of the State, and a change of such books shall not be made oftener than once in ten years."

Mr. NEWLIN moved to amend the amendment by striking out and inserting as follows:

"The Governor, and Attorney General, and Superintendent of Public Instruction shall be constituted a board of education. They shall have the supervision of public instruction, and shall prescribe what books shall be used, subject to such regulations as may be prescribed by law."

Mr. NEWLIN. Mr. Chairman: My motion was not to strike out, but was to come in at the end of the section.

Mr. CORBETT. Mr. Chairman: The gentleman from Montgomery (Mr. Corson) modified his amendment, so that it would read "five" years instead of "ten."

Mr. CUYLER. Mr. Chairman: I earnestly trust that this amendment will not

prevail. It does seem to me to be no part of the duty of a Constitutional Convention to prescribe rules on such a subject. Gentlemen do not seem to observe the distinction between a code and a Constitution. We are not here to make a code, but we are here to make a Constitution. To follow out in this article on education the details of the educational system, seems to me to be wholly beyond our duty, and even if it were within the line of our duty, it seems to me to be exceedingly improper. What, in this progressive age of ours, limit our children to human knowledge, as it was ten years ago? What greater farce could be suggested? We do not seem to see that the world progresses, we do not seem to see that we are making advances in science all the while, we do not seem to see that adaptations for instruction are constantly being made, but we are to go back ten years in this age of progress, and stultify ourselves, and disgrace ourselves, for I do not know any other word to describe the condition to which, according to my view, this Convention would be reduced, in the eyes of the civilized world, if it resorted to such a course. We simply have nothing to do with it. Leave it in the hands of the Legislature, leave it in the hands of your commissioners of public education, where it properly belongs; but it would be quite as reasonable, to my mind, for this Convention to undertake to say what books, precisely, shall be used for purposes of instruction, or what teachers shall be employed in our schools, as to undertake to make a provision of this sort. I earnestly trust, for the sake of the credit and the honor of the Convention, that this amendment will be withdrawn, for it strikes me as simply disgraceful.

Mr. S. A. PURVIANCE. Mr. Chairman: I call the attention of the committee to what I think will dispense with any further discussion upon this subject. It seems to me, sir, in furtherance of the views of the gentleman who has just taken his seat, that there is ample provision under the first section of this article, for all that is necessary upon the question now under discussion; but if that is not the case, I ask the gentlemen to turn to the report of the Committee on Legislation, and they will there find these words among the list of specific acts which are prohibited from being passed by the Legislature: They are "prohibited from creating offices or prescribing the powers or duties of officers in counties, cities, boroughs, townships, election or school districts."

Now, it will be observed that when this is passed, as it doubtless will be, there will be nothing but general laws, prescribing the duties of these officers, amongst whom will be the school directors, and they will, undoubtedly, in the general law, clothe the directors with the power to select the proper kind of books. I, therefore, hope that we will dispense with any further discussion of this subject, and wait until this section is before the committee.

Mr. MACCONNELL. Mr. Chairman: I am opposed to the pending amendment, and I adopt the views of the distinguished gentleman from Philadelphia, (Mr. Cuyler,) and I would emphasise them more strongly even than he did; but there is another objection to it that seems to me ought to be of great weight in the minds of the members of this Convention.

You propose that no change of school books shall be made for ten years; or, if the amendment is modified, five years. It would be made at the commencement of the period of ten years, or five years, or whatever the period may be, by the Superintendent. After that it cannot be changed by any power at all until the end of the term, be it five or ten years. The Superintendent cannot make the change; the Legislature cannot make it; the school directors cannot make it; the school controllers cannot make it; no power on earth can make it, unless there is a change in the Constitution.

Now, suppose that your Superintendent is intelligent, and that he is honest, it is quite within the range of possibility, it is even within the range of probability, that he might make a mistake in selecting school books. If he does, how is the mistake to be corrected? When the books that he has selected are subjected to trial, they may prove to be not what he expected they would be; they may prove to be not effective; they may prove to be actually injurious to the interests of education, and yet he cannot change them, he cannot get rid of them. Nobody can change them, unless a change is made in the Constitution by some process provided for that purpose. You cannot make any change; the selection must last until the end of the constitutional provision.

It seems to me that that is a thing that hardly any gentleman upon this floor will venture to favor. It is certainly a thing that may happen, and a thing that common prudence, to say nothing else, should require us to avoid.

Mr. HAZZARD. Mr. Chairman: I endorse and adopt everything that was said by the gentleman from Philadelphia (Mr. Cuyler) this morning; and I hope that the words of wisdom that have fallen from his lips, and from the lips of others, will prevail, and that this amendment will not be adopted.

It seems to me that if the Darwinian system be true, there must have been a large number of crabs among our ancestors, for we are advancing backwards. Are we about to introduce a law so that no good thing for ten long years shall be introduced in our common schools? I throw not. Let us leave it under the intelligent and heretofore satisfactory system under the law and under our old Constitution.

Mr. Chairman: You know as much of your family as anybody does, or you ought to, and the school directors know as much about the individual wants and the aggregate necessities of the schools as any gentleman sitting upon high stools at Harrisburg, and they will take care of the wants of the children in these schools. It is far better that it should be so. They are personally interested; their own children attend those schools, and, knowing their wants, they will provide for them. I hope that there will be no such office as this created at all, and that it will be left to be regulated as heretofore.

We have forgotten that the law has provided against this grade of "carpet bagging" booksellers, and our directors are observing the law. It is that they shall not change any oftener than at least once in three years. I hope that the amendment of this section will not prevail.

Mr. ANDREW REED. Mr. Chairman: I have one suggestion to add. I am opposed to this amendment, and it is for a reason that I have not yet heard offered.

If the Superintendent of Public Instruction may adopt a certain series of school books, it is a proposition well enough in itself, and these publishing houses will have a copy-right in these books.

Now the gentleman from Philadelphia (Mr. Woodward) says that these publishing houses make great fortunes out of the heads of families in this State in publishing these books. Now, suppose that a certain series of school books are adopted, these publishing houses having a copy-right of them, what is to prevent their placing any scale of prices on their books that they see proper, and there is no power

which will enable us to change the books or the prices for five years.

They may increase them three times, and the whole people of Pennsylvania, your Legislature and your courts, and everything else, may feel that it is wrong, and yet they are powerless to change. They must, if they obey the Constitution, keep the same books that they adopt, and instead of hindering or injuring these houses, we would only tend to make a monopoly among them. It would be a perfect monopoly, and we would be unable to change it. We should leave the power somewhere, and the Legislature is the proper repository of that power. The matter of school books is not one upon which the Legislature would be likely to be troubled with any large lobbying influence, which would be injurious to the interests of the State, and the Legislature would always be able to make a rightful decision in it.

Mr. NEWLIN. Mr. Chairman: I desire to say a few words in answer to the various objections made to this amendment, as I had the honor to offer it.

I have been very much entertained by the very diffuse nature of the discussion on this amendment, or supposed amendment. In fact I was sometimes at a loss to imagine really what was before the Convention. I thought at one time we were trying the Boston publishers for some offence against the State or citizen. At another time I thought the "runners" for book publishing establishments were being called to account, on a charge of electing local school directors. At another time we had the Darwinian theory under consideration, and again we were entertained by an apple story. The result being that I was really at a loss to tell what was actually before the Convention. A great many of the objections which have been urged to the supposed amendment are not in point, because they are directed against something entirely different.

Now, in the first place, it has been urged with a great deal of zeal, that it would be very improper to leave with one person the important subject of selecting the books that are to be used in the schools. The amendment does not contemplate anything of that kind, and I propose to join with the Superintendent of Public Instruction two advisers in this respect, who would, to a certain extent, control his action, and regulate the judgment to be formed in this matter, and in that way obviate the very difficulty sug-

gested, of leaving this power to one person. The gentleman at large, from Philadelphia, (Mr. Woodward,) objected to the proposed amendment for that very reason, because he says that this is an Executive department, and there should be a single head for the performance of any Executive functions whatever. The Executive duties of the Superintendent of Public Instruction would continue to be performed by him alone, and he alone would be responsible for all that was done in that regard.

The only thing which it is proposed to leave to this board is to regulate what might be called the policy—the general policy of the State, in relation to education—no details whatever—and connected with the direction of what text-books shall be used in schools of different grades, and all of this subject to the power of the Legislature, from time to time, to give binding instructions, as to the exercise of the powers of the board. Therefore, I take it, that the objection urged by the gentleman from Philadelphia, who sits immediately behind me, (Mr. Cuyler,) that we are not here to make a code, is entirely out of place, because there was nothing whatever in detail, in my proposition—nothing whatever in the nature of a code. It would amount simply to this, that a central board would direct the State in the matter of its educational policy, and regulate the grades of public schools, and provide that in certain grades certain books should be used, and in other certain grades certain other books. The local board would know what grade of school would be required by their neighborhood, so that the locality would really fix the nature and mode of instruction which should be given to the children of their own neighborhood, only the action of the central board would so regulate their discretion that they would act within a limited sphere. They must say that there would be the first grade, or the second grade, or third grade of school, but if they take a certain grade, they must consult the superintending influence as to how they should act, what books should be used in that grade. That is the nature of my amendment, and it is certainly not liable to the objections offered.

Mr. WOODWARD. Mr. Chairman: I have spoken twice on this subject, and would like to make a few remarks further on it, if I may do so.

Leave was granted.

I should judge from the tenor of the remarks that we have heard this morning, that this amendment (Mr. Corson's) stands no chance of being adopted; but that it is really a great disgrace to this body to contemplate it. I said in the very first words that I offered on this subject, that it was properly a subject of legislation; but, sir, in the whole history of the common school system of Pennsylvania, the Legislature has failed to protect the parents of Pennsylvania against the impositions practiced on them in the matter of school books; and I infer that it will continue to fail to do so, unless this Convention puts a simple and easy rule into the Constitution that will be a law both to the Legislature and the courts. My friend in front (Mr. Cuyler) says it is a disgrace to us to protect the people of Pennsylvania against these impositions.

MR. CUYLER. I did not say that.

MR. WOODWARD. Well, sir, I can tell the gentleman that the people of Pennsylvania will not share the sentiment he did express. Here is a simple proposition to put into the fundamental law a rule that the Superintendent of Public Schools shall prescribe the school books, not that they are to be Webster's spelling books, which my friend from Washington (Mr. Hazzard) told us he was educated upon. I was educated upon it too, and regard it with great reverence and affection.

Nobody has said that the children of Pennsylvania shall be educated on Webster's spelling book. Nobody has proposed that the children of Pennsylvania shall not be educated on the Darwinian system, which the delegate from the city (Mr. Cuyler) refers to. If my friend thinks the children of Pennsylvania would be improved by the Darwinian system, he will have an opportunity to give them all the modern books of which gentlemen seem to be enamored. There is nothing in this rule to shut them up to Webster or to exclude them from the philosophy of Darwin. It is a reference of the whole subject to the Superintendent of Common Schools. The presumption is, that he will be a competent man—that he will be an honest man. Here the objection comes in that the booksellers will bribe him. I have no doubt they will, if he is a bribable man; but, sir, it is possible to find a man whom they cannot bribe.

Take the case of the venerable and excellent gentleman whose loss we have been mourning this week from this Con-

vention. Suppose him to have been the Superintendent of Public Schools in Pennsylvania; why, all the wealth of all the booksellers in New York and Boston, and throwing in Philadelphia, would not bribe that man; he was an honest man. I trust we will find honest men in Pennsylvania to fill that office, and to give to these children of Pennsylvania these new books with that modern philosophy that some minds so crave, [laughter,] if indeed they ought to have it. He will exercise a sound discretion in the premises. This amendment, so far from shutting up the Superintendent to Webster's spelling book, or any particular book whatever, leaves the whole subject open to him, to avail himself of all the excellencies that the wit of man can give him.

I have no objection to the proposition of the gentleman from Philadelphia (Mr. Newlin) to give it to a board, if you have not confidence enough in the Superintendent. Gentlemen would do well to remember this fact, that when you are devolving political and governmental powers, you must trust somebody. I hope we are not all knaves or all fools in Pennsylvania, yet power cannot be exercised except by human hands. You must trust somebody. If the Superintendent cannot be trusted, add the Governor and Secretary of the State, as my friend says. If all three are not to be trusted, give the Senate some power over it also. I do not care how you do it, provided you adopt the principle that some power in Pennsylvania should protect the people from the gross impositions practiced on them by the booksellers through the pliant and compliant boards of control. The principle is, as I say, one that we are bound to vindicate; and if we cannot do that simple thing we had better disband and go home, for I am sure we cannot do the people a better service.

Do not think that I am exaggerating this evil. I have never had the honor of serving in this highly respectable office of school director, nor of maintaining any official relation to the school system of Pennsylvania; but, sir, I have had the honor of being a parent in Pennsylvania, and of rearing a family, and I know what the difficulties of educating children are, and some of these younger fathers will find it out by the time they attain to my age. This very system that was intended to facilitate the subject of education is in the hands of wicked and base men, a diffi-

culty in the way of educating children properly—

Mr. H. W. PALMER. I would ask the gentleman if he ever sent one of his children to a common school on the face of the earth.

Mr. WOODWARD. Well, if I did not, it was because of the directors having charge of them. [Laughter.] If this law now proposed had been in operation, I would probably have had more confidence in the common schools. I do not desire, Mr. Chairman, to enlarge any further upon this question, but I desire to read a short extract from a lecture delivered in this city many years ago. I desire, however, to read, by way of preface, a short newspaper extract to call the attention of the Convention to the immense business done by the firm of Appletons in school books. It reads as follows: "The Appletons are now filling one of the largest orders for books ever received by a single house in this country. All the available space on the principal floor of their vast establishment is filled with books for the school libraries of the State of Ohio. That State appropriates for this purpose \$82,000 annually. Piled up in bulk, they measure twenty-five cords, and weigh seventy-eight tons. Piled on end on a shelf, in the usual manner, they would extend a distance of two miles. The Appletons have made arrangements to transport the entire lot by a special freight train, to be run straight through from this city to Columbus. The binding is neat, substantial and uniform, each volume lettered on the back with the title of the book, the author's name, and the mark of the "Ohio State Library, 1859."

I will now read the extract from the lecture to which I referred. It reads as follows:

"Another difficulty in the way of parents is the multiplication of school books. If you change your school, the children must be furnished with a new set of books. If they remain in the same school, revolution and change are the order of the day. Do parents understand this matter? Let me remind them that some of the most rapid fortunes that have been accumulated in this country, in the last few years, have been made by the publishers of school books. They get out a school book, designed rather to lighten the labor of *teaching*, than to afford facilities to the *pupil*, and then availing themselves of our common school system, that provides superintendents and controllers, the bookseller

sends his agents to these, or to the teachers, by one means and another prevails on them to introduce the new book, and then every pupil must be provided with one at the expense of the parent. As soon as the parents of the land have been made to pay for the first edition, a second edition, or a book pretending to some new improvement, is brought out, and they must pay for that, and then for another and another. The bookseller and the school teacher are thus in perpetual combination against the parent and the child.

You hear of conventions and re-unions of teachers and superintendents every now and then. I am told the bookseller's agent is always on hand to concert new schemes of plunder, and has been known, in some instances, to offer large pecuniary rewards for introducing his wares. It is time that parents held a national convention to counteract the impositions and frauds which are concerted and practiced against them, in this matter of school books.

Doubtless there are some improvements in certain modern school books, but I firmly believe that four-fifths of all that have been published in the last twenty years had better have been burned the day they were printed.

If anybody doubts this, let a test be applied that is fair and sure. Let the tree be judged by its fruits. Look over the land—in Congress, in our Legislature, in the learned professions, or in any of the walks of life—and measure the men who have been educated upon these *modern improved* school books with those who were educated before they came into vogue.

Try it around the circle of your own acquaintance, and you will find that while more books have been used, less knowledge has been gained; that the circumference of intelligence has been increased only by an increase of superficiality; and that frauds, speculations, quackeries, and empiricisms of all sorts have been the fruitful products of modern improvements.

And still the cry is for change. New books come in like a spring flood. Men who have proved themselves unfit for any other employment betake themselves to the manufacture of school books for our children. And we parents are compelled to have them forced upon us in uncomplaining silence, though they debase and debauch both the intellects and the hearts of our children. So far as I have any knowledge on the subject, I believe the public

schools of Philadelphia are the best conducted schools in the State, and yet it is within a month that you have seen in the newspapers an advertisement, a column long, setting forth the extraordinary merits of Worcester's dictionary, and a resolution of the board of controllers introducing it into the public schools of Philadelphia. Every parent in Pennsylvania, having a child to educate, has got to pay for that book. The booksellers will ply other boards of control with the resolution of the Philadelphia board, the judgments of teachers will be taken captive, the word will go home from the school that Worcester must be bought, and very likely the benevolent teacher will consent to act as broker in the business.

The parent will plead his preference for Webster, or Walker, or Johnson, or all of them together, for he may have them all in his family library, but all in vain; nothing will do but Worcester. The decree has gone forth and the word is Worcester. When the over-ruled and subjugated parent commences to purchase, he will be appalled to find that he has got to buy a whole series of dictionaries. Here they are as they stand in the advertisement; No. 1, the school dictionary; No. 2, the elementary dictionary; No. 3, the comprehensive dictionary; No. 4, the academic dictionary; No. 5, the critical dictionary.

I have had no opportunity to see this remarkable series, and shall probably go through the rest of life as best I can without its help; but taking it for granted that the several terms that make up the series are very distinctly marked, and broadly separated from each other, I should like to know what sort of a *school* dictionary that is which is neither an *elementary* dictionary, a *comprehensive* dictionary, an *academic* dictionary, nor a *critical* dictionary.

If the advertisement is to be trusted, (and I presume it does not hide any of the merits of the work,) you must understand that whilst your children are in the common schools, they are to get no views of their mother tongue that are elementary, comprehensive, academic or critical. These are to come afterwards by instalments, to be laid on in streaks.

Now I would not have any ardent reformer anticipate very great results from this extraordinary series of dictionaries; do not expect any Patrick Henrys, Channings, Websters or Clays to be reared up on them, for many moons will not wax

and wane before Worcester will be kicked out of school as unceremoniously as old Webster has been; and some Boston house, having made a fortune on *this* book, will announce, in the same solemn tones as before, that *a dictionary of the English language is about to be published!*

Then will follow the commendatory notices from susceptible doctors of divinity, from boards of control and from teachers; and parents will be put through the motions again and again.

You will be told that the book is paid for out of the public taxes, but do taxes grow spontaneously? Who but parents pay the taxes, and how much difference it does make that new publications are imposed upon him in this form instead of a more direct manner?

I thank the committee for their indulgence in listening to this extract, and having done my duty to the people in this regard, will not longer trespass upon the time of the Convention.

MR. W. H. SMITH. Mr. Chairman: With all deference to the learned and intelligent gentlemen who have spoken so earnestly on either part of this subject, I submit that my amendment offered yesterday to prevent school boards from issuing bonds, which they put aside, was more important than this question. But I do not propose to let that proposition be passed over without at least one other effort in its behalf. Meantime, if I cannot successfully attack this bond business, which is at the root of much of the corruption that has pervaded our common school system, I shall try and assist in the effort to lop off this school book abuse, which has grown to such dangerous proportions.

If the common school system had not been intrinsically good and absolutely necessary, it would have long since died out of the public esteem, or would have been abolished, because of the fearful load of usurpations, large and small, that have been piled upon its broad back by its false friends. You are all familiar with the startling utterance of Madame Roland, as in extreme anguish she was driven to the guillotine prepared for her by the Jacobins—"O, Liberty, what crimes are committed in thy name!" And may we not fairly adopt that exclamation thus: "O, popular education, what constant corruptions are committed in thy name!"

Mr. Chairman, pardon me for saying that I truly think that our common school system has come to be the most effective

engine of demagoguism and plunder because more diffused and less scrutinized than any other that this Commonwealth has yet endured or now endures! As I said before, the repeated change and endless variety of books in the common schools is one of the means whereby the people are vexed and victimized, but it is not the greatest. The frequent changes in the common school books are brought about by the united efforts of certain teachers and directors, and the solicitations of scheming publishers. And I cannot consent to put the larger part of the burden of blame on the last named, as was done in the case of poor Oakes Ames, and to let those who gave guilty consent escape with Pickwickian censure. Neither Ames nor the publishers could have succeeded if they had not found willing instruments. And here, Mr. Chairman, let me say a word about the growing assumption and importance of this same order or "ring" of teachers. They call to mind the "literary order" in China, whose tricks and manners they seem to be striving to emulate. The Chinese scholars (the third estate of the Empire, perhaps,) teach abject veneration for the "brother of the Sun," their Emperor, and unanswering obedience to the mandarins and other ruling persons and classes—with implicit confidence in themselves, of course. Our incipient "literary order" teaches that the great things of this world are "wealth, power and knowledge"—but the greatest of these is knowledge, and that they are the exclusive custodians and dispensers of it. They meddle in everything—claim more power over the child than the parent sometimes exercises, and are active in all agitations, including that of woman's rights. They meet in mock solemnity, weekly, or monthly, or yearly, form themselves into mutual admiration societies, and dole out in dreary platitudes, or in forcible, feeble declamation. The little learning they have obtained at the Normal schools, where many of them are yearly educated for teachers at the public charge. Of course, they *and* the school directors' "ring," one ordained to inflict on the luckless people who may have offspring any books they may choose, and as many of them as they like. And it is not only those who send their children to public schools that have to suffer from this sort of petty combination. Whoever may send his children to private schools will find his charges for books four times what they should be. Is it not presuma-

ble, if not manifest, that these teachers of all sorts, and school directors sometimes, derive some pecuniary advantage from becoming the convenient instruments of every compiler of a new school book, and of his enterprising publisher?

And if you whimper about the needless and very frequent change in books, you are rebuked and shamed by both teachers and directors, and told that you have no public spirit, no love for your children, that you will earn the curses of untaught millions. And yet I doubt whether *all* the directors or *all* the teachers are the best qualified persons to select books for the schools they control.

The gentleman from Luzerne, the younger Mr. Palmer, would give a million for the privilege of naming school books for the State for the Superintendent's term! Would the gentleman do that? Seriously and calmly, would he here proclaim that he would pay half a million to the State for free leave to plunder her people of an entire million. Let him not confess, and avoid by saying that the booksellers would be the victims and not the people! As he would use the booksellers how would these wicked booksellers restore to their coffers his half million of bonus, his other half million of profit, and make some profit for themselves, besides, if the people who are to buy the books would not pay extortionately for all. Booksellers don't give half millions away in that manner, either to superintendents or to the middle men. And if the aforesaid Superintendent would let the furnishing of the books to the highest bidder, or buy the copyrights himself, or rent them at a royalty, and set up a printing office, the State could supply books to her people very cheaply.

And then he could fix a minimum rate for the books, and allow them to be supplied to their customers at a commission say of 5 per cent. The State Superintendent of Printing could oversee the printing of these books, if the State shall conclude to print them.

If, as the gentleman from Luzerne has intimated, we might as well leave these delicious pickings to the 20,000 school directors, (and their friends among the teachers I may add,) as he seems to admit that they *must* be paid, I still prefer the Superintendent, for he would give us *uniformity* in text-books at least; they could be kept till worn out, and then we could watch one official better than we could 20,000. I would guarantee that there

would be no more douceurs to complying directors—no more 20 per cent. commissions to teachers of private or of public schools.

But the gentleman from Delaware has said, with great unction, that the people know what they want in this matter. True, they *do* know—and if there is any one thing that they are all of one mind about—great and small, rich and poor—it is that there are too many school books, too frequent changes in them, and that they cost too much. They regard it, in our region at least, as a continual grievance, and to some it is a serious one.

Now how are the people to tell what they want and have it done, except through the Legislature or through this body? I think the gentleman from Delaware said that if we took the step proposed, that censorious people might say *we* were tampered with. Surely he said that in pure badinage—he intended, perhaps, to perpetrate a witticism. For whoever heard of any man guileless enough, or disinterested enough or public spirited enough to be “tampering”—that, I think, was the word he used—yes, “tampering” with any legislative body or any Convention to *prevent* them from passing ordinances that would *save* the money of the people? No instance of such a man is remembered in these times—and the memory of man runneth not to the period when men were persuaded with bribes *not* to pass laws that would take money from the pockets of the people.

Mr. Chairman, I shall vote for this reform, as I think it to be, without the slightest apprehension that it will ever be charged against to any one in this body, that they were “tampered” with and dissuaded from protecting the interests of the people by money or its equivalent.

The CHAIRMAN. I believe the gentleman from Lancaster has not spoken on this question.

Mr. H. G. SMITH. Mr. Chairman: I do not intend to make a speech now. I merely wish to make a brief statement. Yesterday, while debate upon the proposed amendment was going on, a prominent gentleman from the State of Maryland, who happened to occupy a seat by my side, * * * * * informed me that in that State, by act of their Legislature, not by a clause of the Constitution—which could not be readily changed—the power now proposed to be granted had been conferred upon the Superintendent of Public Schools in Mary-

land. He said that rumors currently prevailed that the Superintendent of Public Schools had combined with publishers for the purpose of putting certain books into the schools and making changes. I merely give this statement because we must learn from experience, and the precedent of a neighboring State may be of use to us in making up our decision.

There is one thing certain. If combinations of this kind are ever made, much greater difficulties will be experienced in making them with the teachers and the school directors of this entire Commonwealth, than would be encountered in attempts to make them either with a single individual or a board composed of a few men. I do not think the publishers could bribe all the teachers and all the school directors of this Commonwealth. They might bribe the Superintendent of Public Instruction. They might possibly bribe a board. It might happen that these men would be put in a position where they could be approached, and I would relieve them from that temptation and leave the responsibility for the selection and change of school books directly with the parties who come into immediate contact with the people. Then there would be such close connection as would be likely to prevent any gross abuses.

Mr. SIMPSON. I did not suppose, when the amendment was proposed by the gentleman from Philadelphia, (Mr. Newlin,) that it would be seriously pressed upon the Convention. I desire to say a word or two against the amendment, and at the outset I may state that I am entirely unwilling that any such power should be given to the Superintendent of Public Instruction, or to any other official. If it is to be put in the control of a small body, I think we had better appoint a committee out of this Convention. I would be willing to be chairman of that committee, and I would like to take my friend from Crawford, (Mr. Mantor,) my friend from Potter, (Mr. Mann,) and one or two other gentlemen who sit near me, as my colleagues, to constitute that board, and if there is any advantage to be derived from it I would like to have my share.

I obtained my education in the common schools of Pennsylvania. I have had, and still have, children attending them. One of my boys has graduated at the High school in this city, and one of my daughters has graduated at the Girls' Normal school. I have one boy still attending the High school, and one daughter attending

a grammar school. I have never heard of any charge being made, so far as this locality is concerned, in relation to the frequent changes of school books. In answer to the gentleman from Allegheny, (Mr. Smith,) who said that parents complained that they were charged too much for school books, I would say that I suppose such parents must be akin to the man who lived in Kentucky. Being asked about the products of that State, he said, "we raise so many thousand bushels of corn, out of which we make so much whiskey, beside that which we waste in making bread." [Laughter.]

I think we had better vote this amendment down, and adopt the section just as it is, leaving the question be where it is now, in the hands of the immediate representatives of the people, controlled by the Legislature of the State.

The CHAIRMAN. The question is on the amendment to the amendment.

The amendment was rejected.

The CHAIRMAN. The question is now upon the amendment, and it will be read.

The CLERK: To add to the section the words, "which shall require him, among other things, to prescribe the school books to be used in all the common schools of the State, and changes in such books shall not be made oftener than once in ten years."

Mr. CUYLER. Mr. Chairman: I desire to say only a single word. I am very sorry that anything which fell from my lips may have wounded the susceptibilities of the distinguished ex-Chief Justice of the State, who sits behind me, (Mr. Woodward.) Indeed, I was not aware, until I heard it this morning, that he had spoken on this question, or what position he had assumed. But I am comforted with the thought, that any discomfort he may have suffered is compensated for by the assurance that the toils and labors of the Convention have ministered to the amusement and enjoyment of the Zaccheus of the Convention, who sits in front of me, (Mr. Newlin.)

Now, sir, there are in this State about seventeen thousand public schools, as I observe from the manual which lies on the table before me, about nineteen thousand teachers, about nine hundred thousand scholars, and a permanent investment of about \$20,000,000 in school property. About \$4,500,000 are expended annually in the salaries of the teachers who are employed in instructing the young. Of course these nine hundred thousand children can

only be instructed from books, and books must be provided. My friend, the delegate, practically says, "No." Why not? Why, because some book publisher makes money out of the books. That seems to be the argument, because, forsooth, some editor or some publisher of books makes money out of these books; therefore we are to have no books for the use of our children. In other words, the spots upon the face of the sun disturb the mind of my learned friend so much that he would blot the sun out entirely to get rid of the spots, for that is about the practical application of his doctrine.

The practical question after all is this: If we are to limit our school books to those that would have been correctly studied ten years ago, viewed in the light of the present, we may be constantly teaching our children what we know to be an error. Science is all the while progressing, and in the daily developments that are taking place around us, our children are to be deliberately mistaught, by a constitutional provision of the State, for ten years, and we are to compel our teachers for periods of ten years to teach that which we know and they know to be untrue.

The CHAIRMAN. Five years.

Mr. CUYLER. Five years, sir, if that be the present amendment; it was originally written ten. But it matters not as to the time; the principle is precisely the same. We are to be compelled, by the Constitution of the Commonwealth itself, to teach error to the children of the State for a period of five years, because, perchance, somebody who writes a book, or somebody who publishes a book, may chance to make a legitimate profit on his book. Certainly, to state the proposition is to illustrate its absurdity, is to show how unreasonable it is. And after all, Mr. Chairman, the answer which I gave a few moments ago, when I spoke on this question, is the true answer. It is a question with which we have no business at all. It is not within the province of a Constitutional Convention to act upon this subject; it belongs to a code and not to a Constitution. My friend from Philadelphia (Mr. Woodward) says we must protect the children of Pennsylvania, yet, in the same breath, he admits that the Superintendent of Common Schools, and other officers of the State, are perfectly competent to pass upon this question. Why, then, incorporate it in the Constitution? I accept his doctrine. We must repose

trust and confidence somewhere, and I ask him to apply the same doctrine to this very question. Let him repose all trust and confidence in the Legislature of the State, in the Superintendent of Common Schools, or any such officer as the Legislature may entrust with the consideration and control of this question.

The question being taken upon the amendment of Mr. Corson, it was rejected.

The CHAIRMAN. The question now recurs upon the section.

Mr. MOTT. Mr. Chairman: I offer the following amendment.

The CLERK read:

Add at the end of the section, as follows: "It shall be the duty of the said Superintendent of Public Instruction to assemble in convention, once in every five years, the county superintendents, and it is hereby made their duty to attend and settle upon the kind of books to be used in the common schools of the State for the next five years."

["No! No."]

The amendment was not agreed to.

Mr. HOWARD offered the following amendment, which was read by the Clerk:

Add at the end of the section as follows: "And the Legislature shall prescribe by law the kind and number of books to be used in the public schools, and changes shall not be made oftener than once in five years: *Provided*, That when this subject shall be considered by the Legislature the Superintendent of Public Instruction shall be allowed a seat in either House, and the right to speak upon the subject."

Mr. HOWARD. Mr. Chairman: I have offered this amendment, the first part of which is, in substance, the amendment that I offered to the first section on a former occasion, because I have listened to this argument very attentively, and have been very much interested in it. I have heard a great deal of objection to the one man power. That has been an argument, in my mind, which had some force. I desire to treat the opinions of all gentlemen with respect upon this and all other questions. I have no idea of being sneered out of this Convention by any man, not to attempt to sneer at others. Men are entitled to be treated with respect upon this floor, and any proposition which they offer is entitled to respectful treatment.

The friends of this proposition, who sincerely believe that the people of this Commonwealth have been abused by the men in authority who have the control of

this book question, have introduced this here as a necessary measure, one worthy to be accepted by this Convention and incorporated into the Constitution. Gentlemen get up here and tell us we do not know our business; we do not know our duty; we do not know why we are assembled; we do not know the difference between a constitutional and the business of the Legislature. I suppose that we understand the difference between a State Constitution and a national one. We know that the Legislature of Pennsylvania has all the powers of this Commonwealth that are not taken away by the Constitution of the State; that it is a very different instrument from the Constitution of the United States; that has no power, except simply the power that is granted, that much and no more.

It has been said that we have no business with this subject of founding a system of public schools. The Commonwealth is called upon to support those schools; the Commonwealth is called upon to maintain them; the Commonwealth is to provide the means, and yet it is out of character, it is out of place that in the Constitution you shall prescribe a means of supplying those schools with books, for the purpose of educating the children, and especially when we know, from past experience, the great abuses that have grown out of the old plan of supplying these school books with books.

A gentleman here says the Superintendent of Schools in the State of Delaware has grown rich. If it is true that he has, it only shows the corrupting power of these men who make it a business to impose themselves upon school boards in every part of the Commonwealth. It shows that they will corrupt, if they can do it, and that they exert the power for that purpose.

I would hesitate to vest this great power in any one single man. I think it is most especially the business of the Legislature of the Commonwealth. The Legislature represents, and represents fairly, as I believe, every man and woman and child in the Commonwealth, and the only reason why I put a limitation of five years upon the right of the Legislature to make the contract is to keep these cormorants away for at least five years, who go about the Commonwealth corrupting school boards, whether they be in the lower or in the higher school boards, or wherever they may be. Gentlemen on this floor said they were offered \$250. They thus made

the strongest argument I have heard, by that statement, in favor of putting this power somewhere beyond the reach of these men that go about corrupting the school boards of the Commonwealth, and imposing upon the parents of this Commonwealth.

This is a great evil. There is not a man in the State of Pennsylvania that has a child old enough to send to school but has felt himself aggrieved by this outrage that was perpetrated—it used to be yearly. But the Legislature, seeing the outrageous corruption that was a disgrace to the system itself, was compelled to step in and say they should not change it oftener than once in three years. Why did the Legislature do that? It was because of this very system of corruption.

The Superintendent of our own State has said that the whole number of McGuffey's Readers, from excepting numbers two and five is a humbug. I believe that this is the experience of every intelligent school director in the Commonwealth, that there is no necessity for the long string of books, only to make money for the publisher, and to take it out of the pockets of the parents who send their children to schools in the State.

Mr. Chairman, it is a proper provision, whatever may be the opinions of gentlemen, whether there be a majority in this Convention or not, it is a proper provision. It is in no sense legislation any more than it is to prohibit or provide for any other thing that we are providing for in this Constitution. We simply say that we vest in the Legislature of the Commonwealth the right of prescribing the kind and number, and that they shall not make this change oftener than once in five years. Now the best argument they can use against is that this is legislation. This Convention has got to put into the Constitution something that will look like legislation. I am perfectly willing to put it into the State Constitution. We could not put it into the United States Constitution. It would not be right and proper, but we are making a State Constitution. We are limiting power; we are not granting it.

Another objection is that these books are copyrighted; that they are patented. I do not believe they can ever patent the A B C, nor the English language, nor mathematics. They cannot patent science and philosophy. They may patent a certain arrangement of words, but I think

the Commonwealth of Pennsylvania, a great Commonwealth that is preparing to inaugurate a new system, a great system for the education of her children, is able, if it is necessary, to patent right her own books, make them, print them and give them to the parents of the Commonwealth. I think that the Commonwealth can take care of herself. Such an argument is worth nothing. It is worthy of very little consideration; it is in fact none at all, only from the fact that it came from respectable gentlemen of this Convention. I would say unhesitatingly that it is the duty of the State to provide the books for these schools, especially in all the lower departments.

I have said this much upon this amendment, because I believe it to be one of very great importance to the people of this Commonwealth. I believe it will add a hundred per cent. to the value of the system—while it will not add a dollar to the cost. If we have some uniformity in the plan of imparting instruction to the children of the State, and it is for this reason that I have consented to speak upon this subject again, and to press it upon the consideration of the Convention, with the addition that I have provided, that the Legislature shall have the power, and the State Superintendent shall have a seat upon the floor of the House or the Senate, that he may speak upon the question—his advice being fully given.

I think we have provided the best plan in that way and the safest place, where we can lodge this great and important power.

Mr. ALRICKS. Mr. Chairman: This discussion has taken a very wide range. I do not think that any gentleman of this committee differs from the delegate from Philadelphia, (Mr. Woodward,) that this is a great and crying evil, and the only question now is, whether it would be in place to insert the amendment of the gentleman from Allegheny (Mr. Howard.)

We are not, as the gentleman from Philadelphia (Mr. Cuyler) has said, making a code of laws; but we are considering an organic law, and I apprehend that we are putting entirely too much timber in the framework. We are covering too much space, and that is the cardinal reason why this amendment should not be adopted. We want to establish a few principles that are to govern the Legislature and the people, and we are not to descend to the minutæ; therefore, I apprehend that this

amendment that has been offered is out of place, if we attempt to put it in the Constitution.

For many years I occupied a seat in a school board. I know the annoyance to which members of that board are subject, and I know that the change of books in the schools is affected by dint of importunity on the part of those who are sent out to canvass. These are inconveniences that we must expect to occur; but I trust that with the present law on our statute book, which states that a change shall not be made inside of three years, they will be remedied, but it certainly is not for us to do here.

Mr. Chairman, while I am up it is proper that I should take notice of a remark that fell from a delegate at large from Indiana (Mr. Harry White.) He informed us that Thaddeus Stevens was the originator of the common school system in Pennsylvania. I beg leave to dissent from the assertion. Mr. Stevens was a great agitator, and he agitated other questions as well as that of the common school question. Our common school system originated with George Wolf, a German Governor of the Commonwealth of Pennsylvania. His constituents, those men who elevated him to the high office of Chief Magistrate of this State, were Germans; they were opposed to the common school system, and I have heard Mr. Stevens, on more than one occasion, commend Governor Wolf, for the noble stand he took upon the subject of common schools and the education of the people. The Governor received the main support from the Germans of Northampton, from the Germans of Berks, and from the Germans of Westmoreland counties; but although it was at the peril of his office he placed himself fairly and squarely upon the record, and he established that common school system which is this day one of the great enterprises in this Commonwealth. He, and not Mr. Stevens, is entitled to the credit of it.

Now, I object to introducing this amendment here, for the reason given by the poet, when he was examining a piece of amber:

"The thing is neither odd nor rare,
The wonder is how the devil it got there."

I apprehend that this amendment will be entirely out of place in the Constitution.

Mr. HARRY WHITE. Will the gentleman allow me to interrupt him a moment?

Mr. ALRICKS. I am through, sir.

Mr. HARRY WHITE. The delegate from Dauphin (Mr. Alricks) takes me to task for giving Thaddeus Stevens credit, yesterday, for being the author of the common school system. I desire to explain that when I say Thaddeus Stevens is the author of the common school system of Pennsylvania, I mean just what I say—I mean it just as I uttered it.

Doubtless there are others who may divide with him the authorship of the common school law, but when I say he is the author of it, I repeat what the history of the times will support me in saying, and I want his memory to have the credit of it. It was the power and the eloquence of Thaddeus Stevens, as a member of our House of Representatives, when urging the appropriation for the Academy of Fine Arts, in the city of Philadelphia.

The CHAIRMAN. The Chair understood the delegate to be putting a question to the delegate from Dauphin (Mr. Alricks.)

Mr. HARRY WHITE. I merely rose, Mr. Chairman, to make the statement which I have, not a digression; but because the delegate from Dauphin took me to task in the discussion of this question, for a remark which I made yesterday.

According to the rules of parliamentary law, I insist that I have a right to explain what I said. I will say then, in short, that what I meant yesterday, when I said that Thaddeus Stevens was the author of the common school system of Pennsylvania, I meant that his eloquence, while a member of the House of Representatives, in favor of an appropriation for the Academy of Fine Arts of Philadelphia, gave an impetus to the common school system in the State of Pennsylvania, which carried the measure ultimately through.

Mr. ALRICKS. That is all right. The statement that he gave an impetus to the measure is correct.

The question being on the amendment of Mr. Howard, it was rejected.

Mr. DARLINGTON. Mr. Chairman: I desire to call attention to the fact that in the report of the Committee on the Executive Department they have provided for a Superintendent of Public Instruction. To make this harmonize, I propose to strike out the letter "a," and to insert instead the word "the," so as to make it read the Superintendent of Public Instruction.

It was agreed to.

The fourth section was then agreed to.

The CLERK read the fifth section as follows:

SECTION 5 Neither the Legislature nor any county, city, borough, school district, or other public or municipal corporation shall ever make any appropriation, grant, or donation of land, money, or property of any kind to any church or religious society, or to any university, college, seminary, academy, or school, or any literary, scientific or charitable institution or society controlled or managed by any church or sectarian denominations.

Mr. SIMPSON. The fourth line provides that no grant shall be made to any university. I desire that that be made more specific, and I move to add to it "or for the use of," so that it shall read that "no grant shall be made to or for the use of any university," &c.

The motion was agreed to.

Mr. H. G. SMITH. I would inquire of the chairman of the committee what is contemplated by the term "charitable institution" in this section, and how it came to be there inserted. It seems to me that this committee have nothing to do with charitable institutions.

Mr. DARLINGTON. The object of the committee in using that phraseology, I stated, in part, when I opened the discussion. This article, like all other articles, is the result of the deliberations of a committee, and is supposed to contain, as nearly as practicable, the sentiment of the whole committee. The purpose which the committee had in view was to prohibit any sectarian institution from having control of public money, and to make it impossible to have any public moneys appropriated to academies, schools, literary, scientific or charitable institutions, or managed by any church or sectarian denomination.

Mr. H. W. SMITH. I submit that the charitable institutions of the State are provided for elsewhere, and a limitation as to legislation upon them will be found in the article on legislation. I think these words, therefore, are out of place in this section. I move to amend by inserting the word "or," after the word "literary," in the fifth line, and strike out the word "charitable" in the succeeding line."

Mr. CORBETT. It strikes me that this whole section is out of place here, and that it does not belong to this committee. By reference to the report of the Committee on Legislation, sections twenty and twenty-one, this whole ground will be

seen to be covered, and it is clearly a limitation upon the legislative power. It ought, therefore, to come under the head of restrictions on legislation.

Mr. J. R. READ. Mr. Chairman: I think the object of the gentleman from Clarion would be obtained as well as the object of the Committee on Education if we were to strike out the first five words in section five, and insert the word "no," so that it shall read "no county, borough, or other public or municipal corporation," &c.

Mr. JOHN R. READ. Mr. Chairman: I have made this suggestion for the reason that it is already provided for in the report of the Committee on Legislation.

The CHAIRMAN. The Chair will state to the gentleman that he had better, perhaps, withdraw his amendment until the amendment of the gentleman from Lancaster (Mr. H. G. Smith) has been acted upon.

The question being then taken, the amendment was not agreed to.

Mr. JOHN R. READ. Mr. Chairman: I now renew the amendment to strike out the first five words in section five, and insert the word "no," before the word "county." My object in making this motion is because it is already provided for in the report of the Committee on Legislation.

The question being then taken, a division was called, and the amendment was not agreed to: Ayes, thirty-one; noes, forty-seven.

Mr. SIMPSON. Mr. Chairman: I offer to amend the section, by inserting after the word "managed," in the last sentence, the words "either in whole or in part."

The question being taken, the amendment was agreed to.

The CHAIRMAN. The question is now upon the section.

The question being taken, the fifth section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 6. The arts and sciences may be encouraged and promoted in colleges and other institutions of learning, under the exclusive control of the State.

Mr. DODD. Mr. Chairman: I certainly have no objection to the encouragement of the arts and sciences, but I have a very decided objection to this section, and to the two sections which immediately follow it, for the simple reason that they are utterly unnecessary. It will be well for

delegates to remember that the State Constitution is totally different from the federal Constitution. The federal Congress has no power excepting that expressly given to it by the federal Constitution, and consequently it is very proper in the federal Constitution that the language should be used, that "Congress shall have power," but when the State Constitution confers legislative power it is unlimited and absolute, and the language, "the Legislature shall have power," is totally uncalled for and unnecessary.

The Legislature has supreme legislative power, except in so far as limited by the Constitution, and no act of the Legislature is unconstitutional, if it is legislative in its character, unless it is expressly prohibited by some section of the federal or State Constitution. Now, sir, if this is correct—and none who are acquainted with the elementary principles of constitutional law will deny it—the Legislature has already the power which we now propose to grant to that body. It has the power to encourage the arts and sciences, and the adoption of this section by the Convention would not add one iota to that power, and neither would the two following sections, and I hope that they will not be adopted, for the simple reason that they are utterly unnecessary.

We might adopt a provision that the sun shall be permitted to shine, but it would add nothing to the power of the sun, while it would detract wonderfully from the reputation of this Convention for wisdom. If we pass such a provision as this we can accomplish no good results whatever, and will be showing to the world that we are totally unacquainted with the elementary principles of constitutional law.

MR. DARLINGTON. Mr. Chairman: The Constitution under which we have been living since all of us were born, and that others lived under long before we were born, contains the provision that the arts and sciences shall be promoted in one or more seminaries of learning. In framing this report, it certainly was not any part of the purpose of the Committee on Education to take a step backward in the career of educational improvement and enlightenment.

It would not look well for the Convention to say that while we have enjoined it upon the Legislature, in passing a section providing that the arts and sciences shall be promoted in one or more seminaries of learning, by omitting anything in regard

to the subject virtually to say that they shall be no longer encouraged.

It was with the view of preserving this idea, and to some extent of amplifying it, that the committee inserted this section in the manner in which it has been reported. I do not think that it is necessary to add a single word in additional explanation, and I therefore leave the section to the consideration of the Convention precisely as it has been reported.

MR. MINOR. Mr. Chairman: I move to amend the section, by striking out the word "may" and inserting the word "shall."

MR. DARLINGTON. Mr. Chairman: The amendment certainly meets my approval, and I certainly desire to accept it, but it is probably improper in a member of the committee to do so.

MR. MANN. Mr. Chairman: If the amendment which has been proposed to the section is adopted, it will give to it a practicable effect, for as it stands now, it is entirely without any virtue.

It is only those sections of this article which say the Legislature shall or shall not do a certain thing that possess any virtue whatever.

The other sections are entirely powerless and without any virtue whatever, and the gentleman who proposed this amendment, to strike out the word "may" and insert the word "shall," proposes to give to this section its only vital effect, but for this very reason I am opposed to the amendment, and entirely in accord with the sentiments which have been expressed by the gentleman from Venango (Mr. Dodd.)

I think this particular section ought not to be adopted, for the reason that this article, reported by the Committee on Education, is designed to provide a system for the education of all the children of the Commonwealth. It is positive in its provisions. The Legislature, as the gentleman from Venango said, has the power to encourage colleges. The Legislature has supreme power over this whole subject of the section, excepting so far as the article reported by the committee shall restrict that body, and hence the restrictive power in section three and section five, and the direct power conferred upon the Legislature, in section two, is wise and valuable, but the negative power in section six, it seems to me, is without any virtue, and the positive power which the amendment proposes to give, I trust will not be placed in the Constitution. The chief desire of

this Convention should be, that all our efforts should be directed towards the interests of the large mass of the children of Pennsylvania who must be educationally provided for, and this section, if it means anything at all, means that the State is to build up a grand State college of learning.

I have supposed the whole purpose, aim and scope of this article is to take care of all the children of the Commonwealth, and to treat them all alike, but this section means to establish a grand State college, in the benefits of which the mass of our children can never participate. I think the adoption of this section will mar the entire article. The common school system of Pennsylvania is now working in a symmetrical and harmonious manner. We have provided by law for common schools, and then for a system of Normal schools, in which teachers can be properly qualified to instruct the children of the Commonwealth, and now I ask why this system should be marred by adding to it a State college, from which the large mass of our children can never receive any benefit. The children of the Commonwealth will receive a direct benefit from each one of these Normal schools, because the teachers therein will be properly educated and well qualified for their work of instruction, and the article, leaving off this last section, will help the Superintendent of Public Instruction to infuse new life into the Normal school districts, and thereby to the common school districts. Adding this other provision will not add anything to the harmony of the system, but will detract from it. I hope, therefore, the amendment will not be adopted, and that the section itself will be voted down.

Mr. HAZZARD. Mr. Chairman: I rise simply for the purpose of saying that I hope this amendment will be voted down. There is no necessity for it either in the old Constitution or the new. To me it seems that it would be an unwise policy to establish schools of this kind. The amendment provides that the State shall have exclusive control of the schools, that is to create institutions of learning which are to be the property of the Commonwealth and by it directed. On this point, sir, we have precedents, and the experience may assist us. Almost all of the institutions of the State, where the Commonwealth was a partner, never came to any good. No good result came from the canals in which the State was interested. No good result was attained by the interest of the Commonwealth in the

bridges she erected or assisted in erecting. Many of the railroad enterprises in which State aid was invoked and secured, proved unprofitable, and therefore, judging from the past experience in these matters, I submit that this subject should be left to the management and be exclusively under the control of people who are immediately interested in it.

Let us see what such a plan as is proposed means. It means a scientific school, or two or three of them, under the exclusive control of the State; and then what follows? It necessitates a large retinue of professors at very large salaries, because no professor will take charge of a State school without large salaries. There must be a physician to the school, supported by the State at a very large salary. There must be a landscape gardener with a large salary, and there will be an immense amount of offices created for the purpose to provide a comfortable place for lazy people who have not anything else to do. Is not that the case with all public institutions of this class? Are not men appointed to positions in them not so much with reference to their fitness and worth as for the political service they have rendered some particular candidate or some political party? We know they are, and the arts and sciences will be better fostered and promoted by private enterprise, by our colleges and schools already organized, than under any such State institution as is proposed. And besides, who will go to it? If we establish this institution who will attend it? It will be a fruitful source of heart burnings, bickerings, difficulties and discontent all over the Commonwealth. No source of trouble is so prolific as partiality, and with every institution of this kind, partiality is inseparably associated. Every child has a right to be admitted to such a school, and while a few may be admitted, more will be excluded, and discontent must follow. Not only must such an institution require large expenditures of money, but it will create dissatisfaction.

Let us sustain our colleges that private enterprises have called into being. We have established common schools. We have academies under competent management. They do not require the patronage of the State. So with the Normal schools; they are not under the exclusive control of the State. It has supervision over a part of its economy, but not the exclusive control, and there ought not to be any such thing as a school erected and

supported by the State. What do we want with such an institution? Are there not schools in this State sufficient to take care of all the educational interests of the children? Have we not common schools? Have we not schools where we teach civil engineering? Have we not schools where geology and mineralogy and all the branches and departments of art or science are faithfully illustrated, and in which thorough training in any of the varied lines of scientific knowledge can be procured? Are there not educational institutions enough to educate our children in the highest measure that can be secured without adding this State institution, which will be cumbersome, expensive, and eternally so? I think that the educational necessities of the country are sufficiently taken care of by private enterprise, and our mission lies in the support and encouragement of such institutions.

Let us not, sir, make the mistake of creating an institution under the direction and exclusive control of the Commonwealth. Such an institution certainly is not required now. In the future it may become expedient to establish it, but if so the power for its creation, in my opinion, exists in the Legislature. In this I may be in error. Intelligent gentlemen inform me that the Legislature has not that power, but I do not so understand it. What principle of the Constitution would the Legislature infringe by the establishment of such an institution. Suppose tomorrow they would establish such an institution in Philadelphia; if established at all, of course it would be located here, for Philadelphia always gets all the important endowments. What provision of the Constitution would be transgressed or what law violated? I affirm that the power is now inherent in the General Assembly, and it is best to keep it there. If the time shall come when a necessity does occur for such an addition to our educational facilities, when we have not sufficient colleges and universities for the proper advancement of education, it will then be time to consider the establishment of a State institution for the purpose; at present it is neither necessary nor wise to insert this amendment into the Constitution of the Commonwealth.

Mr. MINOR. Mr. Chairman: Being connected with the Committee on Education, perhaps a single remark is due by way of explanation. It will be recollected that in the present Constitution there is a clause

identical in substance with this section, except the restricting sentence at the end of it. The present Constitution provides that "the arts and sciences shall be promoted in one or more seminaries of learning." There is where it stopped, leaving the Legislature at liberty to make any appropriation it saw fit, to any institution it saw fit, whether denominational or undenominational, under the control of the State or under the control of individuals. That was the way we found the Constitution and the law when we entered upon our work. But the majority of the committee, as it appears by the report, were not satisfied to leave it there, and hence the design of these additional words was this, to prevent the Legislature from making appropriations to denominational colleges or institutions. To accomplish that the words were used "exclusively under the control of the State." So that if appropriations were made, they should not be made to any denominational college or university or seminary; but, if made, the institution should be under the exclusive control of the State. I mention this by way of explanation. That was the design of the section.

Now, sir, there is a little more involved in it. It is, perhaps, possible that this limitation is sufficiently accomplished by the preceding section. If so, the section under consideration is unnecessary. I leave that to the decision of members.

Thus far I have spoken of the way the matter stood in committee, of the object of the section and the effect it will have if adopted. I am now free to express sentiments of my own, and these are that we should go even farther. I believe that we should not only prevent the Legislature from making any appropriations to denominational colleges, but that we should prevent it from establishing any colleges of its own. I would go farther than this section goes, and put it in such a shape that the Legislature shall not establish any such institutions or make appropriations to them, for reasons in part that have been given by gentlemen already, and also from the light that we derive from experience.

I mention one fact. It is known to all of us that in the State of Michigan there is an institution called the State University. A few years ago there was placed at the head of that University a certain person who stood high in and was one of the shining lights of a particular denomination, and from that time on the State Uni-

versity was largely held up as being the exponent of that denomination. They substantially had charge of the institution and claimed it as theirs. Other denominations accepted the proposition, and immediately went to work to destroy that control by removing the president, and after a contest which shook that State from centre to circumference they succeeded. The result was, that the then incumbent president was ousted, and a president of another denomination was put in, and many honest members of the former denomination, good sober ones, too, declared that the result should, if possible, be reversed, and most bitter feelings were expressed by those who had lost control against those who had taken the charge of the State University out of their hands. They have been in a quarrel there about it ever since, and I presume they will quarrel about it as long as the University is under the support of the State.

What further? There is connected with that institution a medical department, which made it necessary to elect a professor to take charge of that branch of instruction. And at this very time, as I am informed, they are quarrelling about whether it is to be allopathy or homœopathy which shall be taught there. Just as the president's chair caused a quarrel between the denominations, this subject caused a quarrel among the doctors, and the great danger is, that between the scalpels that are used in the two classes of schools, the institution itself will be cut to pieces. There are these dangers to be incurred in the establishment of any State institution of this kind, and while I believe that this Convention ought to provide a broad and ample basis for an unsectarian common school system, yet that colleges and higher institutions of learning should be left to the enterprise of denominations, of individuals, of communities, of scholars, &c. I am also informed that the University of Virginia, established by Thomas Jefferson himself, was a failure, until it passed into private hands. It is a fact, sir, that as long as you have a great institution holding out inducements for patronage and jobs of various kinds, that just so long will it be liable to abuses and unseemly contests, and the interests of education will be deprecated instead of being advanced. I therefore personally, would not object to taking the whole section out, even to seeing a negative one in its place.

Mr. CURRY. Mr. Chairman: I am not very particular whether this section shall be adopted or not, but if it is, then I hope my amendment will prevail, because without the word "shall," in this connection, it seems to me, sir, that the section would be without any weight or power whatever. I submit to the cool judgment of the Convention touching this particular point, and therefore, without consuming time in this discussion further, I submit to the vote.

The CHAIRMAN. The question is on the amendment, and the amendment will be read.

The CLERK: To strike out the word "may," in the first sentence, and insert "shall."

On the question of agreeing to the amendment, a division was called, which resulted, twenty-six in the affirmative. Not being a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question recurs on the section.

Mr. WHERRY. Mr. Chairman: I trust the committee will give this section careful consideration just for one moment. It is substantially a re-enactment of a provision that has been in our Constitution for nearly one hundred years. There can be no good reason given for striking it out now. It is not a mandatory clause. It leaves the whole matter at the discretion of future enlightened legislators. I freely confess I do not believe all the wisdom of the ages past is centered in this body, nor do I assume that we are the wisest men the world will ever know. I can readily understand that in the progress of civilization, as men struggle and strive for the perfection of this beautiful system of education we have adopted in this State, it may, in the course of time, become necessary to complete the symmetry of the grand design, by putting a State institution of higher learning on the top. All we ask is that the Convention will leave in the hands of the Legislature a power always heretofore entrusted to it, and never, in the judgment of any, abused, so that when the good time comes which we all expect, the Legislature may provide an institution, not to teach our children, for that is already done in the public schools; not to teach the teachers, for that is done in Normal schools; but to educate the teachers of the teachers themselves. This is the acme for which advanced edu-

cators in our good old Commonwealth are striving.

Mr. HOWARD. Mr. Chairman: We have provided for a system of public schools upon a very different basis from that provided for in the old Constitution. In the first place, the first section of the article that this committee has already adopted, is a very much broader basis upon which to rest a public school system of the State. The old Constitution read in this way: "The Legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the State, in such manner that the poor may be taught gratis." That is every word there was in the old Constitution, upon which to rear the structure of common schools throughout the Commonwealth, of Normal schools and of high schools, and all the structures that have been reared upon it, a simple provision that the Legislature may provide for teaching the poor gratis. Now what have we provided here? By the first section the Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth, above a certain age, may be educated. Now that we have vested in the Legislature all the power over the subject of providing for public schools, it seems to me if we go beyond that, and we provide for a special and exceptional system in which *all* cannot, from the nature of the case, participate, it no longer then belongs to that class that should be supported from a common and public purse.

Mr. WHERRY. Will the gentleman allow me to interrupt him?

Mr. HOWARD. Yes, sir.

Mr. WHERRY. I believe the gentleman did not read the second section of the present Constitution.

Mr. HOWARD. No, I did not; but I understand the arts and sciences shall be promoted in one or more seminaries of learning. That was provided in the old Constitution; but I say the new Constitution that we are now proposing, is so much broader than the provision in the old Constitution upon this subject that it has an ample basis upon which to rear any structure that should be supported from a common fund contributed by the people of the State.

Mr. WHERRY. Do I understand the gentleman to say that this section of the Constitution of 1838 has never been recognized in legislation?

Mr. HOWARD. I did not say anything about it.

Mr. WHERRY. I beg the gentleman's pardon; I so understood him.

Mr. EWING. Mr. Chairman: I offer the following amendment:

The CLERK read: Strike off from the end of the section the words, "under the exclusive control of the State," making the section read: "The arts and sciences may be encouraged and promoted in colleges and other institutions of learning."

Mr. EWING. Mr. Chairman: If this amendment should be adopted it would leave the section to stand in the precise words that we have in the old Constitution, and it may be of use to leave it there, although it seems to me to be rather ornamental, but being old, I prefer to let it stand as it now is. The term "encouraged and promoted" may mean something more than an appropriation of money. Colleges and institutions of learning not under the control of the State may be encouraged and aided in many ways by general legislation, and that would not include appropriations of money. Now I would not object to anything of that sort, and I take it that this Convention will adopt a provision, a very broad one, prohibiting the appropriation of any money to an educational institution not under the control of the State. Section twenty-one of the report of the Committee on Legislation is a provision that no appropriation whatever shall be made to any denominational or educational institution.

Mr. HAZZARD. We have already adopted a section just before this, of the same import.

Mr. EWING. I think the provision of that section would have the same result, the one we have already adopted; but there is a still broader section reported by the Committee on Legislation that would absolutely prohibit any appropriation of money. Then, if the amendment I propose would be adopted, it would leave this section to stand so that the promotion of sciences and arts would be encouraged in any college by legislation, whether it was denominational or otherwise.

Mr. DARLINGTON. Mr. Chairman: I do not know whether I am at liberty under the rule to speak or not. It is to be remembered that in the history of this Commonwealth the Legislature has been called upon, technically, to aid institutions of learning, colleges founded by benevolent and public spirited persons, without

the requisite means to carry on their business usefully, have applied to the Legislature and have received aid—Dickinson college, Lafayette college—I know not how many more. No one will deny that that has been a highly useful appropriation of public money.

Mr. MANN. I would like to ask the delegate a question if he will permit me.

Mr. DARLINGTON. Certainly.

Mr. MANN. I ask if the Legislature could not make those appropriations without any provision at all.

Mr. DARLINGTON. I have no doubt that the Legislature has power without any constitutional provision whatever, and always has possessed it. I look upon the provision, however, as an expression of public will, for it has moral force, for the aid which may be given to colleges by the Legislature whenever they see fit to appropriate—an expression of the moral sense of the whole community that they ought to do so. I do not doubt but that we will progress; that we will become more and more advanced; that we are unwilling to stop with the present state of civilization, but we are all striving for a higher and a better standard for all the people of the Commonwealth. It is right that we should do precisely as we have done in the establishment of our common schools; and it is right that we should do precisely as we have done in this Convention by still further enlarging the sphere of their action if we can, and command the Legislature, so far as our fiat can command it, to appropriate liberally of the public funds to their support.

I, for one, am ready to continue the public support to colleges and seminaries of learning, without restriction, but such is not the view of all the committee. I would not confine it to those immediately under the care of the State. I would allow appropriations to be made in aid of colleges and institutions of learning, no matter under what religious care they may be, whether Catholic or Protestant, whether Episcopal, Quaker or Presbyterian, or what they may be. I would allow the State to appropriate; but such is not the temper of the committee, and probably such is not the temper of the Convention.

Now we propose in this report simply to hint to the Legislature that they have the power to do that. What then? We take away the injunction which has been upon them for the last eight or ten years, and we virtually say that we have com-

manded you to encourage institutions of learning, and now we cease to command. What is the inference to be drawn? That we have changed our minds; that we care less for the education of our people; that we are more regardless of the instruction for the whole mass of the community than we were before. I say again, as I said before, I, for one, will consent to take no step backward, but rather let us advance, and therefore not only must we continue the injunction upon the Legislature as strong as it has been before, but I would even strengthen it and go further. I hope, therefore, there will be no difficulty about the adoption of this section.

The CHAIRMAN. The question is upon the amendment of the gentleman from Allegheny (Mr. Ewing.)

The amendment was not agreed to.

The CHAIRMAN. The question is upon the section.

Mr. CAMPBELL. Mr. Chairman: I offer the following amendment: I insert after the word "colleges," in the second line, the words "industrial schools."

The object I have in offering this amendment is that we may vote down section seven. The amendment will retain, in substance, the first line of that section, so that the Legislature "may establish industrial schools." I wish to get rid of the second line, that requires the attendance of vagrant, neglected and abandoned children in those schools. If you will consider a moment who are meant by "vagrant, neglected and abandoned children," you will probably see the reason and justice of my amendment. Abandoned children are mainly of two classes; one class is sent to the public alms-houses, and is supported by the State or municipal authorities; the other class is sent to religious and other asylums, and is supported at the expense of the societies or persons having charge of those asylums, or by private charity. Now, if we direct the Legislature to pass a law, under authority of which the Superintendent of Public Schools or the local school officers may require the attendance at industrial schools of children that are supported in religious asylums, it will open the door to religious persecution in the first place, and will lead to great abuses in the administration of our school laws, and consequent dissatisfaction among the people. If we adopt section seven, in the language in which it is framed, it places it in the power of an officer connected with the State to go into a religious asylum and say to

the persons in charge, "these children that you have here are abandoned children, in the contemplation of the Constitution of Pennsylvania, and you must send them to our schools, whether you wish to or not."

I do not want any such interpretation to be drawn from any section of this kind.

In reference to the word "neglected," what does it mean? Is it the intention of the Committee on Education to have the Legislature authorize an officer connected with the industrial schools proposed to be established, to go into a man's family and say to that man, "your children are *neglected*, and therefore you must send them to our industrial school?" I trust that the committee do not wish to place any such power in the hands of a superintendent or any other public school officer, and for the purpose of avoiding the possibility of vesting in him such a power. I would not put in the Constitution the seventh section proposed by the committee. The amendment I offer reserves, to suit the wishes of gentlemen who desire that the industrial schools shall be maintained by the State, that part of the seventh section providing that the Legislature may authorize the establishment of such schools.

I think the amendment would accomplish the main purpose that the Committee on Education had in view in reporting both these sections, (seven and eight,) and it would also enable us to act upon the suggestion made by the gentleman from Venango, (Mr. Dodd,) that seven, eight and nine are entirely unnecessary, because the Legislature has already the power which they, by implication, confer upon it. I agree with him that the Legislature has that power, and that the sections mentioned are entirely unnecessary, but as some gentlemen desire to have a section in reference to the encouragement of the arts and sciences in colleges and industrial schools, I have offered my amendment, with a view to give them an opportunity to retain section six, while at the same, time those who desire to vote against sections seven and eight can do so. I myself intend to vote against both of them.

The question being upon the amendment, it was not agreed to.

The question recurring on the section, it was rejected.

The CLERK read :

SECTION 7. The Legislature may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children.

Mr. DARLINGTON. There is a misprint in that. The word "therein" should come in after the word "attendance," in the second line.

The CHAIRMAN. It will be so amended if there is no objection.

Mr. WHERRY. Mr. Chairman: I desire to offer a few words of explanation with regard to this section, especially in view of its relation to the following clause, section seven, with which it is intimately connected. However unwilling we may be to recognize the fact, however distasteful it may be to gentlemen of tender sensibilities to hear it said, there are two distinct classes of children in the Commonwealth of Pennsylvania, alike demanding her guardianship, her fostering care, her elevating influences. There is that class for which provision has been so nobly and so effectively made; the hundreds of thousands of well fed and well clothed innocent, hopeful, happy children who do now attend the public schools, or may attend them, who are educated in the common schools or may be educated there, if their parents desire it, and if not, are educated by other means at private expense in private schools. But, sir, down underneath this, in dirt and despondency, suffering the realities of cruel want, and breathing an atmosphere of vice, there is lower stratum. It is but idle vanity and unwise statesmanship to longer ignore the unpleasant fact that there is a large class of children in this Commonwealth who, by reason of the ignorance, the indifference, the idleness, the impecuniosity or the vices of their parents and guardians, are absolutely hindered from attending the common schools of this State. It is to provide for that class of children that this section is drawn.

For these we want compulsory education. We want a system that will require and achieve the moral, mental and industrial education of these neglected and abandoned children, and save them from a doomed inheritance of want, and crime and woe!

That is all this section is intended to provide for, and it has nothing to do, directly, with the common school system of the State, as we now understand it.

Mr. HAZZARD. But where are the children?

Mr. WHERRY. All over the State, in every city, town and county. Of this class of children you find twenty thousand reported to the school authorities of this city alone.

There are in my county alone no less than twelve hundred and thirteen children between the ages of ten and twenty-one, who cannot read—a thousand, at least, of these, owing to the criminal neglect of their parents, are not provided for. In our county alms-house, county jail, and belonging to the professional “tramps,” there are from one to two hundred children for whom there is no educational provision of any kind made at all. They would not be in their present condition tolerated at the common school. Children of wealthy families would not sit at the same desk with them. They are paupers and criminal children, and there is not one iota of provision made for them by the State beyond some statutory enactment of a hundred years ago, long since forgotten. They grow up in stolid ignorance and stupidity, in idleness and in want, and furnish the very class of people from whom the great army of criminals of our country is recruited.

I say, here, briefly, but positively, that it is this great neglect of abandoned children that gives us the large proportion of criminals that we find pervading the community.

MR. DARLINGTON. Mr. Chairman: I am unwilling to allow this vote to be taken without adding a few words in defence of the report of the committee. The object of the committee, in introducing this section, was to provide for the education of a class of children of whom we all know there are but too many existing among us, children without parents, without protectors, without any means of education or of support. Is it right for the community to allow such children to grow up amongst them entirely ignorant, without any education or means of education being offered to them? You may say that the common schools are open to them. True, but if the common schools are not open to them, if they cannot be clothed and fed, you find them upon your streets and at your doors, children wanting clothing and food, as well as education. Who is to take care of them? We cannot, in common humanity, stop to inquire whether they belong to this religious denomination or to the other. The question is, will we allow them to remain in ignorance? Is it not the duty of the State to employ some of our ample means for the establishment of industrial schools for the proper education of such children? Surely gentlemen will not be content to permit a state of things to exist, which

manifestly, and by the consent of everybody, does exist, namely: That there are children among us without any means of education, or anybody being responsible for their support or their clothing. What are we to do? It is the duty of the State, it is the duty of the whole people, to provide shelter for these houseless outcasts, to provide food for them, and clothing, and occupation for them.

This can be done by providing industrial schools where they may be taught to learn the arts of common life. Is it right to say that the Legislature may establish such schools? I would rather say that they shall establish them. It is certainly right to say that they may, and in that way give it the sanction of our voice, showing that there is a class of the community who ought to be taken to school, no matter how they happen to have become neglected, or how they became abandoned or vagrant.

The gentleman from Philadelphia (Mr. Campbell) seems to have some fear that this might allow somebody to go into a seminary or retreat or institution of charity, where children are to be found, and take them out of it on the ground of their being abandoned. I fear nothing of that kind. I have no fears of any disposition to interfere with any charity that is actually taking care of children; but if, unfortunately, there should be existing any institution, which, under the name of charity, so far forgets the first principles upon which it was founded, as to take children under its care and deprive them of education—who would be of the opinion that no education was necessary for them—then I would say that the law not only should but ought to step in and say to that charitable institution: “While you are doing much good, you are not doing all the good that the good of the community demands.” I would not allow individuals or anybody else to raise up a body of such children without education. However, I have no fear of any such difficulty arising, and I think the gentleman from Philadelphia need have none. There is no danger of any private charity being interfered with. Some observations have been made with regard to the next section, which is compulsory also. I would not allow a single man in this land to say, “my children shall not be educated.” He fails in his duty of a citizen of the republic when he attempts to raise up a child without education, and if there be any such wrong-headed men, I would not care,

sir, even if they be found in my own brother, or my dearest friend, I would say to him, that by the law of the land and the Constitution of his country, he must educate his children, or if he fails in that duty, the State will take them from him.

Mr. CARTER. Mr. Chairman : I am in favor of this section as reported by the committee, and wish to say just a word or two to remove some doubts and difficulties on the part of my friend from Philadelphia (Mr. Campbell.) I think that if he will give a reasonable signification to the language of the section, he need apprehend no difficulty of the kind which seems to occur to his mind.

"The Legislature may establish industrial schools, and require the attendance therein of vagrant, neglected and abandoned children."

I submit that this proposition does not interfere in any way with the class of children to which he refers. They are not *neglected* children placed in charitable institutions; they are *not abandoned*, if they are in still under parental care. Nothing can be plainer to my mind than this, so when the gentleman speaks of men going armed with authority to charitable institutions at the poor man's home, he is conjuring up a chimera dire in his own imagination. But, sir, this section is needed to provide for those poor waifs—of those helpless little ones that have been actually abandoned and neglected. And further, sir, I most firmly believe, that for the safety of the State this should be done. I think the gentleman is in error in regard to any anticipation of wrong on that score, but I favor this for the reason that it looks in the right direction, in regard to the educational duties of the State.

This great State of Pennsylvania has taken her position long since, on the high ground that it is the duty of the State, as a matter of justice and self-preservation, that every child in the Commonwealth should be properly educated and trained for the high and responsible duties of citizenship. There is a large class of citizens in our Commonwealth commonly known as the perishing class. I entreat the members of this Convention, before they vote upon this section, to consider whether its adoption will not limit, to some extent, the number of vagrant children, who are now neglected and abandoned. The adoption of this section may possibly lead to the establishment of industrial schools, wherein the large number of our vagrant

children can be properly educated in some industrial employment, and properly fitted for their important duties of citizens.

I can foresee none of the difficulties likely to arise which have been predicted by those who have opposed the section. I can, however, perceive a great deal of good that may arise from its adoption, and as a friend, ever and always advocating every measure that is intended to elevate the children of our State, and to every measure that is calculated to promote the prosperity and happiness of all our citizens, I most heartily favor the adoption of this section.

The CHAIRMAN. The question is now upon the section.

The question being then taken on the seventh section, a division was called, which resulted as follows: Ayes, twenty-eight.

Mr. DARLINGTON. Mr. Chairman: Shall not the negative side of the question be taken?

The CHAIRMAN. Certainly. Those who are opposed to the section will please rise.

The noes were counted, and were found to be twenty-six.

The CHAIRMAN. There is not a quorum in the Convention.

Mr. CORBETT. Mr. Chairman: I submit that the vote evidently shows that there is a majority of a quorum, and that the section has been agreed to.

Mr. HARRY WHITE. Mr. Chairman: I desire to call the attention of the Chair to the fact that the question of a quorum can only be taken notice of by the Chair when it is formally called to his attention.

There may be a quorum in the Convention, and by the fact that a quorum does not appear on the count of the vote, it does not necessarily follow that there is not a quorum present in the Convention.

The CHAIRMAN. In accordance with a previous ruling the Chair will decide that the vote just taken is not a vote of a majority of a quorum, and the Chair therefore decides that the section has not been agreed to.

The CHAIRMAN. The eighth section of the report will now be read.

The CLERK read as follows:

SECTION 8. They may by law require that every child of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Mr. EDWARDS. Mr. Chairman: I move to strike out the word "may," where it

occurs in the first line, and insert the word "shall."

The question being then taken, the amendment was not agreed to.

Mr. HARRY WHITE. Mr. Chairman: I move to amend the section, by adding at the end thereof the following words: "And may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children."

Mr. CORBETT. Mr. Chairman: I rise to a point of order and it is, whether the amendment proposed was not embodied in the section which has just been rejected by the committee?

The CHAIRMAN. Such is the understanding of the Chair, and the point of order is therefore sustained. The section is now before the committee.

Mr. COCHRAN. Mr. Chairman: It really seems to me that there are very important questions pending before the committee that I think are not treated with that deliberation and consideration due to them. I do not know whether it is owing to the sparsity of members present or whether there is a disposition to entirely neglect them. I do not like to see important sections like these embodied in the article reported by the Committee on Education stricken down in this manner and without a quorum voting. I therefore move that the committee rise, report progress and ask leave to sit again.

The question being taken, a division was called, and the motion was not agreed to, a majority of a quorum not voting.

The question then recurred upon the seventh section, and the section was not agreed to.

Mr. BOWMAN. Mr. Chairman: I rise to a point of order, and it is this: That if the Convention is to be held down to such a rule as this, no proposition can be carried here to-day.

Mr. MANN. Mr. Chairman: The article having been gone through with, no motion can be entertained, and the committee must rise.

Mr. BUCKALEW. Mr. Chairman: I desire to offer an additional section.

The CHAIRMAN. The entire report of the committee has been disposed of.

IN CONVENTION.

The committee of the whole then rose, and the President resumed the chair.

Mr. CURTIN. Mr. President: As chairman of the committee of the whole, I have the honor to report that the committee of the whole, having had under con-

sideration the article reported by the Committee upon Education, now report the same with amendments.

The PRESIDENT. The amendments made by the committee of the whole upon the article reported by the Committee upon Education will now be read.

THE AMENDED ARTICLE ON EDUCATION.

The CLERK read as follows:

SECTION 1. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools, wherein all the children of this Commonwealth above the age of six years may be educated.

SECTION 2. The Legislature shall appropriate at least one million dollars for each year, to be annually distributed among the several school districts according to law, and applied to public school purposes only.

SECTION 3. No money raised in any way whatever for the support of the public schools of the Commonwealth shall ever be appropriated to or used by any religious sect for the maintenance and support of schools under its control.

SECTION 4. The Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

SECTION 5. Neither the Legislature nor any county, city, borough, school district, or other public or municipal corporation, shall ever make any appropriation, grant or donation of land, money, or property of any kind to any church or religious society, or to or for the use of any university, college, seminary, academy, or school or any literary, scientific or charitable institution or society controlled or managed either in whole or in part by any church or sectarian denominations.

Sections six, seven and eight were stricken out in committee of the whole.

The PRESIDENT. The next business in order is the consideration of the article reported by the Committee on Legislation.

Mr. SIMPSON. Mr. President: I move the call of the roll, in order to ascertain whether a quorum of members is present.

The motion was agreed to.

The PRESIDENT. The Clerk will call the roll.

The CLERK then called the roll, and the following members then answered to their names:

Messrs. Achenbach, Addicks, Ainey, Alricks, Armstrong, Baer, Bailly, (Perry,) Bardsley, Bartholomew, Beebe, Biddle, Black, J. S., Bowman, Buckalew, Campbell, Carter, Church, Clark, Cochran, Corbett, Cronmiller, Curry, Curtin, Dallas, Darlington, De France, Dodd, Dunning, Edwards, Elliott, Ellis, Ewing, Finney, Gibson, Hall, Hanna, Hazzard, Horton, Howard, MacConnell, M'Culloch, Mann, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W. Palmer, H. W., Pughe, Pucviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, James L., Rooke, Russell, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Struthers, Turrell, Van Reed, Walker, Wetherill, Jno. Price, Wherry, White, David N., White, Harry, Woodward and Meredith,
President—71.

ABSENT OR NOT ANSWERING.—Messrs. Andrews, Bailey, (Huntington,) Baker, Bannan, Barclay, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Carey, Cassidy, Collins, Corson, Craig, Cuyler, Davis, Fell, Fulton, Funck, Gilpin, Gowen, Green, Guthrie, Harvey, Hay, Hemp-hill, Heverin, Hunsicker, Kaine, Knight, Lambertson, Landis, Lawrence, Lear, Lilly, Littleton, Long, M'Allister, M'Camant, M'Clean, M'Murray, MacVeagh, Metzger, Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Reynolds, S. H., Ross, Runk, Sharpe, Stewart, Temple, Wetherill, J. M., White, J. W. F., Worrell and Wright—61.

The PRESIDENT. The next business in order is the consideration of the article reported by the Committee on Legislation. Is it the pleasure of the Convention to proceed to the consideration of the article?

Mr. LILLY. Mr. President: I move that the Convention proceed to the consideration of this article.

The motion was not agreed to.

Mr. NEWLIN. Mr. President: I move that the Convention do now adjourn.

The PRESIDENT. Will the gentleman withdraw his motion for one moment?

Mr. NEWLIN. Certainly.

AMENDING THE EIGHTEENTH RULE.

The PRESIDENT. The Chair desires to state that there was an error committed on the part of the gentleman from Warren, (Mr. Struthers,) in offering a resolution relative to the amendment of rule eighteen, which would have an effect not intended by him. His object was to repeal the order made by the Convention in February last, on the motion of the gen-

tleman from Chester (Mr. Darlington.) He now desires to make a motion to reconsider the vote which was taken upon the resolution. Shall he have leave to make that motion?

["Aye," "aye," "aye."]

Mr. STRUTHERS. I move to re-consider the vote which was taken upon the resolution I offered this morning in relation to amending the eighteenth rule of the Convention.

The motion was agreed to.

The PRESIDENT. The resolution is again before the House. Will the House agree to the resolution?

Which was decided in the negative.

Mr. STRUTHERS. Mr. President: I offer the following resolution at this time:

Resolved, That the order made by the Convention on the 12th of February, prohibiting debate on questions as to the time of meeting and adjournment be rescinded.

On the question of proceeding to second reading, a division was called, which resulted twenty-one in the affirmative. Not being a majority of a quorum, the question was decided in the negative.

THE LATE COLONEL HOPKINS.

Mr. HARRY WHITE. Mr. President: I desire to ask unanimous consent at this time to offer a resolution, which should have been offered yesterday.

Unanimous consent was given, and the resolution was read as follows:

Resolved, That the House Committee cause the Hall to be draped for thirty days as a mark of respect to the memory of the late Hon. William Hopkins.

The resolution was read a second time, and unanimously agreed to.

THE STATE PRINTER'S ACCOUNTS.

Mr. CLARK. Mr. President: I ask leave at this time to make a motion.

Leave was granted, and Mr. Clark said: Mr. President: Yesterday the Convention passed a resolution referring the settlement of the accounts of the State Printer to the authorities at Harrisburg. Many persons have found fault with the action of the committee at that time, and at their instance I now desire to make a motion for the re-consideration of that question. I have no views to express, but in order that the matter may be brought fully to the attention of the Convention, I move to re-consider the action of the Convention on that subject.

The PRESIDENT. How did the gentleman from Indiana vote?

Mr. CLARK. In the affirmative.

The PRESIDENT. Who seconds the motion?

Mr. BIDDLE. I do, sir.

The PRESIDENT. Did the gentleman from Philadelphia vote in the affirmative?

Mr. BIDDLE. I did.

Mr. HARRY WHITE. Mr. President: I want to make a motion to postpone the motion of re-consideration for the present, or until Monday, when we can have a fuller House. I move to postpone the consideration of the re-consideration for the present.

The PRESIDENT. The motion to postpone the re-consideration is not in order.

Mr. HARRY WHITE. Mr. President:—

The PRESIDENT. Nothing is in order but the re-consideration.

The motion to re-consider was agreed to.

The PRESIDENT. The gentleman from Indiana has the floor.

Mr. HARRY WHITE. Mr. President: I did not design to say anything, but being recognized by the Chair, I will explain my situation in this matter. I was unaware of the action of the House yesterday until the resolution in question had been passed. I confess I thought it was a little hasty myself. But however that may have been, I thought to-day that it would be proper to dispose of this question of re-consideration until there was a full Convention. It is manifest that we are very short of a full Convention to-day. This is not an unimportant matter, and I would prefer that it should go over until next week. The question is up now on its merits, and I therefore move to postpone the consideration of this question for the present.

Mr. ARMSTRONG. Mr. President: As I offered the resolution, I desire to say a single word in explanation, and ask unanimous consent for that purpose.

The PRESIDENT. A motion to postpone is not debatable.

Mr. ARMSTRONG. I am aware of that, sir, but I ask unanimous consent to say a word.

Unanimous consent was given and Mr. Armstrong said:

Mr. President: I offered that resolution yesterday morning, and it is proper that I should state the circumstances. The gentleman from Pittsburg (Mr. J. W. F. White) came to me the evening before and handed me a resolution, stating that he was obliged to go to Pittsburg, as a member of the committee appointed by this Convention to attend the funeral of Colonel Hopkins, and could not return for

several days, and that there was necessity that the resolution should pass immediately. I made some inquiry into the facts and ascertained them to be about these: That a very large amount of work had been done by Mr. Singerly, and that no provision had been made whatever for his procuring payment upon account. The Legislature passed a bill for the purpose of affording him a mode of reaching payment on account, and it was in the hands of the Governor, who had much hesitation in signing it, unless under some expression of approval on the part of this Convention, he having much reluctance to sign a bill which might be construed as an attempt on the part of the Legislature to take out of the hands of the Convention a matter which properly appertained to it. Upon the merits of the resolution as it occurred to me, and such was the view of the gentleman from Allegheny, whom I represented in offering it, although I did not desire, nor did I think it proper to make such a statement at that time, for the resolution met my own view of what was proper under the circumstances.

I will further say that I took the precaution, before offering it, to consult with two or three members of the Committee on Printing, who expressed no dissent at all to the resolution, and whom I understood to approve it, the idea being that a large amount of work will be done for the Convention, which ought to be paid for on current account, and for which payments no provision has yet been made. A very large amount of work will remain to be done after this Convention has adjourned. We have no accounting officer, nor do I see how we can extend any powers or functions of the Convention beyond our final adjournment. I knew of no other mode so fitting and appropriate, by which these large accounts can be so properly and satisfactorily adjusted, as by passing them through the hands of the regularly appointed and experienced accounting officers of the State, and as the Legislature must provide for the payment, it is proper that they should also provide for the adjustment and settlement of the accounts.

Having made this explanation, it is proper to add, I have not the slightest personal interest in the subject, beyond the desire that we should provide some mode by which the work, as it progresses, shall be reasonably paid for, and that the final account shall be justly and properly settled, with exact fairness both to the con-

tractor and the State. If there be any apprehension, as I have heard suggested, that there is something concealed under this, some effort to obtain an undue advantage for the printer, I utterly disclaim it, and would instantly, at any and all times, vote against the resolution, or any proposition which would look to that end. I offered it under the circumstances, and with the view which I have stated. I have nothing further to express upon this subject, but submit it solely to the judgment and discretion of the House, desiring only to add that it is certainly incumbent upon the Convention to provide, without unnecessary delay, some mode in which the contractor can receive payments on account as the work progresses, and this I understand to be his only desire in the premises.

MR. HARRY WHITE. Mr. President: I ask unanimous consent of the Convention to state what I know about this.

Unanimous consent was given.

MR. HARRY WHITE. Mr. President: I know the motive of all parties connected with this. I know it, and I am satisfied it is perfectly pure and beyond reflection. My attention was called to this matter by the Attorney General, who was late a member of this body, and who knows how sensitive this Convention was upon the subject, and properly, too, of expenses, particularly upon the subject of printing. I was informed that a joint resolution had been introduced and passed through the Legislature providing for an allowance of \$25,000 on account to the State Printer for printing done for this Convention. I inquired of the State Treasurer why this was. The information derived from that source was, that application was made to him by the State Printer to get something on account to assist in defraying the large expenses to which he is subjected. The State Treasurer very properly remarked that before he made any payment on account to him, he wanted some proper voucher, and he called the attention of Mr. Singerly to it. But, inasmuch as this appropriation must be made by law ultimately, at Mr. Singerly's instance, a joint resolution was introduced and passed, without debate, through the Legislature, as a matter of courtesy, I may say, to this Convention. There is now a better feeling between the Legislature and the Convention, if you will allow me to make the suggestion, than there was formerly. There is a desire to show every courtesy possible to the Convention, and this joint

resolution was passed without debate as a matter of courtesy to this Convention. The Attorney General having been a member of this body, knew how sensitive the Convention was about controlling its own expenses, and he called the attention of the Governor to it, and the joint resolution has not been signed.

These statements are due to all parties. Now the matter is entirely in the possession of this Convention, and if, after this consideration, this Convention refuses to pass the resolution which was under consideration yesterday, I am satisfied that the joint resolution will not be signed, and this Convention is as able as any other tribunal to judge whether it is proper to pass a resolution of this kind or not.

MR. ARMSTRONG. Mr. Chairman: For the information of the Convention, as it has not been read this morning, I call for the reading of the resolution.

THE PRESIDENT. No copy of the resolution is now in possession of the Clerk, the Journal having been sent to the printer.

MR. ARMSTRONG. A gentleman has handed me a copy of the *Inquirer*, from which I will read the preamble and resolution:

WHEREAS, It is impossible for the accounts of Benjamin Singerly, as printer, to be settled by the Convention, because a great portion of the work must be done after the Convention shall have adjourned; therefore,

Resolved, That in the judgment of this Convention it is expedient that the Legislature provide for the settlement of his accounts by the proper accounting officers of the State, on the terms and conditions of his contract with the Convention, and for the payment of such sum as he may be entitled to receive.

MR. H. G. SMITH. Mr. President: I ask unanimous leave to make a statement.

Leave was granted.

MR. H. G. SMITH. Mr. President: Yesterday morning, when this resolution was passed through the Convention, sitting in my seat, I heard it very indistinctly while it was read. I tried to listen, but could not catch the full tenor of it. I went to the Clerk's desk, afterwards, and read it in manuscript, as it has been read here this morning. Upon reading it, I thought, perhaps, some members of the Convention besides myself were unable to ascertain clearly the intent and meaning of the resolution, and I thought it probable that not a few might have found themselves

in the position in which I found myself, unable to vote upon it intelligently.

Looking at the resolution as it passed, it strikes me, sir, that the first section of it, the preamble, contains a misstatement. If the State Printer complies with his contract, as entered into with this body, there will be no large amount of printing undone when this Convention adjourns. All of the miscellaneous printing will be entirely finished, and there ought not to be a single thing, at the hour when this Convention adjourns, left unprinted and unfurnished to this body, except one day's Journal and one day's Debates. In looking back to the act of Assembly calling this Convention, I find that the Legislature provided that "warrants for the compensation of members and officers, and for all proper expenses of the Convention, shall be drawn by the President and countersigned by the Chief Clerk," &c. The design was that we would attend to our own accounts, and send no accounts to the accounting officers at Harrisburg without having first passed upon them, intelligently, by our own Committee on Accounts. So far as that committee has acted, it has acted intelligently and well, and it has given evidence of its care for the interests of the people. When the reporters from Harrisburg presented their bill here, the chairman of the Committee on Accounts found that they had estimated the amount of what they claimed to be due by counting the matter, which was printed as leaded matter, making one-fifth more than it would make in solid minion type. He very properly objected to that upon the ground that they did not report the leads which the printer had put in, and he cut their account down to a proper basis.

Now I submit that after the various resolutions that we have had here with regard to printing, after the changes that have been made, that it would be a very indelicate thing for this Convention to ask the accounting officers at Harrisburg to go back over our files, through our contract with the State Printer, through the whole course of our proceedings, and without any instructions from our Committee on Accounts, to ask them to settle a question of this kind for us. We would be setting a bad example, sir. We would be leaving our work undone, the very work that the Legislature charged us to do in a proper manner; and, for one, if I were a member of the Legislature, and especially if I had been there last

year, when this carefully prepared act of Assembly was passed, I would say to the members of this Convention: "Gentlemen attend to your own business; make up your own accounts, send them in the proper manner and shape to the accounting officer of this Convention, and let them be settled as they ought to be settled." I do not charge that there is a job in it or anything of that sort. I say that we ought, in view of our plain duty, and in accordance with our own dignity, to arrange all our accounts in the proper manner provided by law, and send them to Harrisburg in proper shape, in such shape as will make them intelligible to the accounting officers of the Commonwealth.

THE PRESIDENT. The question is upon the motion to postpone.

The motion was not agreed to.

THE PRESIDENT. The question recurs upon the resolution.

MR. H. W. PALMER. Mr. President: It may be added to what has already been so well said by the gentleman from Lancaster, (Mr. H. G. Smith,) that the chairman of the Committee on Accounts of this body is not present. We know how thorough and careful a man he is, and we know what a thorough and careful committee we have; and it seems to me that it would be proper to have some expression from him on this subject, before a resolution of this character is presented to the Legislature. It is perfectly evident this committee is entirely able to take care of its accounts. It also seems to be clear, under the act of Assembly providing for the expenses of this Convention, that the State Treasurer will be entirely warranted in drawing money from the treasury upon a warrant drawn by the President and countersigned by the Clerk. Why any further machinery is needed is not apparent to me. When the accounts are properly audited, by the Committee on Accounts of this body, who are competent and careful, who can necessarily have more and better information on the subject than anybody else, when the accounts are thus audited, and warrants are prepared by the officers which the law designates to prepare them, why should not the State Treasurer pay the money? Shall we resign to the State Auditor the control of all these matters, or shall we attend to it ourselves as the law contemplates?

It has been very justly said, that if the State Printer performs his contract, which he has not approximated yet, if he does his duty, which he is not doing at present,

at the end of the Convention his printing will have been accomplished, except one day's journal and perhaps one or two day's debates, and, therefore, while of course there is no intention probably to express anything erroneously in the preamble of the resolution, there is a misstatement in it. The binding of the reports that may necessarily have to be done after the Convention adjourns, can all be estimated and settled for by the Committee on Accounts before the Convention adjourns, and the printing that necessarily remains will be very trifling; and, therefore, the reason upon which the resolution is based, seems to me to be untrue; and it seems, further, that there are already sufficient means provided for drawing any sum out of the State Treasury that the printer is entitled to, by reason of the work that he has

done and the work that he has to do hereafter. Therefore, I hope our Committee on Accounts will not have this slight put upon them, but that they may be left to perform the duty they should perform.

Mr. HARRY WHITE. Mr. President: I move that this resolution be referred to the Committee on Accounts and Expenditures with instructions to report a resolution for the payment of such amount as shall be found to be due the printer in his contract with the Convention.

The motion was agreed to.

Mr. NEWLIN. Mr. President: I move the Convention do now adjourn.

The motion was agreed to.

So the Convention, at two o'clock and forty-three minutes, adjourned until Monday next at ten o'clock, A. M.

SIXTY-SECOND DAY.

MONDAY, *March 10, 1873.*

The Convention was called to order at ten o'clock. Hon. William M. Meredith, President, in the chair.

The roll was called and those present answered, as follows:

Messrs. Achenbach, Addicks, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Baker, Barclay, Beebe, Biddle, Black, J. S., Bowman, Boyd, Brodhead, Broomall, Campbell, Carter, Church, Clark, Cochran, Collins, Corbett, Corson, Cronmiller, Curry, Dallas, De France, Dodd, Dunning, Edwards, Elliott, Ewing, Finney, Hall, Hay, Hazzard, Horton, Howard, Hunsicker, Kaine, Landis, Lilly, MacConnell, M'Clean, Mantor, Minor, Mott, Niles, Palmer, G. W., Purviance, S. A., Reed, A., Rooke, Russell, Simpson, Smith, Henry W., Smith, W. H., Stanton, Temple, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N., White, Harry and Meredith, *President*—67.

ABSENT OR NOT ANSWERING TO THEIR NAMES.—Messrs. Ainey, Bailey, (Huntingdon,) Bannan, Bardsley, Bartholomew, Black, Charles A., Brown, Buckalew, Carey, Cassidy, Craig, Curtin, Cuyler, Darlington, Davis, Ellis, Fell, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Guthrie, Hanna, Harvey, Hemphill, Heverin, Knight, Lamberton, Lawrence, Lear, Littleton, Long, M'Allister, M'Camant, M'Culloch, M'Murray, MacVeagh, Mann, Metzger, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Read, John R., Reynolds, James L., Reynolds, S. H., Ross, Runk, Sharpe, Smith, H. G., Stewart, Struthers, Van Reed, White, J. W. F., Woodward, Worrell and Wright—65.

The PRESIDENT. There is a quorum of members present.

Prayer was offered by Rev. James W. Curry.

JOURNAL.

The journal of Saturday's proceedings was read and approved.

PROHIBITION.

Mr. ANDREWS presented a petition on the subject of prohibition, which was laid on the table.

FENCING RAILROADS.

Mr. DE FRANCE presented six petitions in favor of fencing railroads, which were referred to the Committee on Railroads.

PROHIBITION.

Mr. DE FRANCE also presented a petition, signed by over four thousand citizens of Mercer county, in favor of inserting in the Constitution a clause prohibiting the sale and manufacture of intoxicating liquors; also to have the same referred to the people in a separate proposition, which was laid on the table.

EDUCATION OF ORPHANS, &c.

Mr. WHERRY offered the following resolution, which was read and referred to the Committee on Education.

Resolved, That it is the duty of the State to provide effective measures for the moral, mental and industrial training of truant, incorrigible, neglected, vagrant and orphan children, and children and youth in jails, almshouses and dependent families, who are wholly or in part the wards of the State, whereby no child in the State shall be permitted to grow up in ignorance, idleness and vice.

RAILROADS.

Mr. BROOMALL offered the following resolution, which was referred to the Committee on Railroads:

Resolved, That the Legislature shall enact a general railroad law, by virtue of which any individual, company, or corporation organized for the purpose, shall have power to construct a railroad between any two points in the State, he or they paying all damages thereby caused to individual owners or to the public where streets or roads are occupied. No ground shall be taken for the purposes of construction or operating a railroad unless the same be necessary, and the question of

necessity shall be determined by proper tribunals under general law.

Mr. SAMUEL A. PURVIANCE offered the following resolution, which was read and referred to the Committee on Railroads :

Resolved, That the Committee on Railroads be instructed to inquire into the expediency of reporting an amendment providing an election by the people, every three years, of a board of railroad inspectors, composed of five persons, whose duty it shall be to examine and report upon any insufficient construction of railroads within the State, which, in their judgment, might imperil life or property, and to provide a remedy therefor, to be enforced after due notice to the companies, on pain of forfeiture of charter.

GAMBLING.

Mr. BAKER offered the following resolution, which was read and referred to the Committee on Legislation :

Resolved, That the Committee on Legislation be instructed to inquire into and report to this Convention a clause in the Constitution making the owner of the property in which a gambling saloon is held, or in which games of chance are allowed to be played, directly responsible to any person or persons who may therein lose any sums of money in any game of chance, or in any gambling operation whatever, for the amount so lost, the same to be recovered, together with the costs of prosecution, by due process of law, and the same to constitute a first lien on the property in which such loss was incurred.

LIABILITY OF SALOON KEEPERS.

Mr. BAKER also offered the following resolution, which was similarly referred :

Resolved, That the owner of the real estate in which any saloon for the sale of intoxicating liquor shall be kept, shall be personally responsible for any damages or injury that may be inflicted by any person while under the influence of intoxicating drinks procured in the said saloon, whether the damage be personal or otherwise, or be the cause of withholding from any family the necessities and comforts of life, which could have been procured with the money spent for liquor. And the Committee on Legislation is hereby instructed to present a clause of the Constitution carrying this provision into effect.

LEAVE OF ABSENCE.

Mr. HORTON asked and obtained leave of absence for Mr. Patton for a few days from to-day.

Mr. FINNEY offered the following resolution, which was referred to the Committee on Mines and Mining :

Resolved, That no incorporated company organized for mining purposes or possessed of mining privileges, shall own, hold or possess the soil or surface right of more than one thousand acres of land at any one time, exclusive of land held for rights of way for railroad purposes by due appropriation of law.

LEAVE OF ABSENCE.

Mr. ANDREWS asked and obtained leave of absence for Mr. M'Murray for a few days.

Mr. BOYD asked and obtained leave of absence for Mr. Darlington for a few days.

ELECTION CANVASSERS.

Mr. JOHN PRICE WETHERILL offered the following resolution, which was referred to the Committee on Schedule :

Resolved, That in proceeding to the election for the adoption or rejection of the amendments proposed by this Convention, when the canvassers shall not agree in registering a name, such name shall be placed on a disputed list, and the right to vote be decided by the election officers on the day of election.

LEAVE OF ABSENCE.

Mr. ALRICKS asked and obtained leave of absence for Mr. Metzger for a few days, on account of sickness.

Mr. EWING asked and obtained leave of absence for Mr. T. H. B. Patterson for a few days from to-day.

Mr. ADDICKS. Mr. President : I am instructed by the Committee on House to make the following report, which I ask to be read, and the resolution annexed thereto adopted :

The Committee on House respectfully report that during the arrangement of the fitting up of this hall, and during part of the month of January, until the Convention determined what employees were required, the Committee on House had employed as messenger and for general duty Thomas Cooper. Annexed is his account for services at two dollars and a half per day, total amount due, forty-seven dollars and fifty cents.

On reference of said bill to the Committee on Accounts, said committee declined to order its payment, for the reason that the employment of said Cooper was not authorized or approved by the Convention. In answer to this your committee desire to state that the said Cooper was of great service, and his engagement by the Committee on House was a matter of ne-

cessity. We respectfully request that the Convention will adopt the annexed resolution.

JOHN E. ADDICKS, *Ch'n*,
M. HALL STANTON,
GEORGE M. DALLAS,
JAMES BOYD.

Resolved, That the employment of Thomas Cooper by the House Committee as messenger during a part of the month of January be approved by the Convention.

Upon the question of proceeding to the second reading of the resolution it was agreed to.

The PRESIDENT. The Chair will observe that the rule of the House provides for the drawing of no warrant except upon the recommendation of the Committee on Accounts. The Chair would suggest that the motion be made to refer this resolution to that committee.

Mr. HAY. Mr. President: I suggest that instead of the resolution reported by the committee a resolution be adopted sanctioning the employment of Mr. Cooper as messenger. Upon such resolution being passed, the Committee on Accounts will of course report a resolution for the payment. I therefore move the substitution of such a resolution authorizing the employment of Mr. Cooper as messenger of the House Committee.

The motion was agreed to.

THE ARTICLE ON EDUCATION.

The PRESIDENT. The next business in order is the second reading and consideration of the article reported from the Committee on Education. Is it the pleasure of the Convention to proceed to the second reading?

The question being taken, shall the Convention proceed to the second reading thereof, it was not agreed to.

LEGISLATION.

The PRESIDENT. The next business is the consideration of the article reported by the Committee on Legislation. Is it the pleasure of the House to proceed to the second reading of this article?

The question being taken, shall the Convention proceed to the second reading thereof, it was agreed to.

The CHAIRMAN. The report will be read.

The CLERK read as follows:

ARTICLE —.

LEGISLATION.

SECTION 1. Before any member shall take his seat in the body to which he has

been elected he shall take the following oath:

I, A. B., do solemnly swear (or affirm) that I will support the Constitution of the United States, and that as a member of the Legislature I will, in all things, support, obey and defend the Constitution of Pennsylvania and discharge the duties of my office with fidelity. And I do furthermore swear that I believe myself to be lawfully elected a member of this House without any false return, bribery, corruption, or fraud committed by me or others with my consent.

Which oath shall be administered by one of the judges of the Supreme Court or court of common pleas learned in the law, in the hall of the House to which the member is elected, and shall be subscribed by the member taking it and filed of record in the office of the Secretary of the Commonwealth. Any member elect refusing to take this oath shall not be admitted to his seat, and any member violating his said oath shall be guilty of perjury, and on conviction thereof, in addition to such punishment as may by law be prescribed, shall forfeit his office and be ineligible thereafter to either House of the Legislature.

SECTION 2. Each House shall judge of the qualification of its members, but contested elections for members of either House shall be determined by the court of common pleas of the county in which the returned member lives, in such manner as shall be prescribed by law.

SECTION 3. Each House shall keep a journal of its proceedings, and publish them daily, except such parts as may require secrecy, and the yeas and nays of the members on any question, shall, at the desire of any two of them, be entered on the Journals.

SECTION 4. Either House shall have power to punish for contempt or disorderly behavior in its presence, to enforce obedience to its process, to preserve order in the House or in committees, protect its members against violence or offers of bribes, or private solicitation, and with a concurrence of two-thirds, expel a member for misconduct, not a second time for the same cause, but a member who has been expelled for corruption shall not be eligible thereafter to either House. Punishment for contempt or disorderly behavior shall not bar an indictment for the same act.

SECTION 5. No law shall be passed, except by bill, which shall be preceded by a

preamble briefly reciting the reason of the Legislature for its passage, and no bill shall be so altered or amended in the course of its passage through either House as to change its original purpose.

SECTION 6. Bills may originate in either House, but may be altered, amended or rejected in the other. No bill shall be considered unless reported from a committee, and printed for the use of the members.

SECTION 7. No bill shall be passed containing more than one subject which shall be clearly expressed in its title, except appropriation bills.

SECTION 8. Every bill shall be read at length on three different days in each House, all amendments thereto shall be printed before the final vote is taken, and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against be entered on the Journal, and a majority of the members elected to each House be recorded on the Journal thereof, as voting in its favor.

SECTION 9. No amendment to bills by one House returned to the other for concurrence shall be concurred in except by the vote of a majority of the members elected to the house to which the amendments are so returned, taken by yeas and nays, and the names of those voting for and against recorded upon the Journal thereof; and reports of committees of conference shall be adopted in either House, only by the vote of a majority of the members elected to each House taken by yeas and nays, and the names of those voting for and against recorded upon the Journals.

SECTION 10. No law shall be revived, amended or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred, shall be re-enacted and published at length.

SECTION 11. The Legislature shall not pass any local or special law.

Authorizing the creation, extension or impairing of liens.

Regulating the affairs of counties, cities, townships, wards, boroughs or school districts.

Changing the names of persons or places.

Changing the venue in civil or criminal cases.

Authorizing the laying out opening, altering or maintaining roads, highways, streets or alleys.

Relating to or incorporating ferries or bridges.

Vacating roads, town plots, streets or alleys.

Relating to cemeteries, grave-yards or public grounds.

Authorizing the adoption or legitimating of children.

Locating or changing county seats, erecting new counties, or changing county lines.

Incorporating cities, towns or villages or changing their charters.

For the opening and conducting of elections or fixing or changing the place of voting.

Granting divorces.

Erecting new townships or boroughs, changing township lines or borough limits.

Creating offices or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts.

Changing the law of descent or succession.

Regulating the practice or jurisdiction of or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery or other tribunals.

Regulating or extending the powers and duties of aldermen, justices of the peace, magistrates or constables.

Regulating the management of common schools, the building of school houses and the raising of money for that purpose.

Fixing the rate of interest.

Affecting the estates of minors or persons under disability.

Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury.

Exempting property from taxation.

Creating corporations, or amending, renewing or extending the charters thereof.

Granting to any corporation, association, or individual, any special or exclusive privilege, or immunity.

Granting to any corporation, association, or individual, the right to lay down a railroad track.

Nor shall any bill be passed granting any power or privileges in any case, where the manner, form, or authority, to grant such powers and privileges shall have been provided for by general law, and in no case where a general law can be made

applicable, nor in any other case where the courts have jurisdiction, or are competent to grant the powers, or give the relief asked for.

SECTION 12. No local or special bill shall be passed, unless public notice of the intention to apply therefore shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall be at least sixty days prior to the introduction into the Legislature of such bill, and in the manner to be provided by law. The giving of such notice shall not be waived by any person or interest, and the evidence of such notice having been published, shall be exhibited in the Legislature before such act shall be passed.

SECTION 13. The Speaker of each House shall publicly in the presence of the House over which he presides, while the same is in session, sign all bills and joint resolutions passed by the Legislature.

SECTION 14. The Legislature shall prescribe, by law, the number, character, duties and compensation of the officers and employees of each House, and no payment shall be made from the State Treasury or be in any way authorized to any person, acting as such officer or employee, except they shall have been elected or appointed in pursuance of law.

SECTION 15. All stationery, printing paper and fuel used in the legislative and other departments of government, shall be furnished, and the printing, binding and distributing of the laws, journals, department reports and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts, and all such contracts shall be subject to the approval of the Governor, Auditor General and State Treasurer.

SECTION 16. No law shall be passed which shall operate to extend the term of any public officer, nor to increase or diminish his salary or emoluments after his election or appointment.

SECTION 17. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

SECTION 18. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the Executive, legislative and judicial departments of the Commonwealth, interest on the public debt, and for common schools, all other appropriations shall be made by a separate bill, each embracing but one subject.

SECTION 19. The general appropriation bill shall, before it becomes a law, be presented to the Governor. If he disapprove the bill, or any item or appropriation therein contained, he shall communicate such disapproval, with his reasons therefor, to the House in which the bill originated, who shall enter such reasons at large upon the Journals thereof, and immediately proceed to re-consider such bill or the separate items thereof disapproved. All items in said bill not so disapproved shall have the force and effect of law. Any item so disapproved shall be void unless re-passed by two-thirds of each House. And as to such bill or any item disapproved the vote shall be taken by yeas and nays, the names of the persons voting yea and nay to be entered on the Journals of each House according to rules and limitations hereinbefore prescribed as to other bills.

SECTION 20. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, except by a vote of three-fourths of all the members elected to each House.

SECTION 21. No appropriation shall be made to any person or community nor to any denominational or sectarian institution, corporation or association for charitable, educational or benevolent purposes.

SECTION 22. The credit of the Commonwealth shall not in any manner or event be pledged or loaned to any individual, company, corporation or association whatever; nor shall the Commonwealth hereafter become a joint owner or stockholder in any company, or association, or corporation.

SECTION 23. The Legislature shall not authorize any county, city, borough, township or incorporated district, by virtue of a vote of its citizens or otherwise, to become a stockholder in any company, association or corporation, or to obtain money for, or to loan its credit to any corporation, association, institution, company or individual.

SECTION 24. The Legislature shall not delegate to any commission of private

persons, corporation or association any power to make, supervise or interfere with any public improvement, or to levy taxes, or perform any municipal function whatever.

SECTION 25. The Legislature shall not create offices for inspecting, weighing or guaging any merchandise, produce, manufactures or commodity; this shall not, however, affect any office created, or to be created, to protect the public health and safety, or for supplying the public with correct standards of weights and measures.

SECTION 26. No act of Assembly shall limit the amount to be recovered for injuries to person or property, and in case of death from such injuries, the right of action shall survive, and the Legislature shall prescribe for whose benefit such actions shall be prosecuted.

SECTION 27. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be regulated by law.

SECTION 28. No money shall be paid out of the treasury, but in consequence of appropriations made by law, and on warrant drawn by the proper officers in pursuance thereof.

SECTION 29. No obligation or liability of any railroad, or other corporation held or owned by the Commonwealth, shall ever be transferred, remitted, postponed or in any way diminished by the Legislature, nor shall such liability or obligation be released except by payment thereof into the State Treasury.

SECTION 30. No bill shall be passed giving any extra compensation to any public officer, servant, employee, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim or part thereof now existing, or hereafter created against the Commonwealth, without previous authority of law, and all such unauthorized contracts and agreements shall be void.

SECTION 31. Every bill which shall have passed both Houses, shall be presented to the Governor, if he approves he shall sign it, but if he shall not approve he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their Journals and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which like-

wise it shall be re-considered, and if approved by two-thirds of that House, it shall be a law, but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the Journals of each House respectively. If any bills shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by their adjournment, prevent its return, in which case it shall be a law unless he shall file the same with his objections in the office of the Secretary of the Commonwealth, and give public notice thereof by proclamation within thirty days after such adjournment.

SECTION 32. No corporate body for banking and discounting privileges shall be created or organized in pursuance of any law, without three months previous public notice at the place of the intended location, of the intention to apply for such privileges in such manner as shall be prescribed by law. Nor shall a charter for such privilege be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the Legislature the power to alter, revoke, or annul the same, whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators.

SECTION 33. The Legislature shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any hereafter to be conferred by or under any law, whenever in their opinion it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

SECTION 34. Every order, resolution or vote to which the concurrence of both Houses may be necessary (except on the question of adjournment) shall be presented to the Governor, and before it shall take effect be approved by him, or being disapproved, shall be re-passed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill.

SECTION 35. Any bill passed in disregard of the provisions and directions pre-

scribed in this article shall be void and of no effect, and when the validity of any law passed by the Legislature is questioned in any court of record, it shall be competent for such court to inspect the Journals of either House, and if it does not appear thereon that all the forms of legislation in both Houses, as hereinbefore prescribed, have been observed in the passage of such law, the same shall be adjudged by such court to be void.

SECTION 36. A member of the Legislature shall be guilty of bribery, and punished as shall be provided by law, who shall solicit, demand, or receive or consent to receive, directly or indirectly, from any corporation, company, or person, any money, testimonial, reward, thing of value, or personal advantage or promise thereof, for his vote or official influence, or with an understanding, expressed or implied, that his vote or official action in any way is to be influenced thereby, or who shall, after his election and during his term of office, consent to become or continue to act as the agent, attorney or other employee of any corporation or person, knowing such corporation or person has or expects to have any personal or special interest in the legislation of the Commonwealth.

SECTION 37. Any person who shall directly, or indirectly, or by means of or through any artful or dishonest device offer, give, or promise any money, goods, thing of value, testimonial privilege or personal advantage to any Executive or judicial officer, or member of the Legislature of this Commonwealth, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and punished in such manner as shall be provided by law.

SECTION 38. The Legislature, at its first session after the adoption of this Constitution, shall provide by law to compel any person who may have offered, or promised a bribe, or solicited, or received one to testify against any person who may have committed the offence of bribery as defined in the foregoing sections, and the person so compelled to testify shall be exempt from punishment for the offence concerning which he is so required to testify, and of which he may be guilty, and any person convicted of the offence of bribery, as hereinbefore defined, shall, as part of the punishment therefor, be disqualified from holding office or position of honor, trust, or profit, in this Commonwealth.

SECTION 39. Nothing in the foregoing sections shall affect the validity of any existing statutes in relation to the offence of bribery.

SECTION 40. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the House of which he is a member, and shall not have the right vote thereon.

THE REPORT OF THE COMMITTEE ON LEGISLATION.

The Convention then resolved itself into committee of the whole, Mr. Armstrong in the chair, on the report submitted by Mr. Harry White, chairman of the Committee on Legislation.

Mr. KATNE. Mr. Chairman: I offer the following amendment to go in at the end of the section.

The CLERK read: —

[Mr. HARRY WHITE addressed the Convention. His speech, the manuscript of which was furnished to him for revision, has not been returned. It will be published hereafter.]

Mr. J. S. BLACK. Mr. Chairman: This is a subject upon which I speak with great reluctance. But I am deeply anxious about it. I do most devoutly believe that the destiny of this Commonwealth, and perhaps that of the whole country, depends upon the decision to which this Convention may come. I beg a brief hearing.

It will be admitted that the legislative function is by far the most important one in any free government. It is the supreme power of the State. All others are insignificant in comparison to it, inasmuch as all the others are bound to obey its will. The Executive is absolutely controlled by it in all the details of his administration. It marks out the path in which he shall walk, and it is able to punish him severely for any departure from it. The Legislature cannot appoint the judges; but it can do more, it can command them what they shall do after they are appointed. All the legal justice we get is manufactured at the seat of government and sent down in bulk to the courts, where it is distributed among the people according to the wants and merits of each individual. The Legislature regulates the practice of the courts, makes and un-makes the rules of evidence and furnishes the standard of decision for every cause. It defines all public offences and supplies the remedy for every private wrong. All rights and all obligations are protected

and enforced in the way that it prescribes, and cannot be either protected or enforced at all without its aid and assistance.

The members of the Legislature are the custodians and trustees of all public property. They can sell it, or give it away, or they can increase it by making additional purchases. The taxing power enables them to descend as deep as they please into the pockets of the people of every class, and it has absolute control, and appropriates all the revenue after it is collected.

What is a still higher consideration, they are the guardians of public morality. It depends upon them whether virtue shall be promoted, or vice and crime be encouraged. The theory is that the Legislature, being the supreme power of the State, commands what is right and prohibits what is wrong, and, in a certain sense, the mere command or prohibition does of itself make it right or wrong. What we are taught in the Bible is certainly true, that they who frame iniquity into a law, compel the people to become workers of iniquity.

The time was, Mr. Chairman, when the State of Pennsylvania, then a mere colony, containing, perhaps, less than fifty thousand inhabitants, had a reputation throughout the earth for independence, justice, peace and good order—for everything that goes to make up the happiness of an organized society. There was no portion of the world from which the eyes of the best and wisest men were not turned in admiration towards this community. All this resulted from the wise and just system of laws adopted by the illustrious founder of the colony. We lost our character as fast as we abandoned the principles upon which the early settlers conducted their legislation. As we can trace the grandeur, the honor, the high reputation of the State to the just laws of the earliest time, so we can read the history of her shame and her misfortunes in the statute books of a later period. If we can now but unite the high tone of public morality which pervaded our legislation in the better days of the State with the wealth and science of the present generation, then you may hope to see this Commonwealth set higher than ever, the envy and the example of all the world. Without infusing into our new Constitution something which will have that effect, at least in degree, our institutions must, before a very long time, rot to pieces.

What we want above all things upon

the earth, is *honest legislation*; and when I say we *want* it, I use the word in the double sense of needing it, and lacking it.

After all that has been said upon this floor, it cannot be denied that the Legislature of the State of Pennsylvania has habitually and constantly, for the last twenty-five years or more, betrayed the trust reposed in its members; and this has gone so far, that we must have reform if we would not see our institutions perish before our eyes. The horrible character and extent of the evil, will be appreciated when you recall the solemn words of the gentleman from Dauphin, (Mr. MacVeagh,) the chairman of the Committee on Legislature. His position in this Convention, to say nothing of his character and conscience, would make him extremely cautious not to be guilty, even of the slightest exaggeration, upon so grave and important a topic. He told us that corruption of the Legislature was a cancer at the heart of the State, which was eating its very life away. Another gentleman, the delegate from Erie, (Mr. Walker,) without intending to be at all condemnatory, but rather the reverse, declared that it was no use to swear the members of the Legislature, because they were, to his certain knowledge, so utterly degraded that they would take the oath and then immediately lay perjury upon their souls, without scruple and without hesitation. I believe him, for he certainly knows whereof he affirms. The evil fame of this thing has gone forth through the length and breadth of the country inasmuch that the gentleman from Indiana, (Mr. Harry White,) the chairman of the Committee on Legislation, vouches for this statement: That when one of his colleagues in the Senate was traveling in Connecticut, and it became known that he was a member of our Legislature, that fact alone raised a presumption against his honesty so violent, that there was some hesitation about letting him go into an unoccupied room, least the portable property to be found there might disappear when he went out. There was a time when membership of our State Legislature was a passport to honor and admiration everywhere, from a Parisian drawing room to the cottage of a peasant. Now that same Legislature is a stench in the nostrils of the whole world.

There are about seventeen gentlemen on this floor who were formerly members of the Legislature. Of course they passed through the furnace of that temptation

without the smell of fire upon their garments. While they have no sympathy with crime, they must naturally be anxious to make the best defence they can, for the reputation of that body to which they once belonged. But instead of a defence, all they can do is to hang their heads and acknowledge, with shame and sorrow, that the accusations are true.

The cry against this corruption comes up, not only from every part of this House, but from every quarter of the Commonwealth. It is borne to us on the wings of every wind. In his speech of this morning, the gentleman from Indiana (Mr. Harry White) acknowledged that the universal demand for a reform of these abuses had brought this Convention together, and without that it never would have been called. Nor is it a mere popular clamor. It is founded upon incontestible facts which have passed into the domain of history, and will stand there forever.

As long ago as 1836, the Bank of the United States pushed its charter through the Legislature, partly by direct bribery and partly by a base combination of private interests, which were openly and shamelessly avowed upon the face of the bill itself. The speculation exploded in the course of a short time; but it scattered destruction everywhere, and brought desolation to a thousand firesides. It disgraced the character of the State; destroyed her credit; reduced her public securities to forty cents on the dollar; branded her with repudiation, and made her name a hissing by-word among all the nations. The perpetrators of that atrocious outrage were never called to any account, and their impunity was an invitation to all others to go and do likewise. For years afterwards, the other banks, combining themselves together, corrupted the Legislature and robbed the public according to the statutes in such case made and provided.

In process of time another class of corporations grew up, composed of more adventurous men with larger capital and with a more plausible claim to public favor.

I think that everybody who has looked at the history of our railroad system will admit that in its original organization it was intended for good and proper purposes. It promised necessary improvements which could not have been made in any other way. One of them, organized to make a road from Harrisburg to Pitts-

burg, undertook the duty under a charter, every part of which is marked with cautious wisdom. If that company had been kept within the limits originally assigned to it, its career must have been entirely beneficent. But its organization gave it an influence upon the Legislature which it used unsparingly. It swallowed up nearly all the property that the State ever had. It took it substantially as a gift; the five or six millions it paid was no consideration for the fifty or sixty millions it got. But that is not all; the gift of this immense domain was followed by a surrender, upon the part of the Commonwealth, of her right to collect her own revenue, amounting to millions more, and which belonged to her as much as the purse in your pocket belongs to you.

Mr. CUYLER. My friend alludes to the repeal of the tonnage tax.

Mr. BLACK. I do; the learned gentleman understands me rightly. I refer to that fatal, that perfidious statute which the Legislature, the lobby and the railroad company conspired to pass, disarming the State of her just right to collect the duty, which was her own, of three mills upon each ton of produce carried. It was a terrible wrong; for it ground the face of labor to pour a great stream of wealth into the imperial treasury of a corporation which had no claim of right to it. By such dereliction of duty on the part of the Legislature, that corporation has grown so mighty that its little finger is thicker than the loins of the Commonwealth which created it. I do not say that it bestrides your narrow State like a Colossus, for the ancient Colossus of Rhodes was but the image of a pigmy in comparison to this Colossus of railroads. Her stride is across the continent from ocean to ocean. Her head is in the clouds and the arms of her gigantic power stretch out on either side from one horizon to the other.

I hope my very good and most amiable friend from the city (Mr. Cuyler) will take no exception to what I am saying. I would fain speak no evil, either of him or his clients. I know that he never tampered with the Legislature and never advised anybody else to do so. On his brow such a shame as that would be a shame to sit. Nor am I complaining of the corporators themselves. I will take it for granted, if he asserts it, that there is not a man belonging to the Pennsylvania railroad that would not run away from any proposition to make money for it or by it.

He may say, if he pleases, that they have impoverished themselves by going about to do good for the public, or that if they have a little more than their share of wealth, it has been thrust upon them against their will. But this I do say, that the several Legislatures which have stripped me and my fellow-citizens of our just rights, to clothe this corporation with imperial power were treacherous to their duty and basely unfaithful to their high trusts.

Other corporations have powers similarly bestowed and nearly as great. Four of them have had the advantage of the loose legislation at Harrisburg, so as to secure monopolies a thousand fold more oppressive than that which made the name of Sir Giles over-reach infamous in the dramatic literature of England. What was the exclusive privilege of selling sweet wines in the reign of Elizabeth compared to the power which puts its own price upon every basketful of anthracite coal that is consumed in a country like this?

All of the companies represented in this body—nay, my friend on the left (Mr. Gowan) need not protest. I do not say that the Reading railroad is represented here. He represents the same constituent body that I do; he is as faithful as I am; and we are both as true as steel. But I have some idea that my learned friend on the right (Mr. Cuyler) is, or was once connected—most honorably of course—with the Pennsylvania railroad as counsel.

MR. CUYLER. Mr. Chairman: I beg leave to remind my learned friend that I have had his assistance in that capacity.

MR. BLACK. True; those gentlemen, or some of them, have been my clients, and I desire to speak respectfully of them for that reason, if for no other. They have been, and they probably will be again, when they have a perfectly good and just case and want a thoroughly honest lawyer. [Laughter and applause.]

But, Mr. Chairman, the unfaithfulness of the Legislature is the subject with which we are dealing. Let us pass to another point in the arraignment. After the corporators were through with her she had left to her about nine million dollars—the remnant of a once magnificent fortune. That sum was deposited in what was called the sinking fund. It was placed there with special care. It was hedged around with constitutional interdicts. It was declared with the utmost solemnity in the fundamental law itself that it should be applied to no other pur-

pose than the payment of the public debt. Yet a combination of private interests was organized to rob the State of this last residuum. A ring was formed; the Legislature and the lobby gave it their united sanction; they dived into the sinking fund and came up with the nine millions in their hands. The grab was nearly successful; it was defeated only by the interposition of the Governor's veto.

These are only a few of the instances in which the Legislature has proved treacherous. I have not mentioned one in a hundred. Nor have I selected the worst cases. Let any gentleman who wants fuller information look at the two papers made by Mr. Jordan, the late Secretary.

The whole system, according to his description of it, is saturated with corruption from the crown to the toe. It has gone so far that the veto power is utterly incapable of stopping it. He declares that if the Governor would try to stop it, combinations would be made against him, and render him as powerless as the driver of a runaway team after his reins are broken.

But there is one fact stated by him, which will astound you when it is mentioned. He says that the office of Treasurer is the most lucrative in the State. Its profits must, therefore, exceed the enormous sums received by the officers of the State House row in this city. This, he says, induces a regular scramble for the treasurership on the first week of every session; and then he adds that the votes which elect the Treasurer are notoriously bought by the successful candidate. The significance of that simple statement of the Secretary will hardly be understood without a little reflection. Remember that the Treasurer is paid by a fixed salary.

MR. HOWARD. Five thousand dollars per annum.

MR. BLACK. No man holding that office can, by any possibility, make out of it one cent beyond the \$5,000 allowed him by law, without being guilty of some act as dishonest as the plainest stealing that ever was done by a common thief. Yet, somehow, the Treasurer of the State gets off from his office enough to buy up a majority of the Legislature, and after making all the deductions necessary for his re-imbursement of that expense, there is enough left in his own pocket to enrich him beyond any other officer. These things, mind you, are not all done at once. The Treasurer does not take all of this sum at one grab; nor does he buy up

the members by wholesale. He has to make a separate bargain with each individual. If you could suppose one of these Treasurers to be convicted of every distinct offence that he has been guilty of in a year, and then suppose him to be sentenced according to law, upon each conviction, what would become of him? At the most moderate calculation you can make, it would take him at least fifteen hundred years to serve his time out in the penitentiary, [laughter,] and for a portion of that period he would be accompanied by a majority of the members of the Legislature. [More laughter.] These are the men that are entrusted with the collection and expenditure of all your revenue, with the control of all your public affairs, and with the power which gives or withholds security to your lives and property.

But, Mr. Chairman, I do not know that we ought to blame the members of the Legislature too severely. Something ought to be allowed for the temptations with which they are surrounded. They walk among snares, and pit-falls, and man-traps. In fact they do not represent us. We are not governed by the men we send there. Our masters are the members of the lobby. They are organized into a third House, whose power is overshadowing and omnipotent. They propose the laws that suit themselves, and the interested parties who send them there. The other Houses simply register their decrees. That our rights and liberties should be in such hands is disgusting in the extreme, for they are generally the most loathsome miscreants on the face of the earth.

My friend from Dauphin (Mr. MacVeagh) spoke of legislation under the figure of a stream, which, he said, ought always to flow with crystal water. It is true that the Legislature is the fountain from which the current of our social and political life must run, or we must bear no life; but as it now is, we keep it merely as "a cistern for foul toads to knot and gender in." He has described the tree of liberty, as his poetic fancy sees it, in the good time coming, when weary men shall rest under its shade, and singing birds shall inhabit its branches and make most agreeable music. But what is the condition of that tree now? Weary men do, indeed, rest under it, but they rest in their unrest, and the longer they remain there the more weary they become. And the birds—it is not the wood-lark, nor the thrush, nor the nightingale,

nor any of the musical tribe that inhabit the branches of our tree. The foulest birds that wing the air have made it their roosting place, and their obscene droppings cover all the plains about them;—the kite, with his beak always sharpened for some cruel repast; the vulture, ever ready to stoop upon his prey; the buzzard, digesting his filthy meal and watching for the moment when he can gorge himself again upon the prostrate carcass of the Commonwealth. And the raven is hoarse that sits there croaking despair to all who approach for any clean or honest purpose.

Mr. Chairman, this state of things cannot go on without bringing us to utter destruction. It is getting worse and worse, and our institutions must utterly perish if we do not stop this mischief. We may preserve the forms of republican government, but the substance will pass away and with it will depart all that is perfect in politics, all that is pure in morals, all that makes life, liberty and property secure; all that makes existence in a free country worth having.

Shall we stand by and see this prodigious ruin rushing down upon us without an effort to arrest it. No surely not. But seeing that we are sent here for the very purpose of stopping it, we will perform our duty, and, with the help of the living God, we will succeed in our mission. We will deliver our good old Commonwealth from the body of this death.

But how shall that end be accomplished? I admit that it is possible to answer this question in different ways, when we come to the details of the remedy. But the common sense and common honesty of the people as represented here will make us unanimous at least on this; that the remedy shall be efficient, radical, thorough and complete. We will not insult our constituents by offering them mere palliatives for the hideous malady with which they are afflicted. They know and we know that this is not a case for the quackery of half-hearted measures. We must cut the cancer out. A surgical operation on a vital part of the body, if it be not entirely successful, always hastens the death of the patient.

I am thoroughly persuaded that there is some fatal defect in our American system of legislation. It has failed ignominiously wherever it has been tried. It is not only here in Pennsylvania that we have rotten representatives and dishon-

est legislation. The same evil is found in the other States. It exists in its worst form and operates on its grandest scale in the Legislature of the Union. What is the cause?

The President of this Convention (Mr. Meredith) struck the point when, speaking of the misconduct of members of the Legislature, he said that it was because they were not responsible and nobody was responsible for them. Washington said long ago that irresponsible power could never be safely trusted in human hands. By irresponsible power I mean power which may be abused without calling down any punishment upon the heads of those who commit it. In this respect all our Constitutions are anomalous. They are a series of commands without any sanction to enforce them. This is particularly and emphatically true with regard to those who execute the supreme power of making your laws. You trust the members of your Legislature implicitly. The framers of the federal Constitution, who were imitated in all the States, seem to have thought of legislative corruption as the Spartans did of parricide, that it was an impossible crime. The Supreme Court of the United States, in *Fletcher vs. Peck*, influenced by this delusion because it was embodied in the Constitution, declared that they did not believe in the corruption of a State Legislature, though it was incontestibly proved, admitted by the parties, and found to be true by a special verdict in the very case before them. Now, if anything is established by all human experience it is that no rule of action, no law, no commandment will ever be observed by men who can promote their interests or gratify their passions by breaking it, unless they are deterred by the fear of retributive justice. If you desire men to do right you must punish them for doing wrong. This may seem like a low view of human nature, but we cannot help it; we are as we are made. Men are not equal to angels, and even the angels fell. In all cases every rule of conduct is coupled with a penalty for its violation;—that is in all but ours, and it is true of ours in all except the fundamental and most important part of it. This is also the principle which runs through the divine law. Almighty God, who created the heart of man, understood the impulses which would govern it, and he annexed a sanction to every one of his commandments. There is no *brutum fulmen* in the Bible. The first law that ever was made

for the regulation of human conduct is, in this respect, the model upon which every other has been framed: "On the day thou eatest thereof thou shalt surely die." And if Satan had not managed to convince our first parents that the penalty would not be inflicted, the fruit of the forbidden tree would never have been tasted.

Can there be any reasonable doubt that corruption reigns in the Legislatures of all the States and in Congress, for the reason that it can be practiced with perfect impunity? Can you or do you expect any thing else from a body of men whom you surround with temptations of every kind to lure them into crime at the same time that you tell them they shall suffer nothing if they commit it? Such a system can not and it will not come to good. You might as well hope to gather grapes from thorns or figs from thistles.

In deciding upon the nature of the punishment which these great criminals ought to suffer, we must not consult our blood but our judgment. Our new laws must have no *ex post facto* operation, and the penalties, though certain, must be moderate even for future offences. No sentiment of vengeance must seek its gratification here. If the honest citizens of the State who have been so basely betrayed by these miscreants would obey the impulse of their natural indignation, and had infinite power to work their will upon them, they would set them upon the remotest battlement of God's creation—far out upon the borders of chaos and old night—and then lash them naked around the circumference of the universe through all eternity. But human punishment can be inflicted only for the purpose of defending society; all beyond that must be left in the hands of divine justice: "Vengeance is mine, saith the Lord; I will repay."

We must look, therefore, to see by what means we can prevent these crimes, and confine ourselves solely to defensive measures. While we should avoid that kind of mercy to the guilty which is cruelty to the innocent, we must not lay a hostile finger on the most atrocious criminal, except in so far as that may be necessary to reform him or to deter others. To do even that would not be either wise or just, unless we accompany it by some regulation which will relieve them from the temptations to which they are now exposed. It would not be fair to surround members of the Legislature with snares set for their virtue and then pun-

ish them when they lose it. Let us weaken the motives to evil at the same time that we strengthen those which impel towards right. So may the preponderance always be on the proper side of the scale.

I will now enumerate the measures in which we propose to embody these vital reforms. I hope the Convention will believe as I do, that if adopted they may save us from the greatest of all public calamities, and at the same time give no trouble or even inconvenience to any honest and upright man whether in or out of the Legislature.

I. *Confine the power of the Legislature within limits as narrow as possible consistently with a proper regulation of our affairs.* This cannot be done to any great extent. A free people must have legislation, and the freer they are the more they need it, for there can be no liberty without law. The various opinions and diversified interests of such a people as are ours, multiply the laws that are necessary for their government. After limiting the power of the Legislature as much as you can, you must still leave it in possession of a great deal. Indeed you can scarcely diminish it in any perceptible degree; and what is left in its hands is liable to be as frightfully abused, as if none was taken away.

II. *Prescribe certain forms of proceeding which will insure deliberation and publicity.* I need not specify these forms. You find them in the report. They require a bill to be reported by a committee, and then read through and through, not once or twice, but three times in each House; the final vote to be taken by yeas and nays, and recorded; each bill to have but one object, and that expressed in its title; every law to be preceded by a preamble, expressing the reasons of the Legislature for assenting to it; the final passage of the law to be concurred in by a majority of members elected to both Houses, and after passage, the title of it to be publicly read immediately before it is signed by the Speaker. These forms will do much to prevent hasty and thoughtless legislation, and make it much more difficult than it is now for members to commit frauds upon one another by clandestinely procuring the passage of bills which a majority do not consent to. But they will not throw any serious impediment in the way of injurious legislation to which a majority of the members can be induced to consent. The

most iniquitous laws we are cursed with have been passed without resort to the tricks which these forms are intended to prevent. Corrupt combinations are made every day which carry a majority, with their eyes wide open, through all frauds, and as Secretary Jordan tells us, strong enough to break down the Executive, armed though it be with the veto. While, therefore, these provisions are salutary and desirable, they are not sufficient of themselves to save us. I proceed to show what more seems to be necessary.

III. *Define bribery so as to include all sorts of corruption.* When a member is to be corrupted, he is not in one case out of a hundred offered money in the plain form of a *quid pro quo*. Almost never is a contract made in words that the vote shall be sold for a certain price paid down as promised. The money is presented as a gracious gift or as a testimonial of the donor's affection—it is slipped into the pocket of the member without a word, or it is placed under his pillow, where he finds it. Most commonly the object is reached by a wider *circum bendibus*. The member is employed as attorney for the party interested in his vote, and the bribe comes in the shape of a fee for other services. It is not at all unusual for members who are considered respectable to let themselves be bought in this way. Still oftener the end is accomplished by giving the member an interest in the subject matter, whose value is to be affected by his vote. The stock of a corporation is distributed "where it will do most good," or the member is taken as a partner, into some speculation which he is to promote by procuring legislation. In a thousand ingenious ways it may be made his private interest to disregard his public duty. All these ways are equally corrupt, and the people owe it to themselves to stop them.

IV. *Extinguish the lobby at once and forever, by making all private solicitation of members by interested parties or their agents a criminal offence.* This is so obviously proper and right that it can hardly be necessary to vindicate it. The hirelings of corruption have organized themselves into a "third house," they have usurped the power which the Constitution gives to the other two; they exercise the supreme legislative authority of the State; the Senate and House of Representatives are degraded into their mere tools, and I repeat that they are the most loathsome wretches that are suffered to live in the world. All men agree to this as a

matter of fact. Nobody doubts the omnipotent power of the "third house" or the evil purposes for which it is used, nor has any one ever suggested the least possible good that can result from its continued existence. The total abolition of this "third house" is demanded not only to secure the weak from temptation, but as a measure of protection to the strong and upright from insult and annoyance. By adopting it you purify the Legislature instantly and restore the honor of your government; for there never has been any bribery, corruption, or other improper influence which did not come privately and secretly in that way. Let no man say that we desire to cut off communication between the Representative and his constituents. All public means of expressing his opinions and wishes are to be left open; the right of petition shall be as sacred as ever; the privilege of being openly heard before committee shall be carefully secured; the right of the people to assemble and speak their will, or to discuss their affairs through the press shall not be denied. The Representative ought to be controlled in some measure at least by an enlightened public opinion, but it is not necessary for that purpose that he should open his ear to the insulting whispers of the miscreants who now dog him up and down the board-walk, and follow him to his lodgings, and stand behind his chair when he votes.

V. *Make all fraudulent acts of the Legislature void.* As the law is now held by all the courts a legislative grant, whether of money, lands or privileges, is sacred and inviolable, no matter how clearly you can prove that it was obtained by fraud, deception or bribery. This doctrine was established seventy years ago by the Supreme Court of the United States in *Fletcher vs. Peck*. The case itself was a fraud; it was made up at Boston by two men who lived in Tennessee, both of them having the same interest in the same fraudulent grant, and the counsel who pretended to argue it was employed and paid to give the cause away. This is not publicly known, but I assert it on the authority of Judge Catron, who knew the parties well, and was often told by both of them that the case was a sham, and the judgment collusive. The principle apparently decided by it is not found in the common law, and is directly in conflict with common sense and plain justice. It violates all the analogies of our jurisprudence. Not only private grants but judi-

cial decrees and executive concessions are pronounced mere nullities, when brought into contact with any kind of corruption. Yet the grossest fraud upon the public or upon individuals when committed by or through the Legislature is consecrated and protected. It has wrought intolerable mischief. It gives infinite encouragement to the worst form of public immorality. It shelters every villain of a certain class who can get away with his booty; and stifles inquiry into the worst wrongs by making it practically useless. If legislative acts were void from corruption, what man or what corporation would think it worth while to pay bribes? We can and ought to abolish this absurd and iniquitous principle. Let it be done with such reservations as will prevent any loss to innocent people, but let us cease to pay a premium for legislative rascality.

VI. *Swear or affirm every member before he takes his seat that he will not only support but obey and defend the Constitution in all things.* The oath to support it required by the federal Constitution, was intended as a mere test of political opinion, to exclude the enemies of the new government from office. To support does not mean to obey. You support the church when you rent a pew and pay the preacher, though you do not square your moral conduct by its precepts. But this preliminary oath being promissory in its nature, I do not think it just to make the subsequent violation of it punishable as perjury. Where it has been taken in good faith, with pure intent to keep it, a breach of the promise it expresses does not justify a charge of false swearing. That among other reasons makes it necessary that there should be another oath or affirmation upon which perjury can be assigned.

VII. *Require every member at the close of his last session to render an account of his stewardship to his own constituents at home.* Make him swear or affirm, specifically, that he has obeyed the Constitution, that he has not listened to private solicitation, or taken any bribe, or knowingly done any other act in his official capacity interdicted by the fundamental law. If his hands are clean he will be willing to show them. If they are not, and he declines to show them, the public can have no further need of his services, and he should not be eligible to the same or to any other office. The necessity of taking this last oath will effectually cut him off from all intercourse with known lobbyists, and free him completely from in-

proper influences, for unless he is a moral monster, he will not do a thing with the preconceived determination to swear that he has not done it. I do devoutly believe that this measure, connected with the others proposed, will make our legislation as pure as it was in the days of William Penn.

In conclusion, let me call the attention of gentlemen to the resemblance between these provisions and those which prevail in analogous cases of a private nature. A member of the Legislature is charged with the administration with the most important trusts known among men. If any body should be held, and held hard, to his duty, it is he. Yet we only propose to enforce his obligations by the same means which we use against a private trustee. When an executor, administrator or guardian takes his duty upon him, you swear him to obey the laws. When he goes out you compel him to render an account, on oath, in which he specifies the particular acts he has done, and if he swears falsely, you indict him for perjury. And if he serves his own interests by making a contract in fraud of his *cestui que trust* you hold him to be void. Why should not the great trust of a legislator be subject to the same rules? Is it because you are willing the public trust shall be betrayed, but desire the private one to be honestly administered? This will hardly be the answer of those who oppose us. What it will be I know not.

MR. CUYLER. Mr. Chairman: I confess it is with considerable self-distrust that I rise to say a few words in answer to part of that which has fallen from the eloquent and distinguished gentleman (Mr. J. S. Black) who has just addressed this Convention. With much that he said I cordially agree. I listened with earnest sympathy to those brilliant and eloquent words in which he described the condition of the legislation of Pennsylvania, and I share with him in as earnest a hope as he can possibly indulge, for the application of efficient remedies for the ills we complain of. I confess, sir, that I have no hope of remedy in the direction of which the gentleman speaks, for I am profoundly convinced that a man who would take a bribe, whether that bribe were a money bribe, or that more insidious form of bribery than the use of money, which is more often employed, the man who would take a bribe in any form, would take the oath precedent and subsequent provided for by the amendment of the gentleman

from Fayette, (Mr. Kaine,) as it has been read in your hearing, and thus calmly disregard it. It is not by oaths, it is not by promises, it is not by pledges, that dishonest men are to be made honest, or untruthful men are to be made truthful. We are to find our remedy, if at all, far back of all this, for unless we have a healthful public sentiment, and unless we have a healthful public action, consequent upon that public sentiment, we shall utterly fail to have any redress, unless we shall provide for purity in our elections, honest nominations, a fair expression through the ballot-box, we shall fail to find any remedy for the ills of which we complain; and if we cannot remedy those things, as I have said before upon this floor, it were better that we abandon our republican system of government and confess it a failure and substitute something else for it.

While I admit the danger, as I say I have no hope in the remedy in the direction to which the gentleman has pointed; not that I would condemn the oath required to be taken by the members of the Legislature before they take their seats; ancient usage and precedent, the custom of all the States and countries reasonably support the propriety of such an oath; but I am sorry to say that I am an utter unbeliever in the thought that gentlemen are afterwards influenced, as they should be, by that oath, and their action as members of the Legislature in any adequate degree controlled by it. If they go there as impure men; if they go there from impure motives and with impure purposes; that oath, nor the oath which is taken afterwards, will restrain them one step in that dishonest direction in which they have been induced to walk.

Now, sir, the learned and distinguished gentleman, alluding to me personally, acquitting me personally, of any participation in, or sympathy with any one of the wrongs he so eloquently condemns, nevertheless denounces interests which I am not ashamed to confess I have a strong sympathy with, and of which, in courts of justice, and in the community, I have been a recognised and not a regretful advocate.

I am not here to say that the great corporate interests of this Commonwealth have not influenced and induced legislation; but I am here to say that they have influenced and induced legislation only because it was necessary for them to protect them-

selves from the assaults which dishonest men made upon them, and from the efforts made in the Legislature to take away from them that which they lawfully possessed, or to prevent them from acquiring that which the interests of the Commonwealth demanded they should acquire; and I will be pardoned if, following the gentleman who has just addressed the committee, I advert very briefly and impulsively to a few thoughts which he has presented here, and which he has regarded as illustrative of the truth for which he is contending.

I understood the gentleman to say that the legislation which spoke into existence, in the first instance, the Pennsylvania Central railroad company, was wise and salutary legislation, but that much of the legislation which succeeded it was unwise and injurious. The great works of internal improvement of the Commonwealth had preceded the building of that road. The Commonwealth herself had founded her great lines of internal improvements in this State by legislation as early as the year 1836, but they had ceased—though nobly useful in their day and generation—to achieve the purpose for which they had been created. This usefulness, once great, had largely disappeared. Consisting of lines of railroad and canal, constructed in the infancy of the engineering art, once answering the purposes for which they were made. Coming now in competition with improved lines of railroad from the Atlantic cities and connected with the far west, they had ceased to be profitable to the Commonwealth or to the people of the State. Then it was that the Commonwealth, expressing—I wish I could say the unanimous—it ought to have been unanimous—expressing the almost unanimous sentiment of the people of the State, authorized the construction of the lines of the Pennsylvania Central railroad company, which lines were but a protraction of the road built by the Commonwealth, which extended from Philadelphia to Columbia, and Harrisburg to Pittsburg.

The Commonwealth—unwisely, as I think and shall presently show, indeed I am amazed at this late day that it should be necessary that I should say a word in support of such an idea—the Commonwealth, for the purpose of re-paying her own supposed loss upon her own lines of internal improvement, when she had authorized the construction of the road from Harrisburg to Pittsburg, imposed a tax of three mills per ton per mile upon all

freight which should pass over the road. Now that was an unreasonable tax. It is always an unreasonable tax to impose a burthen upon your great lines of internal improvement, just as much as it is always an unreasonable tax to impose a burden upon your raw material which you propose to manufacture, or to impose a burden upon the implements and machinery and tools that you use in its process of manufacture.

It were just as sensible for one about to build a mill to construct his race to his mill, then put a dam across his race, as it is for the Commonwealth to construct or to authorize the construction of great lines of internal improvement and then burthen them with charges that sometimes paralyze and always diminish the usefulness of these great and useful public works. It is just as illogical and just as unreasonable for a miller to dam his race as it is for the Commonwealth to charge that burthen upon her great lines of internal improvement. Cheap transportation and unburthened improvements is the great policy of the State, the policy which more than any other develops State, gives value to her property, secures her citizens in the exercise of their individual rights and enables them to cover the whole Commonwealth with the grand fruitage of their labor.

But what was the result of all this? Why the result of all this was, that the Commonwealth gained more money than she ever earned before from the operation of her lines of internal improvement in the increased trade which poured over that portion of her works which extended from Harrisburg and Columbia to the city of Philadelphia, by reason of the protraction of these railways westward to Pittsburg. I mean to say simply this: I mean to say that the increased revenue from what was popularly known as the Columbia railroad, the increased revenue to the Commonwealth by reason of the protraction of that road from Harrisburg to Pittsburg exceeded in amount all that the Commonwealth had ever reaped in the highest days of her prosperity from her own lines of internal improvement. She was the gainer, largely a gainer, and more than that, Mr. Chairman, had it not been for the construction of that extended line from Harrisburg to the city of Pittsburg, the competition of railroad lines extending from New York, from Boston, from Baltimore and the seaboard would have dried up and destroyed utterly the

whole trade of the public works except in so far as it had been a purely local trade.

But more than this. I speak, sir, with exact accuracy as to the general facts I state, but at this distance of time and called upon suddenly on the spur of the moment, to state what I do state I am unable to give the precise detail of figures. But I say, Mr. Chairman, that during the four or five years which preceded the year 1857, which was the date of the passage of what is known popularly as the main line acts, that the Commonwealth operated these works at a loss to her treasury at no time less than \$1,000,000 per annum, and after a time approaching \$2,000,000. These very public works, even after all the benefits accrued to the State from the increased transit over the Columbia railroad, were operated at a loss to the Commonwealth of from \$1,000,000 to \$2,000,000, and this loss was steadily increasing each successive year.

But again, sir, as I look at yonder vacant seat and to these walls, hung around with tokens of sorrow, I am saddened to feel that I cannot appeal to that excellent gentleman who once held office as one of the Canal Commissioners of the State, but who has departed from us forever—our late friend, Mr. Hopkins. But I do appeal to the elderly gentlemen of this Convention, who will sustain me in what I say, that no more frightful source of corruption, no more productive source of dishonesty, lack of integrity and general demoralization to the politics of Pennsylvania and the integrity of her people, than the control and possession of these great lines of public works ever existed in our Commonwealth. Gentlemen may talk here of the corruption of the Legislature. Gentlemen may speak of the condition to which we have been reduced there, but gentlemen who know how our lines of internal improvement in this State were operated prior to the year 1857, will be compelled to bear me witness of the truth of what I say, that the whole politics of the State of Pennsylvania was controlled, degenerated and demoralized by the possession of these very lines of public works.

What, then, Mr. Chairman, after all this demoralization?

Mr. J. S. BLACK. I deny that it is true. There may have been a few stealings here and there of small amounts, but it was nothing to the large robberies that have since occurred.

Mr. CUYLER. Mr. Chairman: Can it be possible that at this period in the history of the State of Pennsylvania, any gentleman should doubt that this demoralization existed?

Mr. J. S. BLACK. It is true!

Mr. CUYLER. Can it be possible that I should now be called upon to prove that the politics of this State were demoralized by the possession of these public works?

Mr. J. S. BLACK. No demoralization at all. They were an honor. [Laughter.]

Mr. CUYLER. I apprehend, sir, that my friend is speaking sarcastically. I do not suppose he is speaking seriously.

Mr. J. S. BLACK. Not sarcastically at all.

Mr. CUYLER. Surely my friend cannot be serious. No man understands better than he that the records of this Commonwealth are burthened with the evidence of this demoralization.

Mr. J. S. BLACK. Let us have them.

Mr. CUYLER. I can produce them here, and I will produce them. We all know that the records of the Legislature teemed with reports of investigating committees, who exhibited the dishonesty which prevailed in the administration of these works. The record of the truth of my statement is in the bosom of every surviving Pennsylvania statesman, a witness in the heart of every pure and honest man who hears me, who was old enough to comprehend passing events. While my friend denounces the operations of a great private corporation of immense aggregated capital, which is worked in the interests of its stockholders and is watched over and controlled by them, and says it is necessarily corrupt, will he undertake to say in the same breath that all the lines of public improvement, which were owned, controlled and managed by the politicians of a great State, are not, by the law of nature, necessarily corrupt? Could they be otherwise? If it be true that this private corporation degenerated into corruption such as the gentleman describes, can it be otherwise, then, that these works of the same character, which were administered by politicians elected for political purposes and operating these lines for political ends, did not necessarily degenerate into utter corruption?

Mr. BLACK. Mr. Chairman: I did not make any accusation of corruption against the Pennsylvania railroad company, or any other railroad company. I did not intend to make any against the gentleman himself, or against his clients, nor

against my clients, nor against anybody that expects to be my client. Nor do I propose that anything shall be taken away from them that they have already acquired. What is vested is vested, and what is writ is writ. But I hope, simply, that the gentleman will agree to promise now not to ask for any more privileges or more power than what they have already got, and that if they do get any more they must get it by other and different means altogether from that by which they have acquired that which they have already possessed. If he will leave us with the burdens that have been already fastened on our backs, and give us an honest Legislature for the future, this State is strong enough to walk away under these burdens like Sampson with the gates of Gaza on his shoulders. [Laughter.] But we object to being crushed down as fast as our strength grows, and to be pressed down so that we can never be able to walk away.

MR. CUYLER. Mr. Chairman: I have no clients here. I am not here as the representative of any corporation, or as the counsel of any company, but I am here as a member of this Constitutional Convention, not unmindful, I trust, of the obligation of the oath I have taken. I am prepared to say, and I am sure my friend who has just interrupted me, and who, by this time, ought to know me well, will endorse me when I say that the wealth of the Pennsylvania railroad company will not buy me on this floor to advocate anything which I did not sincerely believe. I think I know the gentlemen who administer the affairs of that corporation well enough to say that they will not venture to ask me, nor if they had the courage, would they desire to do so. It is not in the interest of any corporation; it is in the interest of truth, it is in the interest of justice, it is in the interest of fair dealing and in the interest of the people of this Commonwealth that I am here, although I cannot indulge much hope, sir, when a gentleman of the breadth of mind, the splendid culture and the masterly eloquence of my distinguished friend who has addressed you, is incapable of rising above these small prejudices and smaller feelings. I cannot hope that men of lesser growth and smaller stature will be able to do it.

But, Mr. Chairman, I have described the condition of things which existed in this Commonwealth in the year 1857, when the act for the sale of the main line was passed. I have described it as a condition

of things in which the Commonwealth was losing steadily from one to two millions of dollars per annum; I believe a reference to the books of the Auditor General will sustain the truth of what I say; in which the Commonwealth was losing from one to two millions of dollars per annum by her public works, and was nursing in her bosom a serpent of the wickedest possible character and dimensions. And, however my learned friend may have denied what I say, I reiterate it, and I appeal to the convictions of gentlemen whose memory carries them back to that time, for the truth of my statement, when I say that the argument that mainly carried in the Legislature of this State the bill under which the public works of the State were afterwards sold, was the conviction of the honest public men of Pennsylvania, that the demoralization of the State which resulted from the administration of these works was an evil of transcendent magnitude, which grew hourly before their eyes. Then it was, Mr. Chairman, that in 1857, wisely, thoughtfully, and for the best interests of the Commonwealth, the State passed the main line act of 1857, and authorized the sale—not to the Pennsylvania railroad company—but authorized the sale at public auction to the highest bidder of the main line of her public works. They were put up at auction to the highest bidder. The whole Commonwealth, and the whole land were invited there to competition in that purchase. Corporate authority and power was provided in the body of the bill for any citizens of the Commonwealth, or elsewhere, who should desire to come in and buy this line of public works, in fair, honest competition, at public sale. And they were sold, and they were bought for seven millions and a half of dollars. Further, let me say that after a debate, most earnest and most protracted, as sagacious a man, as able a man, as honest a man, whose integrity is as pure as that of the driven snow, President Thompson, of the Pennsylvania railroad company, did record his vote, and it so stands upon the minutes of the board of directors against that purchase, as being against the sound policy of the company, because the price paid was far beyond its true value.

[Here the hammer fell.]

MR. BROOMALL. Mr. Chairman: I move the gentleman from Philadelphia have leave to proceed without limit. Unanimous consent being given, Mr. Cuyler continued.

Mr. CUYLER. Mr. Chairman: I am reminded by a gentleman who sits behind me of the fact, that Governor Pollock, then Governor of the Commonwealth of Pennsylvania, in his message to the Legislature, insisted that it were better for this Commonwealth to give away this line of public works than to hold them; better give them away to anybody who would take them, than that the State should continue to hold them with a loss of millions of dollars, and seas of political and financial corruption in their administration. Then it was that they were put up for sale. Then it was that they were bought, as I have said, and this Commonwealth, in consequence of that purchase, became the gainer.

First. By receiving seven millions and a half of dollars for that which not only was worthless to her, but was a positive sink and loss of money.

Secondly. By getting rid of demoralization, of which I have spoken; and

Thirdly. By the advantage of that great line of public improvement which has enabled this city and this Commonwealth to compete with the other cities and Commonwealths upon the Atlantic seaboard, in the transaction of the great business which extends and daily increases between the seaboard and the interior and western and southern parts of the country. What words of mine, what eloquence of the most accomplished orator of this or any other Convention—nay, can even the splendid utterances of my distinguished friend from York over-state, or adequately state in its fullness and power, the grandeur of the benefits which have thus accrued to this Commonwealth. So that it was from no selfish motive, but in the exercise of a wise and practical statesmanship upon the part of the Legislature of the State, co-operated with on the part of the railroad company, that at fair public sale, where the fullest and most lowest competition from the whole land was invited, that the Pennsylvania railroad company bought this great line of public works—bought it, charged with the tonnage tax, to which I have referred. "There," says my learned friend, (Mr. Black,) "was a stupendous instance of the vast iniquity which has attended the legislation of this Commonwealth, so far as the interests of that corporation are concerned." For whose benefit was the repeal of the tonnage tax? Here is a tax of three mills per ton per mile imposed upon freight carried from the interior—from the west-

ern part of the State to the seaboard. In other words, the farmer of Westmoreland county, the farmer of Allegheny county, the farmer of any of the western counties of the State had to pay a tax to get his grain to the seaboard, of three cents per bushel, or of ten cents per barrel, while the farmer of Bucks, or Berks, or Lancaster counties, or any of the counties nearer to the seaboard, got their grain to the seaboard either without the tax or at a price greatly diminished, by reason of their greater proximity to the seaboard than those who live in the western part of the State. So that the people of the Commonwealth, after all, had to pay this tax; and for what? That the Pennsylvania railroad company might get unreasonable compensation? Not at all.

The people of the western part of the State found that there was imposed on them a discriminating duty, or tax, as against their interests for the benefit of the man who lived near the seaboard. That was the foundation of the repeal of the tonnage tax. On what principle shall a farmer or a manufacturer, or any body else in the distant portions of the State, pay a tax upon his labor and his skill and his industry, while the man who lives here shall not be required to contribute his part equally and fairly? What mattered it to the Pennsylvania railroad company? It had but to impose this tax upon the freight that was carried over its line, and then pay it into the State Treasury. It was, therefore, but the collector of the tax for the State. Its private interests were not involved particularly by it. The repeal was little to them, but to the people of this Commonwealth it was an interest of transcendent value and importance.

Mr. J. S. BLACK. Will the gentleman allow me to interrupt him one moment?

Mr. CUYLER. Certainly.

Mr. J. S. BLACK. Did the law which abolished the tonnage tax reduce the rates of fare proportionately, or at all?

Mr. CUYLER. Yes. The "commutation tonnage act" of 1881, in its third section, limited the company to the then tonnage tariff sheet, and made them deposit a copy of that sheet in the office of the Secretary of State—certainly in one of the public offices—and limited the charges of the company to the rates in that sheet—rates not to exceed those.

Mr. J. S. BLACK. That included the three mills?

Mr. CUYLER. I suppose it did.

Mr. J. S. BLACK. Then they just went on making the same charges upon every thing going over the road, as they had before, and instead of putting the money into the treasury of the State, they put it into their own pockets?

Mr. CUYLER. The gentleman has no authority for saying that. The rates of charge by railroads are, I suppose, guided somewhat like the rates of charge of all other enterprises by the laws of trade and by competition. A private corporation, created to establish a line of internal improvement, must be operated in competition with other lines of internal improvement; and it cannot establish a rate of charge higher than that established by others, or it gets no business. It cannot establish rates that are unreasonably high, for that tends to the establishment of competing lines, just as unreasonable profit by a merchant or manufacturer induces the establishment of other like mercantile enterprises or like manufactories. In other words, the mistake which my friend makes—the point which he, in his great intellect, broad cultivation and noble statesmanship, fails to rise to, as might perhaps have been expected only from minds less than his, is that he does not perceive that the same laws of business and trade which govern private individuals—the private manufacturer and the private dealer—laws as eternal as those of truth and justice themselves—must of necessity apply also to private corporations. No merchant, or manufacturer, or corporation can long thrive who conducts his or its business without due regard to these laws, for just so true as there is a God, and God's laws are eternal—just so true is it that that individual or that corporation who does so must ultimately succumb if it persists in violating those laws.

I might add here, that I contended earnestly in the discharge of professional duty, with the grand assistance of the distinguished gentleman who presides over this Convention, and of that other great man who has departed—Mr. Stanton—in the courts of Pennsylvania, and would have done so at Washington, if necessary, that that tonnage tax was an unconstitutional tax—unconstitutional as being a burden upon the trade of other States which passed through our State; unconstitutional as of operating as an unequal burden upon the citizens of our own State—not a fair and equal tax. The Supreme Court of Pennsylvania, divided three to

two, declared so to hold, but the Supreme Court of the United States, within the last three weeks, has so held. The Supreme Court of the United States then, had the Legislature not repealed the tonnage tax of 1861, would have held it unconstitutional and the Commonwealth of Pennsylvania would have lost by the decision of that court, the tax for which my distinguished friend (Mr. J. S. Black) so earnestly pleads before this Convention. But what more? This very act of 1861, distributes \$800,000 among the various railroads of Pennsylvania, for the development of the trade and the resources of the State. The State got rid, first, of an unreasonable burden upon her own industry and her own commerce. She got rid, secondly, of that which it now appears, and was then contended to be, unconstitutional; finally, she developed her own internal resources grandly, by the establishment of additional lines of internal improvement, by which almost numberless millions have been added to the wealth and the resources of the State.

I will refer to a single other fact, because the distinguished gentleman himself (Mr. J. S. Black) alluded to it. He talks about a raid on the Sinking Fund. What does he mean? Why, he means that some nine millions of dollars worth of property, that was yielding to the State six per cent. revenue, and otherwise was dead, should be exchanged for other property which should rest on precisely the same foundation of safety and security to the State, while, instead of being dead, it should be vitalized and invigorated, and made a mighty engineery for the promotion of the wealth and prosperity of the State. He means that the State herself should not be the loser, if he puts the case fairly, as I have no doubt he intends to do, that the State herself should not be the loser one single fraction of the capital of this money, or of the security by which it was made safe to the State, and that the State, instead of locking up in her coffers these nine millions of money, should make them vital, and active, and vigorous in the development of the resources of the Commonwealth. It failed, not by "the salutary veto" of the Governor, for the veto of the Governor was singularly unwise and unjust; and did not my respect for the dead compel me to silence, I could prove here what I say.

I beg pardon of the Convention, however, for having been betrayed into saying so much as I have in response to that

which fell, so unexpectedly to me, from the lips of the distinguished gentleman from York (Mr. J. S. Black.) I am not here as the advocate of the Pennsylvania railroad. I am here simply to express my amazement that at this period of the history of the State, a gentleman of the breadth of mind of that distinguished gentleman, should lament that these developments in the business and the prosperity of the Commonwealth, should have taken place. Why let him go back to the condition of things existing in 1857. Let him then contemplate this Commonwealth, growing to its present vast proportions, in wealth, prosperity and happiness through these very measures he condemns as moral, then where would Pennsylvania be? Her population, a million less than it is to-day; her wealth, but one-half what it is to-day. Instead of being the grand spectacle that the eyes of the world now gaze upon with delight and satisfaction by reason of the wisdom of her citizens, and the prosperity that their wise applications of capital have developed in this State, she would be far, very far, behind nearly half the States of this Union. I could not consent to be silent when an engine of such vast good to Pennsylvania, one whose vast resources, as I know, have been applied with so much wisdom and integrity, aye, sir, *integrity*, to the promotion of the best interests of this city and Commonwealth, was denounced, without at least uttering a word in its defence. It did not need it, however, not in this city of Philadelphia. I said, sir, *integrity*. I am not here to say, as I stated when opening, that there is no corruption practiced upon the Legislature by those great corporations, but I am here to say that the necessities upon these corporations to defend the rights and interests given to them, from plundering and from vicious hands, and the necessity that these corporations should grow with the growth of the country, and not within vigorous manhood, be clothed in the swaddling clothes of infancy. It is that necessity which has brought about this condition of things. The people of Pennsylvania, while they send many honest and many honorable men to their Legislature, send many men there, and I am sorry to say, some from Philadelphia, whose motives are just as base as the most eloquent words which my distinguished friend (Mr. J. S. Black) could possibly employ could describe.

It will not be until the people of Pennsylvania arrive at some method by which they can select honest legislators, and when they have selected them can secure their return to the Legislature, that we shall ever come to walk in the right path in this matter. Our remedy will not be by changing things only for the worse, not by taking men who are scoundrels and villains, and administering to them oaths of fidelity and expecting them to change their nature. Not by forgetting that the man who will take a bribe will take that oath as readily as he will take a bribe, or as he will, when hungry, take a meal. No, sir, you cannot make men honest by oaths. You must go farther back. I do not doubt the integrity of the people of Pennsylvania. I have belonged all my life long to that class in politics which recognizes the ultimate integrity and honesty of the people of the State. I do believe in their integrity. I do believe that if you can appeal to the heart and conscience and to the intelligence of the people of Pennsylvania, they would cleanse this cage of unclean birds more speedily than Hercules did the unclean stables. All we have to do is to make the people of Pennsylvania know and feel in their heart of hearts what the peril is that surrounds them, and my word for it, when they wake up to action it will be to realize the expression of my learned friend, (Mr. J. S. Black,) who likened it to the feat which Samson performed in walking off with the gates of Gaza upon his back. Sir, they will trample out of existence the men who are doing these things of which they complain. They will bring us back to the grand old days of this Commonwealth, and they will give us a Legislature that will not be a by-word and reproach to the whole country, a Legislature that will be filled with men of integrity, of honesty, of ability, and of character; men of whom the whole State and whole nation may well be proud.

Mr. MOTT. Mr. Chairman: I cannot sit quietly in my seat and listen to what has been said here to-day without raising my voice to controvert some of the charges that have been made by gentlemen who have participated in this discussion. One gentleman, after looking around this Convention and seeing that our old friend, Col. Hopkins, has gone from us to return no more, concluded that there was nobody else here that would say anything in defence of the Canal Board. The "inevitable

Mott," as the venerable President of this Convention once called me, is here, however, and will answer for himself, in so far as he was connected with that board.

Now, sir, in the first place, the gentleman from Philadelphia (Mr. Cuyler) is very much mistaken when he says that at the time the improvements were sold the State was losing from one to two millions of dollars a year by the management of its public works. Such was not the case, and the statistics will show that the gentleman made a misstatement.

I will give the Convention a little of the history of those times, and of the transaction referred to. I then had the honor to be a member of the Canal Board. I was elected in 1854, and took my seat in the board in 1855. I found, when I got there, that the Pennsylvania railroad had bought off the two firms which did most of the transporting upon the main line of the public improvements, and that in consequence, we were left with greatly diminished means for transportation upon them. Of the owners of the two lines referred to, one was appointed agent for the region east of Philadelphia, to get freights for the Pennsylvania railroad company upon their lines, and the other was appointed to a similar position west of Pittsburg. The first year that I was in the Canal Board, in consequence of having no power ourselves under the law to supply means of transportation, and having to depend entirely upon legislation, we could do nothing, and when we called upon gentlemen who we supposed were able and willing to take hold of, and provide the necessary furniture and fixtures for transportation, we were told by them that it would not be safe for them to do that, because the agents of the Pennsylvania railroad were constantly agitating the sale of the improvements, and perhaps they would be sold out and then those furnishing means of transportation would be left with a large stock on hand. Therefore, the first year, the main line did not pay what it should have done. It is true that the Philadelphia and Columbia division paid as much, if not more than it had paid before, because the Pennsylvania railroad was throwing its freight upon it in addition to that supplied by the public improvements belonging to the State.

Such were some of the difficulties we had to encounter during the first year of my management in consequence of the movements of this anaconda, which wound its coils about public interests at that early

day. What was expected came to pass sure enough. The next winter application was made, and a bill was introduced for the sale of the improvements. This virtuous Pennsylvania company had "nothing to do with it." Certainly not. Mr. Thomson certainly could not have had, for "he voted against the purchase," if we are to believe what the gentleman tells us. Well, that is all very well for buncombe. I, as President of the Canal Board, instituted a proceeding in the Supreme Court for an injunction against the purchase of the public works by the Pennsylvania railroad company, and I think the question raised was argued and defended pretty ably by the employees of Mr. Thomson and his Pennsylvania company. It resulted, however, in the court declaring that the lines might be sold, but that the Legislature should not transfer the tonnage tax and the right of taxation with the sale. In that manner and by their own action the managers of the Pennsylvania company thus reduced the value of the improvements belonging to the State. In the bill of sale they were authorized to abandon certain sections of the canals, which we had been obliged to keep up at a considerable expense and loss.

In the publication made by the Board of Canal Commissioners, just before the sale was consummated, we showed very clearly that if the Legislature had allowed or empowered us to do what they empowered the Pennsylvania railroad company to do, we could make the public improvements pay an interest on fifteen millions of dollars instead of on seven and a half millions only. We could have done this beyond a doubt. Gentlemen need not tell me that there were not corrupt means made use of in that transaction. I know something about that. I know some of the "boys" that got the corruption money, [laughter,] but I am not going to "peach" on them, [laughter,] because I am not a public "inform-er." I know very well when the question of that tonnage tax repeal came up, that the agents of the Pennsylvania company did try to defeat me by sending a man up to my district with from three to five thousand dollars to render my nomination for the State Senate impossible. They knew, sir, that "Inevitable Mott" would be on hand to help defeat the tonnage tax repeal bill, and he *was* there. I was not offered money myself, but my wife was offered \$25,000 to "influence" me to vote for that repeal, and

\$13,000 to secure my vote for giving the rest of the works away to these fellows up the river here, [laughter,] but she had spunk enough to say to the would-be bribers: "No! we are poor, very poor; but," said she, "I have always traveled with Henry with his head up, and he cannot go back to his county and mine with that sort of money in his pocket." [Laughter.] These, sir, are *facts*. So it is of no use for gentlemen to talk to me about the "virtue" of this Pennsylvania railroad company. But I expect I have said enough.

["Go on! Go on!"]

Well, all I have to say is, that I have nothing against the Pennsylvania railroad company. I had hoped that that whole thing had been forgotten. I did not expect to have to defend the Canal Board in this Convention, neither do I care specially to do it, having been myself a member of it. There is one thing, however, that I can say of it: I went into that board with such men as William Hopkins and Thomas H. Forsyth, and I went out of it with Arnold Plummer and George Scott; and I do not believe there were four more honorable men than they to be found in the State of Pennsylvania. During the time that I was Canal Commissioner there was not a dollar of defalcation among any of the collecting or disbursing agents, or others connected with the large fund involved in the operation of the public works. There never was an investigation into the conduct of any member of the Canal Board in the history of this State; but I do remember, and would remind the gentleman from Philadelphia, that there was an investigation ordered to be made into the means employed to secure the repeal of the tonnage tax, and that a certain official of this virtuous Pennsylvania company fled the State, and remained absent for months to escape that investigation. [Laughter.] And yet we are to be told, on this floor, that the members of the Canal Board were a "corrupt" set of scoundrels, engaged in corrupting the politics and morals of the State. Let me tell gentlemen that we were no such thing. On the contrary, sir—and with this remark I will close what I have to say on this subject—we served the people of Pennsylvania as faithfully as men could do, and as efficiently as was possible under the circumstances, taking into account the fact that we were impeded and hindered by this hydra-headed monster, the Pennsylvania

railroad company, [laughter,] which was ever surrounding us on every side with open jaws. [Renewed laughter.]

Mr. MACVEAGH. Mr. Chairman: I desire to offer, as an amendment to the amendment now offered, the two sections reported by the Committee on the Legislature, and numbered in the report of that committee as paragraphs ten and eleven. They are as follows:

Tenth. Every member of the General Assembly, before he enters upon his official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Pennsylvania, and will faithfully discharge the duties of Senator (or Representative) according to the best of my ability; and I do solemnly swear (or affirm) that I have not paid or contributed anything, or made any promise in the nature of a bribe, to corrupt or influence, directly or indirectly, any vote at the election at which I was chosen to fill the said office, and I do further solemnly swear (or affirm) that I have not accepted or received, and that I will not accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act.

Eleventh. The foregoing oath shall be administered by one of the judges of the Supreme Court, in the hall of the House to which the member is elected, and the Secretary of State shall read and file the oath subscribed by such member; any member who shall refuse to take said oath shall forfeit his office, and every member who shall be convicted of having sworn falsely to, or of having violated his said oath shall forfeit his office, and be disqualified thereafter from holding any office of profit or trust in this State.

The committee will remember that when this matter was before the Convention on a former occasion, it was postponed, at the instance of the gentleman from York, (Mr. J. S. Black,) and of several other members, until we could have the alternative oaths to be reported, one by the Committee on Legislation, and one, possibly, by the Committee on Constitutional Sanctions. I assume that both these propositions are now before the committee, and in order that the entire subject may be brought before them, I have ven-

tured to offer these paragraphs as an amendment to the amendment.

The gentlemen of the committee will understand the marked difference between the three propositions. The Committee on Legislation propose simply the present oath and an oath that the member has not been guilty of bribery to secure his own election, nothing more—nothing as to his discharge of his official duties, except the general oath that he will discharge them with fidelity. The gentleman from York (Mr. J. S. Black) or the gentleman from Fayette (Mr. Kaine) proposes to amend the section as reported by the committee, by providing an oath to be taken upon the final completion of the official labors of the Representative, in which he shall swear that he has not corruptly used his office, and that upon failure to take such an oath, or upon swearing falsely thereto, he shall be rendered ineligible for re-election. The Committee on the Legislature thought it wise to present an oath for your consideration, of a three-fold character, as I once before stated; first, the general oath of fidelity to the fundamental law of the nation and of the State, and the usual declaration of the discharge of the duties of the office with fidelity. Secondly, that he comes to the discharge of his duties with clean hands. Thirdly, God helping him, he will leave it with hands as clean. I have listened in vain for any reason why this oath should not be adopted.

It is a preliminary asseveration that up to that time he has not soiled his conscience, and a prayer for the help of God, through all his official labors to prevent him from soiling that conscience while he remains in office. It was suggested that such an oath was degrading. I trust that consideration has disappeared in view of the flood of light which this morning has been let in from every quarter of the house upon the great danger which menaces free institutions in America. We must be thankful that the morning has not been spent in vain, for there is a consensus of authority at last that American legislation is for sale to the highest bidder, and whoever born on our soil and claiming to be an American citizen can look that admission in the face and not be clothed with humiliation as with a garment, will vote against any proposition tending to correct the evil, but those of us who know that the evil exists, who recognize the truth of the unanimity of opinion expressed here this morning, and who

will seek as with a lighted candle to find some remedy, at least some partial cure, for this terrible disease, this menacing peril, will, I think, agree to support a more stringent oath than has been reported by the Committee on Legislation. It does not seem to me that it is necessary to travel backwards to distribute a share of blame for our present sad condition greater in one corner than another. I hold, Mr. Chairman, that every member of this Convention—I admit frankly that I am in the number—is in his measure and place responsible for the evil that exists. On a former occasion I trespassed upon your time to state then that the corruption in our legislative borders was only one of the results, perhaps one of the inevitable results, of the era of material prosperity in which you live, and of the great works which have been constructed to develop that prosperity; and it does not seem to me so very important to go to yesterday or last week, or last month, or last year to ascertain what portion of blame attaches to this corporation, or to that individual. It is far more important, I think, that we should all admit to-day that the evil exists, and that we ourselves may fall the victims of this temptation to-morrow. As good men as any of us have fallen in the past, and we should endeavor to discover some antidote; we should endeavor to erect some barrier against its further spread.

It is enough to know that the broad statement of the gentleman from York (Mr. J. S. Black) is not only true of the Legislature of this State, but is true of the Legislature of almost every American State, and apparently of the National Government itself; that the men elected to frame your laws do not frame them, but that an infamous and corrupt lobby surround the Legislature, and controls its action for private advantage. Now, in some way we must put up barriers that will, if possible, be impassable between the lobby and the Legislature, at least we must do what we can in that direction. We must do what we can to make the profession of the lobbyists impossible, and if we do that we will do much to purify this fountain from which our evils flow.

Considering the average character of American representatives, I believe it must be useful to require these gentlemen at the threshold of their entrance upon official life, to swear that they will not entertain association with the lobby. Certainly that will go a little way. It can

do no harm; it may do some good. Degrading to anybody? I beg gentlemen to believe there is no degradation for the proudest in the land, to stoop to the lowest service in order to help to save American liberty and American government, in these days of their trial, and unless some will help in this work they cannot be saved, and I trust, therefore, that we will at least go to the extent suggested. I do not know how the laws discussed this morning were passed. I do not know that corrupting influences were used or were not used. I do not know whether the Executive veto was interposed or withheld from improper consideration, but I know this, that the public interest is shamelessly disregarded, and that corruption stalks unabashed in your legislative halls throughout all the American States, and even in the National Capitol itself; and knowing that, I believe that the professional lobbyist is largely the instrument whereby the money is carried to the representative, and I will go "as far as the farthest" in any measures calculated to make that profession henceforth, in Pennsylvania, an impossibility; at least I will put up the barriers of self-respect, all the barriers of conscience between the legislator and the corrupting influences that assail him. I beg the committee to believe, the members are not corrupt to any very considerable numerical extent, when they first assemble at the legislative capitols. It is not true that the men selected to represent this State at Harrisburg are much worse, if any worse, than we are. They are fair, good honest men, from the country districts, known and respected by their neighbors, but they yield, in some instances, and that is only true of a majority, and perhaps not even of a majority, because very good men vote for bad measures for good purposes frequently, but it is sufficiently true to make the whole result a corrupt result, and therefore I do beg of this committee to consider whether it will not be useful to ask the legislator to take an oath before he enters upon his duty, that he will hold no relations with the lobby, that he will never wear their fetters or serve their ends. I do beg of gentlemen to consider, not whether many men will disregard their oaths, not whether, many men will swear falsely, but whether, taking the average farmer, taking the average artisan from the rural districts, whether this oath will not be an added strength to him against the day of his

temptation? Will it not be likely to strike the average legislator as a help to him to resist the evil when it comes?

It is upon that ground, not that it will change the character of men, not that it will cause a paradise of purity and of innocence in legislation, but that it will be at least a little support for virtue and a little barrier against corruption, that I implore gentlemen of the committee to consider it with care, and to decide it as I know they will all desire to decide it, according to what, in their judgment, will be most conducive to the public good.

Mr. HARRY WHITE. Mr. Chairman: I hope the committee will pardon me for saying one word. It strikes me that the proposition now under consideration is exceedingly impractical, and I would be false to my judgment at this moment if I did not say so, and I am surprised at the intelligent gentlemen who have spoken upon the subject, seeking a remedy for an evil in such a movement. It is proposed to provide no member of the Legislature shall have his judgment bound by the decision of a caucus, and every member should be willing to swear that he will not before he enters upon the duties of his office. What does this assume; unquestionably without the oath, that every member of the Legislature—republican or democrat, or liberal, if there be such—is bound, notwithstanding his oath of office, under all circumstances to obey party dictation. I have too much respect for the independence and character of individual members of the Legislature, to assume that they will do so. I have had the honor, if it is an honor, of representing a constituency in the upper branch of the Legislature for nine years, and those who know me best know that there are none more decided in their political convictions in our Commonwealth than I, but sir, I have differed from my party, when we met for consultation, time and again. I voted against apportionment bills twice. Last winter I had the honor of assisting to defeat the Congressional apportionment bill, which was supported by a majority of the members of my own party.

Mr. KATNE. I ask the gentleman whether, if a matter in the Legislature had been agreed upon in caucus of which he was a member, he ever voted against the measure?

Mr. HARRY WHITE. Mr. Chairman: I again say that I have refused to vote

with my party more than once, when my party had resolved upon a certain course of action, after consultation.

Mr. KAINE. The gentleman is begging the question.

Mr. HARRY WHITE. Let me state the case exactly. In common with my associates, I have gone into caucus, consulted about a particular measure, and if I have been satisfied that it was not a proper matter of caucus I would not stultify my judgment, by committing myself to the decision of the majority, and I have left the caucus, and so should any man who values his oath to perform his duty with fidelity above mere party ties. I care not what number of oaths he takes against caucus action, you may pile Pelion upon Ossa mountain high, and you will not affect a change in human nature in this respect. The independent man, the honest man, will always refuse party decisions, when his conscience and convictions prevent him agreeing with a majority of his colleagues. The legislator must not, and does not, always act as a partisan, but as the representative of a free people. Party obligations and decisions cannot hush the still, small voice of conscience. The proposition assumes a depravity in our political organizations insulting to the intelligence and virtue of the people. Sir, the proposition would weaken public confidence in the men you expect to occupy positions in your legislative assemblies. It supposes that after they have sworn to obey the Constitution of the State, and to perform their duty as Senators or Representatives with fidelity, they will disregard this solemn obligation, and rather heed the whisperings of the mere partisan, than vote under the convictions of their judgment and the control of their consciences. I will do no such violence and injustice to the representatives of the people. I am satisfied that this provision will result in no substantial good whatever, and I shall earnestly oppose its passage.

Mr. J. PRICE WETHERILL. Mr. Chairman: I am clearly of the opinion that the amendment, as offered by the chairman of the Committee on Legislature, (Mr. MacVeagh,) is a proper one, and that the sections which he recommends should be adopted by this Convention. I do not intend to occupy the time of the Convention in an argument in regard to the necessity of an oath. That has been gone into very fully by other gentlemen. But I do say that if we require an oath at all

let it be iron-clad, and I do say that the oath as presented by the Committee on Legislature is a much stronger and a much more comprehensive one than the oath as prescribed by the Committee on Legislation. The Committee on Legislation, in their oath, say:

"I, A. B. do solemnly swear (or affirm) that I will support the Constitution of the United States, and that as a member of the Legislature I will in all things support, obey and defend the Constitution of Pennsylvania, and discharge the duties of my office with fidelity. And I do furthermore swear, that I believe myself to be lawfully elected a member of this House, without any false return, bribery, corruption or fraud, committed by me or others with my consent."

I contend, sir, that that is open to objection; that it is not near as strong or nearly so comprehensive as the oath as presented by the Committee on Legislation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Pennsylvania, and will faithfully discharge the duties of Senator (or Representative) according to the best of my ability; and I do solemnly swear (or affirm) that I have not paid or contributed anything, or made any promise in the nature of a bribe, to corrupt or influence, directly or indirectly, any vote at the election at which I was chosen to fill said office; and I do further solemnly swear (or affirm) that I have not accepted or received, and that I will not accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act."

I will admit all that the gentleman from Philadelphia (Mr. Cuyler) has said in regard to the uselessness of dishonest men taking oaths. I do say that if a man be corrupt and dishonest, oaths may be of little or no use in his case; but, notwithstanding that, I see a value in this section which has not been alluded to in the course of this discussion. It is this: That if a dishonest man shall run for office, and it can be proven upon him that he is guilty of bribery, he by this amendment will lose his place; he is declared unfit for the office and he entirely forfeits it. I can see clearly that in the case of two men running for the same office, one of the men honest and

the other corrupt, both having full knowledge of this oath and this section as law, the honest man can and will watch the rascal, and he will endeavor to detect anything like a bribe, and will make sure of his information and keep it to himself until the proper time comes; and when this dishonest man shall come to the Legislature and show his credentials and shall demand to be sworn in, the honest man can show at once that this man, by his own act, has forfeited and cannot hold the office which he seeks to fill. Here I see the value of this provision—not in the fact that it will in any way make a dishonest man honest—but that the honest man who is running against a dishonest man, or any good citizen, anxious to see the law properly carried out and the purity of the elections maintained, may go up and show that this man was guilty of bribery, and is, therefore, excluded from his seat. There is a point in which, it seems to me, there is very much force in this oath; and I doubt very much whether so much force as that could be secured from the oath submitted in the report of the Committee on Legislation.

Mr. WOODWARD. Mr. Chairman: I am prepared to vote for the double oath of my friend from York, (Mr. J. S. Black,) and if that fails to pass, for the lesser oath of the gentleman from Dauphin, (Mr. MacVeagh,) and, in the last resort, for the oath submitted by the Committee on Legislation.

This body, in its very best aspect, is an educational body. It may be true, as the gentleman from Philadelphia (Mr. Cuyler) asserts, that you cannot reform these old hard-headed sinners by any oath you can lay upon their consciences; it may be true that a man who will take a bribe will take a false oath; but, sir, we have some men growing up in Pennsylvania to be the future legislators, and if you place before them these solemn oaths, as conditions upon which they are to take their seats in the Legislature, and a duty which they are to perform after they have come out of the Legislature, you will, in the process of years, rear up a body of legislators whom you can trust; for the young men who are growing up to be our future rulers, with these oaths staring them in the face, will be admonished that they must be honest in politics; that politics is not a fair business for plunder and bribery and all manner of corruption, which is now the prevalent opinion in Pennsylvania.

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You place before the rising generation a better sentiment—you force it upon their attention. Thus while you may not reform any of our present legislators by your oaths, I maintain that you will most certainly provide the State with future legislators of a better quality by virtue of these very oaths. This thought has been weighing upon my mind, and has inclined me to vote first for the oath proposed by the gentleman from York (Mr. J. S. Black.) I hope it will be adopted, and whatever influence it may have upon existing politicians, be it much or little, I am sure the influence will be salutary upon those who are to come after the present race of politicians.

If the committee is not prepared for so strong a measure, take the proposition of the gentleman from Dauphin (Mr. MacVeagh.) He does not propose a subsequent oath.

I am going to vote for these oaths, and in the order I have named—not that I have any Quixotic expectation that they are going to make base men honest now, but in the reasonable, religious and holy hope that they will make men honest in the future.

I do not enter into the struggle of the giants to which we have listened this morning. I leave this part of the discussion exactly where they have left it. When it becomes necessary for us as a body to decide upon these questions, I shall have something to say before I am prepared to cast a vote. But, for the present, I have nothing to say more than to thank the gentlemen for the argument which they have given us this morning.

Mr. J. S. BLACK. Mr. Chairman: I understand that the first section of the committee's report was proposed to be amended by the gentleman from Fayette, (Mr. Kaine,) by adding this requirement for the oath to be taken after the member goes out. Then the gentleman from Dauphin (Mr. MacVeagh) proposed to substitute the oath reported by the Committee on Legislature for the oath that is in the report under consideration. Now what I desire to know is this: Have we before us now simply the question between the two oaths proposed by the two committees?

The CHAIRMAN. The Chair will state the position of the question. The gentleman from Fayette (Mr. Kaine) moved to amend, by adding at the end of the section an amendment, which was read by the Clerk. The gentleman from Dauphin

(Mr. MacVeagh) moved to amend the amendment, by striking out the amendment of the gentleman from Fayette (Mr. Kaine) and inserting his amendment. If the amendment of the gentleman from Dauphin (Mr. MacVeagh) should be carried, it will be an amendment added to the end of the section, which will then open the entire section, as amended, to further amendment on the part of the Convention.

Mr. Kaine. If the gentleman from Dauphin (Mr. MacVeagh) will withdraw his amendment, I will then withdraw mine, to enable the gentleman from Dauphin (Mr. MacVeagh) to offer his amendment as a substitute for the report of the committee.

Mr. MacVeagh. Mr. Chairman: I withdraw my amendment.

Mr. Kaine. Mr. Chairman: I withdraw my amendment also.

Mr. MacVeagh. I now renew my amendment in the shape of a substitute to the section.

Mr. Cuyler. Mr. Chairman: Is a further amendment to the amendment in order?

The Chairman. An amendment to the amendment is in order.

Mr. Cuyler. I was preparing to amend the section itself, by adding after the word "fidelity," the words "and that I will not submit my individual judgment or action to the decision or control of any caucus or combination of the members of the Legislature."

The Chairman. That cannot be received at this time as an amendment to the section, but it is competent to receive it as an amendment to the amendment.

Mr. Cuyler. Then I move to add it as an amendment to the amendment. Now, half a dozen words in support of his amendment of mine.

It must be entirely practicable for not more than one-fourth of either House of the Legislature to control the legislation of the entire body, and to bring the people of the State to that condition where, although they are entitled to the deliberate thought and action of the entire body, they will have to submit to the action of only a fourth of the body. If we suppose the House to consist of one hundred members, and the dominant party to have fifty-one of these, of which fifty-one a majority will be twenty-six, these twenty-six can, by means of caucus regulations, control the legislation of the whole State.

That the ill exists no one can doubt; that the remedy proposed here is not as effectual as could be desired is to be confessed, but, after some reflection, my mind has not suggested to me any other mode of arriving at the difficulty.

Mr. Buckalew. Mr. Chairman: I will favor and vote for that amendment if it shall be modified so as to read that the member shall not submit his individual judgment or action to a caucus, on the passage of any law or joint resolution. I do not think it ought to apply to nominations to offices. In cases of that kind there does seem necessity for consultation; and we should, perhaps, be disturbing the practice of the country too far by applying this proposition to cases of that sort. What the gentleman (Mr. Cuyler) means and desires, I suppose, is that in the enactment of no law a joint resolution having the force or effect of law—matters in which the public are all interested—shall there be a subserviency of individual, to aggregate judgment among a portion of the members of the Legislature. I am entirely prepared to vote for that.

Mr. Cuyler. Mr. Chairman: I will modify the proposition as suggested by the gentleman from Columbia (Mr. Buckalew.)

Mr. Buckalew: The caucus, as it is organized and used in this country, is a body entirely unknown to the Constitution and laws; and yet, perhaps, it is one of the most efficient instruments of power in practical politics. For my part I am prepared to vote for its abolition in all cases except where its propriety may be vindicated by some fair process of reasoning—as in the case of the selection of candidates for legislative offices and in the selection of candidates for United States Senator or any other candidates who may hereafter be chosen by joint vote of the two Houses of the Legislature, or by either House separately. In cases of that sort there is some reason for it. Practically, at this time, as the gentleman from Philadelphia (Mr. Cuyler) has so well said, by the instrumentality of a caucus you get the rule of but a small portion of the people of the State or country; a majority of the Legislature absolutely controls the ultimate decision arrived at upon any question—upon any act or joint resolution having the nature or effect of law.

It is a power alien to the Constitution, subversive of the just ends of government, and practically, in my mind, is productive of as much mischief in govern-

ment as corruption itself. That is, I know, a pretty strong statement, but I feel myself justified in making it, by reason of that experience and observation which I have had of public affairs.

While I had the honor of serving this State in the federal government for a period of six years, I did not enter a room of consultation more than twice, and regretted my presence on both these occasions. At Harrisburg, however, this caucussing is one of the practical evils in the management of the legislation of the State, and I am entirely prepared to say that one of the most wholesome changes that we can introduce here is the novel proposition of the gentleman from Philadelphia, (Mr. Cuyler,) to extract from the practical operations of the government a power of which the people have no knowledge, constitutionally, over which they have no control, which is irresponsible in the highest degree, and yet which is despotic beyond any other power or principle which takes effect in the practical action of the government.

I say this in view of the fact that I have been hitherto in my life, although moderate possibly in sentiment, strictly and always a party man, willing to submit to any portion of that necessary discipline which is calculated to unite sentiment in a proper manner and direct it to public ends.

It will not impair the efficient action of parties; it will not take away from them any instrument necessary to the accomplishment of their work, but it will deprive a few enterprising and often unscrupulous men in legislative bodies from imposing their private will upon their colleagues, and infusing into the Legislature of the State a poisonous and degrading and despotic element, which is altogether alien to free institutions, and subversive of their just ends. I arose to suggest the modification, so that this power of consultation shall still remain unchecked in reference to the question of candidates to office.

MR. MACVEAGH. Mr. Chairman: I should like members to consider the length to which this will commit the Convention. It prevents upon all matters of legislation, of however political a character—and legislation is sometimes necessarily divided by party lines—it prevents consultation and agreement of opinion in pursuance of party sympathy.

MR. CUYLER. Not at all; it is not so intended.

MR. MACVEAGH. Well, it seems to me to do precisely that; and I do not see how any fair-minded man, who is not a casuist, after taking this oath, could enter into any body of his fellow-members to consult with them, in order to agree upon a common policy to be pursued with reference to any legislation. It seems to me utterly impossible for a gentleman so to do, belonging to either of the political parties; that is, it is impossible for either side to have a consultation together, for the purpose of agreeing upon any matter of legislation. If the Convention desires to go so far as that; if they desire to say that all legislation in this State shall be non-partisan, and that members of the same class of sympathy shall not meet together to agree upon a common basis of arrangements, well and good. If it is only meant to say that caucuses shall not have despotic power over the will of a member, let it be so expressed in some proper form.

MR. CUYLER. That is all that is intended.

MR. MACVEAGH. It seems to me it goes very much farther.

MR. KAINE. Mr. Chairman: It seems to me that this is intended to prevent the very thing the gentleman from Dauphin (Mr. MacVeagh) has suggested—that when there is a measure before the Legislature, of whatever kind or character it may be, being a matter of legislation, every man upon the floor of the House or of the Senate should have a right to vote as his own judgment dictates; that he, on such an occasion, should not be controlled by his fellow-members, or by any portion of them—that he should not be bound by what he supposes to be a matter of honor—that is, to vote according to the decision of a majority of a caucus. I understand, sir, that this amendment is intended to meet that very thing, and it is for that reason that I propose to vote for it. I have some recollections of transactions of that kind, Mr. Chairman, as you, also, may have. When apportionment bills, or bills of that sort, which are mere matters of legislation, have been agreed upon, no matter what wrongs have been put upon different sections of the State, members feel themselves bound to vote for the bill, because of caucus decisions; and if they did not so vote they would feel themselves dishonored in the eyes of their fellow-members.

MR. GOWEN. May I ask the Chair this question? If this amendment, offered by

the gentleman from Philadelphia, (Mr. Cuyler,) is now adopted, and the amendment of the gentleman from Dauphin (Mr. MacVeagh) is rejected, can the amendment of the gentleman from Philadelphia (Mr. Cuyler) be offered put upon the main section afterwards?

The CHAIRMAN. The Chair will state if the amendment of the gentleman from Philadelphia (Mr. Cuyler) is lost, it will fail to go upon the section as a part of the amendment of the gentleman from Dauphin, (Mr. MacVeagh,) but that would not prevent the gentleman from Philadelphia (Mr. Cuyler) from moving it at a subsequent time as an independent amendment.

Mr. BOYD. Suppose it is adopted?

The CHAIRMAN. If it were adopted, and the amendment should not be passed, the amendment to the amendment would fall with the amendment.

Mr. GOWEN. But could not the amendment to the amendment thereafter be offered as a separate amendment?

The CHAIRMAN. It could be offered as a separate amendment after the amendment has been voted down.

Mr. GOWEN. I would like to suggest to my friend, the gentleman from Philadelphia (Mr. Cuyler,) whether it would not be well to withdraw the amendment in the shape in which it now is, for I believe firmly and truly that no greater measure of reform in legislation can be offered upon the floor of this Convention than that very amendment; but if that amendment is adopted as part of this long oath, there are a great many members upon this floor who do not believe that you can make corrupt people by swearing them to be good, and I believe a great many persons who are in favor of the amendment of the gentleman from Philadelphia (Mr. Cuyler) are opposed to this oath. As they are both before the committee I desire to say a few words upon this subject.

Mr. CUYLER. My friend will pardon a single word in explanation. I wrote this amendment, being in favor of the section as originally reported, for I did not think myself it was as much in harmony with the substance of it. I am in favor of the original oath as reported.

Mr. J. S. BLACK. Does the gentleman withdraw that?

Mr. CUYLER. No, sir.

Mr. J. S. BLACK. If that amendment is made a part of the oath that is presented

by the gentleman from Fayette (Mr. Kaine) will the gentleman vote for it?

The CHAIRMAN. The gentleman from Philadelphia (Mr. Gowen) has the floor.

Mr. GOWEN. Mr. Chairman: I always give up the floor to the gentleman from York, (Mr. J. S. Black,) because the highest compliment I ever heard paid to the intellectual faculties of any man was paid to him by one of the most eminent judges of a high court in this country, who stated that he listened to his arguments when he knew he was wrong with more pleasure than he listened to the arguments of any other counsel when he knew that counsel was right. Now I do not know whether it is incumbent upon me to reply to the elaborate argument of the gentleman from York (Mr. J. S. Black) made on the floor this morning. He did not say a word about me. He did not say a word about any interest that I am supposed to be connected with, but "the captain with his whiskers took a sly glance at me," and I suppose that he expected that I would reply to it, and I simply desire to say that there are three reasons why I should not reply to that part of the gentleman's argument. The first is, that I am not a representative on this floor of any corporation. The second is, that I do not know anything about these corrupt practices which the gentleman charged, and the third is, that I believe that the basket full of coals which the gentleman spoke about so eloquently is too small a matter for a Convention to amend the Constitution of Pennsylvania to talk about. For these three reasons I will not answer the argument, and I will confine myself, therefore, to what is now before the committee.

First, as to the amendment of the gentleman from Philadelphia, (Mr. Cuyler,) I am in favor of it, but I fear it may be lost, by incorporating it upon the amendment of the gentleman from Dauphin, (Mr. MacVeagh,) and if I am right in believing that the amendment of the gentleman from Philadelphia (Mr. Cuyler) may therefore be offered as a separate amendment, there is no objection to leaving it before the committee now.

A few practical suggestions. It will not do for us to assume that all corruptions in the Legislature are directed to procuring the passage of bills. There may be as much corruption used to defeat a bill as there is to secure its passage. Where the object is merely to defeat a bill, this King Caucus who puts upon his robes and his

sceptre the emblem of sovereignty, gives to any corrupt party the right to defeat the whole legislation of the State of Pennsylvania, by securing the votes of nine members of any dominant party in the Senate. One of the best reasons probably given for increasing the members of the Legislature is that it will be more difficult to corrupt them. What, then, does King Caucus do?

There may be an act of great prospective benefit to the State of Pennsylvania. That act may be for the best interests of the whole State, but it may be opposed to some particular party, or some particular influence, or some particular combination of capital, and that party, and that influence or that combination of capital may simply conclude to defeat that bill. All that it is necessary to do is to get nine members of the dominant party, that for the time being happens to have control of the Senate. Suppose the Senate is divided seventeen to sixteen. Those nine members call a caucus of their party, nine members adopt a resolution in caucus, which the other eight are pledged to carry out, and this way the nine members defeat the whole legislation of the State.

I am not much of an advocate of iron-clad oaths, but I do believe this, that if you are to have these oaths, that to be taken at the end of the session is going to be of much more power than the oath taken at the commencement of it. It has been argued upon this floor, by those who are opposed to this subsequent oath, that the very fact that members know they will have to take the preceding oath will bring a better class of members to Harrisburg. If that is true, and if the member knows that before he goes back to his constituents he has to take another oath, will not that serve to make him honest while he is there? I do not desire to press this very much, for while I have no great belief that oaths will cure rascality, I do believe that if any oath is taken at all, the one at the end of the session will be productive of more good than the one at the beginning. I would be perfectly willing to accept the article as it stands, as reported by the Committee on Legislature, with the amendment of the gentleman from Philadelphia with reference to caucusing. If that amendment shall carry I believe it will cure this evil, and if this other oath is adopted, as it may be, then I will be in favor of adopting the suggestion of the gentleman from Philadelphia. If we are to have one let us have both. If

we are to have one of either of the two let us rather have the one at the end of the session than at the commencement.

Mr. MACVEAGH. Mr. Chairman: I beg permission, before this vote is taken, to say that I hoped it would at least have been modified so that it should not be construed to prevent assemblages of members of the Legislature for consultation and agreement of opinion. As it has not been done, further reflection satisfies me that if it is appended to the oath which I moved as a substitute, it will result in the defeat of that oath, and will really result in leaving only the report of the committee.

The CHAIRMAN. The Chair is compelled, very reluctantly, to remind gentlemen that a delegate, under the rules adopted for the government of debate in committee of the whole, cannot speak but once on the same subject.

Mr. BAKER. Mr. Chairman: I move the gentleman from Dauphin have leave to proceed.

Mr. LILLY. I object.

Mr. EWING. Mr. Chairman: The gentleman from Philadelphia has offered an amendment which, as I understand, will be a very unwise one to have incorporated into the oath to be taken by a member of the General Assembly. As a member of the Committee on Legislation I have agreed to the report as given to the Convention. But on scarcely a single section of that report has any member had precisely his own wish or desire in regard to what words should be in it. Almost every section of the report is a compromise of the ideas and wishes of all the members constituting the committee. I take it that such is necessarily the case wherever members of any deliberative assembly have some general ideas or plans in view. They must consult. They must deliberate. They must compromise and must come to some agreement, and each one must in part yield his convictions to the judgment of his colleagues. Now I take it that that would be prohibited by the amendment under consideration.

Mr. JOHN R. READ. Mr. Chairman: If the gentleman will allow himself to be interrupted, I will ask him whether he understands that by the amendment offered by the gentleman from Philadelphia, consultation of members of the Legislature is prohibited, and whether it does not say that they shall not submit themselves to the result of that consultation?

Mr. EWING. Mr. Chairman: I understand it to say that consultations shall not take place between members of a deliberative body. That if a matter was submitted to the consultation of members having the same general object in view, as I understand it, it would prohibit a member from carrying out the result arrived at by the consultations, if not in accordance with his own views, as I understand it, the amendment would prohibit me from doing that which I have done almost every day in this Convention. It would prohibit that which occurred just now on the floor, between the distinguished gentleman from York, (Mr. J. S. Black,) and the mover of the amendment, when one inquired of the other if he would vote for the oath reported by the committee with that amendment. I think it is impracticable. Now the oath which is reported by the Committee on Legislation is, in my opinion, substantially what should be taken as a preliminary oath by the members of the Legislature. As explained by the gentleman from York, it does more than merely provide that the members shall "support the Constitution of the State." To get the full force of that oath, you must look at the entire provision of the Constitution, and you will find that bribery is to be prohibited. There are a great many things prohibited, and I take it that the oath binds the member to pay attention to, and to observe the forms of legislation laid down here, and a hundred things that it is entirely unnecessary to incorporate into the oath.

Mr. KAINE. Mr. Chairman: May I ask the gentleman to inform the committee what he understands the word in that oath, "to defend the Constitution," to mean?

Mr. EWING. I understand it to mean that he will obey it; that he will observe in his place as a legislator the directions that are laid down there; that he will in all things pay attention to it and obey it and defend it. Now I take it that we can tell better what oath we should prescribe for the members, after we have passed through this article and have determined what restrictions we will lay on the Legislature or on legislators, to see if when we reach the end of this article we have not covered all the ground that it is intended to be covered by the oath reported from the Committee on Legislation. To my mind it is objectionable to incorporate many things in any oath that simply looks to the future. When a man

takes an oath, an official oath, or an oath in any private matter, usually it should be such an oath that the violation of it, or any false swearing, would be punished as perjury.

I take it that the latter clause of that oath covers all that is contained in the oath reported from the Committee on Legislation. If a man has been guilty of bribery, or of corruption, or any undue means by which his election has been secured, he knows it at the time he takes this oath, and if he takes the oath, having committed this offence, he is guilty of perjury. Now the gentleman from Dauphin (Mr. MacVeagh) stated here I think that the oath reported by his committee was a copy of the oath in the Illinois Constitution. I think if he will examine it carefully he will find that that is a mistake. That is loose enough, and I do not think it would hurt any man who is guilty of bribery or corruption, or who violates his obligations while a member of the Legislature. I do not think it would hurt him very much to take the oath prescribed in the Illinois Constitution. But these gentlemen have been still more careful of the consciences of the members. They provide that he shall not do these things; that he shall not bribe; that he shall not lie; that he shall not take a gift, if he does it "*corruptly*." If he does not do it corruptly it is all right. He must do it corruptly, or it is no offence. Do you think that you would ever find any person to say that he did it corruptly? If you do not make the very act of doing it a corrupt measure, it is not worth while to put the oath to him.

I hope that this oath, as reported by the Committee on Legislation, will be adopted without any amendment, and if after we get through this article it is found that it does not bind the legislator strong enough, it can be readily re-considered and amended. I would be willing to vote with any gentleman, who thinks then that it ought to be amended, to re-consider the subject.

I may say further, that as a member of this committee, I agree with the gentleman from York in most of the provisions that he speaks of in regard to the prevention of bribery and the endeavor to abolish the "third house." And I am in favor of a future oath substantially as the amendment was offered by the gentleman from Fayette, (Mr. Kaine,) and will vote for it when it comes up.

Mr. CORSON. Mr. Chairman:—

Mr. KAINE. Mr. Chairman: If the gentleman will allow me, I move that the committee rise, report progress, and ask leave to sit again.

Mr. CORSON. Mr. Chairman: I yield for that purpose.

The motion was agreed to. The committee rose, and the President resumed his chair.

IN CONVENTION.

Mr. ARMSTRONG, chairman of the committee of the whole, reported that the

committee had had under consideration the report of the Committee on Legislation, and had instructed him to report progress and ask leave to sit again.

On the question, when shall the committee have leave to sit again, to-morrow was named and agreed to.

Mr. LANDIS. Mr. President: I move to adjourn.

This was agreed to, and the Convention, at three P. M., adjourned until ten o'clock to-morrow morning.

SIXTY-THIRD DAY.

TUESDAY, *March 11, 1873.*

The Convention met at ten o'clock A. M. Prayer was offered by Rev. James W. Curry.

JOURNAL.

The Journal of yesterday's proceedings was read and approved.

INDUSTRIAL HOME.

The PRESIDENT laid before the Convention an invitation from the Industrial Home for women to visit the institution.

Mr. DARLINGTON. Mr. Chairman: I move that the invitation be accepted, with the thanks of this Convention.

The motion was agreed to.

PROHIBITION.

Mr. JOHN M. BAILEY presented two petitions from citizens of Huntingdon county, in favor of the prohibition of the manufacture and sale of intoxicating liquors.

Mr. WRIGHT presented a petition from certain citizens of Luzerne county upon the same subject.

Mr. CARTER presented two similar petitions from citizens of Juniata county upon the same subject.

Mr. G. W. PALMER presented a petition from citizens of Luzerne county on the same subject.

Mr. HARRY WHITE presented a petition from citizens of Indiana county upon the same subject.

The foregoing petitions were laid on the table.

THE LEGISLATURE.

Mr. RUNCK offered the following, which was referred to the Committee on Legislature:

For determining the ratio of Senatorial representation every ten years by dividing the population of the State, ascertained by the last preceding national census by one hundred, the quotient to be the ratio of representation in the Senate. Counties containing not less than the ratio and three-fifths thereof shall each elect two Senators, and one additional Senator for each additional number of inhabitants equal to the ratio. Counties entitled to

more than one Senator shall be divided into as many Senatorial districts as there are Senators to be elected, from each of which one Senator shall be chosen. Each district shall be composed of compact, contiguous territory, containing as nearly equal population as possible. No election district shall be divided, and no county shall have less than one Senator. The ratio of representation in the House shall be determined in the same manner, except that the ratio shall be ascertained by dividing the population of the State by three hundred instead of one hundred.

IRREDEEMABLE GROUND RENTS.

Mr. BROOMALL offered the following, which was read and referred to the Committee on the Judiciary:

The Legislature shall provide a means, in the nature of a proceeding in partition, for the extinguishment of irredeemable ground rents.

PUBLISHING DEBATES.

Mr. CURTIN offered the following resolution, which was twice read and agreed to:

Resolved, That the Committee on Printing be requested to ascertain the cost for what the reports of the amendments proposed and Debates can be published in two daily newspapers of Philadelphia, and furnish one hundred or a thousand copies of each paper for the use of the members, and make report to this Convention.

ADOPTION OF SEPARATE ARTICLES.

Mr. D. W. PATTERSON offered the following resolution, which was read and laid on the table.

PRINTING REPORTS FROM COMMITTEES.

Mr. BOYD. Mr. President: I move to reconsider the vote by which the resolution to direct the official reporter to furnish reports of standing committees was negatived.

The PRESIDENT. When was the resolution passed?

Mr. BOYD. Last Friday.

The PRESIDENT. Did the gentleman vote in the affirmative?

Mr. BOYD. I did.

The PRESIDENT. Is the motion seconded by a gentleman who voted in the affirmative?

Mr. CURTIN. I second it.

The PRESIDENT. The resolution will be read for information.

The CLERK read:

Resolved, That the official reporter be directed to furnish the State Printer as reported matter, reports of standing and select committees.

The PRESIDENT. The question is to re-consider the vote upon that resolution.

Upon this motion a division was called for, which resulted: Affirmative thirty-seven; negative twenty-four.

So the motion to re-consider was agreed to.

The PRESIDENT. The question is now upon the adoption of this resolution.

Mr. D. N. WHITE. Mr. President: It appears to me that it is necessary to publish these reports in the Debates, in order that the reader may understand what the debate is about. Now, when the report is made to the Convention and published in the Debates, when the subject comes up, the reader can turn back to that report and know what the committee is talking about, and know what relation one part of that report bears to another part. Unless these reports are published in the Debates, a reader of them would often be at sea to know what we were talking about.

Mr. DARLINGTON. Mr. President: When this question was up the other day, we had the matter very fully discussed, and especially by the gentleman from York, (Mr. Cochran,) who gave us the information that we desired, and upon which we thought proper then to vote down the proposition. Now if he will repeat his argument, and let those of us who were not present learn what it is, or if he can give us some reason why we should change from the vote of the other day, I would like to know it.

Mr. ARMSTRONG. Mr. President: It seems to me that there is eminent propriety in this resolution. The various questions that come before the Convention are printed as to the particular matter which is under discussion; but there is no mode of ascertaining the relation of that question to the entire question which may be under discussion, except by referring to the whole report. That report cannot be found except by a reference to the Journal, which is inconvenient, and oftentimes

inaccessible, when the reports might be present.

There are some thirty standing committees, and the entire amount of printing which would ensue upon the printing of all these reports would not, probably, exceed fifty pages in the aggregate. The expense would be comparatively trifling, and the convenience of having them in the reports would seem to me to be very great.

Mr. ARMSTRONG. Mr. President: It strikes me that it is eminently proper that they should be printed in the Debates.

Mr. LILLY. Mr. President: Are they not printed in *this* form, so that all may refer to them? [Referring to the form of legislative bills.]

Mr. ARMSTRONG. Undoubtedly.

Mr. LILLY. Is not that sufficient?

Mr. ARMSTRONG. I think not; because the publication of the debates of the Convention is a permanent record, while *this* form [the form of legislative bills] is merely ephemeral. The reports in that form are not bound, and pass from the knowledge of the members when the Convention adjourns. Gentlemen should remember we are making a permanent record. It ought therefore to be made complete. I do think that it is not worth while, for the trifling expense which will be involved, to make a record of the proceedings incomplete, which we intend to be permanent and to be handed down for many years for the consideration of other persons who come after us.

Mr. DARLINGTON. Mr. President: Is it designed to print these together in a mass?

Mr. ARMSTRONG. No, sir; but to print them, as I understand, as they are reported from time to time.

Mr. DARLINGTON. But we have a thousand pages printed without them already, and we had better find some other plan to relieve us of the dilemma, for how can we go back now and insert the reports as they were presented?

Mr. D. N. WHITE. Mr. President: As a correction of what the gentleman from Chester (Mr. Darlington) has said, I would state that these reports of committees have been published heretofore as they have come from the committees. I would further add that there is only a small edition of the Journal printed, sufficient merely to supply the members, and therefore those who get copies of the Debates will not get the Journals, so that they cannot refer to these documents

at all, unless they are printed in the Debates.

Mr. HARRY WHITE. Mr. President: Inasmuch as I introduced this resolution last week, one word of explanation will not be improper on my part. I have reason to know that great convenience has resulted from the operation of the proposition which is now before you. In the matter of the Debates of the Illinois Constitutional Convention it was said, the other day, that the reports of the committees were scattered all through, article by article, as the sections were brought up for discussion. That is quite true, and if the gentleman will refer to the Illinois Debates, and to the Debates of the other States, they will discover the uniform rule to be that the report of the committee is printed in the Debates as first presented, and it is then analyzed, section by section, as the sections come up for discussion. Under the operation of any other plan, if a gentleman wishes to refer to any part of the report he must turn over page after page, and page after page, until he comes to the particular section under discussion; while otherwise, if printed in the Debates, as I proposed, the whole thing would be together, so that he could see all the bearings of one section upon the other.

In answer to the gentleman from Chester (Mr. Darlington) I would say that all the reports of the different committees have already been printed in the manner indicated, that is, in full, when presented, and this practice was only stopped when the report of the Committee on Legislature was presented. It would be best to have the rule uniform, and extend to all reports of the committees.

Mr. KAINE. Mr. President: I do not know that I understand exactly the object of this resolution. If this plan had been adopted at the commencement of our proceedings, it would have been, I have no doubt, very advantageous, and should have been done. The reports of committees would be printed in the Debates in place of being printed in the Journal. I find in the proceedings of the Convention of 1837-8, that a different course was pursued; for instance, when a particular article was taken up, that article was inserted in full in the Debates. I have the second volume of these debates now before me, and on pages 230-231 I find the following:

"Mr. STEVENS moved that the second article of the Constitution be taken up for consideration.

"The PRESIDENT stated that the question which had precedence was the second reading of the report of the committee of the whole on the first article.

"On motion of Mr. Mann, of Montgomery, the report of the committee of the whole on the first article was postponed.

"Mr. READ, of Susquehanna, suggested that the fifth article was made the special order of the day for last Monday week.

"The motion of Mr. Stevens was agreed to.

"The Convention resolved itself into committee of the whole, Mr. Clark, of Indiana, in the chair."

That second article is then printed in full before the discussion commences. The difficulty that now strikes me is where we should commence to set the thing right. We have a thousand pages of our Debates now printed, and how are we going to get back and put these reports of the committee in their proper places? I have no particular objection to this resolution, but it strikes me that that difficulty is serious.

Mr. LILLY. Mr. President: I think this proposition of printing the reports of committees in the Debates is entirely useless, so far as this Convention is concerned. If you turn to your Debates you will find that we are always ten to fifteen days behind time, so that all action on the article has been disposed of before we get the Debates, which would show the report, and the only thing that we have to refer to consists of these reports as they are printed in the form of legislative debates. It seems to me that if anything is to be done, which looks to the printing of these reports in full in the volumes of the Debates, it would be better to print them as suggested by my friend from Huntingdon, (Mr. John M. Bailey,) at the end of the volume, in an appendix. I think we have the history of the thing in the Debates, section by section, and if any one will follow the Debates through, they will find everything that they need.

I have become sick and tired of listening to statements about the Illinois Convention. What have we to do with the Illinois Convention? We are here as Pennsylvanians, to make a Constitution for Pennsylvania. We have this word "Illinois" put under our noses almost every day. I hope members will have sense enough to determine these things for themselves, without saying anything about Illinois. I think we shall make a great deal better Constitution than ever

Illinois did. I hope we are able to do it, and I hope we will do it.

Mr. KAINE. Mr. President: Since making my remarks a few minutes ago, I have been informed by a gentleman here, who is familiar with this thing, that all the reports heretofore made have been printed in the Debates, and that the resolution was only passed just recently, forbidding anything of the kind being further done; therefore the difficulty in my mind on that subject is entirely removed.

Mr. STANTON. Mr. President: It is very true we are here as Pennsylvanians, but the gentleman from Carbon (Mr. Lilly) will agree with me, that we have referred with very great advantage to the Debates of the Illinois Convention, and that we have got from them a great deal of information. When this Convention passes away we want our record to be as good as that of the Illinois Convention. It may, perhaps, benefit some other State in the future, which shall be endeavoring to amend its Constitution.

If I understand this question correctly, we started out on the plan of printing in the Debates the reports of committees as they were presented, in full, and if we now have this broken into, it will set the whole thing at sea. It will be neither one thing nor the other. I think we had better continue the practice as we commenced.

Mr. J. M. BAILEY. Mr. President: It strikes me that the passage of this resolution will add to the confusion of our Debates. The reports of committees are presented to the body at least three weeks before they are acted upon. It is not proposed, as I understand it, to print them again when we come to consider them in debate, but to print only the particular section under consideration, and that section is always read by the Clerk from the desk, and is reported and printed in the Debates. Now, when we come to consider the report of any particular committee, every member of the Convention, even if he has the Debates printed, before him on his table, will have to look back through, perhaps, two volumes, before he can find the report of that committee. My idea would be, if it is a matter of convenience to have these reports in the Debates, that they should be printed in an appendix at the end of the last volume, and all the reports of the committees would, in that way, be together, and be quite ready of reference.

Mr. SIMPSON. Mr. President: I shall vote for the resolution before the Conven-

tion, because I do not think the Debates will be understood by persons outside, unless they are completed by having the reports inserted in them somewhere. We had a very interesting discussion here, yesterday, but who on earth would suppose that discussion to apply to the important question before the committee? Nobody, and unless the whole report appears somewhere in the volume, the Debates will be incomprehensible. We will have to refer to the Journals or some other documents to ascertain the precise bearing of matters in committee of the whole, upon other matters under discussion. For that reason I shall vote for the making of the Debates complete.

The question being upon the resolution of Mr. Harry White, a division was called for.

Mr. BROOMALL. Mr. President: Before the result of the vote is announced, I desire to ask whether it is the intention of the Convention still to continue to publish these reports in the Journal, as they are published now?

The PRESIDENT. On the question the yeas are sixty-one, and the nays are ten. The resolution is agreed to.

Mr. BROOMALL. Mr. President: I had concluded to call the yeas and nays, and I rose before the vote was announced.

The PRESIDENT. The gentleman did not rise to call the yeas and nays before the vote was announced.

Mr. BROOMALL. I rose before the vote was announced.

The PRESIDENT. To call the yeas and nays?

Mr. BROOMALL. No, sir; I rose before the vote was announced, to ask a question.

The PRESIDENT. The Chair will observe that gentlemen are so much in the habit of standing up in their places, that it is impossible for the Chair to say when persons are up, whether they are there for the purpose of addressing the Chair, or calling for the yeas and nays, or for any other purpose of action. I would ask the gentleman from Delaware, (Mr. Broomall,) whether he rose for the purpose of calling the yeas and nays?

Mr. BROOMALL. Mr. President: I rose before the vote was announced, to make the remark which I tried to make.

The PRESIDENT. It was out of order; but with the consent of the House the Chair will withdraw the decision, and allow the call for the yeas and nays.

Mr. BROOMALL. Then I move to rescind the resolution that has just been passed.

A DELEGATE. Did you vote with the majority?

Mr. BROOMALL. I have a right to move to rescind the resolution, whether I voted with the majority or not.

The PRESIDENT. The Chair withdraws his decision. If the gentleman wants to call the yeas and nays, now is the time for him to do so.

Mr. BROOMALL. Mr. President: Have I a right now to ask a question?

The PRESIDENT. No, sir, you have a right to call for the yeas and nays.

The PRESIDENT. Is the call seconded?

["Yes!"]

Mr. BROOMALL. Mr. President: Have I now a right to debate the question?

The PRESIDENT. Will the House give unanimous consent to the gentleman from Delaware to ask a question?

["No!" "Aye!" "No!" "Aye!"]

The PRESIDENT. Unanimous consent is not given.

Mr. BROOMALL. Mr. President: I give notice to the House now that I intend to debate this question, but not at this time.

Mr. BOYD. Mr. President: I hope the gentleman from Delaware (Mr. Broomall) does not mean to "scare" the members of this Convention. We are not very much affected by scare in this section of the House.

On this question, the yeas and nays were required by Mr. Broomall and Mr. Andrew Reed, and were as follow, viz:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Armstrong, Baer, Baily, (Perry,) Bardsley, Biddle, Black, J. S., Bowman, Boyd, Brodhead, Campbell, Carter, Clark, Corbett, Cronmiller, Curry, Curtin, Dallas, Darlington, De France, Dodd, Dunning, Edwards, Elliott, Ellis, Ewing, Finney, Fulton, Hazzard, Hemphill, Horton, Howard, Hunsicker, Kaine, Lamberton, Landis, Lear, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Mott, Niles, Palmer, G. W., Patterson, D. W., Porter, Pughe, Purviance, Samuel A., Read, John R., Reynolds, S. H., Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, William H., Stanton, Stewart, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F. and Wright—68.

NAYS.

Messrs. Ainey, Andrews, Bailey, (Huntingdon,) Bartholomew, Broomall, Church, Cochran, Davis, Funck, Hall, Knight, Lilly, Long, Reed, Andrew, Reynolds, James L., Smith, Henry W., Struthers, Turrell, Walker, Wetherill, John Price and Meredith, *President*—22.

So the resolution was agreed to.

ABSENT OR NOT VOTING.—Messrs. Baker, Bannan, Barclay, Beebe, Black, Charles A., Brown, Buckalew, Carey, Cassidy, Collins, Corson, Craig, Cuyler, Fell, Gibson, Gilpin, Gowen, Green, Guthrie, Hanna, Harvey, Hay, Heverin, Lawrence, Littleton, M'Allister, M'Camant, M'Murray, MacVeagh, Metzger, Minor, Newlin, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Purman, Purviance, John N., Rooke, Temple, Van Reed, Woodward and Worrell—42.

Mr. S. A. PURVIANCE. Mr. President: I rise to a question of privilege. I move to re-consider the vote by which this Convention resolved that when it adjourned on the twenty-ninth day of this month it be to the fourteenth day of April.

The PRESIDENT. The resolution will be read for information.

The CLERK:

Resolved, That when this Convention adjourn on Saturday, the twenty-ninth of March, it be to Monday, the fourteenth day of April, at ten o'clock of said day.

The PRESIDENT. Did the gentleman who moved to re-consider vote in the affirmative?

Mr. S. A. PURVIANCE. I did.

The PRESIDENT. Who seconds the motion?

Mr. WHERRY. Mr. Chairman: I second it.

The PRESIDENT. How did the gentleman from Cumberland vote?

Mr. WHERRY. In the affirmative.

The PRESIDENT. The motion is before the House.

Mr. RUSSELL. Mr. President: I hope this resolution will not be re-considered. It is very important to a very great many members of this Convention to be at home on the first day of April. Gentlemen who live in the city can be present here every day and attend to their business also. Gentlemen from the country cannot attend to their business.

The PRESIDENT. The Chair is compelled to state that a motion to re-consider is not debatable. The question is on the re-consideration.

On this question the yeas and nays were required by Mr. Edwards and Mr. Lilly, and were as follow, viz:

YEAS.

Messrs. Addicks, Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Biddle, Bowman, Boyd, Brodhead, Broomall, Campbell, Carter, Corbett, Curtin, Dallas, Darlington, Dodd, Edwards, Ellis, Ewing, Finney, Hanna, Hay, Horten, Howard, Landis, Lilly, Littleton, MacConnell, M'Culloch, Mann, Mantor, Niles, Pughe, Purviance, Sam'l A., Read, John R., Reynolds, James L., Smith, Wm. H., Stanton, Struthers, Turrell, Walker, Wetherill, John Price, White, David N., White, J. W. F., Wright and Meredith, *President*—48.

NAYS.

Messrs. Achenbach, Ainey, Alricks, Baer, Baker, Bartholomew, Black, J. S., Church, Clark, Cochran, Cronmiller, Curry, Davis, De France, Dunning, Elliott, Fulton, Funck, Hazzard, Hemphill, Hunsicker, Kaine, Knight, Lamberton, Lear, Long, M'CLean, MacVeagh, Mott, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Reynolds, S. H., Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stewart, Wetherill, J. M., Wherry and White, Harry—46.

So the resolution was re-considered.

ABSENT OR NOT VOTING. — Messrs. Bannan, Barclay, Beebe, Black, Charles A., Brown, Buckalew, Carey, Cassidy, Collins, Corson, Craig, Cuyler, Fell, Gibson, Gilpin, Gowen, Green, Guthrie, Hall, Harvey, Heverin, Lawrence, M'Allister, M'Camant, M'Murray, Metzger, Minor, Newlin, Palmer, H. W., Parsons, Patton, Purman, Purviance, John N., Rooke, Temple, Van Reed, Woodward and Worell—46.

Mr. LILLY. Mr. President: I move to strike out "twenty-ninth," and insert "twenty-eighth," and strike out "fourteenth," and insert "eighth."

Mr. ANDREW REED. I move to amend by striking out "eighth," and inserting "twenty-second."

The amendment to the amendment was not agreed to.

The PRESIDENT. The question is upon the amendment offered by the gentleman from Carbon, (Mr. Lilly.)

The resolution, as amended, will be read.

The CLERK read:

Resolved, That when this Convention adjourns on Friday, March twenty-eighth, it be until Tuesday, April eighth, at ten A. M."

Mr. MANN. Mr. President: I desire to say that this is more objectionable now to members living so far away as those coming from my district, than it was in the first place. It is objectionable in any form that can be named. The proposition is to leave Philadelphia at the most favorable time, so far as weather is concerned, and come back and sit in the heated months of the year. I hope this Convention will have too much good sense to do anything of the kind.

Mr. CURRY. Mr. President: I hope the amendment will prevail, as it will give the Convention ten days vacation, which is long enough to adjourn at any one time.

Upon the amendment of Mr. Lilly, the yeas and nays were required by Mr. Mann and Mr. Corbett, and were as follow, viz:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Armstrong, Baer, Baily, (Perry,) Baker, Bardsley, Bartholomew, Biddle, Black, J. S., Boyd, Brodhead, Campbell, Carter, Cochran, Curry, Curtin, Dallas, Davis, Dodd, Dunning, Elliott, Ellis, Ewing, Finney, Fulton, Funck, Hall, Hanna, Hemphill, Horton, Hunsicker, Kaine, Knight, Lamberton, Lilly, MacConnell, M'CLean, MacVeagh, Mott, Patterson, D. W., Patterson, T. H. B., Pughe, Purviance, Samuel A., Read, John R., Reynolds, S. H., Rooke, Ross, Runk, Russell, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F. and Wright—62.

NAYS.

Messrs. Ainey, Andrews, Bailey, (Huntingdon,) Bowman, Broomall, Church, Clark, Corbett, Cronmiller, Darlington, DeFrance, Edwards, Hay, Hazzard, Howard, Landis, Lear, Littleton, Long, M'Culloch, Mann, Mantor, Minor, Niles, Palmer, G. W., Porter, Reed, Andrew, Reynolds, James L., Smith, Henry W., Stewart, Struthers, Turrell, Walker, Wetherill, John Price and Meredith, *President*—35.

So the amendment was agreed to.

ABSENT OR NOT VOTING.—Bannan, Barclay, Beebe, Black, Charles A.,

Brown, Buckalew, Carey, Cassidy, Collins, Corson, Craig, Cuyler, Fell, Gibson, Gulpin, Gowen, Green, Guthrie, Harvey, Heverin, Lawrence, M'Allister, M'Camant, M'Murray, Metzger, Newlin, Parsons, Patton, Purman, Purviance, John N., Temple, Van Reed, Woodward and Worrell.—36.

LANDS OF MINING COMPANIES.

Mr. FINNEY, from the Committee on Mines, Manufactures and Agriculture, requested that that committee be discharged from the consideration of a resolution referred to it, limiting the extent of land to be held by mining companies, which was agreed to.

The resolution was then referred to the Committee on Private Corporations.

PROHIBITION.

Mr. DUNNING presented a petition of 1,000 citizens of Luzerne county, praying that an amendment may be made to the Constitution prohibiting the sale of intoxicating liquors, which was referred to the Committee on Legislation.

EDUCATION.

The PRESIDENT. The next business in order, is the second reading and consideration of the article reported by the Committee on Education. Is it the pleasure of the Convention to proceed to the second reading of that article?

It was not agreed to.

LEGISLATION.

The PRESIDENT. The next business in order is the further consideration of the article reported by the Committee on Legislation.

IN COMMITTEE OF THE WHOLE.

The Convention then, in committee of the whole, Mr. Armstrong in the chair, proceeded to the further consideration of the report of the Committee on Legislation.

Mr. LILLY. Mr. Chairman: I give notice now, that without intending to be at all discourteous to gentlemen who discuss this question, that I intend to keep them to the matter in debate.

The Chairman. The question before the committee is upon the motion of the gentleman from Philadelphia, (Mr. Cuyler,) to amend the motion of the gentleman from Dauphin, (Mr. MacVeigh.)

Mr. D. N. WHITE. Mr. Chairman: I would now call for the reading of the proposition immediately before the Convention, so that the gentlemen may understand what is before us.

The CLERK read the amendment of Mr. Cuyler, as follows:

"And that I will not submit my individual judgment or action to the decision or control of any caucus or combination of members of the Legislature."

Mr. D. N. WHITE. Mr. Chairman: There are four propositions before the committee on the subject of oaths. The first is the short, comprehensive oath reported by the Committee on Legislation. The second, the more diffuse oath, reported by the Committee on the Legislature, and offered as an amendment by the gentleman from Dauphin, (Mr. MacVeigh.) Third, the oath to be taken by members of the Legislature, after that body adjourns, offered as an amendment by the gentleman from Fayette, (Mr. Kaine,) but generally understood to be the production of the distinguished delegate at large from York, (Mr. J. S. Black,) and which, in his view, is to be the panacea for the enormous evils he so glaringly depicted in his speech yesterday. Lastly, there is the caucus amendment, presented by the eloquent gentleman from Philadelphia, (Mr. Cuyler,) to which he attributes great healing virtues.

To all the amendments to the report of the committee I am opposed. The oath presented by that committee is short, but very comprehensive. It covers all the ground that is necessary. It binds every honest man as firmly as if it was ten times as long, and contained clauses on every imaginable subject; and I have no faith in the power of an oath to bind dishonest men. A man whose moral sense is so distorted that he will take a bribe, will laugh at your oaths as so much idle breath. Therefore I consider the amendments of the gentleman from Dauphin, and the gentleman from Fayette, as utterly useless as restraints upon bad men, while good men, sensitive men, could not take them without a feeling of humiliation.

I am opposed to them for another reason. Their tendency is to fix a stigma upon one branch of the government, by requiring its members to take an oath which is not required from any other and co-ordinate branch. The members of the Executive Department, and of the Judiciary, are not required to swear solemnly that they will not commit a misdemeanor in office which will consign them to the cells of a prison, and cover them with perpetual degradation. But these amendments, if adopted, require this of your Senators and your

Representatives, who compose the highest body in the State, and who come direct from the people, and are clothed with the greatest and most important powers which any body of men in a free government can possess. What object can be gained by degrading the Legislature? Can this high court suffer, and the whole body politic not suffer with it?

The Legislature is that body in the State which, more than any other, represents the democratic element. Without it we must go back to arbitrary power, the one man power or the power of a class. Degrade the Legislature in the eyes of the people, destroy their confidence in their own representatives, and you destroy their confidence in republican institutions, and give them up a prey to ambitious, artful and unscrupulous men.

It is fashionable now-a-days to deride the Legislature, and to speak of it with contempt. Every young fledgling who wishes to display his eloquence on the stump, or his flippant smartness in the press, and to air his virtues and his wisdom before a gaping crowd, attacks the Legislature, and no one rebukes, no one comes to the defence of this foundation-stone of all republican governments. Can we do without a Legislature? Is there any possible mode of preserving our free institutions without it? What folly; what madness then, to seek thus, with suicidal hands, to destroy what should be our glory, but which gentlemen assert on this floor is our shame.

I do not deny that members of the Legislature may have been corrupted. I do not deny that that body may have suffered deterioration in latter years. Is it any wonder? Patriotism is not so prevalent now-a-days as to lead the men who fill all the active walks of life, and who are engaged in the mad scramble for wealth and power, to sacrifice their time to fill an office which yields no emoluments, and which, if we can believe what we have heard here, will only cover him with disgrace. Will it ever be any better if it is to be constantly held up to the scorn and detestation of the people?

How does it come that a part of the members of the Legislature are corrupt? Your individual or body of men outside of themselves must bribe them, if they are bribed. Now we know very well, that very few individuals have enough interest at stake, or have money enough to spare, to resort to wholesale systematic bribery. We are shut up then to the con-

clusion, that the main source of this corruption is found in those immense and wealthy corporations, which, as was said on this floor yesterday, have special privileges they want to obtain, or to prevent legislation in favor of other and rival interests. If cajolery or threatening cannot accomplish their ends, they resort to bribery by means of paid agents constantly on the ground. This corrupt and corrupting influence has done more to degrade the Legislature, than all the other means combined. Evil disposed persons, finding that men high in society, controlling immense interests, and claiming the most exalted integrity, systematically resort to corruption to carry their ends, have sought membership in the Legislature, for the purpose of sharing in these golden spoils. Yet these very men, these corruptors, these bribers of the wills of their people, will declare in the most eloquent and saint-like manner of the corruption of the Legislature! If the receiver is as bad as the thief, is not the tempter as vile as the man who yields to the temptation!

It is not by iron-clad oaths you can cure these evils. It is not by degrading the legislative department that you can exalt the character. Treat the Legislature as you do the Governor, the Judge; honor the office as one peculiarly belonging to the people, and lay your iron hand on the foul tempter who is sapping the foundation of our republican government, that he may ride into imperial power on the ruins of an insulted and betrayed people.

Mr. Chairman, I am also opposed to the amendment of the gentleman from Philadelphia, which requires a member of the Legislature to swear that he will not submit his individual judgment or action to the decision or control of any caucus of the members in the passage of any law or resolution.

What earthly good this could do, except to annoy some sensitive conscience, I cannot see. The case would lie altogether in the breast of the member, and no one could say whether he had submitted his judgment to the control of a caucus or not. Parties are necessary for the welfare of the State, and the nearer they are matched the better for the State. Party caucuses are also necessary for the proper concentration of the will of the party. Suppose a party is in power in a Commonwealth, and is responsible for the government, and is watched by a sagacious political foe, ready to take advantage of any mistake or error, is it not entirely

right and proper that such party should meet in consultation to discuss measures, and harmonize differences? And if there is a difference of opinion, has not a member admitted to such consultation a right to submit his judgment to the will of the majority? His judgment may tell him that it is better for the common weal that he should thus acquiesce in the will of the majority, than that he should break up the continuity of his party, and give the advantage to his political foes. Of course no honest man of any party would submit to any outrage or wrong to his moral sense at the dictation of any caucus, but every member of the Legislature represents a party and party principles, as well as the people in their aggregate capacity, and he is under obligations to promote and carry out those principles to the best of his ability, and in doing so he must necessarily some times find himself in a minority and must yield his judgment, or break up all discipline and harmony in the party. Such a clause has no place in an oath to be taken by a member of the Legislature. It is outside the province of such an oath. It is inquisitorial and pernicious. It goes beyond its proper sphere. It seeks to enter into the reasons which control a man's judgment on questions of policy, for which he is accountable only to his own conscience. And I am surprised that the usually clear headed gentleman from Columbia should have given it his support. His great anxiety to introduce reforms must have warped his judgment, or he has been caught napping when this glittering generality was launched upon the Convention. I am sure no gentleman has been more faithful to party, and to party behests, and to party caucuses than he, and no one knows better how necessary it is to maintain party discipline, if the cherished principles of the party are to prosper.

I would enlarge here, but will not longer take up the time of the committee.

Mr. LANDIS. Mr. Chairman: The committee of the whole, I believe, sir, have more immediately under consideration the amendment of the gentleman from Philadelphia, who sits at my left, (Mr. Cuyler,) but I believe that, as a committee of the whole, we have before us generally the subject of oaths, as applied to the two branches of the Legislature. I do not know, sir, that I would have troubled this committee with any observations on this subject, had not my attention, since yesterday morning, been ar-

rested by the statements of members here as to the character of the oath. I have been surprised to hear gentlemen on this floor attribute to it, sir, a want of importance with which I, in my own mind, have always invested it. I have heard gentlemen state here, that in the discharge of official duty there was little or no safeguard in the oath. They have gone so far, almost, as to claim that those who could be guilty of irregularities in other respects could not be restrained by the taking of an oath. When I therefore heard this matter so slightly spoken of, and feeling in my mind the sacred character of the obligation of an oath, I feel constrained to rise this morning and disclaim any sympathy, on my part, with such sentiments, and to enter upon the records of this Convention my protest against their utterance. Why, sir, I ask you, where is the safety for republican form of government, if we have it not in the sacred character of an oath? It is well for men to say that the republican form of government is based upon the democratic idea. That is well, sir, but I ask you what lies at the bottom of it, if it be not upon the enlightened consciences of those who must administer the government? Where is the safety of government found? Where is the safety for society? What have you to ensure you the perpetuity of society and government, if you do not ask that that government will be administered by those who will feel that their consciences are under some restraint? I ask upon what plane those gentlemen walk who do not invest an oath with that religious character which belongs to it? I ask gentlemen upon what meats they feed, who will claim that only those men are to be thought honest who are guided by a feeling of superstition alone, when they assume the sacred obligation of an oath, and not by the convictions and responsibilities of the christian religion?

I stand here then, to-day, in this christian age, simply stating that we are members of a christian community, that we are living in a day of christian enlightened civilization. And when that is said it is all that need be said that this Convention, and the members of it, should attribute to an oath all the importance it demands. Now, sir, we have been told, and it has become a proverb, that those who will lie will steal. I presume they draw from that the argument, *a fortiori*, that those who steal will certainly lie. Well, sir, to a certain ex-

tent that may be true in the every day affairs of life. But I hold that it does not follow, as a logical result, that a man who is prepared to commit peculation, that a man who is prepared to defraud the State, that a man who is prepared to enter into all sorts of combinations and schemes for the purpose of enhancing his own personal fortunes, at the expense of the State or others, is therefore prepared to add to these sins the great sin of perjury, to say nothing about this crime in a judicial sense. I hold, sir, that there prevails in the minds of all men a certain vein of religious sentiment. I hold, sir, that no man can grow up in this day of christian civilization without feeling that there has been educated into him, in spite of himself, a sentiment which shall set at naught all attempts to induce him to commit the high crime of perjury.

It is a principle, sir, if not born in man must, in this day, be educated into him by force of circumstances. A man may be guilty of an offence, of a crime, if you choose, of theft; but, sir, he is not prepared to go so far as to add to it the crime of perjury. If men have no religious profession, or faith of any kind; if they do not outwardly recognize any of the forms of religion, then it's true that they are more or less affected by a feeling of superstition, and that feeling alone may keep many a man from the commission of this great offence, because, where there is ignorance of the christian religion, you will find that, in the majority of cases, it is replaced by that which is one of the elements of ignorance, superstition.

Now sir, with regard to these oaths, I find this, that those who are to take their seats in these two Houses are required to swear that they have made use of no improper means to secure their election, or to secure a false return of their election. Further than that, I see that the oath requires them to swear that they will be guilty of no fraudulent practices. Now, sir, all that is well, but I confess that I would go further than that. I would be in favor of adopting the amendment of the distinguished gentleman from York, (Mr. J. S. Black.) I would require that at the end of the session those who shall have been there acting in the legislative capacity, should swear that they have done nothing to compromise the high position to which they have been called.

I may speak of what might be the feelings of persons under those circumstances. I ask you if a man would not be alarmed

in a moment of temptation when he knew there was, as it were, a lion in the path to confront him at the end of the session. His oath will always loom up before him in the moment of temptation; it will always stand before him as a gaunt spectre that must haunt him. It is as though he were to walk down to the valley of a shadow. When he comes to knock at the portals of exit, in leaving the high plane of his official action, to depart to his home, he finds the judge standing there to administer that obligation. Tell me not that this oath will not accomplish all that is asked for it. Tell me not that men of conscience will not be awakened to the responsibility which is thus devolved upon them, for with this specialized form of oath their consciences and judgments are ever on the alert. Let us, therefore, awaken to the true importance of this matter. Let us not treat this as one of the idle questions to come before this Convention, but let us, one and all invest it with its true significance. And let us remember this, that with all your other methods reform you will bring into the Legislature men who are intelligent and pure, and men who will not shrink from taking the oaths which you require them to take. Thus you will not be doing violence to them, but you will be assisting them, you will be protecting them, you will be supporting and encouraging them in the discharge of their duties, and you will, besides that, have gone a great ways towards the accomplishment of reform.

There is still another amendment pending, the amendment of the gentleman from Philadelphia, (Mr. Cuyler.) If there is any one thing for which I have felt, in times past, a great feeling of dislike, it is this wonderful power of King Caucus. I have felt, sir, that on more than one occasion he has been far more potent than he should have been, and I for one would be willing, if we could do so, in one way or another, to dethrone this airy sort of potentate; but, with all deference to those who think it ought to be done, I find myself in opposition to the amendment. I cannot bring my mind to the conclusion that this Convention, in framing this great State paper—the organic law of the State—should descend below a certain plane of dignity, if you choose so to call it, for the purpose of meeting an evil which has grown out of the usages of the political parties of the State.

I think there are many occasions in which consultation, mutual conference be-

tween those who happen to owe affiliation to one or the other of the great political parties, might be proper enough, and, sir, if you adopt this amendment, I take it that you will prevent anything of that kind. To make the amendment operative, you must make it rigid in its force; you must make it of such grasp and such reach that men cannot possibly elude its intention and its design, or you give to it a fast and loose sort of action, so that it really accomplishes nothing. I therefore feel that I cannot vote for it. I would like to meet the difficulty insome way, but I believe it to be a matter that will have to work out and accomplish its own reform. I therefore feel myself constrained to vote against it, believing that if we adopt it we will defeat the object for which we are laboring.

Mr. CORSON. Mr. Chairman: This amendment which has been interpolated at a late stage of these proceedings is rather an impromptu piece of work upon the part of the distinguished gentleman from Philadelphia, (Mr. Cuyler,) and I do not think at first was received with any sort of serious consideration, but having been handed about for a few moments and received some complimentary notices on the part of gentlemen on the right and the left; it seemed to assume some importance, but I apprehend that when the delegates of this Convention come to consider the full import of these few lines which it is proposed to interpolate into the Constitution of the State of Pennsylvania, they will say at once, "away with it!" If such a clause had been in our Constitution during the last decade, when war threatened to disrupt this government, the loyal people of this land would have had their hand tied and their mouths closed, and war would have run rampant over the good soil of Pennsylvania. I therefore trust, that when they come to vote upon this question, they will say "we will allow the people of Pennsylvania to assemble, we will allow them to lay down a rule of action, and we will allow them to consult," as the committees of this Convention, meet in their committee rooms to frame the work and digest the matter which shall be laid before this Convention. So much for the amendment proposed by the gentleman from Philadelphia, (Mr. Cuyler.)

Now for the other proposition, and we come directly to the question of swearing. Oaths are obnoxious. Why not put into the Constitution, clause after clause, punishing the legislator who commits any of

these crimes against which you make him swear, rather than put it in the oath? You might as well put it in the marriage ceremony. Why was it not put in the oath administered to every man in this Convention? Because oaths are obnoxious.

The people despise them. In olden times the world was ridden with oaths, until Jeremiah, the prototype of my distinguished contemporary, (Mr. J. S. Black,) exclaimed, sorrowfully, "for because of swearing the land mourneth." When the multitude followed Him who spake as never man spake, out of Gallilee and Judea, Decapolis and Jerusalem, and from over beyond the Jordan, as He made His way up into the mount to declare the counsels of God, what did they hear from His lips? Not that form of oath prescribed by Abraham to his servant, "Put thy hand beneath my thigh and swear to me concerning the matter." Nor that other flaming oath of which we read in Revelations, "and the Angel which I saw stand upon the sea and upon the earth, lifted up his hand to Heaven and sware by Him who liveth forever and ever, who created the Heavens, and all the things that therein are; who created the earth, and all the things that therein are; who created the sea, and all the things that therein are; that there should be time no longer,"—not that oath, but what did He say who laid down the law for us? "Ye have heard that it hath been said by them of old time, 'thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths,' but I say unto you, swear not at all, neither by Heaven, for it is God's throne, nor by the earth, for it is His foot-stool; neither by Jerusalem, for it is the city of the Great King. Thou shalt not swear by thy head, for thou canst not make one hair white or black. Let your communication be yea, yea, nay, nay, for whatsoever is more than these cometh of evil." Shall we take inspiration from Christ's Sermon on the Mount, or from the modes proposed by modern men who may claim for themselves superiority to the Savior, but in my view are neither as profound nor as Divine, and I choose to prefer precepts to those of the Committee on Legislation.

Mr. BROOMALL. Mr. Chairman: I desire to express the views I entertain upon this subject, the more because I apprehend from what I have heard around me that I am in the minority, possibly in a very small minority, in this body. I belong to those who have no faith in oaths. I do

not believe that any amount of swearing will make a bad man good, or a good man bad. The good need no obligation, the bad are not bound by obligations. To make the very most of them, they are but traps to catch the weak and unwary who often are more sinned against than sinning, while the great rogues have ingenuity enough to avoid their consequences. We have no special oath prescribed for legislators in the present Constitution. Why that is I do not know. There was none in the first Constitution. Whether that arose out of the habits of our Quaker forefathers, who had the same prejudices against oaths, that some of their descendants have, I do not know, but it is worthy of note that their practice of avoiding the oath was commented upon with favor by a distinguished Frenchman, when he alluded to the treaty with the Indians. He said that it was the only treaty, up to his time, that was never ratified by an oath, and the only treaty that, up to that time, had never been broken. Possibly that is why we have the Constitution as it now stands, without a special oath for the law making power.

Now, the gentleman who has preceded me, (Mr. Corson,) has quoted an essay upon the subject of oaths, worth all that can be said in this Hall. I know it is from an old authority, but it is from an authority that I apprehend some gentlemen in this Hall respect, especially when they can explain its precepts in such a way as not to cross themselves in any way. That essay is contained in the words "swear not at all, but let thy communication be 'yea' and 'nay,' for whatever is more than this, cometh of evil"—and let me add, goeth to evil.

Mr. BLACK. Will the gentleman from Delaware (Mr. Broomall) permit me to ask him a question?

Mr. BROOMALL. If it is not taken out of my time.

Mr. BLACK. We will give you all the time you want.

Mr. BROOMALL. Well, let it be short. I do not wish to exceed my time.

Mr. BLACK. Has the gentleman overlooked the fact, that this provision is for an affirmation that will perfectly accommodate his tender conscience upon the question of oaths?

Mr. BROOMALL. The gentleman has mistaken my position entirely. I want the communication to be "yea" and "nay"—"for more than that cometh of evil." His affirmation and his oath are upon the

same footing, with the exception that one is positively prohibited by the essay I have quoted, and the other is not expressly prohibited. That is all. We took an oath or affirmation, some one, some the other, when we assembled as members of the Convention. Is there a man here who can point to a single act that he has done, or a single act that he has omitted, that resulted from the taking of that oath? Not one. No man here would have behaved otherwise than he has done. I challenge any member of this body to say that he would have done in any respect differently from what he has done, if he had taken no oath at all.

I know gentleman may say that we are patterns of purity, we are perfectly honest; these oaths are only intended for dishonest men. Well, sir, there has been little too much of this thing. I am sick of hearing ourselves self-lauded as being the only honest body that could be raised out of the people of Pennsylvania. I do not believe it, sir. I believe we are like the members of the Legislature. I believe we are like the people that elected us, no better, no worse; and that we are as likely to err as they. I have a great deal of faith in human nature everywhere. I believe the mass of men are good, and that it is only under temptation that they err; and I believe when temptation comes, all the oaths that you can administer will not restrain them.

If I have made up my mind to commit a murder, it will not affect me in the smallest degree that I had before that time sworn I would not do it. If I have made up my mind, as a member of the Legislature, to be guilty of the infamous crime of betraying the interests of my constituents, and of the crime of bribery, it will not hurt me to add the crime of perjury to it. I will not hesitate, because I had sworn that I would not do that thing.

Now, I have said before, on this floor, that the members of the Legislature are not dishonest either when they are elected or when they get through their term. I speak of them as a body. I know there are frequently some who have been misled, some even who have been guilty of crimes for which they ought to be in the penitentiary, but the number of the guilty is small. The manner in which wrongs have been committed in the Legislature is by the body being misled. Why, we had an example of that here yesterday. Did not the gentlemen from Philadelphia, (Mr. Cuyler,) who is not now in his seat,

tell us that the tonnage tax repealed was right? Did he not make an argument that would have misled half the members of this Convention, if they had not known something about the subject. Let that argument be laid before fifty men from any part of our districts, who know nothing about the question, and forty-eight of them who do not hear the other side, would say that the gentleman from Philadelphia (Mr. Cuyler) was right. That is the way men are misled. I am just now told by a gentleman behind me that he (Mr. Cuyler) was right anyhow. There again is a man misled. Do you think that if my friend here had sworn that he would not be misled by the ingenious arguments of the gentleman from Philadelphia, (Mr. Cuyler,) he would have been any less likely to have been misled? Not a bit.

Members of the Legislature are misled, sir. They are not criminals. They do things they ought not to do; but they do them in the best of faith. I speak of the great majority of them.

Now, Mr. Chairman, this is upon the subject, although it is not very close to it; but I ask the indulgence of the Convention in presenting it. It is this: I believe that this wholesale denunciation of public men and public measures, in which we have indulged, in which the newspapers indulge, and in which the country at large seems now to be indulging, is calculated to produce the very crimes it pretends to try to avoid. It is demoralizing in its tendency. When the people come to have a relish for crime in high places, the people are in a fair way of being corrupted; and if there are members of the Legislature who are weak and easily led away, it is often because they are made by men in high places—places such as we occupy, and by the press, to believe that they are surrounded by dishonest men. Once satisfy a man that he is the only honest man in his neighborhood, and if he is not a saint, he will very soon become a rogue.

This thing has gone too far. The tendency is demoralizing. The exhibition we had on this floor yesterday was pleasing. I liked it as well as others. I grant that I have been so far demoralized as to enjoy those things myself, but I am the worst man for it. If I had the right mind I should have avoided the exhibition of yesterday—should have run away from it as a thing calculated to poison me. We will never get better as a community

—never have better leaders, until we learn to have confidence in humanity.

Now, sir, I want a Constitution to be administered by good men. I intend, as far as I can do it, to have this Constitution so framed that it can be well administered, and by good men. I do not pretend, nor ought any body else to pretend, to frame a Constitution that can be well administered by bad men, so as to suit the interests of the country. That thing cannot be done. If we can not get good men to administer the Constitution, the government itself must go down. Hence, I am opposed to all these oaths, and prefer leaving the Constitution as it is.

The provision immediately before the Convention, that a man shall swear that he will not abide the decision of any caucus is amusing. I never attended a caucus with a view of being "bound" by its decision, and I have attended many. I may not accept the decision of a caucus, but I would not say, in advance, that I would *not* accept it. If the gentleman from Philadelphia (Mr. Cuyler) wants to prevent conference among members of the Legislature, probably the safest way would be to put a provision in the Constitution, requiring each member to swear that he would not vote for anything that anybody else voted for. Then there would be no reason for conference or caucus. However, I feel inclined to vote for this, just as I would vote for anything else that would tend to carry the whole weight of these oaths down before this Convention, so that we may leave the Constitution as it is, in that respect. There is more good in it generally, than many gentlemen seem willing to see, not only in this respect, but in others, and I will not change it until a necessity is shown for the change.

Mr. WALKER. Mr. Chairman: On yesterday, in Convention in this Hall, I expressed myself about in the language of the gentleman from Delaware, (Mr. Broomall,) that I would vote for the amendment now immediately before the committee, with a view to kill the whole of it; but a night's reflection and consulting my own common sense have brought me to a different conclusion. I do not think it is the duty of a member of this Convention, on any occasion, to vote for that which he believes to be wrong. I think the amendment of my friend from the city (Mr. Cuyler) is radically wrong, and although I desire to kill all these extra oaths, yet I must vote against it.

While I am up, allow me to say a word or two upon the matter of oaths in general. I never said, as I was quoted as saying by the gentleman from York, (Mr. J. S. Black,) that I considered an oath unworthy of being taken by any man. I never said that there was not good in an oath. I never said that a good man ought not to be sworn as well as a bad man, but I did say, and I repeat it now, that an oath taken by a bad man, such men as have been described in this Convention, has no effect upon him. It produces no good result. I thought so when I spoke as I did, when the gentleman from York (Mr. J. S. Black) misquoted me, and made me seem to say the very reverse of what I intended to say, and what I did say, and what I now repeat, namely: That when a man has acted the villain in the Legislative Hall, on the bench or anywhere else, he will not be likely to be honest merely by the taking of an oath.

Mr. J. S. BLACK. Mr. Chairman: I would like the gentleman (Mr. Walker) to allow me to say, that I did not want to mistake what he said, and I want now to state it as correctly as possible. I think he does not recollect exactly what he did say. He said that he was opposed to the administration of such oaths as that which was proposed in the report of the Committee on the Legislature, because he said—and he appealed to the gentleman from Greene, (Mr. ———,) who was then in the chair, to bear him out, that the experience of both of them would prove that legislative oaths were like custom house oaths—easily taken and easily broken.

Mr. WALKER. I did say that.

Mr. J. S. BLACK. And that would continue to be the case, no matter what oaths be taken.

Mr. WALKER. I did say so, and I said so in application to bad men—in application to men who were not bound by considerations of honor and integrity. I said so in relation to those who were unfit to be representatives of the people.

Mr. J. S. BLACK. No. The gentleman (Mr. Walker) said it in reference to such people as were in the Legislature generally.

Mr. WALKER. The gentleman (Mr. J. S. Black) misunderstood me. I said it not in reference to such men as are generally in the Legislature, for I believed then, and I believe now, that from the year 1832 down to this time, that there have been, and are now, as pure men in the Legislature as there are in this body.

Mr. WALKER. Mr. Chairman: I repeat I did say so; but I said it in application to bad men; I said it in application to those who are not bound by integrity and honor; I said it with reference to those who are unfit to be representatives.

Mr. BLACK. No, the gentleman said it with reference to such people as are in the Legislature; gentlemen—

Mr. WALKER. The gentleman misunderstands me. What I said was said in reference to dishonest men; not such as compose the great majority of the Legislature. For I believed then, and I believe now, that as pure men, from the year 1832 down to this time were, and have been and are, in the Legislature, as there are in this Convention. I will now, Mr. Chairman, while on this point, state that the gentleman from York was unfortunate in the evidences he gave of corruption in the Legislature. He referred to the incorporation of the old United States bank of Pennsylvania, and said that on its face there stood corruption, and that its passage through the Legislature was procured by corrupt means. Mr. Chairman, perhaps I am the only member of this Convention who was a member of the Legislature at the time that bill was passed. I voted for that bill, because I believed it to be right, and I believe it now to have been right. Mr. Chairman, that bank had run its course as a national bank. It had thirty-two millions of money all paid in. It had for the last twenty-five years collected and disbursed all the revenue of the nation without a cent's cost, and without the loss of a dollar. Its charter expired, and it applied to the Legislature of Pennsylvania to be incorporated. The application was received; Nicholas Biddle, together with its cashier, came there as gentlemen representing the bank, and presented it before the Legislature.

Now, Mr. Chairman, if a man should rise up and proclaim that the passage of that bill through the Legislature had been procured by means of corruption, after a silence from the year 1832 down to this day, I would say that that man made an assertion in which there was not a particle of truth. Mr. Chairman, I voted for that bill. I voted for it with as pure motives as those which actuate me in this Convention, where I am endeavoring to do my duty. I know that my motives were pure, and I believe all the rest of the members of that Legislature voted from, and were controlled by, as pure motives as I did. In the Senate there were four gentlemen,

John Dickey, Thomas S. Cunningham, Jesse R. Burden and Charles B. Penrose, who, it has been said, were bought. I know nothing about that. There was no buying in the House. We believed the bill was right, and we voted for it. In the Senate, if those gentlemen were bought, they know. They are all dead but one—Jesse R. Burden is in this city. Talk with him about it, and see whether he says that there was any money spent to procure the passage of that bill. I only refer to this as showing that the gentleman from York is mistaken when he asserts here, as he did yesterday, that there was corruption in the passage of that bill into a law.

But then, again, he said that there was frauds in the disposition of the public works, and that the Legislature was guilty of fraud, and he held its members up before you, and before this body, as utterly unworthy of any consideration. Why, Mr. Chairman, do you not know, do not I know, does not every gentleman in this body know, that Pennsylvania demanded, outside the Legislature, the disposition of the public works, as a matter of economy. It was not a matter which originated with the Pennsylvania railroad. It was not a matter which originated in the Legislature. It originated through the recommendations from the Executive. It originated in and among the people. They desired that the public works should be disposed of, and they were disposed of under the act of 1837. Who was corrupted in the passage of that act? Nobody. Who was? The gentleman behind me, (Mr. Mott?) Not a bit of it. He was not there. They were sold for \$7,500,000, and the State made just that much by the sale—but that was only the disposition of the Columbia road. The canal from Columbia to Hollidaysburg, the Portage railway, the canal from Johnstown to the city of Pittsburgh—these were sold for \$7,500,000, under the act of 1857.

Now, Mr. Chairman, I think in that sale there could be no fraud. It was, to some extent, a conditional sale. The Legislature offered or proposed to sell the main line, as stated, for \$10,000,000, I believe it was, for the title to that improvement, they to be discharged from the three mill tax that was upon them, or \$7,500,000 free from this tonnage tax. The Legislature gave the railroad company the option to take these improvements at that price, \$10,000,000, without the tax, or to take them for \$7,500,000 retaining the tax. The

Pennsylvania railroad company chose the latter. They paid, or agreed to pay, \$7,500,000 with the tax, instead of the \$10,000,000, the tax being taken off. I blamed that company then; I blame it now, after a suit had been instituted and a judgment of \$650,000 recovered against it, and \$150,000 more, by an account settled and standing on the books against it. I blamed, I repeat, that company for going to the Legislature and asking in 1861, the repeal of the tonnage tax, relieving them from the amount for which the company was then in arrears. They did do so and it was granted, whether corruptly or not I do not know. The gentleman who addressed the Convention yesterday, (Mr. Mott,) did not allude to that in referring to the \$25,000 that was offered at one time, and the \$18,000 at another. Why, no, that was a subsequent thing when Mr. Mott was a candidate for the State Senate, and in no way connected with the disposition of the public works. I say, Mr. Chairman, that in his reference to the evidences of corruption in the Legislature, the delegate from York is unhappy and unfortunate. The cases he cites prove neither corruption nor mistake.

But in the year 1868 an act was passed for the sale of the Delaware division, for the sale of the North Branch canal and its extension, and for the sale of the West Branch canal and its extension. They were sold and to whom? Why, they were sold to the Sunbury and Erie railroad company for \$3,500,000—that company giving their mortgage and their bonds for this property. Now, Mr. Chairman, where was there any corruption or injury done to the State by that sale? Where did those bonds go? They went into the sinking fund, and under the act of 1869 they were taken out and transferred to the Allegheny Valley railroad company—that company giving their bonds and a mortgage upon the road for the payment. I ask you, therefore, has Pennsylvania sustained any loss thereby? Why, no. It secured the construction of the Allegheny Valley railroad, which proved a benefit to both the western and interior portions of the State. There was no injury arising from these acts of 1857 or 1858 or 1861 or 1869. In my judgment the delegate from York was unfortunate in instancing this portion of legislation as showing corruption. It has shown anything but that. It has shown wisdom.

Mr. Chairman, the delegate said it was wrong to repeal this tonnage tax. I said

so at the time and I felt so. Not exactly as a Philadelphian—not exactly as a Pennsylvanian. At that time I was a director in a railroad, a link in roads reaching from the city of New York through to Buffalo, on through the town of Erie, on to Chicago, and clear west as far as the railroad extended at that time, and as a director in that railroad we felt opposed and we expressed ourselves against the repeal of the tonnage tax, and why? Because it was three mills on each ton on each mile traveled in favor of the Lake Shore roads. I was a director in that road, a road in which I have to-day more than I have of this world's goods in any other one thing, except in real estate; but, Mr. Chairman, I see now that it was right to repeal that tax. Right, not because it has been decided since to be unconstitutional, but it was right because it was giving an advantage to the Lake Shore road by the amount of this tonnage tax over the roads of this State, taking from Pittsburgh and taking from Philadelphia, while it turned to Buffalo and from that point to Boston and New York, a trade that legitimately belonged to Pittsburgh, to this city, and to Pennsylvania in particular.

I believed then, and I believe now, that the repeal of the tonnage tax was a wise measure, for the reasons I have mentioned. The gentleman from Philadelphia (Mr. Cuyler) said yesterday that it was done in order that the Pennsylvania road could compete with the Ohio and Baltimore road. Then, Mr. Chairman, the trade along the south shores of Lake Erie dwarfed that of the Baltimore and Ohio road and equaled that of the Baltimore and Ohio and the Pennsylvania railroad, both combined. When you take into consideration the Atlantic and Great Western and the Lake Shore road, their trade exceeded that of both these other corporations. I say, then, it was right to repeal that tax, even if the Constitution of the United States did not do it, as now decided by the Supreme Court of the United States.

But then, Mr. Chairman, look a little further. Since that time two roads have been constructed through Canada from the east to the west. One road from below the falls of Niagara, through the centre of Canada, reaching the Detroit river near to Detroit. Another, a competing road to that, has been constructed in Canada. That company has constructed a bridge across the Niagara river at Buffalo, and have constructed along the

north shore, at Lake Erie, another railroad that is a substantial competitor with that on the south shore, and is an efficient competition with the Pennsylvania railroad. It was in order to enable the Pennsylvania railroad to compete successfully with these corporations that I say, it was wise in the Legislature to repeal the tonnage tax. Instead of its being corruption, it was wise in the Legislature to repeal this tax at the time it did. In this, also, the delegate from York is unfortunate.

Mr. Chairman, upon the subject of oaths—

The CHAIRMAN. The gentleman's time has expired.

Mr. STANTON. Mr. Chairman: I move that unanimous consent be given to the gentleman from Erie to proceed—

Mr. LILLY. I object.

Mr. BAER. Mr. Chairman: The discussion on the pending question has become very desultory, embracing not only the railroads of this State and the nation, but even Canadian affairs; and all this upon the adoption of a form of oath.

I am utterly opposed to this manner of debate; if it is continued we shall not get through our labors here for a year.

We can only hope to make progress in our work when delegates are confined to the discussion of the immediate question under debate.

I rise, then, to say a word on the question of the oath which has been so much disparaged by some of the members who have preceded me in this discussion. I am one of those who are anxious to ascertain which of these oaths is the strongest, and whichever is the strongest I am in favor of. If there is any gentleman in this House who is able to make one stronger than that made by the gentleman from York, (Mr. J. S. Black,) let him produce it. I will vote for it, and the great christian heart of this Commonwealth will vote for it, if it is submitted to them. They look upon the matter of taking oaths as not a sacriligious act, as not a profanation of the great and holy name of the Deity, but as a reverential act of homage and worship. All christians must look upon it in that light, and it is only those who are infidels at heart, (except those who have conscientious scruples about the form of the oath itself,) who will array themselves against the taking of an oath, and join in with these men to put it down.

Look over the country, everywhere, and who are the men who are clamoring

against the administration of an oath? Who are they that are asking for the abolition of the oath? Is it the great mass of the christian people of this country, or is it confined chiefly to the men who profess to be infidels, and yet who are so cowardly that they cannot face the presence of Almighty God when asked to take an oath? They cower then, and for that reason they want it abolished. And for that reason I would make it so strong that infidelity should be made to know, before the days of adversity come, that there is a God. There is no man on this continent, none that ever lived or ever will live, who can, when the last hour comes, deny the existence of God, though he may preach it when he is in prosperity; and the great misfortune now is that the gentleman from Delaware (Mr. Broomall) comes up and joins in asking that this oath shall be put down, and yet he does not speak for that class. He is one of those whose conscientious scruples I respect, but he is provided for by this very oath, as provision is made for all christians to exercise their choice, and instead of an oath take a solemn affirmation. This ought to be all that he should ask here. Let him go and take that affirmation. There is no insult there to the christian religion.

It is as much in accordance with Holy Writ to "perform unto the Lord thine oaths" as it is to "swear not at all," because the christian heart of the entire world will assume that no man violates the precepts unless he swears falsely.

The supreme power of the State commands that you shall perform unto the Lord your oaths in the way of a confirmation of the truth; and when the State provides a form of oath, which also includes affirmation, a man should take it because he would be absolved if there were really anything wrong in it, as all men must be subservient to the powers that be. For that reason the stronger the oath can be made the more cheerfully will I vote for it. Yes, I would vote for it if it would raise the hairs on the head of a villain like "the quills on the fretful porcupine." I have seen in courts of justice men who have come upon the stand and claimed the right to affirm, under the pretext that they had conscientious scruples, who neither believed in God nor the devil, and who, when put to the wall and required to take the oath, trembled and turned pale, showing that there is such a thing as men quailing when they are made to con-

front the great Eternal Power. For this reason I hope that this amendment will be adopted.

Mr. LEAR. Mr. Chairman: The discussion seems to have taken a wide range, judging from what I saw in the papers this morning, not having been present yesterday, and the discussion has continued to-day in the same unrestrained manner. A great deal has been said in reference to what has been done in the Legislature in former years, and I suppose that those facts have been brought to the attention of this body for the purpose of showing that members of the Legislature have been suspected of not being pure.

Now, Mr. Chairman, although I have my own opinion about the members of the Legislature, I have that opinion simply because they are taken from the community and are members of this great human family in the State of Pennsylvania. But it is not necessary for the gentleman from York (Mr. J. S. Black) or the gentleman from Erie, (Mr. Walker,) or any one else, to give particular instances of what has been done by the members of the Legislature to prove that human nature is not sufficient always to withstand temptation. We can find from the same authority to which the gentleman from Delaware (Mr. Broomall) refers, that human nature needs all the support it can get for the purpose of keeping it from falling into error, if not into corruption. From the time when our unfortunate progenitor partook

"Of that forbidden tree, whose mortal taste
Brought death into the world, and all our woe,
With loss of Eden,"

down to the period of the speculation in the stock of the Credit Mobilier, there has been every day found abundant confirmation of the Divine declaration that "the human heart is deceitful above all things, and desperately wicked."

The members of the Legislature have, in their bosoms, this human heart thus corrupted by the primal sin, which we carry about with us to this day, and although it has been asserted in this House that we are setting ourselves up for a body of purity, I have never heard it, and I do not understand that such is the case. We all acknowledge our fallen condition, and acknowledge that we are strengthened and supported when we come to the book and appeal to God, that as we shall perform the duty we swear to perform, so may we be helped by that Divine power; and I say that no man, be he christian or

pagan, can fail to feel the solemnity of the occasion when that Divine sentiment, that is in every man's bosom along with this fallen condition, is appealed to in this solemn manner. It does not matter whether a man is a christian or a pagan, with regard to this sentiment of reverence. They all have it.

The gentleman from Dauphin, (Mr. MacVeagh,) in speaking upon this very subject, in the introduction of his report upon the Legislature, spoke of it, I believe, as a prejudice. Sometimes it gets to be a prejudice, because it is the natural sentiment without the information and intelligence of a christian; but whatever country we go to, to whatever age of the world we turn, under whatever kind of government it may be, that sentiment of reverence may be found. We may find it in the barbarians every where—we may find people without clothing, without education, almost without language, people without the implements of agriculture, the conveniences of life, and without houses, but nowhere, at no time, and in no spot on the face of the earth, will you find a people without their altars and their gods—and when appealed to by their reverence for the objects of their adoration, you will find that they are restrained in their conduct from performing the things which they otherwise would do; and even in the South Sea Islands, where they eat christians with the utmost relish, the word "tabboo" will restrain a man from going into the sacred precincts of temples and groves made sacred by their religious rites. You find that these people are restrained by this spirit of reverence, and all people where they have governments, are bound by oaths to the performance of their duties, which are changed and modified according to what they may regard as the object of their adoration, and it is said that the "Heathen Chinese" is sworn upon the bowels of a recently slaughtered chicken, while they are in a quivering state, and if these pagans are subdued into reverence by such a process, those who go to our Legislatures, who have no idea of the Divine presence, which would bring them to a proper consideration of the performance of their duties, so that the ordinary oath would be of no binding efficacy, may be awed into reverential solemnity by an oath on the palpitating viscera of a dissected legislative rooster, and the State might be benefited in two ways by adopting that form of oath. Now I am in favor of these oaths.

It is said bad men cannot be made better. I say that bad men have that sentiment of reverence in their bosoms, and they are restrained by calling attention to their particular acts which they swear they will not do, and to the performance of the particular duties which are required of them, by virtue of their office. Details in oaths are not new. The old oath, by which we swear a grand jury, is very much in detail, as every lawyer knows. The oath by which we swear the jury to try a man for his life, is not to perform his duty as a jurymen with fidelity, but that he will well and truly try, and true deliverance make between the Commonwealth of Pennsylvania and the prisoner at the bar, whom they have in charge, and a true verdict render according to the evidence. The constable that is called up to take the book, is sworn that he will take the jury into some convenient room, in this house, and there keep them, and suffer no one to speak to them, or speak to them himself, until they have agreed, unless it be to ask if they have agreed.

A director in a national bank takes an oath, not only that he will perform his duty as a director, but he takes an oath that he is qualified to serve as a director, by reason of his having the requisite quantity of stock, and that none of it is hypothecated, and that he has not otherwise done such acts as to disqualify him for the office of director of the bank.

I say that this thing then is not new, and the good man, the honest man, the conscientious man, will go back in his mind during the period of his stay in the Legislative body to review his conduct, and look forward to what he had to do to see whether he acts up to the requirements of that to which he was sworn to perform when he first came into that body, and he will be strengthened and enlightened as the juror is, as the witness is, who has sworn to tell the truth, as the constable is, as the bank director is, as all the different officers are, who are sworn to perform their duties in a special and detailed manner. Now, I say, there can be no objection to this. It is not offensive to an honest man. It may restrain some one of the peculiarly constituted men, because while I admit that we all come here under the cloud of the primal sin, and having that defect which has been denounced against human nature, that "the human heart is deceitful above all things and desperately wicked." Yet there are grades of wickedness in the world, and some men, by practice or by

nature, get to be worse than others, and the bad man may be restrained. There may be a sentiment of reverence which is cultivated in his boyhood, and which was taught to him at his mother's knee, and even that becomes debased and corrupted. And the politician, if you please, who is called to take an oath, and who has forgotten the sentiments which were distilled into his mind in early youth, may have them revived by the solemnity of being sworn upon the Gospel to do these particular things, and to leave undone the other things.

That is, with regard to the oath which precedes his entering upon the duties of his office. Whether we should go farther—whether this oath, which I understand is proposed by some gentleman here, but which is not now actually before this Convention, to swear these members at the termination of their official career that they have not done any of those things which they were forbidden to do in the first oath—that they have not taken any bribes, &c., whether that should also be attached to the position of a member of the Legislature, I have some doubt. That might do no good, and might only work a forfeiture of a man's hopes of happiness in a future world, when he takes a false oath; because the man has failed to tell the truth upon his final oath, and only blackens his soul with perjury. I do not know that this Convention ought to prescribe terms by which he should be damned in the future world. It looks like vengeance.

It is true that the Prince of Denmark, when charged with the duty of avenging his murdered father, and when seeking, sword in hand, an opportunity for punishing this great wrong, found his uncle engaged at prayer. The Prince was thereabout to take summary vengeance upon his uncle, but, on reflection, he said in substance: "If I slay him now his soul will take its flight to heaven; I will wait until I find him in his incestuous bed, or in dissipation, or gaming."

"Or some other act or occupation,
Which has no relish of salvation in it,
Then trip him, that his heels may kick at Heaven,
And that his soul may be as damned and black
As hell, whereto it goes."

I always thought that that was a sort of punishment that was beyond the idea of christian retribution. There was too much personal vengeance upon the part of the mad Prince in this act, and that we should have prescribed an oath by which we

could only enforce performance of duties, and restraints upon corruption. But to follow his term in the Legislature with an oath, that he has kept faith in his first oath, and performed his duties, and if he swear falsely in this final oath, it will not undo what he has done, and cannot benefit the State; but can only add the crime of reiterated perjury to the delinquent member, and eternally damn his soul, without purifying or correcting the record of his official term.

Mr. Kaine. Mr. Chairman: I desire to say a few words upon this question of oaths. Other questions that have had nothing whatever to do with the question before the committee have been discussed here at great length, and with great ability. It was done, I suppose, for the purpose of illustrating the points desired to be made by the gentlemen partaking in the debate.

I prefer the amendment of the gentleman from Dauphin (Mr. MacVeagh) to the oath as reported by the committee. The oath, as reported by the committee, is nothing more than the oath required by the old Constitution. If there is any efficacy in it at all, which I believe there is, I am in favor of adopting an oath which shall be as strong as possible. We have always had oaths in Pennsylvania from the formation of the government, notwithstanding the assertion of the gentleman from Delaware (Mr. Broomall) a few moments ago to the contrary. There was an oath embodied in the laws prepared by William Penn, in England, in regard to all officers, great and small, in the State. I read from the twenty-sixth paragraph of these laws:

"That all witnesses coming or called to testify their knowledge in or to any matter or thing in any court, or before any lawful authority within the said province, shall there give or deliver in their evidence or testimony by solemnly promising to speak the truth, the whole truth, and nothing but the truth to the matter or thing in question. And in case any person so called to evidence shall be convicted of wilful falsehood, such person shall suffer and undergo such damage or penalty as the person or persons against whom he or she bore false witness did or should undergo; and shall also make satisfaction to the party wronged, and be publicly exposed as a false witness, never to be credited in any court or before any magistrate in the said province."

That was the oath in regard to officers. Then section thirty-four of the same laws says:

"That all treasurers, judges, masters of the roll, sheriffs, justices of the peace, and other officers and persons whatsoever relating to courts or trials of causes or any other service in the government; and all members elected to serve in Provincial Council and General Assembly, and all that have right to elect such members, shall be such as profess faith in Jesus Christ, and that are not convicted of ill fame or unsober or dishonest conversation, and that are of twenty-one years of age at least; and that all such so qualified shall be capable of the said several employments and privileges as aforesaid."

Under the Constitution of 1776, this was the oath prescribed:

"I,———, do swear (or affirm) that, as a member of this assembly, I will not propose or assent to any bill, vote or resolution, which shall appear to me injurious to the people, nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the Constitution of this State, but will in all things conduct myself as a faithful, honest representative and guardian of the people according to the best of my judgment and abilities.

And each member, before he takes his seat, shall make and subscribe the following declaration, viz:

I do believe in one God, the Creator and Governor of the Universe, the Rewarder of the good, and Punisher of the wicked; and I do acknowledge the scriptures of the old and new Testaments to be given by Divine Inspiration."

Those were the oaths established by William Penn and his immediate successors, and I am in favor of continuing something of the kind, because I believe we need them infinitely more now than we did then.

How did the gentleman from Delaware (Mr. Broomall) become a member of the Bar?—because I believe he is a distinguished attorney of the county which he represents so ably upon this floor. He must have taken a solemn affirmation—if he is opposed to swearing—that

"I do solemnly affirm that I will support the Constitution of the United States, and the Constitution of this Commonwealth, and that I will discharge my duty, as an attorney of this court, with all due fidelity to the court, as well as to my

client; and that I will use no falsehoods, or delay any man's cause, for lucre or malice."

That is a strong oath.

Mr. BROOMALL. Will the gentleman allow me to ask him a question?

Mr. KAINÉ. Certainly.

Mr. BROOMALL. I desire to know whether the same oath which the gentleman (Mr. Kaine) himself took, by which he was admitted to the bar, has ever, in the smallest degree, influenced his conduct?

Mr. KAINÉ. I hope it has; and a man who would not regard an oath of that kind—an attorney who would take an oath such as this, and say that it had no control or influence over him, I should be sorry to employ him as my counsel in any cause.

Now, sir, these are preliminary questions in this investigation. We had these oaths before; they have done no harm, and, I apprehend, they have done some good. They were left out of the Constitution of 1790, but not altogether, as the gentleman from Delaware (Mr. Broomall) says, for he says that no oath at all is required by it. The eighth article of the Constitution of 1790, which is copied precisely into the Constitution of 1837-8, provides that:

"Members of the General Assembly, and all officers, Executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity."

That is the oath under which we are acting now. The oath by which we bound ourselves, when we organized as members of this Convention, was that we would support the Constitution of the United States, and discharge our duties as members of this Convention with fidelity.

As was well said yesterday, I believe by the gentleman from York, (Mr. J. S. Black,) every trustee, every executor and every administrator, before entering upon the discharge of his duties as such, must take an oath prescribed by law, and after he has discharged his duties and fulfilled his trust he must, before being released from his responsibility, take another oath that he has discharged his duties faithfully and honestly; and if he swears falsely in the latter case he can be indicted for perjury.

That members of the Legislature have been unfaithful in times past is not to be denied. I have been a member of the

Legislature of Pennsylvania in company with the honorable chairman. Much has been said against the Legislature here, and it has been asserted that no man had dared to rise in his place and speak in defence of that Legislature. I know that as honorable and pure men as are to be found in this body, or as have ever lived, have been members of the Legislature of this State. I know, too, that weak and corrupt men have been there. I have no doubt that men have not been wanting who have given their honor for a price. I am not going to discuss anything about this corruption, particularly on this question, except simply to say that as a matter of history—no man need attempt to deny it—that when the United States Bank was chartered by the State of Pennsylvania, in 1836, the members of that body were bought with a price to vote for the charter.

MR. DARLINGTON. Who were they?

MR. KAINE. I am not going to be an informer here for the gentleman from Chester. The gentleman from Chester knows as well as I do who they were. He knows it just as well as he knows that George III was King of England during the Revolution. He knows it just as well as he knows any event in history. So does my friend, the gentleman from Erie.

MR. WALKER. I rise to say, Mr. Chairman, that I was a member of the Legislature which passed the United States Bank charter. I voted for the measure, as I have stated, and, as I am to answer to God, I did not know then, nor do I know now, did I believe then, nor do I believe now, that any man in that Legislature was bribed to vote for that bill.

MR. KAINE. Well, the gentleman from Erie is a good deal older than I am, but he has certainly not read the history of this State! for if that fact has not become a part of the political history of this Commonwealth, as much as that we had a war with Great Britain in 1812, and that General Jackson fought the battle of New Orleans; then I am entirely beyond my reckoning. At any rate, I say this, that no matter what may be the belief of the gentleman from Erie, nor the gentleman from Chester, it is the belief of the people of Pennsylvania that such was the fact. But that has gone into history. This is neither here nor there. It is only a matter of illustration, to show that something should be done to prevent things of that kind from recurring in the future, if anything can be done. Why, sir, is it neces-

sary for a member upon this floor to say here that it is notorious, not only in Pennsylvania, but throughout the length and breadth of this broad land, that the Pennsylvania Railroad Company controls the Legislature of Pennsylvania, and that our Legislature acts precisely at its beck and will? Whatever they desire is done, whatever they desire not to be done, is not done. The repeal of the tonnage tax has been referred to; whether that was right or wrong; whether it was a matter of good policy or bad policy, I do not pretend to say; but that that measure was passed through the Legislature by the corruption of members thereof, has also passed into history, and is not to be questioned at this day. Large amounts of money have been expended by corporations, perhaps other than this, and by individuals also, in procuring improper legislation from the Legislature. And that, sir, is one reason, and that is the main reason, that is given by Mr. Secretary Jordan for the calling of this Convention. If we are not able to do something in respect to that matter to restrain the Legislature in the future, the assembling of this Convention has been in vain.

MR. BIDDLE. Mr. Chairman: I desire to say a very few words in explanation of the vote that I propose to give on this subject, and in stating my reasons, and in giving that vote I shall not be influenced in the least by any fear of the imputation which seems to be thrown out by some of the gentlemen who take a different view of the subject from that which I intend to take. I shall not preface what I have to say by any declaration of faith. I consider such things utterly out of place and out of season here. I shall endeavor merely to give a few, a very few, practical reasons why I think the oath submitted by the Committee on Legislature, and the oath submitted by the gentleman from Fayette, (Mr. Kaine,) and advocated so elaborately by the gentleman from York, (Mr. J. S. Black,) are out of place in this Constitution. I believe all such oaths, and when I say oath, of course I include affirmation, to be proffered in ignorance of ethical and political science, indeed in ignorance of the past history of the world. I believe them to be utterly inefficacious, and I am rather surprised when I hear gentlemen say, as many have said with a good deal of emphasis, that they will vote for as strong an oath as can be put. They certainly do not distinguish between mere strength of language and efficacy as to the

result which is destined to be reached by the words employed. If I thought they would be efficacious then, whether the words were strong or weak, I would go for them. But I am entirely satisfied that they are not. If they were, it would be a very simple and a very easy mode of making us all very good, because you would, only at successive stages in the history of each individual, have to swear him or her, as to past and future conduct, to insure perfect virtue. The laws of Providence, the laws of God, are not framed on any such theory; and when I heard the very distinguished gentleman from York, yesterday, referring to the Divine sanction, I wondered that it never occurred to him that Omnipotence should have pre-ordained from the first the plan which gentlemen seize hold of now as a corrective for all the vices of the community. It would have saved a great deal of trouble in this wicked world of ours.

But as I am not yet prepared to believe this, I shall vote against the amendments. I shall vote against them for another reason. I will not undertake to brand, in advance, the representatives of the people as convicted felons, and then expect them to do their duty as honest men. What mean all these provisions, past, present, and future? They mean, in effect, to say, if they mean anything, that the system of republican government is an utter failure; that the men annually or biennially elected; that the men periodically selected from the body of the people to discharge the legislative functions of the government, are so utterly corrupt, that unless they are hedged around by this formidable fence of oaths and affirmations they will depart from their duty in every single particular. I do not believe this, and therefore I shall never say it by any vote of mine. I do believe that much may be done towards the improvement of legislation, both as regards the elector and the elected, by holding each to their proper functions. When you multiply elective offices indefinitely; when you hold up large money prizes to be voted for, you will inevitably corrupt the elector. When, instead of confining the Legislature to the legitimate functions of devising and promulgating laws for the benefit of the whole community, you send them, as they are sent now, for the purpose of conferring special privileges, for the purpose of granting large gratuities to individuals and corporations, the result will inevitably be an injurious one upon the legislator; and

no matter what the sanctions, or supposed sanctions, by which you attempt to bind him, your labor will be but in vain.

Now in this section, in this article, further on, there are, it strikes me, many excellent provisions in regard to the evils which I have just alluded to, that will meet my most cordial concurrence. I think they may require some additions which I shall, at the proper time, suggest; but so far as they go they are most valuable. I do, therefore, beg gentlemen, before they commit themselves to a vote in favor of such oaths as these, to pause for a moment, and think whether, by affixing a stain in advance upon those who are to make the laws under which we are to live, they can expect to produce anything but unmixed evil? I do not object to the ordinary oath of office as I find it prescribed in the existing Constitution. It is found in article eight, and as it consists of but a few lines I will take the liberty of reading it:

"Members of the General Assembly, and all officers, Executive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective offices with fidelity."

That is enough, and when gentlemen say or argue that it is not sufficiently specific, they lie under a very grave error. It does cover every possible offence which can be committed by a public officer or by a representative; and the statute law defines with sufficient precision what these offences are in detail, and points out the punishment. More is unnecessary. The gentleman from Fayette (Mr. Kaine) fell into an unintentional error, I am sure unintentionally, when he attributed to the gentleman from Delaware (Mr. Broomall) an assertion somewhat different from this. The gentleman from Delaware undoubtedly did say that in the article of the Constitution upon the Legislature, and as he thought in a similar article in the Constitution of 1790, there was no provision for an oath or affirmation; and in saying this he was strictly accurate, as no such provision is there found. The only provision on the subject is the one I have read, which does not assume, as it ought not, to distinguish between members of the Legislature and other officers of the Commonwealth.

Mr. KAINE. Mr. Chairman: I beg leave to explain. I understood the gentleman from Delaware to say that there was no

provision in the present Constitution for any oath whatever.

Mr. BROOMALL. Mr. Chairman: What I said was that there is no provision in the legislative portion, no special provision there in the present Constitution, or the Constitution of 1790,

Mr. BIDDLE. My remarks are about being brought to a close. This subject has been very fully, and very ably discussed on both sides; perhaps with a fertility of illustration by some of the gentlemen who spoke yesterday, which went beyond the immediate range of the discussion, but still in a manner that proved very interesting, and with which we have all been very much gratified.

One thing I would like to say to the gentleman from York (Mr. J. S. Black) before I sit down.

When he undertook to criticise unfavorably, as he did, a man like Jeremy Bentham, he undertook to criticise one of the greatest lights of jurisprudence which this, or any other age, has ever produced. He was a man who worked out theoretically, without the slightest practical knowledge, the whole *rationale* of judicial evidence. Had he lived but a single generation longer he would have lived to find adopted by every civilized country in which the common law of England prevails, every improvement in the law of evidence suggested by him, which is certainly no ordinary triumph for the philosophic inquirer into truth.

Mr. CARTER. Mr. Chairman: This discussion has taken a very wide range. But I shall endeavor, in the few words I say, to speak directly to the point in question. I shall not attempt to answer the gentleman from Montgomery, (Mr. Corson,) and the gentleman from Delaware, (Mr. Broomall,) in regard to the scriptural arguments against oaths; because I do not consider that it is a question or line of argument that concerns this body at all. We have assembled here as practical men to do a practical work; and I cannot believe that any good can arise whatever from examining subjects in that point of view. I think, if it were necessary to go over the arguments of the gentlemen, that they could be refuted, and that it could be clearly shown. The swearing that was then referred to, did not in any form or shape, or in any sense or meaning, refer to the matters such as we are now discussing—I mean judicial oaths, or solemn appeals or statements made in view of responsibility to a Supreme power. It was

from a profane appeal in the semi-barbarous condition of the world at that time to certain powers, and appeals to the earth and to the sun, or against profanity, perhaps. That was the kind of swearing that I apprehend was condemned, and it had nothing to do with the matter that this Convention is now discussing. It is enough for me to know, Mr. Chairman, that for years past, for ages past, there has been held to be a certain sanctity, and a certain solemnity, and a binding force which properly attaches to the position of a man standing up and recognizing the existence of the Most High in some form, no matter how rude, that witnesses his actions and to which he must render a final account. That is all we have now to consider. That this has been recognized as having been of binding force for years past, no intelligent gentleman will deny; but the gentleman from Philadelphia who has just taken his seat (Mr. Biddle) seems to agree with the gentleman from Montgomery (Mr. Corson) and the gentleman from Delaware (Mr. Broomall) in regard to the inefficacy of this matter of oaths. I think the gentleman is under a mistake. I think that to the average mind, be he a legislator, or officer in any capacity, there is a certain binding force in oaths, and this was recognized as much by the great man whose portrait is over your head, Mr. Chairman, as by any of the great legislators of the past. It is true that he, by a technical distinction, rather than one of principle, held that an affirmation should be used as equally binding, being more simple and equally solemn in its character. He recognized it as equally efficacious, and so it has been proved to be for hundreds of years past.

I think the gentleman from Philadelphia (Mr. Biddle) was wrong in the inference that he has drawn in regard to its inefficacy, or rather the inefficacy of all oaths. Why, I might ask the gentleman, are they retained, unless from a belief, almost universal, that they have weight and influence, and determine the conduct of average class of our citizens. He says, further, that he will never vote to say that members of the Legislature are felons, that he will never vote to impose this oath upon them, as it implies that they are felons. It seems to me the gentleman's objection takes too wide a range. The oath was administered the other day to the President of this great nation. Does it imply that he was a felon? Did he probably so consider it?

No, sir; not at all. It seems to me the principle is very nearly identical. It is no implication of the kind. It might not be necessary for the present incumbent, but it might chance to be necessary for some man who was not restrained by equally high moral considerations, but who, to some extent, would be restrained by the solemnity of his oath. I see no force or weight in the views of the gentleman from Philadelphia with regard to its being impliedly an insult upon the Legislature. I think we have had abundant testimony, without going into the question whether the members of the Legislature have been in the past the most corrupt people in the State, to show that some restraint should be imposed upon a certain class, or certain individuals that might become members of that body; and I do solemnly believe that this class will, to a certain extent, be reached.

Now I submit this view, that inasmuch as it has some effect, that it does reach a certain class, and if the thing be not wrong in itself, why should we not adopt it? If its tendency is to do some good, if it would be some restraint, why not, if it is not wrong in itself, and if no harm would probably arise from it, adopt the measure? It is not necessarily a taint upon a man who is required to take the oath; it does not presume that he is corrupt, or that he intends to do a corrupt thing; and there is a certain class of men who do go into the legislative hall, around whom it is necessary to throw all these restraints.

Although I am exceedingly solicitous to pursue every measure that will assist in this great work of throwing guards around the purity of our legislators; yet I cannot see that much benefit which will be likely to arise from the adoption of the proposition of the gentleman from Philadelphia (Mr. Cuyler) in regard to prevent action by party caucus.

Mr. CUYLER. There must be some confusion here in reference to its meaning. If I mistake not, as the Clerk read it this morning, it was in a different form from what it was when offered yesterday. I may be mistaken with regard to that, however, and I thought it was only designed to apply to caucuses of members of a party when a vote was to be taken on a certain measure. If it could be kept there; that is, if it would compel men to sink party whenever they come to legislate for all parties or for the whole State, and if it would have, or if it were calculated to have, any such effect, certainly I should support

it. But it seems to be thought that it simply trammels men in their party sense, and perhaps it would be as well, inasmuch as that it does not seem to be very fully matured, to pass it over.

I shall vote for the amendment of the gentleman from Dauphin, because I think that it goes closer to this evil, if there be any good whatever in oaths, which I still am inclined to believe. I am so old-fashioned as that, and if it can be amended by inserting the well digested thoughts of the distinguished gentleman from York, (Mr. Black,) about which I think there is a certain practicability, that when a man's course is ended, he shall be obliged to take an oath, stating that he has not done such and such wrong, and if he swears falsely he is to be subject to the pains and penalties of perjury—then I think a certain practical end could be gained and I shall vote with much pleasure for such an amendment.

Mr. HUNSICKER. Mr. Chairman: An oath is an obligation which has a two-fold character. It is binding, or supposed to be binding upon the conscience of the person who takes it. And, secondly, we make it binding upon him by adding a temporal pain and penalty to it, in case he violates it.

There is no necessity of justifying an oath by referring to its antiquity, or to its sacred character. To a Convention of intelligent gentlemen, like this, an argument of that kind would be an insult. I have been at a loss to discover from this discussion that there is really much difference between us, because the chairman of the Committee on Legislation (Mr. H. White) contends that his oath covers all that is provided for in the oath reported by the Committee on Legislation, and the gentleman from Philadelphia, (Mr. Bidle,) though he started out with a speech against the sanctity of an oath, yet wound up by saying that he preferred the old form of oath prescribed in the amended Constitution of 1838, which requires that the officers shall swear that they will support the Constitution of this Commonwealth, and perform the duties of their respective offices with fidelity.

Now that oath, in just that language, would cover every part and parcel of all these amplifications. It covers the whole ground, and the man who would take that oath on assuming any office, and then sell his official position for money, or take a bribe, or would betray the trust of his constituents, would be guilty of perjury,

and would make himself liable to the pains and penalties of perjury here, and would close the gates of Heaven against him hereafter; and the only thing that the friends of an "iron-clad" oath, of whom I claim to be one, desire is, that the same form of oath, so well illustrated by the gentleman from Bucks, (Mr. Lear,) that is administered to a grand jury, which contains, in detail, every part and parcel of their duty, shall be administered to a member of the General Assembly when he takes his seat, and that he shall be conscious, at the time he invokes Heaven to witness the sincerity of his vow, that he has still another oath to take, and this will serve to remind him at every step of his progress through legislation, until he concludes, that when he goes home he must go before some judge, or some one competent to administer an oath, and there, again, with his hands upon the Holy Evangelists of Almighty God, swear a solemn oath, that throughout that legislation, and throughout the discharge of his official duties, he has lived up to the oath that he first took.

I do not believe that there lives a man without a conscience, although a man may affect not to believe in any supernatural power, yet he would, notwithstanding, be reminded by that conscience, which is possessed in common by all mankind, that he perils his present or future happiness and peace, by violating the obligation of any oath, no matter in what form it is administered.

The peculiar form of oath assumed by the "Heathen Chinese," is as binding upon his conscience as the form of oath assumed by the christian is binding upon his. It is in each case in accordance with his religious belief. Let this oath be assumed, and let it be assumed with solemnity.

I am very much pleased to find that both these committees recommend that the oath shall be administered by a judge of the Supreme Court. I, sir, would have him, furthermore, clothed in the robes of his office. I would like to see every man coming up, and with the uplifted hand taking the most solemn form of oath that it is possible to frame, and I would have the ceremony as impressive as possible. The reason why so many of our oaths have been disregarded is because of the hurried manner in which they were administered. The conscience of the individual has not been properly pricked, it has not been properly affected by the sense of the ob-

ligation which has been assumed. I shall vote for an efficacious oath, and I certainly believe that that oath is most efficacious which goes to every part and parcel of a man's duty. I shall strike hands with the delegate from Somerset, (Mr. Baer,) and I pledge myself, now and here, to vote for the strongest form of oath which human ingenuity can devise. There is no degradation involved in any oath if a man is honest and means to discharge his duty honestly; he will take a long oath if it be prescribed, and will take it in the most solemn manner, and with a fuller realization of his accountability than if he took a short oath. Why is it that you want a short oath? Is it because a man, after taking a short oath, can argue with his conscience, and persuade his conscience out of the right path? We sometimes see in courts that a man will come up to the witness stand, and when the question is asked whether he will swear or affirm, that he sets up a pretence that he has conscientious scruples against taking an oath. Why is it that, in instances like that, a man will prevaricate and equivocate and avoid the truth, while if he is sworn with the uplifted hand or with the Holy Evangelists of Almighty God in his hand, and which he kisses—why is it that he will then tell the truth? Why is it, too, that in the experience of every member of the bar, and every other person within the sound of my voice, that when a man persistently lies on the witness stand, and you remind him of his oath, he will tremble and turn pale? It is because his conscience has stricken him.

For these reasons I shall vote for the amendment offered by the gentleman from Dauphin, (Mr. MacVeagh,) because I believe it to be an amplification of the same oath which is reported by the Committee on Legislation. I shall also vote for the after-oath submitted by the gentleman from York, (Mr. J. S. Black,) because I believe it will have a wholesome influence by reminding the law-maker all the time that his last duty will be to swear that he has performed his duty to the people faithfully. Thus this first and last oath will act as a guard and shield against every temptation that may assail the integrity of the legislator, and thus restore that public confidence in the law-making power which is now so seriously shaken, if not destroyed.

MR. MANN. Mr. Chairman: I cannot let a subject so important as this be de-

cided by this Convention without expressing his views upon it.

The main object for which we are assembled here is to make such changes in the organic law of the State as shall tend to purify the legislation of the Commonwealth, and I believe that I have as earnest a desire as any member on this floor, to give every vote of mine, and to direct every word that I may utter here, with that special view.

In the interest, sir, of a purified Legislature in Pennsylvania, I appeal to the members of this Convention to vote down these amendments. I was for four years a member of the Legislature of this State, and I was as industrious as my health and physical condition would permit me to be. I believe—I may have been mistaken, but I believe—that for three sessions of the time I was there, I could write the name of every member of the Legislature who had ever been influenced by improper motives in the passage of bills. I believe that number in no one of these sessions exceeded fifteen members, and in some of the sessions it did not come up even to that number. I believe that fifteen was the largest number of members that entered the Legislature during my knowledge of it that, in the passage of Acts of assembly, were ever influenced by improper motives.

A majority may have been mistaken; frequently a majority is mistaken. They may have passed laws which a majority of the conscientious men throughout the State thought improper, but, as firmly as I believe in my own existence, I believe in the entire integrity of the large majority of the Legislature of Pennsylvania, and I as firmly believe that these oaths which you propose to put upon them will increase the number of those corruptible men rather than decrease it. I say further that of those fifteen, the highest number that I can name, I believe every one of them would have taken these oaths, and you may increase oaths a hundred-fold, and they will take them as calmly as they will take a cup of cold tea. The eighty-five honest men would shrink back from these oaths; and the fifteen would not hesitate to take them. The eighty-five honest men will act honestly without them—the fifteen will not act honestly with them. There are a great many men who would adorn the Legislature, and would deem it an honor to be there, who would never take such oaths as these.

Why, sir, you propose to proclaim in advance by these oaths that a man who consents to be a member of the Legislature is presumed to be a rascal and villain. That proclamation is made upon this record, if you adopt any of these amendments as part of your Constitution. If any man, no matter what his character and reputation may have been before, will consent to enter this body, all the people of the State will have the right to presume that he is purchasable, and he must, by taking one of these oaths, proclaim that he is not purchasable.

Sir, I have never more than once or twice been asked if I considered myself an honest man; cannot recall more than a single such occasion. A man came into my office to employ me once, and asked me that question. I showed him the door, and told him he could leave as quickly as possible. I would do the same thing standing before the Speaker in the House of Representatives. I would show myself the door if asked to *swear* that I was an honest man; for that is precisely what the amendment under consideration will require. There is not an honest man that does not feel insulted when such a question is asked of him. Notwithstanding the assertion of the gentleman from Fayette (Mr. Kaine) that he has been influenced by his oath as an attorney, I cannot believe it. I took the same oath which he did when being admitted to practice law in the courts of this Commonwealth, but I say, with all solemnity, that from that day to this it never once influenced my conduct in a single particular, for I felt myself bound to do all that the oath asked me to do, and more too, as an honest man.

Mr. Kaine. I should like to ask the gentleman whether, when he took the oath as a member of the bar, that he "would delay no man's cause for lucre or malice," he considered that oath degrading.

Mr. Mann. No, sir; because it was the ordinary time-honored oath, that had been administered for years and years, so long that the memory of man runneth not to the contrary. But here you propose to inject into the Constitution a new oath, unusual, implying that all legislators are dishonest, and it is that which makes it degrading. The point I am trying to make is that I do not believe the oath which an *honest* man takes affects him or his conduct in any particular, because, without the oath, he would feel bound to

do all that the oath requires of or imposes upon him.

The only effect which an oath has upon any witness in court, or wherever the oath may be taken, is because of the penalty attached to it. You affect no man's integrity or honesty by imposing oaths upon him. You do appeal to his fears when you impose a penalty for swearing falsely. It is the penalty imposed upon the falsehood that affects him, not the oath itself.

Sir, I believe in penalties. If a man commits an offence punish him for it; and the Committee on Legislation have provided amply for the punishment of bribery or corruption on the part of members. They have provided amply that in the passage of bills the Legislature shall observe such forms of legislation as shall protect the interests of the Commonwealth hereafter.

Mr. J. S. BLACK. Mr. Chairman: Since the gentleman from Potter (Mr. Mann) is giving in his personal experience here, I propose to ask him this question: Whether, if there was no prohibition in the Constitution to prevent him from having any intercourse with gentlemen of the "lobby," he would have allowed that intercourse to go on between himself and the "lobby?"

Mr. MANN. No, sir; I would not. In the four years that I had the honor of a seat in the Legislature no "lobbyist" ever addressed me on any subject, and I know a great many other men that no "lobbyist" ever approached. That is the way to purify the halls of legislation. Send honest men there, and your "lobbyists" will go home; their occupation will be gone.

Mr. J. S. BLACK. I want to ask the gentleman this question: Supposing he thought it entirely convenient and right to hear what had to be said in favor of a bill by a party that was interested in it, and would permit private solicitations in the absence of any oath to the contrary. Then suppose he is called upon to swear that he will not listen to any solicitations whatever, would he or would he not keep that oath?

Mr. MANN. I say I would do all that without the oath, and I say that the oath has no binding force upon me, because an honest man is required to do it without the oath.

Mr. J. S. BLACK. Most assuredly an honest man may listen to the solicitations of persons who are interested in bills. They do it every day, do they not?

Mr. MANN. Certainly they will listen to honest men, men who have a proper business to be there; and I do not propose to prevent that. I, sir, do not propose to prevent the proper communication of the constituent with his representative.

Mr. J. S. BLACK. But suppose you are sworn to prevent it, would you not keep your oath?

Mr. MANN. I do not propose to be sworn. I am opposed to any such oath. What I say is that any attempts to prevent "lobby" influence, and all other improper influence by oaths, must necessarily be a failure. It cannot be done. As to the caucus part of the oath I was not speaking. I was making no remarks upon that part of the proposed amendment to the oath which attempts to prevent any communication whatever between the constituents and their representative. I said nothing about that, although I do not believe in that.

Mr. CUYLER. Mr. Chairman: The gentleman refers to his legislative experience of four years. Will he pardon me for asking him whether, under any circumstances, he voted for a bill because a caucus had resolved to pass it, but which his private judgment condemned, and I would remind him in that connection to the amended registry law of the city of Philadelphia?

Mr. MANN. Mr. Chairman: My friend from the city is very anxious about his caucus amendment.

Mr. CUYLER. I am.

Mr. MANN. I was not talking about that. [Laughter.]

Mr. CUYLER. I understood the gentleman's remarks to cover all that ground, the whole ground of legislative oaths.

Mr. MANN. Mr. Chairman: What I said was that I believed an honest man would act honestly without oaths. I was going to say directly that some of these amendments proposed requirements that I think ought not to be asked of a member. They are objectionable on that ground.

Now, since the gentleman from Philadelphia wants me to be diverted from the line of thought I was trying to pursue to the question of caucus, I will willingly gratify the gentlemen. I am opposed to the amendment concerning caucus.

Mr. CUYLER. Mr. Chairman: I would simply add to my question, in that connection, the metropolitan police bill.

Mr. MANN. I do not remember having anything to do with the metropolitan police bill.

Mr. D. N. WHITE. Mr. Chairman—

Mr. MANN. One at a time, if you please.

Mr. D. N. WHITE. Mr. Chairman: If the gentleman will allow me, I only desire to state that the metropolitan police bill never went before any caucus.

Mr. MANN. I do not know anything about that. I was not there.

Mr. J. S. BLACK. About the registry law, then?

Mr. MANN. I do not suppose I am obliged to answer questions that are not pertinent to the matter in hand. [Laughter.]

Mr. Chairman, I would just as soon talk about the amendment of the gentleman from Philadelphia concerning caucuses as not. It proposes to say that there shall be no association or consultation of members of the Legislature that shall affect them one way or the other in the passage of bills.

Mr. CUYLER. I beg the gentleman's pardon for the interruption; I do not so understand my proposition.

Mr. MANN. That is the way I understand it. Perhaps I read it wrong. I am willing to discuss it in the sense the gentlemen understands it. I am opposed to it. It is a poor time, I submit, after a man has received a caucus nomination to the Legislature, after he has been elected by the influence of a caucus, after he has received all the benefits of these influences, to say to him when he gets to Harrisburg, very coolly, "you must not have anything to do with caucuses." If a gentleman were, after being elected by the means I have described, to turn around and say to the caucus of his fellow-members, "I do not pay any more regard to you," it would be a breach of political honor. It would not, at any rate, be my idea of honor. The time to disregard caucus influence is when the convention meets to nominate its candidate. If a man asks for its nomination, if he wants to be a candidate of a caucus, he must be willing to abide by caucus influences. If he wants to be independent of caucus action, let him stand out as an independent man and run on his own strength, and announce himself as the candidate of men who do not believe in caucus. Then, if elected, he can disregard them.

That is my answer to the gentleman from the city. When I make up my mind to disregard caucuses, I will step outside of the influences of caucuses, and not appeal to them. I will do as a friend of mine of other parties, in my district, said

when this question was up. "When the caucuses of my party get so bad that I cannot stand them, I will jump over to the other side." That is what I would do, and if they are so bad that I could not stand them, I will jump out of all party caucuses. For that reason I am opposed to the amendment of the gentleman from Philadelphia. I say it is asking a man to be dishonorable, and I do not like to ask a man to take such a course. I do not believe that the gentleman himself would be willing to submit to his own amendment. If he were elected by the action of his party, he would not want to take any such oath. I am very sorry to differ with the gentleman, because I was very much in sympathy with the tone of his remarks. I understand him to be opposed to this piling up of oaths, and that he is opposed to the pending amendment, and that we are agreed on the main question. Indeed, I am very strongly of the belief that this amendment which he has moved, is just a feeler put out to see how far in the road of foolish action this Convention will go. I do not think he believes in it himself.

Mr. CUYLER. Mr. Chairman: I can assure the gentleman that I believe in it thoroughly.

Mr. J. S. BLACK. Mr. Chairman: I desire to say only a few words.

Mr. MANN. Mr. Chairman: I have not yielded the floor.

Mr. J. S. BLACK. I thought you were through.

The CHAIRMAN. Did the gentleman from Potter yield the floor?

Mr. MANN. No, sir. I desire to pay my respects to the gentleman from York. [Laughter.]

Mr. Chairman, if I had not got entirely beyond that period of time when a person can be very much astonished, I should have been astonished yesterday, very much astonished. We had a line of remarks indulged in yesterday that I cannot comprehend at all, except upon the supposition suggested by the gentleman from Philadelphia (Mr. Biddle) this morning, that the gentleman from York believed republican government is an entire failure. If that is so, then the remarks of the gentleman made yesterday were consistent. If not, I did not understand what the purport of them was. If I believed what he asserted I should vote to abolish the Legislature entirely. Why, it has become a nuisance beyond purification if the statement which he made be

true. But, Mr. Chairman, I believe, with a deep conviction, that what was said yesterday was of as strong a sensational a character as anything George Sands wrote, and as fictitious. It was purely sensational, and the gentleman has become so one-sided on this question, and so absorbed in it, and has been looking so much at the conduct of some of his clients that he can not imagine there are any honest men; and he has just come, as I learn, from the papers, from the successful vindication of a client about whom there has been more allegations of fraud, embezzlement and improper conduct than any other man in the State. And yet, with a little of his learning and his ability, he has brought that man out scot free, and he is as clear as any of us to-day. I do not know how much it would take to have this same ability brought to the vindication of any others charged with fraud and corruption, but I will undertake to say that if they will only secure the gentleman to defend them, they will come out with clean hands and unspotted skirts. Why, sir, the whole community, from Philadelphia to Lake Erie, rung with the charges of corruption, and embezzlement, and crime, in connection with this man. It now turns out to have been pure fiction! There was nothing in it! When it comes to be investigated under the legal ability of my friend from York, there is no crime developed. The man simply made a mistake of a few dollars as to the amount that was due him! Nothing more. Merely a mistake. That is the verdict of the court and the jury, assisted by the legal learning of my friend York, helping to develop that state of things, and to vindicate this much injured George O. Evans from the charges that have been made against him, and I take it that having vindicated the principal in this transaction, all of the accessories have been vindicated likewise.

The CHAIRMAN. The gentleman's time has expired.

Mr. STANTON. Mr. Chairman: I move he have unanimous consent to continue.

Mr. LILLY. I object.

Mr. MANN. Mr. Chairman: I merely wanted to add a passage of scripture. But that, I suppose, would not be palatable in this Convention.

Mr. J. S. BLACK. Mr. Chairman: I am not conscious of having done anything wrong in the course of the trial to which the gentleman (Mr. Mann) alludes. I kept my oath. I used no falsehood. I was true to the court as well as to the client. I

should be very proud of the vindication it gave to an injured man if I had brought it about; but the verdict resulted from the zeal and ability of my colleagues, from the intelligence of the jury and the justice of the great magistrate who presided. But this certainly looks more like a personal controversy than a discussion of the subject before the committee.

He says another thing, however, which is more to the point, when he declares that the tender of an oath to a member of the Legislature is an insult to him, and that he would so consider it in his own case. When the first President of the United States, the greatest man that ever lived in all the tide of time, whose name no true American ever mentions without emotions of respect and reverence, was called upon to take a specific oath that he would preserve, protect and defend the Constitution of the United States, it never struck him that he was insulted. The provision which required it was inserted by himself in the Constitution, signed with his own right hand. But here is a gentleman who, if not greater than Washington, is far more sensitive about his personal honor. He is ready to be insulted—he blazes up with indignation—when you propose that he shall take an oath like that taken by the great Father of his Country. It is not really a question whether a man shall be sworn or not, but whether it shall be modified so as to make it specific, intelligible and binding. It is proposed that if the gentleman from Potter is ever elected a member of the Legislature, he shall declare, on oath or affirmation, that he will *obey* the Constitution, not merely that he will *support* it.

Mr. MANN. Mr. Chairman: I would like to interrupt the gentleman. Does he mean to imply that I object to that kind of an oath?

Mr. J. S. BLACK. You don't object to the kind of oath now required.

Mr. MANN. Not to the ordinary oath.

Mr. J. S. BLACK. No, certainly! Not to the vague, meaningless and flangible oath which is now taken. The gentleman thinks that very good. But when you propose an oath that is unequivocal, and cannot be evaded, then he feels himself aggrieved. He does not object to swearing himself, or making other members of the Legislature swear, provided you don't require them to swear straight up to some point of duty.

Those who think that our rulers should be trusted as we trust nobody else, without

binding them to be faithful, even by an oath, for the violation of which they can be punished, ought to remember the admonition of Mr. Jefferson. He said that the security of our liberties rested upon jealousy, not upon confidence. The people of this country are not worthy to be free if they do not watch their institutions most carefully. We ought to encourage the vigilance of jealousy, not the apathy and negligence which results from confidence. The inheritance of free popular government is so precious that I would double the guards at every available point. Let us take all the chances to save its works, not only from the force that masses upon them by open assault, but from the more dangerous, because more insidious, enemy which undermines their foundations by treachery and corruption. Mr. Jefferson was, unfortunately, absent in France when the federal Constitution was adopted. If he had been at home he would, doubtless, have caused some provision to be inserted against the abuses which have since grown to be so monstrous. If his compatriots in the Convention could have foreseen the fatal degeneracy of their sons, they, without his aid, would have done something effectual to save us from the horrible corruption which now reigns in the federal and in all the State Legislatures.

We are told in some quarters that an oath, no matter how specific and clear it may be, will not influence the conduct of a person who takes it in the slightest degree. It seems to be thought that members of the Legislature are, and will always be, particularly unscrupulous about perjuring themselves. The opinion of Jeremy Bentham, that the religious sanction of an oath never has any effect upon the conscience, is fully adopted by some members of this Convention. Bentham may speak for himself. It is probable that he feared God as little as he respected man. But the gentleman from Potter certainly does himself great injustice when he allows us to suppose that he is in that category. He would most assuredly do whatever he might presume to do on his oath or affirmation. He might haggle about taking the oath—he would not like to walk in the path so straight—but he would keep it if he took it, and do what it binds him to do, though the thing be otherwise indifferent. So would the average run of our legislators. I cannot say that I think much of them in their fallen condition, but brace them well

with an iron-clad oath and they will *not* fall. When a new member of ordinary character takes the gospel of God in his hands, or makes a solemn affirmation that he will not have any intercourse with lobbyists, he will give the back of his hand to that infamous fraternity. The oaths will be ever present to his mind, and when the tempter approaches him he will say "Get the behind me, Satan. I see the bright line of duty stretching out before me. I am sworn to follow it. Shall I lay perjury upon my soul? No, not for worlds."

I admit there may be some who have no conscience, and no fear of the Divine displeasure. We have another way of dealing with them. We will, if this Convention assent, catch them by another oath, to be administered after they go out. They shall swear that they *have not* violated their duty. If they refuse the oath they become incapable of re-election, and we are well rid of them. If they take it and swear falsely, they are guilty of perjury, and may suffer the temporal pains due to that crime. Will not that be effective? Can you conceive of a human being who is at once knave and fool enough to do an act which he must swear he did not do, and take with it the open risk of the penitentiary?

But, Mr. Chairman, the wretches are but few who have no check except human law. Those who deny the general efficacy of oaths ignore the influence and the value of the christian religion. I make no quarrel, at present, with those who dissent from its doctrines, for we are not here to discuss theology. But I take leave to assert, as matter of historical fact, that christianity is not a failure. It has totally changed the moral character of every community that adopted it. The history of its progress through the ages is covered all over with light. Uncounted thousands of men and women have laid down their lives for it. Our fathers came to this country mainly for the purpose of planting the faith which they conscientiously believed to be true. They did plant it. They taught to their children, and to their bond servants, and to the stranger within their gates. It became interwoven with the whole frame-work of their society. It has been propagated over the whole continent, and its principles have everywhere chrystalized into good works. The faith, hope and charity, which are its great elements, exhibit themselves all around. From almost

every hill-top you can see the spire of a church. Schools, alms-houses, hospitals, seem to rise like exhalations from the earth. They are the results of that voluntary, but unostentatious benevolence which refuses to let its left know what its right doeth, a benevolence taught in the New Testament, and taught nowhere else. Is this all hypocrisy? You may call it a superstition, if you will, but is it a sham? In every house you find a Bible, and an overwhelming majority profess to believe every word of it. Their deeds seem to correspond with their words. Is there no security in this? Are they mere whitened sepulchres, goodly on the outside, but filled with dead men's bones and all uncleanness? No; to say that there is not faith enough in the country to bind the conscience of a representative man by an oath, is as comprehensive a slander as the most ribald infidel ever uttered against the Being who made him.

But I repeat that we do not mean to trust the mere conscience of any body. We will take something more than a religious sanction. The representatives spawned upon the Legislature by a stuffed and fraudulent ballot-box might probably defy that. Them we will expose and punish. Their sins shall find them out. We will not be so kind as my friend from Potter has been to the fifteen members whom he knew to be governed by corrupt and improper influences. We will not keep their secrets as he seems to have kept those of his colleagues at Harrisburg.

Mr. Chairman, opposition to this oath and to all measures of defense against corrupt legislation, is to be expected. It is not in the nature of things that men who live and thrive by dishonest practices will quit their occupation because we, the people, don't like it. I have no doubt that the opposition will be very serious. When these provisions were first offered in committee, their friends were warned that they would excite the hostility of a large body interested in the present state of things. It was said that they were strong enough to control fifty thousand votes in this city. They can do more than that—they can add twenty-five thousand to the count by fraudulent returns. What combinations they make with political leaders in the country I do not know. But a dishonest faction, which returns seventy-five thousand votes, can generally make its own terms with a party which cannot maintain its ascendancy without them.

The CHAIR. The time of the gentleman from York has expired.

Mr. HAY. Mr. Chairman: With the permission of the chair, I will yield my time to the gentleman from York (Mr. J. S. Black.)

Mr. LILLY. Mr. Chairman: I object.

Mr. J. PRICE WETHERILL. He can do that.

Mr. WOODWARD. I trust the Convention will allow the gentleman to proceed.

Mr. LILLY. It requires a motion or unanimous consent; and I object.

The CHAIRMAN. The Chair will state, so that the question may be understood by the Convention, the Convention has made a specific order, and it is not competent for the committee of the whole to reverse that order. It is the privilege of any member, sitting in committee of the whole, to avail himself of the order of the Convention; but if, by unanimous consent, opportunity be given for a gentleman on the floor to proceed, the difficulty would be obviated. It cannot, however, be done by a vote, since that would be over-ruling the order of the Convention. The gentleman from Allegheny (Mr. Hay) having had the floor, and having yielded it to the gentleman from York, (Mr. J. S. Black,) the Chair will hold, for the present, that he has a right so to do. The gentleman from York (Mr. J. S. Black) will proceed.

Mr. CUYLER. Mr. Chairman: I move that leave be granted.

The CHAIRMAN. It cannot be done by motion. The gentleman from Allegheny (Mr. Hay) was entitled to the floor for twenty minutes, and he has given his time to the gentleman from York (Mr. J. S. Black.)

Mr. DARLINGTON. Mr. Chairman: Do I understand the Chair to say that one member can give his time to another?

The CHAIRMAN. The Chair may possibly be wrong, but holding it to be the privilege of the gentleman from Allegheny (Mr. Hay) to give his time to the gentleman from York, (Mr. J. S. Black,) the Chair will for the present, unless overruled by the committee, rule that that may be done.

Mr. DARLINGTON. Mr. Chairman: The reason why I asked was that this privilege has been refused this morning to several gentlemen, and I did not want to make fish of one and flesh of another.

The CHAIRMAN. The question had not come up in the form in which it came just now.

Mr. J. S. BLACK. Mr. Chairman: I was about to say that this opposition is one which ought to make every man, who has any regard for the future welfare of his country, more zealous than ever to persist in the reforms proposed, and that the hostility with which we are threatened is in itself a reason for persisting. The honest people of the State must not and will not listen to any protest coming from such a quarter. Rogues are not entitled to a veto upon the means that are employed for their detection. If you want a new lock for your door you do not call a convocation of burglars and ask them how it will suit the conveniences of their trade. The rat-catcher does not consult the vermin which he wants to destroy about the trap to be used in their capture. Why, sir, if the insects that infest the head were allowed to determine how they should be caught and cracked [laughter] there would not be a fine-tooth comb in the world. [Renewed laughter.]

A word or two ought to be said in reply to the gentleman from Erie, (Mr. Walker,) who never speaks without entitling himself to the respect of everybody who hears him. He tells you that the "bank of the United States" was a very good institution; he voted for it himself, and he would do it again. Of course, when he talks that way he is conscientious. But can he say that the charter was honestly passed? I know, of my own personal knowledge, that there were men in that Legislature who voted for it upon considerations which they carried home with them in their pockets. The gentleman who introduced the bill, and whose unexampled skill, wielded the influence which carried it through, many, many times between that time and the time of his death, spoke of the measure as the one which had been carried after a fashion which I need not describe; and he sneered at anybody who, in his hearing, expressed any doubt of it.

Mr. MANN. Mr. Chairman: I should like to know whether I am under any more obligation than the gentleman from York (Mr. J. S. Black) to disclose the "improper influences" that have been used, in connection with legislation. [Laughter.]

Mr. J. S. BLACK. Certainly not. [Laughter.] Neither the gentleman from Potter (Mr. Mann) nor myself make any disclosures; we both keep our secrets. [Laughter.]

But as to my friend from Erie, after all the suffering his bank inflicted upon the people, the disgrace it brought upon the State, the ruin of business men, the plunder of widows and orphans, it seems somewhat late in the day to say that it was right.

He thinks that the repeal of the tonnage tax was all right, also. Strange to say, he was himself a member of the Legislature at the time that measure passed—

["No." "No."]

Was he not? ["No."]

Then he was at some other time when it was proposed. Did he not say he voted against it? ["No."]

Mr. WALKER. I never voted for nor against the tonnage tax. I said I was a director in the Lake Shore road, that the Lake Shore road sympathized with the existence of the tonnage tax because it operated in their favor. I sympathized with them. But I said in my remarks, and I say now, that I was wrong; and that it was, although in favor of the Lake Shore road, against the interests of the State.

Mr. J. S. BLACK. Then the gentleman would have voted probably for that measure if he had been there.

Mr. WALKER. I cannot say what I would have done in that case.

Mr. J. S. BLACK. I totally misunderstood the relation of the gentleman (Mr. Walker) to the subject of the tonnage tax. It seems to me that by being out of the legislature at that time he barely escaped doing a very great wrong. But I have no right to put him in the wrong by supposing a case that never occurred. We will not hold him responsible for hypothetical sins.

But, Mr. Chairman, after the facts that have been stated here, general and specific, and established thoroughly by the history of the Commonwealth for the last twenty-five years, is it any use for either of the gentlemen, whatever may be the respectability of their own character—either the delegate from Potter (Mr. Mann) or the delegate from Erie (Mr. Walker) or the delegate from Delaware (Mr. Broomall), to attempt to say that the rights, interests, wishes and feelings of this people have not been habitually betrayed by the Legislature. The chivalry with which they come up to the support of those who would otherwise be defenceless is certainly a thing to be admired, but it is altogether useless to think of "whitewashing" the Pennsylvania Legislature. [Laughter.] That is past praying for. [Renewed

laughter.] I admire, most particularly, the gentleman from Erie (Mr. Walker) when he is engaged in this kind of business. I give my unqualified admiration to the magnificent dimensions of his brush, and the skill and energy with which he wields it; but I tell him there is not wash enough in his bucket to go over the twenty thousandth part of his job. He may as well give it up. The question remains, what shall be done for a remedy? How shall this cancer be cut out?

If others can invent any better or more efficient mode of doing it than that which has been proposed by the gentleman from Fayette, (Mr. Kaine,) let them come forward with their proposition.

The CHAIRMAN. The Chair will take this opportunity to state that, on reflection, I am satisfied that my decision made a few moments ago was erroneous, and I shall hereafter hold that a gentleman cannot rise, be granted the time of the committee, and then yield it to another.

Mr. D. W. PATTERSON. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

On the question of agreeing to this motion, a division was called, which resulted: Thirty-two in the affirmative; not being a majority of a quorum, the motion was not agreed to.

Mr. SIMPSON. Mr. Chairman: The discussion with which we have been entertained yesterday and to-day has wandered over such far fields that, perhaps, the Convention or the committee of the whole may be unaware of the precise question that is now before us. We have had railroads discussed, the tonnage tax and everything under the sun except the immediate, direct question before this committee. I purpose to say but a few words upon the immediate question now before the committee as I understand it, which is the amendment of the gentleman from Philadelphia (Mr. Cuyler) in relation to an addition to the oath relative to caucus action, that members of the Legislature will not be bound by any vote or decision of any caucuses.

It has been very wisely said, Mr. Chairman, that laws that are not enforced, burdening the statute books of a people, give contempt for law, and the more there are of them, the greater the contempt of the people for all laws. I think the remark is a true one, and I think the experience of every gentleman in this committee will bear me out that it is true,

that the more laws there are in a government that are not enforced the greater is the contempt of the people for all the laws. I think General Grant very wisely said that he knew no better mode of securing the repeal of an obnoxious law than by enforcing it. Now if this amendment of the gentleman from Philadelphia, should be adopted by the committee and by the Convention, and afterwards be ratified by the people and become a part of the oath of office, I want to know by what power that branch of it is to be enforced? You may prescribe whatever penalties you may please, you may say that a man who violates this oath shall never again be permitted to sit in the legislative halls of the State, you may say that he may no longer occupy any office of honor, trust or profit in the Commonwealth; you may go further, and you may say that he shall not longer have the character of the citizen stamped upon him, but like the Chinese, who has been convicted under a law of that country, he ceases, politically, to exist forever; you may say that he is nothing, that is politically a myth, but how can you enforce it, in what way can you prove the crime? It is utterly impracticable for this Convention or for the people of this State to say to the Legislature when in session: "You shall not consult either with your constituents, or with your friends, or with your immediate neighbors, sitting alongside of you, either in the hall of the House, or in a committee room, or in a caucus." But what effect will it have? Suppose that any man in the Legislature is charged with having allowed his judgment to be swayed by the vote of a caucus that had been called to determine upon some question pending before the Legislature, and he says: "I did not allow my judgment to be influenced. I went into that room, and the vote of that caucus was exactly in accordance with my own sentiments." Can you inflict the penalty upon him? Can you convict him of the offence?

Why, then, the necessity of attempting to put upon the organic law of the State a requirement, and a penalty attached to it, upon which you cannot convict any man, and which you cannot enforce? The only effect of it, it seems to me, is that it would bring contempt upon the whole oath. I care not, individually, what form of oath may be adopted by this Convention, and ratified by the people, if I should be called upon to take a seat in the Legislature of the State, and should agree to go there;

whatever oath you may make I would subscribe to; because, when I accept the nomination, when I accept the result of an election, I expect to perform the duty imposed upon me. But I ask this committee of the whole to stop here and now, and, instead of wandering over the broad fields that we have been taken into, as to the propriety of the tonnage tax, and as to the propriety of this thing, and that thing, and the other thing, to come back to the direct question before us. Is there any necessity of passing any such amendment as has been offered by the gentleman from Philadelphia, and, if passed, can you enforce it when it is put upon your organic law? I submit that you cannot, for it rests in the breast of the individual, and unless you can bring home conviction, unless you can prove the fact beyond the possibility of a doubt, it is utterly worthless, and like "the baseless fabric of a vision."

I trust that the committee will not adopt this amendment, Nay, I go further. I trust they will not adopt the proposition of the gentleman from Dauphin, but that they will take the oath as reported by the Committee on Legislation and adopt it.

I am willing to add to it some words that I think, perhaps, ought to be there. I think that instead of a legislator solemnly declaring to support the Constitution, that there should be added to the oath that he will protect and defend it; and I think, Mr. Chairman, that that is all that may be necessary to require of any member of the Legislature.

The question of legislative corruption has been discussed here almost exhaustively, in connection with the subject of the oath necessary or proper to be taken by members of the General Assembly. One gentleman says he knows of corruption, and another gentleman says that he knows of corruption, but, Mr. Chairman, what is the cause of this corruption? What gave rise to it? Let me say, sir, that at least one of the causes of this corruption has not been mentioned upon this floor, and that cause is: The violation of the statute laws of the State as they exist to-day.

Why does not the gentleman from Philadelphia, who proposes to thus purify legislation by incorporating into the oath this agreement, that he will not be bound by the action of a caucus, go one step further, and let every member of the Legislature be required to swear, in addition thereto, that during the time he holds

office under the State he will keep all its laws inviolate on his own part, and assist in the enforcement of them against others. Sir, I know, and other gentlemen upon this floor know, that the violation of the laws of this State in Harrisburg, whereby men have sacrificed the salary of an entire session in one single evening, not in a committee room, but in a private room, at a hotel, has been the cause of much of the corruption of members, because having lost all their earnings, it was necessary to retrieve from some other source. Why not put in this oath that members of the Legislature shall preserve and keep all the statute laws of the State, and particularly that relating to gambling? It is more pertinent, sir, than to say they shall not be bound by a caucus engagement.

If you want to reach the root of the evil; if, as says the gentleman from York, (Mr. J. S. Black,) you want to cut it up by the roots, eradicate it and destroy it forever, let that be added to the oath, and, perhaps, it may restrain some one individual from a violation of the laws, and be productive of some good. At least it strikes me that that may be enforced, while the proposed amendment of the gentleman from Philadelphia cannot be, because the question as to whether a man's vote has been changed by any influence of caucus rests entirely within his own breast, from which no human being can extract it.

These are the views, Mr. Chairman, that I wish to present to the committee of the whole, to bring them back to the question before them, and to say to them that if I stand alone upon this floor I shall vote against all the amendments that have been proposed, and for the report of the Committee on Legislation as originally presented.

Mr. STRUTHERS. Mr. Chairman: I desire only to say that I believe in the efficiency of oaths. I regard them as sacred things, and they ought not to be used lightly, or trifled with. Perhaps the better way to arrive at what we need in this regard would be to embody, as a section in the Constitution, all the pains and penalties that it is desired to prescribe, and hold it up as a terror to evil doers, and then let the old fashioned general oath be administered to sustain, support and defend the Constitution. You will then have established a general oath that will apply not only to members of the Legislature, but all other officers of the Com-

monwealth, commencing with the Governor and the judges of the Supreme Court, down through all the other officers of the Commonwealth.

But at this period of the proceedings I do not desire to occupy time, because I feel that gentlemen are anxious to adjourn. I wish only to explain, in the presence of the Convention, the reasons why I shall oppose all these amendments that are proposed, and why I shall oppose every kind of addition to the general oath which we have been in the habit of administering. When we come to that, if no other gentleman does, I will move to strike out from this oath all after the usual form of oath we have in the Constitution.

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia, which will be read.

The CLERK. "And that I will not submit my individual judgment or action to the decision or control of any caucus or combination of members of the Legislature in the passage of any law or resolution."

On the question of agreeing to the amendment, a division was called, which resulted twenty-one in the affirmative. Not being a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin, which will be read.

The CLERK read:

Every member of the General Assembly, before he enters upon his official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of Pennsylvania, and will faithfully discharge the duties of Senator (or Representative) according to the best of my ability, and I do solemnly swear (or affirm) that I have not paid or contributed anything, or made any promise in the nature of a bribe, to corrupt or influence, directly or indirectly, any vote at the election at which I was chosen to fill the said office; and I do further solemnly swear (or affirm) that I have not accepted or received, and that I will not accept or receive, directly, or indirectly, any money or other valuable thing, from any corporation, company or person, for any vote or influence I may give, or withhold on any bill, resolution or appropriation, or for any other official act."

The foregoing oath shall be administered by one of the judges of the Supreme

Court, in the hall of the House to which the member is elected, and the Secretary of State shall read and file the oath subscribed by such member; any member who shall refuse to take said oath shall forfeit his office, and every member who shall be convicted of having sworn falsely to, or of having violated his said oath, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in this State.

Mr. LILLY. Mr. Chairman: I move to amend the section so as to provide that the oath may be administered by the clerk of the court of common pleas at Harrisburg in the absence of the Supreme Judge.

The motion was agreed to.

Mr. H. W. PALMER. Mr. Chairman: I move to amend, by striking out what occurs between the word affirm, in the seventh line and the tenth line, and insert the following:

"That I have not paid or contributed, or promised any money or other valuable thing to secure my election, or to corruptly influence votes or voters in my favor, nor have I knowingly violated any election law of this Commonwealth."

Mr. PALMER. This is the amendment that I offered when this subject was under discussion before. It is printed in the Debates, and was discussed a couple of days. It is now nearly three o'clock, and I move the committee rise, report progress and ask leave to sit again. At that time the consideration of this subject was postponed, on the motion of the gentleman from Columbia, (Mr. Buckalew,) until the report of the Committee on Oaths of Office should come in.

The CHAIRMAN. The motion to rise is not debatable.

Mr. H. W. PALMER. I understand that. I am only explaining the reason why I make the motion to rise. It would be well to abolish the Committee on Oaths of Office, or give them a chance to present an oath. They have the subject under consideration and, will probably present an oath to the Convention.

The motion to rise was rejected.

Mr. H. W. PALMER. Mr. Chairman: As the committee seems to be averse to rise at this time, I desire to say a word or two in support of this amendment. It seems to me that there is a disposition on the part of the committee to adopt some sort of an oath different from that in the present Constitution. All I desire is, if

there is any change made that it shall be adopted to the exigencies of the case.

Mr. CORSON. Does the gentleman desire to discuss this question?

Mr. H. W. PALMER. I propose to discuss my amendment.

Mr. CORSON. Then I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

IN CONVENTION.

Mr. ARMSTRONG. Mr. President: The committee of the whole have again had under consideration the report of the Committee on Legislation, and have directed me to report progress and ask leave to sit again.

Leave was granted to the committee to sit again to-morrow.

LOUIS Z. MITCHELL.

Mr. J. S. BLACK. Mr. President: A committee consisting of certain delegates-at-large, to whom was referred the duty of appointing a delegate to this Convention in the place of Mr. Hopkins, deceased, have instructed me to report the following:

The Delegates-at-large, to whom it was referred to fill the vacancy in the mem-

bership of the Convention, occasioned by the death of Hon. William Hopkins, of the Twenty-sixth Senatorial district, do report they have come to the following resolution:

Resolved, That Lewis Z. Mitchell be and is hereby appointed a member of the Convention, to fill the vacancy in the representation of the Twenty-sixth Senatorial district, caused by the death of Hon. William Hopkins, the member elect from said district.

(Signed.) R. A. LAMBERTON,
GEO. M. DALLAS,
WM. I. BAER,
WM. T. CORBETT,
JAS. ELLIS,
SAML. H. REYNOLDS,
J. S. BLACK,
GEO. W. WOODWARD,
A. G. CURTIN,
S. C. T. DODD,
JOHN. H. CAMPBELL,
WM. H. SMITH.

The report was laid upon the table.

Mr. DARLINGTON. Mr. Chairman: I move the Convention do now adjourn.

The motion was agreed to.

So the Convention at three o'clock adjourned.

SIXTY-FOURTH DAY.

WEDNESDAY, *March 12, 1873.*

The Convention met at ten o'clock A. M.
Prayer was offered by Rev. Mr. Curry.

JOURNAL.

The Journal of yesterday's proceedings was read and approved.

PROHIBITION.

Mr. JOHN M. BAILEY presented a petition of citizens of Huntingdon county, praying that an amendment may be made to the Constitution, prohibiting the manufacture and sale of intoxicating liquors.

Mr. J. PRICE WETHERILL presented a petition of like import from citizens of Philadelphia.

Mr. CRAIG presented a petition of like import from citizens of Lycoming county.

Mr. WRIGHT presented a petition of like import from citizens of Luzerne county.

Mr. DeFRANCE presented four petitions of like import from citizens of Mercer county; all of which were laid on the table.

REPORT OF THE COMMITTEE ON MILITIA.

Mr. PORTER, from the Committee on Militia, presented the following report, which was read:

The Committee on Militia present the following report:

ARTICLE —

SECTION I. The freemen of this Commonwealth shall be armed or organized and disciplined for its defence when, and in such manner as may be directed by law.

The Legislature shall provide for maintaining the militia by direct appropriation from the State Treasury.

The PRESIDENT. This article has now been read the first time.

METHOD OF VOTING ON NEW CONSTITUTION.

Mr. D. W. PATTERSON. Mr. President: I now move to proceed to the consideration of the resolution offered by me yesterday, proposing to add an additional rule to the rules of the Convention.

The PRESIDENT. The Clerk will read the resolution for information.

The CLERK read as follows:

Resolved, That the following be adopted as an additional rule of the Convention, to be numbered the forty-third rule: That when any article or articles of amendment, proposed to the Constitution, shall have received three several readings, and been finally passed by the Convention, that one-third of all the members of the Convention shall have the right, by motion or resolution, in the usual manner, to require the separate and distinct submission to a popular vote of any such article or amendment, or separable section proposed and finally passed, as above stated, by the Convention.

The resolution was read a second time.

Mr. KAINE. Mr. President: I would like to inquire of the mover of the resolution, what necessity there exists for it? I think there is an act of Assembly which provides exactly for this very thing, without the necessity of creating a new rule. The provision in the fourth section of the act of Assembly says that one-third of the delegates to the Convention shall have the right to require the separate and distinct submission to the popular vote of any change or amendment proposed by the Convention.

Mr. D. W. PATTERSON. Mr. President: I am perfectly aware of the fact mentioned by the gentleman from Fayette, (Mr. Kaine,) and the gentleman from Fayette must be perfectly aware that none of the members of this Convention recognize that act of Assembly. Strange to say I am not one of them, but there are a number of such gentlemen on this floor, and hence if we do not make it the rule of the Convention, it will require a majority vote to submit any separate or distinct article or section to the vote of the people. While some of us, early in the sessions of this Convention, showed by our vote that we did not regard some of the provisions of the act of Assembly of 1872, I myself did not think that the Legislature could restrain this body in any extent or limitation as to how far, or how much of the organic law should be repealed or changed.

I certainly, in this particular, feel that the contents of the fourth section of this act are an indication of the popular will expressed no later than last year, and I think it is an eminently wise provision, and for that reason, because I always submit to the will of the people, I desire that this new rule should be established so that we will not be taken by surprise when we pass through an article which is somewhat doubtful, and upon which the public mind may have a very divided sentiment.

I want to make the rule now so that we will know whether one-third of this Convention shall be able to submit a separate and separable proposition to the vote of the people, particularly an article or proposition that may be very doubtful as to its wisdom, and more particularly as to its popularity and acceptance with the people.

I have felt that we should bow to the indication of the will of the people as expressed by their representatives, and adopt this rule, so that one-third of the members at any time, under the section of the article if passed, may be able to submit it to a separate vote of the people, either an article, a section, or a separable section. That is the object of my offering this rule, and I have thought that we should adopt it so that we may know what this Convention will do, what are the sentiments of the members of this Convention, and whether or not they are disposed to listen to and regard the popular will of the people, as expressed so recently through their representatives.

MR. DARLINGTON. MR. President: I am very glad, generally, to agree with my friend from Lancaster, (Mr. D. W. Patterson,) for I have generally found him to be about right, but upon this question I am convinced that I am unable to agree with him.

I think, in the first place, it is premature for us to fix anything now by rule as to what we will do when we get through with our work. It will be time enough later in the day for us to make any provisions in regard to this. It is a question, as yet, whether we will submit anything to the people at all. It is a question we will have to well-consider and decide when we get through with our work. There are gentlemen who may consider it impracticable or imprudent to submit anything at all to the people. I am inclined to agree with my friend, the gentleman from Philadelphia, (Mr. Woodward,) in regard to this subject. A stage of circum-

stances may arise during the progress of our work which may render it impracticable to submit anything to the people at all, and therefore I am opposed, at present, to the Convention giving any decision upon the subject. I do not, however, regard the expression of opinion by the Legislature as of any validity at all. For the purpose of testing this question I move that the further consideration of this question be postponed for the present.

The question being taken on the motion, the yeas and nays were required by Mr. Corbett and Mr. D. W. Patterson, and were as follow, viz:

YEAS.

Messrs. Armstrong, Bailey, (Huntingdon,) Bardsley, Bartholomew, Biddle, Boyd, Church, Curry, Darlington, Ellis, Finney, Hay, Heverin, Hunsicker, Kaine, Lilly, McCulloch, Minor, Mott, Pughe, Read, John R., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Ross, Runk, Smith, Henry W., Smith, Wm. H., Stewart, Wetherill, J. M., Wetherill, John Price, Woodward and Meredith, *President*—33.

NAYS.

Messrs. Achenbach, Addicks, Alricks, Andrews, Baer, Bailly, (Perry,) Beebe, Bowman, Brodhead, Broomall, Campbell, Carter, Cochran, Corbett, Craig, Cronmiller, Davis, De France, Dodd, Dunning, Edwards, Elliott, Ewing, Fulton, Funck, Guthrie, Hanna, Horton, Howard, Lamberton, Lawrence, Lear, Long, MacConnell, McClean, Mann, Mantor, Niles, Palmer, G. W. Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Sam'l A., Rooke, Russell, Sharpe, Stanton, Struthers, Turrell, Walker, White, David N., White, Harry, White, J. W. F. and Wright—55.

So the motion was not agreed to.

ABSENT OR NOT VOTING.—Messrs. Ainey, Baker, Bannan, Barclay, Black, Charles A., Black, J. S., Brown, Buckalew, Carey, Cassidy, Clark, Collins, Corson, Curtin, Cuyler, Dallas, Fell, Gibson, Gilpin, Gowen, Green, Hall, Harvey, Hazzard, Hemphill, Knight, Landis, Littleton, M'Allister, M'Camant, M'Murray, MacVeagh, Metzger, Newlin, Parsons, Patton, Purman, Purviance, John N., Simpson, Smith, H. G., Temple, Van Reed, Wherry and Worrell—44.

The resolution was then agreed to.

INDEXING THE DEBATES.

MR. HAY offered the following resolution, which was twice read:

Resolved, That the Committee on Printing be requested to have prepared a proper index for each volume of the Journal and the Debates.

Mr. LILLY. Mr. President: I move to amend the amendment, by inserting a proviso at the end of the resolution, that the volumes shall contain at least one thousand pages. I have noticed that one of the volumes of the Debates contains only a little over eight hundred pages, and I find that it makes an exceedingly small book.

Mr. COCHRAN. Mr. President: I wish to state that I think this amendment is impracticable, for the reason that the first volume of the Debates has been concluded, and I think is now in the course of being bound.

Mr. LILLY. Mr. President: I rise simply for the purpose of explaining the amendment which I have offered. It has reference solely to the future volumes which are to be bound by the printer, and not to those which have been already completed.

Mr. COCHRAN. Mr. President: Even in this event it will look very singular to have the volumes of the Debates and Journals bound in different sizes, but if the Convention desire to have it so, I certainly have no objection to it. With regard to the proper index that may be decided upon for these volumes, I would merely suggest to the Convention what has been suggested by others, rather than by myself, that it would be far better to have but one index placed in the final volume for the whole number of books. I do not think there is any necessity for indexing each one of these volumes. I am convinced that one general index will suffice for the whole number. This is the suggestion of other gentlemen, and it is presumed to be a more judicious plan. I am not able to say myself, from the condition of the work at this time, whether or not it would be practicable to index the first volume of the Debates now, or whether it has not been actually bound. If it has been bound, or any portion of the issue has been bound, it will not then, of course, be practicable to make an index for that particular book. I merely desire to call the attention of the Convention to this fact.

The amendment was not agreed to.

Mr. CORBETT. Mr. President: I move to amend the original resolution, by requiring a general index to be made of the

entire number of volumes which are to be published.

Mr. HAY. Mr. President: It certainly seems to me that an amendment of this kind ought not to be adopted. Where the volumes of the Debates are numerous, a general index will be comparatively useless, and, of course, when a single volume is taken up for reference there should be an index to that volume, by which to guide the reader to the different parts to which he may desire to refer. It must be apparent to all that an index is required to each volume, rather than a general index to the entire number, or even if a general index is to be made.

On the question of agreeing to the amendment, a division was called, which resulted: Twelve in the affirmative, and forty-seven in the negative.

So the amendment was rejected.

Mr. RUSSELL. Mr. President: I move to refer this matter to the Committee on Printing.

Mr. HAY. Mr. President: I desire to state to the gentleman that this whole subject has been referred to the committee once, and they have reported this resolution.

The question being taken on the resolution, a division was called, and the resolution was agreed to; yeas, forty-nine; nays, eight.

THE REPORT OF THE COMMITTEE ON EDUCATION.

The PRESIDENT. The next business in order is the second reading and consideration of the article reported by the Committee on Education. Is it the pleasure of the Convention to proceed to the consideration of the article?

"Aye!" "Aye!" "Aye!"

THE ARTICLE ON CITY CHARTERS.

The PRESIDENT. The next business in order is the consideration of the report of the Committee on Cities and City Charters. Is it the pleasure of the Convention to proceed to the consideration of the article?

The question was then taken, and it was not agreed to.

THE ARTICLE ON LEGISLATION.

The PRESIDENT. The next business in order is the further consideration of the article reported by the Committee on Legislation. Is it the pleasure of the Convention to proceed to the consideration of the article?

The question was then taken, and it was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself in committee of the whole, Mr. Armstrong in the Chair, and proceeded to the consideration of the article reported by the Committee on Legislation.

THE OATH OF OFFICE.

The CHAIRMAN. The question pending before the committee of the whole is the amendment offered by the gentleman from Luzerne, (Mr. H. W. Palmer,) to the amendment of the gentleman from Dauphin, (Mr. MacVeagh.)

Mr. H. W. PALMER. Mr. Chairman: I desire to modify my amendment by striking out what occurs between the word "affirm," where it occurs the second time in the section, and the word "and," after the words, "the said office," and inserting the following: "That I have not paid or contributed, or promised, any money or other valuable thing, to secure my election, or to corruptly influence votes or voters in my favor, nor have I knowingly violated any election law of this Commonwealth." If I can obtain the attention of the committee a minute or two, I propose a short cut in this business. We have been listening for the last two days to the discussion of the general question whether there shall be a modification of this existing oath or not, and I suppose nearly every gentleman has made up his mind with regard to it, one way or another. The question now recurs, what shall be the form of the new oath? And I judge the Convention is not in a condition of body or temper of mind to take up and critically examine this subject. The oaths that have been proposed here are neither of them equal to the exigencies of the case. The amendment offered by the gentleman from Dauphin (Mr. MacVeagh) covers only one phase of the difficulty. It aims at the use of money in elections, and covers only one branch of the disease, to wit: the bribery of the individual voter. It simply provides that the member of the Legislature shall swear or affirm that he has not paid or contributed anything, or made any promise in the nature of a bribe, to corrupt or influence, directly or indirectly, any vote at the election. That is simply one specific branch of the great disease, and it seems to me that if we have made up our minds to make any modification in the oath as it stands now, if we have concluded to ad-

minister any remedy for the disease, the antidote should be as powerful as the complaint.

The amendment of the gentleman covers only one of the multifarious methods in which money is used in the elections. The oath reported by the chairman of the Committee on Legislation, is still more objectionable. That oath simply amounts to nothing. My proposition is, that we shall vote down both these oaths in the same manner as when the same subject was considered in the report of the Committee on the Legislature, when we found that objection was made to the form of the oath reported, and then await the report of the appropriate committee to whom this subject belongs. I think we can then take up this subject of the oath and consider it understandingly. It will not be necessary to go over the entire general debate again, and if this course be not adopted there will result at least four more general debates on this subject, because when the report of the Committee on the Judiciary is made, that committee will report an oath, and we shall be obliged to take up that oath and consider it. When the report of the Committee on Counties is made that report will contain an oath, and we shall have to take up that oath and consider it. When the report of the Committee on Counties is made that will contain an oath for county officers, and we shall then take that up and consider it; and when the report of the Committee on Oaths of Office is made that report will contain an oath covering the whole ground, and it will be necessary to go over the whole subject again.

Why, then, should we not refer the whole matter to the appropriate committee. I believe this course should be adopted for a variety of reasons. The first is, because these oaths which have been reported are not adequate; and, secondly, because the Convention is wearied out by two days' consideration of the subject and are not now in temper of mind to critically examine this matter. The third and last reason is, because it is not right to defraud this Committee on Oaths out of their appropriate duties, and it is not right to relieve them from this labor. I desire to obtain the judgment, skill and knowledge of the chairman of that committee. I do not desire that he should be relieved from the performance of his duty in any such way. By adopting this plan we will save time in debating all these modifications, and any oaths that we may

hereafter adopt will then be worth something. I do not propose to discuss now the general proposition as to whether there ought or ought not to be any modification, but I am in the position of an old Quaker, who was asked to subscribe to a church organ. He was very much opposed to it at first, but finally gave \$500 towards its erection, and when taxed with inconsistency said: "If thou wilt worship God by machinery, I desire that thou shouldst have a good instrument."

Mr. MANN. Mr. Chairman: I hope the amendment of the gentleman from Luzerne will not be adopted, for the same reason which I gave yesterday in opposition to the amendment of the gentleman from Dauphin (Mr. MacVeagh.) The gentleman from Luzerne, (Mr. H. W. Palmer) himself presented a very serious objection to all these amendments and oaths; and that is, that when you undertake to specify in an oath the particular thing which a man should not do, the difficulty is that in having made all the specifications that reasonably ought to be made, you thereby leave it to be inferred that certain other things would be proper to be done, when in fact they would be just as improper as those that are specifically named. Hence, to my mind, the old fashioned oath which our fathers took, and the one that has sufficed from the organization of the State down to the present time, ought to be left in the Constitution as it is.

The argument which the gentleman (Mr. H. W. Palmer) made in favor of his amendment is a strong argument against all these attempts to specify in the oath, things which ought not to be done. But I rise, sir, now, for the purpose of correcting a misrepresentation of my remarks yesterday, than to make any argument upon the amendment of the gentleman from Luzerne (Mr. H. W. Palmer,) for I think that he himself has made a conclusive argument against this whole effort to enlarge the scope of the oath to be taken.

Yesterday, in referring to my knowledge of the improper influences brought to bear upon the Legislature of Pennsylvania, and of the members who had been so influenced, I was very careful to say that I thought I could name the men that had been so influenced, and I was also careful to add to it that I might be mistaken. Now, sir, upon that clear and cautious statement—a mere expression that I thought I could name the men, the gentleman from York, (Mr. J. S. Black,) in

his anxiety to condemn me and destroy the character of the people who have inaugurated a new movement in this country—so anxious was he to destroy every man connected with this new movement, and acting in accordance with it, that notwithstanding he had not the slightest feeling against myself, for we have had intimate and pleasant relations from the time of the calling of this Convention to the present moment, yet he is so determined to carry out his purpose of destroying the character of the people of the country that he represents me as concealing corruption in the Legislature of Pennsylvania, and attempts to hold me up to the gaze of this Convention and to the people of the Commonwealth, who may read his remarks, as concealing corruption, when I did not pretend that I knew anything about corruption there. I said carefully and deliberately, that I believed I could name the men who had been improperly influenced, and there is no shadow of excuse for so misrepresenting me.

I acquit the gentleman from York (Mr. J. S. Black) of any intention to do me, personally, any unkindness. It is simply a part of his purpose. From the time that a majority of the people of the United States refused to accept him and his associates as leaders, he has been determined to represent everybody connected with the new movement as corrupt; and that is the key to all this extravagant denunciation of fraud and corruption. Why, sir, if upon the slight foundation upon which he built, yesterday, his remarks against me, he could charge me with concealing fraud, I ask any candid man what reliability there is to be placed upon his statement when he makes a charge of fraud itself against other people? There was not the slightest excuse for charging me with concealing fraud. I therefore submit it is fair to presume he has no better evidence against men whom he charges with fraud itself. What confidence can be placed in his charges? It is made to carry out a purpose, a determined purpose, and he is so earnest, and has his mind so completely fixed upon that purpose, that he is incapable of fairly representing any individual who does not agree with him in that purpose.

He appeals, sir, to the christian religion also, and represented me as putting myself against the principles and traditions of christian religion. He was as unfortunate in that appeal as in the other. It is

a monstrous proposition to say that the principles of christian religion justify the attempt to put into the Constitution an oath which stares in the face a member who has been elected to the Legislature, and which requires him to swear before entering upon his duties that he has not committed a crime, and that he will not commit one while he is in office. There is nothing between the lids of the Bible that justifies any such proposition as that. I do not profess to know as much upon that subject as the gentleman from York, (Mr. J. S. Black,) but I will read one or two definitions—the grandest that ever were uttered upon this subject—and I submit that they justify my position, and do not justify his, either when he attempts to put me against the christian religion, or when he assaults me with his charges of corruption, or concealing the corruption of others. Of course the italics are my own :

"Though I speak with the tongues of men and of angels, and have not *charity*, I am become as sounding brass or a tinkling cymbal.

"And though I have the gift of prophecy, and understand all mysteries, and all knowledge; and though I have all faith, so that I could remove mountains, and have not *charity*, I am nothing.

"And though I bestow all my goods to feed the poor, and though I give my body to be burned, and have not *charity*, it profiteth me nothing.

"Charity suffereth long, and is kind; charity envieth not; charity vaunteth not itself, and is not puffed up.

"Doth not behave itself unseemly, seeketh not her own, is not easily provoked, *thinketh no evil*.

"Rejoiceth not in iniquity, but rejoiceth in the truth.

"Beareth all things, believeth all things, endureth all things, hopeth all things.

* * * * *

"And now abideth faith, hope, charity, these three; *but the greatest of these is charity.*"

Mr. Chairman. The tendency of the argument and the denunciations of the gentleman from York, (Mr. J. S. Black,) are in direct violation of every one of these precepts; and to these I commend him.

Mr. J. W. F. WHITE. Mr. Chairman: I rise, not for the purpose of discussing these oaths, but to explain the vote that I shall give on this occasion, and to second the suggestion made by the gentleman from Luzerne, (Mr. H. W. Palmer.)

I am in favor, Mr. Chairman, of a more full and stringent oath than is contained in our present Constitution; but I am opposed to these oaths being repeated in the Constitution. I am opposed to having an oath for the members of the Legislature different from the oath required for other State officers. I believe, sir, the better plan is to have one oath for all the State and county officers, from Governor down.

In our present Constitution we have an article—"Article VIII"—especially on the subject of oaths; and I wish to call the attention of the committee to this article. It reads:

"The members of the General Assembly and all the officers, Executive and judicial, shall be bound by oaths or affirmation to support the Constitution of this Commonwealth, and to support the Constitution of the United States with fidelity."

We have no special oath for members of the General Assembly; we have no special oath for other State officers. Let us have in the Constitution one oath for all State and county officers. I apprehend that that was what was contemplated by this Convention when we appointed our committees. We have a Committee on Commissions, Offices, Oath of Office and Incompatibility of Office, of which my friend before me, from Fayette, (Mr. Kaine,) is chairman. I apprehend the intention was to have this committee report an oath to take the place of the one in article eight of our present Constitution applicable to members of the Legislature, to all "executive and judicial officers," and I hope we will go further and say "all State and county officers" throughout the whole State. I can see no reason whatever, if we are to swear the members of the Legislature that they have committed no frauds in their election, why we should not apply the same rule to the Governor and to all other State officers, and to all the county officers as well.

For that reason, Mr. Chairman, I hope that we will pass over these reports by the two committees, which are now before us, or in some way lay them aside until this Committee on Oaths make their report. I think, sir, that we should, in framing a Constitution, try to make that Constitution as brief and express it as concisely as possible, having a place in it for everything, and not repeating the same thing in different parts of the Constitution. If we have in one place this oath applying to the Legislature, we shall

have in another an oath applying to the judges, and another applying to State and county officers, thus increasing the length of the Constitution. I think the better plan would be to make the Constitution brief, everything being in its proper place; and make one oath applicable to all State and county officers, and the same oath applicable to members of the Legislature.

I must confess I do not like this thing of swearing members of the Legislature, particularly, against frauds, and make them swear that they will not be guilty of bribery. I do not like that idea to be embodied in a Constitution. I think the members of the Legislature are as good as any other officers we can have, State or county. I do not like singling them out by a distinctive and exclusive oath, applicable to them alone, thus indirectly impeaching them, and making them less worthy of credit than other officers of the State. I do not like it; but I am willing to go for one of these stringent oaths "iron-clad," if you please to call it so, making it applicable to every officer of the State, and everybody in official station, from the Governor down. Then the members of the Legislature cannot say it is particularly aimed at them. I suppose the only way to reach that object is to vote down these propositions at this time. I shall, therefore, vote against all of them now. At the same time I wish it distinctly understood that I am in favor of a strong oath and a general one, and I hope such an oath will be adopted before we finish this article. If not, when this matter comes up before the Convention on second reading, I shall then move to insert such an oath as that I have referred to.

MR. SAMUEL A. PURVIANCE. Mr. Chairman: We have been discussing this question, now, for two days and I am opposed to a postponement of it. It seems to me that we are prepared now to decide upon it. We have, I think, satisfactory evidence that there is a majority in this committee in favor of an oath. What the character of that oath is to be is a subject of controversy here. I think, sir, and have always thought, that there is no degradation in an oath. Why, your grand jurors, since the organization of your government, have been called and sworn to do nothing out of malice or ill will, to do nothing out of fear or affection, or hope of reward or gain, and yet, was it ever for a moment disputed? Was it ever called in question? Was it ever even im-

plied that it was done for the purpose of preventing anything of the kind? It was considered no degradation to take that oath. Every member of the bar, throughout this and other Commonwealths, are sworn to delay no man's cause for lucre or malice. What does that mean? Does it imply that unless they are sworn they will do so? It certainly does no harm to honest men to take that oath, and if there is a dishonest man, one whose conscience is not entirely lost, he, when attempting to carry out his professional duties, may stay his hand in doing an act which, but for the oath, he might have committed.

Now, as to the character of the oath, a word or two. I look upon both oaths, that reported by the Committee on Legislation and that reported by the Committee on Legislation, as defective; and especially the oath reported by the Committee on Legislation. That oath, sir, is but a copy, *verbatim*, of the oath given in the Constitution of Illinois, and, having examined it some time ago, I was satisfied, as my friend from Luzerne (Mr. H. W. Palmer) said a few days ago, that it is so open that a four-horse team might be driven through it. What is it? In the latter part of the oath it says: "That I have not received, and will not receive, any money or other valuable thing from any person or corporation for my vote or influence."

Now let me say to the committee, that when a man makes up his mind to commit a fraud like this, to take a bribe, he does not do it in the way contemplated in that oath; he does not make it a matter of contract, and this implies a contract; hence it is done by hints, or often without hints; it is done in the shape of presents, after the legislation takes place.

It is done by placing on the pillow of a man's bed an envelope enclosing money; it is done by making presents, sometimes even after he has gone out of office. Unless you guard against all these, you have no oath better than a rope of sand.

Now, sir, I would strike out all that, "for my vote or influence," because that contemplates the commission of an offense to depend upon the consideration of agreeing to give his vote or influence, and I would insert "or their agents or employees having an interest in the subject upon which I may be required to vote." That would guard it entirely, because then it would read: "That I will not accept or receive, directly or indirectly, any money or other valuable thing, from any corpo-

ration, company or person, or their agents or employees, having an interest in the subject upon which I may be required to vote."

That relates to time *before* and time *after*. It embraces presents, bribes and everything of that kind. Unless some provision like that is put into this oath, I regard it as of no binding force whatever. It is a mere copy of the provision of the Illinois Constitution, and was probably taken from it by the committee without proper consideration.

MR. HARRY WHITE. Mr. Chairman: Before the gentleman (Mr. Samuel A. Purviance) takes his seat, let me call his attention to one thing in that connection. I ask him to turn over the page of the report and look at section thirty-six. He will there discover that:

"A member of the Legislature shall be guilty of bribery, and punished as shall be provided by law, who shall solicit, demand, or receive, or consent to receive, directly or indirectly, from any corporation, company, or person, any money, testimonial, reward, thing of value, or personal advantage, or promise thereof, for his vote or official influence, or with the understanding, expressed or implied, that his official vote or official influence is any way to be influenced thereby."

If the gentleman (Mr. S. A. Purviance) reads that carefully he will understand that that comprehends the receiving of presents for votes already given, as well as votes to be given, and the man who takes the oath to obey the Constitution, takes it, of course, with the understanding to obey that section.

MR. S. A. PURVIANCE. Mr. Chairman: I would say, referring to that subject, and in answer to the remark of the gentleman from Indiana, (Mr. Harry White,) that that is only a section providing punishment for bribery, and is no part of the oath of the member that he has not been and will not be bribed.

MR. BOYD. Mr. Chairman: I am one of the Committee on Oaths and Impeachments. That committee is supposed to be competent to discharge the duties devolving upon them, and it seems to me that that committee is the proper committee to report the necessary oaths that, in the opinion of this Convention, ought to be administered to officials. It is eminently fitting, sir, that this whole subject should be referred to that committee. That committee will now have the benefit of all that has been said and done on this sub-

ject, and they will be able to make a report that I have no doubt will be satisfactory to this body. Indeed, sir, it is proper that it should go there at this time, and remain there for some time, for the reason that it is better for them to make that report after the leading articles have been passed upon by the Convention, so that when that committee has before them all these articles, they can frame an oath or oaths that will meet all the articles adopted by this body.

The wisdom of the seeming delay of a report from that committee; the discussion that has taken place here for some days past, shows conclusively the wisdom of that delay. It would show their wisdom still more if they would delay their report until well nigh the close of our labors.

I, sir, for one, came into this body believing in the report presented to us by Secretary Jordan; hence it was natural, in my rural simplicity, to believe in that report, and of course was inclined to think there was some corruption in the Legislature, and that there was corruption elsewhere, and that oaths would be necessary as an aid in our work of reform. But, sir, in the light of recent events, and in the few short months that have rolled around since we have been here, we have it demonstrated beyond a doubt, that there has been no fraud or corruption in this broad land, [Laughter.] We have all read the official evidence from the Congress of the United States, that neither saint nor sinner in that body has been guilty of fraud or corruption, and have all been washed with the blood of the lamb, [laughter,] and have come out pure. The President of the United States has declared that the late Vice President Colfax is clearly guiltless, and that he is a persecuted man, and with him, of course, all the rest in that investigation come out in the same way. And so with regard to the shameless scandal that was entailed upon the State of Pennsylvania during the last fall, in relation to the Evans frauds, when efforts were made to involve other gentlemen with him; it has since been shown before a court of competent jurisdiction, that he, too, was a saint; he has been washed by the courts, and found to be clean, pure and undefiled, and all verified by the most distinguished gentleman in Pennsylvania, the delegate from York, (Mr. J. S. Black.) Now, then, with the fact of that trial, with such an endorsement coming from the source that it does, I am

ready to believe the gentleman from Potter, (Mr. Mann,) when he tells me that there is no corruption in the Legislature of Pennsylvania, and never was, and that it is not likely that there ever will be, if all these things be true.

It may be that the Committee on Oaths will report no oath at all to this body. They may well conclude that all men are honest and pure, and that it is utterly useless to administer an oath, and thus, by that means, we will be able to spare the feelings of my distinguished friend from Philadelphia, (Mr. Biddle,) who considers it an insult to swear a man to perform the duties of his office, and he says that he never will, by any vote of his in this body, put upon a man an oath that he will be honest, because it will imply that he intends to be dishonest. It would follow from this that our judges and other officials should not be sworn for the same reason. And it may be therefore, when we come to consider all these things, we may require no oath at all, or if we want any for forms sake, we can use the old oath, which means nothing, and will not hurt anybody to take it, or in any way effect the most delicate sensibilities. Therefore, without discussing the merits of the kind of oath, if any is needed, I respectfully appeal to this House to refer to our Committee on Oaths this whole question, and that they will wait until that committee reports. That is but due to this committee. It is no more than respectful. Why here we have an oath reported from the Committee on Legislature, an oath reported from the Committee on Legislation, an oath reported from the cities and counties and township officers, and perhaps half a dozen others to come from other committees. Why not, then, leave this whole subject to the Committee on Oaths? Why not allow that committee to have exclusive control of the whole subject? Let them act upon this matter after the reports of all the standing committees have been made, and after the Convention has passed upon the different articles submitted in detail, and then they can shape and form an oath suitable to the articles as adopted. I therefore ask this House, as an act of justice to this Committee on Oaths, who have never done a single thing against any member of this body, (laughter,) and I know they never will; so do not put upon us a slight, and allow our committee to perform its share of labor. If I had time to read the names of the members of this

Committee on Oaths, I could show you that that committee reflects credit upon this Convention, and reflects credit upon the eminent president of this body in appointing it, (laughter.) The distinguished gentlemen that compose it are willing to take this subject under consideration, and that will save you a world of trouble and tribulation.

I therefore shall second the motion made by the gentlemen from Luzerne, (Mr. H. W. Palmer,) one of the Committee on Oaths, that the committee of the whole rise and in some way get rid of this immediate proposition; vote down the proposition or dispose of it any manner whatever, and let it go to the Committee on Oaths. Then we will get on with the other sections and be relieved of the agony of the last two days' debate.

MR. DARLINGTON. Mr. Chairman: I have no desire to trespass upon the time of the committee of the whole. I agree with much that has been said by my friend the gentleman from Montgomery, (Mr. Boyd,) but not for the same reasons. I think we should have some kind of oath administered to all officers of the government, legislative, executive and judicial. I do not think, for my own part, that a different oath should be administered to one branch from that which is administered to another. I would not, at all events, be willing to stigmatize any one branch of the government as any more corrupt than any other. I think we do wrong to ourselves, to the people we represent, to the whole State, and to republican institutions and republican government in general, by this wholesale denunciation of the Legislature as unfit to be trusted. The legislators are chosen from among the best of the people, and very many of them are among the best of the people, as much so as your Governors and judges. Then why single them out for denunciation? If it is necessary to bind one to the discharge of his duty by a stringent oath, is it not just as necessary to bind all the others?

Gentlemen may tell me that no corruption has been seen in any other quarters. I know not. The gentleman from Fayette (Mr. Kaine) told us the other day that it is a part of the history of the State that the Legislature has been corrupted. He alluded to the passage of the United States Bank bill and the passage of the commutation bill. I know it is part of the history of the State that it has been charged that the passage of these acts were secured by corrupt

means. That we all know. Like all other political things it has been charged, but I do not know that it has ever been established. Can any man suppose that the Executive department of the State would suffer such things to pass without saying a word against it? Does not the member from Fayette know that he who sat in the Executive chair of this Commonwealth at the time of the passage of the tonnage tax repeal is now a member of this Convention, and if he had known or seen any corruption in the Legislature that passed that bill, was it not his duty to sound the alarm, and would he not have done so? Could that bill have been passed by corrupt means without Governor Curtin knowing it? I submit it to the gentleman from Fayette, that the then Governor of this Commonwealth does not know now and did not know then that there was corruption in the Legislature in reference to the passage of that act, and has never opened his mouth against it, because he has had nothing to open his mouth against. The very fact that this gentleman was in the Executive chair and preserved silence on this subject is conclusive of the fact of which I speak. He was there to preside over and guard the public welfare, and no one will charge him with dereliction of duty. He was our noble "war Governor," and his name has gone out over the whole land as the famous war Governor of Pennsylvania. He was honest, and I will not hear him traduced, as he is traduced, without endeavoring to defend him. I will not allow him to be traduced by anybody here telling me that the Legislature was corrupt when he signed the bill that was the result of this alleged corruption.

I do not believe these stories. For myself I believe the passage of the tonnage commutation bill was right in itself. I would have voted for it if I had been there, as the result of my best judgment of what the policy of the State required. Why should any one charge a member of the Legislature with being bribed to do that which gentlemen throughout the land thought was right to do without bribe? Where is the evidence? Why do not the gentlemen tell me who was bribed? I ask them, as I asked them on a former occasion, to point out who were the bribed, and who bribed them. If gentlemen know, let us know, but do not cast a stigma upon the whole people of the State. Do not defame your institutions. Remember that it

is our fate to live under republican institutions. Remember that no man here or elsewhere in this Commonwealth expects to change the character of our government. We must still be a republican government, and we will still have a head to that republican government, and we will have legislators. We are a nation of honest men. Say what you will, my experience, however it may disagree with others, has been in all my life, nearly the whole of which has been passed among public men and in public affairs, and which has been now not very short, that the great body of mankind is honest. Honesty is the rule, and dishonesty the exception, every where throughout the land so far as I know it. If other gentlemen have had other experience more varied or different from mine, let them point out the instances, and let us see whether their judgment is founded upon sufficient grounds.

I am opposed, therefore, to fixing any particular oath upon one officer which is not applicable to another. Why should we say to the legislator: "It is not enough that we should swear you to discharge your duty with fidelity. It is enough to swear your neighbor, who is elected to another office, to discharge his duty with fidelity, but your office requires additional obligation." One can be bound by one oath, and the other not by the same oath. Why should the distinction be made? When we elect a judge we say to him, when he is about to be placed on the bench: "We ask no guarantee from you but an oath that you will discharge your duty with fidelity." So with the Governor. So, too, with the Secretary of the Commonwealth, and the Attorney General, and the State Treasurer, whom you propose to elect. The distinction applies to the legislator alone, and to him to say: "You are to be set down as presumptively and *prima facie* roguish, while another man elected on the same ticket with you, is presumed to be 'honest and not require the oath which is required in your case.' Let gentlemen reflect on this. Let them give me a reason why we should send out this Constitution to one class of our public servants and say, 'presumptively you are roguish,' and send it out to another class and say, 'presumptively you are honest.'"

Mr. BOYD. Mr. Chairman; I rise to a point of order. The question under consideration is the motion made by the gentleman from Luzerne (Mr. H. W. Palmer.) That is it simply, and the only question

before the House is, whether this section, with its amendment, shall be referred to the Committee on Oaths. I do not understand the gentleman from Chester to be talking to the amendment. I do not entirely understand what he is talking about, [laughter,] but I comprehend that it is something about creation in general, or at least something which has no relation to the question under discussion. I therefore raise the point of order, that the gentleman should confine his remarks to the subject before the committee.

The CHAIRMAN. The Chair cannot sustain the point of order. The question is upon the amendment offered by the gentleman from Luzerne, which is an amendment to the amendment of the gentleman from Dauphin, (Mr. MacVeagh.) It raises the whole question upon the section and its various amendments.

Mr. STANTON. Mr. Chairman: I would ask for information. What report is now before the committee of the whole, the report of the Railroad Committee or the Committee on Legislation?

The CHAIRMAN. The immediate question before the House is the amendment of the gentleman from Luzerne to the amendment of the gentleman from Dauphin, to the first section of the article reported by the Committee on Legislation.

Mr. DARLINGTON. Mr. Chairman: I will detain the committee but a few moments longer, in reference to the amendment of the gentleman from Luzerne. I understand that while in committee of the whole, no motion to refer a subject before this committee to one of the standing committees of the House, can be in order, according to our rules. The only way that it can be reached, so as to meet the views of those who feel as I do, is to vote down the whole of these amendments, together with the first section as reported, with the understanding that the section is not to be killed forever, but that it is to come up again at a more suitable time and a more convenient season.

Mr. KAINE. Mr. Chairman: I propose to reply to the remarks that have just fallen from the gentleman from Chester (Mr. Darlington.) I must believe that the gentleman is sincere in what he has just said upon this question, and if I believe that I must believe further that he has talked about a subject, in part, of which he knows nothing. The gentleman asserts that the Legislature has not been corrupt in the past, that there has been

no corruption there, and he called upon me for the proof.

Mr. DARLINGTON. Mr. Chairman: I rise to explain what I said, or what I meant to say, if I did not, was that I did not believe the majority of the Legislature was corrupt. I said that the great body of mankind are honest, and only a few are not.

Mr. KAINE. I will ask the gentleman if he does not believe that a great deal of corruption has prevailed in the Legislature for the last ten or fifteen years.

Mr. DARLINGTON. I know it is said.

Mr. KAINE. Mr. Chairman: The gentleman's conscience is very tender on that subject, and he has taken occasion here to refer to me, and he has also referred to an honorable gentleman upon this floor, a member of this Convention, who, at one time occupied the Executive chair of this State, and he rises here to defend him. I apprehend that that gentleman is able and willing, at all times, to defend himself, if his character and conduct need any such defense, which I utterly deny. How will the Executive know anything about what has occurred in either hall of the Legislature? He is entirely separate and apart from them, and cannot have any knowledge of anything of this kind. The gentleman from Chester says that he does not believe any of these charges in regard to the repeal of the tonnage tax. All I have to say, if the gentleman knows anything about it, and I apprehend on that particular case he must have some knowledge, because I suppose at that time, as he is now, the gentleman was one of the solicitors of the Pennsylvania railroad company, and as such, if he had been a member of the Legislature, I have no doubt he would have voted in the interest of his client; if the gentleman, I say, knows anything about that transaction, if he has read any of the evidence taken by a committee of investigation upon that case, and he does not believe that there was corruption then and there, he would not believe it, sir, though one rose from the dead.

The CHAIRMAN. The question is pending upon the motion of the gentleman from Luzerne, to amend the amendment.

Mr. H. W. PALMER. Mr. Chairman: I wish to withdraw my amendment. It has not been discussed, and I suppose it can be withdrawn at any time before discussion.

The CHAIRMAN. The amendment to the amendment is withdrawn, and the

question recurs on the amendment offered by the gentleman from Dauphin, which will be read.

The CLERK read: Every member of the General Assembly, before he enters upon his official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Pennsylvania, and will faithfully discharge the duties of Senator (or Representative) according to the best of my ability, and I do solemnly swear (or affirm) that I have not paid or contributed anything, or made any promise in the nature of a bribe to corrupt or influence, directly or indirectly, any vote at the election at which I was chosen to fill the said office, and I do further solemnly swear (or affirm) that I have not accepted or received, and that I will not accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act."

The foregoing oath shall be administered by one of the judges of the Supreme Court, in the hall of the House to which the member is elected, and the Secretary of State shall read and file the oath subscribed by such member; any member who shall refuse to take said oath, shall forfeit his office, and every member who shall be convicted of having sworn falsely to, or of having violated his said oath, shall forfeit his office and be disqualified thereafter from holding any office of profit or trust in this State.

Mr. S. A. PURVIANCE. Mr. Chairman: I move to amend as follows: To strike out all after the word person, in the last sentence of the first paragraph, and insert, "or their agents or employees having an interest in the subject upon which he may be required to vote."

The CHAIRMAN. The question is upon the amendment to the amendment.

Mr. J. S. BLACK. Mr. Chairman: I thought that the Chairman of the Committee on Legislature, the author of the amendment, would accept the amendment of the gentleman from Allegheny.

Mr. MACVEAGH. Mr. Chairman: If the gentleman from Allegheny will not strike out the words providing that a member of the Legislature shall not withhold his vote or influence, on any bill or resolution, or appropriation, I would ac-

cept his amendment. The words he has stricken out, it seems to me, are a material part of the amendment I have offered, and strengthen all the rest of it.

Mr. J. S. BLACK. Mr. Chairman: Let us see if we understand the object of the amendment. As I understand the original amendment, it defines bribery so as to constitute that crime only in cases where there has been an actual contract, and not where there has been a mere giving of money or other property. Under this provision it is necessary, in order to make out the offence, that it should be proved that there was a contract between the parties, expressed or clearly implied, that the money or other property should be given for the vote, and that the vote should be given for the money. Now, that narrows the definition of bribery so as to limit it much within the bounds, and that the common law places upon it; and the object of this amendment, as I understand it, is to make the receipt of money or other property from an interested party or his agent, *ipso facto* bribery, without putting the Commonwealth under the necessity of proving the *scienter*, or the express contract to that effect.

Mr. MACVEAGH. Mr. Chairman: I only desire to say to the gentleman from York, in answer to his appeal, that my judgment remains that the amendment weakens the oath in one of its most essential clauses. I cannot, therefore, accept the amendment of the gentleman from Allegheny. I would do so if the clause he desires to have stricken out was allowed to remain.

Mr. J. S. BLACK. Mr. Chairman: Does the gentleman want to define bribery in such a manner that, in order to prove the crime to have been committed, it must be shown that there was an actual contract, and that the money was given for a vote, on a contract that the member shall vote in the way that the giver of the money proposes? Very well. Is it not *ipso facto* bribery to give a member money without saying anything about it; to put it, as the gentleman from Columbia says, under his pillow, or slip it into his pocket the way Sir Robert Walpole did with the members of Parliament? When he wanted to bribe a man he would go to him and, after a little conversation, slip a five hundred pound note into his vest pocket, and the next morning the man voted right.

Mr. HARRY WHITE. I don't think it is done that way now. [Laughter.]

Mr. J. S. BLACK. Perhaps not. Perhaps the gentleman knows better than I do how it is done now. [Laughter.] But, sir, that is one way it might be done, and will the gentleman say that ought not to be considered bribery, or will he define that offence so that you can prove it without showing that there was an explicit understanding between one party that he should give, and the other party that he should vote a particular way?

The CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Allegheny.

On the question of agreeing to the amendment to the amendment, a division was called, which resulted: Thirty-five in the affirmative, and forty-six in the negative. So the amendment to the amendment was rejected.

The CHAIRMAN. The question is on the amendment of the gentleman from Dauphin.

Mr. BUCKALEW. Mr. Chairman: I have a single remark to make on this subject. If I vote for this amendment it will be a vote given conditionally, and my ultimate vote upon this division will depend upon the question whether it shall be amended. I think there is a fatal defect in this amendment. It does not provide at all against the payment of a consideration to any other party beside the member who is to be bribed. By this oath he swears that he will not himself receive, directly or indirectly, any consideration. If the consideration was to be paid to his wife, or to his daughter, or to his son, or to a friend, or to an association, or to a party to which he may belong, his oath will not cover the offence. It will not violate his conscience in this respect, and in the next place it will impose upon him no danger of responsibility to criminal law.

Now, as I do not know where much of the corruption at which this amendment points is to be found, I suppose, and I think it probable, that in a majority of cases the consideration for corrupt votes is not paid to the party himself, but it is paid in some of the directions which I have hinted. Therefore, unless this division shall be amended, I shall not at a future stage of our proceedings vote for it.

Mr. LILLY. Mr. Chairman: I merely wish to say that it must be apparent to every gentleman on this floor that it is impossible to draw an oath that will cover all this corruption, utterly impossible. And I believe that if you go back to the

old oath, as was stated by the gentleman from Columbia, (Mr. Buckalew,) it is all and sufficient to cover every bit of this thing in general terms, and very much better for us to adopt than any of the suggestions offered to take its place. I must say that I have learned some new ideas since I came into this Convention. Being somewhat acquainted with the Legislature, being somewhat acquainted with the degradation of office generally, both in the Legislature and out of it, and having learned on the floor of this body that gentlemen were willing to give \$500,000 for an office if created in a certain way, with certain powers, I am satisfied of the futility of any oaths that can be framed to prevent corruption.

Having listened to all this, and having listened to this elaborate discussion on oaths, I come down to the conclusion that it is all nonsense to undertake to reach it by an oath. If the language of the old oath is weighed judicially, and fairly, and literally, it is broad enough to cover every contingency. Hence, I hope the majority of this committee and the majority of this Convention will see the futility of this whole proposition to take these iron-bound, iron-clad oaths. I hope the committee will vote everything down, and come down to the old oath, which covers every possible point that has been tried to be reached by this elaborate language.

Mr. ALRICKS. Mr. Chairman: When this section was before the committee on the report of the Committee on the Legislature, a very important amendment was made to it. I wish to call the attention of the committee to it now. It is in the tenth line, after the word "well," to insert the word "honestly." I consider that a very important amendment, and I move to amend the amendment by inserting that word.

Mr. MACVEAGH. As that was before inserted I accept it now.

The CHAIRMAN. The question is upon the amendment, as modified, of the gentleman from Dauphin (Mr. MacVeagh.)

The amendment was not agreed to.

Mr. KAINE. I now offer the following amendment.

The CLERK read:

Within twenty days after the adjournment of the General Assembly *sine die*, every member of the House of Representatives and every Senator whose term will expire at the next succeeding election, shall go before the court of common pleas, or some judge thereof, for the county

wherein he resides, and take and subscribe, to be filed among the records of said court, the following oath, or an affirmation to the same effect :

"I, A. B., do solemnly swear that, as a member of the Legislature, I have obeyed and defended the Constitution of this Commonwealth in all things, to the best of my knowledge and ability; I have listened to no private solicitation from interested parties or their agents; I have voted or spoken on no matters in which I myself had, or expected to have, a private interest; I have not done, or wilfully permitted, any act which could make me guilty of bribery, as defined in the Constitution; I have observed the order and forms of legislation prescribed by the Constitution, and I have not voted or spoken for any law which I knew or believed to be inconsistent with it; I have in no case acted corruptly, to serve the interests of private parties or classes, but always with due regard to the honor, good faith, independence and peace of the Commonwealth, and to the just rights and liberties of the people."

If any member shall fail to take the latter oath within the time prescribed, or as soon thereafter as the state of his bodily health permits him to appear at the proper place for that purpose, he shall not afterwards be capable of re-election or of holding any office of honor, trust or profit under this Commonwealth; and if it be false he may be punished for it as perjury, as in other cases of false swearing.

MR. KAINE. As there seems to be a general disposition to get rid of this matter now, I will withdraw that amendment for the purpose of voting the whole thing down.

THE CHAIRMAN. The question recurs upon the section.

The section was rejected.

THE CHAIRMAN. The next section will be read.

THE CLERK read :

SECTION 2. Each House shall judge of the qualifications of its members, but contested elections for members of either House shall be determined by the court of common pleas of the county in which the returned member lives, in such manner as shall be prescribed by law.

MR. MACVEAGH. Mr. Chairman: I desire to call the attention of the committee to the very great importance of this section. It is a grave question, whether the evils of the decision of contested elections by the representative bodies are greater

than the danger of imposing partisan duties upon the Judiciary.

The Committee on the Legislature considered that question at great length, and in their deliberations had had the advantage of the life long experience of the gentleman whose loss we have so recently deplored, Col. Hopkins, of Washington county, and I think we reached an almost unanimous conclusion that it was unwise to burden the judicial department of the government with this duty, and that the evil of contested elections decided by representative bodies was of lesser magnitude than the danger which would menace the judiciary if the labor was imposed upon it. I beg leave to call the attention of the committee to a very important fact in this connection. This whole question received, a few years ago, the most thorough and exhaustive discussion in the House of Commons. It was admitted upon all hands that this was a judicial question, that the title to an office was as judicial a question, when the office was political as when it was of any other character, but the opponents of the measure in the House of Commons took the ground that the judiciary could not safely undertake the burden of deciding questions of a political character, in which the passions of men had been so deeply excited and aroused. Nevertheless the House of Commons, after a more exhaustive, voted that thenceforward, contested elections of members of the House of Commons should be decided by Her Majesty's judges, under the rules of law applicable to other causes.

Very soon after that law went into effect a great election contest arose in Galway, Ireland. It interested every citizen of the electoral district. The ministers of the Catholic churches were supposed to feel a deep interest in the return of a candidate whom they were supposed to favor. The advocates of home rule for Ireland were deeply interested in the contest, and the supporters of the government were, of course, deeply interested upon their side of the question, so that it became a very excited and animated contest. It resulted in a contest after the election for the seat, and that question was referred, under the law, to Her Majesty's judges, and when the decision was announced one universal storm of execration swept over Ireland, from north to south and from east to west, so that the judge who delivered the decision was obliged to take refuge in London from

the populace, and henceforward Mr. Justice Keogh's authority, as a judge in Ireland, is not worth a farthing, and never will be.

That was the result of the measure there. I do not suggest it as conclusive to this committee, but I do suggest that it is well worthy of consideration, and the fact that by reason of that single judgment the Irish judiciary has received a shock from which, in the opinion of competent observers, it will not recover for many years, should be carefully considered by the gentlemen of this committee before they impose such a burden upon the judiciary.

I do not claim that this section is obnoxious to the criticism of putting non-judicial duties upon the judges. On that subject I trust when the time comes this Convention will be a unit, whatever other differences may exist. I fervently trust that we will utterly abolish the patronage of the courts.

This is, however, another question—whether a burden that is so political and partizan in its character, that the common comprehension refuses to consider it judicial, shall be imposed upon the judiciary. If we are making a fundamental law for the common comprehension of our fellow men, it may be unwise even to impose judicial duties which the common mind refuses to recognize as judicial, and I venture to say that the judicial decisions of contested elections, even in this city, have not resulted favorably, have not resulted in such a manner as to cause thoughtful men to care to amplify the jurisdiction of the courts in this regard. I have, however, done all I desire to do, in calling the attention of the committee to the great gravity of the question, and to the fruits which this change has born in that country from which we have derived almost all of our law, and so large a portion of which is best in our civilization.

Mr. BUCKALEW. Mr. Chairman: The Committee on Suffrage, as has been already stated, have been considering this question of contested elections, and they will make a report upon the subject. It is possible that the question of contested elections in the Legislature, may be separated from others and be treated in this article; but my own idea is that a uniform principle can be applied to legislative and to all other contests. Now the member from Dauphin (Mr. MacVeagh) informs us that there was an excitement in a certain Irish contested election case

recently, under an act of Parliament, which extended throughout the British Empire. He did not inform us, however, that the English Parliament had taken any steps to repeal the law. He did not inform us that British experience against the judicial decision of contested election cases was, in the judgment of Parliament, a failure, or that a repeal of the statute had been enacted. Now this law transferring the decision of contested elections of members of Parliament to the judges, was passed some years since, and many cases have been adjudicated by the judges, and the law yet stands, and, for aught we know, it will stand for a century to come, in that country. At all events the general conclusion to be drawn is, that the law has been satisfactory. If it had not been, a repealing statute would have been introduced, and earnest debate would have taken place upon it, even if it had not been passed. A judge in Ireland is not appointed by the people of Ireland as our judges are appointed by the people of Pennsylvania. A judge goes there amongst the people of that country very often an alien, imposed upon them against their will by the imperial power of the empire, and they are to submit to whatever he does without redress, if wrong be done. This may account, to some extent, for the particular case to which the gentleman has referred, and I think every one will agree with me that that is not a case to quote to us in Pennsylvania, where we have a different system altogether, where the judges are inspired by different feelings toward the people over whom they preside.

There is another consideration to be taken into account with reference to this Irish case, and that is, that it was a religious dispute or quarrel. It was a contest between a minority, so to speak, of the people upon the one hand, holding certain religious sentiments, and a majority of the people upon the other. The gentleman has told us that an assault was made upon the Catholic priests, and therefore indirectly, at least, upon the Catholic church for their alleged interference with the election. Briefly stated, it was a dispute between religious sects with a judge imposed upon the people to whom they were hostile. Besides that, sir, a single case in the course of years, under a general statute, is not conclusive against the wisdom of the statute. The statute being general, its operation may be good, upon the whole, though defective in a particular

case. Whatever else may be done by this Convention, I will not agree that contested elections of members of the Legislature shall be determined as they have been heretofore.

Mr. D. W. PATTERSON. Was not the judge in the Irish case a member of the Catholic church himself, notwithstanding his decision adverse to that church?

Mr. BUCKALEW. I have no information upon that subject.

Mr. D. W. PATTERSON. He was, and an Irishman at that.

Mr. BUCKALEW. I will not agree that a committee drawn by lot, and drawn in such manner that the weakest members of the body are to compose it, shall be permitted hereafter to render purely partisan decisions upon all questions of evidence, as they rise in the progress of the trial, as well as upon questions affecting the merits which enter into the ultimate decision. If you are to have a tribunal of judgment, made up of members of the Legislature, I would at least place over them a judge, who should be armed with authority to decide all questions of law that arise during the progress of the hearing. I would give the same guarantee, at least, for justice in the decisions which you have in the ordinary court, where your jury does not decide the questions of law, but the judge, and where they receive his instruction upon all questions of law that are involved. Unless you make the trial of a contested election case in the Legislature, in point of fact as well as in theory, a judicial proceeding, you never can obtain or secure justice.

I am not particularly anxious that these cases shall be sent to the ordinary courts of law; that they shall be sent to the court of the county in which the candidate whose seat is assailed, may reside. I care nothing about the particular form which our amendment shall take; but I insist upon it that it is a necessity, in the interests of public justice, that you shall make trials of contested election cases, that are judicial in character, judicial in fact, and thus secure the just rights of the people, as they may enter into these cases of contested elections. That is all I care to say at this time.

Mr. BIDDLE. Mr. Chairman: I offer the following amendment:

The CLERK read: Strike out and insert: "Each House shall judge of the qualifications of its members. Contested elections shall be determined by the House in

which the contest arises, in such manner as shall be directed by law."

Mr. BIDDLE. I wish to say a very few words. The existing clause is: Each House shall judge of the qualifications of its members, but contested elections for members of either House shall be determined by the court of common pleas of the county in which the returned member lives, in such manner as shall be prescribed by law.

I have modified that so as to leave the ultimate judgment in the House. I deprecate very much the proposed reference of these subjects to a court. I wish to speak most respectfully of the courts of justice of Philadelphia, but I am compelled to say that whenever an election case, so far as my experience goes, is before them, the case is decided—and I have not the slightest doubt, decided conscientiously, according to the political predilections of the judges who sit there.

Mr. HARRY WHITE. Mr. Chairman: In behalf the committee which made this report, I desire to say a word in answer to the alarm sounded by the gentleman from Dauphin (Mr. MacVeagh) against the section, also as to the amendment offered by the honorable and intelligent gentleman from Philadelphia (Mr. Biddle.) No feature of this report was more carefully considered by every member of the committee than the section as you find it upon your files. I say, in all frankness, I was over-ruled in my opinion by a majority of the committee. Since the report has been made, since I have turned it over in my mind and talked with my associates, and viewed this subject in all its aspects, I have come to the conclusion that the majority of the committee was right, and I am earnestly, and with all my heart, in favor of this reform.

Delegates will observe that this merely gives to the Legislature the discretionary power of passing a law to determine the manner in which contests shall be tried. They shall be tried in the county where the returned member lives, in such manner as shall be regulated by law.

Mr. BIDDLE. It shall be "determined," not "tried."

Mr. HARRY WHITE. Shall be determined, I meant to say. It is understood by this that the Legislature has a large discretion in enacting a statute regulating all the details of the trial. This is a radical change and I think it is imperatively demanded by the experience of the times. The eloquent gentleman from Dauphin

(Mr. MacVeagh) has spoken of the experience of England. In echo of that sentiment, allow me to remark that our experience with the statute which we have, being almost a transcript from the English law, and under which our contested election cases are now tried, has not been favorable to the course of justice. When George Granville, in 1770, introduced into the English Parliament the code which we have tried; he thought he had discovered the panacea for every ill attendant upon the trial of contested elections. The experience of more than half a century has convinced us that the trial of such cases by partisan Legislatures has not been fair and even-handed justice to the parties interested or to the people at large. Something must be done, and the question is, will you now adopt the theory suggested by the honorable delegate from Philadelphia, (Mr. Biddle,) or will you trust it to the courts of the locality in which such cases arise.

I approve of the sentiment of the delegate from Columbia (Mr. Buckalew) that these trials should be of a judicial character. Where can we best have it? Undoubtedly in the courts of the Commonwealth. The only argument against placing such jurisdiction in the courts is that they would become partisan. The statutes passed by the Legislature from time to time enlarge the jurisdiction of courts over a great number of cases of the trials of contested elections. Recently, on taking up a daily paper, I discovered that in the trial of a contested election case, for one of the most important county offices, involving large local interests, in the court of Luzerne county, the honorable court rendered a most intelligent decision, which I trust will meet the approbation of all, and I am satisfied that the court has not dragged itself into the mire of politics by having jurisdiction of such a case.

I find in the case of Mann and Cassidy, which established a record of fraud in the elections of this city without a parallel in the political history of the Commonwealth, that it was decided by a majority of the political friends of the gentleman in whose favor the decision was made. From time to time, in different courts of the Commonwealth, this jurisdiction has been exercised in the most valuable and important offices. What creates more excitement in the minds of the people of a county than a contested election case for the office of sheriff or

some other remunerative office in the gift of the citizens of the Commonwealth? And yet the courts are clothed with ample power to try and determine the cases. Why should we not allow the courts to determine the cases of contested elections when the rights of a Representative or Senator to his seat in the Legislature is involved? I am in favor of the section as it is reported, and I trust this Convention will endorse it, leaving the future to determine whether it shall be accompanied by the results the friends of the section now anticipate.

Mr. ELLIS. Mr. Chairman: I have only a few words to say in reference to this subject, and I am impelled to express them, from a deep sense of the importance of the matter. I trust the amendment offered by the gentleman from Philadelphia, (Mr. Biddle,) will not be adopted. It is simply a modification of the existing state of affairs. We have been referred during the discussion of this question to the practice of the British Government. It is well known that our present act of Assembly, framed under the Constitution, is a re-enactment of the Granville act, under which the British parliament practiced in cases of contested election for, perhaps, a century. The experience of that government in these matters, and in judicial questions generally, is of great importance in guiding us to a just conclusion in regard to this matter. The British government prefaces their act with these words: "Whereas, it is expedient to amend the laws whereby elections are held, and to provide more effectually for the prevention of corruption practiced at parliamentary elections," &c. The object of the law was not merely to determine the question as to who was entitled to the seat, but it was intended to go deeper and prevent the corruptions practiced at parliamentary elections.

We are well aware that in the present system of investigation, the question of title to office is the only matter of inquiry in the Legislature of the State of Pennsylvania, and the practice and the method by which the office has been attained, seldom, if ever, reaches the public eye, and in no way is punishment visited, of any kind whatever. From the very earliest times the judges of England have been the creatures of the ruling power. We know that the bar itself must be and is subservient to the strong power that controls the government. The silk gown is conferred upon a subservient counsel, and

a sergeant is created by the will and pleasure of the monarch. Then when the judge is required to render a judgment, we are aware that he is obliged to conform his rulings to the views held by that power that controls in the government, but we will also know that, notwithstanding the monarch and notwithstanding the judges, there is a sentiment in the minds of the British people that can wrest justice from both monarch and judges. In due time the very excitement which alarmed the people, and perhaps to us would cast a finger of warning, is in the British Constitution the very evidence of its life and its power, and that it will create a more wholesome sentiment and a better security for the liberties of the people.

We know that the Wilkes case shook the British empire from centre to circumference, and from that case arose principles which will be eternal in this question of the right to office and of the right of the people to elect whom they please to elect to office. Now this is eminently a judicial question. The gentleman from Dauphin (Mr. MacVeagh) admits that there can be no denial of this fact. When an election has taken place, and the ballots have been deposited, and a man has a clear majority, he has a vested right to the office to which he has been elected, and it is clearly and plainly a simple judicial question, to decide and determine in whom that title has vested.

Now, if we refer these questions to the judiciary, will it necessarily follow that the judiciary will be degraded? It may to some extent have that effect, but is that a reason why these questions should not be so referred? It does not involve a new principle. The judiciary of Pennsylvania have now the right to determine the title to office in a great many instances throughout the Commonwealth, and why should they not have the power to determine cases of contested elections for members of our Legislature? There should be in this Constitution some uniformity in the determination of these questions, and I think it is of the utmost importance that there should be one uniform principle running through the entire Commonwealth, not only with regard to county officers and judges of courts, but also with regard to members of the Legislature and State officers. We would derive great advantages from such practice, and inasmuch as it is a judicial question, it will be determined upon principles that will govern our judges in its ultimate decision.

They will not be allowed one day to make a ruling, and the next day to reverse themselves, if this power is conferred upon the judiciary, for out of this plan for the determination of these questions will grow a system that will be of great value to the people of Pennsylvania in assisting in determining the rights of the electors for all time to come. It will be a system that will be of great value to the State, and the question that it will degrade the judiciary ought not to weigh the slightest against this proposed section. We must elect men who are fully competent to discharge the duties of their judicial positions, and if they do not determine these questions according to law, the remedy will then rest with the people to elevate better and abler men to these positions.

The determination of these questions of contested elections, as now practiced, is a matter of mere thimble-rigging. It depends entirely upon the manner in which the tickets are put in a box and drawn out of the box. A man may know how they were placed in the box, but no man can tell how they will be drawn out, except the man who put them in the box. It is simply a mere game of chance, and while it continues we shall have neither confidence nor principle in the system, and will lose all confidence in the result of popular elections, which it is the utmost importance for us to restore and preserve.

Mr. JOHN R. READ. Mr. Chairman; I am unqualifiedly in favor of the section as reported by the committee. I believe with the gentleman who has just taken his seat, (Mr. Ellis,) that the determination of these questions of contested elections has become a great abuse, and one that is in sad need of correction.

Let us for a moment consider how these legislative committees are constituted. Let us, in other words, make a diagnosis of the disease, which, by this section, we are endeavoring to cure. If carefully made, we shall find that the present system has worked perniciously, and with the light of our experience, seems to have been devised as a method of rewarding political favorites, and men of consciences elastic. The power of these committees is as great and mighty as that of any other tribunal in the State of Pennsylvania, because, sir, they step between the representative and the people who elect him. They can, by a scratch of the pen, reverse the decision of the people. When any tribunal can do this, I assert that it is a

power too great and mighty to be regulated by the doctrine of chances.

These committees sit as a judicial tribunal. They hear evidence for and against the petitioner, but they do not give speedy and exact justice in their deliberations, and justice is frequently denied, and is often for sale. The hearings in these cases of contested elections are often prolonged until the end of the session, and the disappointment of the defeated candidate is then alleviated and assuaged by the payment of his costs and expenses, and the same salary as that allowed his opponent and other members, so that it has become quite common for persons who were fairly and honestly defeated in the elections to inaugurate these contests for the purpose of filching from the treasury of the State the disbursements and expenses made and incurred by them in an unprofitable political campaign.

It is well known, sir, that the justice of these committees is not blind. It winketh its eye and bows its head in meek submission to the mandate of the party caucus, or follows with servile complacency the advice of the party leaders. But if, perchance, there should happen upon one of these committees a man with sufficient independence and virtue to enable him to assert his manhood, and to manifest a disposition to be guided by the evidence, the party whip is cracked loud and long, and descends with wicked cruelty upon the back of the would-be faithful member, and he is then, under threats of expulsion from the ranks of his political associates, forced into abject contrition, and to do meek penitence by signing the degrading verdict, even though he shudders in secret sorrow.

Mr. TEMPLE. I would like to ask the gentleman whether he believes the judiciary, as a class, are more honest in the determination of all election cases, than the Legislature itself?

Mr. JOHN R. READ. I do, most unhesitatingly.

Mr. TEMPLE. Then I can only say your experience has been different from mine.

Mr. JOHN R. READ. I cannot believe that the gentleman was serious in asking this question. If I believed that the judiciary were not more honest in the determination of election cases than legislative committees, then would I fear that the frame work of this government was so rotten and decayed that it would fall to pieces at the first rude shock of contending forces. Now, as was said by the gen-

tleman from Schuylkill, this is a question which is purely one of title. The Judiciary will not be called upon to decide the qualifications of members of the Legislature. They are not to decide whether he is of age, but they are simply to decide whether he has been elected by a majority of the votes of the people who send him to that body, and I believe, as that is a question which depends upon legal and proper evidence, and one which Judicial tribunals can best decide, that it should be submitted to them alone.

Now, then, Mr. Chairman, what is the remedy proposed by the committee? It is, sir, that all these questions should be decided by courts of justice, in the county from which the returned member comes. To enable this to be done, without fear or favor, I would elevate our judicial tribunals so high above the narrow plane of party politics that they could afford to do right and dare to be independent. The Legislature can prescribe such ways and means for the taking of the testimony, and the time at which it shall be taken, so that exact and speedy justice can be done to the contestant and person who has received the certificate of election. The courts can then issue to the contestant or person who claims to have been elected a certificate of election, if that shall decide that he is entitled to the same, and that person can then go to the legislative halls and be received as a member, provided he should be otherwise properly qualified. I am free to confess that, for manifold reasons, I am in favor of making some important changes in the tenure of our judiciary, and, perhaps, in their qualifications. I would make them ineligible to election until they shall have arrived at the age of forty years. I would give them a term of twenty-five years, and make them ineligible to re-election, and I would confer upon them a retiring pension of whatever sum might be deemed proper by the Legislature. By these changes, if it is possible to have an independent judiciary, without adopting the life tenure, we would have gentlemen occupying judicial positions who would dare, if human consciences are not relics of antiquity, to do what seems to them to be right. I believe that the decision of courts so constituted would be received without suspicion, and with a confidence that is most desirable. Entertaining these views, I am, as I said in commencing these remarks, unqualifiedly in favor of the report of the committee.

Mr. TEMPLE. Mr. Chairman: I offer the following amendment to the amendment: Strike out the amendment offered by the gentleman from Philadelphia, and insert the following: "Each House shall judge of the qualifications of its own members, but contested elections for members of either House shall be determined by both Houses of the Legislature, acting jointly in such manner as shall be prescribed by law, and in no case shall a subcommittee of the Legislature determine the said contest."

Mr. BROOMALL. Mr. Chairman: I endeavored a while ago to obtain the floor to offer the amendment which the gentleman from Philadelphia (Mr. Biddle) has offered. I think his proposition is much better than the present law, and greatly better than that reported by the committee, although little can be said even in favor of it. The present mode is a bad one for the reason pointed out, among others, by the gentleman from Columbia, (Mr. Buckalew,) that in drawing these committees, each party endeavors to cut the strong men of the opposite party off from them, and the result is that the committees are ordinarily composed of the weak men of the body, who would be very likely to decide the question in accordance with their party predilections. The usual mode of deciding contested elections—that adopted by Congress, and I believe by most of the States of the Union, is evidently an evil one. This mode allows the body to decide by a majority vote which of the contestants is entitled to the seat. I have witnessed some twenty contested elections and taken part in them, and I am obliged to confess, although it is humiliating, that in almost every instance the votes that were cast were cast according to party predilections. I believe that has been the case in every instance, with an occasional exception, where the members of the majority, perceiving that their votes were not needed to secure their friend his seat, came forward and appeased their conscience by casting their votes for the opposite party. This is simply humiliating. I admit the defects of the present system.

Little can be said in favor of the practice of allowing a legislative body to decide the question of the right to a seat of its members by what is usually a mere party vote, but I do not see at present, that there is any better mode, and even as it is now, I consider it better than the one suggested by the committee. I am afraid

to entrust to the courts of common pleas the decision of questions that I have always seen decided elsewhere upon party grounds. The last thing I desire to see happen to the courts of the country is to make judges political. The decision of these questions has always made the tribunals so deciding them political in their nature and I have no reason to believe they will not produce the same effect upon our judges. The observation of the gentleman who offered this amendment is to the effect that wherever this experiment has been made of trying contested election cases in courts, the decisions either were, or there was reason to believe that they were, of a partisan character. It matters very little whether these decisions were rendered in a partisan spirit, or were supposed to be by the community, the result is the same upon the standing of the court. When the courts are supposed to be political in their feelings and actions they will lose the confidence of the community. They might as well be political as to be supposed to be by the people. Now this question, I am glad to see, is engaging the attention of the Committee on Suffrage. I am in hopes they will devise some plan by which we shall have all questions of contested elections of State officers decided in accordance with some satisfactory plan. Let us create some tribunal somewhere, if it is considered necessary. Let it, of course, be a judicial tribunal, for the questions are in the nature of judicial ones. The Committee on the Judiciary I suppose will report a provision for an intermediate court. Whether that court will be so constituted as to be safely entrusted with these questions I do not know; I have some doubts about it. The only plan I could suggest is the constitution of a special court, the judges of which should hold their offices during good behavior, so as to be utterly independent of party, and so that they could afford to be impartial, and ultimately would come to decide these questions strictly as legal questions.

Now, the importance of creating some tribunal to decide contested elections in a better manner than they have been decided yet, is manifest to every one who reflects upon the consequences of a contest for Governor of the State. If a contest for Governor should be decided by a majority of the Legislature happening to be against the party manifestly elected, and in a case where the contest is made purely because the body deciding the question has the

majority, the consequences would be serious. This will most surely happen if the present plan is continued. Let it be remembered there is now no plan for deciding the right of electors for Vice President and President of the United States to their seats. There is no way to decide those questions, and when the difficulty shall arise in a State like Pennsylvania, in a case in which both parties may with some plausibility claim the election, where both sets of electors meet and send the result of their labors to Washington, and where the question of which set of electors shall be counted, governs the whole question of who shall be President and Vice President of the United States, then there will be revolution. I had my attention called to this peril at the first election of General Grant, when the State of Georgia was ruled out; and it was admitted on all sides, that if the electors of the State of Georgia, being counted, would have changed the result, the consequences might have been terrible.

Now, the States must settle the question of contested elections of electors for themselves; and I mention this as one of the reasons why some tribunal should be constituted that will stand so high and independent in public estimation as to be known by everybody to decide these questions according to law. Such a tribunal as this should be constituted while we are free from the dangers which may come upon us. I trust that the duty of determining these questions will not be imposed upon the courts of common pleas of the counties. I do not wish to see those tribunals made political, and I trust that the Committee on Suffrage will mature and bring forward some plan covering the whole ground. In the meantime, I hope that the amendment offered by the gentleman from Philadelphia (Mr. Biddle) will be adopted.

MR. J. W. F. WHITE. Mr. Chairman: I apprehend that the great difficulty in our present constitution in regard to this subject is, that it strives to point out a specific mode of determining cases of contested elections. The Constitution of 1838 says, "contested elections shall be determined by a committee to be selected, formed and regulated in such manner as shall be directed by law." The Constitution itself requires a committee to be appointed. It was specific in that particular, and made it obligatory upon the Legislature to create a committee to try contested election cases. According to the language of the

Constitution, it would seem that the report of such a committee would be conclusive upon the subject, and I believe that has been the practice in the Legislature. Now, in consequence of that, as a matter of course the committee could not be chosen until the Legislature met, when the contest of one of the members of that Legislature should arise, and in every case in which a contest arose for a member of the Senate or House of Representatives, the committees have to be called, selected and formed out of the very members who compose the Legislature at that time, after the election occurs. Now, sir, I am unwilling to place a provision in our Constitution that might bind us down irrevocably to any plan. It seems to me that this is continuing the very vice now in our Constitution. I am opposed, therefore, to saying in the Constitution we are now framing, that contested elections shall be determined by the courts, and be fixed irrevocably in that form. Why not leave these questions, in the broad language of the gentleman from Philadelphia, (Mr. Biddle,) so that they shall be determined in such manner as shall be prescribed by law, and if the Legislature thinks proper to confer this power upon the courts, let it do so. Let the experiment be tried, and if found to work well it will be continued, but if found to work badly, it may be repealed. If you place the provision reported by the committee in the Constitution it becomes irrevocably fixed, and must always be resorted to.

Now, Mr. Chairman, I hope the gentleman from Philadelphia (Mr. Biddle) will accept the modification that I shall suggest to his amendment, because I am opposed to the amendment which has been offered to the amendment.

I propose to add to the gentleman's amendment these words: "Existing at the time the election took place." The gentleman's amendment concludes with these words: "Contested election cases shall be determined in such manner as shall be directed by law."

MR. BIDDLE. Mr. Chairman: I have no objection to accepting the proposition of the gentleman as a modification to my amendment.

MR. J. W. F. WHITE. Mr. Chairman: The object of the modification which I have suggested to the gentleman's amendment is to prevent the Legislature from passing an act in reference to some special cases that is before them, for the law existing at the time the election occurs must

prevail with reference to the contest arising at that time.

When the act does not apply to any case then existing, when it cannot apply to any contest at that time existing, but must apply to contests in the future, all parties will desire to have a fair and impartial law on the subject. It will cut up this special legislation in reference to any particular contest.

Now, sir, with the gentleman from Philadelphia, (Mr. Biddle,) I stand utterly opposed to giving this power to the judiciary of our State. In my judgment the judiciary of our State is by far the strongest power in our government, the strongest for good and the strongest for evil. We can control and limit the Legislature and the various other departments of our State, but our judiciary, from its very nature, stands almost beyond reach, and I am utterly opposed to conferring anything like political power upon the judges of our Commonwealth. I wish those judges to be removed as far as possible from party influence and from the influence of politics, not only while they are on the bench, but also in their election; and I call gentlemen's attention to this feature of the case. We have had elections in this State when the persons who were candidates of the party opposed to the dominant party in the county have been elected as judges. We can all call to mind instances occurring in different parts of the State where candidates of the minority party have been elected judges. I wish that the judges shall be so far removed from politics that that may be oftener done. But if you put upon the judges of this Commonwealth the decision of contested election cases you make their election a matter of politics at the very outset. Why, sir, if politicians and parties know that the judges are to determine all these contested election cases, and they will arise frequently, under the section reported by the committee here, I ask you if all parties will not look at that question in its relation to the decision of the court? It will decide the election of the judges themselves; it will become an element in their election, the passing upon these political issues. I wish to avoid that. I wish to have the judges, as far as possible, removed from politics and all political influence in their election, as well as when they get on the bench; and I am willing to trust the Legislature to pass a general law and a good law on the subject. Fur-

ther than that, if they feel disposed to do it, as I have said—to confer this power upon the courts—they can do so under the present proposition. They could not do so under our present Constitution, because that says it must be determined by a committee. Under the proposition of the gentleman from Philadelphia, (Mr. Biddle,) as modified, the Legislature may confer this power on the courts, and they could try it.

Mr. BIDDLE. Mr. Chairman: I think the gentleman from Allegheny misunderstands the amendment. I would like to have it read.

The CLERK read:

"Each House shall judge of the qualifications of its members. Contested elections shall be determined by the House in which the contest arises, in such manner as shall be directed by the law existing at the time the election takes place."

Mr. J. W. F. WHITE. I confess that I misapprehended his amendment. I shall not vote for that. I shall not vote for saying that it *shall* be determined by the House, because I wish to leave it open, and I wish the Legislature to have power, if they choose, to try the decision of such cases by the courts. I prefer it as it is, but I am willing to vote for that broader proposition. At the same time I wish to express my conviction of the impropriety of conferring additional powers upon the courts, especially in political matters; and to say here, that unless I greatly change my opinion I shall, on no question, and in no vote, favor an increase of the powers of the courts. I wish them to be purely judicial; and to strip them of everything except judicial powers and duties, and limit them thereto by Constitutional provision.

Mr. HOWARD. Mr. Chairman: I am aware that this matter of deciding a contested election is a judicial one: it is so understood by the legislative committee, sitting as judges, and bound by rules of law, the same as a court of justice. Yet, at the same time, we know that political questions constantly arise in the determination of contested elections; that it has been impossible to exclude them, and they have been decided just precisely as the committee happens to stand—the majority being of one political complexion or another.

Now, sir, I belong to a class of men—perhaps a minority—who believe that the judges are just about as good, altogether as good, as other men—liable to the same

influences and the same temptations when placed under like circumstances. And, sir, if I have read history aright, I have found that political questions have found their way into the highest judicial tribunals of this country—both in our National and State governments. Political questions, every time, have been decided just as the majority of that court happens to be constituted, politically, at the time. We have not to go very far back, either, in the history of this country, or in the judicial or political history of our State, for illustrations. When the question of the draft; when the question of the suspension of the *habeas corpus*; when the question of the payment of bounties; when all these questions, growing out of the great war of the rebellion, were judicially considered, they were decided every time as political questions, and in accord with the political party views of a majority—as the majority of the judges representing one political side or the other.

The chairman of the committee says that the courts now may determine, and do determine, contested local elections; and why not give them the power to determine the question of contested elections of members of the Senate and House? In the contests arising out of local elections there are no questions of political power or political government at all. But the determination of a contested election for a member of the Senate may determine the political power of the Commonwealth one way or the other, and then they would bring to bear upon the tribunal that determines that question the same influences that they would bring to bear upon a committee, or upon any other number of men, in whom this power may be lodged. Gentlemen look at this proposition only from the stand-point of the manner in which contested elections have been determined. Well, we say they have been determined sometimes wrongfully. We know they have been determined just in accordance with the party views of the political majority; and I say, so far as the judgment of the judges can be ascertained, in every question of great political significance, they have decided them precisely in the same way. And, Mr. Chairman, a feeling, somehow or other, has got abroad in the Commonwealth that because the legislative power resided in the Legislature, and because that Legislature had the right, and the privilege, and the power to confer very important favors, that that body has been

corrupted, in a measure, by the great corporations of this Commonwealth.

And, sir, there is another opinion now getting abroad among the people, and that is, that the same great corporations are trying to entrench themselves in the fortress of the judiciary. I once had a little experience, myself, going to prove this idea. I happened to be a delegate to a Convention that met at Keokuk, in the State of Iowa, for the purpose of devising some plan by which to improve the navigable waters of the Mississippi river and its tributaries, and also for the purpose of removing or preventing "obstructions" of those great natural water-courses. The "obstructions" complained of were bridges erected by railroads; and the objection was not to the fact that bridges were erected, but it was to the manner of their erection. In some instances they seemed to have been erected with a view to obstruction, in order to throw the trade and travel on to the railroads, instead of letting them take their course upon the rivers. I know that in that body we had to encounter a judge of the United States Supreme Court, a member of that Convention, who there represented the railroad interest, and opposed the river men. And when his attention was called to the indelicate position he occupied as a delegate there, when he knew the object of that Convention, and that it was called by the river interests, and when it was stated that questions might arise out of their deliberations that might come before the Supreme Court of the United States for decision, he stated in his place what his decision would be. Would I trust such a man as that with any question of this kind? I would not trust him any more than I would trust the lowest whelp that ever had a seat in the Legislature. I know, too, that that was the general opinion of gentlemen that had a seat in that body.

Mr. Chairman, I do not mean, by any word that I have to say here, to cast any reflection upon the judiciary of our Commonwealth. I know they are an able and learned body of men. I would like to keep them pure by not bringing to bear upon them influences that we know have corrupted other bodies of men that were, perhaps, just as good and just as honorable as they are. Contested elections raise difficult and troublesome questions, and gentlemen should look upon it in that light, whether, by creating a different body of men to determine them, they will

really determine them in any different or more satisfactory manner than heretofore. I am utterly opposed to placing this power in the hands of the judiciary. If the candidates whose seats were contested should happen, if seated, to have the balance of power in their hands, so that they would give the majority, one way or the other, a tremendous contest—a fierce fight would be made for the purpose of carrying that election in a particular way, and every power would be brought to bear upon that court to influence them; fairly, if possible, and corruptly if it must be.

We should not place the judiciary in that situation. Let them decide cases arising in the courts between man and man—the ordinary legal business—but these contested election cases, although called judicial, are, we know, decided by the political bias of the men who decide them.

We know, too, after all, that when the party lash is applied, and when political questions have been decided heretofore by the judiciary, they have been decided for their party.

MR. MINOR. Mr. Chairman: I cannot subscribe to the amendment to the amendment, nor exactly to the amendment itself. I think, sir, the true position has been indicated by the gentleman from Allegheny, whose seat is on my right, (Mr. J. W. F. White.)

Now, the grand objection, it will be observed, which has been given in every case where a proposition has been made to refer anything to the judiciary is the fact that heretofore, by purity of character, it has commanded our respect and confidence. That is the reason which is given, and it is the reason which exists. That being true, up to the present time, as a general rule, I think it becomes the duty of this Convention to see to it that it shall leave the judiciary in such a position as that that reason shall not cease to exist. I think, sir, we owe a most solemn duty to the judiciary of this State, and to the people whose judiciary the judges are, that the ermine shall not be soiled, and that no man shall be able to put it in such a position that it can be suspected or charged with being soiled when it is *not*.

I care not how truly, honestly, or correctly a judge may decide a question of this nature, yet if he does decide in the direction of his own political proclivities, though, as I said, honestly so, he will be

charged with having been biased by political influence. There is the difficulty. Now gentlemen undertake to answer this by saying that the act of a judge is a judicial act. That is no answer at all, sir. While the court itself is judicial, the subject is entirely political. The act, of course, is judicial; it cannot be anything else; but the trouble is that the question to be decided is purely political in its nature, and purely political as to the persons affected by it. The judge is really to say which political party shall have an increase in its power and which diminished, as the result of his decision. That result of his decision cannot be escaped. It is the very thing he is asked to decide. "How shall the political power of the State stand," so far as his decision can affect it? The result, therefore, is manifestly political, although the act itself is judicial. Then I will go a step farther. I said we should protect them from being subject to these charges; we should also save them from any possibility of having the reputation of being affected by political influence. Suppose a judge's term of office has almost terminated, and there comes before him a case of contested election, and he has reason to believe from the facts that the contest should be decided in favor of the candidate of the minority party of the county. Yet, in view of his desire for re-election, you place him in the position of being obliged either to decide, according to his conscience, against the dominant party, and thus defeat his own re-nomination and re-election, or to decide according to his interests and against his conscience, in order to secure his own re-election. There are men, I know, that will always do what is right; they will be just though the heavens fall; but suppose the judge decides in favor of the candidate of the dominant party; he is immediately charged with having so decided in order to secure his own re-election, and he is so situated as not to be able to deny it.

I say, then, it is not right for us to put a judge in that position, so that his character may be ruined beyond the power of man to save it, and that often without his fault; and when you ruin the reputation of a judge unjustly, you certainly make a terrible break-in upon the influence and integrity of the judiciary, and the high position that it now occupies in this State, and ought always to maintain. I remember once when at law school, listening to an address delivered there by one of the

professors, and who was a judge of the supreme court, in which he said :

"Young gentlemen, I want to tell you that this State honored me with all the political offices I desired. I aspired to nothing but what they were willing to accord me politically; but I went on the bench in order to be independent of politics, and I have always rejoiced that in my decisions my mind would be free; and I say to you, that in your future labors, in connection with the laws of the country, see to it that the judiciary is left independent, and free from the opportunity of political bias."

That charge, thus given, I have never forgotten. The influence that it made upon my mind exists to-day, and I repeat the sentiment of that eminent jurist, and say: "Let our judiciary be kept so that it shall not be subject to the power of political influences," at all events so that it shall not be ruined by charges against it which are unfounded, and yet which it is so situated as not to be able successfully to meet. For these reasons we ought not to tie up the Legislature, as is done by this section. One word more, and I have done: I admit there are evils in the present plan, and great evils, and we have experienced evils because we have been tied up to one mode in the old Constitution. The other mode would be also full of evils, even greater than those which exist now. We have been tied, unfortunately, in the past, and if we adopt this section we will be tied, unfortunately, in the future. I believe, sir, that wisdom will not die with us. I believe good men are to live after us; and I think we may put in a section leaving it to the Legislature, to the wisdom and experience of the future, to suggest what shall be the best remedy. If one way is not the best, it can try another. I do not believe we can do better than to leave it there. I believe the suggestion made by the gentleman from Indiana (Mr. Harry White) to the Committee on Legislation is right, (contained in "No. 1" of the "suggestions,") and I read it as part of my remarks.

Mr. HUNSICKER. Mr. Chairman: I had not intended to take any part in this discussion. I did not dream that this section would receive any discussion. I presumed it would be adopted unanimously; because, if there is any evil which cries for reform—which *needs* reform, it is the subject of contested elections in the Legislature. The committees are drawn by lot, and as soon as the political complex-

ion of a committee is known, it is determined who will get the seat. And that a man should be seated in the Legislature who has it in his power to pass a law to take away my liberty, my property, my life; that the man who exercises the supreme power of the State should sit there and legislate and enact laws, and yet, have never been elected or called to that place by the voice of the people; that his right to hold that position should be determined by lot, and that the report of a committee should be final and conclusive on the subject, is monstrous. *Gentlemen* seem to be very solicitous about "preserving the purity of the judiciary." Who has assailed the integrity of the judiciary? They have, for these long years past, tried and decided contested election cases. All our county officers; all our township officers; all our borough officers are made the subjects of contest before the judicial tribunals, and I have yet to know of more than a few isolated cases where they were decided according to the political predilections of the judges who happened to preside over the tribunal which tried them. When you come into court, you come into the court of the very county from which the member is elected, and there, in a solemn and judicial proceeding, you proceed to determine who has been lawfully elected. There is a record made. The witnesses generally reside there. The proceeding takes place right in that community having most interest in its result. The witnesses are called up, and after the case has been fairly and thoroughly examined, a decision is rendered by that court, and if there is any error in the decision, any error of law, it may be reviewed by the Supreme Court of the State. Thus, it having been judicially ascertained who shall legislate and make laws for the protection of life, liberty and property of the citizens of the State, the right man will get the seat. And I do not think it is worthy of consideration that we should thus tend to make the judiciary liable to an imputation of being governed by partisan motives. The judiciary are above and beyond that reproach, with all its powers, and for that reason I shall vote against all the amendments offered, and vote for the section as reported.

Mr. LILLY. Mr. Chairman: I am in favor of this section as reported from the Committee on Legislation, for the reason that the judiciary can be so formed as to put them above and beyond parties. But after that is done, after the judiciary have

been placed above and beyond parties, as I hope it will by this Convention, then all the arguments on this point submitted by gentlemen in the Convention, will fall to the ground. It is well known, and it has been said here over and over again, that these contests before the Legislature are perfect farces and no proper results are ever arrived at. It has been said here, and I presume it is true, that in later years, as the committees were drawn in the Legislature, so did members get their seats, the result having been determined according to the political complexion of the committee. I have not, however, known that to be the case in my experience, but it has been said in this Convention over and over again.

It has been said here, also, this morning, that the judges are inclined to decide according to their politics the questions of contested elections brought before them. I may be mistaken, but I think I heard some of our members say so. Now, I would cite the case of a decision that has been rendered in Luzerne county recently, which is a flat contradiction of that statement. The judges of the court are all Democratic, with, I believe, one exception, that one being a Liberal Republican; but they decided to give a Republican his seat to an office claimed by him, because it was right and just that he should have it. This decision was unanimous, as I understand it, and the seat was given to this Republican, because the vote showed that he was entitled to it, and the court did not desire to over-ride the vote.

But I have a plan to suggest that I think can lift the judiciary out of the influence of politics. I do not expect that I can make my opinions on this subject potent enough to carry them through this Convention, but I think that if the judiciary were constituted as my plan would constitute them, they would be taken entirely out of politics, and all these questions of contest would come before the judiciary properly. An office that a person has been elected to is a valuable thing, the title to which is valuable, and the courts ought to decide all questions of property in valuable things. They are constituted to do that, if I understand their functions correctly, and I believe that that is the place for them to go. My idea is to have the judiciary appointed, not elected. I believe that we have seen the error of the elective system as applied to the bench, and I conscientiously believe that if we leave it to the vote of the people, they will

to-day vote against electing the judiciary. There are gentlemen around me who say that they do not believe such to be the case, but I believe it. I may not, perhaps, be able to speak intelligently for other sections of the State, but among my immediate constituents, the people of the Lehigh valley, I have not heard a man express an opinion on this point who is not opposed to electing the judges. I wish to see them all appointed for life. Make them ineligible to appointment of any kind while on the bench, and for two years, or a term of years, after they leave the bench. Take away all party from them by this plan of appointment for life, and you will have pure, and honest, and square men elected, and they will do as the honest men of Luzerne county did in the case I have referred to—decide contests according to their merits.

I hope the committee of the whole will adopt this section just as it came from the Committee on Legislation. The gentleman from Columbia (Mr. Buckalew) asserts that the Committee on Suffrage, Election and Representation have a general section in view for all contested cases. Their report would coincide with this very well, and I trust that this committee will sustain the action of the Committee on Legislation in this matter.

MR. LEAR. Mr. Chairman: I desire to say but a brief word upon this subject. If we change the Constitution in this regard it will be because we believe there are some abuses under the present system of determining the election of the members of the Houses of the Legislature; and if we make that change we simply do it as an experiment, to see whether we can get anything better. Whether we will improve the plan or not is a matter which I cannot tell; but while we try that experiment as to whether the mode will be improved by what we do or not, let us take care that we do not involve another department of the government, about which there is no complaint, in this experiment, and pull that down to a level with the character of the Legislature.

I do not desire to discuss the character of the Legislature. If for no other reason I would abstain from it out of deference to the sensitive feelings of my friend the gentleman from Potter (Mr. Mann); and I do not intend to object particularly to any amendment which will provide a different mode of determining this matter before the Legislature. But I do object

to the question being referred to the courts of the Commonwealth, for the reasons which have been given by several members of this committee, and especially by the gentleman from Crawford, (Mr. Minor,) who has given almost my views upon this subject. But of the effect of this question upon the judiciary there can be no doubt. There is nothing that so stirs up the feeling of the people of any community as a question involving a political issue; and men take sides with more determination upon an issue of that kind than they do upon even the question of religion, and the whole community may be divided upon a question of this kind, with all the bitterness of party animosity, whereas the ordinary contests that come into our courts only involve the parties to the contest and their particular and immediate friends. This, however, would involve the whole community, and could not help but bring the judiciary into suspicion, and thus lower it and its character. Nay, more than that, it would not be long, if it did not corrupt the judiciary, before the people would carry the election of the judiciary into politics and elect the members of the courts to suit the contests which would be likely to come up. I was told, since I have been in Philadelphia, by a member of the judiciary here, that they feel their power weakening under their feet, because so much has been put into the courts. So many duties, inconsistent with their judicial functions, have been assigned them that politicians are organizing for the purpose of selecting a judiciary to suit the parties who have particular interests involved in their appointments.

Now, whatever we have to regret in Pennsylvania—and we have many things—and whatever we may have to humiliate us in this State, there is one thing upon which the people will ever look with gratification and pride, and that is their judiciary. Whatever may be said about the other departments of government, the executive and the legislative, there never has been a breath—to any considerable extent at least, except in special localities—with regard to the official integrity and personal purity of the members of the judiciary; and it is there that we must look at last. It is the last resort to which the people look for their personal rights, the rights of property, and the sustaining of the laws which may be created by the Legislature, and executed by the Execu-

tive. It is there, at last, where we—if we have had our rights invaded—present our claims with confidence, and have those claims allowed. Now let us not try an experiment, because this is but an experiment, by which we will endanger the confidence of the people in the high purity of that department of government about which, at this time, we have no doubt.

Mr. J. S. BLACK. Mr. Chairman: Certain gentlemen near me have asked me how I would vote. I propose now to tell them and the whole committee at once, and at the same time to give a very brief reason for my conclusion. A contested election—the question whether one man or another is entitled to a seat in the Senate or House of Representatives—is, as everybody will admit, a judicial question purely. It involves the determination of matters of fact according to evidence, and the application of the law to the fact, after it is ascertained. Now it is a principle, not only of this government of ours, but of all free governments, that the judicial authority of the State shall be vested in the ordained and established courts. It is not safe anywhere else. The judges sit with open doors. They are obliged to hear a full discussion. They receive nothing but legal evidence. They exclude all evidence that is not pertinent to the subject, or which appeals merely to the passions. They are obliged to give satisfactory reasons for the conclusions that they arrive at, and a violation of their duty in any of these respects exposes them to a very severe punishment.

To take a question like this, or to keep it, out of the hands of the judiciary, and to put it into the hands of any special tribunal, is a violation of this fundamental principle. All the experiments that have ever been made of determining judicial questions, otherwise than by the regular courts, have been failures. That is the reason why the court of Star Chamber and the court of High Commission had to be abolished. That is the reason why military commissions and ecclesiastical tribunals have become infamous all the world over, and it is also the reason why nobody has any confidence in legislative committees.

We have had some experience upon this subject, and we are extremely unwise if we do not profit by it. It is said that "experience is a dear school," but that even fools will learn in that school when they are put at it long enough. The questions of contested elections were tried in the

British Parliament, from time immemorial, until recently, by committees appointed for that purpose; and I need not say to you, nor any body who has read the history of that country, that there never was such a thing as a fair and upright decision in any case except where it accorded with the political wishes and interests of the committees, and the authorities of that country were driven, by stress of actual necessity, to provide some other mode of getting justice done. It is true that excitable population of Ireland—in Galway, the extreme west, where they are more excitable than any where else—charged, truly or falsely, that a judge in an election case had prostituted his official functions to a political purpose. But that was the only instance of dissatisfaction that has arisen since the new arrangement for trying such cases has been made.

Here in the city of Philadelphia, and elsewhere in the State, all contested elections, except for members of the Legislature, are tried, and heard, and determined by the courts. Here, perhaps, the strain upon integrity and the purity of the courts would be stronger than anywhere else in the known world. Yet I think the universal testimony is to the effect that the judges have acquitted themselves like fair and honorable men—not always deciding every question rightly, perhaps, not always able to do it with perfect freedom from some kind of prejudice; but the decisions upon subjects of that kind have been generally as fair as upon other subjects—as fair as you can expect from human tribunals.

But then, on the other hand, Mr. Chairman, look what has happened in cases before legislative committees. Can any gentleman point out a case in which the decision was believed to have been fairly and impartially made? Why, nobody looks for anything of the sort. A committee man who would vote according to the truth, in opposition to his political friend, would be punished by expulsion from his party. Now I don't say this without authority. I don't speak of our own Legislature so much as I do of some others that I have more acquaintance with. A gentleman—a member of Congress, and a very distinguished one—who was for a long time (ten years I think) chairman of the Committee on Elections, delivered an address before a convention, a "social science" meeting, or something of that kind, in New York. He spoke upon contested elections, and of their history for the pre-

vious ten years, (all which he saw and part of which he was,) and he told them, in effect, that there was no such thing as impartial decisions, and gave divers reasons why it could not be expected.

I was concerned once for the sitting member in a contest. The case was too plain to talk about. The simplest exposition of the facts made the case entirely clear; yet there were indications that my client might be deprived of the seat to which he was undoubtedly elected. I met a member of the committee afterward, of the majority party, who undertook to quiet my alarm by telling me that they did not intend to decide against the man who had the right. And he said, "I will tell you the reason why. We have got members enough on our side in this Congress, and we do not want any more. It is not necessary for us to do this wrong for any political purpose, and *therefore* we won't do it." [Laughter.] I am thoroughly persuaded that, plain as that case was, my client would not have stood half a chance if there had been a partisan reason for throwing him overboard.

The ground upon which I put my vote, simply stated, is this: That we have a reasonable assurance that rights will be protected if you try the question before the judicial tribunals, and that if you go before the Legislature itself, the chances are all against justice. Let us try judicial questions before the judicial authorities, and leave to the Legislature no functions but that which ought to belong to it, namely, the making of laws.

MR. DARLINGTON. Mr. Chairman: There is one view of this whole question which does not seem to have been referred to by any speaker that has occupied the attention of the committee thus far. By the constitution of the Senate and House, which I have not heard any one propose to change, the House has the sole power of impeachment, and the Senate to try and adjudge, not only the Governor, but all judicial officers; and the judge to whom you propose to commit the power to decide whether one man or another shall be elected to the Senate may be the very man who is to be tried by your Senate for high crimes and misdemeanors. It might happen that one vote in the Senate would decide the question of the judge's remaining in office or going out. At all events he would have the power of deciding which of the two candidates were elected to the Senate, and his decision

might be in favor of the man who would acquit him, when he comes to be tried before the Senate. Now, is it right to give the power to decide upon who shall be the Senator, to the man who has to be tried by the Senate, or who may be tried by the Senate? Are we not running into utter confusion in this respect? Suppose it be a member of the House—the House has the sole power of impeachment—the man whose seat may be contested; and to whom the judge deciding upon it may grant a commission, may be the majority who will decide upon the question whether he shall be impeached or whether he shall be convicted, or say who shall be the majority in that body, who is to impeach or to try

Now, this is one argument that, it strikes me, deserves the serious attention of the committee. But more, no one has yet suggested any change, as I have said, in the constitution of this high court. It will be sufficient, as far as the integrity and qualifications for the trial of your highest officers, your Governor, your Secretary of the Commonwealth, your Attorney General, all your civil officers. Every judge in the land who may be charged with high crimes or misdemeanors must be tried somewhere. The people have said in all time past that the proper tribunal to try these officers is the Senate. Why? Because you can imagine no tribunal better qualified. The human mind has not devised any better tribunal, and, therefore, the highest tribunal in the land may try your highest officer, and may adjudge him innocent or guilty, as the proof shall be, and yet the gentleman from York (Mr. J. S. Black) would have you believe that nobody is pure but the judiciary. You trust the Senate to try the purity of the judiciary. They are pure enough for that purpose, but not pure enough for any purpose connected with their own organization. Would it not be a strange spectacle if you were to assert that you will trust the House of Representatives with the sole power of impeaching all your officers, and yet deny them the authority, because they are unfit to say whether one of their number, be he who he may, is not elected or qualified to serve. Why should they not be trusted with the lesser function, when they are trusted with the greater?

Now, sir, it is said that this is a judicial function—everybody calls it a judicial function—and yet there is the least possible quality of judicial function about it. Contested elections, in nine cases out of

ten, as the gentleman from York will, himself, concede, are purely questions of fact that any mind, not judicial, is as well qualified to decide as a judicial mind. Questions of law are very rarely presented in these contested election cases, and therefore you might organize a body to decide these questions with or without judges, as you please; they will not be any the less questions of fact. Does not every one know that in the last seriously contested election in Philadelphia, it depended upon a count of votes? And the judges at the first count made some mistake, or some one did who was summing it up, and they were obliged to go over it again. It was decided that that was wrong, and the seat was given to the contestant upon a pure question of addition; and yet you would debase the judicial mind by bringing it down to a question which every election officer is competent to decide. That is precisely where you are attempting to invest the judiciary with a question which is not strictly judicial. You cannot place it in the hands of the judiciary without degrading that office. There is no need of placing it there; it is better without it. It will be more honored and more respected. Besides, highly as I honor the judiciary, judges are but men, and men are necessarily interested in the government of their country, and they will take sides in a question of policy, differing honestly as to what shall be the best means of carrying on the government. We must expect that. We are divided into two well known parties, each having its own views of what the government, State and National, should be; and judges, whether they be elected or whether they be appointed, because, if appointed, they will be appointed by a power which has political proclivities, will have their political tendencies and associations, and although they are, in the main, pure and generally impartial, upon political questions they cannot safely be said to be wholly impartial. Allow me to suggest, that even the Supreme Court are not always impartial on political questions, and I would not trust such questions to them if it could be possibly avoided.

Entertaining, as I do, a very decided objection to imposing any more duties upon the courts, for they are already overburdened; we hear but one voice from all parts of the State, and that voice is, the judiciary are overloaded with business; and we are here to devise ways and

means to relieve them of this burden, by appointing a greater judicial force or in some other way. While this is the case, and it is acknowledged to be so all over the State, why will we increase that burden by casting upon them duties which are not strictly judicial, for which there is no necessity, and which would be much better discharged by other tribunals.

Now, there has never been, in the history of this State, any great wrong perpetrated by either the Senate or House of Representatives, admitting a man to his seat who was not entitled to it. I challenge any gentleman to point out to me any instance in the history of the State where the introduction of a member, supposed not to have been elected, resulted in any great wrong to the State at large. True, it may have deprived one of the honors of the office, and it may have given those honors to another, who was not entitled to them. It may have been that he was the representative of the minority, but some of us are in favor of minority representation, and do not consider that a very great wrong. I do not think that any one can put his finger upon any legislation of the country that ever was influenced for evil by a man who was introduced into the body when he was not elected. Show me any instance; give me a fact; do not rely upon assertions; let us see whether the State has been injured in any time past by an improper decision in either house of the General Assembly in the introduction of a member. I must adhere to my judgment, that it is not wise to commit such power to the judges. I would leave it precisely as the gentleman from Philadelphia (Mr. Biddle) proposed to leave it, to each House of the Legislature, under such regulations as they shall prescribe.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Philadelphia (Mr. Temple) to the amendment offered by the gentleman from Philadelphia, (Mr. Biddle,) which the clerk will now read.

The CLERK read :

"Strike out the amendment offered by the gentleman from Philadelphia," and insert: "Each House shall judge of the qualifications of its own members; but contested elections for members of either House shall be determined by both Houses of the Legislature, acting jointly, in such manner as shall be prescribed by law, and in no case shall a special committee

of the Legislature determine the said contest."

Mr. TEMPLE'S amendment was not agreed to.

The CHAIRMAN. The question is upon the amendment of the gentleman from Philadelphia, (Mr. Biddle,) which will be read.

The CLERK read :

"Each House shall judge of the qualifications of its members; contested elections shall be determined by the House in which the contest arises, in such manner as shall be directed by the law existing at the time such election takes place."

Upon this amendment a division was called for, and the amendment was rejected; twenty-six members, not a majority of the quorum, voting in the affirmative.

The CHAIRMAN. The question is upon the second section.

Mr. ELLIS. I move to strike out the words "common pleas of the county," and insert "courts."

Mr. BARTHOLOMEW. Mr. Chairman: I move to strike out the words "common pleas of the," and insert "circuit court holden for the."

Mr. HARRY WHITE. Mr. Chairman: I am not going to debate the question, but will merely remind the committee that the question of the court was decided by the committee, and it was thought wiser to give it to the court of common pleas in the county where the returned member lived.

Mr. MANN. It would be a very great hardship, in any county of the State, to send them to the circuit. We have no circuit court in our county, or within a hundred miles of us.

Mr. BARTHOLOMEW. There will be.

Mr. MANN. I hope there will not be.

Mr. ELLIS. Mr. Chairman: I desire to say that the amendment which I offered may lead to confusion, and as an opportunity will be presented to offer it after the report of the Committee on Elections and other committees, I will withdraw it for the present.

Mr. BIDDLE. Mr. Chairman: I offer the following amendment: Strike out, in the second section, after the word "determined," and all after the word "lives," so that the section will read: "Each House shall judge of the qualifications of its members in contested elections for members of either House shall be determined in such manner as shall be prescribed by law."

Upon this amendment a division was called, which resulted: Affirmative, thirty-three; negative, forty-five.

So the amendment was rejected.

The question being taken upon the section it was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 3. Each House shall keep a journal of its proceedings, and publish them daily, except such parts as may require secrecy, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journals.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 4. Either House shall have power to punish for contempt or disorderly behavior in its presence, to enforce obedience to its process, to preserve order in the House, or in committees, protect its members against violence, or offer of bribes, or private solicitation, and with a concurrence of two-thirds, expel a member for misconduct, not a second time, for the same cause; but a member who has been expelled for corruption shall not be eligible thereafter to either House. Punishment for contempt, or disorderly behavior, shall not bar an indictment for the same act.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 5. No law shall be passed except by bill, which shall be preceded by a preamble, briefly reciting the reason of the Legislature for its passage; and no bill shall be so altered or amended, in the course of its passage through either House, as to change its original purpose.

Mr. LILLY. Mr. Chairman: I move to strike out all in relation to the preamble.

The motion was rejected.

Mr. MINOR. Mr. Chairman: There seems to be a point here that will be subject to difficulty. It provides that each bill shall be preceded by a preamble, briefly reciting the reason of the Legislature for its passage. It occurs to me that that would be a physical impossibility. The Legislature may not know all the reasons. I certainly do not see the object of putting in this clause. I move to strike out that part of the section.

Mr. CORBETT. I rise to a point of order. That the question was just decided, and the committee refused to strike it out.

The CHAIRMAN. The Chair did not so understand it.

Mr. HARRY WHITE. I submit that that question was voted on.

Mr. LILLY. That was my original wording, but it was restricted. The committee did not vote on my original wording.

The CHAIRMAN. The Clerk will read the amendment, that there be no confusion.

The CLERK. The amendment is to strike out these words: "Which shall be preceded by a preamble briefly reciting the reasons of the Legislature for its passage."

Mr. D. N. WHITE. Mr. Chairman: It appears to me that this is a very singular feature to put into a Constitution, that every bill must be preceded by a preamble. I think it would endanger a great many bills if the bill did not accord with the preamble. I see no necessity for it, and I hope it will be voted down.

Mr. J. S. BLACK. Does not the gentleman think a great many bills ought to be endangered?

Mr. D. W. WHITE. That may be, but we do not not mind to endanger them when we pass them.

Mr. J. S. BLACK. Unless the Legislature that passes a law can give a reason for what they do, ought they to do it? If they are not able to understand the grounds upon which they vote, they ought not to pass it at all, and if they are able to understand it they are surely able to state it briefly, in the form of a preamble. This is one of the restraints, that is intended to be put upon the Legislature so as to prevent them from acting hastily.

Mr. D. N. WHITE. I think that all the preamble we want in the bill is the bill itself.

Mr. J. S. BLACK. I am sure if the gentleman himself were a member of the Legislature, and I believe he has been, he would not vote for a bill without being able to give, in a few words, the reasons why he voted for it, stating the mischief of the law as it stands, and the necessity for a change in the law. In times past all the old English acts of Parliament contained preambles, and it lets more light in on the meaning of a law itself than any thing you can do.

Mr. D. N. WHITE. That depends upon who writes the preamble, and how it is written.

Mr. ANDREW REED. Mr. Chairman: I hope the committee will strike this out. We put in here in our organic law, a provision which makes it absolutely necessary that all bills passed must set forth the reason for their being passed. Now, one member may have a particular reason why he votes for a bill which may be directly opposite to the reason which influences another member, and you cannot get both the reasons in, because they are directly opposite to each other. One man may vote for a bill for the reason that he believes the provisions contained in it will promote the interests of a particular class, and another man will vote for the same bill because he believes that it is opposed to the same class of interests, and they will both vote for the bill. How will you fix it in a case of that kind? They will both be in favor of the bill, and yet each will have different ideas of the effect of the bill upon their constituents or the country at large. They will both wish the bill passed, but one will conceive it to have one effect, and the other will conceive it to have a directly opposite effect, and in a case of that kind what will you do with it?

For that reason I shall vote for the amendment of the gentleman from Crawford.

Mr. LEAR. Mr. Chairman: This provision, if put in here at all, must be put in for some purpose. Now if it is absolutely requisite that this preamble should precede every act of Assembly, then if it does not precede the act of Assembly, it is no act, and would be unconstitutional. Then if the matter gets into court, where it must be determined at last, whether it is constitutional or not, the question will be raised, that this act cannot stand because it is not preceded by a preamble containing the reasons upon which it is based, and then will come the question, whether, if it has reasons in this preamble, they were sufficient to authorize the Legislature to have enacted the law. I claim that if that be the case —

Mr. H. W. PALMER. Mr. Chairman: I beg to call the gentleman's attention to the thirty-fifth section of this article of the Committee on Legislation in connection with his argument, which just corroborates his idea.

Mr. LEAR. Mr. Chairman: My attention has just been directed to another sec-

tion, section seven, which I think contains enough to provide against any sort of legislation getting into bills of the character which, in legislative parlance, are called "snakes:"

"No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except appropriation bills."

That is already in the Constitution, having been put in recently.

Mr. H. W. PALMER. Read the thirty-fifth section.

Mr. LEAR:

"Any bill passed in disregard of the provisions and directions prescribed in this article shall be void and of no effect; and when the validity of any law passed by the Legislature is questioned in any court of record, it shall be competent for such court to inspect the Journals of either House, and if it does not appear thereon that all the forms of legislation, in both Houses, as hereinbefore prescribed, have been observed in the passage of such law, the same shall be adjudged by such court to be void."

Now, then, it seems to me that it must be apparent to every member of this committee that unless this preamble is to the act it is, of course, void, and unless the reasons contained in that preamble are, in the estimation and judgment of a court, sufficient to have warranted and authorized the Legislature in enacting the law, then it is unconstitutional. I say it is well enough, as the gentleman suggests, that acts of Parliament and acts of our Legislature should contain preambles. It is well enough to have these explanations before us, if they set forth the mischief which was intended to be remedied, or why it was that the Legislature was called upon to enact a particular law that they have passed. But, at the same time, when it is required by the Constitution that these reasons shall be contained in the preamble, then there come up the varied opinions of the judges of the courts of common pleas in the first instance, and of the judges of the final power of adjudication in the next instance, to determine whether the Legislature have had good reasons, whether these reasons have been sufficient, whether, in other words, as appears by the preamble, the Legislature was justified in passing the law. Now it seems to me that it must create interminable confusion and raise questions which should not be raised, and which it

is not intended by this committee should be raised before courts of judicature.

Mr. KAINE. Mr. Chairman: I do not think there is any necessity at all for this section. Section five reads that "no law shall be passed except by bill, which shall be preceded by a preamble, briefly reciting the reason of the Legislature for its passage, and no bill shall be so altered or amended, in the course of its passage through either House, as to change its original purpose." Nobody ever thought of passing a bill in any other way under the rules and practice of the Pennsylvania Legislature. Then the seventh section, which, I believe, is a transcript from the present Constitution, reads, "no bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except appropriation bills." Now if this section is voted down, I propose to amend the section, by adding thereto this much of the present section, "and no bill shall be so altered or amended in the course of its passage through either House, as to change its original purpose."

Mr. CORBETT. Mr. Chairman: I did not intend to say anything upon this subject, but I cannot concur in the construction given to this section by the gentleman from York (Mr. J. S. Black.) The thirty-fifth section requires a bill to have a preamble, or it might be void, but I apprehend there is nothing in the report that authorizes the courts to declare a bill void which contains a false preamble. If there are any words in any section of this report, as will allow any construction of this kind, I would like to have it pointed out. The section requires every bill to have a preamble, which is a matter that may be very necessary, because in the construction of an act, if a corrupt reason is assigned to the preamble, it may have great weight in the construction of the law, but there is no portion of this report, or any clause in it, which renders a bill null and void, if it has a preamble. I do not care how false or bad the reason is that may be assigned. If there is any provision of this kind I should like to be pointed to that section or clause.

Mr. HOWARD. Mr. Chairman: I do not know whether I understood the gentleman from York, (Mr. J. S. Black,) but my understanding is that he said if a bill contained a lying preamble, it would be declared void by the courts. If this is the law, I am certainly opposed to this section as it now stands. Suppose that some

falsehood should happen to creep into the preamble of a bill. There might be, as often happens in deciding this question, a difference of opinion, and when that difference was balanced, there might be a majority of the court who would say that the preamble was false; suppose that question did not arise for ten or twenty years, and millions of dollars had been invested under that act of Assembly. Would it be right to give our courts the power to say that because some falsehood had crept into the preamble, therefore the act was null and void? I think we should take care not to vote for such a monstrous proposition as that. I was not aware that it had been held, that because the Legislature may have stated some falsehood as a reason why they passed an act of Assembly, therefore the act should be judicially declared null and void. I am unwilling to see any such provision introduced into the Constitution. It is certainly something extraordinary. We, of course, expect it to have something new, but such a provision is remarkably new.

Mr. J. S. BLACK. As the report now stands, the construction which would be placed upon it is the one which the gentleman from Clarion (Mr. Corbett) says is the true one. That is: That the validity of a bill will depend upon the question whether it contains any preamble at all, false or true; but I suggested that there ought to be an amendment to the thirty-fifth section, and that that could be considered when that section came up, making the bill void, not only for want of a preamble, but for want of a true preamble.

Mr. HOWARD. Mr. Chairman: I understood the gentleman from York (Mr. J. S. Black) to state that an act of Assembly was null and void if it was preceded by a lying preamble. Now, whether that be true or not, if the courts were to decide that an act of Assembly was void, because it contained a falsehood in the preamble, I certainly would not support this section for other reasons. There might be an act of Assembly with one short section, and there might be a preamble as long as this room, because every member of the Legislature has a right to put his reasons in the preamble. Each individual member has a right to insert his reasons in the preamble as fully as the committee that reported it, and the preamble would be just as much susceptible of amendment as the bill itself, and when

the highest law—the Constitution—requires that the reasons and the truth shall be inserted in the preamble, every member that votes for the bill will vote to have his reasons incorporated for voting for the act of Assembly. It may, indeed, be said that it would be a practical impossibility to pass a legislative act under such a provision as this.

Mr. HARRY WHITE. Mr. Chairman: The object of this section is a manifest one. There is no provision in our present Constitution which prescribes the manner in which laws shall be passed. In order to avoid confusion it was deemed proper to provide that no law shall be passed except by a bill. The word "bill" occurs all through the section. With this explanation it is thoroughly understood. If the section is read it will be discovered that the section provides that no bill shall be so altered or amended as to change its original purpose. Now, the suggestion, preceded by the preamble, states, for instance, what its original purpose and object was. Then, furthermore, I call the attention of delegates to the fact that preambles now precede a great many of our bills. There is nothing to restrict the practice but the discretion of the Legislature. This section will increase the volume of our laws, and I remind delegates of the fact that it prohibits special legislation, and that it will largely restrict the amount of legislation hereafter. In addition, I may add this suggestion of preambles to the bills passed in the Legislature is an additional restriction or prohibition against the increase of special legislation. There are some items of special legislation which may not be covered by the prohibitory clause in section eleven, and consequently if a preamble is required there is an additional prohibition not covered by these other prohibitions, if not readily understood by the committee having jurisdiction of the bill. I think, then, the section affords a valuable reform in this respect.

Mr. ANDREW REED. Mr. Chairman: I desire to ask the gentleman a question. Suppose there is a bill introduced in the Legislature to repeal the usury laws, and one member desires the reason to be inserted in the preamble that it will cheapen money, and another member that it will make money dearer. How can the preamble be arranged in such a case as that, and what would be the effect?

Mr. HARRY WHITE. I do not think my intelligent friend from Mifflin intends

that as a serious question. The question carries its own answer with it. There will be no reason at all; the bill will be sufficient. It has been decided in the case of *Gentile vs. State of Indiana*, to be found in 39, *Indiana Reports*, that any bill passed by the Legislature, concerning which the Legislature exercised, the exercise of that power could not be inquired into by another tribunal. Under this view, any reason which shall be given in the preamble for the passage of the bill, will be given after the bill has passed. No other tribunal can inquire into them.

Mr. RUNK. Mr. Chairman: I offer the following amendment: Strike out all after the word "briefly," intervening before the word "and," and insert the following, "and truly recites the purpose for which it is passed."

Mr. BUCKALEW. Mr. Chairman: I am decidedly opposed to the section and the amendment now pending. My opinion is that the section is entirely unnecessary, and that its only practical effect will be trouble, difficulty and embarrassment, both in the Legislature and in the courts. There is now no existing abuse or evil in regard to preambles to acts of Assembly, for whenever they are thought expedient they are inserted, and when they are deemed otherwise they are omitted. Why, then, should a change be desired in the Constitution in this respect? If the section is passed there will be lawyers all over the Commonwealth arguing against the validity of statutes that may be passed because the preamble does not recite the particular purposes which the law is to be construed by the court to cover. Let our laws hereafter be construed upon their text. I am convinced that every gentleman of the bar, in looking at this matter, will be convinced that the only effect of placing such a provision in the Constitution, will be to produce trouble and difficulty hereafter without the slightest practicable advantage in any direction.

The question being taken, the amendment to the amendment was not agreed to.

The question being taken on the amendment, a division was called, which resulted as follows: Ayes, forty-nine; noes, thirty-two.

So the amendment was agreed to.

The CHAIRMAN. The question recurs upon the section as amended.

The sixth section was read:

SECTION 6. Bills may originate in either House, but may be altered, amended or rejected in the other. No bill shall be

considered, unless reported from a committee and printed for the use of the members.

The sixth section was agreed to.

The seventh section was read :

SECTION 7. No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except appropriation bills.

It was agreed to.

Mr. HAY. Mr. Chairman : Is it in order to move a re-consideration of section four?

The CHAIRMAN. It will be in order to-morrow.

The eighth section was read :

SECTION 8. Every bill shall be read at length, on three different days, in each House. All amendments thereto shall be printed before the final vote is taken, and no bill shall become a law unless, on its final passage, the vote be taken by yeas and nays, the names of the persons voting for and against be entered on the Journal, and a majority of the members elected to each House be recorded on the Journal thereof as voting in its favor.

Mr. LEAR. Mr. Chairman : I move that the committee now rise.

The motion was not agreed to.

Mr. J. M. BAILEY. Mr. Chairman : I move to amend, by adding to the end of the section the words, "and published in the pamphlet laws."

I suppose the object of this section is to place upon each member of the Legislature the responsibility for his vote. That is certainly the principal object of this section. It is proposed to place the name upon the Journal. Now who sees the Journal? It is true you have a section here which says it shall be published daily; but who will see that? Very few, I trow. If the object be, as I take it, to place the responsibility for his vote upon each member, let us show that we are in earnest, and let his name be placed upon the records of the Commonwealth, that the people see, side by side with the statutes, what he should be responsible for. This is the object of my amendment, and I hope the Convention will seriously consider it before voting upon it.

Mr. EWING. Mr. Chairman : I think the gentleman (Mr. J. M. Bailey) is mistaken in regard to the object of this section. It is not particularly to make the members responsible, but to prevent hasty and ill-considered legislation, and to prevent the signing of a bill by the members, or its pretended passage when it is

not actually passed, by having a *bona fide* call of the yeas and nays on the Journal, where it can be found. Most of us never thought of the reason suggested by the gentleman from Huntingdon, (Mr. J. M. Bailey.)

Mr. CORSON. Mr. Chairman : I move that the committee now rise.

Not agreed to.

The question being on the amendment of Mr. J. M. Bailey, it was not agreed to.

Mr. BUCKALEW. Mr. Chairman : I move to amend, by adding after the words "printed," in the second line, the word "of substance." It may not be convenient always to print every little mere verbal amendment.

Mr. HARRY WHITE. Mr. Chairman : I hope that will not prevail. Such a provision as that might give opportunity or excuse for sneaking some bill through that would not otherwise be passed.

Mr. BUCKALEW : Let us not leave our work so that it will be a source of unnecessary trouble to the Legislature. Corrections of grammar or of style may be necessary, and it would be altogether unnecessary to print *them*.

The question being on the amendment of Mr. Buckalew, it was rejected.

The question recurring on the section, it was agreed to.

SECTION 9. No amendment to bills by one House, returned to the other for concurrence, shall be concurred in except by the vote of a majority of the members elected to the House to which the amendments are so returned, taken by yeas and nays, and the names of those voting for and against, recorded upon the Journal thereof, and reports of committees of conference, shall be adopted in either House only by a vote of a majority of the members elected to each House, taken by yeas and nays, and the names of those voting for and against recorded upon the Journals.

Mr. HARRY WHITE. Mr. Chairman : I offer the following substitute: "Neither House shall concur with amendments proposed by the other, or adopt the report of a committee of conference, except by a vote of a majority of the members elected to such House, taken by yeas and nays, and recorded in the Journals thereof."

Mr. MACVEAGH. I think the original section is better.

Mr. HARRY WHITE. I withdraw my substitute.

Mr. J. R. READ. Mr. Chairman: I renew it.

Mr. HARRY WHITE. I would say that my proposition is entirely the same as the section, but in different language. The section as printed is longer, and possibly more explicit. The substitute is short.

Mr. J. R. READ. Mr. Chairman: I concur entirely with the chairman of the Committee on Legislation, (Mr. Harry White,) but I differ with the gentleman from Dauphin (Mr. MacVeagh.) I think the substitute is better than the report of the Committee.

Mr. CORBETT. Mr. Chairman: I move that the committee do now rise.

It was agreed to.

So the committee rose.

IN CONVENTION.

Mr. ARMSTRONG. Mr. President: The committee of the whole has had under consideration the report of the Committee on Legislation, and has directed me to report progress, and ask leave to sit again.

Leave was granted.

Mr. CORBETT. Mr. Chairman: I move that we do now adjourn.

It was agreed to.

The Convention then, at two o'clock and fifty-eight minutes, adjourned.

SIXTY-FIFTH DAY.

THURSDAY, *March 13, 1873.*

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith, in the chair.

Prayer was offered by the Rev. James W. Curry.

The Journal of yesterday was read and approved.

PROHIBITION.

Mr. DUNNING presented a petition from nine hundred citizens of Pittston, Luzerne county, praying for the insertion of a clause in the Constitution prohibiting the manufacture and sale of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. HORTON presented a petition from citizens of Rome, Bradford county, praying for the insertion of a similar provision in the Constitution, which was referred to the Committee on Legislation.

RAILROAD FENCING.

Mr. DE FRANCE presented a petition from citizens of Lycoming county, praying for the insertion in the Constitution of a clause requiring every railroad in the State to be substantially fenced, which was referred to the Committee on Railroads.

FEMALE SUFFRAGE.

Mr. CARTER presented a petition from citizens of Lancaster county, praying that the Constitution be so amended as to secure to women the exercise of the right of suffrage, which was referred to the Committee on Suffrage and Election.

THE SUPREME COURT.

Mr. LILLY offered the following proposition of amendment, which was referred to the Committee on the Judiciary:

"That the Supreme Court shall consist of — judges, learned in the law, who shall be appointed by the Governor, by and with the consent of the Senate; they shall continue in office during good behavior: *Provided*, The said judges shall be retired at the age of seventy-five years, or for mental or physical disability, upon full pay.

"That the State shall be divided into districts, as from time to time shall be necessary, and that a sufficient number of judges, learned in the law, shall be appointed from time to time, as they may be required, to perform the requisite duties; when such appointments are required the Supreme Court shall name to the Governor at least five names of gentlemen learned in the law for each appointment to be made, from which number the Governor shall appoint.

"That all judges, learned in the law, shall hold office during life or good behavior: *Provided*, That all judges shall be retired at the age of seventy-five years, or for disability, upon full pay; no judge of any court of this Commonwealth shall be eligible to any office, either appointed or elective, except in the judiciary, while in commission, nor until after at least two years have elapsed after retiring from the office of judge."

VAGRANTS.

Mr. BROOMALL offered the following proposition of amendment, which was referred to the Committee on the Judiciary:

"That the Legislature shall enact proper laws for the arrest of all vagrants, and the employment of the adults, the compulsory education of the young, and the care and protection of the aged and infirm among them."

LEAVES OF ABSENCE.

Mr. GUTHRIE asked and obtained leave of absence for Mr. Curry for a few days.

Mr. ALRICKS asked and obtained leave of absence for Mr. M'Allister on account of sickness.

Mr. JOHN M. BAILEY asked and obtained leave of absence for Mr. Hall for a few days.

PRINTING ARTICLES.

Mr. LAMBERTON offered the following resolution, which was twice read:

Resolved, That the Committee on Printing be instructed to inquire into the expediency of having printed on the Journal, or in bill form, the several articles of the

Constitution, with amendments in the committee of the whole, and reported to the Convention.

Mr. EWING. I think, if the gentleman will look at his file, he will find that these articles are already printed.

Mr. LAMBERTON. I withdraw the resolution.

SHERIFF SALES.

Mr. LAWRENCE. Mr. Chairman: I hold in my hand a resolution in relation to the publication of legal notices, sheriff sales, &c., which was referred to the Committee on Counties and Boroughs. I move now, that that committee be discharged from the consideration of the resolution, and that it be referred to the Committee on the Judiciary.

The motion was agreed to.

THE ARTICLE UPON EDUCATION.

The PRESIDENT. The next business in order is the second reading and consideration of the article reported by the Committee upon Education. Is it the pleasure of the committee to proceed to the consideration of the article?

["No." "No." "No."]

THE ARTICLE UPON CITY CHARTERS.

The PRESIDENT. The next business in order is the further consideration of the article reported by the Committee on Cities and City Charters. Is it the pleasure of the Convention to proceed to the consideration of the article?

["No." "No." "No."]

THE ARTICLE UPON LEGISLATION.

The PRESIDENT. The next business in order is the further consideration of the article reported by the Committee on Legislature. Is it the pleasure of the Convention to proceed to the further consideration of the article?

["Aye." "Aye." "Aye."]

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, and proceeded to the consideration of the article on Legislation, Mr. Armstrong in the chair.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Philadelphia, (Mr. J. R. Read,) to strike out the ninth section, and insert the following:

"Neither House shall concur in an amendment proposed by the other, nor adopt the report of a committee of con-

ference, except it be by a vote of a majority of the members elected to such House, taken by yeas and nays, and recorded on the Journal thereof.

Mr. EWING. Mr. Chairman; I desire to state that the mover of the amendment is not here this morning. The gentleman did not so tell me, but I understood after the adjournment yesterday, that he intended to withdraw that amendment, and perhaps bring it up on second reading. This was done after some consultation with the Committee on Legislation, and I would suggest that for the present it be voted down. It will probably be offered on second reading, according to an understanding made with the Committee on Legislation.

The amendment was rejected.

The CHAIRMAN. The question recurs on the section, which will be read.

The CLERK read as follows:

SECTION 9. No amendment to bills by one House, returned to the other for concurrence, shall be concurred in except by the vote of a majority of the members elected to the House to which the amendments are so returned, taken by yeas and nays, and the names of those voting for and against recorded upon the Journal thereof; and reports of committees of conference shall be adopted in either House, only by the vote of a majority of the members elected to each House, taken by yeas and nays, and the names of those voting for and against recorded upon the Journal.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 10. No law shall be revived, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length.

The section was agreed to.

The CHAIRMAN. The next section will be read.

Mr. ROSS. Mr. Chairman: I beg to offer the following, to come in at this time as a new section:

SECTION —. The Legislature shall enact no law, the operation, force and effect of which shall be limited or conditioned upon its approval by a majority of the citizens, at a general or special election, or which shall be dependent for its en-

forcement upon the majority vote of the electors of the State, or any of them.

Mr. Chairman, I believe that all the presumptions and *prima facies* are in favor of a report coming from any one of the standing committees. The standing committees are composed of gentlemen who have been selected by the President, and who have given the subject matter before them their due consideration, who have made a specialty of it, and it is presumed, therefore, that their report, under the circumstances, will be better and more reliable than the views of the members who perhaps have not devoted so much time and attention to the subject matter.

But, sir, I have carefully examined the report of this Committee on Legislation, and I do not find that in any of its provisions there is a clause similar to that which is contained in the amendment which I have had the honor to offer. Believing, as I do, that the fundamental law should contain a provision of this character, I have thought it right to offer this amendment to obtain the sentiment of this body in regard to it. The object of this section is simply to impose upon the Legislature, upon the law-making power, a duty which the Constitution necessarily does impose upon them, and a duty which the report of the Committee on Legislation has already imposed upon them. Now, sir, the people are the supreme source of power in this state. The people have delegated the law-making power to the Legislature. They have prescribed three great departments, the Legislative, the Executive and the Judicial, and the powers and duties of each one of these departments are clearly defined; and no one department can trench upon the powers of the other. To the Legislature has been delegated the law making power, and this amendment proposes to compel the Legislature to exercise that power, which the people have delegated to them, and to prevent them from escaping from the exercise of it.

I submit, Mr. Chairman, that when a bill is enacted by the Legislature, when the force and effect of that bill depend upon the vote of the people of any portion of the State, it is no law; it is not an exercise of the law making power, which has been vested in the Legislature; and further, sir, when a bill has been enacted whose enforcement depends upon the vote of the citizens of the State, then I submit that the Legislature have not fulfilled their duties, and have not carried

out the objects and purposes for which they were elected, and are failing to enact laws. Why, sir, it is cowardly upon the part of the Legislature to enact a bill which shall depend for its vitality upon the votes of the people of the State; and it is right and proper that the fundamental law shall impose upon the Legislature the purposes and the duties which they have sworn to assume, and that they should not be permitted to fly from those duties and to throw upon the people of this State the responsibility which they themselves should properly assume. It is a delegation of a delegated power. The people delegate to the Legislature the law making power, and the Legislature have no right to re-delegate that power into the hands of the people to determine whether a law shall become a law or not.

If an act is passed which depends upon the vote of the people, I should like to know when it becomes a law? Not certainly when it leaves the Legislature; not when it passes away from the legislative control; not when it has received the approval of the Governor. It is a dead letter until the people breathe vitality into its inanimate body by the expression of their opinion at the polls. As well might the sculptor point to a block of marble, and say to a person: "There is a statue, you take it and carve out the figure I say it contains," as for the Legislature to enact a law which is dependent upon the vote of the people for its life and for its very existence.

I submit to the committee of the whole, that this is a proper provision to be inserted in our fundamental law; that it does simply nothing more than to compel the law making power to exercise their duties, and to enact and pass laws which shall be complete and perfect laws when they leave the legislative body, and which shall not depend upon the voice of the people in any respect whatever. Why, sir, we are liable to have dangerous and mischievous laws enacted by a process of this character. Public clamor, the voice of fanaticism, the voice of the enthusiast, may call into being a law which the Legislature, if they had acted within their own province, would have failed to have passed. I submit, for these reasons, that this section should be incorporated in the report of this Committee on Legislation.

Mr. SIMPSON. Mr. Chairman: This proposition now before the committee, is very far reaching, and is designed to reach a class of legislation that is now

under consideration in the Supreme Court, having been argued upon at a very recent date. It will prevent the passage of local option laws, giving to the voters of any one locality the right to say whether liquor shall be sold by license or not within their boundaries. It will go further. It will prevent the creation of new counties, dependent upon the vote of either the old county or the portions proposed to be united together to make the new one. It will prevent the change of county seats by a vote of the people, and a variety of questions that naturally and properly belong to the people in a particular locality, who understand their wants far better than the Legislature can do. If this amendment is adopted by the Convention it will prevent all that kind of legislation, and prevent the wants of the people from being satisfied according to their own desires.

I ask the committee of the whole to consider this question in the light of matters now pending, and whether they will engraft it upon the Constitution. The Supreme Court have said that a law that is entirely dependent upon the will of the people is not a law. That is sufficient. It is unnecessary to put any such clause in the Constitution. But if they should pass a law and permit it to be submitted to a vote of the people upon any moral question, or one entirely affecting the people of a particular locality, no such denial ought to be engrafted on the Constitution. I do not think the committee of the whole understood this proposed section when it was read, and that is the reason why I make this explanation, and call their attention to it thus briefly.

Mr. DODD. Mr. Chairman: I had intended, at the proper time, to offer an amendment to the Constitution, exactly the reverse of the one offered by the gentleman from Bucks, (Mr. Ross,) and I intend, if this amendment is voted down, to offer an amendment to the effect that the Legislature shall have power to refer the execution of any law to a vote of all the electors of the State, or to the electors of any portion of the State to be affected thereby. By adopting an amendment of that kind we will not be violating any well known rule of constitutional law. It is true, as has been ably argued here, that the legislative power is a delegated power. It is a well known maxim of law, that a delegated power cannot be re-delegated. But who is principal and who agent in this matter? The power dele-

gated to the Legislature is delegated by the people of the State. Now, while an agent cannot choose another to act for him, and can not place the responsibility of the trust which the people have placed upon his shoulders in any other hands, why cannot the agent refer back to his principal the decision of important questions which affect that principal alone. The Legislature never has, and never proposes to place back in the hands of the people the responsibility of drawing, framing and passing any law. That would be impolitic and unwise. But the Legislature, after it has framed a law, may refer it to the qualified electors of the State, to decide whether that law should take effect or not. I claim that this is wise and just. I claim that it is not only practicable in cases of the erection of new counties; in the removal of county seats; in the creation of election districts, and the hundred other cases in which it has been done in this State; but it is wise in the case of a general law, such as the local option law that is now pending before the Supreme Court. It is clear to my mind that the Supreme Court, in deciding, as it has done in *Pennsylvania*, that such a law is unconstitutional, because it is an attempt on the part of the Legislature to delegate its powers, is incorrect, but such decision renders it necessary for us to put in this Constitution a provision which will bring us back to correct principles on this subject.

I wish to read an extract from an opinion delivered by Ruggles, chief judge in the case of *Barto vs. Himrod*, in eighth *New York Reports*, page 489, which puts this matter on a true basis. He says:

"It is worthy of consideration, however, whether there is anything in the reference of a statute to the people for acceptance or rejection which is inconsistent with the representative system of government. To refer it to the people to frame and agree upon a statute for themselves would be equally impracticable and inconsistent with the representative system. But to take the opinion of the people upon a bill already framed by representatives and submitted to them, is not only practicable, but is in precise accordance with the mode in which the Constitution of the State is adopted, and with the action which is taken in many other cases. The representative in these cases, has fulfilled, precisely, those functions which the people, as a democracy, could not fulfill; and where the case has reach-

ed a stage when the body of the people can act without confusion, the representative has stepped aside to allow their opinion to be expressed. The Legislature is not attempting, in such a case, to delegate its authority to a new agency, but the trustee, vested with a large discretionary authority, is taking the opinion of the principal upon the necessity, policy or propriety of an act which is to govern the principal himself."

Why, sir, if the amendment of the gentleman, as offered, be adopted, we never could call a Convention again as this Convention has been called. The Legislature could not even refer to the people of the State the question whether they should have a Convention to revise their Constitution. All will admit the propriety of such action in such cases. All will admit the propriety of such action in the case of local option laws, and laws of that character, and I am not only opposed to the resolution which the gentleman from Philadelphia has offered here, but I am strongly in favor of a resolution which shall place this controverted question beyond controversy, and give to the Legislature this power which ought to be exercised by them in many cases.

Mr. EWING. Mr. Chairman: I merely wish to state in regard to the action of this committee on this precise subject, that at one time, just the day I believe that our report was made up, the Committee on Legislation agreed to report a section providing for the local option law, making it constitutional, and carrying out the suggestions of the gentleman from Venango (Mr. Dodd.) It was afterwards deemed better under the circumstances, the matter being before the Supreme Court, and for other reasons, that that question should be laid over for a time, with two or three other matters that the committee expect to have before them hereafter. I may say that a majority of the Committee on Legislation were in favor of and did adopt that section, and they expect to have it up and to consider it at some future day.

The CHAIRMAN. The question is upon the section proposed by the gentleman from Bucks (Mr. Ross.)

The section was rejected.

The CHAIRMAN. The next section will be read.

Mr. DODD. Mr. Chairman: I offer the following as a new section, to come in at this place:

"The Legislature shall have power to refer the adoption or rejection of any law

to a vote of the qualified electors of the State, or of that portion of the State to be affected thereby."

Mr. BUCKALEW. Mr. Chairman: My idea is that making this legislative regulation is doing an unnecessary thing. Besides it would invite the Legislature to submit everything of difficulty and dispute to the people of the State, or of divisions of the State, and escape their just and proper responsibility. The submission of questions for popular vote connected with the enactment of law is a power that should be very sparingly exercised, and the placing of such a provision in the Constitution would be to invite its exercise. Therefore, sir, it would be an unwise practice and we should avoid it. For my part I have a general opinion of the power of the Legislature to submit questions for popular decision, and I aver that the courts have not determined that they cannot do that. They have only determined that where the enactment of a law is to be directly determined by the popular vote, that it is inconsistent with the grant of legislative power to the General Assembly. But they have never decided that the Legislature cannot submit any question whatever to the popular vote in order to ascertain the views of the people thereon. When, in a certain way and under certain conditions the Legislature has enacted a law, but made its operation dependent upon popular assent, the law has been held valid.

I hope that in this, and other cases arising upon this article, we may avoid doing anything that does not seem indispensably necessary to reform.

The amendment was rejected.

The CHAIRMAN. The next section will be read.

Mr. BANNAN. Mr. Chairman: I offer the following, to come in as a new section:

"No act of the General Assembly shall take effect until the fourth day of July next after its passage, unless in case of emergency (which emergency shall be expressed in the preamble or body of the act) the General Assembly shall, by a vote of two-thirds of all the members elected to each House, otherwise direct."

Mr. EWING. Mr. Chairman: I move to postpone the consideration of that section or the present.

The CHAIRMAN. That cannot be done in committee of the whole. The committee must vote upon the section.

Mr. BANNAN. Mr. Chairman : I have offered this section, finding that no section of that character had been reported by the Committee on Legislation. In examining the Constitution of Illinois, of 1860, I found that the time fixed for a law to take effect after its passage was three months. They tried that and were dissatisfied with it, and in 1870 they inserted this provision exactly as I have offered it here, with the exception that they specified the first day of July, and I have named the fourth day, because I thought that more proper. The people, if this section be adopted, will become acquainted with the passage of laws, and the time when they will go into effect. It would be known not only to lawyers, but to the people in general. I have had several instances within my own experience where distributions were being made upon decedents' estates when, while the matter was before the auditor, an act was passed in relation to the orphans' court sales, altering the whole law, and before the auditor's report was made the act was again repealed. I recollect several instances of this kind where, before the distribution could be made, the law was changed some two or three times. This, I think, is a difficulty which could be avoided by this section, and I have offered it for that purpose. We should have a general day upon which all our laws should take effect. It is a clause that has been introduced into all the new constitutions recently framed, and I think it is a very serviceable one.

Mr. MANN. Mr. Chairman : In the absence of the chairman of the Committee on Legislation, I submit that we should proceed only to consider the article as reported by that committee. I do not make this suggestion with any desire to prevent the proper discussion of these new sections. There will be ample time after we have gone through with the article, as reported, to put in all the new paragraphs that gentlemen can desire. This one now under consideration, and indeed all of these special subjects, seem to be more appropriate at the end of the article than in the place where they are now sought to be put in. Therefore I ask the gentleman who proposed this pending section to withdraw it, and I appeal to gentlemen to permit the committee of the whole to act upon the article as reported from the Committee on Legislation before offering new paragraphs.

Mr. BANNAN. Mr. Chairman : For

the present, then, I withdraw my amendment.

The CHAIRMAN. The amendment is withdrawn, and the question is upon the next section, which will be read.

The CLERK read as follows :

SECTION 11. The Legislature shall not pass any local or special law—

Authorizing the creation, extension or impairing of liens.

Regulating the affairs of counties, cities, townships, wards, boroughs or school districts.

Changing the names of persons or places.

Changing the venue in civil or criminal cases.

Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys.

Relating to or incorporating ferries or bridges.

Vacating roads, town plats, streets or alleys.

Relating to cemeteries, grave-yards or public grounds.

Authorizing the adoption or legitimizing of children.

Locating or changing county seats, erecting new counties, or changing county lines.

Incorporating cities, towns or villages, or changing their charters.

For the opening and conducting of elections, or fixing or changing the place of voting.

Granting divorces.

Erecting new townships or boroughs, changing township lines or borough limits.

Creating offices, or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts.

Changing the law of descent or succession.

Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals.

Regulating or extending the powers and duties of aldermen, justices of the peace, magistrates or constables.

Regulating the management of common schools, the building of school houses, and the raising of money for that purpose.

Fixing the rate of interest.

Affecting the estates of minors or persons under disability.

Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury.

Exempting property from taxation.

Creating corporations, or amending, renewing or extending the charters thereof.

Granting to any corporation, association or individual any special or exclusive privilege or immunity.

Granting to any corporation, association or individual the right to lay down a railroad track.

Nor shall any bill be passed granting any powers or privileges in any case where the manner, form or authority to grant such powers and privileges shall have been provided for by general law; and in no case where a general law can be made applicable, nor in any other case where the courts have jurisdiction, or are competent to grant the powers or give the relief asked for.

Mr. MANTON. Mr. Chairman: I desire to express my hearty concurrence in this section, as it comes from the committee.

Mr. KAINE. Mr. Chairman: I would suggest that we consider this section by the sub-divisions into which it has been divided by the committee.

The CHAIRMAN. Is that the order of the House? ["Yes, yes!"] The first paragraph is:

SECTION 11. The Legislature shall not pass any local or special law, authorizing the creation, extension or impairing of liens.

Mr. KAINE. Mr. Chairman: The gentleman from Crawford (Mr. Mantor) has undertaken to explain this section. I would therefore ask him what that paragraph means—what evil it proposes to remedy?

Mr. MANTOR. Mr. Chairman: I simply desire to give my views in relation to the section itself—in relation to its subject matter, namely, special legislation. These views shall be brief. I will not trouble the House long.

Mr. Chairman, this section contains so many propositions with relation to restricting special legislation that I feel it my duty to give it my entire sanction. The first paragraph of the section is as follows: Section 11. The Legislature shall not pass any local or special law, authorizing the creation, extension or impairing of liens. The residue of the section, in substance, is as follows, and every sen-

tence should meet with the hearty concurrence of every delegate on this floor. It reads: Regulating the affairs of counties, cities, townships, wards, boroughs or school districts; changing the names of persons or places; changing the venire in civil or criminal cases; authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys; relating to or incorporating ferries or bridges, except for the erection of bridges crossing streams, which form boundaries between this and any other State; vacating roads, town plats, streets or alleys; relating to cemeteries, graveyards or public grounds; authorizing the adoption or legitimatizing of children; locating or changing county seats, erecting new counties or changing county lines; incorporating cities, towns or villages, or changing their charters; for the opening and conducting of elections, or fixing or changing the place of voting; granting divorces, erecting new townships or boroughs; changing township lines or borough limits; creating offices or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts; changing the law of descent or succession.

Now, sir, nothing will strike the people of this State with as much force as this question of barring special legislation, that the people feel more interest in this one subject than any other which this Convention will be called upon to decide. I would therefore say that equal privileges for all, exclusive privileges for none, should be the sentiment of every citizen of this Commonwealth. If we depart from this principle we are at sea without a chart or compass. A general law, granting privileges to incorporate companies, is made for the benefit of the people of the State; the privileges granted thereby may be enjoyed by all the people of every locality in the State. There can be no special monopoly created by pursuing this course. No company can be organized under general laws which can occupy any particular locality or carry on any particular kind of business to the exclusion of all other companies for the same purpose. I am in favor of adopting a principle into our Constitution which will permit all people to combine with the same privileges. I would not give to the Legislature, through this Constitution, power to grant privileges to which all persons are not equally entitled under general law. I would place a

restriction on the legislation in this Commonwealth, and say to it, thus far and no farther, so that if one man points his finger at you, and says, "I have a right and privilege under such a law," you can answer him, "so have I." There would seem to be a kind of general fairness in such a principle as this. But when you permit, through a Constitution, a legislative body to assemble, and allow them—with hardly a restraint—to pass any act they may choose, to incorporate any company, to establish any special charter, you at once tolerate arrogant legislation, and the people will sooner or later see and feel such oppression, and for a thorough contention for their rights may seek a different form of political revolution. I would, therefore, restrict special legislation by placing around it a proper safeguard, like that which this section suggests, and also that all laws of a general nature shall have a uniform operation throughout the State; nor shall any act, except such as relates to public schools, be passed to take effect upon the approval of any other authority than the General Assembly except as otherwise provided in this Constitution.

This last suggestion is one of the provisions incorporated into the Constitution of the State of Ohio, (and some other States,) which have felt the weight of local legislation, but has sought to remedy it by careful safeguards in their Constitutions. Our State legislators, in their anxiety to be heard, have at times overleaped all bounds of propriety and equal fairness, with, perhaps, in some few instances, an honest desire to favor local wants. We can readily understand from whence this evil had its origin. Men rarely refuse power, when they are thoroughly backed by privileges, and if we fail to insert in this Constitution, where the power may rest, and trust to legislation to give it its proper interpretation, we may well dread the results of legislative enactments. At the time our Constitution was revised, some thirty-eight years ago, those men who took part in the work had but a very limited idea as to the future of this State, and I wonder not at the latitude given and entrusted to the Legislature, the confidence that those men had, that privileges granted would not be abused, and the abuses that have grown out of such latitude given is but that warning voice that came up to us this day and says to us to make haste and profit by the experience of the past. We have the Con-

stitution of a State before us which seems to checkmate many of the abuses growing out of local legislation. I refer to the Constitution of the State of Illinois. In her revised Constitution of 1870 we find under article four, and section twenty-two, entitled special legislation, prohibited some twenty or more specific subjects that cannot be bartered and traded away at the mere beck or nod of some unscrupulous lobbyist, who lounges about the State Capital, whose business it is to manipulate the foul work of their masters. If we adopt this section as reported in this Constitution, we shall receive the thanks of the many whose eyes are now upon us. We may rest assured, unless we meet the expectation of the people of this Commonwealth in some way of this kind, that the work we are doing here will be repudiated by them, and with the advantages they have, they will not be slow in making up their minds, and will be prepared to give their solemn verdict against our work.

We have grown rich, it is true, under our legislation, as bad as it has been in many things; we have been, so far as special legislation is concerned, acting like so many independent provinces—seeming to care only for special privileges, and thereby gratified special wants—yet the evil has been, and is growing on us day by day, and we stop right here to view the situation, and are preparing the way to check the evil. Why, sir, when we take into account what we ought to have done by way of encouraging reciprocal business relations between different sections of the State, we can conjecture, and without much forethought either, that the interests of the people have been divided by granting to each and every part of the State any legislation it demanded. We aver that it has been this evil of special legislation that has kept back, and is keeping back, that which is always a necessary requisite to a healthy growth and a prosperous future.

We have not been studying the interests of all the people, but through these special grantings we have been widening the breach that has divided us. Philadelphia, the first city in the State, and second to but one in the Union, is beginning to wake up to a broader idea of commercial wealth. So far as this State is concerned, it has been but a few years that she began to realize that, west of the Alleghenies, in this State, were some possessions enclosed in the Commonwealth, of

which she but formed a part, and where there was large business interests in which she should long since have been a partner.

But, as a Pennsylvanian, I take great pride in speaking of Philadelphia as our city, and can but hope that every law passed, after adopting this Constitution, shall be so broad, so completely affecting all interests on every subject of like character over the State, that it will cement our commercial relations, and that in the future we shall act with a oneness of purpose for the good of all.

In looking over the acts which the Legislature has passed for the past few years, say commencing with 1866 and ending with 1872, we find the following results:

In 1866, general laws passed were 50; special laws were 1,093.

In 1867, general laws passed were 86; special laws were 1,392.

In 1868, general laws passed were 73; special laws were 1,150.

In 1869, general laws passed were 77; special laws were 1,276.

In 1870, general laws passed were 54; special laws were 1,276.

In 1871, general laws passed were 81; special laws were 1,353.

In 1872, general laws passed were 54; special laws were 1,232.

So you see that in seven years there were passed 475 general laws, and 8,755 private acts. The number of acts which the present Legislature of 1873 have passed are many, and, I am told, will duplicate the number of the acts of any one former year. This is undoubtedly correct, and is but another proof of the necessity for this Convention of adopting this section with all its paragraphs complete.

From 1866 to 1871 the legislators passed for railroads, and granted them corporate privileges, some four hundred and fifty special acts bearing on railroads alone. These were, perhaps, not all the laws that were passed in which railroads were not directly or indirectly interested.

But, Mr. Chairman, what a fearful comment is this on the abuses of special legislation. By a restrictive section in this Constitution, the best and largest interests of a free and industrious people like ours, in this State, would be protected. Without it we have not much faith in the ultimate results, for as we are carried forward by the political maelstrom, we shall find that our political rights will be swallowed up by granting special privileges to soulless corporations. Now, sir,

what sort of justice, I ask, can there be that will allow the law-making power in this State to change, at each and every session of the Legislature, some act, because a few favored citizens desire it; this ought not to be tolerated for one moment. Necessary legislation is greatly retarded, the expenses to the Commonwealth are greatly enlarged, the assumption of such rights degrades the dignity of any legislative body, and with all impairs the efficiency of legislation for good to the whole people. Now, should we so frame this Constitution that any law made under it should require a change, why change it so that all may be benefited by the change. If you restrict any by law, restrict all under like circumstances.

It is not democratic to give one man special privileges which are denied to all others, whether it is for the purpose of corporations or for any purpose whatsoever. I deny that privileges granted by the legislative body of this State, giving such large scope for corporations, and with hardly a seeming restraint, is just and equitable. The people all over the State are asking that we shall circumscribe the acts of our legislation by incorporating in this Constitution a section like this, that will make all laws general. I am one of those who believe that nearly all objects for legislation can be equally accomplished under general law. The agriculture and mining wealth of our State is large. Generations are to live after us, who will become more and more interested in those grand developments; and let it not be said of us that we chained their energies. It will not be denied that there is a fevered anxiety about the abuses growing out of special privileges. We should meet this matter at the threshold and grapple it with the strong arm of the Constitution, only looking to the best interests of the present and the necessities of the future.

MR. DARLINGTON. Mr. Chairman: I move to amend the paragraph, by striking out the words "or impairing," and inserting the word "or," after the word "creation," so that the section will read, "authorizing the creation or extension of liens."

I do not know what the committee had in view in placing a provision in the Constitution that the Legislature should not impair liens by special laws. I take it that the Legislature cannot impair liens by any law, either general or special. I have therefore moved to amend the paragraph, so that it shall read that the Legis-

lature shall not pass a law authorizing the creation or extension of liens.

Mr. CORBETT. Mr. Chairman: I cannot say that I am very particular about the word "impairing" in the paragraph. I am not aware that there is any great evil that it is intended to reach; but with reference to the creation of liens I think this paragraph is intended to strike at all local laws creating liens in particular localities. I may take, as an illustration, several instances which have occurred in some of the counties of this State. In the western part of Pennsylvania there is a special law for Venango county; there is another law for Butler county, while there is a different law for Clarion county, which is supplemental to the original act, and they are, each and all, the most complicated pieces of machinery in legislation that can be originated. I think this paragraph is intended to strike at all special laws creating liens for particular localities. It does not, of course, increase the power of the Legislature, by general law, to create liens.

The question being taken, a division was called for, which resulted as follows: Ayes, thirty-nine; noes, forty-two.

So the amendment was not agreed to.

The question recurring on the paragraph, it was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Regulating the affairs of counties, cities, townships, wards, boroughs or school districts."

The question being taken, the paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Changing the names of persons or places."

Mr. DARLINGTON. Mr. Chairman: I would like to know what reason influenced the committee in denying the right of a place to change its name?

The question being taken, the paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Changing the venue in civil or criminal cases."

The question being taken, the paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys."

Mr. WHERRY. Mr. Chairman: I desire to ask the chairman of that committee whether the paragraph has any application to turnpikes.

Mr. EWING. I suppose a turnpike is a road or highway.

Mr. KAINE. Mr. Chairman: I doubt very much the propriety of that portion of the paragraph prohibiting the Legislature from passing any special law laying out a road. So far as the residue of the paragraph is concerned, perhaps it may be proper enough. Now far so as the roads in the counties are concerned, there is no necessity for any legislation upon the subject. That is a matter that belongs, and has for years belonged, to the court of quarter sessions of each county, but where a road is wanted from one county to pass through two or three counties, how are you to attain the object without the assistance of the Legislature? We might want a road in the county of Indiana, passing through the county of Westmoreland, through the county of Fayette, to the Virginia State line. Some of these roads have already been established, and acts of Assembly have been passed for that purpose in years gone by. Now how can the courts of Indiana county, the courts of Westmoreland county, and the courts of Fayette county provide for a matter of that kind? How can the Legislature, by a general law, provide a remedy for this difficulty? Why, the Legislature appoints A., B. and C. by a special act of Assembly to lay out a State road through these three or four counties. I think it would be utterly impracticable. I therefore move to strike out the words "laying out" and "opening."

Mr. CORBETT. Mr. Chairman: I hope the amendment of my friend from Fayette (Mr. Kaine) will not prevail. I apprehend there is, and will be, no difficulty in providing such general laws as will meet the cases that are mentioned. If several counties desire roads through their territories, it will be very easy to frame a general law so as to reach the particular case by the joint action of the several courts, or otherwise. They may be empowered to act jointly or severally, and accomplish the object. If the people desire it, of course their petitions will be heard and will prevail. If the people do

not desire it, the application will be rejected.

Now, Mr. Chairman, this clause is designed to meet the very cases mentioned by the gentleman from Fayette, (Mr. Kaine,) and let me say that in portions of western Pennsylvania I have known of some twelve or fifteen bills having been passed for the laying out of as many State roads. Commissioners have been appointed and have performed their duty, and not in one single instance have those roads ever been opened, and it is a crying evil, producing expense to the several counties, and no benefit to the citizens. Parties get up these petitions in particular localities, present them to the Legislature and have a special act passed for laying out a road for many miles through different counties. The road is laid out, but it is never opened. I do not think, within my knowledge, and I think I know of many of these cases, and of many roads located under special acts, of a single one that has been opened through and through. In some instances they are opened for a short distance, and then allowed to remain. Not only that, but frequently we have contests over these matters. Parties procure an act to be passed; other parties go to the Legislature and get the act repealed; the first parties go back and get it re-enacted. Sometimes acts are passed throwing the matter in the courts, and after the courts have decided it, they go back to the Legislature and get the whole thing set aside. It is a crying evil, and this amendment is intended to meet the very cases alluded to by my friend from Fayette (Mr. Kaine.) The committee believed that general laws can be passed, and through the action of the courts any relief that is necessary to the people in the shape of roads can be obtained, and that was the proper mode, and they the proper tribunals through which to seek to obtain it.

Mr. HANNA. Mr. Chairman: I hope the gentleman from Fayette (Mr. Kaine) will not press his amendment. If this is an evil complained of in the interior, I can safely say it is also a mischief and has been productive of serious result in our great cities. I will only instance one case. A square and a half from this spot is a street called Prune street, which runs only to Fourth street. A few interested individuals on the line of that street were anxious that it should be opened eastward to the Delaware river. Instead of

applying to the councils of the city to have the street opened, knowing their petition in that direction would not be granted, because it would involve the city in an expense of half a million of dollars, the individuals interested applied to the Legislature for an act to open Prune street eastward to the Delaware river, and commanding the chief commissioner of highways, within sixty days after the passage of the act, to open, grade and pave the street. Any gentleman familiar with that locality will remember that the street, if opened, would pass through blocks of dwelling houses, stores and ware-houses, requiring their demolition and ruin to a very large extent, the expense of which would mainly be upon the tax-payers. Fortunately the bill was defeated. To prevent such attempts at special legislation is the object of this section and this clause, and to require that parties who desire to have streets and avenues opened in particular localities shall apply to the proper authorities under a general act of Assembly. Now, why cannot a general law be passed giving the local authorities full jurisdiction in regard to laying out and opening streets, roads and highways. I insist that this is a valuable provision which has been carefully considered by the Committee on Legislation, and is intended to meet the very evils complained of by the gentleman from Clarion, (Mr. Corbett,) and I hope it will be adopted.

Mr. PARSONS. Mr. Chairman: I trust the amendment of the gentleman from Fayette (Mr. Kaine) will not prevail. I remember a case that occurred in my county a few years ago, when, during the last days of the session of the Legislature, an act was passed providing for the laying out of a State road, one mile long, from Williamsport to a certain cemetery in Lycoming county, and providing that three commissioners should be appointed to lay out the road, and if the township did not open it and pay the expense, the cemetery company should open the road. The township refused to make the road. The cemetery company opened it, and brought an action against the township to recover the cost. The township was defeated in the common pleas, and carried the case to the Supreme Court, putting their defence upon the ground that the act was unconstitutional. The Supreme Court decided that the act was constitutional, and the township had to pay the sum of eight hundred dollars for opening the road. Such being the law of Pennsylvania

nia, it seems to me that it is our duty to correct it in the fundamental law.

Mr. KAINE. Mr. Chairman: I will withdraw the amendment. I have been so much impressed by the remarks made by the gentleman from Philadelphia (Mr. Hanna) that I am willing to forego any little inconvenience we might suffer in the country for the benefit of the city of Philadelphia. I am willing to yield, and I do it with the greatest pleasure.

The paragraph was then agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read: "Relating to or incorporating ferries or bridges."

Mr. WHERRY. I simply desire to ask a member of the committee what necessity there is for this clause ten in consideration of clause thirty-eight. Does not thirty-eight, being the whole, include ten, which is only a part?

Mr. LEAR. I desire to offer an amendment, to add, at the end of the paragraph the words, "except for the erection of bridges crossing streams which form boundaries between this and any other State."

The object I have in offering that amendment is to leave open the power to pass acts for the purpose of erecting bridges across streams which form boundaries between Pennsylvania and any adjoining State. Now, sir, it is a fact, that if we pass this provision as it stands it will prohibit us from having any other bridge erected across the Delaware river between the States of Pennsylvania and New Jersey. There is a compact between this State and New Jersey, by which it was agreed, many years ago, that the Delaware should always be a highway, and should not be obstructed by bridges or otherwise, except by an act concurred in by the Legislatures of the two States. It must be special legislation, or the power cannot be given. And when we are providing for some special evils which we have, it is well enough to be careful that we do not run to the other extreme. We ought not to tie our hands so that the river Delaware should not be bridged in any place for the convenience of commerce and travel, whether for a wagon road or railroad, whenever the convenience or necessities of the people require a bridge to cross it. I have no objection to this paragraph, so far as it relates to the incorporation of bridges and ferries, that there should be no special law relating to the incorporation of these compa-

nies, and I desire to add the amendment which I propose: "Except for bridges to be erected crossing any stream which forms the boundary between this and any other State," in order that we may meet this difficulty, growing out of a compact between the people of Pennsylvania and the people of New Jersey. There may also be other States with which such compacts have been made. The Delaware river, where it divides Pennsylvania from New Jersey, is directly in the line between the east and the west, and with railroads that may be created by general or special laws—national roads or any other—bridges may be required over this navigable stream, which could not, according to this compact entered into between these two States, be erected except by the concurrent action of the Legislatures of Pennsylvania and New Jersey. Therefore I ask that this amendment may be added, or else that the first words, "relating to," be stricken out.

Mr. JOHN R. READ. Mr. Chairman: I have spoken to a few of the members of the committee, and those with whom I have spoken agree that this amendment is proper.

Mr. TEMPLE. Mr. Chairman: I do not think the gentleman is right in speaking for the committee.

Mr. JOHN R. READ. I have surely the right to say what those gentlemen told me.

Mr. ANDREW REED. Mr. Chairman: I trust the Convention will adopt this paragraph. The gentleman from Cumberland desires to know whether this should be adopted in connection with paragraph thirty-eight. We have an instance in the county which I have the honor to represent which will show the propriety of the present paragraph. Section thirty-eight refers to "creating a corporation, or amending, renewing or extending their charters," while this section reads, "relating to or incorporating ferries or bridges."

There was an act passed for Mifflin county some three years ago by the Legislature, requiring the commissioners of Mifflin county to build a bridge in a certain place in that county; and another section requiring them to buy an incorporated bridge. Now, that act was opposed by nine-tenths of the tax-paying and voting people in that county; yet it was passed through the Legislature by the influence of two or three interested parties. A bridge had been endeavored to be procured through a general law which exists on

the statute books, and the constituted authorities of our county, the grand jury and courts, declared that it was unnecessary, that the public did not require it to be done; and yet, in spite of that, the county commissioners have been compelled by the mandate of the Supreme Court of this State to go on building that bridge, although it would have been better for the county to have bought out, at a fair valuation, the land and everything else intended to be affected thereby.

This section will prevent the happening of such a case, because, under it there can be no special law passed in relation to bridges. There is no necessity for incorporating a bridge company to get a bridge built. There was no incorporation of a company in the act that I have just mentioned; it only required the county commissioners to build it. That is the difference between these two paragraphs. The repeal of the act mentioned is now, and has been, pending in the Legislature, and it is with the greatest difficulty it can be effected. I do not think that there is any other provision that would be more beneficial to the interests of the State than this.

Mr. BEEBE. Mr. Chairman: I hope this paragraph and this section will be adopted. Among those things which it is expected are to assist in destroying this great Commonwealth is special legislation, and the *ipse dixit* has gone forth that it shall be hereafter wiped out. That subject is very fully handled in this section. Let us, therefore, put it through at a "two-forty" pace, word for word, and line for line, and if anything is needed to make it complete, let us add it quickly and cheerfully.

I found, upon calling at Harrisburg last week, the full number of private and special bills on the calendar, and was privately and confidentially informed by members of the Legislature that they were almost daily requested by members of this Convention to hasten the passage of the private bills in which they or their constituents were interested—although they did not desire to have that fact stated, and I therefore state it confidentially, that the high moral prestige of this body may be maintained. [Laughter.] I learned sir, that the general feeling among the representatives of the people there is that all special bills must be quickly disposed of, for where a constituency is interested in a special bill they are urging it as usual, and it is hoped by the advo-

cates of these bills there that by a special effort, and by the grace of this Convention, sufficient time will elapse before the adoption of this Constitution, to enable these little "williams" to go safely through and be duly signed, and conveyed back to the people in accordance with their request.

I am free to confess here, sir, that having been the author of a great deal of special legislation in Venango county, and accused of the authorship of all of it, and having had a special bill before the Legislature very recently, I was careful to anticipate the storm that I saw coming by getting our own little "william" put through, and at the same time intimating to my constituents that they could hold me responsible for no more. It counts nothing now that it was a measure of great importance to the borough in which I lived, and was called for by the unanimous vote of all the tax-payers. It was a bill to enable a much-needed Union school house to be built in Pleasantville, and without which, though already partially built, the structure could not have been completed, and there was no general law authorizing the issue of any bonds for more than one-third of the amount required, or the collection of any taxes more therefor. But while that is all true, the great evil to be corrected in this Commonwealth is special legislation, and we must wipe it out. I trust, therefore, that all factious opposition will be withdrawn, and that this will be put through, word for word, and line for line, and that we will not hesitate to do, and do quickly, as much more as may be necessary to cure this crying evil and to save the Commonwealth.

Seriously, Mr. Chairman, I admit that special legislation has grown to be a great evil by its abuse; but that the interests of many sections of this Commonwealth have been greatly benefited by it heretofore I do most assuredly believe, and that it could still be so used I am equally clear, were it not for its abuse. And much inconvenience will be experienced in time to come, until general laws can be well matured to cover the necessary ground, and the people will certainly feel it.

Mr. MINOR. Mr. Chairman: I would like to say to the committee that this matter was once very forcibly brought to my attention in connection with some property of my own. I was called away for about two months, and when I came back I found there a bridge and a ferry,

the bridge erected and the ferry established, and families living there and doing a thriving business, all on my land. I asked the person in charge how all that came about, and he coolly replied, "I have got a charter from the Legislature." There was my property tied up, without the slightest notice to me, and without redress."

Mr. MANN. Mr. Chairman: I cannot see the propriety of a paragraph requiring anything to be done with regard to "incorporating a bridge." I think we had better make that word "bridge company."

Mr. D. N. WHITE. Mr. Chairman: I move to add, "or to incorporate any bridge company in this State," so that it will read, "relating to ferries and bridges," or, "incorporated ferry and bridge companies within this State."

The amendment was agreed to.

The CHAIRMAN. The question recurs on the amendment as amended by the gentleman from Allegheny (Mr. D. N. White.)

Mr. D. N. WHITE. Mr. Chairman: I think that the amendment itself is rendered unnecessary by the adoption of my amendment, which puts in the words, "within this State."

Mr. STRUTHERS. Mr. Chairman: I think we ought to have the amendment of the gentleman from Bucks (Mr. Lear) incorporated in that paragraph. It may be that New Jersey would be willing, under the compact existing between that State and this, to pass a law with relation to bridges crossing the Delaware river, and that they would say in that law that it shall take effect when similar legislation shall be passed by the State of Pennsylvania. Without this amendment, if you adopt this clause, that legislation by Pennsylvania to correspond with the legislation in New Jersey, could not be had.

Mr. COCHRAN. Mr. Chairman: I understand the amendment offered by the gentleman from Allegheny, (Mr. D. N. White,) which contains the words "within this State," to be intended to meet the objection with regard to this provision interfering with the building of bridges across the Delaware river between the States of New Jersey and Pennsylvania. I understood the idea to be to so limit this paragraph as not to prevent the Legislature from authorizing the building of bridges in common across the Delaware or any other stream which is the common boundary between this and any other

State. If it has that effect the amendment of the gentleman from Bucks is entirely proper.

The CHAIRMAN. The Clerk will read the paragraph, as it will be, as amended by the gentleman from Allegheny, (Mr. D. N. White.)

The CLERK read: "Relating to or incorporating ferries and bridges, or incorporating ferry and bridge companies, wholly within this State."

The CHAIRMAN. Does the gentleman from Bucks accept this as embracing the intention of his amendment?

Mr. LEAR. Yes, sir.

The CHAIRMAN. Then your amendment may be considered withdrawn.

Mr. LEAR. Yes, sir.

The CHAIRMAN. Then the question recurs on the paragraph as amended.

Mr. WHERRY. I move to amend, by adding after the word "to," in the first line, the words "turnpikes or turnpike companies."

The amendment was not agreed to.

Mr. BUCKALEW. Mr. Chairman: It seems to me that this paragraph as it now stands will not accomplish the object in view. It speaks of "bridge companies wholly within this State," and I understand the object is to have this apply to a bridge or bridges over the Delaware river. As drawn it seems to me to apply only to bridge companies. A company may be wholly within this State, and yet be authorized to construct a bridge over in New Jersey.

Mr. CORBETT. Mr. Chairman: Did I understand that the amendment of the gentleman from Cumberland (Mr. Wherry) was adopted?

The CHAIRMAN. It has not been adopted.

Mr. CORBETT. All right. I think, sir, it would be better for us to strike out the words "wholly within this State," and adopt the amendment offered by the gentleman from Bucks, a few minutes ago. I say this because I think there is great force in what the gentleman from Columbia (Mr. Buckalew) has said.

The CHAIRMAN. The words referred to cannot now be stricken out without a reconsideration.

Mr. CORBETT. Then, sir, I move to reconsider the vote upon that amendment.

The motion was agreed to.

The CHAIRMAN. The question now recurs on the amendment.

Mr. CORBETT. I move to strike out the words "wholly within the State," and in-

sert the words offered as an amendment by the gentleman from Bucks (Mr. Lear.)

The CHAIRMAN. The Clerk will read the amendment to the amendment.

The CLERK read: "Except for bridges crossing streams which form boundaries between this and any other State."

Mr. LEAR. Mr. Chairman: Were not the words "for the erection of" in there?

The CHAIRMAN. They were stricken out.

Mr. LEAR. They were in my amendment as offered by me.

The CHAIRMAN. They will be restored.

Mr. LEAR. They formed a portion of my amendment. I do not want to prohibit the restriction of special legislation; that they shall not be incorporated. What I want to provide against is not that we shall have corporations of this kind by a general law, but that the Legislature shall have power when, by this general law, a private corporation is erected to authorize the erection of the bridge; to add that additional power to a corporation created by general law; and that the Legislature shall still have power simply to authorize the erection. That expression was used by me for two reasons.

Mr. MOTT. Mr. Chairman: I am in favor of the paragraph which has been reported by the committee if it affords some protection against the legislation that has already occurred in the State in relation to bridges. I know that in one county railroad companies have bridges which span the waters of the Delaware without the first particle of redress on the part of the lumbering interests of the valley of the Delaware in the event that they obstruct the navigation, and in spite of all I have said and done they were passed over my head, as a representative. I do protest that there should not be an exception made in favor of railroad companies as against any and every other company. Let them take their chance, and let them go to the courts, and then we shall feel that we have some protection against the obstruction of the navigable waters of the Delaware.

The question being taken a division was called, which resulted: Ayes, forty-three; nays, thirty-nine.

So the amendment was agreed to.

The paragraph, as amended, was then agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Vacating roads, town-plats, streets or alleys."

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Relating to cemeteries, grave yards or public grounds."

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Authorizing the adoption or legitimating of children."

The question being taken, the paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Locating or changing county seats, erecting new counties, or changing county lines."

Mr. DUNNING. Mr. Chairman: I move to strike out the entire paragraph. In making this motion I desire to say that I am in favor of general laws, or rather in favor of restricting future legislation, as far as practicable, to general laws and the action of courts; but, sir, let us not, in our zeal to do away with special legislation and to invest the courts with authority, forget that it is possible that questions may arise where the same fairness could not be obtained under general laws, or from the courts, that you might have a right to expect from legislative enactments. Now I can well believe that the large majority of the people of the Commonwealth are opposed to the division of counties.

Members of this Convention will doubtless recollect that about sixteen years ago the Constitution of our State was so amended as to amount to an absolute prohibition, or nearly so, of any division of counties in this Commonwealth, and since that amendment, notwithstanding efforts have been made in the Legislature to procure the division of a county or two, and, in one instance, presenting a case of great merit, the provisions of that amendment adopted in 1857 were of such a character as to defeat a most worthy object. Now, sir, notwithstanding that provision still remains as a provision in the Constitution, it now contemplated to place it beyond possibility for any county to be divided in this Commonwealth. It provides also that no legislation shall take

place that can, in any manner, affect the removal of the county seat.

Now, any gentleman will see at a glance that it would be impossible to fix any general law that would cover the interests of all the counties in this Commonwealth in this respect. Will it be supposed that if this authority is vested in the courts of any single county in this Commonwealth, no matter what may be the interests of the case, that the courts would agree either to a removal of a county seat or to a division of the county? That, sir, would be unlike the history of any transaction in connection with these two propositions with which any of us are acquainted. Why, sir, suppose for a moment the instance of a county seat established sixty or seventy years ago, and established, too, in that quarter of a county best calculated at that time to subserve the interests of the people of that county, and since that time developments of its mineral and other resources have occurred in different and in remote parts of the county which have concentrated the business interests in an entirely different section of the county. In such a case as this shall it be said that the county seat shall remain where it was established originally, and in a spot where you hear neither the sound of a hammer, nor the voice of a stranger, except when the courts are in session? Or shall the Legislature have power to make such necessary change when it is patent that the courts will not do it?

I speak, however, Mr. Chairman, more particularly in regard to the division of counties, which is proposed to be cut off in this paragraph. I have distinctly in view my own county, which contains one thousand four hundred square miles, with a population of one hundred and sixty thousand, and for the last thirty years the question of the division of the county has been agitated, and I am satisfied the interests of the county demand that it should be divided. Why, sir, in the county of Luzerne we have three courts, two mayors' courts and a court in Wilkesbarre, with an assistant law judge and the entire year, and yet it is an utter impossibility for the business to be transacted in those courts, and hence there is a discrimination made against that county which could not be made applicable to any other county in the Commonwealth, and I think that no general law could be enacted for the benefit of the county of Luzerne, while the majority of the counties represented in the Legislature conceived themselves to

be all nicely fixed without division. The great majority of the members of that body know that the people of the particular counties which they represent are opposed to the division of their own counties, and hence would not enact a general law favorable to any division, for fear of affecting counties where division is not a necessity.

Therefore, Mr. Chairman, that injustice may not be done to my own, or any other county, I trust this paragraph will be voted down.

Mr. HAZZARD. Mr. Chairman: I hope I may be able to secure the attention of the committee for a few moments, while I express my views upon this subject. I know that I am talking to a Convention composed largely of lawyers, who, for the most part, are comfortably located in their homes, at the county seats of their respective counties, and that there may be a determination upon their parts that there shall be no division of the counties in which they reside. I feel the responsibility of addressing the committee, knowing that I may be in the minority with regard to this matter of counties; but I have a word to say in behalf of my constituents, and while I may know that there is among some a desire that there shall be no division of counties, I flatter myself that at the same time they are gentlemen of great integrity, and that they will recognize the rights of the minority, that I, perhaps, represent, and they will be able to rise far above all selfish considerations when we come to vote upon this paragraph of this section.

It is better for the State that our counties be divided. I have thought more upon this subject than upon any subject I expect to address this committee upon during its session, and I make this assertion, that it is better for the State, and it is better for the individual that there be small counties. This will strike many a mind as perhaps not true, but allow me to bring some facts to the attention of the committee.

If you will take the Auditor General's report you will find that in all the small counties the taxes that are due to the State have been paid in more promptly than from the larger and more unwieldy counties. I have examined that subject, and I know it to be true. It is better, because they collect the taxes quicker and easier. It brings the tax collector nearer to each individual in the county. It is better for the individual in a hun-

dred ways, and some of those ways I will now state to the committee.

Before I go any further I will state that it seems to me that this word "locate" in this section will not allow the State to look for one moment into the place where it is supposed a new county would be located. They shall not even turn their eyes toward it. They shall not look at it at all. They may close their eyes and "go it blind." I say there must be some way worked out by which a new county may be erected, but they must not look at it; it must not be located.

Mr. HANNA. This section reads "locating or changing county seats." It is not "locating counties."

Mr. HAZZARD. The paragraph reads, "erect new counties or changing county lines." It does say "locate." Now are we ready to say that in all time to come, for the next fifty years—for I hope we shall make a Constitution that will last that long—are we willing to say that during all that time there shall be no machinery by which a new county may be erected? I hope that such an injustice will not be perpetrated by the intelligent gentlemen who compose this committee. I said it was good for the State that counties should be small; it is certainly better for individuals. In what way?

It costs less in every respect. It costs less for commissioners. You start a commissioner out to build a bridge. He is paid a *per diem*. In our county he may be fifty miles away from a bridge, and it must take him one day to go. Then it takes one day to contract with a bridge contractor, and he must return on the third day, costing nine dollars. If our county were divided, as which it ought to be—if I had my way I would make four counties out of it—the business could be done, and the commissioner could return the same day, and the cost would be but three dollars.

It would be cheaper in every way. If I am sold out by the sheriff it would not cost me so much to bring the sheriff to sell and cross me out. It would cost me less if I went to prove a will. As it is, I must get out my carriage and horses and trot the witnesses to the county seat, twenty miles. When I reach my place of destination my horses are so tired I cannot come back the same day. If it were not more than ten miles to the county seat, as it ought not to be in any county of the State, I could wait until after dinner and get my witnesses in, and go to the county

seat, prove the will, and come back again without any cost.

It costs less to collect taxes in a small county. In our county, I want to say, that there are twenty-five or more places where our county treasurer goes to collect taxes, and he must be at great cost, and must be paid a large salary in percentage out of what he collects, to go around to these twenty or thirty places to collect taxes. If it were a smaller county we could go to the county seat after dinner, and pay our taxes, and save the expense and percentage of the county treasurer traveling around. If you want to record a deed or to search a record, you must get on your horse early in the morning, by daylight, and trot off, as we have to do in our county, as far as thirty-six miles, in order to reach the records, or you must leave it to an attorney at great expense. If you wish to transact any business in the office, you must travel thirty miles across our county to do it. It is better for the individual in any light that you may please to look at it, and yet you propose to put into the Constitution that it will be impossible to render this aid to or bestow these benefits upon the people who live in remote corners of large counties. Let the population be as it may; let the necessities be as they may; let large communities gather, as they are gathering at this time, as my friend from Fayette (Mr. Kaine) knows, along the river which bounds our county upon the east, no change can be made. There is a population pouring into that valley that is now engaged in the mining business, that will create large communities, that will be denied the privilege of trying their cases in courts only after long delays. I think there are something like fourteen hundred cases upon our docket. It will cost no more; it will cost less. It will cost the individual less to carry on his business so far from the county seat.

Mr. M'CLEAN. I would suggest to the gentleman that the proposition before the committee is not to prevent the erection of new counties.

Mr. HAZZARD. It amounts to that.

Mr. M'CLEAN. It is to prevent special legislation with regard to the location of new counties.

Mr. HAZZARD. It proposes that they "shall not be located." How are you going to erect new counties without locating them?

I hope, sir, that however strong a prejudice may be in this committee against

tearing down old lines, and I know that we adhere to this old line with great tenacity, that whatever antipathy there may be to the enactment of anything of this sort, that it will give way before the majority of the right of the minority in this committee, and that this provision will be stricken out. You cannot fix a law appointing a commission to decide these matters as you can to locate a bridge. It will be unwieldy.

I hope, therefore, this one thing will be left to the Legislature, and that they will not be crippled in this paramount and great interest of very many of our citizens in this State.

M. H. G. SMITH. Mr. Chairman: The changes which have been made in this State from time to time in the formation of the counties have led to disputes in different localities, and to corruption in the Legislature. In order to prevent the abuses which had crept into the practice of the Commonwealth, an amendment was made to the existing Constitution providing "that no county shall be divided by a line cutting off over one-tenth of its population, either to form a new county or otherwise, without the express consent of such county by a vote of the electors thereof; nor shall new counties be established containing less than four hundred square miles." That amendment would seem to be calculated to prevent abuses, and yet, sir, at this very time, in the Legislature of this Commonwealth, a bill is pending which undertakes to evade all the limitations of this clause in the Constitution. A gentleman in this Commonwealth, who has been a distinguished member of the lobby, and who happens to be the owner of a watering place along the line of the Northern Central railroad, in the county of Bradford, desires, for his own personal convenience, and for the convenience of certain of his friends, to make his watering place hotel the centre of a new county. In order to do this he presents to the Legislature of Pennsylvania a bill, carefully prepared. He does not undertake to subtract from any county one-tenth of its population, because if he did that, the people would defeat his project, but he avoids that difficulty by taking portions of four surrounding counties, Bradford, Lycoming, Tioga and Sullivan, containing less than one-tenth of the population of each. Sullivan county is small, containing but a fraction over four hundred square miles. The bill now before the Legislature provides for the

subtraction of a large township from that county. Should it pass the Legislature, and there is nothing in the Constitution to prevent its passage, the little county of Sullivan will be reduced below the constitutional limitation.

For the purpose of preventing abuses of this kind, and avoiding violations of the Constitution by cunning contrivances, such as I have described, the restriction embraced in the pending paragraph has been proposed, and from the fact that a bill is now pending at Harrisburg which is designed to evade both clauses of the existing constitutional provision to which I have referred, the necessity of this amendment ought to be apparent to every member of this Convention. No special act of the kind to which I here referred ought to be passed. But it will be perfectly competent for the Legislature of this State to provide for such contingencies as may arise in the formation of new counties, the change of county seats, &c., by a general law. Whatever is good for the whole Commonwealth, will no doubt be promptly done by the Legislature. While we are amending the Constitution, let us get rid of the evils I have endeavored to point out, among others.

Mr. HAZZARD. Mr. Chairman: Can the Legislature, under this act, pass any general law regulating such a question at all? Let me read: "Locating or changing county seats." It is not a special law for one county, which I admit will be a special act, but this says "there shall be no act passed by the Legislature, locating or changing county seats, or erecting new counties." A general law is disregarded, and we can never have a new county while the Constitution lasts.

Mr. H. G. SMITH. Mr. Chairman: I would reply to the gentleman from Washington that each clause of this section is preceded by a common commencement, which would make the paragraph read as follows: "The Legislature shall not pass any local or special law locating or changing county seats, erecting new counties or changing county lines." A proper general law, providing for the formation of new counties and the locating of county seats, can be passed at the first session of the General Assembly after this Convention adjourns, if its work is accepted by the people; and a general provision can be made which will meet every proper case that may arise, whether it be locating or changing county seats, erecting new counties or changing county lines; and in pas-

sing this section as it is reported from the committee we do but what we ought to do—provide that in this, as in other things, the Legislature shall act by general laws and not by special laws, enacting iniquities such as are proposed by the bill which is under consideration at Harrisburg this day.

Mr. HAZZARD. Mr. Chairman: I move that the further consideration of this section be postponed.

The CHAIRMAN. The gentleman cannot move to postpone in committee of the whole. The committee may dispose of it by voting it down.

Mr. BUCKALEW. Mr. Chairman: I was anticipated in my remarks somewhat by the member from Washington, (Mr. Hazard,) who stated that this whole subject belonged properly to another part of the Constitution. We have in the Constitution at present a provision, which was drawn by me many years ago and adopted by the people of the State, which provides that no county shall be erected containing less than four hundred square miles of territory; nor shall any county be divided by a line which shall cut off over one-tenth of the population, without the express assent of the people by a popular vote. Now, sir, if you desire additional limitations in the erection of new counties, that clause will be the place to put them, and this other subject of changing county lines and the subject of the removal of county seats all belong to the same place. They constitute together one general subject, and ought to be disposed of in that part of the Constitution relating to counties and townships and their organization. Here the subject is interjected in the midst of this legislative article. It is evidently out of place.

Now, sir, I am strongly against the undue increase of counties. The amendment of 1857 has, no doubt, prevented the erection of twenty or thirty new counties in this Commonwealth, and if there is a limitation necessary as to county seats, or county lines, let us add it at the proper time and place.

What is this section? It is, practically, to destroy utterly the whole power in the Legislature, of authorizing the removal of county seats, and making new counties. I will undertake to say that a general law on this subject is impracticable. You will have to lodge your power to make the new county somewhere under the general law. Is the Legislature to lodge it in itself by a general statute? That

would be absurd. The only end that we should aim at is the imposition of some wholesome limitation upon this legislative power, and not to render the Legislature powerless to act upon this subject.

Mr. CORBETT. Mr. Chairman: I hope the limitation which is contained in this paragraph will pass the committee. We know very well that there are squabbles in the Legislature every year about new counties, and about changing county seats. Some members have wholly mistaken the effect of this clause if adopted. It merely prevents special legislation upon this subject. If nothing else is done by the Committee on Counties, &c., as to the formation of new counties, the Legislature would have power, by general law, to prescribe how they should be erected, and how county seats should be changed. I do not apprehend that this is liable to the objection raised by the gentleman from Columbia, (Mr. Buckalew,) that it did not belong to the Committee on Legislation. It certainly did come legitimately within the scope of their power. We have not undertaken to regulate how new counties shall be formed. We have not undertaken to prescribe, by any provision, any mode by which they shall be created. That belongs to the Committee on Counties, and when that committee comes to report, they may report some mode by which this end can be obtained. It is their duty to do it. If they do not do it, it will be left to the Legislature to prescribe by general law.

I hope that this provision will pass, and I apprehend in the case of large counties, where they ought properly to be divided, instead of the limitation operating in such a manner as to prevent division, it will finally aid such division. The Legislature will be compelled, by some general law, to prescribe how new counties may be created, either submitting it to a vote of the citizens or otherwise. The Constitution of Illinois provides that new counties shall be formed by a vote of the people.

Mr. DUNNING. I withdraw my amendment.

The CHAIRMAN. The question recurs upon the paragraph.

Mr. MANN. Mr. Chairman: With all due deference to the gentleman from Columbia, (Mr. Buckalew,) whose views I generally subscribe to, I submit that this paragraph is a proper one in this section, which is treating upon the particular matters of legislation, and is defining the

subjects which the Legislature shall not pass upon by local or special law, and I respectfully suggest to the members of the committee that it, in no manner, interferes with their proper prerogative. It does not undertake to say how many square miles of territory a county shall consist of, or how many people it shall contain, nor anything relating to it. It simply prohibits the Legislature from passing upon questions of that character by a local or special law, just as it does upon all the other questions. I submit to the committee that all these restrictions upon local legislation should be in one article, where the members of the Convention, running down the article, can see this set forth in this article, and not scattered through the Constitution in various articles and sections.

It was for that purpose that the Committee on Legislation went over all the subjects which they thought ought not to be legislated upon by special law. It does not touch the question which properly belongs to the Committee on Counties, in any way. In addition to what the gentleman from Lancaster (Mr. H. G. Smith) said upon this paragraph, I have just this to add, that upon every occasion where the question of changing the county seat, and changing the county line, or erecting a new county, comes before the Legislature, there is more corruption connected with it than with any other one thing that ever comes before it, and if you want to purify the Legislature of Pennsylvania this paragraph ought to be adopted. It does not interfere with the duties of any committee, any more than any other paragraph. It simply proposes to prevent the corrupt influences in the Legislature that are always connected with special legislation upon this question. I submit, Mr. Chairman, that a general bill may readily be passed that will cover all the cases that will ever arise in the Commonwealth, and in the passage of that bill there will be no corruption whatever. It will be passed upon general principles. I challenge any delegate in this Convention to name any general bill in this Commonwealth that was ever passed by corrupt influences. I never knew one. I do not believe one has ever been passed, and there will be no corruption connected with a general bill upon this subject, but upon any special or local bill there will be corruption. I hope, therefore, the paragraph will be adopted.

Mr. W. H. SMITH. Mr. Chairman: I

hope this paragraph will pass, and I hope that we shall see no more postponements of any section of an article that may be presented for the consideration of the Convention. I regret exceedingly that so many postponements of the consideration of questions before the Convention have been made. It has only been a few days since the report of the committee on the Legislature was postponed to await a report from another committee, upon the subject then under consideration. I therefore hope that these continual postponements will not be made hereafter.

The question being taken, the paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Incorporating cities, towns or villages, or changing their charters."

Mr. D. N. WHITE. Mr. Chairman: move to amend the paragraph, by striking out the words "towns or villages," and inserting the word "boroughs."

The amendment was not agreed to.

The question being taken, the paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"For the opening and conducting of elections, or fixing or changing the place of voting."

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Granting divorces."

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Erecting new townships or boroughs, changing township lines, or borough limits."

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Creating offices, or prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts."

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Changing the law of descent or succession."

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Regulating the practice, or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other tribunals."

Mr. HAY. Mr. Chairman: I offer the following amendment, to come in at the end of the paragraph: "Or providing or changing methods for the collection of debts, or the enforcing of judgments."

Mr. EWING. Mr. Chairman: I wish to say that the members of the committee have no objection whatever to the amendment, but I think it should be placed in a better form. I feel satisfied that the section as reported does not cover the ground intended by this amendment; it was not in contemplation. I offer to amend the amendment, however, by adding the words, "or changing the effect of judicial sales of real estate."

Mr. HAY. Mr. Chairman: I desire to request my colleague from Allegheny, the mover of this amendment, to permit my amendment to be voted on before any action is taken upon the amendment which he has offered, which may require discussion.

The CHAIRMAN. That cannot be done unless the amendment to the amendment is withdrawn.

Mr. EWING. Mr. Chairman: I withdraw the amendment to the amendment. The amendment was agreed to.

Mr. EWING. Mr. Chairman: I now renew the amendment to the amendment, by adding at the end of the paragraph the words, "or changing the effect of judicial sales of real estate."

Mr. CORBETT. Mr. Chairman: I would like to ask the gentleman from Allegheny (Mr. Ewing) how he could change the effect of a judicial sale. If a sale has been made, how is it possible to change its effect after it has been made? I must confess that I do not understand the amendment.

Mr. EWING. Mr. Chairman: What I mean is precisely this: I do not propose nor suppose that any court or any person would think that a law passed after a sale has been made would affect it; what I intend to cover is this which is an abuse. There has probably not been a session of the Legislature in the past ten years in which some special law has not been

passed for some county, determining the effect of judicial sales of real estate. An orphans' court sale in some counties will divest all liens, and in other counties it will not divest mortgages which are first liens. In one county an orphans' court sale for payment of debts of a decedent will divest all liens, and in other counties it will not. I am familiar with cases myself in which parties have gotten up a petition for an orphans' court sale and presented it, and had an order of sale made, and afterwards it turned out that a few days before the order of sale was made the Legislature had passed a law changing the effect of that sale.

Mr. CORBETT. After the sale was made?

Mr. EWING. No, not after the sale was made; but I submit that we do not want a special law applying to one particular county that is not general all over the State.

Mr. CORBETT. I now understand the object of the gentleman's amendment, and I certainly shall vote in favor of it; but I suggest that it would be more proper to frame a section incorporating this idea and to offer it separately.

The amendment was agreed to.

The question being taken, the paragraph as amended was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Regulating or extending the powers and duties of aldermen, justices of the peace, magistrates or constables."

Mr. HAZZARD. Mr. Chairman: I desire to offer an amendment to this paragraph, but before I do so I should like to understand the exact meaning of the paragraph. I took occasion to write, last year, to various portions of the State in regard to the jurisdiction of justices of the peace. I know very well that they are a class of our communities very much underrated by some people, but the general tenor of the information I received was in favor of enlarging the jurisdiction of justices of the peace to \$300. I am in favor of a law extending the jurisdiction of justices of the peace to \$300, and there is no reason why it should not be, because \$100 in 1810 was just about equal to \$300 now. I desire, however, to amend the paragraph, by adding after the word "constables," the words, "of any single county."

Mr. JOHN R. READ. Mr. Chairman: I think if the gentleman will read the first paragraph in connection with the para-

graph now before the committee, the difficulty which exists only in his imagination will entirely vanish. I think I can answer the gentleman's objection by illustrating one of the evils which this paragraph is intended to correct. Some time in the year 1869, I think, there was an act of Assembly passed, by which the prothonotary of Schuylkill county was authorized to commence suits before the justices of the peace of that county for costs against plaintiffs and defendants in suits that had been instituted in the courts of that county during his prothonotary's term of office. By that act of Assembly, jurisdiction was conferred upon justices of the peace of Schuylkill county to issue writs to any part of this Commonwealth, and by the same act the constables of that county were authorized to send these writs to such persons as they might select in the county of Philadelphia, or any other county in this Commonwealth, who had the power to serve writs of summons. The rules of evidence were also changed by that act of Assembly, so that the books of the prothonotary were made *prima facie* evidence of the costs that had been incurred by the plaintiffs, or that were chargeable to the defendants in these suits. Under that act of Assembly some three or four hundred suits were brought, during a period of less than six months, before the justices of the peace of Schuylkill county, for the sum of one dollar, to which was added ten or eleven dollars mileage. Those writs were sent down to Philadelphia and served upon some three or four hundred different persons, who had in years gone by instituted suits in the county of Schuylkill, and judgments were obtained against them for the sum of one dollar, and eleven or twelve dollars costs, without an opportunity being given to these parties to appear in that county; and it is the purpose of the committee in offering this section to provide for just such cases as these, and to prevent such special and local legislation from being enacted in the future. I do not think the question of the jurisdiction of aldermen or justices of the peace has anything at all to do with the paragraph now before the committee, and I trust the committee will not so consider it.

The amendment was not agreed to.

Mr. DARLINGTON. Mr. Chairman: I move to amend the paragraph, by adding after the word "regulating," the words "the fees."

Mr. EWING. Mr. Chairman: If the gen-

tleman from Chester will turn to section sixteen, he will ascertain the views of the committee in regard to the salary or emoluments of public officers. It provides that the Legislature shall not pass any local or special law which shall operate to extend the term of any public officer, nor to increase or diminish his salary or emoluments after his election or appointment.

Mr. DARLINGTON. I have read that section, and have found it has an entirely different application from the one contemplated in my amendment.

The amendment was not agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Regulating the management of common schools, the building of school houses, and the raising of money for that purpose."

Mr. WHERRY. Mr. Chairman: I entirely agree with the intention of the Committee on Legislation in reporting this paragraph; but I think it is objectionable, perhaps, in its statement. It will be observed that the paragraph concludes with the words, "and the raising of money for that purpose;" the word "that" evidently referring only to the last purpose named in the paragraph, viz: "The building of school houses," which evidently was not the intention of the committee. I would suggest, as a further amendment, to strike out the word "common" and the words "the building of," and insert the words "public" and "school houses."

Mr. DARLINGTON. Mr. Chairman: I wish to ask the gentleman from Cumberland if his amendment will absolutely prevent the Legislature from creating independent districts. I do not want the Legislature to be deprived of that power.

Mr. WHERRY. Certainly not. They will have the right to create independent districts under a general law.

Mr. CORBETT. Mr. Chairman: They certainly can provide, by general law, for the creation of any school district, but not under any special law.

The CHAIRMAN. The question is on the amendment of the gentleman from Cumberland, which is to strike out the paragraph and insert: "Relating to public schools and the building of school houses."

Mr. J. M. WETHERILL. Mr. Chairman: I suggest the word "common."

Mr. TURRELL. Mr. Chairman: I move to amend further, by striking out the three last words, "for that purpose."

Mr. WHERRY. Mr. Chairman: The Committee on Education have reported against the use of the word "common," as applied to our schools. If the gentleman from Schuylkill will refer to the report of that committee he will find that they have used the word "public schools" everywhere.

Mr. TURRELL. Mr. Chairman: I have been laboring under a misapprehension. I did not understand that the amendment was a substitute for the paragraph, and I ask that the amendment be read for information.

The CLERK: The gentleman from Cumberland moves to strike out the paragraph and insert, "relating to public schools and the building of school houses."

Mr. TURRELL. Mr. Chairman: Then I will withdraw my amendment, to allow action on the substitute.

On the question of agreeing to the amendment, a division was called, which resulted thirty-one in the affirmative. Not being a majority of a quorum, the amendment was rejected.

The CHAIRMAN. The question recurs on the paragraph.

Mr. TURRELL. Mr. Chairman: I now move to amend, by striking out the words, "for that purpose," at the end of the paragraph.

Mr. Chairman, the paragraph as it stands limits the raising of money for the management and building of schools and school houses. I would not limit the raising of money to the buildings, because from what I have seen in practical life, if limit be imposed, no good will come from it. I have seen a school house repaired at a larger expense than the original building cost, and then an application made to the Legislature, by the school directors, without the citizens knowing anything about it, to give them the power to borrow money, at a high rate of interest, to meet the expense of such repairs.

Mr. CORBETT. I desire to ask the gentleman from Susquehanna if he will not accomplish his purpose better by not striking the words out, but by making them read, "for such purpose."

The CHAIRMAN. Does the gentleman from Susquehanna accept the modification?

Mr. TURRELL. I think it would be better to simply strike the words out, but I will partially accept the suggestion of my friend from Clarion, and will modify my amendment so as to propose to insert, after the word "building," the words "and

repairing," and to strike out the word "that" and insert "such." The paragraph will then read: "Regulating the management of common schools, the building and repairing of school houses, and the raising of money for such purpose."

Mr. HAY. Mr. Chairman: I suggest to the gentleman from Susquehanna, to see if it meets his approval, that he make another change, so that instead of the section reading as it does now, it may read as follows: "Relating to common schools and school buildings, and the raising of money for such purposes."

Mr. TURRELL. Mr. Chairman: I think it is preferable as it is now.

The amendment was agreed to.

The CHAIRMAN. The question recurs on the paragraph as amended.

Mr. WHERRY. Mr. Chairman: I am satisfied that if the committee had given careful consideration to the amendment that I offered, it would have been adopted. It is plain to my mind that the section, as it now stands, does not meet one of the greatest evils that we have to cure. One of the greatest evils—

Mr. MANN. Mr. Chairman: I rise to a point of order. There is no question before the House.

The CHAIRMAN. The paragraph is before the committee, and the gentleman is addressing the House on the paragraph.

Mr. WHERRY. One of the greatest evils of the school system as it exists to-day is the creation of new districts, and the alterations made in the old districts.

Mr. HANNA. Mr. Chairman: If the gentleman will allow me, that is provided for in the fifteenth paragraph of the printed report.

Mr. WHERRY. That relates to officers alone. It relates only to certain officers, and has nothing to do with the creation or alteration of school districts.

I now move to amend this paragraph as it stands, by adding to the end thereof the words: "Or creating or changing school districts."

Mr. DARLINGTON. Mr. Chairman: I fear we are acting hastily on this whole subject. There are instances in my district in which it was absolutely necessary to establish an independent school district. The same cases have existed all over the Commonwealth. Population changes. School houses that have been erected years ago are not sufficient to-day, either in point of location, or in their size, and as these accommodations fail it is necessary

to establish new ones. On the line of two counties there may be no school district on either side, but join them and you can form an independent district. This requires special legislation, and it requires also that the citizens affected by the creation of these independent districts have the power to raise money, either by taxation or effecting loans to establish their school houses. Now, is it improper to go to the Legislature to authorize the establishment of independent school districts, with the power to build houses of a better class than are usually called for, and either borrowing money, or paying it themselves to do it? What is the objection to it? I fear that by the general sweeping terms of this clause, as you have it now, you would prohibit all advantage now derived by the creation of independent school districts and the erection of independent school houses, and I do not want this admirable system restricted.

Mr. EWING. Mr. Chairman: I think the purpose the gentleman from Cumberland has in view is already provided for in section eleven, in the second paragraph.

Mr. WHERRY. Mr. Chairman: Will the gentleman allow me to answer that the paragraph relates only to the "affairs" of school districts?

Mr. HANNA. That covers it.

Mr. WHERRY. Mr. Chairman: There can be no "affairs" of a school district until the district is first constituted. Now, the constitution of a district, and the management of its affairs after its constitution are entirely different things.

Mr. J. M. WETHERILL. Mr. Chairman: I would like to ask a question of some of the gentlemen having this matter in charge. We have in the State an agricultural college which seems to be maintained by some special laws, and which may in the future require additional special laws. I would ask whether it is considered that this section effects that?

Mr. EWING. Certainly not.

Mr. BIDDLE. It relates only to common schools.

The CHAIRMAN. The question is on the amendment of the gentleman from Cumberland.

The amendment was rejected.

Mr. CORBETT. Mr. Chairman: If it be the fact that the committee having the subject in charge have denominated "common" schools "public" schools, I will suggest that we here change "common" to "public."

Mr. WHERRY. That is the fact.

Mr. CORBETT. I then move as an amendment, unless it can be done by common consent, if that be so that word "common" be stricken out, and the word "public" inserted.

Mr. BARTHOLOMEW. Mr. Chairman: I would suggest to the gentleman from Clarion that he make his motion so that it will apply to the whole report, wherever the words "public schools" occur.

The CHAIRMAN. That would not be in order at this time.

Mr. BARTHOLOMEW. Mr. Chairman: Can it not be done by common consent?

Mr. CORBETT. I will modify my amendment so that it change the word "common" to "public," wherever it occurs in the sections that have been already adopted.

The CHAIRMAN. That motion is not in order.

Mr. DARLINGTON. It can be done by common consent.

The CHAIRMAN. It cannot be done by common consent, because the sections are not before the House. The only question before the House is this section.

Mr. CORBETT. Mr. Chairman: I suggest that the change be made in this paragraph by common consent.

The CHAIRMAN. The gentleman from Clarion proposes, by common consent, to change the word "common" to "public." Shall the change be made? [No! No!] It is objected to.

Mr. CORBETT. Then I move to amend, by striking out the word "common" and inserting "public."

The amendment was agreed to, there being, on a division, ayes forty-two, noes thirty-eight.

Mr. WHERRY. Mr. Chairman: Allow me to offer another amendment to this paragraph: To strike out the words "regulating the management of," and insert the words "relating to." My object simply is this: The word "management" is too restricted in its sense, and it does not at all cover the ground which the Committee on Legislation intended it to cover.

On the question of agreeing to the amendment a division was called, which resulted twenty-nine in the affirmative. Not being a majority of a quorum the amendment was rejected.

The CHAIRMAN. The question recurs on the paragraph as amended.

The paragraph as amended was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows: "Fixing the rate of interest."

Mr. DARLINGTON. Mr. Chairman: I want to know from the Committee on Legislation what that means?

Mr. CORBETT. Mr. Chairman: It means to prohibit all special laws fixing a special rate of interest, not to allow interest to be fixed by anything except a general law.

Mr. DARLINGTON. Mr. Chairman: I want still to inquire whether the purpose is to prohibit a city, county or borough from borrowing money at one rate of interest, where they can get it at that rate, and allow another city to borrow at another rate of interest.

Mr. CORBETT. Mr. Chairman: I apprehend it applies to a city, corporation or person, to every person alike, and to every person, corporation, city or borough; it says no rate of interest shall be fixed by special law. The law must be general.

Mr. DARLINGTON. Mr. Chairman: Then I submit that it is impracticable in its operations, and for this reason: You cannot obtain money for a city like Corry or like Pittsburg, even, at the same rate at which it can be obtained in Philadelphia. This is an attempt, it seems to me, to deny to a city or town with less ability, and less power, and less capacity to borrow money at all, unless it can do so at a rate at which it is impossible to obtain it.

What is the use of such a clause? What good is to be attained by it? Why should not any community be allowed to borrow money from its citizens, and why should not the citizens be allowed to loan it to that community at any rate of interest they can agree upon, whether it is five, six or seven per cent? Why should we prohibit them from borrowing at all because they cannot get it at the same rate that other cities can?

Mr. W. H. SMITH. Mr. Chairman: This section says that the Legislature shall not pass any local or special law fixing the rate of interest. That does not interfere with the boroughs borrowing money, except to say that the rate of interest shall be fixed by a general law, affecting all equally, and not any one specially. Now there are institutions all over the Commonwealth whose charters allow them to loan money at widely different rates of interest. Some chartered institutions are allowed to charge six per cent., while others are allowed to charge ten per cent., the power being conferred by special charter. It is to prevent any special enactments of this sort that this clause is de-

signed. There exist in our city of Pittsburg, and I have no doubt all over the State, institutions that have the right to loan money at ten per cent. under a special law, and I hope this paragraph will be adopted to prevent such a thing as this.

Mr. MANN. Mr. Chairman: I desire only to say one word in addition to what has been said by the gentleman from Allegheny, and that is that this clause was agreed upon by the Committee on Legislation to prevent the very thing that the gentleman from Chester (Mr. Darlington) advocates. The committee thought that it was better that the Legislature, by a general law, should allow any city to contract such rates of interest as it has authorized them to do under a general act, and not to allow one city to pay one rate of interest, and another city a different rate. That was the very purpose we designed to prevent. We want, by a general act, to define this whole question of interest upon some sensible plan, which has yet never been done. There are now in this State saving funds and banks having rates of interest from six all the way up to ten per cent., according to the charters granted by the Legislature. One year the Legislature will pass these charters and allow the banks to charge ten per cent. interest per annum, and the next year pass another law, restricting them to six per cent. Such banks are in existence in this State, and it should be remedied, and it cannot be remedied by any other provision than just this one. I have heard it stated that we are to have a report from another committee which will supplant this; but until we have it, let us adopt this paragraph as it stands.

Mr. KAINE. Mr. Chairman: Before the gentleman from Potter sits down, I want to ask him a question, whether it is the intention of the Committee on Legislation to allow the Legislature, in pursuance of this provision of the Constitution, to permit persons or corporations to make any contract they please in regard to the loan of money?

Mr. MANN. No, sir. They propose that the Legislature shall regulate this subject by a general law.

Mr. KAINE. Mr. Chairman: The gentleman misunderstands me. I desire to know whether the Committee on Legislation expect that the Legislature will pass a general law, allowing parties to make any contract which they please in regard to interest?

Mr. MANN. Mr. Chairman: I am not authorized to say what the committee expect beyond what I have already said, that the view of the committee was that it worked injuriously to have this special legislation on the question of interest, and it ought to be eradicated.

Mr. KNIGHT. Mr. Chairman: For the information of the committee of the whole, I beg to state that the Committee on Agriculture, Mining, Manufactures and Commerce proposes to offer a clause, something as follows: "In the absence of special contracts the legal rate of interest or discount shall be seven per cent. per annum. But special contracts for higher or lower rates shall be lawful. All national and other banks of issue shall be restricted to the rate of seven per cent. per annum." This we propose, when our committee reports, to offer to the Convention, and it will be a general law, not fixed by the Legislature, but fixed by the Convention itself, legalizing the rate of interest to be charged by banking institutions of issue at seven per cent, and leaving the rate of interest where contracts are previously made at a higher or lower rate, but to be binding and lawful.

Mr. STANTON. Mr. Chairman: Do I understand my colleague to say that such a proposition is now pending before the Committee on Agriculture, Mining, Manufactures and Commerce?

Mr. KNIGHT. Yes, sir; I do.

Mr. STANTON. Then why should not the committee of the whole vote this paragraph down, and wait until the proper committee reports?

Mr. KNIGHT. Mr. Chairman: We do not see that this paragraph at all interferes with our report.

Mr. CORBETT. Mr. Chairman: I hope that this committee of the whole will pass this paragraph as it stands. It is possible that something may be reported from the Committee on Agriculture, Mining, Manufactures and Commerce, to which the gentleman from Philadelphia (Mr. Knight) belongs, that will obviate the necessity of it altogether, and, if so, there will then be no objection to striking it out. But we cannot anticipate what this Convention will do, even after the committee to which the gentleman belongs reports. Therefore we ask that this be now adopted by the committee, and reported to the House, and if the necessity of it is obviated it then can be struck out.

The paragraph was agreed to.

The CHAIRMAN. The next paragraph will be read.

The CLERK read as follows:

"Affecting the estates of minors or persons under disability."

Mr. WOODWARD. Mr. Chairman: It sometimes happens that in the examination of titles, a defect, real or apparent, is discovered which prevents an advantageous sale of an estate, and then there is no so convenient remedy as to go to the Legislature and get an act of Assembly to cure that defect. Now I must remind the legal gentlemen, by whom I am surrounded, that Blackstone tells us that acts of Parliament are one of the forms of conveyance sometimes resorted to, and resorted to with good effect. When designing men undertake to obtain an act of Assembly to take away from minors, women, and others under disability, their estates, I agree that the Constitution should restrain them, if possible; but we should not make that restraint so general in its terms as to prevent the occasional necessary interpositions of the legislative power which are quite according to the common law, and according to the practice of Parliament.

Therefore I propose an amendment to this paragraph. I would strike out nothing in the section, but I would add these words to the end of the clause, with a view of accomplishing the special end I have in view:

"Except after due notice to all parties in interest, to be recited in the special enactment."

The purport of that amendment is to qualify this restraint upon the legislative power by requiring, in case of any such special act of Assembly, full notice to all parties in interest before the act is passed, to be recited in the special enactment itself. I think that that will guard the interests of the defenceless, and those under disability, while it will not take away the power to relieve families and individuals in cases of extreme hardship. Take the case of an estate about to be sold for a valuable sum of money, and a defect is discovered in it which no court under any general legislation has power to remedy. If that defect can be promptly cured, the family is benefited by the price that can be got. If that defect cannot be cured the family is deprived of that price. Now there is no power in the Commonwealth that I know of that can remedy such a defect, except it be the legislative power.

I would restrain it to that class of cases. I would require the applicants to prove full notice to all parties in interest which should be recited upon the face of the law, and if not so recited, or if the notice was not competent, a court could hold the law invalid for that reason.

Mr. MANN. Mr. Chairman: If the gentleman from Philadelphia will modify his amendment slightly, I can see no objection to it. If he will modify it so as to make it read that the application shall be by guardians or trustees of estates, it will meet my views.

Mr. WOODWARD. Mr. Chairman: I would have no objection on point of principle to such a modification, but it does not exactly reach the case. The application to the Legislature may come from any parties. It may come from a proposed purchaser, as well as from guardians of minors or trustees. The suggestion of the gentleman from Potter would narrow it too much, but from whomsoever it came, full notice is required to be given before the Legislature can act upon it. If that is done, then I cannot see how any evil could result.

Mr. HANNA. Mr. Chairman: I would like to ask my honorable colleague from the city, whether or not such a case as he refers to could be provided for under a general law. I would remind him of the act of 1853, called the Price act, which provides for every supposable case which can arise under a settlement of a decedent's estate, and for all persons under disability, lunatics and everybody else. Why cannot some general act be made to cover the point?

Mr. WOODWARD. Mr. Chairman: It is not competent for the wit of man to provide for every case which will occur in human affairs. It is impossible that any one act shall comprehend all things. On the contrary, the next day after the law is enacted, a case will arise which is not within it. Such is the character of human affairs, that to attempt to adjust a statute to all possible cases, is to remind me of Judge Gibson's figure of a mantua-maker, who would prepare a dress for a lady before the customer came into her shop. It cannot be done; we cannot tell what cases are going to arise. But we all know, that in point of fact, these sporadic individual hardships do occur. We cannot anticipate them; we do not know when they will arise, and that is the reason why power to relieve them must reside somewhere in the State, if you mean

that the people shall be a free people. That is exactly the reason why Parliament possesses it in Great Britain, and our Legislature ought to possess it here.

Mr. CORBETT. Mr. Chairman: I do not exactly see the cases for which the gentleman from Philadelphia (Mr. Woodward) wants to provide for. This section itself is intended to prevent the Legislature from passing special acts by which the estates of minors shall be converted. It intends to limit those cases to general laws under the action of the courts. Now if a sale takes place, and there is a defect in the proceedings such as renders it void, and if it has not the effect of rendering it void the estate passes, but if the defect be such as renders the title void, I apprehend no Legislature now can cure it. They cannot divest an estate. It is only by a sale under regular proceedings, either by special or general law, that they can divest a minor's estate now.

This is intended to strike at special acts by which the estates of minors are converted. It intends to confine this class of estates to general acts; and I apprehend that we cannot cure a defect now by which the estate can be converted. I am opposed to any exception or limitation of this section, and I hope the committee will adopt it as it stands.

The amendment of Mr. Woodward was agreed to.

The question recurring on the paragraph as amended, it was agreed to.

The CLERK read the next paragraph:

"Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury."

It was agreed to.

The CLERK read the next paragraph:

"Exempting property from taxation."

It was agreed to.

The CLERK read the next paragraph:

"Creating corporations or amending, renewing or extending the charters thereof."

It was agreed to.

The CLERK read the next paragraph:

"Granting to any corporation, association or individual any special or exclusive privilege or immunity."

Mr. W. H. SMITH. Mr. Chairman: I desire to amend, by adding at the end of the forty-first line, "or giving to contractors, builders, landlords, or any other class of creditors preference or priority of liens against the personal or real property of any debtor, except for wages."

I do not see any better place for this

than here. I offered this as a suggestion some time ago, and it will be found on page twenty-four of the suggestions. I have been looking for the proper place to put it in, and presume this is it.

Mr. T. H. B. PATTERSON. Mr. Chairman: I would call the attention of the gentleman from Allegheny to the second paragraph of this section, prohibiting special legislation, "authorizing the extension, creating or impairing of liens." It seems to me that covers the point. Certainly that was the idea of the committee in adopting it. I think the amendment ought to be voted down.

The question being on the amendment of Mr. W. H. Smith, it was rejected.

The question then recurring on the paragraph, it was agreed to.

The next paragraph was read:

"Granting to any corporation, association or individual the right to lay down a railroad track," and it was agreed to.

Mr. BROOMALL. Mr. Chairman: I move to insert immediately after that paragraph the following:

"Nor shall the Legislature indirectly create such special or local law by the repeal of any general law."

I apprehend that when this local legislation shall be stopped a greater evil will probably be attempted to be perpetrated on the State by individuals, who, wanting to get a local or special law, get a general one, and have it repealed, as to all except the thing they want. I therefore propose this as an amendment at this point, so as to guard against the class of cases referred to.

The question being upon the amendment of Mr. Broomall, it was agreed to.

Mr. KAINE. Mr. Chairman: I offer the following amendment, to come in as a new paragraph, after the one just adopted:

"Regulating labor, trade, mining or manufacture."

The amendment was agreed to.

The next paragraph was read, as follows:

"Nor shall any bill be passed granting any powers or privileges in any case where the manner, form or authority to grant such powers and privileges shall have been provided for by a general law, and in no case where a general law can be made applicable, nor in any other case where the courts have jurisdiction, or are competent to grant the powers or give the relief asked for."

Mr. BAER. Mr. Chairman: I offer the following as an amendment:

"Nor shall any law be passed empowering courts to grant a divorce, a *vinculo matrimonii*, for any cause, arising after the marriage took place, except adultery."

In doing this I feel that I have entered grounds that may possibly be hard to maintain, but the greater reason exists for the effort. I shall at least not die without a struggle. All I ask of this Convention is an open field and a fair fight.

As, however, this subject is a comprehensive one, it will be impossible for me to give my views upon it inside the twenty minutes allowed by rule to members addressing themselves to the discussion of any question. I would, therefore, ask leave, at this time, to have an extension of time in advance. I would ask the Chair to take the decision of the Convention, as to that point, before I begin.

Mr. BIDDLE. It is certainly a very important subject. I hope the time will be extended.

The CHAIRMAN. Unanimous consent is necessary. Shall the gentleman (Mr. Bear) have unanimous consent? ["Aye!" "Aye!" "No!"] Unanimous consent is not given.

Mr. DARLINGTON. The time can be extended if the gentleman (Mr. Baer) should not get through in twenty minutes.

Mr. BAER. Mr. Chairman: I rise with great diffidence to defend the amendment just offered. I know that it is radical, but founded in truth and justice; and I believe that now is the time and here the place to introduce it; but I am overawed by the consciousness that I am wholly unable to do justice to the subject.

That the proposition, in the present state of society, will not only meet with much favor, but would be endured by a overwhelming majority of the electors of this State if submitted to them, I have no doubt. But I fear I shall be unable to win much favor for it in this Convention, and will possibly succeed in verifying a prediction made by one of our members early in the session, when the question of publishing the Debates was under discussion, that it would be quite likely more than one of us would, during our discussions, write himself down an ass.

Did I not, therefore, deem it an imperative duty imposed upon me by an innate sense of right, and a consciousness that I would fail to do my whole duty here, if I failed or neglected to urge such amendments as I believed would tend to the

general welfare of the people of the State, and would make our fundamental law entirely consistent with the great and eternal principles which underlie all good government, I would hold my peace—for "it is hard to kick against the pricks." But having introduced the amendment early in our session, and finding that it had found no favor in committee, I am compelled to offer it here where I may give such reasons as I can for the faith that is in me, and establish, if possible, that it is at least worthy of consideration. The principal involved in the amendment is, that marriage, which is the very foundation and life of society, from which spring all the joys and happiness of mankind, and upon which are based the hopes and well-being of a nation, *is not a civil contract, but an institution arising out of the nature of man and society.*

Very many men I know flatly deny this, but they do so, in my opinion, in consequence of what I deem a false sentiment of this and previous ages, created by those who, though they succeeded in moulding public sentiment, did so in virtue of their acknowledged intelligence, but not upon the plain principles of common sense, as found dwelling in the average human mind, and as applied to the nature of man's being and his relation to God, but upon some fancied theory of the prime original state of man antecedent to all society, and independent of the law of his being, or of his relation to that great and holy being, who created man in his own image, and that, therefore, both *society and marriage are founded on contract.*

The two theories indicated raise the whole question involved, and upon the adoption of either depends the truthfulness or untruthfulness, the vice or the virtue of the principle embraced in the amendment. If one theory is adopted, my amendment is founded in error and should fall. If the other is adopted my amendment is founded on the eternal principles of truth, co-extensive with man himself, and with him must stand. And in order to determine the question intelligently and correctly we should examine both theories and see which is true.

Now, I call upon the one hundred and one lawyers in this Convention, who are ready to proclaim law a science, and the common law the perfection of human reason, to rise up to the full standard of their professional dignity, and meet this question upon its merits—to analyze it as they would any other great fundamental principle—to

leave out of consideration exceptional consequences and statutory enactments of mere human origin—go back to the source and fountain of society—survey the whole field of laws, human and divine, and see whether, in all its proportions, the laws of marriage and divorce will square with first principles, which are eternal and underlie all sound laws.

And I call upon the thirty-two very learned and intelligent lay members of this body, to examine the question involved, carefully and conscientiously—free from all previous prejudices or convictions, arising from existing customs or existing laws, but in the light of reason and the well-being of society.

In order fairly to discuss and understand the length and breadth and depth of the question involved, it is necessary to go back to the beginning of all things—to the days when man first appears upon the stage, and ascertain what was his condition then.

There are those, and in vast numbers, who teach and believe, "that society exists by virtue of a social compact, and that prior to the formation of this social state, man was found in a state of nature, when, as the poet says,

"Wild in the woods, the noble savage ran,
Ere arts and manners first corrupted man."

"That in those days man appeared upon the earth as does the brute or the beast of the field—going where, and doing as he would—existing as an individual, independent of all other men—having nothing to do but to eat and drink, and do whatever his heart moved him to do, in which state of nature there were no husbands—no wives—no property—no family—no nation—no rights—no wrongs—no worship. Nothing but the individual man on the same plane with the beasts of the field."

That therefore his rights were unlimited and *man was supreme.*

They would have you believe that from this state of nature men came voluntarily together and constituted society by compact, each renouncing a portion of their original rights as a price to society for securing others.

This theory, I am sorry to say, is advocated, directly or indirectly, by a great mass of mankind, who would consider it a very great insult to be called anything else than christian.

Another theory, not more heathen to my mind, than that just mentioned, assumes, "that at first men crawled out of the earth

as worms, which gradually and constantly developed from a lower to a higher order of creation, and in due time appeared upon the stage as brutes and dumb animals, fighting, at first, with fists and scratching with nails for acorns and wild fruits, and finally with arms which necessity invented; their rude cries they gradually formed into articulated language; and then having gradually ascended in the scale of being, and having assumed an erect form they came together; by means of their crude language they made a social compact, which constituted their first and fundamental law and in it provided for marriage."

But what evidence, I ask, exists anywhere that sustains either of these fancied prime original states of man, antecedent to all society and independent of the inherent law of man's being? Search the traditions of earliest days; examine all records, sacred and profane, and where do you find the evidence of such a state? Writers on christian ethics may well exclaim: "Lo! in the historical records of the whole world there is no record of such a state or such a compact." It exists only in fiction and theory, and has no foundation in fact.

Go to the orient and get the first glimpse of man, and tell me how do you find him there? Tell me, does he roam in the forest with nothing but instinct as a guide, in the capacity of individual man, or as a being possessed of reason, and in society? Your answer can only be: We find man, wherever he is found, even in the fewest numbers, whether in the orient or occident, in the state of society; and on pushing the investigation still farther, you are compelled to acknowledge that man enters society as a member of a family. Adam and Eve are the first male and female man we have any record of. They are the source or root of all human beings, if the records are true, and their first appearance is in society, "male and female made he man," and every subsequent human being was *born* into society. But if you will not concede the Adamic origin of man, and deny the truth of the statement, will it follow that upon the mere denial thereof the converse is proven?

Let us see. Take me to any place upon this globe, "where from newness of a country—famine, war, pestilence, desolation or emigration—only one family is found, and can you show me man in the independent a individual state roaming at pleasure and doing as he will? No, you cannot; for,

whether you go to the old or the new world to demonstrate your theory, everywhere you will be confronted by the presence of man as a member of society. Wherever he has first been seen he has been found in society, and though you may find a spot on this earth, remote enough from all other places, and find upon it a human being at all, it will be at least "one family, a man and wife; a social organization, which is at once a family; a nation in embryo, and a church, and the head of it, at once the father, the king and the priest," with no evidence of origin; and you only know, but your thereby know it truly, that this organization is coeval with man. Assuming, now, that you find these relations existing, how then do you find man? Does the condition you find him in warrant the assumption of the heathen story "that man surrendered part of his natural rights to society in consideration of his being made more secure in those that were left him?" What rights in the fancied natural state could man possibly have had that were at all commensurate with his rights in society? Has not a man in society ten thousand rights a savage never dreamed of?

Suppose it were true that man in his natural or savage state could do as he pleased; was he not restricted by his power and ability? Surely he was not omnipotent. It at most could mean that he could do as he pleased within the limits of his ability; and does not the history of the world, and of the human race, prove, conclusively prove, that man only becomes powerful in society, and that the higher a nation attains in the scale of intelligence and civilization the more powerful it becomes?

Aye, "a mere glance at man in his fancied state of nature, and at civilized man in society, will satisfy any man that society enlarges, develops, secures and defends the rights of man; and that unless murder, robbery, theft, lying, contempt for the marriage bond and all crimes, *melum in se*, were prime original natural rights, he has surrendered none," and this feature in the social compact theory falls.

If this theory were true; if it were based on incontrovertible facts, not assumed but proved; then indeed would society depend upon contract, and marriage be an institution of society; and the conclusion would be irresistible that marriage is a civil contract, and may be annulled for any cause, and if the argument was carried to its utmost limits, might be annul-

led for no cause at the mere pleasure and will of the parties. For it is a principle of law and of common sense, that they who can make a contract can also unmake it, as will be seen by the following definition of a contract:

"A contract is a convention or agreement by which two or more persons consent to form between themselves some lawful and binding engagement, or to rescind a preceeding one or modify it."

Are you ready to endorse this civil contract theory, and destroy the family, undermine society, degrade public morals, and out of the marriage bond make a mere rope of sand? Consequences that would necessarily follow.

Nay, you would not; but, as men, you throw yourself back upon the State, and console yourself with the solacing conclusion, that as the State adopts the heresy, your skirts are clear.

But, sir, to-day, and now, this body represents the State, and in the future the State will just be what this body makes it to be, and for all iniquities which shall be crystallized knowingly, into the fundamental law, this body is responsible.

The State proclaims marriage a civil contract. But behold the sovereignty of the State, after having violated the very nature of man's being by proclaiming marriage a civil contract, resorting to a miserable subterfuge to shield herself from the dreadful disaster which is sure to follow the monstrous heresy, by a principle of law of her own creation, and declares, that a contract between the parties to a marriage, to annul the same at pleasure, or for any cause whatever, is against public policy, and therefore void.

Why against public policy? and why void? Let the champions of the civil contract theory answer.

Sir, I assert that it is against public policy, because it is against the law of nature and the law of man's being, and is void, not because it is against public policy, but because it is in conflict with the laws of *nature, and the revealed law of God*, and that the restriction against the annulling of a marriage by agreement of the parties, is an unwilling recognition by the State, that marriage is not a mere civil contract, but has its existence as an institution of the law of nature, which law itself proclaims that any dissolution of the marriage bond, except for the *cause of adultery*, is not only against public policy, but void, "inasmuch as by it no injustice—

no immorality—no wrong to individuals, or society can be justified or excused."

Go back as far as historical research will carry you, examine the lives, the history, the customs and the habits of all nations, communities and peoples, from the most civilized, refined and intelligent, down to the rudest, most barbarous and savage.

Aye! go back, view man as he emerges out of chaos, at the fiat of *Almighty power*, or as he gradually develops from a creeping thing in the proud stature of an erect intelligent being, possessed of God-like faculties, and show me where is the evidence of the institution of marriage as a mere social contract? Who were the first parties to it? where was it consummated? and what were the terms?

Failing to adduce any evidence of the fact, by direct proof or by implication, don't ask intelligent men to believe it on mere bold assertion, or as a deduction from premises, assumed by an infidel philosophy.

The fact that marriage is found existing from earliest days, and among all nations and people, affords no presumption that its institution was by contract. As well might you ask us to presume, that because the beasts of the forest, the brutes of the field and the birds of the air, though destitute of reason, and lacking all the elements which enter into the making of a contract, do nevertheless mate and in couples agree, such mating is based upon contract.

As the common intelligence of man must revolt at such a conclusion, I ask, sir, to what conclusion does it unerringly point? I answer it myself, because it is the voice of the ages. All animated nature do so mate and in couples agree, by virtue of a law of their being, and not by virtue of a contract. For bears and lions to mate and in couples agree, is quite as much a part of their nature, as it is for them to growl and fight.

And if the history furnished us by naturalists, has any truth, many animals can be found from whom lessons of duty and fidelity might well be learned by man.

The lion, by instinct led, will not forsake his bride. Nay, while the lioness nurtures and cares for the young ones in the den, the noble giant of the forest roams at large in quest of food for this royal family. And woe betide the rival who, at any time, dares to enter his paradise uninvited.

So while the female bird sits upon the nest, and attends to the family duties at home, her mate is out in search of food for

both; and nobody ever heard of the gentleman bird playing false to his bride.

Man only descends so low in the scale as that. In the absence then of all proof of a contract, the existence of the fact of marriage and the mating in pairs in man and beast from earliest days, is a conclusive proof, that the institution is one of nature and not of contract.

If by contract, there must have been a time where man and woman roamed as individuals—man being the strongest, was lord of the forest and “might making right”—he would seize upon every woman in his way—there being no eternal fitness of things, and man not led by instinct, as the balance of animated nature, and unable to subdue the flesh, as has always been his history, would make the life of woman intolerable. She would be at the mercy, not only of a man, but of *all men*.

Behold her in the days of gestation—the hours of parturition—the months of nutrition, weak, but lovely—how is she to be protected from the fiery passions of man, roaming where, and doing as he pleased? How is she to be nurtured when days of travail are over? Could she, like the hen, run clucking, her brood following her with the shell yet on their backs?

Oh! the deep damned infamy that would rest the foundation of society on such a hell-born basis!

Stop for one moment! annul with an Omnipotent fiat, all laws human and Divine—resolve society into the original elements of individual man and individual woman, independent of any natural and revealed law; let loose the reins of passion and lust; sever the domestic and family tie; turn loose the libertines and lascivious devils, who but wait to lay hold of the most virtuous and beautiful woman that passes their way; and a score of them will, against her will, know her in an hour. Like the wandering jew, she could have no rest day nor night.

Imagine all laws and restraints removed and set aside in this city. *Ye gods!* who could contemplate the scene.

Is it possible that any sane man believes such a state ever existed? Will you still insist that such a state as we find the other animals now exist in, may at one time have existed for man?

I tell you, sir, all nature gives it the lie. For all animals, except man, are guided by instinct, which never *errs*—it is true and constant as the needle to the pole. While man having the god-like faculties

of reason, knowing good from evil, and having the power to choose, is not led by instinct, which, in him, is very weak, but acts independent of instinct, and without regard to any imperative law of his being. And while instinct always leads animals of the same class and genus in the same direction, reason, operating in the minds of individuals, excites, impels, moves and determines each man differently; and as the powers and lusts of the flesh are stronger than the powers of the will, as the history of man fully demonstrates, he is led by them, as by an *ignis fatuus*, into all sorts of absurdities and crimes. All animals, except man, are to-day what they were originally, and man, occupying a higher sphere than that afforded by instinct, alone fell. Having, I think, shown that neither society or marriage are creatures of contract, but that they are institutions arising out of man's nature, it is necessary to go farther before we can determine the question at issue.

From the premises established, how far can the civil or municipal law go in enlarging or restraining the original institution?

The acknowledged doctrine of this State is: That sovereignty, or the supreme power of the State, is inherent in the people. If therefore, the absolute sovereignty is in the people; if society was originally formed by man in a state of nature, where they were free and untrammelled by any law; coming together and forming a compact, then the laws passed and ordained by such society would, indeed, be supreme. And if it should enact that murder is a virtue, stealing honest, lying honorable, promiscuous concubinage right, and marriage a civil contract, so they would be, whatever consequences might follow. And we to-day, being here by express delegation, representing every human being in this State, would be, for the specific purpose of framing a fundamental law, the supreme power of the State. If we enacted the section, as it stands, it would be the law. If we rejected that, and adopted the amendment, it would be the law—assuming, always, that our work would be ratified by the people.

If there were no other questions or principles involved, it would follow that whatever this Convention enacted as law, would on the particular subject matter be the law; whether wise or unwise, beneficial or injurious to man or society. But our enactments cannot become anything more nor stronger than municipal law,

which is "a rule of civil conduct prescribed by the Supreme power of a State, commanding what is right and prohibiting what is wrong;" and within this rule is found another recognized principle, which declares that all governments are founded by the people and for the people, for the purpose of promoting the general welfare and greatest happiness of the greatest number "*salus populi supraemallex*" has come down from the ages, and is as much an axiom to-day as at any previous period. Our enactments must, therefore, be strictly in accordance with public policy; and if this were the only limitation upon our power we should content ourselves with the inquiry: Does the section, or the amendment, or either or both, accord with the principles of public policy? But we can best solve this question by going a step farther.

For on the examination of the true spirit and essence of municipal law, we find that the supreme power of a State which establishes and ordains municipal law, is, in its sovereignty, limited by the law of nature and the revealed law of God, which are not only superior laws, but are the ultimate abodes of sovereignty. And therefore our fundamental law, when we shall have done with it, will be supreme only, in so far, and no farther, as it is in harmony and consistent with the principles of public policy, the law of nature, and the law of God. And as the law of nature and the revealed law of God are the Supreme law, and all other laws or rules are subordinate, the only inquiry necessary for us to make is, are our enactments in harmony and consistent with this Supreme law, for the principles of public policy themselves are founded on the same great law, and the moment we establish any subordinate rule or law to be consistent with the Supreme law, that itself also establishes its harmony with all valid subordinate laws.

What is this law of nature? Our best and wisest authors define it to be:

"A law prescribed by God to all men, not by formal promulgation, but discoverable by the light of reason—it comprehends all the duties we owe either to the Supreme Being, to ourselves, or to our neighbors. It is superior to all others, binding in all countries and at all times; all laws and constitutions which are valid derive their authority directly from it and from the revealed law of God, (the Bible,) and all in violation of either, or both, are void."

So we read as lawyers, and so we profess to believe. Does our faith and practice agree? Let me suppose a case. Suppose a man and a woman of full age, and free from any of the legal bars or restraints which would make the marriage void, mutually agree that they will unite as man and wife, but that the being of the husband, for the most purposes, shall be merged in that of his wife, and that under her protection and cover he shall perform everything. In short, that the wife shall be head of the family, and the husband shall be *baron covert*, as by the existing rule the wife is *feme covert*, that she should be clothed with the governing attributes of the man, and that the husband, in the family, should obey the wife. That, as part of a marriage contract, they mutually agree that the man shall not take the woman away from the neighborhood of her mother without the consent of the wife, and that the marriage was solemnized by incorporating this agreement in the ceremony. Will the advocates of the civil contract theory tell me whether this contract is *valid or void, and if void, why?* I answer, the contract is void, but the marriage is nevertheless valid, and this, because marriage is not a civil contract, but an institution of the law of nature, which law can not be modified by any contract or condition which man and woman or society can make. I assume now, from all that has been established, that marriage is an institution of the law of nature, and as such I assert it can not be annulled; because,

1st. "Marriage, as defined by the Roman law, and the definition everywhere accepted, is the union of a man and a woman, constituting an united, habitual course of life, never to be separated; a partnership of the whole life, a mutual sharing in all rights human and Divine;" and the common law goes farther and treats them, for many purposes, as one person.

2d. Independent of this definition, which accords with the nature of the institution itself, it is plain that inasmuch as the institution is not by contract, it cannot, like a contract, be rescinded by the parties to the marriage; for that only may be rescinded which was made a contract by competent parties.

3d. As it is an institution of the law of nature, it is therefore a part of that law; and as, under our theory of government, no law, in whole or part, may be annulled or repealed except by the supreme power,

and as the sovereignty of this State is only supreme when it acts in harmony with the natural and revealed law of God, and is to all intents and purposes subordinate to that law, and as the annulment of marriage would, to that extent, be equal to an annulment or repeal of the law of nature, it follows that all contracts or laws having for their aim the granting of divorces, by which the marriage bond is annulled, are void, as it would in effect be the elevating of a subordinate power over the supreme power. The declaration of Holy Writ is therefore a mere reflex of the law of nature: "What God has joined together let no man put asunder."

Is this a mere figment of the imagination? Let us see. "A man and woman unite in marriage, become one flesh, sharing in mutual joys. One of the ends of marriage is to pro-create children and propagate the species. A new era and new life dawns upon them—the man becomes father, the wife mother; and this new relation is like the perpetual union itself; it runs through the whole life. Nothing but death destroys the relation of father or mother—nay, not even the death of the offspring—nothing short of the death of the father and mother themselves; for once having become a mother, though her child die, and though her husband desert her, yet can she not bring herself back to the ante-nuptial period, before the womb was opened. It has become a part of her nature, is co-extensive with her life. Can you dissolve the bond and put the parties in the same condition they were before? If so you would have some reason for claiming to deal with it as a civil contract. If you cannot, and who is there here bold enough to maintain such a doctrine, then only can you act through violated law.

Up to this point in the argument I have endeavored, though in a disjointed and rambling way, to prove the truth of my position, outside and independent of Holy Writ, using whatever I could find in legal and moral science, which bore upon the question, in order, if possible, to convince those, if any there are, who do not believe that the Scriptures are divinely inspired and binding upon the consciences of all men, that the principle involved in the amendment is founded on truth, and has been established independent of the laws of Moses or of Christ.

And I am bold enough to assert, that no matter how illogically and awkwardly expressed, the great truths of the argu-

ment do nevertheless establish the fact that marriage is an institution of natural law, which law binds all men whether they will be bound by it or not, independent of any religious belief; and that man, willing or unwilling, must by his own inherent nature, if true to himself, acknowledge that the marriage bond is perpetual, that only one woman was born for one man, and one man for one woman; that husband and wife are so essentially one.

That on the plain principles of common sense, no human power is strong enough to annul it by contract or legislation; and that though you should separate the parties, the union in its mysteriousness continues to exist, and will continue to exist until death or adultery dissolves the tie.

But, may I not hope, that for this Convention, there is an irresistibly conclusive argument in favor of my amendment, found in that Book of books—that living word which is the reflex of Jehovah himself, and which to us and all men is the supreme law, pointing out to us the way of life and holding forth the hope of glory.

Its utterances are the way, the truth and the life—accepted by us all without reasoning or demonstration. All christians receive it as the oracles of the living God, and to us all it is a thus saith the Lord of Hosts.

Let it testify in this cause.

On this plain we have no grappling in the dark to discover the origin of man. The Record proclaims, and on the sixth day the Lord God made man; out of the dust of the earth made He him; male and female made He them. Man, as made, was one at first; but when the Lord God said it is not good that man should be alone—from his flesh and bone He made a partner for him.

Man was the original creation; and woman was made out of the substance of the man; flesh of his flesh and bone of his bone; adapted by their very nature and constitution to union in marriage; the one for the other.

And to establish for all time the certainty of the divinity of the institution—the union of the man and the woman—God made but *two*, one man and one woman, the one for the other as a necessity of their creation; the man out of the dust, the woman out of the flesh and the bone of the man, so that the two contain but the flesh and the bone of the original man, and hence the two were, and were so declared, one flesh, henceforth existing as male and female man. Making them

one flesh, so that no contract or choice could intervene; neither could do without the other, if either would—the very law of their being impelled their union as husband and wife.

There was no formula used in that original marriage, nor was there any occasion for Adam's saying, "I take you, Eve, for my wife, as long as we shall live or agree, or for good and for worse, in sickness and in health, in adversity and in prosperity, to support and protect." Nor need Eve reply, "I take you, Adam, as my lawful husband, as long as we both shall live or agree, for good or for worse, in adversity and prosperity, in sickness and health, to love and obey, until such time as you, Adam, shall look smilingly upon some other fair dame.

But it is a fair implication, from all that is recorded of this primitive marriage, that Adam, looking lovingly upon Eve, and finding her the most beautiful and lovely being upon all the earth, did not go through the tedious modern custom of courting; but at a single bound, rushing to her side and embracing her, says, as he had the right to say: "*I am no longer myself*—no longer a man; I am only the greater fraction of a man; I am utterly and hopelessly ruined for all time to come, unless the other fraction be restored again. Oh, me! How can I be lord of creation, short of a perfect man?" And addressing Eve, says: "The Lord God, when I was asleep, took one of my ribs, bone of my bone and flesh of my flesh, and made you, my darling Eve. You are the other part of myself—the fraction taken from me, as man—nothing entered into your composition but bone of my bone and flesh of my flesh; you, in your *entirety*, are only the rib which was taken from my side; together we represent the sum of *all* the parts of the original man. The sum of *all* the parts is only equal to the whole—the whole was man, and any fractional part is less than man—without you, then, I am not man, and you not man; *but with you, I am myself again*, lord of creation, and head of the race. Henceforth you are mine and I am thine, and together we are man."

Because of this mysterious union of husband and wife, a man shall leave his father and mother, and shall be united unto his wife, and they two shall be one flesh. "The natural tie of parent and child, close and tender as it is, and far exceeding any mere contract alliance, shall be superseded by one infinitely closer and

dearer, in the relation of husband and wife. So closely and truly shall man cleave and be united to his wife, that they too *become one flesh*. And though a son partakes of the elements of his father and his mother, which in him are inseparable, and make the relation of parent and child one of the closest ties imaginable, yet this is far excelled by that mysterious union of husband and wife, whereby they become one flesh.

Is the injunction, then, a strange or unnatural one which proclaims: "What God therefore joined together, let not man put asunder?" Not in the least. It follows logically from the relation established; for if husband and wife are once made one flesh—one life—then nothing but death can destroy the relation. Death, alone, is an extinction of life. Hence, though you may separate the parties, the oneness continues—the union is perpetual, and has become a part of their nature, which death alone can change or modify.

The Scriptures teach that husband and wife are one flesh, so one that, by Christ's law, nothing but death can disunite them. One, so that the unbelieving husband or wife is sanctified by the believer. One, as Christ and his church are one. One in a mysterious union, incomprehensible to us, but true, because revealed as a truth in God's holy word.

St. Paul, in Eph. v, 22, says: "Wives submit yourselves unto your own husbands, as unto the Lord, for the husband is the head of the wife, even as Christ is head of the church, and he is the Saviour of the body." * * *

"So ought men to love their wives as their own body, for he that loveth his wife loveth himself; for no man ever yet hated his own flesh." * * *

But close as is the union of husband and wife, though they have really become one flesh, and are, jointly, but one perfect man, by a union, for the whole life. Yet it is clear, from the Scriptures, that the tie, strong as it is, may be dissolved; but for one cause only, and that the foulest, meanest, most infamous and degrading, yet least punished of all crimes, adultery.

This is plainly asserted in the nineteenth chapter of the Gospel of St. Matthew: "The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause? And he said unto them, have ye not read that He which made them at the beginning, made them male and female, and said for this cause shall a man leave

father and mother and shall cleave to his wife, and they twain shall become one flesh. What, therefore, God hath joined together let no man put asunder. They say unto him, why did Moses then command to give her a writing of divorcement, and to put her away? He saith unto them, Moses, because of the hardness of your hearts, suffered you to put away your wives; but from the beginning it was not so. And I say unto you, whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and whoso marrieth her which is put away, doth commit adultery."

Here, then, is the conclusion: You may permit husband and wife to live separately, as under our divorce, *a mense et thoro*, they now may do. If, for any good reason, it is impossible to live harmoniously together, but they shall continue to be one person, and the relation still existing, they are bound to fidelity to the marriage bond. But the bond itself, which is a part of their nature, you shall not destroy, nor permit it to be destroyed, so that the parties become disunited, with all the powers and immunities of anti-nuptial contract again attaching, including the reciprocal right of marrying again, except for one cause only, and that adultery.

This crime is so enormous in the eyes of humanity and of God, that all the essential elements originally entering into the marriage union are destroyed, and that as effectually in regard to its operation on the innocent party as by the death of the guilty party.

Love, affection, trust, confidence, fidelity, all have disappeared. Mutuality of the marriage joys has flown, one of the parties to the original marriage, with a broken heart, is made miserable for life, while the other, the guilty cause, having severed the most sacred earthly tie, by defiling himself in a foul nest, soon finds the gates of hell ajar, ready to receive him into the final abode of all the damned.

Now, sir, in this day and generation—in the light of the law of nature, and with the revealed law of God before us—with the municipal law as our guide in what is right and what is wrong—and it declaring that all laws inconsistent with the natural and revealed law are void. I ask, will you vote down this amendment, and crystallize the iniquity into the fundamental law?

Don't excuse yourselves by any mere subterfuge, such as, that the section as it stands, don't violate the principle. I charge that it does, because it recognizes

the right of granting divorces by courts of record or other tribunals by virtue of general laws, and that without any limitations whatever.

And it must be plain to the common sense of all men that the evil that the people are complaining of is not that the Legislature, like the courts, grants divorces, but that both the Legislature and courts grant divorces in violation of the christian law and of municipal law. And that it is quite as degrading to the public morals, to have illegal and unwarranted divorces granted at one place than at another.

To-day, sir, I am informed there are no less than forty cases pending at Harrisburg; add to these the number pending in the courts of each county of the State, and you will swell the list to such monstrous proportions that even the champion State of Indiana will pale before it, although in its capital town last year, one divorce was granted for every six marriage licenses issued.

No one dreams of the extent of the iniquity, without specially investigating the matter.

A friend cites me to Connecticut, where last year nearly five hundred divorces were granted.

And Ohio, the *Quasi* Yankee State, furnishes one county where the proportion of divorce to marriage was as one to nine.

Now, Mr. Chairman, I find, sir, in looking over the files of amendments proposed, that propositions have been submitted to this Convention contemplating a provision in the preamble of the Constitution, recognizing Almighty God as the Supreme Being and Ruler of the universe, and acknowledging our dependence upon Him. I take pleasure in saying now and here, that no man will more cheerfully vote for such a proposition than I will, if it is presented at the proper time, and shall be found, when presented, to be entirely and fully consistent with all our work, so that the whole may, without spot or wrinkle, and entirely free from blemish, be dedicated to Him who holds in His hands the destinies of nations and of men. And I am very sure the great christian heart of this good old Commonwealth is in entire harmony with our good designs.

But I must be permitted here to call earnestly and pleadingly upon all the true friends of that proposition to rally in support of the amendment I am advocating,

as one infinitely above and beyond that they are seeking to establish, in its bearings upon society, and without the adoption of which, with some kindred propositions that will yet arise in this Convention, all these labors, though they should succeed in accomplishing their purpose, would not only be inconsistent, but to the minds of intelligent men would appear hypocritical, unchristian and absurd, and possibly not very far removed from blasphemy. They want to have the world believe that we, as a people, recognize Almighty God as the great and Holy Being, existing from all eternity, Creator of all things, Ruler of all nations and Judge of all men. I agree with them, this is well. But is this all that is intended by the proposition? Do they want it merely as an advertisement of the theology of this State, to draw the kindest sympathies of the wise and good of all nations towards it? Or is it proposed as a public profession of the faith of the State, as one great perennial and perpetual act of worship—a great and glorious *Te Deum Laudamus*, which shall ascend constantly and unceasingly to the Throne as the voice of a mighty people, saying: We praise Thee, O God; we acknowledge Thee to be the Lord. All the earth doth worship Thee, the Father everlasting.

If its purpose is to recognize the sovereignty of God, and acknowledge a nation's dependence upon Him, whereby the natural and revealed law are proclaimed supreme, and as a consequence municipal law subordinate, I am with you with all my soul. But let me say to the friends of that great measure, while their cause is just, their labors are herculean, and must be consistent.

It is manifest from some amendments, or propositions offered, that an effort will be made to remove all disability, ostensibly on the ground of religious belief, but in reality to make men eligible for office, and eligible as witnesses and jurors, who have no religious belief at all, and who deny the very existence and being of God, although the Scriptures declare that "the fool only in his heart says there is no God." When this proposition comes up, how will you vote then?

Propositions will be made to exempt men from military service on account of conscienceous scruples against bearing arms, based upon the teachings of the Master whom we profess to follow. When it comes before us, how will you vote then?

And in the proposition now pending, you have before you the great evil of modern society, an evil whose existence is a disgrace to the State and the age, and an insult to the christian sentiment of all the good people of this Commonwealth. You have here and now an opportunity to show your zeal and your faith by your works. Will you stand up and help to fight on the side of the Lord of hosts? Will you help to lead the van in all these States, asserting, by your votes to-day, that marriage is not a civil contract, but an institution existing in the very nature and being of man and his relation to God, and recognized and proclaimed in the revealed law? That husband and wife are one flesh, joined together by God himself, and may not be dissolved for any cause arising after the consummation of the marriage, except for adultery?

If you do all this, you will do all that in this regard is asked or looked for. Your work will be consistent, and you can safely unfurl the doctrines of the preamble at the head of the instrument, and it will be a true emblem of the character of the instrument itself. But if you want to emblazon this great principle of the preamble at the head of the instrument, without caring what the instrument itself shall contain, you will have put yourselves in the position of the skillful painter, who, too, professed that he was master of his profession, and his work gave rise to a story which I shall relate, as it contains a stronger argument for my cause than I can make. In times gone by, when swinging signs were the last and best thing out, a landlord in a thriving town was prevailed upon to have a sign painted, that should, to some extent, indicate the leading trait of his business. And as his was the headquarters for horse drovers, and the place where persons in search of a good horse invariably came, he was easily persuaded to have the noble animal painted on his sign.

The artist who claimed to be master of his profession, went vigorously to work, and in a few days his work was swinging as a sign at the village inn. It was a wonderful picture, painted in the most gorgeous colors, and dazzling in the sunlight like a constellation of diamonds. It soon drew the villagers together, who stood in awe, gazing at the painting. But unable to decide what it was intended to represent, the inquiry became universal, what is it? What is it?

It happened the picture had been painted to fill the imagination of the painter, and was not understood by anybody else, and it became necessary for him to print below the picture, in letters large and brilliant: "This is a horse."

Now if this Convention wants to make terms with the devil in the body of the Constitution, by adopting the licentious and infamous doctrine of marriage, which nature, God and christianity unite in denouncing, then vote against this amendment, which denounces the christian and natural law doctrine, that marriage shall not be annulled except for that foul, unnatural, rope and hell-deserving crime of adultery; and assert, by your votes, that the civil is above the natural and revealed law, and you will have succeeded in painting a picture that does not express the true, christian sentiment of this State, and like the painter, you will be compelled to print in large letters the name of the image which you were expected to paint, but which can't be discovered in any other way. By dedicating it in the preamble to that great and Holy Being in whom the people of this great Commonwealth trust.

If, however, you are in earnest, if this Convention does really represent a christian State, and if the effort to adopt such a preamble is intended to afford a true expression of the faith of the State, then embrace this amendment in the Constitution, and make it possible honestly to use the preamble. We will thereby reflect the will of a vast majority of the people of this State—will make the provisions of the fundamental law consistent with the natural and revealed law as well as with itself.

We will purify society; will remove a stain from our fundamental law; will reflect honor upon the marriage state; will do justice to the pure wives and daughters of the Commonwealth; will assure them that the marriage bond is not a mere rope of sand, which may weaken with failing health and decaying beauty; will reconcile discordant elements in families where love does not reign; will convince the world that it is quite possible and agreeable for some husbands and wives to live together and enjoy all the blessings of a married life, who before could not tolerate one another's presence. But not only this; home will be the dearest place on earth—a perfect paradise for husband, wife and children—in which the wife will pull through love—and Constitutional

Conventions will not soon be troubled again by advocates of woman's rights, all having been restored by declaring the true character of the marriage union.

And, inaugurating this great reform, what State more able or more worthy to lead the van than this land of steady and conservative habits founded by the immortal Penn?

We will thereby elevate our wives and daughters; make them feel that husband and wife are not joined together by a mere rope of sand, that may weaken with decaying health and fading beauty. That having become one flesh by marriage they have entered a perpetual union, extensive with the whole life so mysteriously yet truly united and made one, that nought but death or the foul, unnatural, soul-destroying crime of adultery can dissolve it.

Woman will thereby appreciate her true sphere in society; will fill the mission of her being; will realize that she is a queen in the family, and will there rule through love. Strong-minded women will disappear from the stage, and woman's rights, having been restored by conforming the civil to the natural and revealed law, will not trouble a Constitutional Convention again.

And we, as a State, will lead the van in a reformation that no state in the Union can lead better, with more consistency or greater prospect of ultimate success, than this State of steady and conservative habits, founded by the immortal Penn.

The amendment of Mr. Baer was not agreed to.

Mr. T. H. B. PATTERSON. Mr. Chairman: I move to amend the section, by adding to the end the following: "*Provided however*, That bills may be passed repealing local or special acts."

I would state that this matter was the subject of consultation in the committee, and it was the general understanding of the committee that this provision would appear in the report, but, by some misunderstanding or other, it did not.

It is evident to anybody, on the simple statement of the matter, that without this provision we would fasten upon the people of the State all the special acts—all the local legislation—that have been passed, because there is scarcely any subject on which you could get the members from all the sections of this State to agree in passing a general repealing act, and as the paragraphs of this section are general in their terms, and provide that no special

act shall be passed upon the subjects enumerated, of course one of the effects would be to prevent all special or local repeal. Hence I offer this proviso. It is the general understanding of the Committee on Legislation that it should be adopted.

The question being on the amendment, it was agreed to.

The question recurring on the paragraph, it was agreed to.

The CHAIRMAN. The question is now upon the section as amended.

Mr. DARLINGTON. Mr. Chairman: I move a re-consideration of the paragraph, beginning at line twenty-five. I am apprehensive that it may not be understood, and merely desire that it should be. It is that as to "regulating the practice or jurisdiction of courts." I voted in the majority.

The question being upon the motion, it was not agreed to.

Mr. J. M. WETHERILL. Mr. Chairman: It would be an advantage to have these paragraphs numbered "first," "second," "third," &c. I propose to add to the first line the words, "upon the following subjects," and then number the paragraphs.

Mr. CORBETT. I submit that that cannot now be done. We have passed that some time.

The CHAIRMAN. Now that the section has been gone through with, in detail by paragraphs, any member can move to amend the section.

Mr. J. M. WETHERILL. If there is any objection, I withdraw my amendment.

The question being upon the section, it was agreed to.

The twelfth section was read as follows:

SECTION 12. No local or special bill shall be passed, unless public notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated; which notice shall be at least sixty days prior to the introduction into the Legislature of such bill, and in the manner to be provided by law. The giving of such notice shall not be waived by any person or interest, and the evidence of such notice having been published, shall be exhibited in the Legislature before such act shall be passed.

Mr. PARSONS. Mr. Chairman: I offer the following as an amendment:

"No local or special bill shall be passed, unless notice of the intention to apply therefore shall have been published in two newspapers printed nearest to the lo-

cality where the matter or thing to be affected may be situated; which notice shall be published at least eight times in each of said newspapers prior to the introduction into the Legislature of such bill. Such publication shall not be waived by any person or interest, and the evidence of such notice having been published in the regular editions of such newspapers as aforesaid, shall be exhibited in the Legislature before such act shall be passed, and shall be filed in the office of the Secretary of the Commonwealth."

Mr. PARSONS. Mr. Chairman: I have no disposition to debate the amendment, but I think it would be unwise to leave this section as it is reported by the committee. This provides that notice of a bill shall be published in the locality, without providing how that publication is to be made. It is true that a subsequent line of the section provides that notice shall be published in a manner to be provided by law; but I submit that is giving too much power to the Legislature. There is a certain class of gentlemen there known as "roosters," and they will endeavor, in every possible way, to avoid this provision, and any other judicious one that we may adopt.

In addition to that, the section provides that evidence of such notice having been published shall be exhibited in the Legislature, but it is not provided what that evidence shall be, nor what shall be done with it. My idea is that the evidence shall be filed in the office of the Secretary of State. Then when the act comes before the House, the fact of publication can be examined properly.

In the locality in which I reside we have had special legislation until we are sick of it. There are a few persons who go to Harrisburg every winter, and before anybody is aware that they have left us, a special bill of some sort is passed. An act was passed in that way two years ago, abolishing our judicial district in two hours. If the provision be inserted in the Constitution that notice of special legislation shall be published in two newspapers nearest the place to be affected, it will cover the objections made by the gentleman from Carbon, (Mr. Lilly,) that there may be no newspaper published in the county.

Mr. DALLAS. Mr. Chairman: I offer the following amendment:

"No local or special law shall be enacted until after notice thereof, and of the proposed application therefor, (with the name

or names of the person or persons intending to make such application) shall have been printed in two newspapers at least six times, the first of which times shall be not less than sixty days prior to the introduction of the bill into the Legislature, which two newspapers shall appear by affidavit, to be made by an applicant for the bill, and filed in the office of the Secretary of the Commonwealth, to be those published in or most nearly to the locality in which such law may be intended to operate or to apply."

In looking at this section it has struck me, as it has the gentleman from Lycoming, (Mr. Parsons,) that it is crude and incomplete for the purpose it contemplates. The amendment which he has offered to the section is, in many respects, in my judgment, better than the section itself. But, as I heard it read, it did not cover all the ground that I desire to have covered by the section as I would amend it. The section reported by the committee provides that no local or special bill shall be passed, unless public notice be given, and that is the end of it. How notice is to be given it is not stated, except that it is to be provided for by the Legislature.

I see no reason why this Convention should not fix the manner of that notice, and put it beyond doubt. The purpose of this section is a restriction upon the Legislature, and, certainly, it is not reasonable to provide that the Legislature shall be restricted in a manner to be fixed by itself.

I have provided, therefore, by my amendment, that this public notice shall be given in two newspapers, published in the locality to be affected, or two papers most nearly located thereto; and that it shall appear that such notice has been given in the manner suggested by my amendment, I would further provide that an oath, by an applicant for the law, shall be taken, and the affidavit be filed in the office of the Secretary of the Commonwealth, so that it may become a record of the State—filed amongst its archives—and may be there, at any time, found. The section, as reported, provides that the giving of such notice shall not be named by any person or interest.

Now, sir, I cannot understand, and am quite ready to be informed, how this committee supposes that a constitutional provision could be waived. The fact that the

Constitution provides that no law shall be passed without a certain prerequisite, it seems to me, is enough to render the waiving of such prerequisite impossible. There is no more reason for putting that provision here than in any other section of the Constitution. We might, with equal propriety, wait until we get to the end of it, and say no part of the Constitution shall be waived. I think if this Constitution is adopted by the people of Pennsylvania, it is not in the power of any person or interest to waive any part of it, and that no law, not passed in conformity with it, can be a good law.

The section then continues: "And the evidence of such notice having been published, shall be exhibited in the Legislature before such act shall be passed." Now, sir, I suppose there can be no possible necessity for that. If an affidavit showing compliance with this section shall be, in every case, filed, as it ought to be, in the office of the Secretary of the Commonwealth, it will be always there for reference. But to exhibit the evidence in the Legislature cannot serve any good purpose, and is not necessary, because persons applying for an act will always want it passed in such a manner as to assure its validity, and they will not ask its passage in violation of the Constitution, for it would be void and of no avail.

In one other thing my amendment to the amendment differs, both from the section and from the amendment. I would require the parties applying for the law to publish, not only notice thereof and notice of the application, but of the names of the persons who are applying. In a great many instances that would be very valuable information to the people of the locality to be affected by a special law.

Mr. EWING. Mr. Chairman: I move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to, and the President having resumed the chair, the committee of the whole, by its chairman, (Mr. Armstrong,) reported that it had had under consideration the report of the Committee on Legislation, and had directed him to report progress and ask leave to sit again.

Leave was granted the committee to sit again to-morrow.

On motion of Mr. Stanton, at two o'clock and fifty-five minutes P. M. the Convention adjourned.

SIXTY-SIXTH DAY.

FRIDAY, *March 14, 1873.*

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith, in the chair.

The Journal of yesterday was read and approved.

SESSIONS OF THE CONVENTION.

Mr. PORTER offered the following resolution:

Resolved, That on and after Monday next the sessions of this Convention shall be held from ten o'clock A. M. to one o'clock P. M., and from three o'clock P. M. until six o'clock P. M., except on Saturday, when only one morning session shall be held.

On the question to proceed to the second reading and consideration of the resolution, a division was called, and it was decided in the negative. Ayes, twenty-eight; noes, forty-six.

Mr. J. M. WETHERILL offered the following resolution:

Resolved, That when the Convention adjourns to-day it will be to meet on Monday next at eleven o'clock A. M.

On the question to proceed to the second reading and consideration of the resolution, the yeas and nays were required by Mr. Mann and Mr. T. H. B. Patterson, and were as follow, viz:

YEAS.

Messrs. Ainey, Armstrong, Baer, Baker, Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Brodhead, Broomall, Carter, Clark, Cochran, Curtin, Dallas, Davis, Dunning, Elliott, Ellis, Ewing, Hemphill, Hunsicker, Kaine, Lamberton, Lilly, M'Camant, Newlin, Niles, Palmer, H. W., Parsons, Pughe, Rooke, Runk, Sharpe, Simpson, Smith, H. W., Stanton, Stewart, Van Reed, Wetherill, J. M. and Wherry—42.

NAYS.

Messrs. Achenbach, Alricks, Andrews, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Biddle, Boyd, Campbell, Church, Corbett, Craig, Darlington, De France, Dodd, Edwards, Hall, Hay, Hazzard, Horton, Howard, Lawrence, MacConnell M'

Clean, M'Culloch, Mann, Mantor, Patterson, T. H. B., Porter, Purviance, Sam'l A., Russell, Smith, Wm. H., Struthers, Turrell, Walker, Wetherill, John Price, White, David N., White, J. W. F., Wright and Meredith, *President*—40.

So the resolution was read a second time.

ABSENT OR NOT VOTING.—Messrs. Addicks, Barclay, Black, Charles A., Brown, Buckalew, Carey, Cassidy, Collins, Corson, Cronmiller, Curry, Cuyler, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Guthrie, Hanna, Harvey, Heverin, Knight, Landis, Lear, Littleton, Long, M'Allister, M'Murray, MacVeagh, Metzger, Minor, Mott, Palmer, G. W., Patterson, D. W., Patton, Purman, Purviance, John N., Read, John R., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Ross, Smith, H. G., Temple, White, Harry, Woodward and Worrell—40.

The CHAIRMAN. The question is upon the adoption of the resolution.

The yeas and nays were required by Mr. Joseph Baily and Mr. Corbett, and were as follow, viz:

YEAS.

Messrs. Ainey, Armstrong, Baer, Baker, Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Brodhead, Broomall, Carter, Clark, Cochran, Curtin, Dallas, Davis, Dunning, Elliott, Ellis, Ewing, Hemphill, Hunsicker, Kaine, Lamberton, Lilly, M'Camant, Newlin, Niles, Palmer, H. W., Parsons, Pughe, Rooke, Runk, Sharpe, Smith, Henry W., Stanton, Stewart, Van Reed, Wetherill, J. M. and Wherry—41.

NAYS.

Messrs. Achenbach, Alricks, Andrews, Baily, (Perry,) Bailey, (Huntingdon,) Beebe, Biddle, Boyd, Campbell, Church, Corbett, Craig, Darlington, De France, Dodd, Edwards, Hay, Hazzard, Horton, Howard, Lawrence, Lear, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Patterson, T. H. B., Porter, Purviance, Samuel A., Russell, Simpson, Smith, Wm. H., Struthers, Turrell, Walker, Wetherill, Jno. Price, White, David N., White, J.

W. F., Wright and Meredith, *President*—41.

So the resolution was rejected.

ABSENT OR NOT VOTING.—Messrs. Ad-dicks, Barclay, Black, Charles A., Brown, Buckalew, Carey, Cassidy, Collins, Corson, Cronmiller, Curry, Cuyler, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Guthrie, Hall, Hanna, Harvey, Heverin, Knight, Landis, Littleton, Long, M'Allister, M'Murray, MacVeagh, Metzger, Minor, Mott, Palmer, G. W., Patterson, D. W., Patton, Purman, Purviance, John N., Read, John R., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Ross, Smith, H. G., Temple, White, Harry, Woodward and Worrell—50.

PRINTING THE DEBATES.

Mr. CURTIN. Mr. Chairman: I beg leave to ask if the Committee on Printing is prepared to report on the resolution which I offered a few days ago, and which was passed by the Convention, in reference to the publication of the debates in the Philadelphia papers.

Mr. NEWLIN. Mr. Chairman: I was about to ask leave of the Convention, for the Committee on Printing to sit during the session of the Convention. I make that motion.

The motion was agreed to.

LEGISLATION.

The Convention then, as in committee of the whole, Mr. Armstrong in the chair, proceeded to the further consideration of the report of the Committee on Legislation.

The CHAIRMAN. The question before the committee of the whole is the amendment proposed by the gentleman from Philadelphia (Mr. Dallas) to the amendment proposed by the gentleman from Lycoming (Mr. Parsons) on the twelfth section, and upon this question the gentleman from Philadelphia (Mr. Dallas) had the floor.

Mr. DALLAS. Mr. Chairman: I desire to say to the committee that the gentleman from Lycoming, (Mr. Parsons,) who offered the amendment to which my proposition was an amendment, and myself, have agreed upon a substitute for the amendment. I therefore withdraw my amendment, in order that he may have an opportunity to present a modification of his amendment.

The CHAIRMAN. The question recurs upon the amendment of the gentleman from Lycoming (Mr. Parsons.)

Mr. PARSONS. Mr. Chairman: I withdraw my amendment, and offer this in lieu of it: "No local or special bill shall be passed, unless notice thereof and of the intention to apply therefor shall have been published in two newspapers published in or nearest to the locality where the matter or thing to be affected may be situated, which notice shall be published at least eight times in each of said newspapers, the first of which shall be no less than sixty days prior to the introduction of such bill into the Legislature. Affidavit of such notice, having been published in the regular editions of such newspapers, shall be exhibited in the Legislature before such act shall be passed, and shall be filed in the office of the Secretary of the Commonwealth."

Mr. BARTHOLOMEW. Mr. Chairman: I propose this as an amendment to the amendment, to come in at the end:

"*Provided*, That the certificate of the Secretary of the Commonwealth shall be conclusive evidence that the publication required by this section has been duly made."

Mr. Chairman, I simply desire to say, in behalf of this amendment to the amendment, that without some such provision as the one which I have offered, after a law has been enacted and approved by the Governor, unless there is something which renders it beyond a doubt a valid enactment, no person would feel safe for one moment, no man could invest money or put his interest into any proposition if it were possible, fifteen or twenty years thereafter, that an act of the assembly could be attacked for want of constitutionality by reason of the fact that the evidence required was not exhibited to the Legislature. That would be a matter that would depend entirely upon the proof, and the character of the proof would necessarily make it subject to destruction and loss. There must be something beyond the mere preserving of the publication, because that is liable to destruction by fire or loss, or a thousand other means.

Mr. PARSONS. Mr. Chairman: I will accept the amendment of the gentleman from Schuylkill (Mr. Bartholomew.)

Mr. LILLY. Mr. Chairman: I move to strike out "sixty" days, and insert "thirty" days.

The motion was not agreed to.

Mr. MANN. Mr. Chairman: I think a little reflection will satisfy the members of the committee that none of these

amendments are needed. The Constitution, as it now stands, has a similar provision in relation to charters of banks, and I ask the attention of the committee to its language: "No corporate body shall be hereafter created, renewed or extended with banking and discounting privileges, without six months' previous public notice of the intended application for the same, in such manner as shall be prescribed by law."

Can any gentleman point to any inconvenience, or any doubt, or difficulty that has ever arisen under this provision? The Legislature might, after the adoption of this clause, provide by law for the proper manner of giving notice, and I believe that no company has ever been incorporated under that act, unless the proof of the notice was submitted first to the Legislature and then to the Governor, and several vetoes have been sent in to former Legislatures, and some to the present one, vetoing bills because the notice was not given to the Governor that this provision of the law and the Constitution had been complied with. Now, gentlemen, the committee, in preparing the section under consideration, followed the language of the present Constitution, because no evil had ever resulted from it. It contains precisely the old requirements, that six months' notice shall be given, not only for these corporations, but for all special laws, following the exact language, only making it cover all special legislation. I appeal to you, if the Legislature cannot be trusted to determine the method and kind of notice to be given, what in Heaven's name can it be trusted with? I hope the committee will not put into this section of the Constitution proper and legitimate legislation.

Mr. DALLAS. A single word in reply to the gentleman from Potter (Mr. Mann.) The section of our present Constitution to which the gentleman has referred applies only to banks; nor is its language precisely that of the section now under consideration. This section, as it came from the committee, provides that "no local or special bill shall be passed unless public notice of the intention to apply therefor shall be published in the locality," but it does not say, however, where, or how, or when, or how often such notice is to be published; and there is no reason why we should leave our own work only partially done. There is also a provision that this section, if adopted, shall not be waived by any person or interest whatever; and the

amendment that I have offered proposes to omit such proviso, because I have assumed that a constitutional provision cannot be waived, and that we should not suggest or imply that it is possible that it can be done. Those are the only changes which I propose, except some few alterations in language merely, which, I think, if gentlemen will read the section as reported in connection with the amendment as it will be read from the Clerk's desk, they will think it prudent to adopt.

Mr. EWING. Mr. Chairman: I was not present when this section was adopted in committee, and I have no feeling about it, but the very amendments which have been offered here, and the discussion of them, would satisfy me that it is altogether improper to undertake, in a constitutional provision, to determine the precise manner in which the notice should be given. That is a matter of detail which may require change. It is a matter of detail which is properly and fairly left to the Legislature. It has, I believe, never been abused, and the section as reported by the committee, I think, properly leaves the proof of that notice to the House. As I understand the amendment the proof of notice is simply to be filed with the Secretary of State. An affidavit is to be made. It provides for the evidence which shall be conclusive. I do not know that under that provision the House could go back of the affidavit and inquire whether or not that was correct. I take it that a law fixing the manner of this notice ought to go more into detail than the amendment here offered does.

I think the provision with regard to notice not being waived is a proper one. The section without that might be construed as merely directory. Such interpretations have frequently been given to such provisions in the Constitution; and if there were added to this section a provision that this proof of the publication should be spread upon the Journal of the House, I think it would cover everything that the gentleman proposing the amendment wishes to have in it.

Mr. PARSONS. Mr. Chairman: I am aware that under the old Constitution there was a proviso requiring that notice of applications of charters for banks should be advertised, and the wording of the old Constitution was that it "shall be advertised in such manner as shall be prescribed by law." Now the object of the amendment that I have offered is to prevent the Legis-

lature from passing such a law as they did after this section of the old Constitution was adopted. They passed a law requiring notice of application for charters of banks to be published in newspapers in Harrisburg. The consequence was that, very few persons taking those papers throughout the State, it was not known when there was an application to be made and the expense went for nothing.

Mr. MANN. Mr. Chairman: The gentleman is mistaken. The requirement of the law was that the notice should also be published in the paper where the bank was to be located, so that the people, not only where it was to be located, but all over the State, had notice.

Mr. AINEY. Mr. Chairman: I would ask if it is not notorious that banks have been chartered under this provision of the Constitution, and under the law regulating the advertisement, without having been legally advertised.

Mr. MANN. Mr. Chairman: I answer that I do not believe such a thing exists. It may, but if it does, will the amendment prevent it? All the amendment proposes is to require notice to be published in the newspapers. The present law requires that, and if the one can be evaded the other can be.

Mr. AINEY. Mr. Chairman: I am aware, if the gentleman is not, that banks have been incorporated in this Commonwealth under this provision of the Constitution without any notice whatever, either at Harrisburg or at the locality it was to go. It is a fact, and I state it with regret, that charters have been passed by the Legislature without any advertisement, and sold—huckstered about to any who would buy them. Such charters have been passed in our county and in adjoining counties. Now I understand that the Legislature construes that because they provide the manner of advertisement, by statute law, they can set it aside, and ignore it. If we put it in the fundamental law it will be binding upon the Legislature, and they cannot set it aside. I am in favor of passing the section in a positive, certain form, and shall vote for the amendment for that reason.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Carbon (Mr. Lilly.)

Mr. LILLY. My amendment was voted down.

The CHAIRMAN. The question recurs on the substitute offered by the gentleman from Lycoming (Mr. Parsons.)

Mr. T. H. B. PATTERSON. Mr. Chairman: I ask that the section, as amended, be read.

The CHAIRMAN. The question is on the substitute for the entire section, which will be read.

The CLERK read as follows:

SECTION 12. No local or special bill shall be passed, unless notice thereof and of the intention to apply therefor shall have been published in two newspapers published in or nearest to the locality where the matter or thing to be affected may be situated, which notice shall be published at least eight times in each of said newspapers, the first of which times shall be not less than sixty days prior to the introduction of such bill into the Legislature. An affidavit of such notice, having been published in the regular editions of such newspapers, shall be exhibited in the Legislature before such act shall be passed, and shall be filed in the office of the Secretary of the Commonwealth.

Mr. T. H. B. PATTERSON. Mr. Chairman: Before the vote is taken I would like to know whether that word in the substitute is "affected" or "effected."

The CHAIRMAN. The word is "effected." It is evidently intended to be "affected."

The substitute was agreed to, there being on a division, ayes fifty-one, noes twenty.

Mr. DARLINGTON. Mr. Chairman: I move to amend the section, by inserting after the word "published" the words "with the names of the applicants." I think the members of this Convention are cognizant of the fact that the newspapers of the State are always full of notices containing applications to be made to the Legislature for the charter of certain banks. These notices are published without containing any information as to the locality where the bank is to be situated, and without the names of the parties who are interested in its incorporation. I think that the public ought to know the names of the applicants who desire the charter to be passed by the Legislature; and also whether they are bankrupt men or men who possess sufficient capital to enter into the banking business.

Mr. DALLAS. Mr. Chairman: I desire to say the amendment now proposed, that the names of the applicants should be published, was included at one time in this section, but upon consideration, however, with some of the friends of the measure, it was ascertained that this sugges-

tion was not approved of by them, because instances might arise by which the Legislature would be imposed upon by the insertion of false and fictitious names in the application. I became convinced by this argument, and subsequently withdrew the words from the section which the gentleman has suggested.

The amendment was not agreed to.

Mr. BRODHEAD. Mr. Chairman: I move to amend the section, by adding the words "and the enrollment of any law shall be conclusive evidence, in all courts of justice, that such publication has been made." I offer this amendment for the reason that the certificate of the Secretary of the Commonwealth might not be conclusive evidence of the passage of an act ten or twenty years afterwards, if his authority was disputed by the courts.

Mr. BUCKALEW. Mr. Chairman: The Convention will perceive the difficulty that will be occasioned by the adoption of this amendment. The ordinary mode in constitutions is a provision which requires applications for private bills to be published in the locality from which the application shall come, leaving the Legislature, as in ordinary cases, to pass a statute providing all the machinery necessary for the success of the provision. A provision has already been adopted by the Convention, prescribing what evidence shall be introduced into the House, and into the Senate, of the publication of a notice to introduce these bills, and that evidence is to be the certificate of the Secretary of the Commonwealth. The gentleman who offered the amendment points out a difficulty, and suggests a remedy, but I think all these details are quite improper in the Constitution of the State, and if we undertake to go through every amendment that we propose, and provide the details and machinery for their application in this manner, we shall have a Constitution of the most fearful length, and, presently, we shall find, in practice, that a thousand things we have not foreseen are injuriously affected by our details. I think that we should leave the moulding of general principles, contained in the provisions to the Constitution, to the ordinary legislative power. I regret that the House has adopted any amendment to this report. The committee has provided that public notice shall be given in all the localities of these applications, and I think the details should be left to the Legislature.

Mr. BRODHEAD. I would like to ask the gentleman whether, if the validity of such a charter is disputed, ten or twenty years afterwards the certificate of the Secretary of State will have to be introduced into courts to sustain that charter as evidence that the publication was made?

Mr. BUCKALEW. The gentleman seems to suggest a difficulty in his question that I do not propose to answer off-hand without time for deliberation. I cannot perceive the necessity of incorporating all these details into constitutional provisions. We are engaged in establishing immutable laws, and we do not know where they may strike; whereas if a mistake is made in questions of details in one session of the Legislature it can easily be corrected in the succeeding session.

Mr. BIDDLE. Mr. Chairman: I merely wish to say that I concur in all that has been said by the gentleman from Columbia, and I trust this section will pass as it has been reported. It gives all the securities that are necessary in regard to the passage of local laws.

The CHAIRMAN. The Chair will state to the gentleman that the section, as reported from the committee, is not now before the committee of the whole. It has been amended by the adoption of the substitute of the gentleman from Lycoming, (Mr. Parsons,) which is now open to amendment.

Mr. DARLINGTON. Mr. Chairman: I move to re-consider the vote taken on the substitute.

Mr. BOWMAN. I desire to suggest to the gentleman that his object can be reached when the vote is taken upon the substitute offered in place of this section.

The CHAIRMAN. The Chair will state that the substitute has already been adopted, and now takes the place of the section reported by the committee.

Mr. J. W. F. WHITE. Mr. Chairman: If it is in order, I move to re-consider the vote by which the substitute was adopted. I voted in the majority, and I will just say that I voted for the substitute hesitatingly.

The motion to re-consider was agreed to.

Mr. J. W. F. WHITE. Mr. Chairman: I will state that I voted for the substitute, supposing it would be acceptable to the committee, but from the discussion that has arisen since, and from the various propositions which have been offered to amend it, I am convinced of the impropriety of endeavoring to legislate in the Constitution. I believe myself the sec-

tion as reported by the committee is sufficient for all purposes, and we had better leave it in that shape.

Mr. BUCKALEW. Mr. Chairman: I move to amend the section, by striking out the words, "the giving of such notice shall not be waived by any person or interest."

The amendment was agreed to.

Mr. DARLINGTON. Mr. Chairman: I would like to ask the members of the committee who reported this article whether there is any objection on the part of anybody to the names of the applicants being published with the notice.

Mr. CORBETT. I answer that I do not think the committee has any objection whatever to the amendment.

Mr. DARLINGTON. Mr. Chairman: I then move to amend the section, by inserting after the word "therefor," in the first sentence, the words "with the names of the applicants." I have endeavored to state before the evils which have arisen, and are constantly arising, in the case of bank charters. A bank charter is applied for without the public knowing in any way the parties who make the application. I remember an instance in which parties made an application for the charter of the bank of Brandywine. Although considerable inquiry was made it was impossible to ascertain where that bank was to be located, whether at the lower or upper end of a stream forty miles in length. The object of the notice, I think, certainly ought to be to convey information as to the parties who make the application for the charter, so that some idea can be formed in regard to where the bank is to be located.

Mr. CORBETT. Mr. Chairman: I have found, in conversation with the friends of this section, that it would perhaps be better not to incur the section with the amendment. Of course the committee has no objection to the section being perfected, as far as possible. I presume this is a matter that can be provided for by legislation, and under such restraint as the Legislature may see proper to adopt. I think, therefore, it probably would be better if this matter was left entirely to the Legislature.

The amendment was rejected.

Mr. BRODHEAD. Mr. Chairman: I now renew my amendment, to be added at the end of the section, viz: "And the enrollment of any law shall be conclusive evidence in all courts of justice, that such publication has been made." The objection I desire to overcome in offering this

amendment is the want of ample evidence of this publication. The fact is that a large number of banks have already been chartered in this State, and, I am credibly informed, without any publication of the notice of the charter having been made. Now if the charters of those banks are attempted to be invalidated, nothing can save their charters from being revoked, because under our present law there is no place to find the necessary evidence. If a charter, passed under this Constitution, is attempted to be invalidated, I ask this Convention where the evidence of the publication of the notice for the charter could be procured? I think the State should certainly do something to protect the stockholders of these corporations, and after the act has been signed by the Speakers of both Houses, and signed by the Governor, I think it very proper that the enrollment of that law should be conclusive evidence of the validity of a charter in the courts of justice hereafter.

Mr. J. S. BLACK. Mr. Chairman: I desire to call the attention of the gentlemen who are in favor of having some provision of this kind, if it is absolutely necessary in the Constitution, to such a modification of the section as this. It will read, if adopted thus, in the following manner: "No local or special bill shall be passed unless upon petition of which public notice shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall be at least sixty days prior to the introduction into the Legislature of such bill, and in the manner to be provided by law, and the fact of such notice shall be conclusively proved by the certificate of the committee which reports the bill, endorsed on the petition."

The CHAIRMAN. Does the gentleman offer that as a substitute for the section?

Mr. J. S. BLACK. I offer it as a substitute.

The substitute was not agreed to.

The CHAIRMAN. The question recurs on the section as amended.

The question being taken, the section, as amended, was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 13. The Speaker of each House shall publicly, in the presence of the House over which he presides, while the same is in session, sign all bills and joint resolutions passed by the Legislature.

Mr. CORBETT. Mr. Chairman: I believe the title of "presiding officer of the Senate" has been adopted by the Convention. The word "Speaker" is used in this section, and I therefore move to strike out the word "Speaker" and insert the words "the presiding officer."

Mr. LILLY. Mr. Chairman: I offer the following amendment to the amendment:

"The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read, immediately before the signing."

I desire to state that the reason I have offered this amendment is if this section is intended to be of any use at all it should require the presiding officer of each House to sign all bills at the time of their publication. I have sat in the Legislature time after time when I have seen the Speaker, with a file of bills before him, busily engaged in signing his name. I think the presiding officers of the Legislature might as well sign bills and joint resolutions in his chamber as to be required to sign them publicly.

Mr. BOWMAN. I would like to ask the gentleman if he ever heard of a presiding officer of either House signing a bill that had not been duly passed by both Houses?

Mr. LILLY. I do not know such to be the case, but I have heard it said, and I know that charges to this effect have been made, time and time again. I remember one case where the gentleman from Columbia (Mr. Buckalew) endeavored to have a certain bill repealed, because it had been signed by the Speakers of both Houses without going through the legislative body at all. I think if there is any use at all in the section which has been reported by the committee, that the chairman will accept the amendment I have offered.

Mr. HANNA. Mr. Chairman: I am surprised at the amendment which has been offered by the gentleman from Carbon, (Mr. Lilly,) and particularly since he has been a member of the Legislature he certainly ought to know that a suggestion like this can have no other effect than to obstruct public business; and the idea of requiring every bill, after it has been read three times and passed both Houses, to be publicly read during another session of the Legislature, I think is entirely impracticable. Such a provision as this would require a longer session of the Leg-

islature than is deemed necessary by the public.

Mr. LILLY. The gentleman either does not correctly represent or correctly understand this. He does not want the bills read before signature; but the gentleman from Columbia (Mr. Buckalew) will tell you that many a time bills have been so signed that had never been passed.

Mr. BUCKALEW. Over and over again.

Mr. HARRY WHITE. Mr. Chairman: The object of the section is to do away with what has been, in some instances, a flagrant evil in legislation. From time to time gentlemen of the Senate, and of the House of Representatives, have arisen in their places and complained that some bill which the Governor had signed, and which they understood to have become a law, was never passed by the Legislature, and the consequence is, very frequently, the appointment of a committee of investigation and the delay of legislation. The subject has been a prolific source of scandal upon the Legislature. There is a very important bill upon the statute book—the act preventing railroads from crossing at grades—which, it is said, never passed the Legislature, and I believe myself it never did pass. The object of the present section is to make the act of signing a public act, so that there can be no mistake about it.

Mr. AINEY. Mr. Chairman: I would like to ask the gentleman from Indiana (Mr. Harry White) whether such a thing would be possible under the provisions of the report of the Committee on Legislation now, requiring that every vote shall be taken by yeas and nays, before the bill be passed, and that that vote shall be printed in the Journal.

Mr. HARRY WHITE. Mr. Chairman: I can hardly imagine that which could not be possible. I am not prepared to say, at a moment's notice, whether it is possible or not; but, it occurs to me, that it might take place. If the gentleman (Mr. Ainey) will reflect a moment, he will discover that the details of a bill are not entered on the Journal—it is only the manner of the passage—and a different bill, perchance, may be presented to the Speaker, and signed, from that which was actually passed. As we propose, the form of expression will be something like this: "The following bills have been presented for signature, and will be signed." That is then done in the presence of the House. I do not imagine it is cumbersome at all, and I think it is wise to at-

tempt to save the Legislature from the scandal which has come from the signing of bills which never passed.

Mr. MACCONNELL. Mr. Chairman: I consider this a very important matter, and I will state my reasons for so thinking. A case involving this principle came within my observation some years ago. An act was presented in the borough of Manchester, authorizing a plank road company to erect a gate on one of the streets of that borough. It was opposed very strongly by the inhabitants of the borough, and when the pamphlet laws came to be published, the act appeared among the acts without the name of the Speaker of the House or the President of the Senate to it, but it had the name of the Governor approving it. We were very well satisfied that it had never been passed, and I am satisfied now that it had never been passed. We contested the right of the company to keep up their gate; it was carried into the court of common pleas; the court decided that the act was valid, although not signed by the President or the Speaker of either House. It was taken to the Supreme Court, and it was there held that it was not necessary to the validity of an act that it should be signed by the Speaker of either House. Now, in that case, I am satisfied, and very many in the neighborhood were satisfied, that it never had passed into a law. I, therefore, believe that it is a matter of great importance to make the validity of a bill depend upon its being signed by the Speaker of each House, and also that the signing should be done in public.

Mr. MACVEAGH. Mr. Chairman: It is not clear to my mind, I confess, that this section is absolutely necessary, with the previous guards we have been providing; but if the section is necessary, then, I confess, I cannot see the grounds upon which we are to decline to accept the proposition of the gentleman from Carbon (Mr. Lilly.) The object certainly is to have the bill signed as a public official act, and if it is intended that the signature of the bill shall be an official act, and done in the presence of the Legislature, surely it is proper to call the attention of the body to the bill that is being signed, by the reading of its title. That is all. It will take but very little time. If, therefore, the section is to be adopted—and certainly, as the committee has fully considered it and reported it, I suppose it will be adopted—then I trust the proposition of the gentleman from Carbon will be adopted also.

The amendment of Mr. Lilly was agreed to.

Mr. HARRY WHITE. Mr. Chairman: I move to add at the end of the section the words, "and the fact of signing shall be entered on the Journal."

The amendment was agreed to.

The section, as amended, was then agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 14. The Legislature shall prescribe by law the number, character, duties and compensation of the officers and employees of each House; and no payment shall be made from the State Treasury, or be in any way authorized to any person acting as such officer or employee, except they shall have been elected or appointed in pursuance of law.

Mr. LILLY. Mr. Chairman: I move to amend, by adding at the end of the section the words, "and shall have actually performed the duty of the position."

The reason why I desire to add that is that there has grown up at Harrisburg a very reprehensible practice. When I was a member, twenty-two years ago, we had but nine employees, and we were well served. Everything that the members desired was done efficiently, and we got along entirely well. That number included the firemen, pasters, folders, sergeant-at-arms, doorkeepers and their assistants. Now, I understand there are between fifty and sixty employees there. Each man of the dominant party who has influence will get some friend appointed. This friend's name is then placed on the roll, and he goes home, and does not present himself again, except, perhaps, once a week, until the end of the session, when he draws his salary.

I desire that no man shall be employed in either House, nor draw pay, who is not needed there. Some members of the Convention with whom I have talked on this subject seem to think it is rather a small thing to put into a Constitution; but the evil is so great that I think a few words in the Constitution would be of great service, as it is very important we should put an end to that practice.

Mr. ALRICKS. Mr. Chairman: The principle objection to the gentleman's amendment is that it is entirely too long. The same end could be accomplished by striking out some words from the earlier portions of the section, and striking out the words "as such," where they occur in

the fourth line; and also striking out the words "except they have been," in the fourth and fifth lines, and inserting the words "except to an officer or employee," so as to make the section read, if my amendment is adopted: "The Legislature shall prescribe, by law, the number, character, duties and compensation of the officers and employees of each House; and no payment shall be made from the State Treasury, or be in any way authorized, to any person, except to an acting officer or employee elected or appointed in pursuance of law."

Mr. LILLY. Mr. Chairman: I accept that.

The question being on the amendment of Mr. Lilly, as modified, it was agreed to.

Mr. DARLINGTON. Mr. Chairman: I would like to ask what meaning they propose to give to the word "character," in the second line. "The Legislature shall prescribe by law the *character* of an employee." Of course they shall prescribe the number, the duty and the compensation. Is not that all the law requires, and should not that be sufficient?

Mr. HARRY WHITE. Mr. Chairman: In answer to that I would say that "the character" of course means the kind of office—it is the *designation*; it is the *name*.

Mr. MACVEAGH. Mr. Chairman: That matter, I suppose, can be corrected hereafter. I confess I do not agree that the character of an officer is necessarily the *kind* of office he fills. I trust the chairman of the Committee on Legislation will re-consider that *dictum*. It is very often necessary to distinguish between the kind of office a man fills and the character of the man that fills it. I think it will be well if the chairman would see whether he cannot frame the paragraph so as to cover the point without the use of the word "character."

Mr. HARRY WHITE. Mr. Chairman: To avoid the possibility of misunderstanding, and as I have no objection to striking out the word "character," I move that it be stricken out.

The amendment was agreed to.

Mr. HOWARD. I move to amend the section by adding, "and have performed the duties of said office."

I do not know whether the section as read covers precisely what is covered by my amendment; but I have personally known of officers having been frequently appointed at Harrisburg, and perhaps discharged some very slight duty, and have never been seen there during the

rest of the session; yet they have drawn their full pay.

Mr. ALRICKS. Mr. Chairman: The word "acting" covers that—"an acting officer." He must *act* in the capacity for which he was paid.

Mr. HOWARD. Well, I withdraw my amendment.

Mr. HAZZARD. Mr. Chairman: I move to amend, so that it will read, "the Legislature shall prescribe by law the number and kind of offices and the duties and compensation of the officers and employees of each House." The object is that the number and duties of the officers shall be prescribed, and that the duties pertaining to each of these officers and employees should not be distinctly stated. I do not know that anything ought to be put into a Constitution about the character of the officers; but, certainly, the character of the duties ought to be included. I understood a few days ago that there were six door-keepers at Harrisburg. It seems to me that is rather too many.

The amendment was not agreed to.

The question recurring on the section as amended, it was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read, as follows:

SECTION 15. All stationery, printing paper and fuel used in the legislative and other departments of government shall be furnished, and the printing, binding and distributing of the laws, Journals, department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the Governor, Auditor General and State Treasurer.

The fifteenth section was then agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read, as follows:

"No law shall be passed which shall operate to extend the term of any public officer, nor to increase or diminish his salary or emoluments after his election or appointment."

Mr. MACVEAGH. Mr. Chairman: Does the Chairman of the Committee on Legislation think that the words "which shall operate" are desired to apply to the operation of law? Would it not be better to say that "no law shall be passed to extend the term of any officer," &c. The expression, "which shall operate," is a phrase used rather as applied to *medicine* than to law.

The CHAIRMAN. Does the gentleman from Dauphin move an amendment?

Mr. MACVEAGH. I should like to strike out the words, "which shall operate," in the first line, and let it read: "No law shall be passed to extend the term," &c.

Mr. EWING. Certainly the gentleman has not considered that amendment. It no doubt would be interpreted to mean what *this* does mean—or *probably* would; but the law may be passed ostensibly for some other purpose, and yet it would incidentally operate to extend the term of office.

Mr. MACVEAGH. Is not that a matter of construction by the courts?

Mr. EWING. Perhaps so.

Mr. MACVEAGH. And if the object of it be put in the title, and it has to be read three times, ought we to put a phrase in about how it should "operate?" It will operate as the courts construe it.

Mr. EWING. But it will apply to any act which would indirectly affect the matter intended to be reached by the section.

Mr. MACVEAGH. You may use the word "operate" if you choose. I do not think it is good English in this connection. Should any constitutional provision furnish a standard of construction for the courts? Is it not clearly a question of judicial construction? When we prohibit the passage of a law for this purpose, we prohibit everything we ought to prohibit.

Mr. EWING. What is the effect of a constitutional amendment passed at the last election? It is an amendment to authorize the people to elect a State Treasurer. Its operation is to extend the term of the State Treasurer. There might be a great many cases of the same kind.

Mr. MACVEAGH. Can you prevent that if the court so construes it, by putting in a clause that it shall not operate in a certain manner.

Mr. EWING. That is not the question. The point is that it shall not indirectly do so.

Mr. MACVEAGH. Do you not effect your purpose when you say that they "shall not pass any law to," &c.?

Mr. AINEY. Mr. Chairman: I would suggest that it would read better if you strike out the words "operate to," and leave the word "shall" in. Make it read: "No law shall be passed which shall extend the term," &c.

Mr. DALLAS. Mr. Chairman: I do not know that a further amendment is in order now; but I would suggest that the whole purpose can be effected by striking out more words than anybody has yet suggested. Strike out the words "be passed, which shall operate to," so that it shall read: "No law shall extend the term," &c.

Mr. MACVEAGH. I agree fully with the gentleman from Philadelphia, (Mr. Dallas,) but I think the phraseology of the other sections of this report is of such a character as to need that some of these words be left standing to preserve the symmetry of expression.

The CHAIRMAN. The gentleman from Dauphin accepts the amendment of the gentleman from Lehigh, (Mr. Ainey,) and the question is on the amendment.

Mr. DUNNING. Mr. Chairman: I move to further amend as follows: To insert after the word "extend," the words "or shorten."

Mr. DARLINGTON. Mr. Chairman: I ask the gentleman from Luzerne whether it is possible for the Legislature to reduce the term of office after a man is elected and in possession?

Mr. DUNNING. Mr. Chairman: I think it has been done. A law has been passed, for instance, abolishing an office, and men have been legislated out of office.

The amendment to the amendment was rejected.

Mr. STANTON. Mr. Chairman: How does the precise question before the House now read?

The CLERK: It is proposed to strike out so as to make the section read: "No law shall be passed which shall extend the term of any public officer, nor to increase or diminish his salary or emoluments after his election or appointment."

Mr. HOWARD. Mr. Chairman: I hope the amendment will not prevail. It has been the common practice to get a law passed to simply change the time of holding an election, in order that the term of certain officers might be extended another year. Now, although that would not be a law passed to extend the term of any officer, yet the law would operate to carry the terms of these officers over. If I understand the object of the Committee on

Legislation in reporting this section, it was to provide against just such cases as this. Therefore I think the amendment of the gentleman from Dauphin will not be adopted.

Mr. MACVEAGH. Mr. Chairman: I submit that the proper way to reach that end would be to say that no election shall be postponed. That is one thing, and if the fact be as stated by the gentleman from Allegheny, it can be met in that way, but not in any other. I venture to say that the evil will not be reached in the way the gentleman indicates by leaving in the words "operate to." No court can declare an act unconstitutional that is not forbidden, because one of its indirect consequences will be that some man will hold office longer than he otherwise would, if that is not the object of the law. If it is constitutional otherwise, the fact that it permits an increased term of office in one or in a few cases will not make it unconstitutional under this provision. Let us understand this thing. Is there any lawyer now here who holds that if it is constitutional for the Legislature to postpone an election, and one of the incidental consequences of postponing the election a circumstance not mentioned in the bill, and having no necessary relation to its text, is that a certain man will hold a certain office for a year longer than he otherwise would, that the Supreme Court would declare such a law to be unconstitutional, under any such clause as this, that a law shall not be passed to operate to extend the term of any public officer? The way to make that unconstitutional is to say that no special law shall be passed changing the time of elections, and I think that we have done that already.

Mr. BIDDLE. Mr. Chairman: I desire simply to suggest to the gentleman from Dauphin that he draw his amendment so as to read in this manner, which I think will, in part, cure the difficulties suggested by the gentleman from Allegheny (Mr. Howard:)

"No law shall extend the term of any public officer, nor increase or diminish his salary or emoluments after his election or appointment."

Mr. DALLAS. That is my suggestion; I was going to move it as an amendment.

Mr. MACVEAGH. Mr. Chairman: My friend from Philadelphia (Mr. Dallas) suggested that, but I think the previous clause is in this form. If not, I will accept that.

Mr. CORBETT. If you strike out the word "to" in the phrase "nor to increase or diminish," it will be all right.

Mr. MACVEAGH. Mr. Chairman: Very well. I will do that.

Mr. BIDDLE. Will the Chair have the paragraph read as amended?

The CLERK read, as follows:

"No law shall extend the term of any public officer, nor increase or diminish his salary or emoluments after his election or appointment."

Mr. HARRY WHITE. Mr. Chairman: I have no objection to abbreviate any section, so far as I am concerned, and I always receive with great deference any amendments proposed by the gentlemen who have been proposing this. But it occurs to me that the section, as reported, will relieve the courts possible, and the Legislature certainly, from applications in regard to the very difficulty that has been named here and which we are all desirous to avoid. This question was considered carefully by the Committee on Legislation in that regard, and the words, "shall operate to," carefully weighed. I can well imagine how that may be done by indirection, which cannot be done directly. For instance, the charter of a city may be modified, and the effect of it, indirectly, may be to extend the term of an official. The courts and the Legislature may be relieved from difficult applications made to them from time to time, if the words "shall operate to" are left in. That is the reason why it was so worded.

Mr. BIDDLE. Mr. Chairman: I think that to leave in the words "shall operate to" will make it less specific. I do not see that anything which it is intended to imply by the section, as reported, is not implied in its amended form, and the clause seems to me to be much more precise, as it stands in the amendment of the gentleman from Dauphin.

The amendment was agreed to.

Mr. BUCKALEW. Mr. Chairman: The amendment which has just been added here, I understand simply was intended to relate to the term of office of any public officer. But the language of the clause makes it also apply to the increase or diminution of his salary or emoluments. I do not apprehend that such was intended, yet it seems to be the inevitable effect. The truth is, a general clause of this kind, universal in its application, that no compensation of anybody shall be increased or diminished, is one of some tenor, and

we had better know how it is going to operate before we take final action on it.

Mr. MACVEAGH. Mr. Chairman: As I understand it, the purpose of this Convention is to abolish fees and perquisites, and to fix salaries for public officers, and I do not think that these salaries ought to be increased or diminished after a man has been elected to an office for a definite term of years.

Mr. BUCKALEW. Mr. Chairman: Take the case of the office of justice of the peace, an office that lasts five years, and various other offices of high emolument. I suppose, at all events, that the term emoluments had better be stricken out.

Mr. CORBETT. Mr. Chairman: I move to amend as follows:

To strike out the word "emoluments."

The amendment was rejected.

The CHAIRMAN. The question recurs on the section as amended, which will be read:

The CLERK read as follows:

SECTION 16. No law shall extend the term of any public officer, nor increase or diminish his salary or emoluments after his election or appointment.

The section, as amended, was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 17. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other bills.

Mr. MACVEAGH. Mr. Chairman: Why not use the word "to" instead of "as in other," at the close of the clause. My friend from Philadelphia (Mr. Dallas) makes the suggestion, and I think it proper. Is not this a clerical error?

Mr. DALLAS. Mr. Chairman: If the gentleman will allow me to explain, I find that this is an exact copy of the clause in the Constitution of 1838.

Mr. MACVEAGH. Then I withdraw the suggestion.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 18. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on the public debt, and for common schools; all other appropriations shall be made by separate bill, each embracing but one subject.

Mr. EWING. Mr. Chairman: I think the word "for," before "common schools," is superfluous, and should be stricken out. I ask that it be done by common consent.

Mr. DALLAS. Mr. Chairman: That would make it read "interest on the common schools."

Mr. EWING. Mr. Chairman: I thank the gentleman from Philadelphia. I withdraw my request; I see I was mistaken.

Mr. WHERRY. Mr. Chairman: I move to amend, by striking out the word "common" and inserting the word "public," to make the section harmonious with the report of the Committee on Education.

Mr. HARRY WHITE. Mr. Chairman: I accept that to make it agree with the report of the Committee on Education.

The amendment was agreed to.

The CHAIRMAN. The question is on the section as amended, which will be read.

The CLERK read as follows:

SECTION 18. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, for interest on the public debt, and for common schools; all other appropriations shall be made by separate bills, each embracing but one subject.

The section as amended was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 19. The general appropriation bill shall, before it becomes a law, be presented to the Governor. If he disapprove the bill, or any item or appropriation therein contained, he shall communicate such disapproval, with his reasons therefor, to the House in which the bill originated, who shall enter such reasons at large upon the Journals thereof, and immediately proceed to re-consider such bill, or the separate items thereof disapproved. All items in said bill not so disapproved shall have the force and effect of law. Any item so disapproved shall be void, unless re-passed by two-thirds of each House. And as to such bill, or any item disapproved, the vote shall be taken by yeas and nays, the names of the persons voting yea and nay to be entered on the Journals of each House, according to rules and limitations hereinbefore prescribed as to other bills.

Mr. BOWMAN. Mr. Chairman: I move to strike out the section entirely. It is already provided for in the sixteenth and seventeenth sections of the report of the

Committee on the Executive Department, which has been adopted in committee of the whole.

Mr. MANN. That is correct.

Mr. HARRY WHITE. Mr. Chairman: I will be glad if the gentleman from Erie (Mr. Bowman) will send the sections he refers to to the desk to be read.

Mr. BOWMAN. Mr. Chairman: The gentleman from Indiana will find the sections on page five of the report of the Committee on Executive Department.

Mr. HARRY WHITE. Mr. Chairman: I have not a copy of that report. Let the section be read.

Mr. MANN. I will read them if the committee will allow me.

Mr. CORBETT. Mr. Chairman: I desire to say that the sections already adopted, as reported from the Committee on Executive Department, cover this case entirely.

Mr. HARRY WHITE. Let them be read by the Clerk.

The CLERK read as follows, from the report of the Committee on Executive Department:

SECTION 16. Every bill which shall have passed both Houses shall be presented to the Governor; if he approves he shall sign it, but if he shall not approve, he shall return it with his objections to the House in which it shall have originated, which shall enter the objections at large upon their Journals, and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent with the objection to the other House, by which, likewise, it shall be re-considered, and if approved by two-thirds of that House, it shall be a law, but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for or against the bill shall be entered on the Journals of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly by their adjournment prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SECTION 17. The Governor shall have power to disapprove of any item or items of any bills making appropriations of money, embracing distinct items, and the

part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

Mr. HARRY WHITE. Mr. Chairman: It is the last section which supplies this. I have no objection to section nineteen being voted down. The section just read is the same in substance.

The section was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read as follows:

SECTION 20. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, except by a vote of three-fourths of all the members elected to each House.

Mr. MACVEAGH. Mr. Chairman: Before adopting this section I desire to say that I think one of the most beneficent matters of modern legislation has been that which links the charity of the State to the assistant charity of individuals. I think that it is one of the very best uses that can be made of the public money, and as now the English speaking people everywhere are studying the best method of dealing with distress, with pauperism and with misfortune in the different forms in which it afflicts humanity, I submit that it is not wise to limit the Legislature by the terms of this section. Wherever you can secure of the wealth of any man a considerable proportion for really worthy and charitable purposes, I think it is always wise to supplement it with the charity of the State. Therefore the committee of the whole ought to consider this subject carefully, and not adopt this section as matter of form. It appears to me now that the section should be voted down, although I shall be very glad to hear from the gentleman from Columbia, (Mr. Buckalew,) and others upon it. As at present advised, I would not put any obstacle in the way of the Legislature which would prevent it from meeting the wishes of charitable citizens who come before it, and saying to those who are doing all they can to relieve want, "the State will give you \$50,000 or \$100,000 to assist in taking care of the orphans, of the destitute, of the insane, of the halt, the lame, the blind, or of any of the forms of suffering in which charity is so urgently needed in all modern societies."

Mr. BUCKALEW. Mr. Chairman: I move to amend as follows: To strike out "three-fourths" and insert "two-thirds."

Mr. MACVEAGH. Why not let a majority do it?

Mr. BARTHOLOMEW. Mr. Chairman: I move to amend the amendment, as follows: By adding after the word "except," the words "under the rules and limitations prescribed for the passage of other bills over the Executive veto."

Mr. BARTHOLOMEW. Mr. Chairman: I will simply show the inconsistency of this proposition. Here they say that the Governor shall have the right to veto any particular item of the appropriation bill, but if that appropriation shall be passed by two-thirds of the members of either House then it shall become a law, as other bills that are subject to veto. Then in this section on the appropriation to charitable purposes, or for charitable institutions, they fix the limit at three-fourths. Now I take it that the appropriation that shall be made to a charity will be in the appropriation bill, and therefore will pass under the general rule. Yet if the Governor should veto such an appropriation as that in the general appropriation bill, under that section it would pass by a two-thirds vote.

Mr. MACVEAGH. Mr. Chairman: It cannot be in the general appropriation bill under the section. The appropriation bill is the subject of a separate section.

Mr. EWING. Mr. Chairman: I merely wish to call the attention of the gentleman from Schuylkill to a section already passed, which would require an appropriation of that sort to be made a special bill.

Mr. BARTHOLOMEW. Mr. Chairman: I see by section eighteen that my point is not well taken, and I withdraw my amendment.

Mr. BUCKALEW. Mr. Chairman: I submit this amendment as preliminary only to the general question upon this section. If we are to have a limitation at all, it ought to be the usual, ordinary limitation of the two-thirds vote. The Convention will observe that by it the absent members are counted in the negative, in this case, or in the case of all other bills under the provisions of this report, so that the two-thirds limitation is much more stringent under this proposed article of the Constitution than under the existing Constitution. Now, sir, I desire, at all events, to have a change in favor of a two-thirds limitation, if the limitation is to be retained, and then afterward, on the general

question of whether such a limitation is to be retained in the Constitution or not, when we come to consider it, I may have something to say.

Mr. BIDDLE. Mr. Chairman: I hope that three-fourths and two-thirds will both disappear from this section. I know that some of the most meritorious charities in this community, which are very largely supported by private beneficence, receive annually moderate assistance from the State. Amongst others, I enumerate the Deaf and Dumb asylum, the House of Refuge, the Orphan asylum, and institutions of that sort, which are for classes of persons who are in absolutely destitute circumstances, and which classes cannot be increased by charitable aid. You do not make people deaf and dumb, you do not make people blind, by the misapplication of charitable assistance and a community that does not take care of such persons does not deserve the name of a civilized community. Now do not let us throw any impediment in the way of such institutions, obtaining moderate aid from the State, simply because they are not under its absolute control. None of the institutions named by me fall under that category. They are under some State control, but not under its absolute control. There is no fear of money being thrown away in that direction, at least I have never heard it suggested that such appropriations were misused, and there is great danger of doing harm by leaving the section as it is. I hope, therefore, the whole section will be stricken out.

Mr. LILLY. Mr. Chairman: I perfectly agree with what the gentleman from Columbia (Mr. Buckalew) has said on this question. I would not desire the limitation contained in this section retained at three-fourths, but I hope it will be fixed at two-thirds. Such a limitation is necessary to protect the treasury of the State from organized combinations, that under the cover of charity claim large donations of public moneys. It is not only the honestly-deserving association which asks aid from the State, but new-fangled institutions send representatives to Harrisburg to demand relief, and some of these things are got up only to make positions for somebody, and to make a splurge in the world. Nay, I am informed that in some cases—and I believe my information is correct—that out of these very appropriations that the State makes for these charitable purposes, the men who go to Har-

risburg to get these laws through, receive ten per cent. of the gross amount, and this business has grown to be a profession. There are persons who go from member to member in the Legislature, and from office to office in the State department—men of polished address and women of culture, who dress elaborately—and solicit for these charities at the time the appropriation bill is before the two Houses of the Legislature. I have no doubt, that in some cases at least, ten per cent. of the sums donated to these charities is kept out of the treasuries in this way. This is an evil we ought to cure, and the two-thirds vote, if it is kept at two-thirds, will be a security that the charity will be bestowed wisely, and that all really necessitous cases will be provided for. But it would be equally proper to ask for aid for our county poor houses as to ask for appropriations for many of the institutions that claim it. We in Carbon county, as in many other counties of the State, pay a poor tax, and we do not ask the State to help us, and while some of these institutions are worthy, others are made to order, for the purpose of receiving public appropriations, and it is to guard against them that the two-thirds vote ought to be left in. I am willing to strike out the three-fourths, but the two-thirds ought to remain to protect the treasury, and protect the people from these organizations that without merit in themselves always have received public appropriations and probably always will.

Mr. DARLINGTON. Mr. Chairman: What a spectacle would we not present to the world if we would here deny to our Legislature the power to assist the individual charity of this or any other city, or community, with the public money of the State. We all know that these noble charities are to be found in and about the large cities, because of the aggregated wealth and the munificence of those endowing them. It is there that these institutions most ordinarily grow and flourish. But they are not exclusive. Our insane and our deaf and dumb from all parts of the State are admitted to the benefits afforded by these institutions in the cities. It is not alone the locality in which these institutions happen to be that is interested in them. All parts of the State are benefited by them. The people of all parts of the State have admission to them and are interested in their prosperity.

Is there any more noble use to which we can devote a small portion of our pub-

lic funds than to the aid of these charities to assist in taking care of those, who all acknowledge, we must take care of, and who we must take care of as amply as it is possible for us to do? It would be a crime for us to take a step backward in a direction like this. If we are in danger of having some money misapplied, if we are in danger of giving our charity to some unworthy object, far better is it to err on that side than not to reach out at all a helping hand to those who stand in need of assistance. We had better permit some of the public money to be given in charity, even if it does not go to worthy objects, than to dry up the stream of benevolence which has honored and elevated us as a christian people. It will not do, in my judgment, to say that because a charity is under the control of a religious society, it therefore must not have a share of the public funds.

I belong to no religious society asking aid from the Commonwealth. My Quaker education, fortunately for me, was in a society where we take care of all our own poor, of all our own insane, of our deaf and dumb, and blind. We do not call for the aid of the State in anything. But this is not the case with everybody else, and I am willing that a portion of the public funds in which I am interested, shall be given in aid of those charites, although they may be maintained and controlled by benevolent people of other societies.

Now I am in favor of striking out this whole section and leaving the Legislature in that position where it has always been.

There is no danger of any abuse there is no danger of any money being appropriated improperly to these objects. Guard the treasury against plunderers, but give freely to charity and with a liberal hand.

Mr. W. H. SMITH. Mr. Chairman: I want to say two words on this subject. I think there should be a restriction to this indiscriminate voting of money to charitable institutions.

The gentleman from Carbon (Mr. Lilly) has said that he believes it is a business to "lobby" for these bills at Harrisburg, and that the average price is ten per cent. I believe, sir, that the price is more than that. I know of a single instance myself where there was an amount of \$8,000 asked on behalf of a charitable institution to be appropriated by the Legislature. It went to a committee of conference, and there the members of the committee were divided, and it became necessary, in order

to get that item put through, that the man who was "engineering" for this charitable institution to pay \$4,000 to get the appropriation made, and he paid it, as he alleges, and as I believe. The institution knew the money was coming, and as the slang phrase is, they "went back" on this man they had hired. He handed them \$4,000, and when they asked him where the rest of the money was, he said he had given it to the members of the committee on conference, and that he did not have it. They said it must be produced, and they sued him for it. It was afterwards paid for him by a request of one who was a friend of his, and also a friend to the institution.

That is only one of probably a number of cases in which that sort of thing has been done.

I believe, for my part, in giving to some—only a few—of these charities. I believe, as was said by the gentleman from Philadelphia, (Mr. Biddle,) that it is the system, that is the circumstances connected with the system, that are wrong. It is not the fault of the children that they are born blind and lame, insane and idiotic. There ought to be some restriction—some discrimination. I do not believe the Legislature has a right to tax the people heavily and then give away the money they extorted, without just discrimination. A mere reckless system by which excessive appropriations are made is what should especially be guarded against.

Mr. HAZZARD. Mr. Chairman: In these educational matters I am very much interested. I am somewhat afraid that by this provision we should endanger Pennsylvania in her educational interests. It is well known by every delegate on this floor that these Normal schools are favorite schools of Pennsylvania. They are not under the exclusive control of the State, but they are doing a great work. They are beginning at the very foundation; they are educating the teachers. They are preparing for the education of all the rising generation of this country, and if we pass that section we strike all these down. We have an institution of that kind in our county, which is the pride of the county. We feel its benefits in the proportion of teachers that go out from it into the schools of the Commonwealth. The State of Pennsylvania has liberally contributed to the struggling people of a little borough of not more than three thousand inhabitants, perhaps not so many, that has expended

over one hundred thousand dollars, and are building—

Mr. MANN. Let me interrupt the gentleman, to say that the committee do not propose to cut off the appropriation for the Normal schools of the State.

Mr. HAZZARD. I do not know anything about what is to come; I only know what is before us. If it is proposed to except them, I do not know that I have anything further to say.

Mr. CLARK. Mr. Chairman: I offer an amendment to the amendment, to insert after the word "Commonwealth," in the second line, these words: "Other than Normal schools established by law, for the professional training of teachers for the public schools of the State."

Mr. J. PRICE WETHERILL. Mr. Chairman: I hope the Convention will vote down this entire section. I have heard no good reason given why it should be adopted. If there is any reason in the argument of the gentleman from Allegheny, (Mr. W. H. Smith,) that because it costs money to secure these appropriations, therefore some of them should not be made, I would ask if it costs a certain sum of money to pass a bill by a bare majority, how much more will it cost to pass that bill by a three-fourths or two-thirds majority? If you look carefully over these charities you will find that to restrict them by such a veto as this is very improper. We appropriate to the charitable institutions of the State about \$500,000, annually, and of that amount eighty per cent. will, if gentlemen will examine the matter, be found to be devoted to the clearest and truest objects of charity, a charity broad and comprehensive, a charity which will be of incalculable good to the afflicted throughout the State. It will not do for gentlemen to say that they themselves take care of the poor in their counties. Do they do it? They certainly do not, for instance, take care of the blind, or the deaf and dumb poor as they should be taken care of. They cannot do it. This class of people must, of necessity, be kept and cared for differently from the class that is kept in county poor houses. I hope the gentleman from Carbon (Mr. Lilly) will, on reflection, see that there is but little force in his own argument in that respect.

In regard to the Soldiers' Orphans' schools, it will cut off some of the appropriation from them, because the State has not absolute control over them. It will cut off, probably, thirty or forty per cent.

of their annual appropriation. Surely it is not desirable to do this. But, sir, do we want a check of a three-fourths majority in this matter? Have we not a sufficient check already? Have we not the Governor as a check? If an excessive or unreasonable appropriation is asked for, will not this power, properly evinced, restrain excessive appropriations? This power is the only check we need or should desire in this matter. Do not let us by an action secure a reputation for being less liberal than heretofore, when all admit that these charities are of the most deserving character. I hope the Convention will not disturb the present status of that question.

MR. HARRY WHITE. Mr. Chairman: I have a few words to say on this section. The object of the section is one exceedingly valuable and useful to the Commonwealth. Its necessity, or the necessity of a section somewhat like it, has been demonstrated by the experience of the past. The object of the section is to keep the Commonwealth as near to a plain political corporation as possible. For years there has been a conflict between private or local, and general and public charities. No one complains against the reasonable appropriation of the public fund to what are known as the State charities. Among such are the asylums for the insane, located in different parts of the Commonwealth; the asylum for the blind, and the asylum for the deaf and dumb. Nobody in the Legislature or out of it, in this enlightened age, disputes the propriety of these appropriations. A gentleman, who was formerly the Executive of the State, and now occupies a seat in this body, (Mr. Curtin,) sent a message to the Legislature of 1833, in which he expressed, more forcibly than I can do it, the bearings of this question, and from that time forward there has been a conflict between private and public charities. Yet no gentleman who lived in the locality of the blind asylum or the asylum for the deaf and dumb, or the insane, are disturbed on this section, because these institutions are regarded as State charities.

MR. J. PRICE WETHERILL. Mr. Chairman: I would like to ask the gentleman this question: Whether the Pennsylvania Deaf and Dumb asylum, in the city of Philadelphia, is under the absolute control of the Commonwealth?

MR. HARRY WHITE. Mr. Chairman: The intelligent gentleman from Philadelphia (Mr. J. Price Wetherill) knows the

situation of that as well as, and better, possibly, than I do. I merely say that it is regarded as a public institution, and that no difficulty whatever has been found to exist in relation to getting a two-third vote, or a three-fourths vote, or, indeed, a unanimous vote for its appropriation.

MR. MACVEAGH. I would like to ask the gentleman from Indiana (Mr. Harry White) on what grounds he asks this Convention to make it more difficult to pass a law in aid of a charitable purpose, than to pass an ordinary law in aid of an ordinary selfish purpose?

MR. HARRY WHITE. Mr. Chairman: The object of the Legislature, the object of the government of Pennsylvania, should be to make our laws uniform, to make the benefits of the government uniform, so that the rich and the poor, the sparsely populated and the more thickly populated sections of the State may have the equal benefit of them. That is the reason why we should have some reform in this respect. What is the situation to-day? The great Commonwealth of Pennsylvania is building institutions for the insane in different parts of the Commonwealth. There is a lunatic asylum established at Harrisburg; a lunatic asylum has been established, at an expense probably of a million of dollars, in the town of Danville; and but the other day the Legislature passed a joint resolution providing for the location of another insane asylum up in the north-western section of the State.

These institutions will be State charities, and under the control of the State. What is the situation of Dixmont to-day? It is a private corporation. The State annually appropriates about \$250,000 for it—a large amount—yet, being a private corporation, a lien or judgment creditor can sell out its corporate franchises, and deprive the institution, and the public, and the State, of the benefits of the appropriation. It should not be so. That institution, and others like it, should come under the control of the State.

There is no objection whatever to enlarging the power of the Legislature, in relation to granting aid to the Normal schools, which are part of the common school system of the Commonwealth. I think the time is coming when the State itself should and will take charge of its common school system in every department. Reason and experience have demonstrated the necessity of something of that kind. In the town where the honor-

able gentleman from Columbia (Mr. Buckalew) resides, there is a Normal school. Last year the Legislature appropriated \$10,000, in addition to the \$15,000 which were already appropriated to it. Yet it was and is a private corporation. The institution is about bankrupt, and about to close; the writ of *levari facias* is now in the hands of the executing officer, and it and the State will lose the benefits of the money already gratuitously given it. The object, then, is to have this and other institutions become exclusively of a public character. They should be absolutely under the control of the State. I have no objection whatever to the amendment in regard to Normal schools, for they are such a character of institutions as should be provided for from the public fund. But, sir, appropriations to them should be made in such a way as to save the rights of the Commonwealth therein. These, sir, are the reasons that induced the committee to report the section as submitted.

MR. HANNA. Mr. Chairman: I have given this subject of appropriation for educational and charitable purposes by legislative and municipal bodies considerable attention, and I have become fully satisfied that the whole system of donating or giving away public money in charity is radically wrong. I am opposed, not only to all union between the church and State, but also between the State and private charities. I maintain, as a principle, that no legislative body—no representative body of the people has the right to give away the public moneys raised by taxation for specific purposes to any charitable purpose whatever. I contend that these bodies have no right to divert the public money raised for one purpose to another. Now, sir, in connection with this subject, I would state to this committee a remark made in the Committee on Legislation by a distinguished member of this Convention. He remarked to me that "one of the most rascally virtues of mankind was generosity with other people's money," and is not that true?

How easy it is for any member of a legislative body on a mere pretence of charity thus to vote away the money belonging to the people, without assuming any direct responsibility. It does not affect him directly, and therefore he can afford to be generous. Now will any gentleman in this Convention say that this system in itself is right and proper? Why, sir, I submit that private charities should de-

pend upon the sympathy and the generosity of private individuals. They are organized for a private and special purpose, and are not controlled by the State at large, and no portion of the money in their possession has been raised from the pockets of the tax-payer to be given to private charities. I therefore submit that no legislative body has the right thus to divert the public money from its proper channel. This subject received very careful consideration, and while the committee was not willing to go, perhaps, as far as I would go in this particular, they have submitted this proposition, and have thrown a safeguard around it, which will protect the Commonwealth. Now, sir, this proposition does not go so far as to say that hereafter no special appropriation, or any gift or donation shall be made, but it provides that no appropriation shall be made to any charitable or educational institutions except by a vote of three-fourths of all the members elected to each House. The chairman of the committee has well remarked if any special subject is brought before the attention of the Legislature, and it is a meritorious one, it will receive the necessary support, and will commend itself sufficiently to the members of that body. Why, sir, let us see to what extent appropriations are carried. Private charitable institutions have frequently been brought to the attention of the Legislature and have procured large appropriations when they have owned extensive and valuable real estate. What do they then do? They ask not only for a donation from the Legislature, but also to be exempt from taxation. In the city of Philadelphia, to-day, real estate belonging to private charitable institutions, whose assessed value amounts to twenty-five or thirty millions of dollars, is thus exempt from municipal taxation. Why should not these institutions pay their quota of the municipal taxation? Why, I say, should they not pay their quota, at least for the police protection of property, and the paving and lighting of the city? Why should they not contribute towards the improvement and prosperity of our city?

It has been well remarked that the very moment these institutions are exempted from paying their proportion of the taxation, an additional burden is at once cast upon the remainder of our tax-payers. Now, sir, I do submit—

Mr. LILLY. I would like to ask the gentleman whether he is in favor of the appropriation for the centennial?

Mr. HANNA. That is a foreign question entirely. I was about to remark, Mr. Chairman, when interrupted by the gentleman, that I fully concur in the section containing, as it does, a certain safeguard which will be thrown around these appropriations, and fully approve the idea that provision should be made for meritorious questions that may be submitted before the Legislature, in order that they may receive proper consideration. I submit, however, that the State of Pennsylvania cannot afford to be charitable and the Legislature ought not to be charitable with other people's money. But, sir, when these cases are brought to our notice that should depend entirely upon private sympathy and charity, the people of the State at large should not be asked to divide the money which has been raised to carry on the business purposes of the Commonwealth for the support and encouragement of these private charitable and educational institutions. Now, sir, I am willing to vote for this section as reported by the committee. If it is thought proper and advisable to alter the qualification or limitation by changing the vote of three-fourths to two-thirds of all the members of each House, I shall entertain no particular objection; but I do insist that while we leave the door open for these appropriations or donations, we should at the same time throw every safeguard around the exercise of this power conferred upon the Legislature, as shall ensure the protection of the people of the Commonwealth in all future time.

Mr. LILLY. Mr. Chairman: If the Convention is ready to put into the Constitution a provision that all county lines shall remain, from this time forever, as they now are, and determine that there shall be no alteration whatever in changing the county seat, or otherwise, they will vote for this provision, as reported by the committee, because this, certainly and surely, will be the result of the whole thing; but if there is to be no change in population, or in business, and it is desirable or necessary to change the county line, then this provision should be stricken out. I think the world moves, and I hope the Commonwealth moves, and I hope the population of the State will go on increasing, and, I presume, the time will come when we will, probably, have twice as many counties as we have now,

to be able to have our courts so arranged as to do the business required by the people.

Mr. WHERRY. Mr. Chairman: I desire to enter my most solemn protest against the adoption of this section, as it is reported by the Committee on Legislation. I trust the Commonwealth of Pennsylvania will never depart from that high standard of charity to which she has held hitherto from the very foundation of our government, and I trust that her arms will never be shortened, but that her hands will ever be stretched out to aid the unfortunate, and those who may be deserving of her charity. Gentlemen, in speaking of these appropriations for charitable institutions, have endeavored to make the impression that they are easily obtained from the Legislature. I have had considerable experience in these matters, and I know, Mr. Chairman, that it is one of the most difficult things in the world to procure an appropriation for a charitable institution from the Legislature of Pennsylvania. I can enumerate more than a dozen instances, in which the most worthy institutions have presented their petitions in the halls of the Legislature, year after year, which have been finally rejected, and various communities in the State have suffered in consequence. The gentleman from Indiana (Mr. Harry White) has referred to the case of the North-western Insane asylum, and I wish I only had the time to give a history of that institution. For three years have the good people of the community in which it is projected, backed by the best men of the Commonwealth, been asking for an appropriation sufficient to build an institution upon a decent foundation, and they have not been successful to this day.

Mr. HARRY WHITE. I would like to ask the gentleman what he means by the North-western Insane asylum.

Mr. WHERRY. I was saying that there has been an application made to the Legislature for a sufficient appropriation for the building of an insane asylum, in the northern part of this State, and it was not yet granted.

Mr. HARRY WHITE. I think the gentleman from Cumberland (Mr. Wherry) has misunderstood my remarks. I meant to say that the State was taking charge of all these insane asylums, and had appointed commissioners to locate an insane asylum in the north-west. I do not refer to the one at Erie. It is possibly to be located in Crawford county.

Mr. WHERRY. Mr. Chairman: I believe that is the fact so far as the gentleman states it, but the friends of that institution have been for the last three years endeavoring to obtain such an appropriation from the Legislature of our State as would enable them to erect a suitable and commodious building, and to furnish it for the accommodation of patients. In consequence of their inability to obtain that appropriation, the State has been compelled to rent a miserable hovel, in which to confine the insane people of that section of the State. In my own county today, there is a miserable hovel rented by the State, in which a number of our insane population are confined.

Mr. D. N. WHITE. I would like to ask the gentleman where that North-western Insane asylum is situated?

Mr. WHERRY. It is not yet located; as the gentleman from Indiana (Mr. Harry White) has said.

Mr. HARRY WHITE. Is there any such institution at all?

Mr. WHERRY. It is not yet located, but I was remarking that the friends of the institution have been endeavoring to obtain an appropriation from the Legislature for its location and completion, and that they have been entirely unsuccessful. That is all I was saying. Now, Mr. Chairman, I submit again that gentlemen are entirely mistaken if they suppose it is an easy matter to procure these charitable appropriations from the Legislature. I tell you that legislators are not distinguished for their charitable deeds, and they are not a class of men likely to dispense charity. On the contrary they are mostly local politicians who look to their own interests, and their own advancement, who will vote against any appropriation of money for any purpose excepting where their own elections and party interests are advanced thereby. This is notorious, and it must be palpable to every man in this body, who has had any experience whatever in these matters, that it is the most difficult thing in the world to obtain an appropriation for a charitable purpose from the Legislature of this State.

Mr. COCHRAN. Mr. Chairman: I concur in the sentiments entertained by the gentlemen who have advocated the total striking out of this section from the report of the Committee on Legislation. I believe the section is very objectionable, and that it would be a very great reproach to the Convention if we were to determine

or fix such a limitation as this to any appropriation of money for charitable purposes. We have all guarded against, as I apprehend, the danger of log-rolling together on this subject, so as to combine influence in favor of any institution which might not possibly be content to stand on its own merits. We have already passed a section which provides that no bill shall contain more than one object, which shall be distinctly stated in its title. Now, when an institution of a charitable nature comes before the Legislature for an appropriation, it must stand there on its own merits. It cannot combine with any other institution, and it cannot receive an appropriation, simply because it deserves it and commends itself to the judgment of the Legislature; and I think when we have fixed such a restriction as this, in itself a wholesome restriction, that we may well submit this question of public charity to the judgment and feelings of the members of the Legislature themselves.

These charities have nothing in them to arouse a feeling of greed, or to excite a selfish or pecuniary disposition in the minds of the members of the Legislature. These institutions do not belong to that class, but they do belong to the class which is supposed as proper and necessary to the due administration of the affairs of this Commonwealth, and the maintenance of its public reputation and character, as any other class. They range themselves right along side of your public school system, and they stand, in fact, upon the same principle, because this Commonwealth has a great necessity in providing for the charitable objects which exist within its bounds as it has in the education of its youth. It has a great necessity in restoring sanity to the insane, and strength to those who are decrepit and broken down in life, and in all the other forms of public charity it has as great a necessity in restoring them to usefulness in the community as it has in educating and bringing up its youth to be useful and beneficial citizens of the State. And, sir, on that ground I submit that this matter of public charity is a matter of public concern, and should be favored and promoted just as much as we would favor and promote the cause of public education. For this reason and others that have been stated by other gentlemen in the Convention, and which I do not desire now to repeat, I hope this section and the amendment will finally be stricken out of the report of the committee, and that we

will leave the subject of public charity remain in the hands of the representatives of the people and the Governor of the State.

Mr. AINEY. Mr. Chairman: I agree entirely in the remarks that have fallen from the gentleman from York, (Mr. Cochran,) but if I understand the matter correctly, the State has already provided for the promotion of charitable institutions, as far as the judgment of its representatives in the Legislature have deemed necessary. This section, I apprehend, was intended by the committee only to provide for exceptional and extraordinary cases that may arise, and I think when such an appropriation is asked at the hands of the Legislature, its propriety ought to be so apparent, so clear and so unquestionable, that it would commend itself at once to a two-thirds or three-fourths vote of each House. I am in favor of limiting it to three-fourths vote, and I fully concur in the remarks made by the gentleman from Philadelphia (Mr. Hanna) on the subject of charitable appropriations. I believe that gentlemen are too often willing to be more liberal with other people's money than with their own, and I think we should hedge around the Legislature in this respect, and adopt tangible and proper limitations for their protection from too frequent importunities in behalf of charities of doubtful character, as well as the State from these raids on its treasury. I am, therefore, in favor of the section as reported by the Committee on Legislation.

The CHAIRMAN. The Chair will state the amendment offered by the gentleman from Indiana (Mr. Harry White) is not germane to the amendment now pending, and it will be held, therefore, that it is not in order at this time. The question is on the amendment of the gentleman from Columbia, (Mr. Buckalew,) striking out "three-fourths" and inserting "two-thirds."

Mr. H. G. SMITH. Mr. Chairman: I do not feel desirous of occupying the time of the committee, but there has been so much said in the Convention during its session respecting the corruption prevailing in the Pennsylvania Legislature that I beg leave to point out what I have discovered, by observation, to be, perhaps, the most fruitful source of corruption in this Commonwealth. I do not believe that the Legislature of Pennsylvania is bought up by the direct use of money as often as some seem to imagine. Instances of notorious and unblushing corruption have un-

doubtedly occurred, and great evils have sprung from that source, but I say to gentlemen of this Convention that, so far as I have been able to ascertain, greater evils have arisen from combinations made by members from various portions of the Commonwealth for the purpose of carrying out certain designs than from any direct influence of money that has been brought to bear upon the Legislature. This has been the case in regard to almost every species of legislation. You find men in your legislative body actuated by selfish purposes and sectional feelings from which they cannot be expected to free themselves while human nature remains what it is. The members being thus actuated, combinations are formed for the purpose of carrying out sectional and selfish designs, and those who are reaping in the field of public largess are willing to condone in others those offences against the public from which they expect to glean private profit. The influence of such combinations, or conspiracies, for we may properly call them such, has been frequently seen when general appropriation bills have been under consideration. Appropriations for this and that private purpose, for this or that local charity, are proposed. A small body of members favor one provision, a large number favor another, and each is willing to aid the other in depleting the State Treasury. Thus do a number of small rings make up a majority of the Legislature, and thus are improper appropriations of public money frequently made. Gentlemen need not fear that the Legislature will fail to pass any proper bill for the appropriation of public money. Every proper charity will be properly sustained in the future, as it has been in the past.

Mr. WHERRY. I would ask the gentleman if this section does not apply only to educational and charitable institutions? And if it does, I do not think the gentleman has a right to include other institutions.

Mr. H. G. SMITH. My remarks are intended to apply to the system that prevails in the Legislature of the State, and if the gentleman has heard what I said he could not readily have misunderstood me. I am arguing, Mr. Chairman, in favor of the insertion of a section in the Constitution that will strike at the root of one of the evils which this Convention has been assembled to destroy. Combinations, I repeat, are formed in the Legislature of this State, year after year, for the purpose

of obtaining appropriations for charitable, educational and other purposes. Every year, when the general appropriation bill comes up for discussion and consideration, the same scene occurs. Small combinations of men, forming, when fully united, a majority of the Legislature, urge the passage of appropriations for charitable institutions in different parts of the Commonwealth, and it has not unfrequently happened that money has been improperly appropriated. It is to prevent this abuse that the pending paragraph has been prepared and presented.

Mr. JOHN M. BAILEY. I would like to ask the gentleman if those poor unfortunates, the deaf and dumb, the blind and halt, are at fault if these combinations are made in the Pennsylvania Legislature?

Mr. H. G. SMITH. Nobody makes any objections to such appropriations, nor ever did, as the gentleman to my right, (Mr. Mann,) who has had very considerable experience in the Legislature, has just remarked. Nor will any man, who fairly represents the Commonwealth of Pennsylvania in the Legislature, ever make objections to proper objects of charity. The design of this section, as reported by the committee, is to strike at the root of a great evil that has crept into the legislation of Pennsylvania, the formation of combinations which annually take large sums from the treasury of the State in an improper manner.

Mr. H. W. PALMER. I would like to ask the gentleman if he knows of any instance wherein one dollar of an appropriation made for a charitable purpose has ever been misappropriated?

Mr. H. G. SMITH. If reports be true, if what I have heard upon the floors of the Legislature when the appropriation bill was under consideration was to be credited, and if I understood the legislative proceedings as I witnessed them, there have been great wrongs perpetrated in the manner which I have attempted to describe. In the passage of every general appropriation bill through the Legislature for some years past, these combinations have been formed. If the proposed paragraph is placed in the Constitution, so that appropriations of the character named shall not be passed, except by a vote of three-fourths, or, if you please, two-thirds of all the members of each House, the evil which I have tried to portray will be nearly, if not completely, eradicated. There can be an exception inserted with

regard to Normal schools, and properly so, because they are a recognized part of the common school system of the State; but I do hope this Convention will sustain, by a large majority, this wholesome provision, which has been carefully considered by the committee from which it has been reported. In my judgment it is one of the very best paragraphs contained in the report of the Committee on Legislation.

Mr. CARTER. Mr. Chairman: I am fully convinced, after mature consideration, that the section reported by the committee, when amended by the substitution of two-thirds for three-fourths of both branches of the Legislature, is required and will be found eminently useful to correct abuses in the past, when a bare majority could make these donations.

I differ entirely from the gentleman from Dauphin (Mr. McVeagh) and the gentleman from York (Mr. Cochran) in the general idea they hold or the principle they advocate in regard to the almost indiscriminate charity. They seem to think it is the duty or province of that body to bestow. That is the radically wrong idea I would combat. In my humble judgment I do not think it is the duty of the State to respond so promptly to all these appeals for aid from the various charitable institutions in the State. I do not conceive that this duty comprises any very important part of the functions of the legislative body, in whose power is placed the normal and proper disposition of the funds of the Commonwealth. There are certain great objects of charity, such as the deaf, the dumb and the blind, that appeal to the heart of every man. The State recognizes their unfortunate condition and provides for them with a liberal hand; but there are numberless charities which, perhaps, have but small foundation for soliciting the assistance of public generosity, or, at least aid from the public coffers. The argument of the gentleman from Dauphin, (Mr. MacVeagh,) if it was followed out, would lead to continual solicitation by every man in the community, who felt benevolently inclined, to proceed to the Legislature, and ask the State to extend a helping hand to the almost innumerable charitable projects. I think, therefore, this section is wise, as it will have a tendency to lessen the number of these annual appropriations for purposes which may not be, perhaps, strictly meritorious. I do not consider it to be the duty of this Commonwealth to

adopt the views entertained by the gentleman from York, (Mr. Cochran,) for I think they would be found in the future as they have been found in the past—a wrong committed against the interests of our citizens.

Mr. MACVEAGH. I would like to ask the gentleman, and I only ask for information, whether he is aware of a single appropriation made by the Legislature for a charitable object that was either misappropriated or that ought not to have been made.

Mr. CARTER. I do not propose to discuss that question, simply because I have no list thereof on hand or memorandum, or anything of that kind before me, but I assume as a fact that there can be no question about it, and no candid intelligent man will deny it. But my main objection is, that the taxes are levied, and treasury kept replenished, for the purpose of defraying the legitimate expenses of the government. There cannot be a greater error than the gentleman from York (Mr. Cochran) that these donations rested on the same grounds as the aid the State gives to the public schools. When the Legislature gives public aid to other than those indicated in the first part of my remarks, the necessity should be made so plain as at once to command a two-thirds vote.

Mr. H. W. PALMER. Mr. Chairman: I hope this whole section will be voted down. It is designed to strike dead the public and private charities of the State. It is alleged that great abuses have crept in under the cloak of obtaining aid for meritorious charities. I hold in my hand the appropriation bill, as reported to the Legislature for the present year, and I find the sum total of all the moneys given by this magnificent Commonwealth for charitable purposes of every nature, including the salaries of the officers, of the officials of the Eastern and Western penitentiaries, and \$100,000 each for the Pennsylvania university and Jefferson college, is only \$727,000. We spend \$7,000,000 to educate the children, and less than one-half a million for the care of the insane and helpless. The charities of Pennsylvania have ever been the pride and boast of her citizens. Few States can exhibit a record so fair and large. I am unwilling to tarnish a reputation gained by a century of giving by any such provision. Until some instance of misappropriation of money, some case of mistaken charity, some allegation of wasted funds is made,

it seems cruel to shut the bountiful hand of public alms-giving and forbid the State to extend the mantle of her protection over the weak and helpless. For the sake of the multitudes bereft of the light of reason, of the aged and infirm, smitten in the winter of life with cruel destitution, and the hapless little children, out-cast and shivering on the threshold of a cold and cheerless life, now and here after to become the objects of public and private charity, I beseech you to pause before inserting this forbidding and heartless section.

Mr. HUNSICKER. Mr. Chairman: I think the passage of this section will have a tendency not only to dwarf the character of this Convention, but to degrade the State of Pennsylvania. It is the duty of the counties composing the State to provide for their poor, insane and infirm, and if private charities, prompted by religious and charitable motives, relieve the counties of a portion of that burden, I think it is a worthy object, and one which should be encouraged. Gentlemen grow very economical, and say that it is robbery to vote away the money of the people for charitable purposes. They seem to forget that the Legislature represents the people, and that the people are voting away their own money. They certainly are voting away their own money. The funds which the people of the State contribute under the forms of law, and pay into the public treasury, the people of the State may appropriate, unless you tie their hands by a constitutional provision.

The proudest ornaments of which Pennsylvania boasts are her charitable and educational institutions, and I trust, therefore, that this section and the one that follows it, which is even worse than this, will be voted down, and that this matter will be left to stand as it stood before; and I will add that, in my judgment, the sum of money which has been heretofore appropriated for the support of educational and charitable institutions has been a contemptible sum, considering the wealth and the greatness of this Commonwealth.

Mr. WALKER. Mr. Chairman: I am in favor of the purpose of this section as it came from the committee. True, I would not regret the change from the three-fourths to the two-thirds. I think the intention of the section is a proper and benevolent one. No gentleman in or about the city of Philadelphia need fear

that an appropriation cannot be obtained for any of her institutions from the State. That has never been denied. It never will be denied. It will be given not only by a two-thirds or a three-fourths, but by an almost unanimous vote. As long back as I can remember such benevolent institutions have been sustained by the Legislature. It is in the human heart to do it. You must make that heart as bad as some gentlemen here think it is before it will refuse to support those institutions.

Mr. Chairman, this section, as I learn—for I am learning as I go along, or am endeavoring to do it—is to guard against improper, injudicious and ill-advised legislation. It is to guard against giving away the public money for sectarian purposes, not to guard against giving to the well established benevolent non-sectarian institutions of the State that the committee had in view in this section. I am for that reason in favor of the section, as it came from the committee, though its purpose might be more clearly expressed. I could not be otherwise. Always, when in the Senate and the House, I voted freely and willingly, and I never heard it contested, that these institutions should not be sustained, and sustained amply up to the requirements.

The gentleman from Dauphin, (Mr. MacVeagh,) in his remarks just now, alluded to the poor of the county of Erie, stating that the insane there were running the streets, shivering and naked. If I understood the gentleman—

Mr. MACVEAGH. I understood that the physicians of the north-western part of the State are now demanding an insane hospital to be built there by the State, on the ground that their insane poor have no refuge, winter nor summer, but are running the streets uncared for.

Mr. WALKER. The physician in the north-western part of the State, or any other part, who communicated that information to the gentleman has communicated a falsehood, clearly and distinctly. I so brand it. For near fifty years I have lived in the city of Erie. Her poor and her insane, her blind and her sick, are as well cared for as they are in this city or in any county in the State.

Mr. WHERRY. Does the gentleman mean to affirm on this floor that application for reception of insane at hospitals have not been denied?

Mr. WALKER. I do not know whether an insane person from the county has or has not been denied at an insane hospital.

Mr. MACVEAGH. Has not the medical society of Erie specially demanded a State Insane hospital?

Mr. WALKER. Unquestionably. That is not what the gentleman said. As I understood it he said that the poor and insane of Erie county were shivering in the streets of Erie, for the want of protection and proper care.

Mr. MACVEAGH. So I am told.

Mr. WALKER. If the gentleman was told so, he was told an untruth. The insane poor are as well cared for in the county of Erie, as the records of that county will show, as in any other locality of the State. We send them to the asylum at Dixmont; we pay for them there, and our yearly expenditures show that they are well cared for, or, at least, that Erie county pays for good care. I know that we have at Erie a Marine hospital, built at a large expense. I did not know how much until one gentleman mentioned some \$200,000. Those \$200,000 have been thrown away. We knew it there. It was not because Erie county demanded it. It was not because an institution of that kind was specially wanted there, but because we were then represented in the Legislature by one who cared more for carrying out his own opinions than serving the best interests of his constituents. And, in this instance, it has happened that a friend in Erie made some money and cheap glory out of it, than it has done good to the State or the citizens of Erie.

We, in the north-west know that the State has, in this instance, been imposed upon. We know that it will be imposed upon again if an appropriation is given to that as a benevolent institution. It is to guard against just such villainy as that, to guard against just such injudicious appropriation of money as that, that I will vote for this section now before the committee. I know what I am affirming, when I state that this Marine hospital has proved thus far, and promises to prove, a failure as such hospital. If you turn it into an insane asylum, and put the gentlemen in there who obtained the appropriation for it as a Marine hospital, and then maintain it as an insane asylum, it will be an institution deserving the aid of the State.

Mr. HARRY WHITE. I have no objection to accepting the amendment of the gentleman from Columbia (Mr. Buckalew.)

The CHAIRMAN. The gentleman cannot accept it. The amendment is to strike

out "three-fourths," and insert "two-thirds."

The amendment of Mr. Buckalew was agreed to.

Mr. CLARK. Mr. Chairman: I now renew my amendment.

The CLERK read:

Insert after the word "Commonwealth," in the second line, these words: "Other than Normal schools established by law, for the professional training of teachers for the public schools of the State."

Mr. DARLINGTON. Mr. Chairman: It is obviously proper that this exception should not be made, if it is the intention of the committee to adopt the section. The State has already aided Normal schools in several portions of the State. It has aided the Normal school at Westchester. We ask nothing more, but there are other Normal schools which ought to be aided.

Mr. HAZZARD. Mr. Chairman: The gentleman from Indiana (Mr. Clark) offered the amendment while I was speaking before, and I was not quite done. I hope the section will now pass with this provision, because Legislatures are very apt to make charitable appropriations in order to carry some other infamous thing, and if we pass this, these charitable measures will be voted for on their own merits, and they will be careful not to encumber their favorite bills for appropriations, by putting it in the general appropriation bill in which these charitable appropriations are made, for that will injure it.

The amendment of Mr. Clark was agreed to.

The CHAIRMAN. The question recurs upon the section as amended.

A division was called for, and resulted: Affirmative, fifty-one; negative, thirty-three. So the section as amended was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read:

Mr. HAY. Mr. Chairman: I offer to amend, by striking out the section and inserting —

The CLERK read:

"No appropriation shall be made for any denominational or sectarian purpose, or to any institution, corporation or association, created and maintained for objects limited or restricted by any particular religious denominational or sectarian views."

Mr. HAY. Mr. Chairman: The section under consideration, it seems to me, goes

further than is wise or prudent. It prevents any appropriation to any institution, corporation or association for charitable, educational or benevolent purposes, which is managed or controlled by any religious society. That would prevent the granting of State aid to any hospitals or orphanages, which were originally established and are most largely maintained by religious societies. It seems to be the settled policy of the State to encourage private benevolence, and to grant its aid to private institutions of this kind. And if such is to be the future policy of the Commonwealth, the section under consideration should be somewhat amended. I do not know, for myself, that I would be always in favor of State aid to private charities, or in favor of the State acting as a benevolent society at all; but if this is to be the course of events, then I think it would be well, and that it is necessary, to restrict the power of the Legislature in this matter to some extent; and that the restriction should be substantially that incorporated in this amendment.

Mr. DALLAS. Mr. Chairman: I would like to call the attention of the chairman of the Committee on Legislation to the language of this section as reported. It is written: "No appropriation shall be made to any person." Much depends upon what you may imagine as to its punctuation in determining how it should be construed and understood; but, certainly, it is not intended to provide that no appropriation shall be made to any person. The rightful salaries of State officers, I believe, depend on appropriations, the propriety of which nobody can doubt. But here is a section that might be understood to mean that no appropriation shall be made to any person or community, for any purpose, nor to any denominational institution, corporation, or association, for charitable purposes.

Mr. HARRY WHITE. The whole section, I think, is clear and explains itself, that "no appropriation shall be made for charitable, benevolent or educational purposes to any person, community or any denominational institution."

Mr. ANDREW REED. Mr. Chairman: I do not think there is any necessity for this section. If the committee will turn to section five of the report of the Committee on Education they will find, I think, that it embraces all that is intended to be covered by this, and that has already been passed.

Mr. CORBETT. Mr. Chairman: It does not cover all. With reference to sectarian institutions, the adoption of the fifth section of the report of the Committee on Education does cover that. But there is another class of appropriations that this is designed to strike out, and which are peculiarly private charities. We have made appropriations to communities, to towns destroyed by fire, and this section is intended to strike at such appropriations, to apply the knife to the very core and eradicate such appropriations altogether. Now, for myself individually, I have no objection to any amendment of this section, so that it will reach that object. As to the other portion, that as to sectarian institutions, it is already provided for and adopted by the committee of the whole on the article on education.

Mr. MACCONNELL. Mr. Chairman: I desire to ask the gentleman a question, viz: Whether the committee intended, by this section, to prevent the State from giving pensions to wounded soldiers?

Mr. CORBETT. All that I can say is, that it was not intended to reach any case such as the member proposes, but it was intended to reach the case of appropriations to merely private charities.

Mr. LILLY. Mr. Chairman: I move to amend, by striking out the word "community." My reason for that is that it is contrary to what the gentleman from Clarion says. I can conceive there can be a fire which may involve everybody in a community in suffering. A conflagration in a city or large town may destroy a large portion of the place, and that during the sitting of the Legislature.

The **CHAIRMAN.** The gentleman from Carbon will permit the Chair. The gentleman offers an amendment to the amendment, to strike out a word which is not in the amendment.

Mr. LILLY. I beg pardon of the Chair. I did not know there was an amendment pending. I ask for its reading.

The **CLERK** read as follows:

"No appropriation shall be made for any religious denomination or sectarian purpose, or to any institution, corporation or association created or maintained for objects."

Mr. LILLY. Mr. Chairman: I think that is governed by the article alluded to by the gentleman from Mifflin, (Mr. Andrew Reed,) but I withdraw the amendment I offered.

Mr. HARRY WHITE. Mr. Chairman: At first sight it does not strike the com-

mittee of the whole what is the distinction between this and the preceeding section. Now section twenty-one is as follows:

"No appropriation shall be made to any person or community, nor to any denominational or sectarian institution, corporation or association, for charitable, educational or benevolent purposes."

This section is very comprehensive, and the purpose of it is to stop appropriations to sectarian institutions. That is the policy of the committee. Furthermore, the policy has obtained, or the precedent has been established in some instances, of appropriating to communities where there has been destruction by fire. An appropriation was made to the town of Mifflin for \$20,000. An appropriation has been made to the town of Somerset of \$75,000. I am not complaining of these, nor do I speak of them as abuses. Let them stand upon their own merits. But I do not think, for one, and I believe that this committee will agree with me in that opinion, that the Commonwealth of Pennsylvania should turn itself into an insurance company. These precedents have been established, and if a fire occurs in a rural district or in a town, and an appeal is made to the Legislature for assistance, in view of these precedents how can it be resisted.

Application was made to me once by a gentleman who had a valuable piece of property burned because he had prosecuted certain liquor sellers, and he alleged that, in vindicating the laws of the State, he had been punished by those who had been convicted, and that the State should reimburse him. Well, that was a fair case; certainly quite as fair for reimbursement, or quite as worthy, as the cases of communities which have been relieved when they have suffered loss by fire. The only way to cut these off is by a constitutional provision such as this. I don't intend to reflect upon any body, or to reflect upon any interest; but this policy is unwise, and I think it ought to be restricted by the organic law.

Mr. MACVEAGH. Mr. Chairman: Would it not relieve the committee of a great deal of embarrassment about the true construction of this section if it should read:

"No appropriation for charitable, educational or benevolent purposes shall be made to any person or community, or to any denominational or sectarian institution or association."

Mr. HARRY WHITE. I do not object.

The CHAIRMAN. Does the gentleman from Dauphin move that as an amendment?

Mr. MACVEAGH. Yes, sir.

The CHAIRMAN. Is there any objection to transposing the words as suggested by the gentleman from Dauphin?

Mr. DALLAS. Mr. Chairman: I will have to interpose an objection at this time, because I do not think the suggestion meets the difficulty.

Mr. HAY. I desire to suggest to the chairman of the Committee on Legislation that the differences between the section as reported by that committee and the amendment which I offered, are these, and I will state them very briefly:

In the first place, the amendment offered provides distinctly that no appropriation shall be made for any religious, denominational or sectarian purpose. This is not provided for in the section reported from the committee. I should think there would be no difference of opinion in this Convention upon that subject. That certainly ought to be adopted. The section as reported from the committee provides, further, that no appropriation shall be made to any denominational institution at all, even if its objects be entirely general and undenominational. I take it that a hospital, for instance, which is under the control of, which is maintained and managed by, one religious denomination, such as the Presbyterian hospital, existing, as I understand, in the city of Philadelphia, is a denominational institution, because it was established and is managed and controlled by a particular denomination of christians. Yet its objects are not confined to the Presbyterian denomination at all. Its objects, as are the objects of many other such institutions in this Commonwealth, are as wide as the world. It gives and extends its aid and benefits to all who need them, without regard to their religious belief or their nationality. I think, therefore, that an institution such as that ought not to be excluded from receiving the benefit of State aid, if aid is to be extended by the State to any charities whatever.

Mr. LILLY. I would like to ask the gentleman a question.

Are there any institutions which confine their aid to persons of the one religious belief?

Mr. HAY. There are charitable institutions of various kinds, the sole object of which is the relief of the distresses of per-

sons professing the religious belief of their founders.

Mr. LILLY. Of what sort?

Mr. HAY. There are orphan asylums and homes for aged men and women, for instance. I could mention others.

I think that the State ought to be permitted to help institutions which extend their benefits to all, without regard to religious views, notwithstanding the fact that they may be managed by one religious denomination alone. The difference, therefore, between the amendment and the section as reported is just this: That the amendment does not prohibit the extension of State aid to institutions which may be managed by one religious denomination for the benefit of the public, and whose benefits are not confined to persons of the particular religious views of the founders of the institution. I may also suggest that the amendment does not cover the case of communities which may need or desire State aid on account of conflagrations or any such extensive misfortune. I purposely omitted including any reference to such cases in the amendment, in order, if that question was raised, that it could be voted upon separately; in order that it might be raised distinctly, and voted upon separately upon its own merits. I suggest that if an amendment should be offered to the amendment offered by myself, adding to the end thereof these words, "nor to any person or community for charitable, educational or benevolent purposes," that this object would be secured and a vote could be taken upon the question whether State aid should or should not be extended to charitable institutions, created and maintained for public benefit, without complicating that question with the entirely distinct and different one—whether or not State aid should be permitted to be extended to communities suffering under extensive calamities.

The CHAIRMAN. Does the gentleman from Allegheny move that as an amendment?

Mr. HAY. No, sir.

Mr. H. W. PALMER. Would this section cover the case of a town destroyed by a raid of a public enemy?

Mr. BIDDLE. Certainly. It covers every case.

Mr. H. W. PALMER. Mr. Chairman: Then I am against the whole section. Shall it be said that when by the "act of God or the public enemy" the people of a whole community are stripped of homes and property, the hand of State charity

shall be closed to them forever? If that be the meaning of this section, I am against it.

A citizen might lose his limbs in the service of the Commonwealth, and this section would prevent the State from appropriating a dollar to his relief. No pension, gratuity, perhaps not even a debt, can be paid when this shall become a part of the Constitution. I submit that it is an unwise and niggardly provision.

What evil has been suffered that is to be remedied by a section like this? Can any gentleman name an instance?

If a conflagration sweeps away a whole village, and impoverishes a whole community, and if the representatives of the people of the State are willing to extend the public bounty, why should they be forbidden the privilege? Who are the persons that compose the Legislature but the chosen representatives of the people, vested with authority over the finances of the State, and whose money is it they vote away but the people's money? And shall not the people, through their representatives, bestow their charities and do what they will with their own?

To appropriate money for the propagation of any particular religion would violate the fundamental principles of our government, and such power I do not ask to have conferred upon the Legislature; but before we paralyze the hand of public charity so that the needs of a suffering people stripped by unavoidable calamity may not be relieved, let us pause and in the name of humanity consider well.

MR. STEWART. I confess, sir, to no little surprise, when, upon reading this section, I discovered it contained the limitation which is now being discussed. I regret that this Committee on Legislation saw fit to make any such report, for I have the profoundest respect for that committee, and I am satisfied in my own judgment that the section, as it stands, does justice neither to its intelligence nor to its liberality. For, sir, why? It proposes to deny to this Commonwealth the high privilege of doing that which, if well done, magnifies and makes honorable. I am at a loss to understand what reasons governed the committee and induced their action. If I were called upon to defend this section as it stands, I would feel myself shut up to one of two theories, either that the State, as a State, has no right to be an almoner, or that our experience in the past has been such as to make us dread the exercise of any such power by the Legislature. In

other words, either that it does not comport with our understanding of what a State is for her to distribute charity, or that the exercise of this power has been so abused as to put it beyond human ingenuity properly to regulate it.

Now I submit to this Convention, is either of these considerations worthy of discussion? What delegate will rise in his seat and say that the State of Pennsylvania has no right to be bountiful, no right to be charitable? What public teacher ever proclaimed any such doctrine? What State ever practiced any such doctrine? If such a doctrine has ever been proclaimed or practiced, I know not of it. I speak now from conjecture, and not from research, because I have not had the opportunity to make an examination; but I dare to say that in all the United States there is not a Commonwealth that has a similar provision in her Constitution. I am willing to be corrected. I am speaking, as I said, from conjecture. I have no actual knowledge of the fact, because I have not had the time to make the examination. But if there be any such Commonwealth, it should not be conclusive upon our action here, because we of Pennsylvania regard Pennsylvania as something more than a mere State, as a mere organized government. We are a Commonwealth, not simply a people closed in by certain geographical lines. We are a people united by a common sympathy in a common interest, and have a common political weal, and shall it be said that this Commonwealth must say to any one portion of its people, overshadowed by a terrible calamity, that while she failed to be their protector, she dare not be their benefactor? I utterly repudiate any such doctrine as that. It is inconsistent with the high office of a State not to be charitable.

Now, sir, can it be said that the exercise of this power by the Commonwealth has been abused in times past? Let any delegate rise in his chair and point me to a single instance. The distinguished chairman of this committee, the gentleman from Indiana, (Mr. Harry White,) has cited two instances in which the benefactions of this Commonwealth have been extended. He has told you of a little town which was almost destroyed by a terrible calamity, and its people made homeless and dependent upon the charities of the world. Was it an abuse of this power in the Legislature to extend a helping hand to that people bowed down with misfor-

tune? Was it an abuse of this power in the Legislature to say to that people, "despair not, but re-build your homes with the bounty of a generous State." He cited another instance, the town of Somerset. The same misfortune befell the people of that village, and was it an abuse of this power for the Legislature to extend a helping hand to that people? I submit that, unless the gentleman can point us to some circumstance in which this power has been abused by the Legislature, this section ought not to be insisted upon as it stands. I repeat, that if I were called upon to defend this section I would feel myself shut up to one of these two theories. Either one, if found to be true, would justify this measure. But I submit here that neither of them can be defended as true in fact, and unless gentlemen can fortify themselves by some undeniable truths like these they ought not to insist upon the adoption of this section by the committee of the whole.

I trust, therefore, that it shall be voted down, or at least that the amendment of the gentleman from Allegheny (Mr. Hay) shall be accepted by the committee.

Mr. HOWARD. I hope this section will not be voted down. Instead of that I hope it will be made stronger and clearer. I was not aware, until after I had read it over carefully, of the meaning of the section. At first I could hardly comprehend what the committee had intended, and I hope it will be made clearer, so as to express that this State shall never "loan, or otherwise appropriate, the public money for or on account of any damage caused by the public enemy, or the troops of the United States, in time of war." Nor would I have it construed so that they could not pay pensions on proper application. I have listened to the arguments of the delegate from Franklin (Mr. Stewart.) I have heard these arguments before. I have heard the parallel drawn here between the cases of Chambersburg and Somerset, and in the case of Chambersburg—

Mr. STEWART. The gentleman will pardon me: I made no reference to Chambersburg.

Mr. HOWARD. I understand the gentleman did not name Chambersburg, but the remarks of the gentleman certainly had allusion to Chambersburg, and such communities as suffered by the war.

Mr. STEWART. The gentleman will allow me; they had no such reference whatever.

Mr. HOWARD. Well, perhaps, they had not; I can give them the benefit of it. Perhaps they would not apply to such a case; but I can use them as having some similar application to illustrate my meaning. The gentleman has no objection?

Mr. STEWART. Certainly not; I simply wish that the gentleman shall not misconstrue anything I said.

Mr. HOWARD. Unless he has a patent right for them. Mr. Chairman, this matter has been annually before the Legislature. The people of the Commonwealth never objected to the first half million of dollars that was appropriated for this purpose. They thought, under all the circumstances, that it might be right, as an urgent charity, but they always thought that the proper place to apply was to the national government. In the first place, the State of Pennsylvania, in time of war, is not the military protector of her people, and these damages, caused in time of war, if they are a proper claim, belong to the national government to pay or satisfy. The gentleman has asked the question, whether the Commonwealth, being the protector, should not be the benefactor. The Commonwealth, in time of war, is not the protector in a legal sense. The power that is bound to supply protection is the power to appeal to, in case of injury or damage, either for compensation or benefaction. There can be no question that the damages for which these moneys have been appropriated, from time to time, were caused in time of war, flagrant and public war. I understand that in the case of a riot, or in the case of mere rebellion that is confined to the boundaries of the State, to be a legitimate State affair, and I understand what is the duty of the Commonwealth in such case. I apprehend that the citizens of this Commonwealth, even if it were not a proper claim against the State, would not hesitate to be charitable in a proper case. But, in every instance, these pretended war claims have been presented to the State of Pennsylvania as proper and legitimate claims upon the national government. Whenever an appropriation has been made by the State, the State has made appropriations as though she were buying up these claims. I find in the pamphlet laws of 1871, page 224, where an appropriation was made of three hundred thousand dollars, in certificates payable by the State in five years, with eighteen thousand dollars to pay the first year's interest on them. This provision:

"Upon payment of these certificates, the State shall become the holder of such claims, and the Governor shall demand the payment of the amount heretofore paid, and hereby appropriated to such claims from the general government, and appoint such agents for the purpose of collecting the same as may be deemed necessary."

Now, if any portion of the people of this Commonwealth have got claims against the government of the United States, and we buy them up with the funds of the people of the Commonwealth, we must take our chance of collecting them; that is precisely the transaction that has been going on at Harrisburg from year to year in regard to this class of claims. Now, Mr. Chairman, I am wholly opposed to this. If they have got a legal claim let them present it at Washington. If it is a proper claim for charity let them present it there, because the United States certainly owe protection to the people of the Commonwealth of Pennsylvania in time of war. They owe protection to every community and to every individual in this Commonwealth, for during that great war the United States claimed and did exercise the entire war power of the whole government. The Commonwealth, as it were, was powerless. She was stripped of her military strength, which was all mustered into the service of the United States.

The United States government is the proper place to look for charity or for compensation. I know that very great corruptions have been connected with these claims. I remember very well, at Harrisburg, in 1870, when an agent of what were called the border raid claims came there, opened up shop in one of the committee rooms of the House, and there undertook to set up his three million bill to make a raid upon the Treasury of the Commonwealth, having first made a contract with all these different persons who pretended to have, or who may have had, these claims. He had a bargain for fifteen or twenty per centum of the amount, and he came to Harrisburg to buy up the representatives of the Commonwealth, and boldly and openly this man took charge of one of the committee rooms. Into that room members was taken one at a time, their names put down, and the amount arranged which they were to receive for voting for these bills.

MR. H. W. PALMER. Mr. Chairman: I would like to ask the gentleman whether

he raised his voice about the appropriation to Pittsburg after the calamity of 1844?

MR. HOWARD. I remember the occasion, for I was there. If there was an appropriation to Pittsburg, however, I am not aware of it; but if the appropriation was made, it was properly a charity, and it was not caused by the public enemy, and we had no claim upon the United States. If the gentleman (Mr. H. W. Palmer) understood me at all, he will remember that I stated the difference when I started, between the case of Somerset and these claims that grew out of the act of the public enemy.

MR. SHARPE. Will the gentleman from Allegheny (Mr. Howard) permit me to ask whether, in the case of Pittsburg, the people did not have their policies of insurance to fall back upon?

MR. HOWARD. I am not talking about Pittsburg.

MR. SHARPE. Well, I am.

MR. HOWARD. I know; but, I say, in a case of that kind, the Commonwealth heretofore has afforded relief. I have not objected—I am objecting to this class of claims on another ground.

MR. WHERRY. I would ask the gentleman whether a calamity is any the less a calamity because it is perpetrated by the public enemy?

MR. HOWARD. Well, there are *proper* places to go for redress for certain calamities. I was making the distinction that this is a class of claims that properly belong to the government of the United States. I was making the further point that there was corruption in the claims to which I referred, for I got a member of the House to go into that committee room, under the idea that he would take part in that game that was being played, to plunder the treasury of the Commonwealth. He ascertained the names of some who were to vote for it, and the prices that were to be paid therefor. And when he came out of the committee room, and the man having the matter in charge asked him if he was not going to sign his name and pledge himself to put that thing through under a suspension of the rules—they would not even print the bill—he said "No; he would take a little time to think over it." This member came immediately to the Senate chamber and told me what had occurred; he was followed into the House of Representatives by another person, and the question was put to him, "Are you dissatisfied with the amount

that you are to get? If you want a higher sum for your vote you can have it." "No," he said, "I am not dissatisfied; but I have concluded not to go into the transaction at all."

I have mentioned this merely as one circumstance connected with this business of settling up this class of claims. They are not claims against the Commonwealth. The claims had been gobbled up by the speculators who took them to our treasury to get the money, and leave their certificates for the State of Pennsylvania to collect from the government of the United States, when they knew well that the government of the United States, in all probability, would never recognize them as lawful or legal claims. Let such claims as these go direct to the United States. The United States should be charitable if any charity is due; and if there is no valid legal claim, let them ask of Congress what they are importuning the members of the Pennsylvania Legislature to do for them. We should particularly insist upon this course when we know that these claims have fallen into the hands of the class of men that I have described, if not altogether, at least in a very large measure.

For these reasons I hope that this section, if it is broad enough to cover that class of claims, and drive them out of this State, to Washington city, will be adopted; and if not strong enough to answer that purpose, I hope it will be made stronger.

Mr. DALLAS. Mr. Chairman: I offer an amendment to the amendment, as a substitute:

"No appropriation shall be made to any denominational or sectarian institution, corporation or association, nor to any person or community for denominational or sectarian objects."

The twentieth section, which the committee have already agreed to, distinctly applies to charitable and educational institutions, and upon receiving a two-third vote in the Legislature they may have appropriations made in their favor. I suppose it cannot be the intention of the committee who reported this article to make a discrimination in favor of institutions and corporations and against persons. It is said that "a charitable institution may, upon receiving a two-third vote, have an appropriation," and still, in the section now under consideration, they would say that no *person* shall, with *any* vote, have an appropriation for a like purpose, namely: An educational or charita-

ble one; and I do not suppose it to be the purpose of the Committee on Legislation to discriminate against individuals and in favor of societies and corporations.

The evil which I would correct by such a provision as that we are now discussing is one and only one, and that is the evil of different religious sects and denominations going to the Legislature for appropriations in aid of their special purposes, and for the advancement of their particular doctrines. It always happens that some one sect acquires an advantage over the rest. My amendment limits the prohibition simply to all denominational or sectarian appropriations, and I think that every good purpose proposed by this section will be met by adopting my proposition.

Mr. WOODWARD. Mr. Chairman: Since this debate has taken a somewhat wider range than at first, and especially since the attention of the committee has been called to the proposition to strike out this section altogether, I confess it has interested me, and some of the remarks that have been made on the other side of the Hall seem to me to be worthy of notice. It has been suggested by the gentleman from Philadelphia (Mr. Hanna) that the State ought not to appropriate money to charitable, religious and educational objects, because it is the money of the people.

There are several forms of reply to such an observation, but the one that I choose to adopt is this: At this time, in Pennsylvania, most of the revenue of the State comes from the corporations of the State. Our banks, our railroads, our insurance and mining companies, and other corporations, are taxed as no other forms of property have ever been taxed in Pennsylvania, and the aggregate of the corporation taxes is a very large revenue. Now, sir, if you go to any one of these corporations to subscribe to, or assist in building or maintaining a hospital or a home for friendless children, or for any other of these various charities, you will be politely received, and informed that it would be submitted to their board of directors, and when it is submitted to them, my experience has been that they refer it to their lawyer to advise them whether they may appropriate corporate funds in that way; and when the question comes before that lawyer he says to himself: "If I advise this, it will diminish my fees; if I advise against it it will increase my fees," and, sir, the charity never gets the aid from the corporation. I speak what I know,

for I have seen it tried, accompanied with the offer to obtain legislative authority for what was asked for.

Now, sir, we live in a State governed by corporations, *possessed* by them, almost swallowed up by them. How shall we make them contribute to these charities? Not by direct appeal; that cannot be done. Why we will do it through the State. The State can enforce the payment of large taxes into its treasury, and then the State, acting upon a sentiment that is worthy of the State and every individual in it, may appropriate a reasonable amount of these revenues to charitable and religious objects; and thus the money of these corporations, through the treasury of the Commonwealth, is made to contribute to the relief of suffering humanity. If you tell me that the corporation charges this money upon the people again, through its freights or its insurance, so that the people, after all, have to pay it, I answer that I admit that. It is true; but then that is a consequence of our condition. We are governed by corporations. All their profits are derived from the people; but in the great power they possess, and the exclusive control they have over affairs in Pennsylvania, you cannot make them *feel* for the poor and the suffering; they cannot feel if they would try to, for they have no heart; and they certainly do not try to feel, nor can you make them feel.

When can you make them contribute any essential portion of their wealth unless it is done through the power of the Commonwealth? I ask if it is unreasonable that the State should take some of the money of these corporations and give it to these beneficial institutions? But the gentleman from Allegheny (Mr. Howard) says that the general government ought to take charge of these matters. I am of the opinion that the general government should keep its hands, as far as possible, off of the domestic affairs of the people. I think, with Fisher Ames, that the State government was a beautiful fabric, but that it was situated on the naked beach, and the Union was the dyke around it to fence out the flood.

Mr. HOWARD. I desire to remind the gentleman that I only alluded to that class of claims that grew out of the war.

Mr. WOODWARD. I believe that the government did appropriate something when Chambersburg was destroyed by a common enemy, but I do not know if Chambersburg would not have fared better

if she had been left to herself and to State charities. What I wish, however, to meet is this idea of looking to the general government for appropriations for charitable purposes. It was never intended for any such purpose. There is a document that possesses such importance in our country's history that I think I will be pardoned for referring to it, for it lies very much out of the line of reading of many men. I mean the Declaration of Independence. That document undoubtedly contains some absurd recitals in its beginning about the equality of men, but it is full of the most salutary teachings. I have never seen such an excellent definition of a State as is contained in that instrument. After setting forth the reasons that lead to the formation of the government, and declaring that the States composing this unit of government ought to be free and independent, Mr. Jefferson proceeds to define what a free and independent State is, "and that as free and independent States they have full power to levy war, conclude peace, contract loans, establish commerce and perform all other acts and things which independent States may of right do." "All other things" include christian charities—a declaration that has never been made by any intelligent man in regard to the federal government of this country. That government is one of limited powers, expressly delegated or necessarily implied, and is not empowered to do all other things that free States may do. Pennsylvania has.

Now this visible corporation that we call a State—this essential entity—proposes to contribute out of her treasury, and out of the taxes of corporations, sums of money for the promotion of the charitable institutions of the country. And what does this article in the Constitution propose? To make these appropriations in behalf of any institution that is denominational in its character? Listen to the reading of the section:

"No appropriation shall be made to any person or community, nor to any denominational or sectarian institution, corporation or association, for charitable, educational or benevolent purposes."

This sovereign, free and independent State, which has the right to do all things which other free and independent States may do, is to be tied down, restrained and prevented from doing that which every benevolent man in the State would wish her to do: Contribute to the relief of the suf-

ferings occasioned by calamities that sometimes befall towns and cities, and contribute to the aid of hospitals that relieve the sufferings of our common humanity. Mr. Chairman, this disposition to relieve the sufferings of our fellow-man is one of the distinguishing characteristics of the age, and we sometimes hear it said, in the pulpit and in our fourth of July orations, that the ancients had no hospitals and infirmaries. Now, I think, we do not quite do justice to antiquity by that line of remark, because there was a time when every castle was a hospital, and every monk's cell an infirmary; and under the feudal system there was as much care taken of the tenantry as there was under the slave system in our Constitution. The tenantry, in those days, received instruction and relief, and there were as many benevolent institutions, in proportion to the population, as there are to-day in this country, and in this christian age. I know that the charitable enterprises of this day are undertaken in a more ostentatious manner, and large buildings are erected, and many of our citizens become interested in their welfare. We make loud proclamations of all we are doing in the way of charity. I do not say it is wise, but this is the form in which our charity manifests itself, and, I must confess, that we are not apt to follow the Scriptural teaching, not to let our left hand know what our right hand doeth. We do not conceal our deeds of charity from anybody, but we take pleasure in letting the world know of them. We put up large hospitals, in the most conspicuous places, and surround them with all the ornamentation that is calculated to attract the attention of the stranger or the passer by, and we tell the world what the fact is, and I rejoice the fact is so, that we are a benevolent people, and that we live in a charitable age. Charity is one of the attributes of our nature, and it is better it were dispensed in our way than not at all.

The world has long since passed from the feudal age, and this country has extirpated its slavery, and I am glad of it, and we must now confer our charities on another, though more ostentatious form. I say that this Convention will be very cruel to the people of this great Commonwealth if it does not encourage charitable objects that are educational, benevolent and religious, and the reason is monstrous that all encouragement is to be refused because these institutions are generally founded and built up by denominational

influences. Why, Mr. Chairman, of what value is a man in Pennsylvania who does not belong to some denomination? If you subtract the denominational class of our citizens from the population of Pennsylvania, what do you say of the residue? Do they ever build hospitals or encourage charities in the State? I tell you no; the people of Pennsylvania are a denominational and a sectarian people. They all belong to some class of religious belief. Why, even my friend from Chester (Mr. Darlington) belongs to a religious sect, and in fact I believe he claims to be a Quaker, [laughter,] and yet he, too, is a denominational man, and belongs to a sect that is distinguished above others for charities. Would I not trust Presbyterians to dispense charities? Certainly I would; and then there is another denomination that I certainly would trust in dispensing charity, and it is the Episcopalians, to which sect I have been long attached. The Episcopal hospital, of this city, has never, to my knowledge, received one dollar of assistance from the public treasury, and yet it is an invaluable institution. Its doors are always open, and when relief from suffering is sought, it never stops to inquire the religion of a person. It is enough for its officials to know that the sufferer is one of our fellow-men, and that he needs relief, and they relieve him. Shall it be said that Pennsylvania is not a denominational Commonwealth, and that this provision shall be placed in the Constitution, in order that it shall not dispense denominational generosity? I do not believe there is a denomination in the State of Pennsylvania that does not provide some mode for the relief of suffering humanity. I do not know of a church, sect or denomination that ignores these words of our Saviour: "The poor ye have always with you." The church, sect or denomination that has no poor, or neglects its suffering, possesses no religion. That church, you can be sure, has no Christ, because Christ was the friend of the poor.

Now, Mr. Chairman, does this Convention consider what they are asked by the Committee on Legislation to do when they are asking that the Legislature of Pennsylvania shall be denied the power to aid and assist denominational and benevolent charities throughout the State? Why, sir, I would be ashamed to see such a provision in the fundamental law of Pennsylvania. If a certain denominational institution asks an appropriation from

the Legislature for a special purpose, and present the objects and necessities of their institution before the members of that body, they will be refused, and the only reason given for the refusal will be that that some benevolent man in that denomination originated this charity, laid its foundation and built a hospital for the care of the sick and the infirm, and therefore for this free and independent State of Pennsylvania, with money in her treasury, extracted from the pockets of the people, will not lend its hand in encouraging and promoting this noble and worthy object.

This is the philosophy of the section which has been reported by the Committee on Legislation. If it rests upon any philosophy whatever, it rests upon the philosophy of denying to aggregated Pennsylvania the right to perform a duty that would be honorable to each and every one of that aggregate. We mean to do in our aggregate capacity that which would be honorable and proper for any of us to do in our individual capacity.

Suppose the chairman of the committee who presented this amendment would patronize a Presbyterian or Quaker hospital. I do not suppose that this section contains anything that denies him that right, but when a unit of the people in this creature that we call a State, although endowed with powers vastly beyond those of all the individuals composing it, proposes to do the same thing, then this fundamental law shall step in and prevent its accomplishment.

Well, sir, if the State does not do it, it will not be done. If the State does not patronize these institutions, they cannot be built and sustained.

The chairman of the committee mentioned the deaf and dumb asylum of this city this morning, in some of the remarks that he made. I have some knowledge of that institution. I have been a very unworthy member of its board for some twenty years, and I know that it is a well-conducted institution, and that the Legislature appropriated only twenty thousand dollars to its support, and the institution educates, upon the State foundation, more boys and girls than those twenty thousand dollars pay for. So the State gets, in the educated mutes of its population, from that institution, more than it renders. It has some endowments beyond this State appropriation, or it could not exist. It has been patronized by denominational men, and I imagine that ev-

ery man who has given a legacy or contributed to its endowment has been a denominational man of some sort. It has considerable endowments of this kind, which, with the inconsiderable contribution from the State, enables it to educate all the mutes of our State and some from the State of Delaware, and I believe some from the State of New Jersey. It is the most efficient charity of any in our midst. The "blind institution," I believe, is also in the same catalogue, although I have not the same personal knowledge of that that I have of the deaf and dumb.

The gentleman from Luzerne (Mr. H. W. Palmer) proposed to strike out this section. The gentleman from Franklin, (Mr. Stewart,) who made an excellent speech in support of that motion, has given good reasons for striking it out. The gentleman from Allegheny, (Mr. Howard,) it seems to me, has offered no satisfactory reason for retaining it, and I confess that I am prepared to vote for striking out this and all similar provisions. My friend from Philadelphia (Mr. Dallas) proposed to modify it, but I do not care about the modification. I prefer to strike out the clause entirely. I conceive, sir, the thing is wrong in itself, and that it is, in some sense, while it is not so intended, an insult to all that class of our population who are sectarian, who belong to one or another of the religious denominations. I see no occasion for condemning them. These divisions and schisms in the church are matters and things to be lamented undoubtedly. I think the church greatly weakens herself in the popular estimation by dividing her forces and fighting each other instead of the common enemy. I would that all men were of one mind upon this subject, but I see no prospect of uniting men in their opinions on this or any other subject. We are to have as many minds as we have men, and whilst we have them, and whilst we have these different jarring denominations, all coming, however, to a common point, I certainly would not discourage unity by preventing their contributing to and sustaining common charities. While they dispute about doctrines endlessly, and the longer the war of words is waged the less is learned, yet they agree in this, that the poor shall be cared for, the hungry shall be fed and the naked shall be clothed. Now here is a ground of unity. This constitutional amendment proposes to take away that ground, and leave the denominations to wage this unmitigated warfare

with each other. Sir, I have said enough to indicate my reasons for intending to vote for the motion of the gentleman from Luzerne, (Mr. H. W. Palmer,) to strike out this provision from the report of the committee.

MR. CURTIN. Mr. Chairman: It is impossible for us to do without a Legislature. It is the highest and most useful branch of our government, and yet this Convention seems to have been struggling, from the first day of its session down to this day, to abolish that useful branch of our government, through and by which the will of the people is expressed, and the long discussions on the subject of the action of the Legislature on granting corporate powers generally, and the contractions of the powers of that body proposed by this committee, had seemed to me to have gone so far that it was scarcely necessary that this Convention should put a restraint on charities of the State. Until you can form different men for electors, and send an entirely different class of men to the Legislature, and that inspiration from the Almighty taught in the Scriptures, and which every man finds in his heart, will lead the members of the Legislature to do charity, and to do it at the public expense, when it is judicious and proper, notwithstanding what has been said here, of the means by which the State has been induced to do charity through the Legislature, I confess I have some doubt of it.

It is said that in order to get an appropriation of money for a charity from the Legislature, it is necessary to pay money; and yet gentlemen who have had the honor of seats in the Legislature complain here of the presence and importunities of committees. If to pay money is all that is necessary, why do the committees of benevolent women and men importune honorable members of the Legislature in their seats and their homes, for appropriations of the public money? If they pay money for legislation, and if it is true that legislation of such a character can be procured only in that way, they could find men who would take the contract for all the charities in this State, and attend to it professionally and with more certainty of success than the importunate men and women who give their time and energies to such work of benevolence.

I am opposed to the whole section, and approve much that has fallen from the lips of the distinguished and learned delegate from Philadelphia (Mr. Woodward) upon

the subject. There never has been in Pennsylvania a more beautiful charity and a higher justice than that which induces the people of this great State to protect the orphans of the men who have fallen in the war to save the government from destruction, and yet, sir, when the power was given to the Executive, in a single section, to form a plan, as suggested in a message to the Legislature, to educate and nurture the orphans, his plan was to put the child of every man that fell, into a sectarian institution of the same denomination of his father, for the reason that no institutions were in the State for this nurture and education, except sectarian; and I never heard any complaint that that charity was not proper and good. It grew and enlarged until it became a department of the government, and that feature is not yet entirely abandoned. The boys on the streets of this city, now in blue clothes, the children of the men who died that this country might live, are in a sectarian institution, and money is paid by the State in support of the institution they are in. The gentleman had better take care, or he will cut off the Lincoln institute from all appropriation of money.

It is distinctly and clearly a sectarian institution, and it is provided that the children in that school should be raised and nurtured and taught in the Episcopal church, and the Executive, although not an Episcopalian, but a Presbyterian, of the sternest sect, to protect these orphans, gave a full share of the sacred fund to the good men and women who manage this institute; and notwithstanding they propose to instruct the pupils in the Episcopal faith, and he feels none the worse for having done so. But it is said, unless we restrain and restrict the Legislature, they may make an appropriation, such as they made to Somerset or Juniata counties, following the example of an appropriation when a great calamity befell the city of Pittsburg in 1845, the city so ably represented by the eloquent gentleman (Mr. Howard) who makes such serious objections to an appropriation of that character. Since that time various occasions have occurred on which the state has lent a helping hand to relieve the people from great calamities.

MR. HOWARD. Mr. Chairman: I do not like to be misunderstood. I was speaking only of this other class of appropriations. I gave my entire argument to them. I stated that the appropriation to Somerset was proper.

Mr. CURTIN. I accept the explanation; but the other instance he gives is still worse, the payment of the people of Chambersburg who suffered, and I understand it if such a calamity should occur again, if we adopt this section as it comes from the committee, the Legislature would have no power to do anything to relieve the suffering of those who have lost their property.

During the war the people of Pennsylvania were, from time to time, called to defend the border—this same border—and the wonderful spectacle occurred of thirty-six thousand men appearing at the capital in ten days, in answer to one of such calls, and when the enemy were driven beyond the border, and the people returned to their homes, it was found there was no appropriation of money at Washington out of which they should be paid. The Legislature was not in session, and there seemed to be no means of discharging the just obligation to these men who left their homes to defend the State. The Executive of the State came to this city and assembled the presidents of the banks, and on the mere promise that the Legislature would be asked to refund the money, they gave him six hundred and forty thousand dollars, with which the troops were paid, and it is proper to say, in this connection, that the endorsement of the note by the Executive would have embarrassed him very much if he had been liable personally. When the time arrived, and Congress failed to pay the money, he communicated the fact to the Legislature at ten o'clock in the morning, and at three o'clock in the afternoon he signed a bill unanimously passed by both branches of the Legislature, refunding the money. Prompt action to maintain the honor and good name of our Commonwealth by the Legislature so much abused on this floor.

Now the calamity at Chambersburg presents to my mind the strongest reason why we should put no such feature into our Constitution as this. In the beginning of that terrible conflict we raised in Pennsylvania an army intended for the domestic protection, but the defeat of the armies of the federal government required their presence out of the State, and they were immediately surrendered. At various times during the war, troops were raised in Pennsylvania to protect the border, but were demanded by the national necessity and went forward. In 1864, by an arrangement with the federal

authorities, seven regiments were raised in Pennsylvania for border protection. Care was not taken as to the selection of the men; many were older than generally required for military service. Many were not in wealth; some had been in the service and had contracted the diseases which many of our gallant and true men suffered in the south, and not a few had been wounded and discharged as unfit for military service. These seven regiments were all that were necessary for the protection of the State. The rebel armies advanced north in the summer, as we all know, and the seven regiments were called for, for the protection of the Capitol at Washington.

At first it was declined. The battle of Monocacy resulted in a defeat of the army under General Wallace, and the armies of Breckenridge and Ewell approached the national capital, and then it was declared that the presence of these troops from Pennsylvania might be a positive necessity to the safety of the federal capital, and the whole force was sent forward, and three days after they were sent from Pennsylvania; many of them died in defence of Washington. The rebel army burnt Chambersburg; and will any American citizen tell me that it is not proper to relieve these people? Why, in the brilliant record made in that State during that terrible struggle, her fidelity was never more illustrious than in uncovering her own border in order to protect the capital of the nation. In doing that, the beautiful town of Chambersburg was exposed and burnt, and the country around it was ravaged by the enemy. And, houseless and homeless, without food or raiment, cast into the field, where private charity could not reach them, they were succored by the State. Will any man desire to put in the Constitution of the State a section declaring that the people shall be debarred from assisting their fellow-men in such a time of calamity and distress? Go to Washington for charity, the delegate from Allegheny says. That, sir, is the wrong place to go to for charity. They are not your brothers, they are not your friends and kindred, at Washington. They are from all over this vast continent. It is a severe and a close government, at Washington, and it ought to be such, and only give according to national law; all the people of the country ask only the administration of law there. We are a State. Our government is domestic, and our institutions are equally so. Our gov-

ernment should act like an individual or community—like a town, or city or county, under like circumstances. And when you find a part of your people distressed, by such a calamity, when private charity alone cannot succor them, the public treasury must—according to some gentlemen here—be closed against your brother when his property is thus destroyed, not by his own act, but by the public enemy; and destroyed, too, when the State shows its loyalty for the nation, by uncovering its own border to save the nation's capital. My friend from Allegheny (Mr. Howard) was unfortunate in his illustration, and surely this Convention will not deny a member of the Legislature the power of giving the charity of the State on such an occasion.

It is painful, sir, to hear so much said of the Legislature of the State. I am sorry we so defile ourselves by telling all these painful histories of bribery and corruption on all occasions. Is there no honesty left? Can we find men in Pennsylvania who will administer the government faithfully? I have never have had the honor of sitting in the Legislature, but I have been by the side of that department of our government for several years, and I must confess, in the presence of all the evidence as to the corruption of the people sent there, that I do not think it is all reliable. My friend from Potter (Mr. Mann) says fifteen was the number of corrupt men he believed *he* knew and could name in the House of Representatives. Sir, the men at Harrisburg who would be bribed or corrupted are as well known as their names to the public.

It is not a majority of the Legislature, but an abandoned few. And you must remember that there is the giving and taking of interests; there are the various local laws in the passage of which reciprocal votes are given; there are some members, doubtless, who take money for their votes. But if it be true that the Legislature is as bad as we make it out to be, then what are we to do, for we must have a Legislature? We may sit here for five years; we may put in our Constitution articles, and sections, and amendments to restrain the powers of our government, to limit the action of the Legislature, yet we must trust men. We must have a Legislature, and we must have a Governor, and we must have State officers. We must put men into office. Do what you may, you must have your government administered by men; and in

my judgment men are just about as good now as when the Declaration of Independence was promulgated. My experience of life is not that all men are dishonest, but, on the contrary, that very few of them cannot be trusted, compared with the vast multitude now in our country. There are more people in our country now than there were at the period when gentlemen claim so much virtue, and I suppose there are, therefore, more corrupt men. But, today, in all trades and occupations, you find the majority of men whose word is as good as their bond. Unfortunately, however, many of the men who are not of that character, if it be conceded that what is said here is true, and I accept the declaration of gentlemen who must know more about it than I do, many of these men get into office.

I am very thankful to know that there is a different class of men in this Convention however. I am exceedingly glad to find that this Convention is without taint.

I speak in all seriousness when I say that no body of men ever assembled in Pennsylvania who had to sustain them, a stronger, a better defined, and a larger measure of public confidence than this Convention, and the people of Pennsylvania are looking forward to judicious and prudent reforms in our organic law. If we make these reforms wisely, honestly, and fairly, depend upon it they will be accepted by the people. I do not think that the good people of Pennsylvania desire that we should put a section in our organic law in restraint of charity; and certainly not for the reasons given here by the gentleman from Allegheny, (Mr. Howard,) and some others who have advocated it.

Mr. HUNSICKER. Mr. Chairman: I am satisfied that this most proscriptive and intolerant section will not be able to stand the test of discussion. I have very little to add to the analyses of the section so well made by the gentleman from Philadelphia (Mr. Woodward) and the gentleman from Centre, (Mr. Curtin,) because they have ably exposed its faults, and have completely demonstrated that it would be, as I have already said, dwarfing the proportions of this Convention, and it would be dwarfing the Constitution of the State of Pennsylvania to place in the fundamental law a provision that, in effect, means that so soon as a charity is instituted by a church it becomes connected with something wicked, and is no longer worthy of the charitable aid of the State. The sec-

tion that we have just adopted allows the Legislature to appropriate to charitable and educational institutions. An educational or charitable institution, not under the sanction or direction of a religious institution, can receive charitable aid from the State; but the moment a charitable association becomes fostered or encouraged, or is upheld and maintained by people who worship God in conformity with a creed, and according to the dictates of their own consciences, then the arms of the Legislature are tied, and when these charities call for aid they are told, "we cannot aid you because you worship God in a particular way."

I do think, sir, that the proposition is monstrous. There is a want of conscience in it. Let me go a little farther. If this Convention cannot be reached by an appeal to its conscience, let me appeal to its *fear*. As the gentleman from Philadelphia (Mr. Woodward) so well said, strike out from the population of Pennsylvania those who belong to churches, and what portion of the population have you left. Array, if you please, the denominations and the sects against the work of this body, and what becomes of it? It will be buried so deep by an indignant people that it can never be resurrected. It will never be ratified by the people of Pennsylvania.

I have been quite surprised to hear the arguments of the gentlemen who favor this section. I have not yet heard a single word, or line, or sentence, in favor of it, which has any convincing force whatever. Why such a proscriptive and intolerant section as this should have been reported I am at a loss to conceive. We are accustomed to being scared by stories of the corruption that exists, or existed, at Harrisburg. But you have "bottled up" the Legislature already. You have tied them hand and foot. Do you propose to adopt here a code of laws that shall last until the end of time, or do you propose simply to erect a frame-work of government? Why cannot the Legislature be trusted as well with the work of aiding the charities of the State, as they can be with the making of the laws which regulate the manner and mode by which you shall enjoy your liberty and your property?

I do submit that this section is wholly unnecessary, and that if there have been any abuses in times past in the disposition of public funds the difficulty can be corrected by an appeal to the people. The

Legislature represents the people. It comes fresh from the people. If the people make any complaint and elect representatives upon that issue they will vote as the people desire them to do. Let me ask gentlemen who have had more experience than myself where has there been a candidate for either branch of the State Legislature who has run upon the issue that there should be no appropriation to a charity or sectarian institution for charitable purposes? Where has there been a man who has been opposed because he would aid Somerset or Chambersburg? Has there ever been such a case? Not to my knowledge certainly. I trust the good sense of this Convention will prevail, and that the hateful section will be voted down.

MR. EWING. Mr. Chairman: For one I have been very much entertained by a considerable portion of the discussion, and by some of the speeches of the learned gentleman, and also very much gratified with some of them. I am exceedingly glad that the distinguished gentleman from Philadelphia (Mr. Woodward) has got to examining the Declaration of Independence. There are some excellent truths in it; though how he deems the doctrine of sectarian charity from the definition of a State contained in that declaration, I was unable to see. I was also very much entertained and gratified with the eloquent speech made by the distinguished gentleman from Centre, (Mr. Curtin,) who gave us an account of the war and the payment of the troops, and all that sort of thing. It is good history and it is entertaining, and there are certain gentlemen who are entitled to a great deal of credit for the part they took in those transactions, but what these things had to do, or in what way they bear on the section under discussion I have been unable to see. I was also gratified to learn from the distinguished gentleman from Philadelphia (Mr. Woodward) that so large a portion of the people of this Commonwealth were religious people—denominational people, and really, if I had not examined the section and known what it meant, I should have thought it was an attack upon the churches of this State and the church-going people.

I do not so understand it. Now, charity is a noble thing—a grand thing, and it is a most magnificent subject to *talk about*. It is a wonderful easy thing to go round and get subscriptions from *others* for a charitable purpose, if you do not have to

subscribe for it yourself. Most of us have seen a little of that. It is a very grand and an equally easy thing to vote away other people's money. Now for one, I think I feel just as charitably disposed as any of the gentlemen here, under circumstances of that sort.

Mr. STEWART. How does the gentleman apply that to legislative action? He says it is a very easy matter to be charitable with other people's money.

Mr. EWING. If the gentleman will wait he will hear about it. This section is not aimed at the charities of the State at all. I do not see how the question of the State being charitable comes up here at all. The question here is, what is the proper direction to give to the charities of the State. Who are the proper objects to receive the charities of the State, and who should be the almoners of the State. This section may fairly be divided into two portions. There is one that refers to the charitable donations of the State, to particular communities that may fairly and properly be separated from the balance of the section.

I do not propose to discuss at any length the subject of the State appropriations to communities or persons, and on which there have been some magnificent speeches made. I have to say, for one, that, notwithstanding the denunciation of all who are so uncharitable as to think that the State should not vote money to communities for these purposes, I think that the appropriations spoken of here—I refer to Chambersburg, and Somerset, and Pittsburg—if it got an appropriation—were improper, and did not fall within the line of the legitimate business of the State.

But there has been a great deal said here with regard to the denominational question, and I have no doubt as to the meaning of this section as reported by the committee upon that point. It means precisely this, that the Presbyterian hospital that my friend from Allegheny (Mr. Hay) talks about, is just the thing that *should not* have an appropriation from the State, nor the Episcopal hospital, if there be such a one. I do not think that the Presbyterian hospital is asking for an appropriation from the State, nor is it likely to ask for one. The gentleman tells us that the Presbyterian hospital and the Episcopal hospital are open to all the world. I presume that if some sick, lame or diseased person, with proper recommendation, should come to one of those hospitals they would not turn him out

simply because he happened not to be a Presbyterian or an Episcopalian as the case may be, but does not every man, woman and child know that the Presbyterian hospital is for Presbyterians alone? ["No!"] Do they not know that the Episcopal hospital is for Episcopalians? ["No! No!"]

True it may give its charities to others, but that is what it is intended, what we all mean by it, it is for denominational effect. It is no more a public charity than are the contributions made in a particular church to build a mission church, or to support the poor. I am a denominational man. I belong to a denomination myself, and believe in it.

Mr. AINEY. Does the gentleman understand that the purpose of this section is to prevent any discrimination or preference being given to any religious or denominational institution?

Mr. EWING. Yes, sir.

Mr. AINEY. Then I would ask the gentleman whether that is not sufficiently provided for in the bill of rights in section three: "No preference shall ever be given by law to any religious form or mode of worship."

Mr. EWING. If he means it in that limited sense, that is not the object of this section. They talk in this amendment offered about refusing appropriations to churches and other societies for denominational purposes. I see no use in that—it don't strike at the way the thing is done. I cannot see any reason for a denominational institution of charity or of education, unless to support the poor of its own church, or to extend the church. If it is for the general public why not make it a public charity? Why cannot Episcopalians, and Presbyterians, and Methodists, and Catholics and those who are not such join and erect a common hospital? That would be free from the objection of sectarian; but just because our people are divided into denominations you cannot make an appropriation to charitable institutions that are strictly denominational without giving preference to one over the other.

But we are warned that the limitation contained in this section is unpopular. This proposition is one instead of being unpopular would be rather popular in the State. I am not afraid of the people voting against that, as the gentleman from Montgomery (Mr. Hunsicker) is.

I do not think the people approve of appropriations to strictly denominational

institutions, whether they be charitable or educational; and if, as the learned and honorable gentleman from Centre (Mr. Curtin) says, that it would cut off the appropriation from the Lincoln hospital, which, he says, is a denominational institution, if it be such, and provides that all its pupils shall be brought up and educated in the Episcopalian faith, as he says it is, I think the appropriation ought to be cut off from it.

Mr. BARTHOLOMEW. Will the gentleman give way until I make a motion for the committee to rise at this time?

Mr. EWING. Certainly.

Mr. BARTHOLOMEW. Mr. Chairman: I then move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to.

IN CONVENTION.

Mr. ARMSTRONG. Mr. President: The committee of the whole have again had under consideration the report of the Committee on Legislation, and have instructed me to report progress and ask leave to sit again.

Leave was granted to the committee to sit again to-morrow.

REPORT OF COMMITTEE ON AGRICULTURE, MINING, MANUFACTURES AND COMMERCE.

Mr. FINNEY. Mr. President: I ask unanimous consent of this Convention to present a report from the Committee on Agriculture, Manufacture, Mining and Commerce. I would like to have it read, as it is very short.

Unanimous consent being granted, the Clerk read:

SECTION 1. In the absence of special contracts the legal rate of interest and discount shall be seven per centum per annum, but special contracts for higher or lower rates shall be lawful; all national and other banks of issue shall be restricted to the rate of seven per centum per annum.

SECTION 2. The Legislature may provide for the establishment of mining schools, to be located in the coal regions of Pennsylvania, for free instruction in mining and the mechanic arts and sciences.

SECTION 3. No combinations of employers or employed, to enable the one to control the business operations of the other, combinations to maintain arbitrary prices for manufactures, merchandise or the products of labor of any description, or for labor itself (including professional ser-

vices) shall be allowed; nor shall any combinations of individuals, associations or corporations, to obstruct the free course of trade, or to make or maintain arbitrary rates for freight or passage on rivers, railways or canals, be permitted, and the Legislature shall pass laws to prevent and punish such combinations.

SECTION 4. The Legislature shall provide by law for such appliances and regulations in mines, manufactories and workshops, and in the erection of buildings, as may be necessary to protect the health, and secure the safety of the operatives, and shall by law regulate, and may prohibit, the employment of children under the age of ten years in mines and manufactories.

SECTION 5. The Legislature shall regulate by law the manufacture and sale of carbon oil, so as to insure the safety of life in its use for light.

SECTION 6. The Legislature shall provide by law for an equitable assessment of benefits in favor of mine owners and operators whenever, by works and expenditures in mines, draining or tunneling, they produce results which inure, directly or indirectly, to the benefit and advantage of any contiguous or adjoining mines.

Said article was read the first time and laid on the table.

The PRESIDENT. This article has been read the first time. It will be laid upon the table and printed.

PROHIBITION.

Mr. CORSON, by unanimous consent, presented a petition from citizens of Montgomery county, in favor of the prohibition of the manufacture and the sale of intoxicating liquors, which was laid on the table.

ADJOURNMENT.

Mr. HARRY WHITE. Mr. President: At the request of several friends about me, I move that when the Convention adjourns to-day it will adjourn to meet on Monday next at ten o'clock.

Mr. CORBETT. I make the point of order that that has been passed upon.

Mr. KAINE. No, the resolution passed this morning was to meet at eleven o'clock, not ten.

The PRESIDENT. It is not in order to make that motion at this time.

Mr. CORBETT. Mr. President: I move the Convention do now adjourn.

The motion was agreed to.

So the Convention, at two o'clock and fifty-seven minutes, adjourned.

SIXTY-SEVENTH DAY.

SATURDAY, *March 15, 1873.*

The PRESIDENT called the Convention to order at ten o'clock, and announced that there was not a quorum of members present.

Mr. WORRELL. Mr. President: I move that the roll be called.

The PRESIDENT. The Clerk will call the roll for the purpose of ascertaining whether or not there is a quorum present.

The roll being called, the following named members answered to their names:

PRESENT.—Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Biddle, Bowman, Brodhead, Campbell, Carter, Corbett, Craig, Curtin, Dallas, Darlington, Davis, De France, Dodd, Ellis, Ewing, Guthrie, Hanna, Hay, Horten, Kaine, Knight, Landis, Lawrence, MacConnell, M'Clellan, M'Culloch, Mann, Mantor, Mott, Newlin, Parsons, Porter, Purviance, Sam'l A., Russell, Sharpe, Smith, Wm. H., Stewart, Struthers, Turrell, Walker, Wetherill, John Price, Wherry, White, David N., White, J. W. F., Worrell and Meredith, *President*—57.

ABSENT OR NOT VOTING.—Messrs. Addicks, Ainey, Bannan, Bardsley, Beebe, Black, Charles A., Black, J. S., Boyd, Broomall, Brown, Buckalew, Carey, Cassidy, Church, Clark, Cochran, Collins, Corson, Cronmiller, Curry, Cuyler, Dunning, Edwards, Elliott, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Hall, Harvey, Hazzard, Hemphill, Heverin, Howard, Hunsicker, Lamberton, Lear, Lilly, Littleton, Long, M'Allister, M'Camant, M'Murray, MacVeagh, Metzger, Minor, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Read, John R., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Rooke, Ross, Runk, Simpson, Smith, H. G., Smith, Henry W., Stanton, Temple, Van Reed, Wetherill, J. M. White, Harry, Woodward and Wright—75.

Mr. BARTHOLOMEW. Mr. Chairman: I move that the Convention now adjourns until Monday at ten o'clock.

The yeas and nays were required by Mr. Darlington and Mr. Dallas, and were as follow, viz:

Y E A S .

Messrs. Bartholomew, Carter, Curtin, Ellis, Ewing, Hanna, Kaine, Landis, Parsons, Porter, Struthers and Worrell—12.

N A Y S .

Messrs. Achenbach, Addicks, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Beebe, Biddle, Bowman, Boyd, Brodhead, Campbell, Corbett, Craig, Dallas, Darlington, Davis, De France, Dodd, Guthrie, Hay, Horton, Howard, Knight, Lawrence, MacConnell, M'Clellan, M'Culloch, Mann, Mantor, Minor, Mott, Newlin, Purviance, Samuel A., Russell, Sharpe, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Walker, Wetherill, Jno. Price, Wherry, White, David N., White, Harry, White, J. W. F. and Meredith, *President*—52.

So the motion was determined in the negative.

ABSENT OR NOT VOTING.—Messrs. Ainey, Bannan, Bardsley, Black, Charles A., Black, J. S., Broomall, Brown, Buckalew, Carey, Cassidy, Church, Clark, Cochran, Collins, Corson, Cronmiller, Curry, Cuyler, Dunning, Edwards, Elliott, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Hall, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Lamberton, Lear, Lilly, Littleton, Long, M'Allister, M'Camant, M'Murray, MacVeagh, Metzger, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Read, John R., Reed, Andrew, Reynolds, James L., Reynolds, S. H., Rooke, Ross, Runk, Simpson, Smith, Henry W., Van Reed, Wetherill, J. M., Woodward and Wright—65.

PROHIBITION.

The PRESIDENT laid before the Convention a petition from the Philadelphia Methodist conference, praying for the insertion of a clause in the Constitution prohibitory of the sale of intoxicating

liquors as a beverage, which was referred to the Committee on Legislation.

Mr. DODD presented a petition from citizens of Venango county, praying for the insertion of a similar provision in the Constitution, which was referred to the Committee on Legislation.

FENCING RAILROADS.

Mr. ARMSTRONG presented a petition from citizens of Lycoming county, praying that railroad companies passing through that county be required to fence their roads, which was referred to the Committee on Railroads.

RESCINDING THE XIII RULE.

Mr. LAWRENCE offered the following resolution, which was laid on the table:

Resolved, That the XIII rule for the regulation and proceedings of the Convention, requiring a member to be at his desk when he makes a motion or addresses the Chair, be rescinded.

THE HOPKINS'S MEMORIAL.

Mr. KAINE offered the following resolution, which was twice read:

Resolved, That the Committee on Printing is hereby directed to have the proceedings of the Convention on the death of Hon. William Hopkins—heretofore ordered to be printed—printed in this city, in pica type, double leaded, with black rules around each page, carefully printed on superior tinted paper, and bound in fine cloth—octavo form—with a portrait and autograph of the deceased.

Mr. KAINE. Mr. Chairman: After consultation with the Committee on Printing, I have concluded to offer this resolution. I was not present in the Convention, on the occasion of the announcement of the death of our friend, the late Colonel Hopkins, nor was I present when a resolution was passed, upon the following day, which is to be found upon page 396 of the Journal of the Convention. The resolution, as adopted by the Convention at that time, reads as follows:

Resolved, That the Committee on Printing be instructed to procure the printing of the proceedings of the Convention on the occasion of the death of Hon. William Hopkins, in memorial form, and that five hundred copies be furnished the members for distribution.

The Committee on Printing do not feel authorized, under the resolution referred to, to have a portrait engraved, and desire the Convention to indicate the manner and style in which it wishes the work done.

As a friend of the late Colonel Hopkins, I desire a memorial offering worthy of the Convention, and of the memory of the man whose past services and life it is intended to commemorate. Colonel Hopkins was a member of nearly every public body in this Commonwealth, from the year 1834 down to the day of his death. He filled many important offices, with credit to himself and honor to the Commonwealth, and now let this Convention honor his memory in the publication it is about to make.

Mr. NEWLIN. Mr. Chairman: I desire to say that the resolution in regard to the printing of the memorial proceedings of the Convention, upon the announcement of the death of Colonel Hopkins, which was referred to the Committee on Printing, was very vague, and left a very wide margin as to the manner in which it should be carried out. In view of the fact that this matter of printing has always been a very sore subject to the Convention, and inasmuch as it is difficult to harmonize the views of gentlemen upon this subject, the Committee on Printing thought it would be more satisfactory to the Convention, and certainly more satisfactory to the committee itself to have something definite by way of resolution as to the manner in which this publication should be made. I entirely concur in the views of the gentleman from Fayette, (Mr. Kaine,) that this publication, if it is made at all, should be made in a proper manner, and the manner indicated in the resolution is perhaps the best that could be adopted.

The question being taken, the resolution was agreed to.

THE ARTICLE ON LEGISLATION.

The PRESIDENT. The next business in order is the further consideration of the article reported by the Committee on Legislation. Is it the pleasure of the Convention to proceed to the consideration of this article?

["Aye." "Aye." "Aye."]

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself in committee of the whole, Mr. Armstrong in the chair.

The CHAIRMAN. The question is upon section twenty-one of the report of the committee. The pending question is upon the amendment to the amendment, offered by the gentleman from Philadelphia, (Mr. Dallas,) which will be read.

The CLERK read as follows :

"No appropriations shall be made to any denominational or sectarian institution, corporation, or association, nor to any person or community, for denominational or sectarian objects."

The CHAIRMAN. The gentleman from Allegheny (Mr. Ewing) has the floor.

MR. EWING. Mr. Chairman: I remarked yesterday, and I desire to call the attention of the committee to it again, that the amendment of the gentleman from Philadelphia (Mr. Dallas) is a material and vital change of the section as reported by the Committee on Legislation. That amendment of the gentleman from Philadelphia appears to have been drawn with his usual skill, to effect the object which, I presume, he has in view, and that is, to completely emasculate the section and render it worthless. The amendment provides that "no appropriation shall be made to certain institutions and persons," and so on, "*for denominational or sectarian purposes.*" Now, although the section of the existing Bill of Rights, referred to yesterday by the gentleman from Lehigh, (Mr. Ainey,) I suppose was intended merely to indicate that there should be no State church in Pennsylvania, yet I apprehend that that section would prevent any such appropriation as would be covered by the amendment offered by the gentleman from Philadelphia (Mr. Dallas.) I presume there never has been a time, in the history of this State, where there was an attempt made to obtain an appropriation of money for any society, *ostensibly* for denominational and sectarian purposes. Although some members of the Convention intimated yesterday that it had been done in New York, I think, however, that a reference to the appropriations, made either by the city or State of New York, will show that they were made in the same manner in which they have been made in this State, and that where an appropriation has been actually made for denominational and sectarian purposes, it has been made under the *form* of an appropriation, not for "*sectarian and denominational purposes,*" but for *educational or charitable purposes*. That is the form such appropriations have uniformly taken, and I think the power has been greatly abused, and is likely to be abused in the future. I conceive it to be an objectionable practice, and that it should be entirely prohibited. I regard the amendment which has been offered as entirely useless, and as superfluous as

it would be to insert a provision that would prevent the Legislature from legalizing theft.

No one has attempted to obtain an appropriation from the Legislature directly for a denominational purpose, nor is it likely to be attempted in future. This question it seems to me has been very fully and erroneously argued by gentlemen in the Convention, as though it were a question of charity and a question of humanity, and a question of religion. I conceive it to be nothing of the kind. While some gentlemen think that the State should not be permitted to make appropriations for charitable purposes, some of us entertain a contrary opinion, and believe that it is entirely a question of the *direction* which the charity of the State shall take. Those of us in favor of the proposition as it came from the committee, think that its charities should be directed by the State for certain specific objects. We believe that asylums are necessary for the relief of the insane—the deaf—the dumb—the blind, and other infirmities to which humanity is subject, and which the smaller communities cannot be expected to fully relieve. But we believe that this charity should not be dispensed *through denominational institutions*. I was yesterday approached in a very friendly manner, at the close of the Convention, by a gentleman who told me that I was mistaken in supposing that the Presbyterian hospital or Episcopal hospital, I do not know which, refused admittance to persons belonging to an entirely different denomination. Why, I never supposed for an instant that these hospitals were closed against sufferers of other denominations any more than I supposed that the Presbyterian church is closed against all persons except Presbyterians. I have supposed that churches are built to receive every person who was willing to attend the service, no matter to what denomination they may belong.

MR. HAY. I desire to ask the gentleman if he does not know that there are many charitable institutions in this Commonwealth in whose benefits persons belonging to their respective denominations can alone participate.

MR. EWING. I can answer that; I know of two or three instances of that kind, but they are rare. By denominational institutions I understand institutions whose management and control is necessary, by their constitution, to be confined to members of a particular denomination. Now,

I take it that such institutions are just as much denominational as a church; they are instituted and maintained for some denominational or sectarian purpose, and conducted, perhaps, merely for denominational glory, perhaps to make proselytes, but always for a denominational purpose. It may be that the donors think that this is the best way in which they can bestow their charities. Very well, I certainly shall make no objection. They are grand and noble institutions, and confer honor upon the churches that sustain them, and upon the members who contribute, but they are nevertheless sectarian, and are therefore improper objects to be the recipients of the bounty of the State. In this matter of charity and contributions to institutions I maintain that all the people of the Commonwealth stand on an equality. If an association of infidels proclaiming their doctrines organize an association for charitable purposes, providing that their association shall be wholly controlled by infidels in all times, they would be a sectarian association. I would bid them God speed in their work of charity for the sake of humanity, but I would never consent to allow the State to contribute anything to their assistance, nor would I any more have the State contribute to an Episcopalian or to a Presbyterian or other denominational institution of the same kind. I maintain that all these institutions are built for denominational purposes, and I think it is an admirable plan in which the charity of our churches can be bestowed.

I had occasion, a few days ago, to visit the "Friend's Hospital for the Insane," in the north-western part of the city. I found it to be an admirably managed institution, and I do not understand that it has ever asked any aid from the State. There are many of these private institutions throughout the State, and they are managed well. They are a credit to their supporters, and should be encouraged by all charitable people of the particular denomination, but they need no State aid. Now, a word in regard to the other portion of the section. I remarked yesterday that it is fairly divisible. There is a marked distinction between appropriations for the aid of sectarian or denominational institutions and appropriations to "persons and communities." I can very well understand how gentlemen can argue that the Legislature should have the right to make appropriations to communities or persons for charitable purposes, and not

to contribute anything to sectarian or denominational institutions. I think, myself, that they stand on different ground. I do not think that at this time there is any necessity for leaving that power in the hands of the Legislature, to be abused as it is likely to be, and as it has been in the past. I was not aware, when this subject was first under discussion, that there had been, what seems to me, abuse of that very power to so great an extent. I understand that the Legislature of this State made an appropriation to Pittsburg. I have nothing to say upon that subject. I also understand that the State made an appropriation to the town of Mifflintown, or Lewistown, I do not recollect which, and I am also informed that the division of this appropriation, which was made for the restoration of property that had been burned, has been a subject of discord and heart-burnings in that town from the period of the appropriation, and that the dispute remains unsettled until this day.

I also understand that the Legislature has made appropriations to Chambersburg in 1864, \$100,000; in 1866, \$500,000 more, with a pledge that no more should be asked from the State. In 1866-8, \$300,000 more was appropriated. All this was paid out in money. If I have been misinformed, I desire to be corrected. A year or two ago, under pretence of obtaining proof, and establishing the claims to be presented to the United States Government for payment, an act of Assembly was passed creating a commission (at an expense of some \$50,000 more) to take proof of claims for property destroyed by the rebels in the "border raids," and issue certificates to the parties. This, under the stipulation that the State should not in any event be liable for the payment of such claims. Under this commission certificates have been issued to an amount over \$2,000,000. And now the parties, or their assigns, are with the lobby knocking at the legislative door for another appropriation to pay the interest on these certificates. What a powerful lobby, with a large corruption fund, may accomplish in future, we can guess at from the past. The town of Somerset is also asking for an appropriation of \$100,000 to repair the ravages of fire. Many other towns have equal claims on the benevolence of the State.

I have no harsh word and no unkind thought for these people, who, by the visitations of Providence, or by the ravages of war, have lost their property, and have

besought and received the bounty of the State.

If the people who actually lost their property have received a fair division of the money appropriated, or if the appropriations were obtained by honest means, the public opinion in the Commonwealth is sadly at fault in regard to the facts. But granting that no dishonest means were used in obtaining the appropriations, and that the money was fairly and honestly distributed among the unfortunate sufferers. I, for one, believe all such appropriations to be outside the legitimate scope of legislative authority, not proper cases for charitable appropriations. If there is any legal claim for compensation in any case, it would not be affected by this section. I believe the power of the Legislature, in this matter of appropriations to communities and persons, has been abused; that it is a power likely to be abused in any case of its exercise, and that it should be restricted by the Constitution.

Mr. SHARPE. Mr. Chairman: I am so entirely averse to obtruding myself upon the attention of the Convention, and feel so diffident of my ability to influence the opinion of a single delegate, that I am quite sure that I would have remained silent during this discussion, had not certain remarks been made which seem to require my notice. I voted against the twentieth section of this article because I believed it to be uncalled for by any consideration of public welfare, and because it is wrong in principle, and I shall vote against the section now under examination, for the same reasons. Some short time ago, when we were considering the report of the Committee on Legislature, I took occasion to make some observations about the dignity and value of the law-making power of our State. The immediate subject then before the committee involved the qualifications of legislators, and how the constituent membership of the legislative body should be made up and apportioned throughout the State.

But, sir, we are now engaged in the examination of an article reported by the Committee on Legislation, which rises in importance far above every other question or matter appertaining to this branch of our government. Whilst it is certainly of great moment that the Legislature itself should be judiciously and properly constituted, it is still of much greater moment that its functions and powers should be so prescribed and defined, as that it

shall be able to do injustice to no citizen, but equal and impartial justice to all.

It should have all the authority which a great State needs for the development of its material resources, for the education of its people, for the security of their lives, liberty and property, for the relief of the suffering, for the advancement of art and science, and for the cultivation of those moral sentiments and christian virtues which ennoble society and adorn human character. A Legislature possessing such authority, in as high a degree, and hedged in by as many safeguards against abuse of its high functions, as man's ingenuity can devise, would be as perfect a human institution as is now attainable, and could be productive of very little that would not be for the advantage of the people.

But a Legislature with its hands tied, with its feet wearing chains, with a load of jealous restrictions upon its back, is an anomaly in a free government, and will be a spectacle for the world to point its finger of scorn at.

Mr. Chairman, I am for reform; I loathe corruption with an intense loathing. I despise the public functionary who barter away his honor and the rights of the people for filthy lucre. I know quite well that laws have been passed in the Legislature which ought not to have passed, and that influences have been habitually used there to tempt the avarice of legislators, and sap their virtue. But, sir, I would not begin the redress of this enormous wrong. I would not attempt to purify the legislative halls by destroying the dignity, functions and august beneficence of the law-making power of our State.

Let the people purge the Legislature of bad men, and bad legislation will cease. From this soil the upas tree has grown, and not from the chart of legislative power found in our present Constitution.

We are just now engaged in framing and perfecting an article containing the powers which the people are willing to delegate to the Legislature.

I am absolutely sure that every gentleman on this floor is anxious to do exactly right, and to reach a correct conclusion in this business.

I will not arrogate to myself the assertion, that during our progress in the consideration of this article, we have already made some fearful blunders, but I am greatly apprehensive that we have.

The limitation of legislative power, under all circumstances, is an exceedingly *delicate* operation. But the limitation of legislative power in a great Commonwealth like Pennsylvania, traversed by stupendous lines of public improvements; with vast resources; with ever shifting interests, and ever increasing wants; with a people of varied language and race, is an experiment of extreme hazzard.

We must recognize the fact that all innovations in the science of government are not reforms, but often prove disastrous to the prosperity of the State. Now, sir, a reference to the eleventh section of this article will show that in that single section we have taken from the Legislature the power to pass local or special laws, on twenty-six distinct and separate subjects.

I lay no claim to the possession of prophetic ken, but I predict that the oldest member of this Convention will live to see the day when bitter experience will teach the people that this has been a mistake.

It can hardly be possible that in the future, special or local legislation about some of these twenty-six subjects will not become an absolute necessity.

Let us remember what we are doing. We are not passing acts of legislation which can be repealed as soon as they are found to be mischievous, but we are framing an organic law which, if accepted by the people, must stand, unchanged and unchangable, until its oppressions become so grievous as to compel the calling of another Convention, to undo the wrong which we have done.

I have sat silent whilst all these manacles were being forged for the Legislature.

When the twentieth section was under consideration, which provides: "No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, except by a vote of three-fourths of all the members elected to each House," I still remained silent, although I was amazed and mortified that the delegates of a civilized and christian people should think it proper to place greater restrictions upon the Legislature in dispensing charity to suffering humanity, than in forwarding the selfish schemes of individual and corporate cupidity and of aggrandizement.

But I was content to demean myself thus, because I observed that while State

charity was hampered, it was not wholly destroyed.

But, sir, when the twenty-first section was reached, which provides: "No appropriation shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation, or association;" and when I heard from gentlemen on this floor, the wide sweep which they propose the section shall have, and the special, imaginary evils, which it is intended to prevent and eradicate, I felt that further silence would be a wrong to myself and an insult to my constituents.

The section has two distinct branches. The one prohibits the appropriation of money to any denominational or sectarian institution or corporation for charitable, educational or benevolent purposes; the other prohibits the appropriation of money to any person or community for like purposes.

The first branch announces a proposition of astounding novelty. It contemplates nothing less than the damming back the stream of State charity, unless it flows through a non-sectarian channel, to relieve non-sectarian suffering. It goes even beyond this, for it declares that the bounty of the State shall not be used to educate any but the non-sectarian mind, and that it shall exercise no benevolence that shall not be free from the taint of sectarianism.

Now, happily for us, the State and church are divided in this Commonwealth. We have no established State religion, no State formula in sacred things, no State ecclesiastics, and no test oaths.

Every man's religion is a question between himself and his God. No one would wish to change this, even if it were possible to do so. But is it a fair and proper conclusion, from these premises, that the State should withhold all aid from every institution or corporation that is under sectarian government, or cherishes sectarian religious trusts? I grant that it would be wrong for the Legislature to appropriate money in aid of one particular sectarian institution or corporation, to the exclusion of all others, for this would lead, in the end, to the establishment of a State religion. All discriminations between sectarian institutions or corporations are forbidden, alike by our sense of justice, by the Constitution under which we now

live, and by the genius of our government.

But this is quite a different question from that which we are now considering. It is said the State ought not to aid sectarian schools and hospitals. Why not? Is an institution, established for the most beneficent objects, to be ostracised, and put beyond the pale of State assistance, because its managers are Presbyterians, Episcopalians, Methodists, Lutherans, Baptists, or Catholics? What is ~~the~~ *the rationale* for this condemnation? Are the good works of sectarian enterprise to go for nothing, because of an insane bigotry which distrusts all sects alike? One of the first and noblest duties of a State is to relieve suffering. The great heart of the people declares that this relief shall overleap all sectarian barriers, and feed the hungry, minister to the sick, and clothe the naked, of whatever faith, and wherever found. Whatever is given for the love of God, and the love of man, is charity. In this love of God, and love of man, all creeds harmonize. They may quarrel about forms and about doctrines, and about ecclesiastical government, but in this common love of God, and love of man, they are a unit.

To what charity will the State make appropriations, if it excepts everything that is sectarian? It is doubtful whether the gift that is laid upon a non-sectarian altar is sanctified.

The people understand these things better than we do. Their moral perceptions are always about right. They appreciate the blessings that flow in almost every community from the good works of sectarian institutions. And when misfortunes overtake such institutions, when their means become straightened, and their circle of usefulness narrowed, the people have always been willing, and always will be willing, that the State shall grant proper aid. No abuses have appeared in the past, growing out of such appropriations. Nothing but good has resulted from them, and the probability is that nothing but good shall hereafter proceed from them.

At all events the people have not demanded this restriction upon legislative power. They have not asked us to dry up the fountain of State charity so that it may not hereafter run in a sectarian stream. They have not asked us to take away from them the power to bestow their bounty upon whom they please. Until they do ask it, and upon sufficient grounds, I shall never consent to do so.

It seems to me that this attempt to hide a niggardly State policy behind the antipathy which is supposed to dwell in the vulgar mind against everything sectarian can never be a success if the people get to understand the matter. Should it become a part of our organic law it will invite the people to a wide-spread contempt for sectarian institutions, and a deep-seated skepticism about sacred things, which none will deplore more than the intelligent gentlemen who have been instrumental in its consummation.

But the other branch of this section forbids the appropriation of money "*to any person or community for charitable, educational or benevolent purposes.*"

This steers clear of the sectarian aspect of the other branch of the section. We are informed that its purpose is to prevent, in all cases and under all circumstances, gratuities to individuals or communities.

This kind of relief has been sparingly but very beneficially exercised in the past by the State in relieving individuals and communities suffering under some overwhelming calamity. Are we prepared to say that no such relief shall hereafter be granted? Are we afraid to trust the integrity of the Legislature in a matter of this kind? When has the bounty of the State ever been abused in this direction? Turn over your statute books, gentlemen, supporters of this proposition, and point out to me in whose behalf the Legislature has done wrong? Tell me, if you can, of an appropriation that has ever been made by the State Legislature to a stricken community that ought not to have been made.

Let me suppose that a conflagration shall sweep over this magnificent city, leaving its stately buildings a heap of ashes; its marts of trade a desert; its business men bankrupts; its citizens houseless and homeless. Let me suppose that a pestilence shall walk through its streets, destroying at night, and wasting at noon-day; what christian man will say that the State ought not to grant immediate and liberal relief to the suffering and afflicted? Let me suppose, again, that this stupendous calamity falls upon a rural district, crushing its people to the earth, what man of proper sensibility will say that the State has no business to alleviate such distress? We are told that private charity is always prompt enough, and generous enough, for such cases. He who asserts this has but little experience

in such affairs. May my right hand forfeit its cunning, and my tongue cleave to the roof of my mouth, if I ever assist in incorporating into the Constitution a proposition to dam up the charities of the State, within any bounds whatever. There is not a particle of danger that the Legislature will ever become too charitable. I will leave this question with the law-making power, just as those who have gone before us left it, and may God defend the right. But, sir, I suspect that this provision would not have found its way into this section were it not for the intense dislike which seems to be lurking in the minds of certain gentlemen on this floor, against what are commonly known as the "*border claims*."

The distinguished gentleman from Allegheny (Mr. Howard) has given expression to his feelings. He has stigmatized these claims as frauds, which are seeking to deplete the treasury of the Commonwealth. He says that they have been bought up and transferred to a lobby, which has for years been attempting to procure the payment of them, by corruption and other foul practices. That the demand upon the State by the claimants is preposterous and without the slightest merit, and that he advocates the proposition now under consideration, chiefly because it will have the effect to debar the State from ever paying these war damages, and he avows himself ready to support a still more stringent restriction, if the present one is not sufficient for that end.

Mr. HOWARD. Mr. Chairman: I did not say that they were frauds nor without merit. But I stated distinctly, positively, earnestly, that they had no right to be presented to the State of Pennsylvania, but that if they are proper claims they ought to be presented at Washington city.

Mr. SHARPE. Did not the gentleman from Allegheny state that money had been used to secure their passage?

Mr. HOWARD. I stated that an attempt was made most fraudulently and most rascally—and I know it personally—to set them up and corrupt the Legislature of this Commonwealth.

Mr. SHARPE. Mr. Chairman: If the gentleman knows personally, he knows more than I do.

Mr. HOWARD. Well, I do. Understand me when I say a thing distinctly.

Mr. CUYLER. Mr. Chairman: I would like to understand how the gentleman knows it.

[Here the hammer fell.]

Mr. BIDDLE. Mr. Chairman: I move that the gentleman be given unanimous leave to proceed.

This was unanimously agreed to.

Mr. SHARPE. Mr. Chairman: Now, sir, let me tell the gentleman from Allegheny some facts which may shed a few rays of light even upon his prejudiced judgment, in regard to this subject.

On the morning of the thirtieth of July, one thousand eight hundred and sixty-four, Chambersburg was a prosperous and thrifty town. At dawn of that eventful day, a thousand rebel incendiaries, under command of General McCausland, entered it, and in two hours left it, a smouldering heap of ruins. About two millions of property were destroyed; hundreds of its citizens, who rose from their beds in comfortable circumstances, before noon were beggars. Hundreds of families wandered away, houseless and homeless, old age upon its staff, infancy in its mother's arms, and the sick carried upon their beds of pain. The earnings of a lifetime were licked up by the relentless demon of flame. Would that I could transport the gentleman from Allegheny, and set him down amid the smoking ruins of those devastated homes. Had this scene of desolation ever fallen upon his vision, I am very sure that his kindlier feelings would have been aroused, and he would have commended the wisdom that put it in the power of the Legislature to grant relief. Who, sir, were these people that were ruined by the casualties of war? Were they rebels? No, sir. Were they of doubtful loyalty? No, sir! Were they lukewarm in their support of the government? No, sir! They sent more than a regiment of gallant soldiers into the field. They invested their money in government securities; they nursed the sick and wounded that were carried from the battle fields of Antietam and Gettysburg to their hospitals; they were in all respects loyal and true citizens. The blow that laid Chambersburg in ashes, was aimed at the whole north. Chambersburg was the break-water that stayed the wave of rebel vengeance and hatred from overflowing the State. Why should her citizens, who shared the common calamities of the war, be subjected to these extraordinary damages which were not experienced by other portions of the State?

The injuries having been inflicted by a public enemy, all the policies of insurance on the destroyed property were worthless.

Will any gentleman rise in his place and say that the Legislature did wrong in appropriating money for the relief of Chambersburg.

It cuts me to the quick, sir, to hear gentlemen sneer at the calamities of my constituents. It pains me to hear them assert that they especially want a constitutional provision, that will debar the payment of these losses.

The claims are honest in amount, and have been adjudicated by a commission of upright gentlemen of which the gentleman from Centre, (Mr. M'Alister,) and John Briggs, Esq., and Colonel Jordan, of Harrisburg were members.

I totally deny, sir, that any improper means have ever been used to procure the appropriations that have already been made; I totally deny that a single one of these claims has been bought up and transferred to a third party; I totally deny that any lobby has ever been authorized by the claimants to use improper means to secure payment.

Mr. HOWARD. Mr. Chairman: If the gentleman will allow another interruption, I desire to ask him: Have there not been contracts made with agents in consideration that they would use their services as representatives or otherwise to get the State to assume these claims, by which they would receive a certain percentage, twenty or twenty-five per cent.?

Mr. SHARPE. Who did that?

Mr. HOWARD. I ask you if it has not been done. Have not the owners of the claims generally made contract with persons by which they have agreed to pay a certain percentage of the claims, if allowed, in consideration of these persons getting the State of Pennsylvania to assume them?

Mr. SHARPE. There has been an arrangement made by which certain moneys have been appropriated to defray certain necessary expenses in getting up the papers, in getting out powers of attorney, and for work of that kind, but none for any purpose such as the gentleman suggests.

Mr. HOWARD. Mr. Chairman: I am sorry the gentleman does not understand the subject better.

Mr. STEWART. Mr. Chairman: Will you allow me one word? The gentleman from Allegheny asserts that the gentleman from Franklin, who addresses the House, does not understand his question. I hope the gentleman will repeat it and elicit all the information he desires.

Mr. HOWARD. I said that the gentleman from Franklin did not understand the subject in relation to which I asked.

Mr. SHARPE. Mr. Chairman: The sufferers have never regarded this as a matter of grace; they have always insisted that the duty of the State to pay them was imperative.

Did time permit, I think I could prove that it was the duty of the State to protect her citizens against rebel invasions, and failing to do so she is bound to reimburse their losses.

The gentleman from Allegheny admits that the general government ought to pay these claims, but asseverates that it never will. I presume he is right in his last assertion, so long as they remain in the hands of their present owners. But let the State pay them as she ought to do, and then let her carry them before the tribunal of the nation; let her hold there, that the regiments raised for the protection of her borders were yielded to the government in its extremity of peril. Let it be proved there that these regiments could have prevented the calamities that fell upon Chambersburg, and I believe the United States will recognize the justice of the demand and satisfy it promptly.

But, sir, this is not the day nor the occasion to discuss the liability of the State to pay these claims. Should that question legitimately arise at some future time during our deliberations, I may then speak to that end; but now it is enough for me to ask gentlemen whether they are ready to vote this proposition into the organic law to meet a special case? Are you ready to say that under no circumstances, individuals or communities shall receive help from the State? Will you stay the beneficent hand of the Commonwealth lest its touch may heal the wounds of Chambersburg? Will you dare go back to your constituents and say to them, we were afraid that your sense of justice would some day impel you to pay the sufferers of Chambersburg; we distrusted the Legislature, and have, therefore, so fixed it that you cannot satisfy these claims, although you desire it over so much? Will this great Commonwealth tie a constitutional ligament about its heart which, in all future time, will hinder the out-pushing of its streams of benevolence—lest a small portion of their invigorating influences may send joy and plenty along its borders? Until I see it done, I will never believe such a consummation possible.

Mr. J. S. BLACK. Mr. Chairman: My friend and colleague, Mr. Woodward, objects to that part of the section which prohibits the appropriation of public money to sectarian purposes, and he certainly did prove it to be very unwise.

All or nearly all the great charities of the country have been founded and conducted by the spirit which animates the various christian churches. If a meritorious institution be Methodist, or Presbyterian, or Catholic or Episcopalian it is none the worse on that account. Such things do not, as a general rule, come from any other quarter. And if you say that you will not recognize the charity which they teach and practice, you must ignore all the good that there is in the world, and give yourselves up to the undisputed dominion of Satan.

But that is not the serious question in this case. You cannot avoid a controversy between the different sects, which will be injurious to them as well as to the general interests of the community, if you allow appropriations to be made for any of these purposes. If you make members of the Legislature the distributors of your charity they will give what you put in their hands to those institutions which are carried on under the auspices of the largest church, and the weak and the unpopular will stand no chance at all. Before a Protestant Legislature what chance would a Catholic institution have? And what show for a donation would be given to the sect everywhere spoken against—the people first called christians at Antioch? Why they could not muster a thousand votes in the State, while their enemies could pay a premium of a hundred thousand without any trouble.

Shall you under any circumstances put the charities of the country into the keeping of the public authorities of the State? The State has one function to perform; the church has another, and a totally different one. The faith and charity, as well as the hope, of the christian church will be polluted and mutilated by any kind of connection that you can possibly contrive with the coarse and vulgar machinery of the State government. The founder of christianity and all His apostles declared that they came to establish a kingdom which was not of this world. The men who settled our institutions and achieved our independence determined that they would build up between the church and the State a wall of perfect and complete partition, so that the organization of one

could never be used for any purpose of the other. The reason which they gave, and to which every man sensible has always assented, is that they cannot be combined for any common purpose, without doing excessive injury to both. The history of the whole world makes it perfectly clear that the church is more successful when it stands entirely alone and unaided. The voluntary benevolence of those who belong to it is worth a thousand times more than all the legal contributions which can be made to its power. It would be far better for the church, and everything that concerns the church, that it should encounter the fiercest persecution of the State, than to languish under the patronage of political power. The christian religion is as hardy as the mountain oak, when planted in the open air, where the sunshine of heaven can settle upon it, and the free winds can blow among its branches. But it is no hot-house plant. It withers and dies when you place it under the forcing glass, and subject it to the stimulus of an artificial heat.

My friend, to whom I have already referred, (Mr. Woodward,) is in favor of patronizing sectarian charities because he cannot patronize christianity without patronizing the sects into which it is divided. He would not make any distinction between them, or do more for one than another. But how will he help it if he leaves it to the discretion of the Legislature? That is probably the last body on earth whose impartiality in a matter of that kind could be trusted. I would confine them to secular duties, and give them as little rope as possible even in that department. I am, therefore, in favor of the section without the anti-sectarian qualifications, and would prohibit *all* appropriations of public money to charitable or pious uses.

But my brother (Mr. Woodward) thinks it would be right to tax the corporations, and apply the proceeds to pious purposes. I like his ingenuity. The arrangement he proposes would do good both ways. It would punish the sinners by taking their property without their consent and at the same time reward the virtuous and enable them to multiply their good works. It would much improve the spiritual condition of the corporations, while it would fill the treasury of the Lord. But is not this doing evil that good may come? Have we—has anybody—has the State, a right to plunder with one hand in order

to be charitable with the other. Is it charity to transfer property from one person who owns it to another who don't? Is it for the honor of the church or its members to be the recipients of a forced benevolence, or creditable to the State to be the instrument of a pious fraud?

My friend mentions a particular case, which, he says, did actually occur. An application was made to one of these soulless corporations for a donation to some charitable purpose. Instead of responding, as was expected, without hesitation the directors referred the subject to their counsel, and the counsel failed to advise them that they had a right to do what was asked. I think that the counsellor was right in declining to give the advice which seems to have been expected; as a matter of law and conscience he acted properly; his conduct is not at all open to the condemnation which my friend pronounces.

MR. WOODWARD. Will the gentleman allow me to explain? I do not know that I did state, but I, perhaps, ought to state, that the counsel was told that legislation could be obtained. That, if the company had not the power, that legislation could be obtained to give them the power. That was part of the case.

MR. J. S. BLACK. That does not help the case one whit. Neither the Legislature, nor the board of directors, nor the counsel, nor anybody else, could honestly appropriate money to charitable purposes that was in the hands of the corporation, in trust, for another use. Would the gentleman himself, even with an act of Legislature directing it, advise an application of corporate money or property to any purpose, however meritorious, in conflict with the object for which it was committed to its charge? If it was a railroad company, as I suppose it was, (because they are the chief sinners in this country,) the funds were donated to public use—the building of a public highway for the Commonwealth. If the road was already built the surplus was held first for the creditors, and next for the stockholders. No matter how you look at it, you must see that what the counsel refused to advise was simply a breach of trust. To me it seems that the charitable gentleman who made that request might have been better employed than in going about tempting trustees to cheat their beneficiaries, and promising that the Legislature should be made (or got) to assist in the wrong. Cer-

tainly they did no honor either to church or State.

But again; are members of the Legislature fit to be the almoners of the people? Those men who, according to what seems a prevalent notion here, have so little conscience that they can't be bound by an iron-clad oath, are they to be trusted with the distribution of our charities? I am charged with having too little charity, and I confess I have it not in super-abundance, but I would be unfaithful to my own convictions if I did not answer this question in the negative. The claim of the border counties, for injuries by the invasion, was perfectly clear, legal and just. But there is a very strong suspicion entertained by a great many persons, and by the gentleman from Allegheny, (Mr. Howard,) there is something more than suspicion, that a fund had to be raised for the purpose of paying the black mail which they know would be levied upon them. I do not like to say this if it hurts the feelings of my distinguished friend from Centre, but still I do not know how to avoid it, unless I say what I do not believe.

MR. CURTIN. Just put anything you have to say about me in a parenthesis and go on. [Laughter.]

MR. J. S. BLACK. Yes. [Laughter.] You shall have it any way you want it. I desire merely to deprecate the gentleman's displeasure. He has told us that he does not like to hear any evil spoken of the Legislature or its members, whereas I find it somewhat difficult to speak well of them. He may think it right to cover up their misdeeds, but I entreat him not to be offended if, upon proper and necessary occasions, I say what I verily believe to be true.

One word about the "raid." The claim that was made by the people of the border counties was as just, as honest, as fair and as legal against Pennsylvania and the United States, both, as ever was made by man against man.

It is a just debt, and if the Legislature (or the lobby) refuses to pay it that refusal will be repudiation, as base as ever blackened the brow of any government in the world. The people of that region were entitled to protection; they were promised protection by the compact expressed in the fundamental law of the State and the Union, both upon the sole condition that they would be obedient to the constituted authorities. They were obedient, and it was that obedience that caused their frontier to be left open and exposed.

In consequence, the tide of invasion rolled over them and covered their country with blood and ashes. Both governments having failed, either because they were not able, or because they were not willing to give them protection, there is no way of making a proper reparation except to pay them to the uttermost farthing for the losses that were thereby caused.

[Here the hammer fell.]

Mr. CORBETT. Mr. Chairman: I move that unanimous consent be given the gentleman from York to proceed.

This was agreed to.

Mr. J. S. BLACK. Mr. Chairman: I only want to refer to another case that has been mentioned here. The people of the town of Somerset made a claim upon the Legislature for a donation. I cannot help wishing that they would succeed; but my wishes are not based upon my patriotism, nor upon my convictions that they ought to succeed, but because I have a clannish love for my relations, and for the little town in which I was brought up. As matter of public and elementary law, if I must speak conscientiously, I can only say that the State of Pennsylvania is not an insurance company, and not bound to pay the loss that a man suffers when his house is burned down.

Mr. BARTHOLEMEW. Mr. Chairman: I desire to say a word or two upon this subject, not that I will give any new views to the committee, but, perhaps, I may enforce an idea or two that has been referred to in the argument. Now, sir, I yield to no man in a devotion to well directed charity. I believe that it is the duty of the government to lend a helping hand to the afflicted where, by reason of poverty, they have not, nor have their friends, sufficient to maintain and support them. I believe it proper and right for the State to uphold public institutions for the maintenance and for the restoration of those who are afflicted in all cases where private enterprise cannot furnish the necessary means to carry into effect the purposes of those institutions. But I do not agree with my friend from Philadelphia, (Mr. Woodward,) that charity is the result of the christian religion, and that the non-professing of this earth possess no charity. Nor do I believe that without the aid of sectarian organizations, charitable institutions would not be. I believe that charity was before Christ. I believe that charity was when the Israelitish religion was confined to the borders of the Mediterranean. I believe that charity existed wherever

man existed, either in the colds of the Frigid, or upon the sands of the Torrid. I believe that it was just so expanded as man was cultivated, and elevated, and enlightened. I believe that it progressed as man progressed, and as man became enlightened, so his charity became enlightened; because thereby he had a realization of his duties to his fellow-men.

Now upon the question immediately before this House, it strikes my mind just as it struck the mind of the gentleman from Franklin, (Mr. Sharpe,) that it is susceptible of two divisions. The first division relates to the appropriations to persons or communities; the second, to the institution, religious or charitable, which is controlled by a denomination.

On the first branch of this proposition I am opposed to the report of this committee. I am opposed to it, first, because I believe it to be the duty of a State to do that which is right to those who sustain her interests. It is right to give to the individual who leaves his home in time of peril and danger, and offers his life for the safety of the State. I believe that pensions should be given to individuals; I believe that bounties should be given to individuals; I believe that as long as national existence depends upon force—and until the millennium shall come it will—there should be a proper and exact reward for individual bravery, courage and devotion. I believe, also, in giving to a community where, by reason of the extent of the disaster, it becomes more than a particular municipality can bear. A riot may be suppressed by the sheriff by the aid of the *posse comitatus*; but if it extends and grows in proportion, the State is called upon. It is the protection to the individual; and while there may not be the same legal liability for protection to the individual in the case of a calamity, that there is in the case of force and lawlessness; yet, I say, it begets an equity, because this government, to a certain extent, is parental in its character, and stands *loco parentis*. Therefore, on that very proposition, when calamity spreads itself broadcast, and covers the whole community, and when there is no helping hand but that of the State, I say that the duty and the obligation of the State to the individual demand that it shall extend relief—that it should grant relief from the public purse, and I do it upon the proposition that such a grant is general in its character. It discriminates not between Presbyterian and Methodist; not between

Baptist and Catholic; not between black and white; not between the European and the Esquimaux; but is given to all men alike in that community who have suffered. Upon that branch of the question I stand, and have stated my position but it is the least important.

The more important branch of this question comes upon the appropriation of moneys from the public treasury to denominational and sectarian associations. I say that this is against the policy of this government. I say it is against the principle upon which it was organized. The public fund is the result of taxation. Taxes are not levied upon Presbyterians as Presbyterians, nor upon Methodists as Methodists, nor upon Catholics as Catholics; but they are levied alike upon all, and upon the property that the citizens hold without respect to color, creed or faith.

The gentleman from Philadelphia (Mr. Woodward) says, and I do not say that I could understand his logic, that because the great bulk or a large proportion of the taxation of this Commonwealth is obtained from corporations, and it goes into the treasury from corporations, therefore we might take that fund and appropriate and apply it to sectarian gifts and bequests; but he tells us in the breath after that if we do take from these companies it comes ultimately from the people. The people, he says, will have to stand it at last—that that is the ultimate source from which the wealth of the corporations comes, and if we take the corporation taxation and give it to these institutions they will only get so much more from the people. Therefore, I take it, it comes from the people. The gentleman should at least have alleged, or asserted, to make his arguments at all complete, that these corporations were Presbyterians, or Methodists, or Baptists, so that there would be some legitimate thing to put a sectarian hand upon to take the fund from the treasury. He does not do it. He leaves the taxation raised by the State in the treasury of the State. For what? Why for the purposes of government—for *temporal* government, and not for *spiritual* government. It is the old doctrine. If we once concede that the highest object of man is spiritual welfare, and that the State was organized for the highest interests of man, then it is the duty of the State, to make a man religious, and have the citizens baptized by the townships. It becomes the old doctrine of church and State. I say that the only proposition is that this fund is a State fund

—belonging to all the citizens of this Commonwealth alike. They are not stockholders in a corporation, holding so much stock; they are not Methodists dividing and holding Methodist stock; or Presbyterians holding Presbyterian stock, but the fund was raised by taxation for the purposes of government.

It is true that it is the duty of the government to care for the helpless, the sick and the weak. Mere motives of self-interest would impel us to do that, because those who are unable to work may be able enough to steal; those who are fit for a hospital would disgrace civilization upon your public highways, and shame alone would make us shield them from the public gaze.

Now this question of charity being a common duty, not confined to religion; religion not begetting it; no faith bringing it into existence, but a common blessing—a blessing as common to man as the blossom to the tree or the rose to the bush; not to be divided, but a duty, a gift, given to us by God, an attribute of God himself, and He therefore having given us, that it is a duty that we must exercise without restriction and without regard. Is it to be said that because I am a non-professing christian I am therefore without charity? Is that the rule of my life, or is it the rule of life of any intelligent man? Is it the rule of life of any decent man? No; not so. Organizations of charities have been founded not through sectarian parties. Gaze on this State; look at Philadelphia; look at your Girard College; look at the thousand institutions that are spread over the land. Did they spring from a sectarian source? No. Some of them have come not only from non-professing men, but certainly one of them, as I have been informed, not even from an orthodox believer.

I come, then, to this fact and this proposition, that it is the duty of the State to take care of her helpless, her infirm, her blind, her insane and all those that have suffered or are heirs to such calamities as prevent them from taking care of themselves. This is a duty that is imposed upon the State, because she has that paternal care over her people, and for a thousand reasons that I can suggest. Therefore it becomes a public duty imposed upon the State to exercise charity, and that charity runs through the channel of the State officials. I am, therefore, in favor of public institutions and such charities as shall, in the wisdom of the

Legislature, be established to carry out all the purposes which the government may think fit to give it for the care of those who cannot care for themselves.

When we come to the other question, the sectarian applies for charity. What right has he to apply? "I come," he says, "asa Presbyterian. I want fifty thousand dollars from the State treasury." "What for?" "A charity." "Aye, a charity!" "A charity" is a well-sounding phrase. Men sometimes forget what charities there have been in the history of the world. "Charity" is a word that appeals to the heart. It makes the feeling of men spring out, anxious to cling to that and do good. Every good nature is affected by it; every good nature should be affected by it. But there is no fund in this treasury that is a Presbyterian fund; there is no fund that was raised by Presbyterians. The taxation of this State was upon all, without regard to sect; and, therefore there can be no division of the fund of this Commonwealth for special, particular purposes. "Yes, but you forget your charity." I say we do not forget the well-directed charity that is in accordance with the principles of our government. We say the State shall care for its helpless. Charity shall be exercised, and State charity, like the law, is general in its application, and particular charities shall be attended to by the benevolent individuals. There are cases that public charity cannot reach; there are cases where it requires a private charity to allow a man to take the advantage of a public charity. These private charities should be encouraged—encouraged by the christian churches. I am opposed to the idea spoken of by the gentleman from Philadelphia, (Mr. Woodward,) that we are ostentatious in our charities; that the Presbyterian or the Methodist shall erect the hospitals or build up their magnificent pile of buildings, and claim, "this is our place, we give here to the poor and needy, and we aid and relieve the afflicted," when the means whereby that aid is given comes, not from the Presbyterian or the Methodist, but comes out of the public coffers, and it is my tax and every other mans' tax in the Commonwealth. I say that ostentation of that kind, at the expense of the State treasury, I utterly denounce, and I am opposed to. I am opposed to it for the reason that it cramps and chills private charity. Instead of opening the heart to let all that is generous pour forth, it cramps it, because it says in effect that "charity shall not de-

pend on the individual, but on the public coffers." Nay, more.

We have a clause in the Constitution of 1838, which prevents the giving of any preference to any religious organization. Now, it may be true that the construction of that article of the Constitution would simply apply to a place of worship; but let us look into the history of the past. Will you tell me that that society which has control of the coffers, and the public funds, founding her charities, and spreading them broadcast over this land, is not the most powerful for proselytism, is not the most powerful for extension, will not build her power and lay her foundation as strong as adamant, and that she will grow in greatness by reason, not of her faith, but by reason of power which she draws from the Commonwealth. Therefore, when I see a charity which is denominational, as *this* sectarian charity, and *that* one, and I know that they draw from the public coffers, I say it is not their charity; it is a lie upon its face; it is the charity of the people; it is the charity of the public, and to the public it should belong.

The policy of this Government from the beginning has been what? Look at the Constitution of this State, and at the Constitution of every State, and it will be observed that the framers thereof were anxious in their formation to be specially and particularly tenacious upon this subject of freedom and liberty of conscience, and the positive enactment that there should be no preference, the one over the other.

I do not care how you place it, whether you build a church or whether you build a charity that should be under the control of that church, it is one and the same thing. It is a violation of the principle of liberty, of conscience, for which this country has been so pre-eminently distinguished above all other lands.

[Here the hammer fell.]

Unanimous consent was given for Mr. Bartholomew to proceed.

Mr. BARTHOLOMEW. Gentlemen, so tenacious was was one of the founders of this government, upon this subject, Mr. Thomas Jefferson, that he left his seat in the Continental Congress and went to Virginia, for the purpose of taking a position upon the floor of the House of Delegates, that was then framing a State Constitution, for the very purpose of dismembering the church and the State. I say it is in the line of our teaching that there

should be an absolutely equality of all sects and denominations; that they shall not appear above the surface one above the other; that there shall not be a recognition of such a thing as a sect in any official or governmental proceedings; that men shall stand alike before the law, and the Constitution, so far as their consciences and their religions are concerned; that there shall be no recognition whatever of a denomination; and I say woe to the day when this State, by her Constitution or by her legislative enactment, shall recognize sects at all, by dragging them into politics and permitting them to be the bases of political power. The reason for this is manifest. The moment that appropriations depend upon, or religious societies find that they can take from the treasury, appropriations of money, the means whereby they can effect that purpose are perfectly plain. They accomplish it by a cast of political power, by organization among themselves, by religious bodies loading down their spiritual welfare and attempting to enforce an organization of their temporal welfare, forgetting the teachings of Christ and turning after mammon and gold. That will be the result. Religious societies have done it in time past, and we are not now making a law for times of peace and apparent calm. We know from the history of the past that the conflicts between religious societies have been of the fiercest character. They have engendered the worst of passions and feelings, and have resulted in more bloodshed than any other cause, and they may again.

Let us, so far as we can at least, put the seal of condemnation upon such a course; let us follow the teachings of the past; let us live in the light of our own history; let us follow the guides who made this land a land of freedom of conscience, without recognition of condition or sect, and place all men, christian or unchristian, alike before the Constitution and the law. Let us not take that which belongs to the Presbyterian to give to the Methodist; let us not take that which belongs to the Jew to give to the Catholic. Let them all stand alike, without official recognition; let us not do that which will stamp charity as a public act when it claims to be a private one. I do not ask that the wells of private charity shall be dammed up, but I ask to let it be poured forth. There are occasions enough for it, but I do believe that public charities, under the control of the State, are the only

legitimate recipients of the taxes of the people of the Commonwealth.

Mr. M'CLEAN. Mr. Chairman: It occurs to me that the necessity for the amendments offered by the gentleman from Allegheny (Mr. Hay) and the gentleman from Philadelphia (Mr. Dallas) is obviated to a very great extent by the report of the Committee on Education, which has been adopted in committee of the whole. The final section in that report provides:

"Neither the Legislature nor any county, &c., shall ever make any appropriation, grant or donation of land, money or property of any kind to any church or religious society, or to or for the use of any university, college, seminary, academy or school, or any literary, scientific or charitable institution, or society controlled or managed, either in whole or in part, by any church or sectarian denominations."

Now it seems to me that the object of these gentlemen who are contending against appropriations by the Legislature for entirely sectarian or denominational purposes, is entirely reached by this section already adopted by the committee of the whole. It is general and comprehensive in its purport; too much so, it would seem, to be embraced in a report of the Committee on Education; nevertheless it has been adopted, providing that the Legislature shall not make any appropriations to any charitable institutions or societies controlled or managed, either in whole or in part, by any church or sectarian denomination. For that reason, sir, I consider that the amendments offered by both these gentlemen are unnecessary, and that they have been already passed upon and adopted by this Convention in committee of the whole.

Now, sir, I desire to direct the attention of the committee to this section itself, and not so much to the whole section as to the first and last lines of the section, taking them together, they being so framed as to be made a whole: "No appropriation shall be made to any person or community for any charitable, educational or benevolent purposes." This part of the section does not raise the denominational question at all; and it is to this view that I propose to direct my remarks.

It is surprising to me, sir, that any committee of any Constitutional Convention should ever report such a measure as that in its full significance and import. The proposition that you offer to present to the

people of this christian Commonwealth, that no appropriation shall be made to any person or community for charitable, educational or benevolent purposes, is, I fear, not considered in its full signification and import. I submit, sir, that this proposition is hostile to christianity. It is intended to adopt a preamble to the Constitution which we are about framing, acknowledging the existence and sovereignty of Almighty God, Father of men, and seeking His guidance in our work.

It is a principle that no gentleman on this floor will deny, that all human laws are based upon the Divine, and from that derive all their force and validity, and yet what the christian religion and the law of God, and the better instincts of our nature prescribe to us as our duty—the great duty of charity, this committee, in this section, would prohibit. What is right in the individual they would not have done by the entire community, by the Commonwealth? It matters not that charity and mercy are prescribed to men; their existence and their obligation must be ignored and denied by the body politic, by the State. When faith, hope and charity are held up to us, and it is declared that the greatest of these is charity, this Convention, representing the people of the Commonwealth, is asked to wipe out from its organic law every trace of this great virtue.

I believe if the gentlemen who compose this Convention only gave this proposition full and careful consideration that they would not assent to it. It will certainly belittle the Commonwealth. How numerous are the instances that can be enumerated of the wrong that will be effected if this section is adopted. The State in this event shall never have the right to appropriate any money for any of the worthy purposes designated in the section. The State of Pennsylvania, for instance, could not vote a sword in recognition of the services of such a man as a Gen. Anthony Wayne, of revolutionary fame, or General George G. Meade, of recent time, or pension the crippled and wounded Pennsylvania soldiers who served their country during the time of our national troubles. Is it the intention to deny to the Commonwealth of Pennsylvania the right thus, and in similar ways, to recognize the services of those who have rendered our State illustrious and glorious in the history of our nation? Are we going to deny the right of the State to be grateful to its faithful and gallant men? Are we going to deny the right of a pen-

sion to a poor widow of a soldier who may have fallen in the defense of his State and country? Suppose the visitation of a famine is apprehended throughout a portion of our State and country; should not the Commonwealth of Pennsylvania be permitted to imitate the government of Egypt in preparing to meet the wants and alleviate the sufferings which would be produced by such a fearful calamity? Numberless are the instances that might be detailed which would put the Commonwealth to shame if such a provision be inserted in the Constitution, and which would forever prevent the extending of her charitable hand in times of necessity and suffering.

The gentleman from allegheuy (Mr. Howard) has seen proper to indulge in a fierce and bitter attack against claims for compensation, for the loss of property sustained by a portion of our citizens during the invasion of the State by a common public enemy. I submit, sir, that this attack has been too fierce and bitter to be either wise or just. I propose to refer to his argument, and what is it? First, he states that improper measures were used to obtain an appropriation from the Legislature for the purposes referred to. I contend that an assertion like this is no answer to the object of this legislation, and because improper means may have been employed to procure this legislation, does that render any the less worthy the object of the legislation? I do not justify the employment of any improper means to influence the Legislature of our State in securing appropriations for such a purpose, but that is no reason why the State should deny justice to these claimants. Then the gentleman makes the amazing statement to this Convention that the Commonwealth is not the protector of its citizens.

Mr. HOWARD. The gentleman certainly misunderstood me.

Mr. M'CLEAN. The gentleman certainly said so, for I took down from his lips his identical words. Notwithstanding the citizen contributes his taxes, his property, his patriotism and his blood in the defence of the State, the Commonwealth owes him absolutely nothing in return, and although an enemy may invade his hearthstone and sweep away his property, he ought not to look to the State for compensation. Such a doctrine is incompatible with the spirit and the letter of the bill of rights of Pennsylvania, which provides in the tenth section that no man's

property shall be taken for the public use without the consent of his representatives, and without just compensation being made. The gentleman from Franklin (Mr. Sharpe) eloquently remarked that he wished the gentleman from Allegheny (Mr. Howard) could have been with him amidst the burning ruins of Chambersburg, and I, too, wish he could have stood with me in the battle of Gettysburg, that raged around my own fireside and my own native home, and witnessed that storm of fire and blood that laid waste our fields, destroyed our property and rendered our citizens poor, in some instances, for the remainder of their lives. The people of those devastated sections of our State were loyal to the core. They contributed a regiment and company after company to the defence of the government, and their fair daughters and mothers nursed the wounded and dying soldiers of the republic. Yet the gentleman from Allegheny would deny justice to these unfortunate people. He tells us what the State cannot do, or ought not to do, the United States government will do, and yet he mocks us and mocks these claimants for indemnity and compensation from the Commonwealth, by saying almost in the same breath that he knows the United States government will not recognize these claims. "The United States government never will recognize them," were the gentleman's own words. The gentleman not only proposes to deny justice to these sufferers, but he adds insult to their injuries. It is principally, Mr. Chairman, for the reasons which I have hastily and imperfectly presented, that I hope the Convention will not endorse such a wrong as is embodied in this twenty-first section reported by the committee, but that we will consign it to that oblivion which it so justly merits.

Mr. W. H. SMITH. Mr. Chairman: I do not desire to occupy the time of the Convention; but this section which is now under consideration leads me to make a few remarks upon the practice of European governments in dealing with this question. The greatest evil which has existed in regard to the governments of Europe is that they interfere entirely too much with the people. They have established in that part of the world what is known as paternal governments, and although they have been so styled the people who live under them call them despotic. William the Conqueror established just such a government as that.

The French people have lately witnessed the destruction of probably one of the best "paternal" governments that has ever existed, because it was administered by intelligent men, and at its head was one of the most remarkable men of the age—Louis Napoleon. That government meddled with almost everything. It laid out important public works, and taxed the wealthy classes of its citizens for the means to carry out its designs, in order that the poorer classes of the Empire could be furnished with employment. A tax was fixed upon every man and upon every loaf of bread that was manufactured. The very kind of reading published in the newspapers passed under the eyes of a censor appointed by this paternal government. Before the overthrow at Sedan that paternal government was administered as well as any government of the kind.

The principle of a paternal government, Mr. Chairman, seems to be this: It assumes the control of all your money, and the entire control of the public purse, and furnishes its subjects all that they require; but the subjects are compelled to keep the purse well filled. There is nothing more, or less, in that government. But the idea of comparing this sort of government to a paternity existing in a family, is simply absurd, because the head of a family exercises a different authority from that exercised by the head of a paternal government. The head of a family maintains his offspring, and relieves them according to their necessities out of his own resources. He builds a house for them, and protects and shields them from all danger; but a paternal government assumes to carry on its affairs out of the means furnished by its subjects, or its children.

I am sorry, Mr. Chairman, that any allusion has been made to the fire at Pittsburgh. To the honor and credit of that city, it can be said that she refused the fifty thousand dollars which was voted to her some twenty-eight years ago. I remember well the incidents that transpired after the fire. It was not twenty-four hours afterwards before the click of the hammer and the ring of the trowel could be heard in the rapid progress of rebuilding the desolated city, which had already commenced. Her citizens went to work *at once*, and did not wait for aid from the general government. There were, however, large sums of money received; but the greatest possible care was taken in its distribution, and the sufferers

by the fire all received their just proportion.

However, what I want to say is, that we ought not to take Pittsburg as a precedent for giving money on occasions like this, because Pittsburg did not take that money, as I am informed and believe. The very worst almoner in the entire world is the State. It costs more to maintain an invalid in a State hospital, or hospital mainly supported by State appropriations, than in any other. It costs four times as much; indeed more than that.

As to the consideration that our government is "paternal;" I am opposed to this whole idea of making this government of ours so exceedingly "paternal." It can only be a stepfather, at best, to its people. It is like the father of the man in the play: "A little more than *kind*, and less than *kind*."

I would agree, Mr. Chairman, to modify this if it could be done at this time. There are amendments pending, however, and I cannot do it at present. I merely throw out the idea that I would agree that State appropriations may be made to stay the havoc of famine and pestilence; and sometimes, perhaps, to repair the devastation of war. Beyond that I cannot go, except, perhaps, to aid "blind asylums." It certainly is necessary to stop this corruption at Harrisburg in granting these appropriations to hospitals and sectarian schools. I do know that there is no greater abuse that has prevailed at Harrisburg than this particular one. Men have been hired to go there in the name of these institutions, and they have spent money. I do not know how they got their fees for what they did, but, of course, they got them, and of course, also, they were paid out of what they got from the Legislature. It is a very great abuse. I suppose it is as great now, if not greater, than it has been, and I know that five or six years ago it was fearful. I was astonished about that time, being then president of the board of inspectors of the western penitentiary, by a man coming into my office and saying to me, "are you going to Harrisburg?" I said "no, sir; I do not know that I am; I have no business at Harrisburg that I know of." "Why," he says, "did not you make out your report here for the penitentiary the other day, and send it on, and ask thirty thousand dollars (or some such amount) to be appropriated for that institution?" I said, "yes, I did; I sent on the report and asked for the customary appropriation

to pay the officers." I believe that was all we had the right to get. "Well," says he, "you had better go on." Said I, "I have nothing to do with that." "But," he says, "people do not get these things at Harrisburg unless they go there and are on hand, and pay people to let them have the appropriation." "Well," said I, "I will not go; if the State of Pennsylvania has good reasons before it, and knows very well why a demand is made for money, and she does not care to pay her officers or support her criminals according, as the law directs, I have nothing to do with it, and am not to blame for it."

This incident only shows that in a matter of that kind, where even the whole routine was prescribed and laid down, some men supposed they might get out of the officers of that institution a fee for soliciting from the Legislature money that they were compelled by the law to appropriate. That was only part and parcel of the system of abuses which had grown up under this plan of giving to all such institutions. As I said before, I would be willing to add to this section a clause in favor of extending aid in cases of sudden calamity, or pestilence, or famine, where the money might be brought to the relief of the people to check the progress of the disease, or to repair some great public and sudden injury. Beyond that, I would oppose this indiscriminate giving, and would rather the section should stand as it is, than that the principle which it is intended to cover should be destroyed.

MR. CUYLER. Mr. Chairman: The committee is impatient, and justly so, of this protracted debate; and I do not rise, therefore, with the view of entering into the discussion at large which has taken place. Much of it, it seems to me, has missed the true point which ought to have presented itself to the mind in determining this question.

I should suppose that there would be absolute unanimity in the committee as to the impropriety of directing grants for sectarian purposes to sectarian institutions. I must believe there would be absolute unanimity, or almost so, among the people of the State on that subject. I cannot suppose that any gentleman would deliberately rise in this committee and advocate the doctrine that the money of the State should be appropriated to the purposes of any sect or denomination. But I draw the broad line of distinction between those cases where sects or denominations are performing the grand work of chris-

tian beneficence, where they are doing that which the State ought to do, and is bound to do, in aid of the State; and those other cases where these denominational institutions may be supposed would be promoting their own sectarian purposes. For example, the Episcopalians have a hospital in the city of Philadelphia; the Presbyterians have a hospital in the city of Philadelphia. I may regret—I do regret—that these hospitals have been designated by denominational names. I think it were wiser that they should not have been so, and yet, after all, perhaps the large contributions of individual citizens which have created and endowed these particular hospitals, were more readily called forth by the adoption of those particular names, than would otherwise have been the case. But, then, it is to be understood that it is in the discharge of no sectarian or denominational purposes that these institutions exist. They are doing the great, broad work of christian philanthropy, without regard to sect or denomination, that which it is, in very truth, the duty of the Commonwealth herself to do. Every dollar of private charity and private enterprise which is contributed to plant and support these institutions is so much done in relief of the general burden which rests—and ought to rest—upon the whole people of the State. God forbid, therefore, sir, that by any provision in the Constitution of our State, which this Convention might adopt, we should debar the State from making these grants, or making such grants in aid of such institutions as these, as she has done in the past, and, I hope, will continue to do in our time and in the future. Just so far as private benevolence does this great, broad work of christian philanthropy, it does what the State herself should do, and is relieving the State, and therefore the State may, to the extent of their reasonable demands, assist them by contributions.

But that our Constitution should provide that the money of the State should not, by donation, be applied to the especial purposes of any particular sect or denomination within the narrow limits of sectarian doctrine, I cordially agree, as I suppose every one does. I would not grant the money of the State to aid a Catholic, or a Presbyterian, or an Episcopal school or any other that was established to teach all the peculiar doctrines of any particular sect; but when that sect engages in the great broad work of public philanthropy, I cannot consent, so far as my

vote goes, to withhold the liberality of the State from institutions of that character. There, I think, is the true line.

Therefore I would object to the opening words of the last amendment, as proposed by the gentleman from Philadelphia, (Mr. Dallas,) and if they were stricken out I think, perhaps, the closing words will properly convey the idea that I have in my mind.

A single word more, which I am almost ashamed to utter, particularly because I have no words to express my surprise at that which fell from the lips of the gentleman from Philadelphia, (Mr. Woodward,) and partly because I fear I might be betrayed or led into a position where gentlemen might suppose that I was an advocate of corporations here. But my friend from York (Mr. J. S. Black) came so gallantly to my aid this morning—having so gallantly assailed me on Monday last—I feel that I should not be in that sort of peril, and that therefore nobody will suspect me of a leaning towards corporations or of serving their cause, except, as the gentleman from York (Mr. J. S. Black) so well said some days ago, “when they have an honest cause and want an honest advocate.” I do not agree with my friend from York, (Mr. J. S. Black,) although I so widely disagree with my friend from Philadelphia (Mr. Woodward.) I do not quite accept the defence of my friend from York, (Mr. J. S. Black,) made for an act of mine which, I suppose, was alluded to by the gentleman from Philadelphia (Mr. Woodward.) I do not quite agree with the doctrine that there are not institutions where corporations may well give, and largely give, and generously give, of the money of their stockholders in benevolence. I refer to a grant of fifty thousand dollars—I would have been glad that it were larger—for the soldiers’ orphans of the Commonwealth. My learned friend would condemn that; yet I advised it. Why? Because they were the orphan children of the men who had fallen, in part, in defence of the very works and property of this company. Because, passing, as its lines did, into and along the borders of the State, and exposed to the peril of destruction by rebel raids, they had been gallantly defended by the soldiers of the Commonwealth. Why should not they provide with liberal hands for the orphans of those who had fallen under such circumstances. I have known that company to give, within a few months past, twenty thousand dollars, I think, to the hospitals of the State of

Pennsylvania. The doctrine of my friend would condemn that. Not so, mine. In the actual operation of the works of companies like this, many men suffer. They become maimed, they are wounded, they die. Why should that company not give liberally to endow hospitals into which these people may be carried? I have known them to give with large liberality where property has been destroyed by fire, because from the communities in which the calamity occurred large business had come to the corporation, and great benefits had been derived.

There does rest upon these corporations in certain specified cases, the duty of a large liberality, from which I would not exclude them by any such doctrine as my friend (Mr. J. S. Black) contends for, although I would hold as high aloft as he would the duty of trustees not to divert the funds entrusted to them, by devoting them to purposes for which they were not contributed. Therefore I defend such action; but after all, a great corporation, notwithstanding what has been said upon this floor, is all the days of its life a charitable institution. Its works are all works of charity, in the true and broad and comprehensive sense of that word. If it be true that the man who makes a blade of grass to grow where none grew before is a public benefactor, what shall be said of those combinations of aggregated capital that cover the Commonwealth and the whole country with the fruitage of their liberal expenditure of money? If they promote the industries of the Commonwealth, if they employ her people, if they develop her wealth, if they increase her prosperity in the broadest and the truest sense of the word, they are charitable institutions, and should be treated and regarded as such. I did not rise, sir, with the expectation of saying as much as I have said. I rose only for the purpose of calling attention to what I consider to be the true line of demarcation, which is what I indicated in the opening of my remarks, and that is that wherever sects or denominations are engaged in the great broad work of christian philanthropy, where they are engaged in doing that work which rests upon our common humanity and aids and consoles the sorrows of our common humanity, I see no reason why the bowels of compassion of the State should be shut up, or she should be prevented from exercising a fair and reasonable liberality in the endowments of institutions of that character.

Mr. KATINE. Mr. Chairman. I simply rise for the purpose of calling the attention of the chairman of the committee of the whole to the fact that there does not appear to be a quorum present.

The CHAIRMAN. Does the gentleman ask that the roll be called?

Mr. KATINE. I do.

The CLERK called the roll, and the following answered to their names:

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bartholomew, Beebe, Biddle, Black, J. S., Bowman, Boyd, Brodhead, Church, Corbett, Craig, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, De France, Dodd, Ellis, Ewing, Guthrie, Hanna, Harvey, Hay, Horton, Howard, Kaine, Landis, Lawrence, Littleton, MacConnell, M'Camant, M'Clean, M'Culloch, Mann, Mantor, Minor, Mott, Newlin, Porter, Pughe, Purman, Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, James L., Russell, Simpson, Smith, Wm. H., Stanton, Struthers, Walker, Wherry, White, Harry, White, J. W. F., Worrell, Meredith, *President*—63.

NOT PRESENT. — Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Black, Charles A., Broomall, Brown, Buckalew, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Collins, Corson, Cronmiller, Dunning, Edwards, Elliott, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Hall, Hazard, Hemphill, Heverin, Hunsicker, Knight, Lamberton, Lear, Lilly, Long, M'Allister, M'Murray, MacVeagh, Metzger, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Reynolds, S. H., Rooke, Ross, Runk, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, White, David N., Woodward and Wright.

The CHAIRMAN. There is not a quorum present.

Mr. DARLINGTON. I move the committee rise, report progress and ask leave to sit again.

The CHAIRMAN. The Chair will state that the only report the chairman could make to the Convention, would be that the roll being called, there was no quorum present.

Mr. HARRY WHITE. I move the committee rise and report the fact of no quorum being present in the Convention.

The motion was agreed to.

IN CONVENTION.

Mr. ARMSTRONG. The committee of the whole have had under consideration the report of the Committee on Legislation, and upon the call of the roll it was ascertained that there was no quorum present, and for that reason the committee has arisen.

Mr. S. A. PURVIANCE. Mr. President: I move the Sergeant-at-Arms be sent for the absent members.

Mr. HARRY WHITE. Mr. President: I move the Convention do now adjourn.

The yeas and nays were required by Mr. Boyd and Mr. S. A. Purviance, and were as follow, viz:

Y E A S.

Messrs. Achenbach, Bear, Bailey, (Huntingdon,) Bartholomew, Beebe, Black, J. S., Bowman, Brodhead, Carter, Corbett, Craig, Dallas, Davis, Ellis, Ewing, Guthrie, Hanna, Landis, MacConnell, McCamant, Mott, Newlin, Porter, Read, John R., Simpson, Stanton, Struthers, Walker, Wherry, White, Harry, Woodward and Worrell—32.

N A Y S.

Messrs. Alricks, Andrews, Armstrong, Baily, (Perry,) Biddle, Boyd, Church,

Curtin, Cuyler, Darlington, De France, Dodd, Hay, Horton, Howard, Kaine, Lawrence, McClean, McCulloch, Mann, Mantor, Minor, Purviance, Sam'l A., Reed, Andrew, Reynolds, James L., Russell, Smith, H. G., Smith, Wm. H., White, J. F. W. and Meredith, *President*—29.

ABSENT OR NOT VOTING.—Messrs. Adicks, Ainey, Baker, Bannan, Barclay, Bardsley, Black, Charles A., Broomall, Brown, Buckalew, Campbell, Carey, Cassidy, Clark, Cochran, Collins, Corson, Cornmiller, Curry, Dunning, Edwards, Elliott, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Gowen, Green, Hall, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lamberton, Lear, Lilly, Littleton, Long, M'Allister, M'Murray, MacVeagh, Metzger, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Reynolds, S. H., Rooke, Ross, Runk, Sharpe, Smith, Henry W., Stewart, Temple, Turrell, Van Reed, Wetherill, J. M., Wetherill, John Price, White, David N. and Wright—71.

So the Convention, at one o'clock and twenty-five minutes, adjourned until next Monday at ten o'clock A. M.

SIXTY-EIGHTH DAY.

MONDAY, *March 17, 1873.*

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith in the chair. The Journal of yesterday was read and approved.

SESSIONS OF THE CONVENTION.

Mr. DE FRANCE offered the following resolution, which was read:

Resolved, That this Convention will hereafter hold two different sessions, the first as follows: From ten o'clock A. M. to one o'clock P. M., and from three o'clock P. M. to six o'clock P. M.

On the question to proceed to a second reading and consideration of the resolution, it was not agreed to.

LEAVES OF ABSENCE.

Mr. DARLINGTON asked and obtained leave of absence for Mr. Boyd for a few days.

Mr. S. A. PURVIANCE asked and obtained leave of absence for Mr. Turrell, for a few days.

THE ARTICLE ON LEGISLATION.

The CHAIRMAN. The Chair will state that the committee of the whole having risen on Saturday, for a want of a quorum, the article reported by the Committee on Legislation is still in that committee. If it is desired that the Convention shall proceed to the consideration of the article, a motion will be necessary.

Mr. STANTON. Mr. President: I move that the committee now resolve itself in committee of the whole for the purpose of considering that article.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Armstrong in the chair.

STATE AID.

The CHAIRMAN. The twenty-first section of the report of the Committee on Legislation is before the committee. The section will be read.

The CLERK read as follows:

SECTION 21. No appropriation shall be made to any person or community, nor to any denominational or sectarian institu-

tion, corporation or association, for charitable, educational or benevolent purposes.

The CHAIRMAN. To this section the gentleman from Allegheny (Mr. Hay) moved an amendment, which will be read.

The CLERK read as follows:

"No appropriation shall be made for any denominational or sectarian purpose, or to any institution, corporation or association, created and maintained for objects, limited or restricted by any particular religious, denominational or sectarian views."

The CHAIRMAN. The gentleman from Philadelphia (Mr. Dallas) moved an amendment to that amendment, which will be read.

The CLERK read as follows:

"No appropriation shall be made to any denominational or sectarian institution, nor for any denominational or sectarian object."

The CHAIRMAN. The question is upon the amendment to the amendment.

Mr. DALLAS. Mr. Chairman: I have thus far abstained from saying anything upon this subject, but I have been approached by so many members of the Convention this morning with the request that I should state the object and scope of my amendment, that I find it necessary to rise simply for the purpose of explaining it, and I do not desire to occupy the attention of the committee any longer than is necessary for that purpose. The gentleman from Allegheny (Mr. Ewing) did me the honor to say that I had prepared the amendment in a most skillful manner, so as to entirely emasculate the section as reported. Now, sir, I can only say that no such purpose was in my mind, and if my amendment would affect such a result, then so far from being skillful I have been most awkward in the expression of my intention, for whilst I did intend to take from the section a feature which, in my judgment, seemed to be objectionable, viz: That which would prevent the State from making appropriations in aid of non-sectarian charity, I

did think the section was beneficial so far as it proposed to prevent a State appropriation for merely sectarian or denominational purpose. Therefore the amendment I have offered provides that no appropriation shall be made for any denominational or sectarian objects; but, sir, I think the amendment would be very inefficient indeed if it stopped there, because if we allow the State to make an appropriation to denominational or sectarian institutions, we might as well say that we will permit appropriations to denominational or sectarian objects.

It is true that very many and very worthy charities, although under the control of different sects, are not confined in their benefits to those who are of the denomination controlling the charity; still every charitable institution established and supported by the members of one denomination becomes a propagander of its faith. The hospitals which they endow, and even the schools which they establish, become monuments to the sects that endow or support them, and the teachers, physicians and nurses become the active and able missionaries of that sect to which the institution immediately belongs; and now, sir, while it is true, and while I agree thoroughly with all the gentleman from Philadelphia (Mr. Woodward) has stated upon that point, that the charity of the State of Pennsylvania is largely, if not entirely, due to the efforts of christian denominations, and that all our christian churches are marching in the same general path of christian charity towards one end, still the corner stone of our political system is that the church and State should be disunited, and it is unfair and injurious to the churches themselves that they should be allowed to contend for appropriations from the State treasury in support of their several peculiar doctrines and peculiar faith, notwithstanding that it may be done under the sweet name of charity. Such aid can not forward charity; but the result must be that each church which proposes to build hospitals or other large and expensive buildings for benevolent uses, will undertake more than its congregation can support, with the hope that larger appropriations may be obtained from the State. Each church should endow its own charities and support them out of the contributions of its own congregations, and the charity of the State should be kept in the control of the State, and it's officers should manage and be responsible for its asylums for the deaf

and dumb, the blind and the halt. If an appropriation is made to one church it will occasion trouble by being considered unfair to other denominations, and therefore the Legislature should be prohibited from making appropriations to any sectarian or denominational institution, and so place the whole subject permanently at rest. These, Mr. Chairman, are the reasons which have influenced me in offering this amendment. It is in substance that no appropriation shall be made to any denominational or sectarian institution, nor for any sectarian or denominational object.

Mr. NEWLIN. Mr. Chairman: I do not rise to trouble the committee with any extended remarks, after all that has been said upon this subject. I simply desire to place myself upon the record as being opposed to all sectarian appropriations. I am in favor of an entire, radical and complete separation of the church and State. Religion and politics should be kept as far apart as the poles, and it is utterly impossible for a government to legislate for sectarian purposes, directly or indirectly, without seriously menacing that freedom of conscience so indispensable in all good governments, and which should be so jealously guarded. It seems to me not only is it necessary to adopt that portion of the report of the committee, so far as it relates to sectarian appropriations, but I am of the opinion that all these appropriations are now contrary to the spirit of our institutions, and contrary to the present Constitution of the State. I can see no right or power in the Legislature, even now, to appropriate public moneys to any sectarian institution whatever. Why, sir, the result of permitting this kind of legislation, if carried to its logical consequences, would be to justify the establishment of a paternal system of government, as in France and other continental countries, wherein the governments legislate, not only for life and property, but for the comfort and morals of the people. Such systems have invariably ended in despotism. Again, in everything that is calculated to encourage and promote charitable objects, the fullest opportunity should be allowed, and is desirable; for the exercise of individual efforts, for when it is known that the government takes care of the poor and needy, and performs all the duties of our charitable institutions, the stimulus for personal exertion will be greatly lessened. I am opposed to that portion of the report of the com-

mittee which proposes to prevent the Legislature from appropriating money to individuals or communities, because there are cases in which it is proper that the State should pension those who have performed valuable services for it, and there are cases of great public calamity, in which I would leave it in the power of the Legislature to afford that relief which may be necessary and proper, but so much of the report of the committee as is opposed to sectarian legislation I shall support.

Mr. D. N. WHITE. Mr. Chairman: As much as I dislike to take up the time of the committee, I cannot forbear to say a few words on a subject which I esteem as of more than ordinary importance. Since this Convention commenced its sessions, last November, I have not taken up one-half hour of its time in presenting my views on the various subjects which came before it, and I should not now trouble the committee did I not infer from the tenor of the debate that the merits of the section under consideration were not estimated at their true value.

I shall not occupy the time of the committee on that part of the section which restricts the bounty of the State in cases of some great and sudden calamity by fire or flood, or the casualties of war, further than to say that I approved the spirit of it, and believe that it would prevent more evil than to reject it would ever do good. It is impossible for the State to relieve all such calamities without changing the very object and spirit of good government, and opening the flood gates of every species of corruption and speculation. If you cannot relieve all, then you cannot, in justice, relieve any. All the citizens of the State stand on an equality in this respect. If a fire burns down my house, or a sudden flood sweeps away my property, and leaves me impoverished, have I not as good a right to the bounty of the State as if one hundred or a thousand persons were ruined at the same time? Does the number who suffer increase the magnitude of the calamity to each individual? The old adage, that "misery loves company," is a true one. A calamity is harder to bear singly and alone, than if others around you partake of the same sufferings. Therefore if a severe blow falls upon an individual he has just as much claim upon the charity of the State as if the same blow fell upon a number of individuals. The war found Pittsburg with vast property—with her steamboats, her coal barges, her thou-

sands of tons of coal, her enormous quantities of manufactures, her cotton, which she had bought and paid for, within the rebel lines, and all of which was speedily confiscated. Millions were lost in a day, and men in affluence went down never to rise again. Did Pittsburg ask the State to pay for these losses? No, sir; it was one of the incidents of the war which could not be provided against; and it was a loss which no government could undertake to pay without ruin.

But, Mr. Chairman, I leave this part of the subject to consider what I deem of more importance, the entire prohibition of State appropriations to charitable or educational institutions under the control of religious sects or denominations. And here let me say that I base my opposition to such appropriations on a somewhat different ground to that taken by the gentleman from Schuylkill. I do not, with him, believe that these heaven-born charities would flow as well without christianity as with it. On the contrary, I hold that all, or nearly all, the genuine charities which so ennoble humanity and bless our land are born of christianity, sustained by christianity, and that without christianity they would perish. Furthermore, I believe that the division of christianity into sects and denominations has greatly tended to increase the number and improve the character of charitable and educational institutions, and has opened up streams of benevolence which, but for them, would have been dry and arid.

I do not oppose christian benevolence. Would to God it were a thousand times more than it is. Would to God that the untold millions of money, worse than wasted upon the artificial appetite for strong drink in this city alone, were turned into streams of benevolence instead of into avalanches of ruin. But I oppose all connections, except the simple protection of the law, between the institutions of religion and the civil and political institutions of the State. The Great Teacher said, "My kingdom is not of this world," and He laid down His life in attestation of this sublime declaration. As a citizen, He worked a miracle to procure the means to pay a tax due the State, but after the State demanded of Him that He should subordinate His faith and His conscience to its dictation, He refused.

Connection between the church and the State has, in all ages, worked injury to the church, and I may say to the State also. Separated, each following their pro-

per, and, I believe, God-given sphere, they have mutually benefited each other, and each has been stronger for the other. Bring them into adulterous connection, and indifferentism, hypocrisy, irreligion and downright infidelity is the unlawful progeny.

For the last three hundred years Europe has been struggling to throw off the fearful incubus of the union of church and State, which has trammelled both parties. Mr. Gladstone, the great prime minister, succeeded, partially, in divorcing the State church in Ireland from the control and patronage of the State, but he has gone down in trying to organize an Irish university, in which both Catholics and Protestants could be taught. Happily, we, in this country, are free from the complications which so fetter the State and dwarf the church in the old world. Our fathers, with consummate wisdom, confined our government to its legitimate sphere, and left religion free from all trammels and disabilities to work out its own grand uses and results. Of late years, and it is only of late years, denominational charities have been knocking at the door of the treasury, and demanding to share in the funds levied and collected for purely State purposes. It is to stop this evil, at almost its inception, that the section under consideration has been proposed. Our State has not suffered much from it yet, but a sister State has, and the warning should not go unheeded.

Let it be once understood that denominational institutions for charitable and educational purposes can be supported, in whole or in part, from the public funds, and the demands will yearly increase and be persistently urged. Each denomination will claim its share, and according to its voting power will finally demand that its claims be granted. The unholy scramble will dishonor religion, and impoverish the State, and worse than all the rest, will dry up the fountains of private benevolence.

There are certain great charities which peculiarly belong to the State, and which church or private charities cannot so well reach and manage; such as asylums for the insane, the blind, the deaf and dumb, and houses of refuge and other reformatory institutions. Add to these the common school, and while the necessity lasts, the soldiers' orphan schools, and there the State should stop. All other charities can be better managed by counties and cities, with their homes for the destitute, and

by the different christian denominations, with their orphan asylums, their homes for the friendless, and the various other ways in which the true spirit of christianity reaches out to relieve and bless mankind. While the State furnishes to each child within its borders the facilities for acquiring a good common school education, it should not attempt, from the public funds, to establish and endow academies and universities. These should be left to associations, to religious denominations, and to the munificence of wealthy and benevolent individuals. Unless the State furnishes to all its youth the means of acquiring a liberal education, she cannot, in justice, furnish it to a part; and if she furnishes it to one city or county, all the rest have an equal claim.

The gentleman from Montgomery (Mr. Hunsicker) says that if we adopt this section we shall array all the christian denominations against the Constitution. Never was a man more mistaken. It is the very protection which the Protestant denominations want, and which they have recommended and demanded in their papers, and assemblies, and conferences. If the State could dole out to each denomination the amount to which each was entitled from its numerical strength, or the amount of its voting or taxing power, there might be some thoughtless and shortsighted persons to be found in the churches who would favor it. But the church, in its aggregate capacity, comprehending its wisest and most devoted members and rulers, will say amen to this section; and I believe this to be true of the Catholic as well as the Protestant.

The church has never been so grand, so successful and so powerful, as when she has stood alone, untrammelled, unsupported by the civil powers. I have no doubt that the Catholic church in this country is to-day far stronger, and wields a greater influence over the minds of its votaries, than if, in any form, it was supported by the State. Would the great Methodist church of this country be what it is if it had leaned upon the State? I pray God to save it from any such terrible calamity as to become, in the least manner, a pensioner on the public treasury. Most of us are old enough to recollect the grand spectacle of two thousand Scottish ministers leaving their churches and their snug manse, and going out they knew not where, without churches in which to preach, and without houses to live in, because they could not conscientiously ac-

cept the bounty of the State with the conditions imposed. Thus was formed the Free Church of Scotland, through which to-day throbs the religious heart of that sturdy people. They have now more churches, more manses, more wealth, more power, than they had before, and do ten-fold more for the evangelization of the world and to advance the Kingdom of Christ,

Mr. Chairman, if it is desired to preserve the State from the machinations of designing men who put on the livery of heaven for their own selfish purposes; if it is desired to preserve the church pure, to promote its material as well as its spiritual prosperity, and to advance its moral power; if it is desired that all the noble and lovely charities which arise and grow and flourish in the churches, and, like a perennial stream, fructify and beautify the arid wastes of life, shall continue to prosper; if it is not desired that all private streams of benevolence should dry up, from the blasting effects of trusting in State aid, pass this section, and the christian people who shall fill all the valleys, and cover the hills, and spread over the plains of this noble Commonwealth, in the long years to come, will rise and call you blessed.

Mr. LANDIS. Mr. Chairman: I imagine there must be some misapprehension in the minds of the members of the committee with regard to the question which is before us. The debate so far has proceeded upon the assumption that we have here presented for our consideration a question that is entirely new, whereas the very opposite is the truth. The debate in the committee of the whole for the last three days has been confined almost entirely to the question whether we shall embody in the Constitution, a proviso that there should no appropriation by the Legislature for sectarian purposes. Now, sir, this proposition is not a new one. The attention of the committee has, by several gentlemen, been called to the fact that the Committee on Education has already reported a provision of that kind; but, sir, I believe that it has not been fully understood by the committee, else this debate would not have proceeded to the extent that it has.

If gentlemen will turn to their files they will find that the fifth section of the report of the Committee on Education, as reported from the committee of the whole, reads as follows:

SECTION 5. Neither the Legislature nor any county, city, borough, school district or other public or municipal corporation shall ever make any appropriation, grant or donation of land, money or property of any kind to any church or religious society, or to or for the use of any university, college, seminary, academy or school, or any literary, scientific or charitable institution or society controlled or managed, either in whole or in part, by any church or sectarian denomination.

The committee of the whole has passed upon that proposition. It was amended in committee of the whole and was adopted. Now the question is, do we desire to embody in the Constitution a second proposition covering the same ground that this does? The section reported by the Committee on Education is far broader in its terms, and far more comprehensive in its grasp, than the one under consideration. Therefore I take it that those who are opposed to making such appropriations are prepared to vote against the section now, because it has already been provided for, whilst those who are in favor of such appropriations are equally prepared to vote against it because the section is against their views.

I do not desire now to discuss the question as to whether or not the Legislature ought to do this or not, because the committee having passed upon it, I think it is now a waste of time to do so. I, for myself, am in favor of restricting the Legislature so far as sectarian appropriations are concerned, not because I love the State too much, not because I love the objects of the bounty of the State too little, but upon the ground that I love the church more; because, sir, I take this view, that the very moment you allow the Legislature to make appropriations to this and that sectarian denomination you throw into the church a firebrand which will inflame and consume it. I do not, therefore, desire to discuss this part of the question; and if there was nothing else of the section now under consideration, there would be no difficulty about it.

There remains, however, the question whether this Convention should prevent the Legislature from appropriating sums of money to "persons" or "communities." Now, sir, I am opposed to restricting the Legislature in this respect. I think that this Convention ought to arrive at a proper conception of the dignity, of the responsibility, of the functions and prerogatives of the Legislature. For one, I am not in

favor of dwarfing its power. I do not favor the proposition to rob it of that sovereignty which properly belongs to it. The idea of our form of government is that the sovereignty of the people, except such wholesome restrictions as the Constitution may impose, shall be vested in the Legislature; and the very moment you attempt to take away from it that power which naturally belongs to it, you impose upon it fetters which not only detract from its sovereignty, but to a great extent derogate from its dignity and its usefulness. Numerous restrictions may make it powerless for evil; but on the other hand, they may make it powerless for good.

I do not desire to discuss this question fully. I think it has already been fully discussed. There has been a great deal of time already consumed in debate upon it, and it occurs to me that the minds of members are made up to vote against the section and to vote against the amendments. For the reasons which have been stated, and for such reasons as I have now briefly repeated, I hope a vote may be reached during the morning.

Mr. BAER. Mr. Chairman: As my native town of Somerset has been introduced into this discussion, I am compelled to give the reason for the vote that I shall give, and I here and now utterly deny that the question of international law has anything whatever to do, or could by any possibility have anything to do, with the question that arose between the border claims and the compensation which, it is claimed, the State is liable to make. That principle is one that must rest upon the reciprocal rights and duties of the citizen and the State. If the doctrine that has been proclaimed here by the gentlemen from Indiana is to be endorsed, then the next time you get up a rebellion, and you send him and others about this broad State to preach and plead, in the name of patriotism and loyalty, the people will tell you that they have adopted the definition of Doctor Johnson, that the plea of patriotism and loyalty is nothing more than the last refuge for scoundrels. Sir, if this State owes no protection to her citizens, when she claims the right to tax them, the right to take them from their families and place them beyond the borders of the State, in order to protect other people and other communities, then the relation ceases, and there should be no reason in law, as there is none in common sense, why any man should obey the command of the supreme power of the

State. I say that the right for compensation for the citizens of the border counties exists as a matter of law and right. If they are to be taken away from their homes, and confronted to the public enemy's bullets, liable to be shot down at any moment, in defence of the institutions of the State, what consideration have they for such service? Why, sir, if in their absence their property shall be destroyed by an invading force, are they to be met, when they ask for reimbursement, with the answer: "No, you shall not have it, because when you come to the Legislature to ask for an appropriation from the State, so that the burden might fall lightly upon all this State, it may possibly be attended by some corruption." Upon whom does this liability for this corruption lie, (if there is any corruption used in the Legislature,) when men are asking appropriations for a purpose like that? Where the State is liable. I say it rests largely upon the gentleman from Indiana, who, in his holy horror for such contributions, will not stand up in defence of the right, but withholds his aid, and thereby makes it possible and necessary for men, in order to get their rights, to buy up a set of scoundrels. If the honest men of the Legislature had stood up to do what is right, they would possibly have limited the claim to a reasonable amount. But by withholding their votes from a just claim they may have made it necessary, if all be true that has been set forth here, to increase the bill, in order that they might raise money enough to pay some rascals whose votes were necessary to be bought.

I do not believe in degrading the Legislature of this great Commonwealth, but if you pass this, and other kindred iniquities, why not go farther, and get up a proposition to abolish the Legislature altogether. If the one hundred and thirty-three men that are annually sent there have not intelligence and morality enough to determine what is right or wrong, when a particular emergency like this arises, without requiring votes to be purchased for an honest cause, then abolish your Legislature, and give us a centralized power, and say that one man shall rule. I believe in no such doctrine, nor do I believe in the doctrine that has been promulgated here, that misery loves company, and that therefore a huge misfortune, that will devastate a whole section, is easier to be borne than where a single individual is stricken down. We all

know that when any single man in the community is burned out, that his neighbors will all come to his rescue, and out of their own funds they will put him on his feet again. But when a whole community is stricken down, to whom will they look for aid, if the great State of Pennsylvania shall lock up the treasures that she has in her coffers? Do you want us to say that all that is worth preserving in the State is the almighty dollar? That the people themselves, upon whom all the greatness of the State depends, are not worth upholding and preserving? If so, then strike them down by endorsing this proposition, and say that all this people care for is money; that the people are nothing; that the morals and principles of this great State are nothing whatever, but all greatness depends upon the almighty dollar. That seems to be the drift of the argument here, but what amount has there ever been contributed at any one time in relief of the charities of the State? Why, sir, half a million of dollars will cover all that the State has paid in the last quarter of a century, for appropriations of this kind, a mere pittance, perhaps, of a shilling a voter. And who is complaining? If the State can do without communities, if it is by accident, and not fault that a community is stricken down, shall it be kept down, and shall it not lend its aid in the future, in the grand development and progress of the State? If so, then put this principle in the fundamental law and cut off all these charities.

But I go further, and I say that the entire section ought to be wiped out, as it is an insult to the age. It is yielding to the clamor of infidelity, that claims that there shall be nothing done in the way of public charity for the reason, forsooth, that the denominations which receive the charity are sectarian. Sectarian, though they be, and in this country all christianity is sectarian, they are yet institutions under the care of the christian religion, and I care not whether a man be Catholic or whether he be Protestant, if his religion is based upon Jesus Christ as the son of the living God, he is my fellow and my brother, and the cry that is gotten up against Catholicism, here to-day, can have no weight with me. As between Catholicism and Protestantism, I am a Protestant. As between Catholicism and infidelity, I am a Catholic, now and forever. I am for a religion always in preference to no religion. And now, sir, when the great mass of the people of this State be-

lieve in the doctrines of one or the other of the sects in existence among the christian churches, shall we restrict this charity in this form? Why is this advocated? Is it because of an article that we see now on our desks, headed, "the platform of the Liberals, or Free Religionists" of the country, a party organized, as that was, with a capital of \$100,000, and which has sent to Europe for a man to come here and stump this entire State, at a salary of \$15,000 per year, in advocacy of the right of independence and free feeling in religion, but really in advocacy of the doctrine of no religion at all? What is the demand of these "Liberals?"

"We demand that all religious services now sustained by the government shall be abolished; and especially that the use of the Bible in the public schools, whether ostensibly as a text-book or avowedly as a book of religious worship, shall be prohibited.

"We demand that the appointment, by the President of the United States or by the Governors of the various States, of all religious festivals and fasts, shall wholly cease.

"We demand that the judicial oath in the courts and in all other departments of the government shall be abolished, and that simple affirmation, under the pains and penalties of perjury, shall be established in its stead.

"We demand that all laws, directly or indirectly enforcing the observance of Sunday as the Sabbath, shall be repealed.

"We demand that all laws looking to the enforcement of 'christian' morality, shall be abrogated, and that all laws shall be conformed to the requirements of natural morality, equal rights and impartial liberty."

I admit that the gentlemen who are present here to-day do not suppose so, but they are unconsciously acting directly in the interests of an infidelity which is now ready to make an attack upon this great State. Is this Convention going to give over this great State to the infidels of Europe, on the pretence that this Government is founded upon religious toleration? I say, for one, never. If the hordes from Europe are deterred from coming here because of the religious sentiment of this State, let them stay away.

I can readily foresee that if this effort to surrender the moral and religious sentiment of this country to the infidelity of modern Europe, is persisted in, that the time is not far distant when an organi-

zation will arise, and, as a democrat, I shall be one of the first to join it, which will of necessity proclaim that "Americans shall rule America," and thenceforward the loose morals of other countries shall not be endured by adopting its advocates. For these reasons I hope the section will be voted down.

Mr. ALDRICKS. Mr. Chairman: It is difficult, at this distance, to get the eye of the chairman; but I fear it will be far more difficult to get the ears of the members of the Convention. Although this subject has been ventilated at some length, I apprehend it has not yet been properly considered. The power should be conferred on the Legislature to grant pensions and annuities to soldiers and their widows as heretofore; to make becoming mementoes for meritorious, signal, civil and military services, and, in the event of an inevitable calamity, to make an appropriation to meet the immediate pressing necessities of an impoverished community; but there should be no appropriation for a sectarian purpose.

Now, Mr. Chairman, some of our number are strongly in favor of conferring upon the Legislature the power of relieving the necessities of a community suddenly overtaken by a great calamity. The suffering which was occasioned by the great fire at Boston filled the hearts of that community with sadness, and the Legislature was quick to grant relief, but the Supreme Court of that State have said that the Legislature had no power in the premises, and that the law under which that grant was made was unconstitutional. Then, Mr. Chairman, it has been said that charity is one of the prerogatives of a great Commonwealth like that of Pennsylvania; but it has been well replied that the Commonwealth has her noble public charities, her institutions for the blind, the deaf and dumb and insane, and houses of refuge, &c. These institutions are all abundantly provided for in the section we have just passed. The gentleman from Franklin, (Mr. Sharpe,) who addressed this Convention on Saturday, deprecated the idea that we should place hand-cuffs and manacles on the Legislature.

Now, Mr. Chairman, wherever we give them authority it ought to be to do something that will be for the public good, and wherever it will not be for the public good we should place a restriction upon their power. This Convention has been called here for the very purpose of placing restrictions upon the Legislature

—if the gentleman prefers the word "manacles" he can use that term.

The impression appears to prevail here that the Legislature are the directors of a vast benevolent society, extending throughout the Commonwealth; and that the members elect are to disburse the public funds among the numerous applicants knocking at the door of the treasury; are, in short, elected for the purpose of relieving special wants. This, I apprehend, is a great mistake. The members of the Legislature are not commissioners of public charities; the people do not so consider it. If our legislators were sent to the State capital for that purpose, I think the difficulty might be remedied by placing that power in other hands nearer home, by committing it to the county commissioners, or to some other authority, instead of placing it in the hands of the Legislature, whose chief business is to make our laws. I therefore apprehend that it is a great mistake in supposing that the law makers are required to give so much of their attention to this subject of charity.

There was an exhibition here on Saturday which warned us of the danger of parties becoming excited, and as they will whenever the question of the appropriation of money is concerned. The gentleman from Allegheny (Mr. Howard) made some unfortunate allusion, which I did not hear, to an appropriation which had been made for the relief of Chambersburg. The remarks brought the gentleman from Adams (Mr. McClean) to the floor, who indignantly resented the attack, and the gentleman from Allegheny (Mr. Howard) was also pursued by the ponderous blows of the distinguished gentleman from Franklin (Mr. Sharpe.) There was every probability of this peaceable body witnessing a border raid on a limited scale.

It is for the purpose of preventing the introduction into our Legislature of such exciting questions, that we should place a restriction upon the Legislature, and not throw open the treasury's strong box and bid the poor unfortunates throughout the State to walk in and help themselves, and such a course would bankrupt this Commonwealth. The Legislature is sent to the capital for the purpose of making laws for the people, and not for the purpose of devising means of relieving those who have been overcome by misfortune.

I was very glad to hear that the members of this Convention were almost unanimously in favor of divorcing church and

State. I say that I am glad that we can meet upon common ground, and that we can agree on that question.

This brings me to the next division of the proposition before the Convention, that there shall be no appropriation for any sectarian purpose. That provision has been incorporated in the much-abused Constitution of Illinois, I hope the gentleman from Carbon (Mr. Lilly) will permit me to say, and also in the Constitutions of Indiana, Wisconsin, Missouri, Michigan, Oregon and Minnesota. I apprehend therefore that we cannot be charged with tramping upon new ground, but that we are following in the way adopted in other States, and I, for one, would be disposed to say that if contributions are to be made under the direction of the State they should not be for sectarian purposes, but I do not know whether the proposition as it is now before the Convention entirely meets the views of all the gentlemen in the Convention. I would much prefer if it was placed in the following form, which I think would meet all the exigencies of the case: "Pensions and annuities may be granted to soldiers and their widows. Becoming mementoes may be made for past meritorious civil or military service, and in the event of a great inevitable calamity a reasonable sum may be appropriated only to supply the immediate pressing necessities of the impoverished community, but no appropriation shall be made for a sectarian purpose." I suppose the gentleman who has offered this amendment would prefer the phraseology in which it is couched, and I will not therefore press the amendment which I have suggested, although I am fully convinced that it would meet the case more fully than any which has yet been presented to the Convention.

Mr. MANN. Mr. Chairman: If I am able to comprehend the force of the arguments which have been made in opposition to this section, I think there is a very great departure on the part of some of the delegates from the spirit and purpose of the original founders of this government. This section now under consideration has been denounced in unmeasured terms by some delegates upon this floor, and one would think, from listening to them, that the members of the committee which reported it were heartless and unfeeling, and had no sympathy with the great charities of this Commonwealth. Why, Mr. Chairman, it seems to me there is a great perversion of language upon the

part of many delegates in discussing this question. For myself I utterly deny that the appropriations which have been made out of the Treasury of Pennsylvania by the Legislature are *charities* in any proper sense of that word, and I utterly deny that the appropriations that have been made under the name of charity have either blessed the giver or the one who received them; and if I am correct in this understanding of the fact, then clearly they are not charities, for charity always blesses the person who gives and the person who receives; but charity, in order to do this, must be the individual gift of the person who bestows it. It is not those who take money out of the Treasury of the Commonwealth who feel the beneficial influence of a charitable gift when they bestow it, and there has been a result connected with all the efforts made to obtain money from the State for all these purposes, as far as I am informed, precisely the contrary to the effect produced by private charity. The appropriations which have been made have not produced those happy results which flow from the free-will offerings of persons who gave their own funds. They have been obtained by importunities, and by means of an influence that has been brought to bear upon the members that ought to be kept entirely away from the Legislature.

I read in a morning paper yesterday, a dispatch from Harrisburg, which shows the character of the efforts made to get this money out of the treasury, and is, to my mind, a conclusive argument in favor of the purposes of the section under consideration. I ask the attention of the delegates to this dispatch to the *Philadelphia Press*. In speaking of the appropriation bill it says: "There was a frightful amount of money asked for local charitable purposes, in which the most invidious distinctions were made, well calculated to create dissatisfaction and mistrust." This is the difficulty that always enters into appropriations for these local charities. They can be, in no sense, called State charities, for they are always invidious, and are well calculated to create dissatisfaction. This is the universal fact, and it cannot be otherwise, for whenever the Legislature undertakes to make these appropriations for local and special charities, they are always of such an invidious nature that they confer relief upon a very few, while the great mass of the people of the Commonwealth are entirely

deprived of the beneficial influences which are expected to result from them. This correspondent, who is the regular and trusted one, says that the applications made for appropriations to local charities in the present Legislature are *frightful* in their amount, and, Mr. Chairman, they will go on increasing from year to year, if some such provision is not inserted in the Constitution. They have been increasing rapidly for the last few years, until, as this record shows, they have become frightful in their amount. They are not of the character as represented by several gentlemen on this floor, insignificant and of no consequence. They have already become of the character described by this correspondent. Sir, they are invidious, creating heart-burnings, and dissatisfaction, and bitter opposition. That is not the effect of charity. No man can point to a charitable gift that has produced any such effect as that. Its whole influence to all persons that it operates upon, is precisely of the opposite character—beneficial—creating a healthy influence, and exerting a great moral effect for good. But these attempts to take money from the Treasury of the State are always of the character as described by this correspondent, invidious, creating dissensions and bitter oppositions. I say to the gentleman from Somerset, (Mr. Baer,) who spoke this morning about the improper influences that had been brought to bear in favor of appropriations to the district in which he was so much interested, that if the honest members of that body had given their support there would have been no necessity of applying to the dishonest ones. I tell the gentleman that he is mistaken; that nearly every honest man in the Legislature was opposed to the appropriation, and was driven into its support by the persistent efforts that were made, and for other reasons which I never quite comprehended.

Nobody denies that it is the duty of Pennsylvania to take care of the insane, and we have made provisions for that. There never was a voice in the Legislature in opposition to any honest and proper method of taking care of the insane, but to what extent does it go? Not to pay the expenses of maintaining the insane people. That is either done by the friends of the insane, or by the counties from which they come. Not in a single instance has the State of Pennsylvania been asked to pay the expenses of insane people, so that the statement the gentleman made in op-

position to this section as to the shame of allowing these people to go at large or to be improperly provided for, is of no force. The State of Pennsylvania has never undertaken to do more than to furnish suitable buildings, and has done this with a lavish hand, and no one objects to it. All that is asked is that these institutions shall be properly located, and that the funds appropriated for their construction shall be properly expended, and that is all the duty which the State has ever undertaken to discharge towards these people; simply to pay the expense for erecting the buildings, and that is not a charity. It does not come within the meaning of this section by any fair construction of language. It does not touch any duty which the State has ever undertaken to discharge towards any of the unfortunate people of this Commonwealth.

The poor, the blind, the halt and the insane are not touched by any provisions of this section. They are to be provided for in the future, as they have been in the past, by furnishing suitable buildings, and paying suitable officers for the purpose of taking care of them. This appeal, therefore; this attempt to excite the prejudice of the delegates, by introducing that feature into this discussion, is absurd. This section is simply a recommendation on the part of the committee to prevent invidious appropriations to local individuals or communities. I say there is no ground or necessity for it. The greatest calamity which ever occurred on American soil by fire was relieved by private free-will offerings, as witness the spontaneous relief, from all parts of the United States, to the sufferers of Chicago, when she was burned to ashes. There has never been a failure to respond to calls for charity, and there never will be if the proper channels of charity are appealed to. The people will always respond promptly for the relief of all who deserve charity, without going to the funds in the Treasury of the State, or of the nation.

There is, therefore, no possible danger of any difficulty ever occurring by the insertion of this section into the Constitution. I agree with the gentleman from Dauphin, (Mr. Alricks,) that the section is not worded in the best form. Listening to his suggestion, I believe that I would have preferred the section to have been in the language which he proposed, but the spirit of this section ought to go into the Constitution.

The gentleman from Philadelphia (Mr. Woodward) read, a few days ago, from the Declaration of Independence, the immortal document of Thomas Jefferson, wherein he states the reason why the colonies had a right to become free and independent, and among these was, that they had a right to do what independent States may, and of right should do, and therefore this section is wrong. While I subscribe very heartily to the statement of Thomas Jefferson read to us, I cannot, for the life of me, understand how it bears upon this section, for the committee which reported it think that this thing of making invidious appropriations for local charity is one of the things which a State ought not to do, and has no right to do. And the gentleman did not explain, so far as we could hear, by what right they should do it. The State should use the public funds, as the gentleman from Dauphin (Mr. Alricks) said, for the good of all the people, not for a small part of them. We have arrived at that stage of jealousy in the use of the State funds which compels us to say that neither the State nor any county shall help construct public improvements. Now the building of public improvements comes far nearer to benefiting all the people than any of these local charities can do, and if any appropriation of the public funds for any outside legitimate purposes of the State should be made, it ought to be made for the opening of great public improvements, for that will benefit all the people.

Just see how these appropriations which this section is intended to put a stop to operate. There is an item in the appropriation bill now before the Legislature to give to a town \$75,000. Now does anybody believe that that town has suffered more than many other towns in the Commonwealth, during the year? At the very time when the appropriation was being passed through the Legislature for the town of Mifflin, the business part of the town of Tioga, in Tioga county, was burned to the ground, and when the gentleman from that district moved to add an appropriation of \$5,000 for the sufferers there, it was voted out, receiving hardly a dozen votes; and yet they were situated precisely alike. In both cases the whole heart of the town was burned up; but one received an appropriation of \$20,000, and the other not a cent, and so it will always be. The town that can bring the most influence to its support will get the most money, and the towns that are out

of the way, and not heard of much, will get none. This thing of towns being injured by fire is something that is constantly occurring. I am informed that another town in northern Pennsylvania, Blossburg, was burned last week. Here is an appropriation of \$75,000 to the town of Juniata, and I will risk all the reputation I have that if Blossburg will make an effort to get \$1,000, it cannot get a single cent. So it will always be; you will make flesh of one town and fish of another. These disasters by fire are constantly occurring, and to undertake to make the State of Pennsylvania an insurance company will be to destroy the character of the Commonwealth and to bring it into contempt.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Philadelphia (Mr. Dallas.) The amendment will be read.

The CLERK read:

"No appropriation shall be made to any denominational or sectarian institution, corporation or association, nor for any denominational or sectarian object."

The amendment was rejected.

Mr. ALRICKS. I propose an amendment to the amendment.

The CLERK read:

"Pensions and annuities may be granted to soldiers and their widows, as heretofore. Becoming mementoes may be made for past meritorious civil and military services, and in the event of a great inevitable calamity, a reasonable sum may be appropriated, only to supply the immediate pressing necessities of an impoverished community; but no appropriation shall be made for sectarian purposes."

Mr. ALRICKS. Mr. Chairman: I ask for a division of the question on the amendment.

The CHAIRMAN. The first division of the question will be read.

The CLERK read:

"Pensions and annuities may be granted to soldiers and their widows as heretofore."

The first division of the amendment was rejected.

The CHAIRMAN. The next division of the amendment will be read.

The CLERK read:

"Becoming mementoes may be made for past meritorious civil and military services."

The second division of the amendment was rejected.

The CHAIRMAN. The last division of the amendment will be read.

The CLERK read :

"And in the event of a great inevitable calamity, a reasonable sum may be appropriated to supply the immediate pressing necessities of an impoverished community; but no appropriations shall be made for sectarian purposes."

The last division of the amendment was rejected.

The CHAIRMAN. The question is upon the amendment offered to the original section by the gentleman from Allegheny, (Mr. Hay,) which will be read.

The CLERK read :

"No appropriation shall be made for any denominational or sectarian purposes, or to any institution, corporation or association created or maintained for objects limited or restricted by any particular religious, denominational or sectarian views."

The amendment was rejected.

The CHAIRMAN. The question is upon the section.

Mr. HARRY WHITE. Mr. Chairman: I offer an amendment to the section.

The CLERK read :

"No appropriations, except for pensions or gratuities for military service, shall be made for charitable, educational or benevolent purposes to any person or community, nor to any denominational or sectarian institution, corporation or association."

Mr. BROOMALL. Mr. Chairman: I would suggest to the gentleman who has just offered the amendment, that the language is somewhat awkward, and I will call his attention to an amendment of the same nature which I was about proposing, which, I think, is better than his; and that is to amend, in the second line, after the word "community," by inserting the words "except in payment of a debt, or for services rendered." The section would then read: "No appropriation shall be made to any person or community except in payment of a debt, or for services rendered; nor to any denominational or sectarian institution, corporation or association, for charitable, educational or benevolent purposes." The meaning is clear and covers the whole ground.

Mr. HARRY WHITE. I have no objection at all to the gentleman's amendment, but I do not think it is necessary, because this section will not prevent appropriations for the payment of debts.

Mr. BROOMALL. An appropriation to a person may be intended for the payment of a debt. I think this covers the whole ground for military services, and also re-

moves from the section the difficulty that I suggest, that an appropriation to an individual may be in payment of a debt, or for some other service than military.

Mr. HARRY WHITE. I would like to accept the amendment offered by my friend, but I submit, with all deference, that it seems to me to be confusing in its character. In the amendment which I have offered it is perfectly clear that appropriations can be made for pensions and gratuities. Then it applies to charitable, benevolent or educational purposes; then to persons and communities, and finally to denominational or sectarian institutions.

The CHAIRMAN. The question is upon the amendment offered by the gentleman from Indiana (Mr. Harry White.)

The amendment was rejected upon a division, thirty-nine members voting in the affirmative, and twenty-six in the negative.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 22. The credit of the Commonwealth shall not, in any manner or event, be pledged or loaned to any individual, company, corporation or association whatever; nor shall the Commonwealth hereafter become a joint owner or stockholder in any company or association or corporation.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 23. The Legislature shall not authorize any county, city, borough, township or incorporated district, by virtue of a vote of its citizens or otherwise, to become a stockholder in any company, association or corporation, or to obtain money for or to loan its credit to any corporation, association, institution, company or individual.

The section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

"SECTION 24. The Legislature shall not delegate to any commission of private persons, corporation or association, any power to make, supervise or interfere with any public improvement or to levy taxes, or perform any municipal function whatever."

Mr. J. W. F. WHITE. Mr. Chairman: I do not desire to see this section passed without some modification. I therefore move to amend, by inserting after the

word "not," the words, "without consent of the local authorities." I presume this section was intended to apply to cities, counties, boroughs, and all other municipal corporations. Now, when the subject of city charters comes before the Convention, the report of the committee will very likely contain a section relating thereto. This section, being broader, will apply to boroughs as well as to cities. In order to illustrate the objection I entertain to the broad language of this section, I would refer to the borough in which I reside. Under the section as reported by the committee, there never could be a commission for the erection of water works, or gas works, or any other public improvement in a city or borough. Those public buildings, or improvements, would have to be constructed by private corporations, or by the city and borough councils. Now, that can be done very frequently, in my judgment, a great deal better by a commission than by the city or borough councils. In the borough in which I reside we have an act of the Legislature authorizing a commission for the erection of the water works. Without that commission those works would have to be erected by the borough councils, changeable every year, without any permanency as to the members of the councils, and without any person being designated particularly to attend to the erection and supervision of those works. I am in favor of leaving this power in the hands of the Legislature, to create commissions for certain purposes, by and with the consent of the local authorities. In the case of cities, by and with the consent of the councils, and in the case of boroughs, with the consent of the borough councils.

I trust, therefore, that the section will not pass with the broad language in which it has been reported, and I think the amendment suggested will save and secure all the benefits to be derived from the section.

MR. J. PRICE WETHERILL. Mr. Chairman: I hope that the amendment will not pass, and for this reason: If the councils of a city, town or borough desire to create a commission for a special purpose they have their full power to do so. If they desire to delegate a power to a commission on account of its permanency they can do it, and the language of the section will place this power in a body which is much better than the Legislature. I hope that all the power for creating commissions will be taken from the

Legislature and placed in the hands of the proper municipal authority. There is where it ought to be placed, and there is where it ought to rest. I therefore hope that the amendment of the gentleman from Allegheny (Mr. J. W. F. White) will be voted down.

MR. HANNA. Mr. Chairman: I only desire to refer the gentleman from Allegheny (Mr. J. W. F. White) to section eleven of this report. That section prohibits the Legislature from passing any local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts, and now we propose to prohibit that very legislation in the same direction to which the gentleman has referred. He refers to the case of a commission created in his town for the purpose of erecting water works. Now we propose by this section to prohibit this very kind of special legislation, and to prohibit in future the creation of commissions for this very purpose, on the ground that the Legislature cannot, by a general law, regulate those matters which should be governed by the local government. This is the idea of the gentleman from Allegheny, I have no doubt; but I must go farther and say, with reference to all local and special matters, the councils of cities and boroughs possess a better knowledge by far than the Legislature. It is true, however, that the city councils change from time to time, but the members are not, in all cases, changed at the same time. There are members elected from year to year, but the committees of councils remain the same, and so the management of these local improvements will be under the same direction. I therefore think that the general prohibition in this clause is very full, and we can do no harm in passing it, at least in committee of the whole.

MR. NEWLIN. Mr. Chairman: I desire to say a single word, which may possibly throw some light upon this question, especially as it has not been adverted to during the discussion. In the city of Philadelphia there is a single commission, no single member of which was elected by the people, and the proceedings of which are in no way subject to be reviewed by the people. In addition to this, no wish of that commission can be refused by any department of the city government. Such a commission as this, which has been imposed, has increased the debt to some thirteen million dollars. I should think the statement of this fact ought to

be a sufficient answer to a proposition to leave to the Legislature the creation of commissions in any event.

Mr. EWING. Mr. Chairman: I imagine that there will have to be several provisions made in regard to the local authorities of counties and cities, in addition to those which have been already reported. I am in favor of this section as it has been reported by the committee, and I think the amendment offered by my colleague (Mr. J. W. F. White) is entirely impracticable, and would have the effect of weakening the force of this particular section. I presume he means by the local authorities of a county, the commissioners, perhaps the controller, if there be one in the county, and what others we know not. This section is intended to strike at an evil which has prevailed to a very considerable extent in Philadelphia, and also in Allegheny county. Many of our citizens in Allegheny county, a few years ago, thought that a commission appointed by the Legislature, was the best plan for the purpose of making general local improvements, but since then there has been a complete change in the mind of every one, excepting those who are connected with these commissions and their immediate friends, who favor the appointment of a commission for everything. I believe some three or four commissions have been created in our county for this purpose, and there has been more money wasted by them than by all the other official authorities during the past twenty years. One of the most objectionable of these commissions is in the nature of a corporation, or association, appointed for the supervision of bridges to be built over the Ohio river, and this amendment would not reach that sort of a case. I think the saving clause my colleague (Mr. J. W. F. White) desires to be incorporated in the section, can be provided for when the Convention reaches the question of counties and county officers, cities and boroughs, and I hope, therefore, the amendment will not be adopted at present.

Mr. WORRELL. Mr. Chairman: I trust this section will be adopted, just as it is reported by the Committee on Legislation. I think it proposes one of the most important and most needed reforms presented to the consideration of the Convention. If we leave with the Legislature the power to create commissions, which shall absorb and exercise the proper and legitimate functions of the various municipalities, it would be wise not to attempt

to reform municipal governments, and not to take any action affecting cities and city charters. The universal opinion is, that the new Constitution should guarantee to every municipality the control and regulation of its own internal affairs, and that the legislative body of each city, its select and common councils, should possess the supreme power of legislation upon all subjects affecting the municipality only. If the Legislature be vested with the right of quartering upon a city, without its consent, irresponsible commissions, to exercise *any or all* of the powers and functions of the municipal departments, it will practically nullify any provision intended to secure intelligent, independent and responsible government of the various political districts of the Commonwealth. No legislation has been more generally condemned than that which restrains a municipality in the exercise of the powers of local government.

Mr. Chairman, no local public improvement should be authorized or directed until the municipality has determined that such improvement is needed, *and that the condition of the city finances* will warrant the proper expenditure on that account; and unless these considerations are determined affirmatively by the municipality, the people should not be subjected to burdensome taxation by the Legislature or any other body, for the purpose of erecting unneeded improvements, or those which the public treasury will not justify. But the Legislature, in the creation of commissions for various purposes, determines these questions without any regard to the wishes or the necessities of the people, or to the condition of the city treasury. The commissioners are wholly irresponsible; no department is authorized to examine and to approve or disapprove their actions. They are generally without restriction as to their power to assess and levy taxes. I hope that this section will be adopted, and that it will be part of the fundamental law, "that no commission, corporation or association shall have power to make, supervise or interfere with any public improvement, or to levy taxes, or to perform any municipal function whatever."

Mr. J. W. F. WHITE. Mr. Chairman: I am not here to defend any improper commissions in Pittsburgh or Philadelphia, nor anything of that kind. I suggested this amendment, because I was afraid the section was too general. By the eleventh section of this article, to which my

attention was referred by the gentleman in front of me, from the city, (Mr. Worrell,) all special legislation upon the subject of regulating cities, boroughs, townships, &c., is prohibited, absolutely and unqualifiedly. Now, by the section before us, when we say broadly that the Legislature shall not delegate to any commission any power to do these things, I apprehend that it is prohibited, and that that power cannot be delegated by a general law. Because, previously, we have prohibited all *special* laws on the subject. Why, then, this prohibition, unless it extend to and operate upon the *general* law? It was for this purpose that I suggested this amendment. I dislike to have in one part of our Constitution a provision contradictory or in conflict with any other provision. Gentlemen from Pittsburg, and others, have suggested that this can be provided for when we come to the article on "cities and city charters." I proposed this here, so as to bring it into harmony with what we might do then; not to have an absolute prohibition here, to be qualified afterwards, when we come to consider the question of cities and city charters; that was all.

Mr. GOWEN. Mr. Chairman: I am entirely in favor of the objects sought to be accomplished by this section, and I propose to go much further than this section goes. I think, from its phraseology, that if passed without amendment, it would probably prevent the organization of corporations for public improvements, which certainly was not the design of the committee that reported it. If the gentlemen of the Convention will take up the section and read it in this way, as a court would be compelled to read it, omitting all that does not pertain to the immediate subject, to which I desire to call the attention of the Convention, it will read thus:

"The Legislature shall not delegate to any corporation any power to make any public improvement." This section, as reported, certainly contains a prohibition upon the Legislature which would prevent them delegating to any corporation the power to make any public improvement. That certainly was not the intention of the committee. I apprehend that the intention of the committee was to prevent the Legislature from vesting in any commission or association of individuals, any *municipal* power, or any power within the municipal government of any city, town or county. And in order to get at the sense of the Convention on

this subject, I propose to amend by striking out the section, and inserting as follows:—

The CHAIRMAN. The gentleman must move it as an amendment to the amendment, if he moves it at this time.

Mr. GOWEN. Very well, sir. This is what I propose to insert: "The Legislature shall not delegate to any person, association, corporation or commission the supervision, management or control of any of the improvements, money, property or effects of any municipal corporation whatever, whether held in trust or otherwise, nor vest in such person, association, corporation or commission, as trustee or otherwise howsoever, the power to levy taxes, or perform any municipal duties or functions whatever; and the Legislature shall provide for vesting directly in the local authorities of every municipal corporation all such power as is herein above referred to, which now be exercised by any person, association, corporation or commission."

Mr. EWING. Mr. Chairman: Before the gentleman sends that to the desk, will he allow me to make a suggestion of something that I am afraid the amendment will not cover. The term "corporation and association" was put in there, I think, to meet a case something like this: Two or three years ago the Legislature passed an act of Assembly giving to an association or corporation known as "The Coal Exchange" of Pittsburg, power to interfere with any bridge that might be made over the Ohio or Monongahela rivers in Pennsylvania, practically putting it in their power to prohibit the building of a bridge by any company that might be chartered by the State or any municipal corporation. I am afraid that it would not cover that case.

Mr. GOWEN. Mr. Chairman: I think this does cover it. I think it prevents any corporation from having any *municipal* authority whatever; but as the section was originally reported the Supreme Court of Pennsylvania, in construing the Constitution of the State, would be obliged to declare that this section shall read, omitting all that is not material to the subject under consideration: "The Legislature shall not delegate to any corporation any power to make any public improvement." That is the way this section would be construed if it were adopted by the Convention as it has been reported. Now, I desire to say a few words in sup-

port of the amendment which I have sent up.

The CHAIRMAN. The Chair will be compelled to rule that the amendment to the amendment cannot now be entertained, as it is not germane. The amendment proposed by the gentleman from Allegheny (Mr. J. W. F. White) will be read.

The CLERK read: "To insert after the word "not" the words, "without the consent of the local authorities."

Mr. GOWEN. Then I will withdraw my amendment for the present, and offer it at the proper time.

Mr. HARRY WHITE. Mr. Chairman: I call the attention of the Convention to the fact that the purpose of my friend from Allegheny (Mr. J. W. F. White) can very well be accomplished by the Legislature if you let the section be as it is. I will suggest, furthermore, that there is a misprint in the section as it is offered. There is a word omitted; that is the word "municipal." I would, therefore, move to add the word "municipal" after the word "public," in the third line, so as to read "any public municipal improvement," &c.

Mr. MACVEAGH. Mr. Chairman: That is a verbal correction, and, I hope, will be permitted without a motion.

There being no objection the insertion was made.

The question being on the amendment of Mr. J. W. F. White, it was rejected.

Mr. BIDDLE. I now move to strike out the word "public."

It was agreed to.

Mr. GOWEN. Mr. Chairman: The introduction of the word "municipal" and striking out the word "public" does cover some of the objections which I found in the original section as reported; but I do not think it is broad enough to cover every case. I do not know whether the construction of the courts would be that the devise to a city as a trustee for a charitable purpose would be considered municipal property. If it would not then this section would take away from the local authorities the power to control the property which was vested in the municipal corporations in trust. I desire, for a few moments, to call the attention of the Convention to a matter —

Mr. MACVEAGH. Mr. Chairman: Before the gentleman proceeds, I would like to ask—because it relates to a matter that I had in my own mind—whether his

amendment is divisible, so that the collocation of words here will be corrected.

The CHAIRMAN. The Chair will state to the gentleman from Dauphin (Mr. MacVeagh) that no amendment is now pending. The gentleman from Philadelphia (Mr. Gowen) has not offered any amendment.

Mr. GOWEN. I desire to offer one, sir. I will offer it now.

The CHAIRMAN. The Clerk will read the amendment of the gentleman from Philadelphia (Mr. Gowen.)

The CLERK read:

"The Legislature shall not delegate to any person, association or commission the supervision, management or control of any of the improvements, money, property or effects of any municipal corporation, whether held in trust or otherwise, nor vest in such person, association, corporation or commission, as trustees or otherwise howsoever, the power to levy taxes, or perform any municipal duties or functions whatever; and the Legislature shall provide for vesting directly in the local authorities of every municipal corporation all such power as is hereinbefore referred to, which may now be exercised by any person, association, corporation or commission."

Mr. GOWEN. Mr. Chairman: I desire to call the attention of the Convention to one matter of very great importance. It is a general subject, but we are making a general, broad, and comprehensive Constitution. We are not legislating; we are making an instrument that shall be the general supreme power and law of the land for, I hope, fifty years. It will not do for us to assume, in making this fundamental law, that the representatives of the government of this State, or of any municipality within the State, are forever to be corrupt. If this Convention is to base its action upon the assumption that the representatives of the people will always be corrupt, we shall be obliged to go into legislation and make a very long instrument. The great thing to be accomplished is, to select a representative government, in which the representatives of the people will be honest and faithful to their trust. The more power we vest in the Legislature or in the municipal authorities of any city or town, the more earnest will be the desire of the people to send good men to represent them. If we make a Constitution that dwarfs the man who represents the power of the State, or the power of the city, into a mere ma-

chine, and that ties his hands and stills his voice, and prevents him from exercising the functions of his brain in order to legislate for the good of the people who send him there, the people, themselves, will say: "It makes no difference who we send, for the Constitution prevents our representatives from doing us any injury." The more power you vest in those who are the representatives of the people, the more earnest will be the desire of the people to secure good and honest representatives; and when you do, as I believe we already have done, break down the fraudulent system of elections, and enable the honest people to determine who shall be their representatives, from that moment you can safely leave to the people themselves the power to determine who their representatives shall be, and you can vest great powers in these representatives.

Nothing can so surely bring a Constitution into contempt as to find that it has usurped the province of the Legislature, or the province of the local governments of the cities, and hedged them round with such restrictions that, in one or two years, there will be a desire to break down the Constitution, in order to prevent its trammels from entirely disabling the people's representatives. This is only a general view; it applies particularly to the Legislature, but it applies with equal force to the councils of a great city like Philadelphia, or to a city like Pittsburg, and even to the smaller municipal governments of boroughs or cities in the State.

It is very true, and we may admit it, that corruptions in local governments have induced the Legislature, for wise purposes, to vest in commissions almost the entire property of some municipal corporations. The commission is not responsible to anybody. It holds its office for a term of years, and in many cases it requires the most cumbersome machinery, in order to remove any of the commissioners. Their sessions are held in secret. There is no responsibility to the people that elects them, whereas the power, and the property, and the effects, and the public improvement of that very corporation, if they are vested in the local government of that corporation, can never be interfered with, except by public exercise of legislative power, which the whole community has a right to witness, and which the newspapers of the day spread before every voter within ten or twenty-four hours after the subject has been discussed. The power

of these commissioners, originally adopted, probably for wise purposes, will lead to the vesting of all the power of the country in the hands of an association of people who are entirely irresponsible, over whom the community has no control, whose deliberations are held in secret, and who are not responsible to any elective power whatever. I am in favor, therefore, of amending this so there shall be no doubt about the subject, and of going still farther, and making it obligatory upon the Legislature to re-vest in the local authority of every municipal corporation any power which is now exercised by any commission heretofore appointed.

The CHAIRMAN. The question is upon the amendment of the gentleman from Philadelphia (Mr. Gowen.)

Mr. MACVEAGH. Upon that I should like a division of the question. It seems to me, Mr. Chairman, that it, with all due deference to the Committee on Legislation, is more clear and distinct in its expression, and if it is so, one of the difficulties of interpretation, to which the gentleman from Philadelphia has alluded, is disposed of.

It is a difficulty that occurred to my own mind before he mentioned it, and if the impression that I received of it on its first reading is confirmed, and agrees with that of other gentlemen in the Convention, I trust it will be adopted as a substitute for the section as it now reads.

Upon the second portion of the question, if it is so divided, I think the Convention should consider well before adopting it, because it is legislative. It is destroying commissions created by the Legislature, and now existing. Not having lived in a large city, I am not of any decided opinions upon the subject, but it certainly is a subject of great gravity. It directly acts upon every act of the Legislature itself in the past creating commissions for any purpose.

Mr. GOWEN. For any *municipal* purpose.

Mr. MACVEAGH. Yes; for any municipal purpose—and vests them in the common council of the city. Some commissions exist, I believe, in this city—the park commission for instance. It may be the desire of the citizens that that should be transferred to the council; but it certainly is taking a very important step in advance of anything we have yet done. Our Constitution, up to this point, has looked wholly to the future. Now we

propose to annul a large number of laws, dealing with very important subjects, concerning vast sums of money, and it seems to me that it is a question that it concerns the Convention to consider deliberately and carefully before it commits itself to any distinctive policy upon the subject. If the representatives of Philadelphia here, and the representatives of Allegheny, desire this legislation to be erased from the statute book, I do not know that I have any special objection to it, because I am not in a condition, really, to form a very intelligent opinion upon it. I only wanted to call the attention of the Convention to the fact that now, for the first time, we turn our faces to the past, and we erase what has been done then.

MR. DARLINGTON. Mr. Chairman: I do not know that I am at all authorized to say anything on a question of this kind, for it seems chiefly to concern cities, and in the small boroughs of the State we probably have nothing to say about it. But I suppose the object of the gentlemen who represent the city of Philadelphia is to get rid of some of the commissions that have been created, and to prevent the creation of others which are liable to be created by the Legislature, from time to time. We all know that they have a park commission, which, I believe, is reasonably acceptable, and a public buildings commission, which, I believe, is reasonably odious, to them in Philadelphia. They have also had a law passed which took out of the hands of the city corporations the control of the Girard trusts. To that I, myself, never would have subscribed. I do not know how the people here may look at it, but from the public character of some of the gentlemen appointed to the management of these trusts, I very much doubt whether they have improved the trust. Now, if the object of my friend from Philadelphia (Mr. Gowen) is, by this provision of the Constitution, to prevent all these commissions in the future, whether for arts, public buildings, the management of police, or for any other purpose, I am ready to vote for it. I think they are all vicious, and the whole control of all these things should be in the hands of the city. If they fail to elect the proper officers and get into difficulty thereby, let the misfortune be upon their heads. Let them take care to elect their best men to these offices, and the thing will be properly done. Now, as to any restricting of authority, I would be very glad to see a pro-

vision introduced here which would totally and utterly annul the legislation which took out of the hands of the city the management of the Girard estate, because I think it was a violation of the trust which Mr. Girard left in the city. He intended it to be exercised by the corporation. The Supreme Court has decided it to be within the constitutional power of the Legislature, I understand, to divest it, and have taken to themselves, under that law, the authority to appoint whom they please to manage these important trusts. If the city of Philadelphia wishes these commissions destroyed, destroy them. They should have the privilege of remedying the evil, if they deem it to be an evil.

MR. J. PRICE WETHERILL. Mr. Chairman: As I understand the amendment offered by the gentleman from the city, (Mr. Gowen,) it will abrogate all existing commissions, and I do not know that I am prepared to go so far, yet I am perfectly satisfied that the only way to govern a city or town is to prevent all special legislation in reference to it, and to delegate to that city or town full and supreme power and control. Now, sir, we all know that different commissions which have been named on this floor, controlling certain of our municipal departments, are very properly administered. For instance, the park commissioners, alluded to, and a half dozen other departments that are, in a measure, indirectly under judicial control; but I would state to the gentlemen that there may be, and is, great danger in lodging so much power with the courts. The park commission, and the half dozen others which are managed by our very best citizens, and prudently, and judiciously, and economically controlled; yet the danger is, that if we give the courts so much power and patronage, in a very little while a combination may be formed, and by securing the nomination of the judge of the court, they would thereby hold the control of all the patronage under him, and it would become so powerful an instrument for evil as to overbalance the little good which the commissions do under present circumstances.

Now it seems to me that the only way this difficulty can be removed is to say to the people of all large cities: "Be supreme in the government of your own affairs." If it is necessary let no more commissions be placed in power, and if it is necessary let the present commissions be dissolved. We are able, I hope, to control and govern

ourselves and I conceive that the danger which would arise in giving the courts so much power is so great that it would be a great deal better to remove it entirely from their control, and dispense with all these commissions, and confer the power in the government of all large cities upon the mayor and the city councils. They are the proper representatives of the people. The people elect them to take care of the municipal affairs, and if the mayor and the city councils fail or prove derelict in the performance of their duties the people have the remedy in their own hands. No matter how much we may attempt to palliate these evils by placing the remedy in the hands of the courts, it does not afford the true panacea according to my judgment. It is a great mistake to load down the courts with so much power and patronage, and it seems to me we should be extremely careful, because we may create such a combination which might eventually cast a slur upon the purity of the courts themselves. I am therefore of the opinion that the amendment should be voted down. You will recollect, sir, that a year or two ago the Legislature of the State imposed upon the city of Philadelphia a commission that was wholly irresponsible, and conferred upon it such powers and privileges as to make its creation extremely dangerous. Why, sir, this commission in the city of Philadelphia was empowered to pledge the faith and credit of the city for certain amounts of money in the creation of its office without any control or supervision whatever. Now, sir, if this section is not adopted, other commissions may be imposed upon this city of a like irresponsible nature, and possessing unlimited powers in the performance of their duty, a power, in my opinion, of a most dangerous character.

Mr. SIMPSON. Mr. Chairman: One of the facts stated by the gentleman who has just taken his seat (Mr. J. P. Wetherill) will induce me to vote for the amendment offered by my colleague (Mr. Gowen) if it were for no other reason than the fact that it exists. There are commissions in this city, as the gentleman has mentioned, with unlimited power to impose any amount of debt upon the citizens of Philadelphia without their being able to utter a single word of remonstrance.

I cannot perceive that the section, as reported by the committee, will prevent the continuation of these commissions, possessed with the same unlimited power for the future, as they now are and have

been in the past. The amendment offered by my colleague (Mr. Gowen) will cut them up by the roots, destroy their existence entirely, and restore back to the people their just rights, which have been wrested from them by the Legislature. I shall vote for the amendment which has been offered by my colleague for several other reasons, but principally for the following: While I believe one at least has done well, I do not suppose that there is a gentleman within the sound of my voice but who believes if the public building commission had been selected by the people of Philadelphia, either directly or indirectly, and were responsible to our citizens, that they ever would have dared to establish a building fifty years behind the age, closing up two of our great thoroughfares, and converting them into blind alley ways. I do not suppose there is a gentleman who will deny it. I have said before, and I now repeat, that there are children now born who will live to curse the men that have ruined two magnificent avenues of our city by the erection of the public buildings upon the intersection at Broad and Market streets, by the public building commission. It is for the reason that I think this amendment will destroy these commissions and restore this power to the people, of which they have been deprived, that I shall vote in its favor.

Mr. DALLAS. Mr. Chairman: I rise for the purpose of saying that I cannot conceive that the amendment proposed by the gentleman from Philadelphia (Mr. Gowen) is so far legislative in its character that this Convention should not adopt it. There has been so much said during the progress of our sessions, not only by the gentleman from Dauphin, (Mr. MacVeagh,) but also by other distinguished gentlemen, in objection to any action by this body which, in their view, trenches upon the province of legislation, that I cannot help feeling that it is high time for some person to say that we are not sent here to perform the old-fashioned duties of a Constitutional Convention. I do not believe that we have been sent here merely to re-declare the declaration of rights, or to place into our fundamental law those general principles appertaining to the formations of a government which constituted the principle duties of our forefathers in framing the original Constitution. Those labors have been amply and judiciously performed, and I do not suppose it forms a part of the duties of this Convention to re-write the bill of rights, or to

re-enact those fundamental principles that will be found in the Constitution of 1790, and of 1838, quite as strongly and ably expressed as we could do it. We were sent here as a Convention to supply such new constitutional restrictions as experience has shown to be needed. We were sent here to correct that wherein the Constitution has been found, from its generality, to be deficient, and to provide specific remedies for specific evils.

The Committee on Legislation would never have reported this section if special legislation had not already imposed upon this city irresponsible commissions, who have undertaken to govern, and have governed, this city in all its principal and most valued interests, and it is idle to say that we will provide against the future creation of such commissions, if existing commissions are to be allowed to continue. I do not say a word against the members composing the commissions. I am acquainted with but one or two of them, and of them I could say nothing but to their credit, but I say the principle is wrong, and because the principle is wrong the result is evil.

I also object most earnestly to the suggestion which has been made, that the power of appointing these commissions should be conferred upon the courts. I hope such a suggestion will not be adopted, and that the Committee on the Judiciary will report a section that the judges of this Commonwealth shall perform none other than judicial duties. I hope that in this I will not be disappointed, and that the amendment of the gentleman from Philadelphia (Mr. Gowen) will be adopted, so that the local government of our city shall at last be placed and left where it should be, with its own citizens and their own elected representatives.

Mr. LILLY. Mr. Chairman: I do not know that I entertain any objection to the amendment offered by the gentleman from Philadelphia, (Mr. Gowen,) but I do not think it is necessary to drag into our deliberations this local fight in the city of Philadelphia, for I fear that it may jeopardize the entire work of the Convention.

Mr. DALLAS. I would like to ask the gentleman what local fight he refers to.

Mr. LILLY. The gentleman on my left (Mr. Simpson) referred to it during the course of his remarks. I do not desire to meddle with the local affairs of Philadelphia, but if I was a Philadelphian I should probably be as much interested in the question as anybody else. I can say this,

however, that I think it is simply outrageous, not only to the people of this city, but to all the people of the State, by destroying one of the finest thoroughfares in the city, by placing the public buildings at the intersection of Broad and Market streets. I consider it is a nuisance to the State at large and an eyesore to every Pennsylvanian that comes to Philadelphia. I presume the commission has spent so much money now that they are compelled to go on in the work. I do not desire, however, that this fight between that commission and this city should enter into this Constitution. This is briefly my reason for voting against the amendment offered by the gentleman from Philadelphia (Mr. Gowen.)

Mr. BIDDLE. Mr. Chairman: I feel under considerable embarrassment in regard to this question, and I may say before I discuss it, that I heartily approve of section twenty-four of the report of the committee, and shall undoubtedly vote in its favor. The question seems to be whether we should now take a prospective view only or grapple at once with both sides of the question. If I could I would prevent discussion of the question at present, but it seems inevitable that it must be met now. I am in favor of the prospective limitation or prohibition; and now as to the past, I feel as strongly impressed as any one with the enormity of delegating to commissions the right to levy taxes upon the city of Philadelphia for the erection or establishment of municipal improvements, without any responsibility whatsoever to the tax-paying portion of our community. I concur heartily in all that the delegate from Philadelphia (Mr. Simpson) has said in reference to the particular commission to which he referred; and if the effect of the amendment was to strike out that commission alone, which, so far as I know, is the only commission that has the right to levy taxes, I would vote for the amendment.

Mr. J. PRICE WETHERILL. The South street bridge commission has also the right to borrow money—\$800,000.

Mr. BIDDLE. Then it falls in the same category of vice. The law under which the right to erect that bridge was established was declared to be constitutional by a divided court; that is to say by three judges against two, the late Chief Justice Thompson and Mr. Justice Sharswood dissenting; but the commission has progressed so far in the work that it would be unwise, in an economical point of view,

to discontinue its operation. The South street bridge commission is besides limited to the sum of \$800,000, while the public building commission is entirely unlimited in its power to levy taxes.

If, therefore, this amendment could be so limited as to apply only to commissions that had the right to levy taxes, I would vote for it. But I doubt as to a great many others, and I will give my reasons. We have a park commission, which has no right to levy taxes. Their estimates must be submitted to councils—

Mr. J. PRICE WETHERILL. Will the gentleman allow me to ask him a question?

Mr. BIDDLE. Certainly. I want information.

Mr. J. PRICE WETHERILL. If the park commissioners should create a debt of ten thousand dollars, and the councils should decline to pay that money, would they not have it in their immediate power to collect it by *mandamus* in the courts?

Mr. BIDDLE. I should doubt it very much. I think those contracting with the park commissioners take the risk of the appropriation being passed. But I believe that that commission has been as well managed as a commission possibly could be. I regret very much, to-day, the absence of another delegate from Philadelphia, who is a member of the commission, (Mr. Cuyler,) and who could give us a great deal of information in detail, in regard to its management, which it is impossible for me to give. It has been, and it is now, composed of men who, for integrity, economical administration and devotion to the interests of the city, are not surpassed in the city of Philadelphia or elsewhere; and when I name the late General Meade, the Hon. Morton M'Michael, Eli K. Price, John Welsh, and men of that kind, I am sure every gentleman in the Convention will agree with me. I believe no complaint has ever been made on this score. I believe that this commission is better managed, and has been better managed, than it would have been by a committee of councils, without meaning to say anything in derogation of councils, because these men are all men of large views, great public spirit, great integrity, and most of them of very considerable leisure. Now I should be very sorry, and I will not, if I am called upon to vote to-day, vote for the amendment as it is presented, so that a commission, which I believe so valuable as this, will be struck down.

Now there are other commissions which, I presume, are also included. They have not the power of levying taxes. There is, for instance, a commission of which my friend from Philadelphia (Mr. John Price Wetherill) is himself a member, the board which manages the county prisons. I know from comparing, or rather from contrasting—for the contrast is a very sharp one—that the management of this institution by the present commission, is an enormous improvement, so far as economy and efficiency are concerned. It has brought down the expense of that institution to a minimum point. Now, this board will probably be affected. There may be many others, probably our board of local charities, in which is included the management of the Girard college, which, so far as I can recollect, numbers among its members some of our very best citizens—Henry M. Phillips, William Welsh, and men of that stamp. I cannot recollect, but possibly Judge Woodward himself may be a member of that board, but I am not certain, and he is not here to-day.

Therefore, as I said when I arose to speak on this amendment, I feel considerable embarrassment. If it was a new matter, I should probably vote for the amendment, and I intend to vote for the section. I think it is a valuable one. If it would be proper to include the building commission, which has this unlimited power of raising taxes, I would be very glad to do so, but I cannot say that I am prepared to vote for the whole amendment now. These are some of the reasons; others may suggest themselves to other gentlemen here, why I think we ought not to pass the amendment, but leave it open, and possibly we may get more information when we come to consider the report of the Committee on City and City Charters. By that time we may receive new light which will help us to come to a more definite conclusion upon this question. There are gentlemen who can give us information which we cannot get to-day because they are not here. We can vote for the section, upon which I believe we are quite concurrent in our views, and lay the other over for another day—

Mr. DARLINGTON. Will the gentleman tell us when the city members are likely to be here?

Mr. BIDDLE. I can only speak for myself.

Mr. NEWLIN. In point of fact, most of the large appropriations have been made by the city councils to pay debts contract-

ed by the park commissioners. These appropriations have been made upon the spur of the necessity, for if the councils refused to meet the necessary charges the parties from whom the park commission had purchased properties could, by mandamus, compel the payment of the required money direct out of the city treasury. So that it was better that the city councils should appropriate the money in the ordinary way. It is a notorious fact that the great bulk of the appropriations, apparently made voluntarily by the councils, have been made through the force of the provision in the act of the Assembly, whereby the commission is enabled to compel the city to sustain its contracts, and pay for the damages incurred by the taking of real estate.

Mr. KNIGHT. Mr. Chairman: My colleague from Philadelphia (Mr. Biddle) has expressed my views so fully that I do not think it necessary to state them myself, and with his permission I will endorse his remarks, which will indicate the way I shall vote.

Mr. WORRELL. Mr. Chairman: I find, in looking at the financial statistics of this city, for the past year, that there has been an appropriation of \$1,697,482 64 made by the park commissioners of this city, nearly twice as much money as was required for all the general expenses of the State of Pennsylvania. Now there have been many complaints made about this very commission. Money is expended by the commission, as many regard, in a very irresponsible and very improper way, and the funded indebtedness of this city is being increased to a large amount on account of expenditures made by this very commission. The people of Philadelphia have no power to determine just what additions are necessary to the public park. The people of Philadelphia have no means of saying whether these grounds are taken at a fair price or not, and in many instances it is supposed that the additions made to the public park are made at a cost largely in excess of that which would be charged to a private individual.

I addressed myself a few moments ago to the proposition as reported by the Committee on Legislature, but having heard the proposition from the gentleman from Philadelphia on my right (Mr. Dallas,) I think it covers the ground entirely. These commissions were never created at the wish of the people of Philadelphia. They are not responsible to the people of Philadelphia, and every commission which has

been created in that way, and which is exercising these powers which should belong to the municipality, and which the people of Philadelphia desire to be exercised by the properly constituted authorities, should be abolished. Let the people of Philadelphia, in their own way, through their legislative assembly, exercise all the municipal functions of this city.

Mr. HARRY WHITE. Mr. Chairman: I have just a word to add to what has been so well said by my friend from Philadelphia (Mr. Biddle.) I hope the committee of the whole will stand by the section, with one or two modifications, as it has been reported. It has been carefully considered before reported, and it occurs to me that the proposition of the gentleman from Philadelphia (Mr. Gowen) is so long that it may confuse the popular idea upon this subject, and may excite hostilities and controversies and antagonisms which we do not desire. It seems to me that our policy and province here is to enunciate a general principle, and then let future Legislatures predicate their conduct, as far as municipalities are concerned, upon this general policy. We want to avoid, as far as possible, all these causes of local disturbances.

I will call the attention of the committee of the whole to how it reads: "The Legislature shall not delegate to any commission of private persons." I propose, if this amendment be voted down, to strike out the words "of private persons" and add the word "special," which will make it read: "The Legislature shall not delegate to any special commission or corporation or association, any power to make, supervise or interfere with any public improvement, or to levy taxes or perform any municipal function whatever."

Now if you want to cover money and property, add the words "money or property" after the word "improvement." That seems to me wiser than to substitute a long section, such as has been proposed by the gentleman from Philadelphia (Mr. Gowen.)

The CHAIRMAN. The question is on the amendment of the gentleman from Philadelphia, (Mr. Gowen,) on which the gentleman from Dauphin (Mr. Alricks) has called a division. The first division will be read.

The CLERK read as follows:

The Legislature shall not delegate to any person, association, corporation or commission the supervision, management or control of any of the improvements,

money, property or effects of any municipal corporation, whether held in trust or otherwise, nor vest in such person, association, corporation or commission, as trustee or otherwise howsoever, the power to levy taxes or perform any municipal duties or functions whatever.

On the question of agreeing to the first division, a division was called, which resulted thirty in the affirmative.

The CHAIRMAN. Less than a majority of a quorum vote in the affirmative.

Mr. WORRELL. Mr. Chairman: I ask for a call of the House.

Mr. DALLAS. Mr. Chairman: I ask for a count of the "noes."

The CHAIRMAN. Those in the negative will rise.

The vote in the negative was thirty-five.

The CHAIRMAN. Thirty-five gentlemen voting in the affirmative, there is less than a quorum voting. The Chair will state at this point that the practice, as I have understood it and observed it in committee of the whole, is to decide a question carried by a majority, irrespective of a quorum.

Mr. HARRY WHITE. Mr. Chairman: I call the attention of the Chair to the fact that there is a quorum here.

The CHAIRMAN. The Chair will remark that, perhaps, it is a sounder parliamentary rule to hold that a quorum must vote in order to carry a question, either in committee of the whole or in the Convention, and there is no vote unless a quorum vote.

Mr. BROOMALL. Mr. Chairman: Did not a quorum vote?

The CHAIRMAN. It did not.

Mr. LAWRENCE. Mr. Chairman: I hope the Chair will take the vote again.

The CHAIRMAN. The Chair did not announce the decision, and will take the vote again.

Mr. GOWEN. Will the Chair have the division read again, so that the delegates may know that it is only the prospective part of the amendment that is being put?

Mr. MANN. Mr. Chairman: I rise to a question of order. Less than a majority of a quorum having voted for this section, it was lost.

Mr. MACVEAGH. I say so, too.

Mr. MANN. It does not make any difference how many will vote for it at the present time.

The CHAIRMAN. The Chair would sustain the point of order if it were necessary at this time, for the rulings of the committees heretofore sitting in this Conven-

tion have not been different. But the Chair, upon objection, deeming it his duty to adhere to a different parliamentary rule, will, in this instance, order a different vote to be taken, inasmuch as the vote was not announced.

Mr. W. H. SMITH. Mr. Chairman: May I ask if this amendment is to supersede the section reported by the committee?

The CHAIRMAN. The Chair will explain. The gentleman from Philadelphia (Mr. Gowen) has offered an amendment, in the nature of a substitute, upon which a division has been called, and the first division has been read.

The vote on the first division was then again taken.

On the question of agreeing to it, a division was called, resulting: Thirty-four in the affirmative, and thirty-six in the negative.

So the first division was rejected.

The CHAIRMAN. The second division will be read.

The CLERK read as follows:

"And the Legislature shall provide for vesting directly in the local authorities of every municipal corporation all such power as is heretofore referred to, which may now be exercised by any person, association, corporation or commission."

On the question of agreeing to this division, a division was called, resulting twenty-five in the affirmative. Less than a majority of a quorum voting, it was rejected.

Mr. HARRY WHITE. Mr. Chairman: I ask unanimous consent to strike out the words, "of private persons," and to insert the word "special" before the word "commission."

Unanimous consent was given, and the section was so amended.

Mr. NEWLIN. Mr. Chairman: I offer the following amendment: To add to the section as follows:

"And such powers as have heretofore been so vested are hereby abrogated, and the same shall hereafter be exercised in such manner as the city councils may, by ordinance, provide."

On the question of agreeing to the amendment, a division was called, resulting twenty in the affirmative. Less than a majority of a quorum voting, the amendment was rejected.

Mr. DODD. Mr. Chairman: How does the section read, as amended?

The CLERK read as follows:

SECTION 24. The Legislature shall not delegate to any special commission, corporation or association any power to make, supervise or interfere with any public improvement, or to levy taxes or perform any municipal function whatever.

Mr. KAINE. Mr. Chairman: I suggest to the chairman of the Committee on Legislation that he had better strike out the word "whatever" at the close of the section. It has no use there.

Mr. HARRY WHITE. It is emphatic.

Mr. GOWEN. Mr. Chairman: I am afraid that this section does not cover one of the greatest evils. It only prevents a commission interfering with a municipal improvement or prevents it from levying taxes or performing municipal functions. Now there may be, and there often is, a large amount of money or property, belonging to a corporation, held in trust for charitable purposes, which might not come within this designation of municipal improvement, or its control might not come within the designation of performing municipal functions.

I therefore move to amend, as follows:

By inserting after the word "improvement" the words "property, money or effects, whether held in trust or otherwise."

Mr. HARRY WHITE. Mr. Chairman: I have no objection to that myself. Several gentlemen who represent the large cities suggest that it be adopted without objection. I might accept the amendment, as it comports with my own idea.

The CHAIRMAN. The gentleman from Indiana cannot accept the amendment.

Mr. HARRY WHITE. Well, what I desire to say is that I concur in the amendment.

The amendment was agreed to.

Mr. DARLINGTON. Mr. Chairman: I move to amend, as follows:

To strike out the last word "whatever."

Mr. DARLINGTON. Mr. Chairman: I do not desire to discuss this question. The word has no meaning where it occurs.

On the question of agreeing to the amendment a division was called, which resulted: Eighteen in the affirmative.

Less than a majority of a quorum voting, the amendment was rejected.

Mr. D. N. WHITE. Mr. Chairman: I desire the section read with its amendment.

The CLERK read as follows:

"SECTION 24. The Legislature shall not delegate to any special commission, cor-

poration or association, any power to make, supervise or interfere with any public improvement, property, money or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal functions whatever."

The section as amended was agreed to.

THE TWENTY-THIRD SECTION RE-CONSIDERED.

Mr. BOWMAN. Mr. Chairman: If it is in order, I move to re-consider the vote by which the preceding section was adopted, for the purpose of offering an amendment. It was passed over very hastily.

The CHAIRMAN. It is competent for the gentleman to move a re-consideration.

Mr. HARRY WHITE. What for?

Mr. BOWMAN. I will suggest to the gentleman that I wish to insert into the section, after the word "obtain," the words "or pay" or, "or appropriate."

Mr. HARRY WHITE. Mr. Chairman: I hope the gentleman will not press it. That section is in the old Constitution.

Mr. BOWMAN. I know it is, and that is the very reason why I want to have it amended.

The motion to re-consider was agreed to.

The CHAIRMAN. The twenty-third section is before the House.

Mr. BOWMAN. Mr. Chairman: I move to amend, as follows:

To insert, after the word "obtain," the words "or appropriate."

Mr. BAKER. Mr. Chairman: How will the section read as amended?

The CLERK read as follows:

"SECTION 23. The Legislature shall not authorize any county, city, borough, township or incorporated district, by virtue of a vote of its citizens or otherwise, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for or to loan its credit to any corporation, association, institution, company or individual."

Mr. BOWMAN. Mr. Chairman: The reason why I offer this amendment is this: I am aware that the section is precisely as it stands in the present Constitution, article nine, section seven, but the section there does not meet what I desire should be reached. There is a question, and a very serious question, whether the councils of cities, towns and boroughs have not, under that section, the right to donate their funds. There is a bill now pending in the Legislature, which has already passed one House, by which it is proposed to pay over \$80,000 of the public

funds of the city of Corry, where I reside, to a certain firm which proposes to establish, in the city, the manufacture of engine boilers, &c. Now this constitutional objection is raised, and the ready answer is, that this giving of money is not "loaning its credit," but a simple proposition to donate this amount of money. I want to place this question beyond controversy or doubt hereafter, and I desire that this amendment be incorporated in this article.

Mr. HARRY WHITE. Mr. Chairman: I do not propose to discuss this amendment, but I hope it will not be adopted. With all due deference to my friend, the gentleman from Erie, allow me to state that this, which is a copy of the amendment of 1857, was properly designed to correct a great evil. It prohibits the loaning of credit, the piling up of debts upon municipalities for improvements. The appropriation of the funds they have on hand is not liable to abuse. That subject is under the immediate supervision of the people, and care will be taken, as it has been taken, to prevent the exercise of that power. I do not think it has ever been abused.

The amendment was agreed to.

The CHAIRMAN. The question recurs on the twenty-third section as amended, and it will be read:

The CLERK read as follows:

SECTION 23. The Legislature shall not authorize any county, city, borough, township or incorporated district, by virtue of a vote of its citizens, or otherwise, to become a stockholder in any company, association or corporation, or to obtain or appropriate money for, or to loan its credit to, any corporation, association, company or individual.

The section, as amended, was agreed to.

THE REPORT RESUMED.

The CHAIRMAN. The twenty-fifth section will be read:

The CLERK read as follows:

SECTION 25. The Legislature shall not create offices for inspecting, weighing or gauging any merchandise, produce, manufactures or commodity; this shall not, however, affect any office created or to be created to protect the public health and safety, or for supplying the public with correct standards of weights and measures.

Mr. WORRELL. Mr. Chairman: I would like to inquire of the chairman of the Committee on Legislation if this section will

abolish the office of inspector of pickled fish, that we have heard so much about lately? [Laughter.]

Mr. WHERRY. Mr. Chairman: I am not sure whether the words, "standard of weights and measures" will include quite all that it ought to include. I therefore move as an amendment:

To add the word "analysis" to the end of the section.

Mr. HARRY WHITE. Mr. Chairman: I have no objection.

The amendment was agreed to.

Mr. DARLINGTON. Mr. Chairman: I call for a division of the question upon this section, the first division to end with the word "commodity."

Mr. LILLY. Mr. Chairman: I rise to ask for light on the subject. We have been accustomed to have inspectors of several articles of manufacture and commerce, inspectors of flour, inspectors of leather, inspectors of whiskey, measurers of grain, &c. I have been taught that it is necessary to have these different inspections. We, in the country, have understood that the duties of the different inspectors were necessary, and that the public required this examination as a matter of protection. Therefore I ask the chairman of the committee why this section should strike them all out. I am not interested in the offices myself, in all or any of them, and I do not care a button about them one way or the other. But I ask for information.

Mr. ELLIS. Mr. Chairman: I can scarcely see, with the gentleman from Carbon, (Mr. Lilly,) that the section will sweep away anything. The first portion of the section provides that "the Legislature shall not create offices for inspecting, weighing or gauging any merchandise, produce, manufactures or commodity." That is one part of the section. The other is "this shall not, however, effect any office created, or to be created, to protect the public health and safety, or for supplying the public with correct standards of weights and measures and analysis." Now, although in the first provision the creation of these offices is prohibited, yet under the second the power reverts to the Legislature, and they may do all that they are forbidden to do in the first. Under the pretense that it is for the public health they can create an office for the inspection of all the provisions of the Commonwealth. Under the words "public safety" they can inspect all the machinery of the Commonwealth, inasmuch

as they may assert that if manufactured in a different way it may be injurious to the public safety, so that really the first portion of the section would be rendered entirely inoperative by the adoption of the second. I certainly am opposed to putting into the Constitution any clause, one part of which is in conflict with the other, making the section worthless.

Mr. J. PRICE WETHERILL. Mr. Chairman: I desire to say a word or two in explanation of this section, and give a reason why I think it ought to pass. I had the honor of presenting, some two or three weeks ago, a memorial from the Corn Exchange of this city, an institution representing a very large number of merchants, probably twenty-five hundred, asking for the passage of just such a section as this; for the reason that as trade now exists in the city of Philadelphia State inspections are of no value whatever. If a merchant desires to buy, if you please, one thousand barrels of flour, he goes to his broker and the broker goes to the commission merchant. The broker makes his own examination, and if he is satisfied with the price and the quality he reports both to the buyer, and the sale is closed. The State inspection is not regarded at all in the transaction. The broker does not even ask if the flour he purchased has passed the State inspection or not.

I recollect reading some time ago of a consignment sent from an interior town in two lots to two warehouses of the city of Baltimore, fortunately not in our own city. The State inspector went to the two warehouses and inspected the two lots of flour, both of the same identical quality and shipped by the same man, and put two different brands upon the two lots. He was so entirely ignorant of the quality of the flour that upon the same brand, from the same mill, of the same quality, he put one brand upon one lot and another brand upon the other. I would remind gentlemen that the merchants know very well the value of these inspections, and are satisfied that they ought to be abrogated, because trade regulations should come from trade associations.

Mr. LILLY. Mr. Chairman: If the gentleman will allow me to ask him a question. Is not the consumer of flour interested in having the inspection?

Mr. J. PRICE WETHERILL. No, sir; he never is. Mr. Chairman, in reply to the gentleman from Carbon, who knows something about the manner in which

trade is now carried on, because he is a large operator himself. He knows that in olden times trade marks were almost unknown, but to-day almost every manufacturer has his own trade mark, and he makes his manufactured article live up to that trade mark. That was the reason why the maker of a fine brand of flour in the west put four acres on the head of his barrels. Why? Because in regard to the quality of that flour he wanted to maintain a lone hand. [Laughter.] And so it is in all departments of trade. Manufactures are governed entirely by the quality, and that quality is indicated on each particular article by its own trade mark. These trade marks are known to the entire trade of the country and of Europe, and speak for themselves. They are copy-righted and no one can interfere with them. They are just as sacred to a manufacturer as any other copy-right is to its holder, and the manufacturer, knowing his reputation is always at stake, makes the quality of his article come up fully to that trade mark. Therefore State inspections are valueless.

Why, sir, it was only a little while ago, before it was very properly abolished by the Legislature, that there was appointed for the city of Philadelphia an inspector of pork and an inspector of lard. And at that time, if you went into a packer's warehouse, you could find his stencil on his barrels, and immediately below, putting on the stencil of the State inspector, and, as the cooper finishes up the empty barrels, and puts on the head, and puts on the trade mark of the firm, right below on the empty barrel he puts on the stencil of the State inspector; and then the open barrel is filled with mess pork and it goes out into the trade. Nay, more, in many of the warehouses, where pork and lard were packed, the State inspector leaves his stencil to be put on by the coopers of the firm who pack their wares, and at the end of the week he comes around, asks "how much has been sold," and when he is told makes out his bill, notes down the amount and goes away with the fees in his pocket, without having seen a barrel of it, or inspected a package.

Again, another reason why these inspectors should be discontinued is because persons inexperienced in manufactures are appointed State inspectors. Men who know nothing whatever about the articles they inspect are placed in these positions, and they are forced to leave the matter to their subordinates. So with a flour in-

spector; when wanted you find an inspector appointed, though a very excellent man in the United States Internal Revenue office, thoroughly competent to perform all the duties there, yet what can he know about inspecting flour? What does a carpenter in the city of Philadelphia know about measuring grain? And what does a physician, thoroughly posted, probably, about the astringent qualities of the tincture of bark, know about the commercial value of quercitron bark? Any one who knows anything about the trade of Philadelphia will know to whom I allude, and can make the application.

A little while ago a very prominent, and doubtless a very worthy politician, who had rendered his party good service, went to the Legislature to find a place for himself, and in looking around he found all the nice positions taken up, and he was forced probably as the only position left, to take that important position, the inspector of pickled fish. [Laughter.] Well, when he came to Philadelphia, and looked around the fish market, he found that the packers of fish in New England were smart enough to have their own inspector, and that all the fish that came to this market in that condition had that brand upon them, and on inquiry he found that it was contrary to law to put two inspection marks on one package of fish, and therefore his occupation was, in a measure, gone, as far as the pecuniary benefit to be derived from the privilege of taxing the fish dealers for his inspection was concerned. But in a very little while afterward there was offered at Harrisburg, by a delegate from this city, who desired to put a little money into the hands of the inspector of pickled fish, a bill which added to the inspection of salt fish, baskets of clams, and shallop loads of oysters. And the inspector became very *clam-orous* to have the bill passed. [Laughter.] But the idea of charging a tax for merely looking at a basket of clams, and so much per ton for examining the hold of a shallop load of oysters was so preposterous that the gentleman who offered it very wisely and prudently withdrew it, and I hope that this effort will be the last attempt to place so useless a tax upon the trade and commerce of this city to secure this. I hope the section will be adopted.

Mr. BIDDLE. Before the vote is taken, had not we better consider the propriety of leaving out the word "safety?" I am in favor of leaving the word "health" in.

What I fear is this: I want to say but a word or two on the subject. I concur heartily with what has been so well said by my colleague from Philadelphia (Mr. J. P. Wetherill.) I am opposed to the Legislature interfering between buyers and sellers to make their bargains for them. There is no more need for an inspector of flour than there is for an inspector of dry goods. I believe all these things are useless; but I am afraid that if we leave in the word "safety," we will open a very wide door, through which a great many of these appointments will be allowed to creep, because it will be argued, very plausibly, when an appointment for the inspecting, weighing or gauging some new article is urged, and the Constitutional inhibition is spoken of as preventing it, that the words "or safety" will allow the Legislature to judge whether it is a *safe* thing or not to do it.

Mr. WHERRY. I suggest to the gentleman the insertion of the word "safety" after the word "life."

Mr. BIDDLE. The words "public health" cover that, because life is included in health. I am willing that the word "health" may stand, but I do not like the word "safety."

Mr. MACVEAGH. Mr. Chairman: Is not this phraseology likely to create misunderstanding: "This, however, shall not affect any laws created or to be created." Why not strike out the word "created?"

Mr. HARRY WHITE. I am going to suggest this amendment, if the gentleman will allow me, to strike out the words "to protect," and add or insert the words: "Except for the purpose of protecting the public health and safety, or for supplying the public with correct standard weights and measures, and add "for protecting."

My friend from Philadelphia (Mr. Wetherill) has so well explained the purport of this section that I cannot add anything to what he has said. I might, however, add that it affects largely the section of the State in which I reside, and which I partly represent here, and I call the attention of gentlemen of the eastern counties to the difficulties under which a representative labors when, from time to time, he has presented to him in the Legislature a bill providing for the creation of an office of inspection in the interest of one of his constituents. I appreciate fully the difficulty which exists in matters of this kind, and the object of this section is to restrain the discretionary power of

the Legislature, and at the same time to materially relieve that body from these incessant annoyances that are constantly presented from people who want an office made with some little salary attached to it. I would strike out the words "or safety," if it was not for the fact that from the experience at Avondale, and some of those other great disasters in the mines, the mining population have demanded the creation of the office of inspector of mines, and the word "safety" is inseparably connected with that office.

Mr. LILLY. Mr. Chairman: I would like to ask the gentleman if he has examined the reports of these inspectors for several years, to know whether there has been a single life saved by them?

Mr. HARRY WHITE. Mr. Chairman: I am not prepared to say anything about that.

Mr. LILLY. Mr. Chairman: I understand the subject, and am prepared to speak on it. There has never been a single life saved by the inspection by these inspectors of mines.

Mr. HARRY WHITE. That may all be so, Mr. Chairman. My friend from Carbon is, of course, a large operator in coal, and knows more about that subject than I possibly can. But the miners themselves have demanded the passage of a bill of that kind, and it is indispensable. It seems to me that we must yield to that demand. At all events I would allow the Legislature to exercise discretion in that regard. That is the reason why the word was left in.

Mr. SIMPSON. Mr. Chairman: On the safety part of this question I want to say a word. The Legislature in 1855 passed an act creating an inspection of buildings for the city and county of Philadelphia; that is not for the protection of life and property merely, but for the saving of heads and limbs as well as life; and under this bill I am sure many lives have been saved in this community. I had been for many years before that time an active fireman in this city, and had gone day and night from my work to assist in extinguishing fires; had frequently been caught in traps myself and seen others caught also.

Mr. BIDDLE. If the gentleman from Philadelphia will allow the interruption; I do not object to the word "life" at all, and only objected to the word "safety."

Mr. SIMPSON. Mr. Chairman: There may be an injury suffered by an individual that would be more than losing

his life; he might, for instance, be made an incurable cripple.

Mr. HARRY WHITE. I was going to move to strike out the words "or safety," and insert "for the purpose of protecting life."

Mr. SIMPSON. I do not think that would be sufficient. My attention was particularly called to this subject just before I took a seat in the Legislature in 1855. I went out to a fire in the district of Richmond, in the upper part of the city, and I discovered a row of houses, fourteen in number, with but four outside brick walls to them, four inches in thickness; the division of the intermediate parts were but stud and lath partitions. The fire broke out at one end, and it swept to the other in a very few minutes. The whole row fell to the ground, barely allowing the people to escape, and two or three persons were injured before they could get out of the ruins, and may now, so far as I know, be living and suffering from the result of the injuries then received. My attention was also called to this subject by a fire in another place, in George street, between Schuylkill Sixth and Seventh, where the roofs of the houses were in one entire row. The fire broke out in the western end, and when I went with a stream to the other end to assist in extinguishing the fire, I was roasted out in very short order. That bill, providing for the appointment of building inspectors, was then drawn by myself, after an interview with a number of builders, and was presented to and passed by the Legislature. I know that it has worked very well in this city, and I know that the gentleman from Philadelphia (Mr. Biddle) would not be willing to part with it to-day.

Mr. BIDDLE. Mr. Chairman: I withdraw my amendment.

Mr. DALLAS. Mr. Chairman: I think, as the gentleman on my right (Mr. J. Price Wetherill) has said, that the Legislature has appointed an inspector for oysters and clams, as well as salt fish, there is very little use in this section, if intended to be confined to the creation of offices in the future. Though the present incumbents of these offices may die, the offices that now exist for the inspection of clams and oysters, salt fish, and the like, may remain eternally under the words of this section, which provides that the Legislature shall not create offices for inspecting, weighing, or gauging any merchandise, produce, manufactures or commodities. This shall not, however, affect any office

created or to be created to protect the public health and safety, or for supplying the public with correct standards of weights and measures. I have no amendment to offer, but simply desire to ask the chairman of the Committee on Legislation, if he will allow me, whether it is the intention to allow offices of that character to remain as they now are.

Mr. HARRY WHITE. Mr. Chairman: In reply to the inquiry of my friend from Philadelphia, I will say that it was not the desire of the committee, in reporting this section, to legislate or repeal any act, but to announce a policy. When they announce this policy, of course the Legislature can repeal these offices.

Mr. GOWEN. Mr. Chairman: It seems to me that the last clause of this section entirely emasculates the first clause, and the argument which applies to the keeping in of the first clause must apply to keeping out the remainder. Take the case of the inspection of public buildings, or the inspection of mines, both of which are proper. When you say that "the Legislature shall not create offices for inspecting, weighing, or gauging any merchandise, produce, manufactures, or commodity," you do not prohibit the appointment of the inspector of mines, nor do you prohibit the appointment of the inspector of public buildings, both of which, I am willing to admit, are necessary and important. Therefore, if there is nothing in the first clause which prohibits the appointment of the inspector of mines, or the inspector of public buildings, it seems to me that it would be improper to adopt the whole section, as reported, because the adoption of the whole section would give the power to the Legislature, by an ingenious preamble, to appoint officers directly in contravention of the suggestions contained in the first clause.

Let us suppose that the Legislature, in its wisdom, should declare that public health and safety rendered it necessary that fish should not be cooked in a particular manner, and that they should appoint an inspector of cooked fish to visit every household and examine the culinary arrangements of every kitchen. Or, that the public health and safety required that no oysters should be cooked in a particular manner. Surely if you give the Legislature the power to make an office to protect the public health and safety, it is to decide what the public health and safety require. Certainly, there is a great deal of bad cookery in the Commonwealth

of Pennsylvania. I think the public health and safety are as much endangered by bad cookery, as they are by purchasing diseased animal or decayed vegetable food, and if the public health and safety are to be consulted, you will have the Legislature appoint an officer to visit every household, to interfere with the private domestic relations of every family. There is no more tyrannical exercise of power than the appointment of these petty officers. Every professed politician, who cannot get an office in any other way, goes to Harrisburg, and endeavors to get his friends to appoint him an inspector of some commodity of known general use. It may be pickled fish, or it may be decayed clams, or it may be dough-nuts, or it may be sauer kraut, but it is something the people use, and do not want to be interfered with, and the entire object of the whole thing is simply to pension off some political hanger-on of one or the other parties. They do no good. Nobody pays any regard to their inspection. Nobody throws up a contract because their inspection is not satisfactory. Nobody buys anything because their inspection is satisfactory. But every man who buys, and every man who sells, relies upon his own judgment, and his own judgment alone, and all of these offices ought to be abolished, and, while we are about it, let us abolish them now and forever. Do not let us adopt any proviso which, upon an assumed regard for the public health or the public safety, will enable the Legislature to infest the community with these people.

But coming back to what I said at first, what I desire to call the attention of the committee of the whole to is that there is nothing in the first clause of this section which would prevent the Legislature from appointing an inspector of buildings, or an inspector of mines; by adopting the first clause alone, we accomplish all that is required, without the danger of perpetuating the inspectors of merchandise, produce, manufactures or commodities, which would follow the adoption of the entire section.

Mr. WHERRY. Mr. Chairman: Before the gentleman from Philadelphia takes his seat, I would like to ask him if it would include an inspector of dangerous oils, fluids and dangerous combinations?

Mr. GOWEN. Oh, yes; that would be included in the term "produce or commodity," unquestionably.

To conclude, I would therefore not pass this section unless you make it so strong:

First. That no such office now created shall hereafter exist; and

Second. That no alleged benefit to the public health or safety can be made use of as an argument for foisting upon the community a class of non-producers, whose only object is to make money, without any benefit to the community, whatever.

I desire to suggest to the gentleman from Indiana, whether either of the words "merchandise, produce, manufactures or commodities" would cover the case of live stock, cattle, hogs, horses or sheep. I think not. I do not think you would call live stock "merchandise, produce, manufactures" or a "commodity." I would therefore suggest an amendment by inserting, after the word "merchandise," the words, "live stock."

Mr. HARRY WHITE. That is right.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Indiana (Mr. Harry White.)

Mr. EWING. What is that amendment?

The CHAIRMAN. It will be read.

The CLERK read:

To strike out the third line to and including the word "protect," and insert in lieu thereof the words, "except for the purpose of protecting."

The section, as amended, will read:

"The Legislature shall not create offices for inspecting, weighing or gauging any merchandise, live stock, produce, manufactures or commodity, except for the purpose of protecting the public health and safety, or for supplying the public with correct standards of weights and measures."

Mr. KAINE. I did not know, sir, that there was a law in Pennsylvania that required the inspection of live stock—either horses, cattle, sheep or hogs. I know that attempts have been made in the Legislature of Pennsylvania, while the gentleman from Indiana (Mr. Harry White) has been a member of it, to pass laws of that kind, but I was not aware, nor am I aware now, that any such law exists on the statute book of this State. I understand from the discussion here that this section is intended by the gentlemen in favor of it to abolish all the existing offices of the kind named in the section. I merely want to know whether it is the opinion of those gentlemen, or of this committee, that this section will do that thing. These

offices are now existing by the acts of the Legislature of this State. This section will certainly not abolish them, and if it does not, why they must exist as long as the law stands—it may never be repealed, and I suggest to the gentlemen who favor this section that they had better put something into it that will abolish these offices at once.

Mr. DARLINGTON. That can be very readily done if the committee see fit to insert the words "or continue."

Mr. JNO. PRICE WETHERILL. I would suggest, to the gentleman from Chester (Mr. Darlington) that his colleague has prepared an amendment, which, I have no doubt, will meet the point.

Mr. DARLINGTON. Mr. Chairman: I do not propose to add anything to what has been said on this subject; but I desire to say that I entirely agree with what has been said by the gentleman from this city, over the way, (Mr. J. Price Wetherill,) and the other gentleman from Philadelphia, (Mr. Gowen,) that the thing desired, if anything, is the total abolition of these offices; and what I want to observe is that the latter part, the last three lines, of this section, seem to me to be entirely unnecessary for any purpose for which they are intended: "This shall not, however, affect any office created or to be created to protect the public health and safety, or for supplying the public with correct standards of weights and measures." We have a standard of weights and measures, I am aware, at the seat of government, and they are furnished to the county. We have an officer in every county, appointed from time to time by the Executive, called the sealer of weights and measures, a very useful officer. He is enabled to go into our markets and see that the weights and measures are of the proper standard. He is an officer like clerk of the market in the city of Philadelphia or any other city, to occasionally go through the market and see that the weights and measures of the butter and other things that are there are correct, and thus protecting the purchaser, but that requires no constitutional provision. It does not affect the public health. There is no general law about supplying the public with correct standards of weights and measures, nor do we mean to interfere with the standard of weights and measures that exist in every county in the Commonwealth, nor with the sealer of weights and measures, who may be appointed by the Governor, as

heretofore, in accordance with law. I think, therefore, that the best plan would be to adopt the two first lines and reject the balance.

Mr. GOWEN. Mr. Chairman: I move to amend the amendment, and I trust that the gentleman from Chester (Mr. Darlington) will agree that this will be voted on before the division is called for, to insert after the word "commodity," in the second line, the words, "and all such offices are hereby abolished."

Mr. DARLINGTON. That is what is wanted.

Mr. J. W. F. WHITE. Mr. Chairman: I hope that that amendment will not prevail. I presume they have here in this city—if they have not we have in Pittsburgh—an inspector of meat, a very useful and very important officer for the public health. That officer will be stricken down by the amendment just now offered—the inspector of meat.

Mr. MACVEAGH. And the inspector of petroleum.

Mr. J. W. F. WHITE. I apprehend that if that section were modified as proposed that office could not be created, or would not be allowed to continue.

Mr. WHERRY. Mr. Chairman: I suggest that that is a municipal office, and I would ask whether he is not appointed by the city authorities?

Mr. J. W. F. WHITE. Well, when we say that the *Legislature* shall not create, we mean that they shall not create directly or indirectly. ["No! No!"] Why, certainly, and you have prohibited all special legislation on these matters. When we say *they* shall not create an office of that kind, they certainly cannot authorize the *city* to create that office, because the city cannot create any office except what they are authorized to create by the Legislature. I cannot, for the life of me, perceive how you are to prohibit the Legislature from conferring a power, and then say that the city shall exercise that power. When you, by a particular section of this kind, expressly say that the Legislature shall *not* create an office, it does not say by special act, but broadly, the Legislature shall *not* have power to create such an office, yet say that a *city* shall create such an office. I cannot conceive that that will stand the test of our courts. If it is modified in that way it might do, but when you have a broad section such as that would be, if this amendment were adopted, it *will* apply to cities, and prevent

them from creating, and prevent the Legislature from authorizing them to create such an office, I hope the amendment in its present shape will not be adopted.

Mr. WM. H. SMITH. Mr. Chairman: The inspector of meats in our city is a municipal officer, elected by the county. There is nothing in here to prevent a county from electing such an officer. But I suppose that this will apply to the office of sealer of weights and measures in our city, and abolish it. That is an office that is wholly useless; it is of no service whatever, and is nothing but a tax upon the merchants doing business there. It authorizes a man who has no acquaintance whatever with scales or weights, or materials for weighing, to make an inspection twice a year, and get his fees for it. It is of no use to the people, and is a tax upon every man who has scales in his house. I do not know that that office is abolished by this section; but I know it is an abuse, and I would like to have a word from the chairman of this committee as to whether the section would apply to such municipal offices as that and abolish them. I mean such officer as that of the sealer of weights and measures. It is of no practical use whatever, and is merely a sinecure enjoyed by people who are not fit to attend to it.

Mr. MACVEAGH. Mr. Chairman: As I understand the distinction intended to be drawn by the committee which has made this report, it is that there are two classes of inspectorships now recognized by the law of this State in its legislation. One is a class of inspectorships to protect the public health and safety, that is, to prevent diseased meats, and I suppose to prevent improper and unsafe petroleum, and to prevent unsafe buildings, and unsafe mines; in other words, matters which affect the public health and public safety and which affect cheating, as by false weights and false measures. These inspectorships are preserved to the Legislature; that is, the power of creating them, in their wisdom, is left with them. There is another class of inspectorships contemplated by the section which does not affect the public health or safety, but which, in some antecedent time, has been supposed to furnish a standard for the buyer in the market, and it is intended to say that for the future no such inspectorships shall be created. That seems to be an entirely intelligible distinction, and which I am certainly quite willing to adopt.

Mr. ELLIS. Mr. Chairman; I would like to ask the third class to which the gentleman (Mr. MacVeagh) referred.

Mr. MACVEAGH. I said the inspectorship of weights and measures and the protection from cheating.

Mr. ELLIS. Those are the first and second. What is the third?

Mr. MACVEAGH. The third is a class of inspectorships, I infer from what one of the gentlemen from Philadelphia said, to give currency to articles of merchandise, simply to fix the relative grade and rank of these commodities. The merchants here say that these no longer serve their purpose, but have merely served the purpose of a house of refuge for needy politicians. I know nothing about that. I do not even know what is allowed by law; but these distinctions seem to me to be broad enough between the two classes. I suppose, if that is so, the Convention will be ready enough to see the distinction. But unless I did know what the effect of the repeal of the law would be I would not vote for it. I would hesitate before repealing legislation *en bloc* in this matter. Such a clause as that would require a controversy as to particular offices, and the controversy would be whether it was an office called for by the public health and safety or not. We should endeavor to so fix the section that it would end all confusion of that kind and all controversy.

Mr. SAMUEL A. PURVIANCE. Mr. Chairman: It strikes me we are carrying this prohibition a little too far. I cannot see the necessity of this section at all. I think, sir, that no abuse has arisen from these appointments by the Legislature of certain officers of this kind. However it may work in the city of Philadelphia, I believe my colleagues will all join me in saying that, so far as regards the city of Pittsburg and the county of Allegheny, the system has worked well. There has been no complaint about it; and, sir, to pass this section in its present shape would give rise to very considerable doubt as to its legal construction. Our courts would be called upon to determine what was for the public safety and for the public health. Why leave a question like this open to be determined by our courts? What is the inspectorship of flour? Does not that inspectorship relate to the public health and safety? Certainly it does; and no gentleman will say that it does not. Of course, then, it becomes a matter for judicial interpretation. What does an in-

spectorship of beef amount to? The gentleman from Indiana (Mr. Harry White) goes for the direct exclusion of beef inspectors. I consider that so far as Allegheny is concerned, having a population of nearly three hundred thousand, it is a matter of the greatest importance to them that their beef should at all times be inspected.

Mr. HARRY WHITE. Mr. Chairman: Allow me to state to the gentleman that I said I was opposed to the proposition for inspecting cattle yards—inspecting live stock.

Mr. S. A. PURVIANCE. Mr. Chairman: I know there are occasions when butchers of, perhaps, poor repute will go into a cattle yard, and there, perhaps, purchase a beef that has died from exhaustion, or from ill treatment, while on its way from the prairies to Pittsburg. When you require that all these things shall not be inspected, that is saying to the public that neither flour nor beef should be inspected. We have, also, in Western Pennsylvania, not confined to Pittsburg as a city—not within the municipal control—inspections of oil, and what are they? They are vastly important to the community for the purpose of preventing men from being defrauded of their rights. It is known that certain grades of petroleum are explosive and dangerous at a certain temperature, and sales are sometimes made of petroleum of that grade or that character. It is advisable to have persons for "inspectors of oil" who are skilled in the knowledge of this commodity, and who are able to deter, mine its quality and character; for suppose a case occurs where an investigation is desired as to damage resulting from such oil, these inspectors would be essential in order to fix the blame where it belongs. They have inspectors of oil at Oil City, and at other places, and outside of the control of any municipality whatever.

Mr. BAER. Mr. Chairman: I move that the committee now rise.

It was not agreed to.

Mr. HEMPHILL. Mr. Chairman: Believing that the municipal authorities have all the power necessary to create boards of inspection, for the inspection of such articles as may endanger the public health or safety of the citizens of the municipality—

Mr. STANTON. There is no power in the city except what comes from the Legislature.

Mr. HEMPHILL. They will be able to get it under general laws. I think,

sir, that such being the case, or that it could readily be made so by a general provision of the Legislature, applying to all cities alike, giving them the power to employ such officers for the health and safety of its citizens, I think the exception should be confined solely to an officer for supplying a correct standard of weights and measures, and I therefore offer the following, as a substitute, for insertion.

The CHAIRMAN. Does the gentleman (Mr. Hemphill) offer this as an amendment?

Mr. HEMPHILL. Yes, sir; as a substitute.

The CHAIRMAN. It may be read for information at this time; but it cannot be received, as there is an amendment to an amendment now pending.

The CLERK read:

"All offices for the weighing, gauging, measuring, culling or inspecting of merchandise, produce, manufacture or commodity whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained shall affect the supplying of the public with correct standards of weights and measures."

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Philadelphia (Mr. Gowen.)

Mr. MINOR. Mr. Chairman: This section and the amendments will affect my own portion of the State very largely. I am free to say that abuses have been introduced in the Legislature, by way of special bills, that bore very hard indeed upon us, and we regard it as an almost unmitigated evil; yet I do not think that *that* is a sufficient reason for taking away all power as to the appointment of proper inspectors in cases where protection might be required. The benefits of such inspections as are necessary to be here provided for should not be confined to cities, but should extend to the country districts as well.

There are officers, such as inspectors of oil, inspectors of steam boilers and other inspectors, the greater portion of whom are entirely outside of cities, and must be governed by general acts and action, if they are to be governed at all. I think this section in its limitations goes too far entirely. I subscribe to the doctrine of the gentleman from Dauphin, (Mr. MacVeagh,) that if we make any restriction let us make it in this section, but to undertake to do away with all these officers

at a sweep would be to leave ourselves powerless against what may be a very serious evil. We are taking a leap in the dark. Let us not relieve ourselves of one grievance and then have occasion to grieve over another. Let the power be in the Legislature. We have been imposed upon, perhaps, more than any portion of the State by special bills, yet I am not in favor of taking away all power from the Legislature. Either vote down the section and leave the Legislature to act freely or leave it as it stands.

Mr. LANDIS. Mr. Chairman: The section as proposed to be adopted reads:

"The Legislature shall not create offices for the inspecting, weighing or gauging of any merchandise, live stock, produce, manufacture or commodity, except for the purpose of protecting public health and safety."

If it is desired to affect the public health and safety, does it not then follow that the Legislature *shall* appoint inspectors for inspecting and weighing merchandise, &c.? The very desire of the Committee on Legislation is defeated by the section as it now stands.

Mr. MACVEAGH. Mr. Chairman: I understand the distinction of the Committee on Legislation to be this: Suppose a cattle disease breaks out that requires a skilled inspector to ascertain whether the cattle or the meat is diseased; or, suppose the pork becomes diseased with *trichinæ spiralis*, and it requires the services of an expert to save the public health, then the committee leave it to the Legislature to appoint an officer of that kind.

Mr. LANDIS. If that is so then the whole measure is unnecessary, and we had better vote it down.

Mr. BREBE. Mr. Chairman: I offer this amendment —

The CHAIRMAN. An amendment cannot now be received.

The question is on the amendment to the amendment proposed by the gentleman from Philadelphia, (Mr. Gowen,) to insert, after the word "commodity," these words, "and all such offices are hereby abolished."

Mr. DODD. Mr. Chairman: It is so near the hour of adjournment that I do not wish to take up the time of the committee, but I hope that the vote will not be taken on this to-day. My mind is somewhat unsettled in regard to it. It strikes me that it is an important matter, and there certainly is a misunderstanding about it. For instance, my friend from

Allegheny (Mr. J. W. F. White) asked the question whether the municipal authorities could create an office, provided it is not left to the Legislature. Certainly not. A municipal government is the creature of the Legislature. Whatever is prohibited to the Legislature is prohibited to the counties and cities. If we prohibit the Legislature from creating these offices no city or county could create them. The law is clearly laid down in "Cooley on Constitutional Limitations," which I have on my desk, and any gentleman who reads it will see that municipalities created by the Legislature cannot have a power which the Legislature itself has not got. Now, are we ready to give up these offices and say that we are not going to have any inspection of anything? I think the section, as it is before us, meets the case. They have all the power that they want under the general police regulations of the State for the general safety

of the community. I am not certain but what we had better leave it there as it is, and not encumber the Constitution with details.

Mr. ELLIS. Mr. Chairman: I move that the committee do now rise, report progress and ask leave to sit again.

It was agreed to. So the committee rose.

IN CONVENTION.

Mr. ARMSTRONG. Mr. President: The committee of the whole have had under consideration the articles submitted by the Committee on Legislation, and have directed me to report progress and ask leave to sit again.

Leave was granted the committee to sit to-morrow-

Mr. RUSSELL. Mr. President: I move that the Convention do now adjourn.

It was agreed to.

The Convention then, at two o'clock and forty-five minutes, adjourned.

SIXTY-NINTH DAY.

TUESDAY, March 18, 1873.

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith, in the Chair.

The Journal of yesterday was read and approved.

PROHIBITION.

Mr. H. W. PALMER presented a petition from citizens of Luzerne county, praying for the insertion in the Constitution of a provision prohibitory of the sale of intoxicating liquors as a beverage, which was referred to the Committee on Legislation.

Mr. FULTON presented a petition from citizens of Westmoreland county, praying for the insertion of a similar provision in the Constitution, which was referred to the Committee on Legislation.

PRINTING REPORTS OF COMMITTEES.

Mr. MACVEAGH presented the following resolution, which was twice read :

Resolved, That all the standing committees of this Convention be requested to present their reports in time, that the same may be printed before the adjournment of the Convention on the twenty-eight instant.

Mr. MACVEAGH. I move to amend the resolution, by inserting the words, "excepting the Committees on Schedule and Revision and Adjustment."

Mr. BOWMAN. I move to amend the amendment, by excepting also the Committee on Constitutional Sanctions.

Mr. MACVEAGH. Mr. Chairman: I do not think it is desirable to accept this modification of the resolution, unless some reason can be shown for its necessity. The object of this resolution is that these reports of the standing committees shall all be printed, in order that we may be able to take them home when the Convention takes a recess, excepting those committees which cannot report until the final work of the Convention is completed.

Mr. BOWMAN. Mr. Chairman: The Committee on Constitutional Sanctions have not made their report as yet, and I do not think they will be able to report in time to comply with the requirements

of the resolution. I hope, therefore, the amendment to the amendment will be adopted.

The question being taken, the amendment to the amendment was not agreed to.

The question being taken on the amendment, it was agreed to.

The question then recurred on the resolution, and it was agreed to.

Mr. J. M. WETHERILL offered the following resolution, which was twice read :

Resolved, That the Committee on Printing be directed to have printed a sufficient number of the reports of the committees, that each person and member of the Convention may be furnished with three copies.

Mr. KAINE. Mr. Chairman; It has not been long since a resolution was passed by the Convention, requiring three hundred copies of the reports of the various committees to be printed for the use of the members. I apprehend that this is a sufficient number.

Mr. J. M. WETHERILL. Mr. Chairman: I desire to remark that sometime ago made an application to the Sergeant-at-Arms for additional copies of some bills which had been printed, and I was informed that they had all been distributed. I think, especially as the Convention will adjourn in a short time, that a sufficient number of the reports of the committee should be printed in order to furnish all the members with copies. They are not only useful for reference for ourselves, but for distribution among our friends. I hope, therefore, that the resolution will pass.

The question being taken, the resolution was not agreed to.

THE ORDER OF BUSINESS.

The CHAIRMAN. The Chair will state that if it is the desire of the Convention to proceed to the consideration of the report of the Committee on Legislation, a motion will be necessary. The Chair mentions this fact because the orders of the Convention have become so numerous that the time of the Convention is un-

necessarily consumed in reading them over.

Mr. HANNA. I move that the Convention resolved itself in committee of the whole, and proceed to the consideration of the article reported by the Committee on Legislation.

THE ARTICLE ON LEGISLATION.

The Convention then resolved itself into committee of the whole on the article reported by the Committee on Legislation, Mr. Armstrong in the chair.

STATE OFFICES.

The CHAIRMAN. The twenty-fifth section is before the Convention. It will be read by the Clerk.

The CLERK read as follows:

SECTION 25. The Legislature shall not create offices for inspecting, weighing or gauging any merchandise, live stock, produce, manufactures or commodity; this shall not, however, effect any office created or to be created to protect the public health and safety, or for supplying the public with correct standards of weights and measures.

The CHAIRMAN. A motion has been made by the gentleman from Indiana (Mr. Harry White) to amend the section, by striking out the words "to protect," and inserting the words, "except for the purpose of protecting." The gentleman from Philadelphia (Mr. Gowen) has offered an amendment to this amendment, by inserting after the word "commodity," in the first sentence, the words, "and all such offices are hereby abolished." The question is upon the amendment to the amendment.

Mr. HARRY WHITE. Mr. Chairman: I withdraw the amendment I have offered.

The CHAIRMAN. Gentlemen will suspend remarks until the Chair ascertains the precise question. The gentleman from Indiana withdraws his amendment to the amendment, and the amendment will fall with it.

Mr. HARRY WHITE. Mr. Chairman: I now move to add the words, "live stock."

The CHAIRMAN. That was accepted.

Mr. GUTHRIE. Mr. Chairman: I offer the following substitute for the section.

Mr. LILLY. Mr. Chairman: I desire to ask a question. Is it competent for the chairman of the Committee on Legislation to accept the amendment offered in the House?

The CHAIRMAN. The amendment was not accepted by the gentleman from In-

diana. It was proposed by him, and accepted by the House.

Mr. STANTON. Mr. Chairman: Has the gentleman from Indiana withdrawn his amendment?

The CHAIRMAN. He has. The question is upon the substitute offered by the gentleman from Allegheny, (Mr. Guthrie,) which will be read.

The CLERK read as follows: The gentleman from Allegheny (Mr. Guthrie) moves to strike out the section, and insert as follows:

"The Legislature shall not create any office for inspecting, weighing or gauging any merchandise, produce or manufactures, except such offices of inspection as may be necessary to protect the public health and safety, and to furnish correct standards of weights and measures."

Mr. S. A. PURVIANCE. Mr. Chairman: I move to amend as follows: To insert the words "live stock."

The CHAIRMAN. Will the gentleman from Allegheny indicate at what point?

Mr. GUTHRIE. Mr. Chairman: If the gentleman from Allegheny proposes to add "live stock" in the exception, I am willing to modify my substitute, so as to prohibit it. But I am not willing to accept as an amendment a law authorizing the State to appoint such inspectors.

Mr. S. A. PURVIANCE. Mr. Chairman: I want the words added, so as to keep them in the inspection.

The CHAIRMAN. The substitute, as amended, will be read.

The CLERK read as follows: It is moved to insert the words, "including the inspection of live stock," after the word "inspection." The substitute, as amended, will read as follows:

"The Legislature shall not create any office for the inspection, weighing or gauging of any merchandise, produce or manufactures, except such offices for inspection, including the inspection of live stock, as may be necessary to protect the public health and safety, and to furnish correct standards of weights and measures."

Mr. HARRY WHITE. Mr. Chairman: I have but one observation to add to what was said on the subject yesterday. I have no particular objection to the amendment or substitute offered by the gentleman from Allegheny (Mr. Guthrie) for the original section. Delegates will observe it is the same in effect with the section as reported by the Committee on Legislation.

That section says:

"The Legislature shall not create offices for inspecting, weighing or gauging any merchandise, produce, manufactures or commodity; this shall not, however, effect any office created or to be created to protect the public health and safety, or for supplying the public with correct standards of weights and measures and analysis."

That is the original section. The substitute offered by the gentleman from Allegheny includes the first part of the section, striking out the latter part, and adding the words, "except such officers of inspection as may be necessary to protect the public health and safety, and furnish correct standards of weights and measures."

Now that is but another way of expressing what is already expressed in the original section. I am not tenacious about it, but it occurred to me that that had better be retained in the original section; certainly if the gentleman from Allegheny (Mr. S. A. Purviance) is going to press his amendment, including live stock, I am opposed entirely, and in toto, to that inspection. That is one of the grievous evils of the times.

Now what is the purpose of this section? I admit that it is somewhat difficult to keep in mind the exact distinctions that are here proposed. There is an exception here in behalf of such offices of inspection as are necessary to protect the public health and safety. Some exception of that kind is indispensable. What is fully aimed at has been explained by the earnest gentleman upon my left, (Mr. John Price Wetherill,) who so eloquently reviewed the abuse on this subject in the city of Philadelphia. The Legislature yearly is tormented to create special offices of inspection for the obligation of this man or that man, and after the office has been created it is found to be a mere bagatelle. Then members of the Legislature are importuned to increase the perquisites so that it will be a paying office. The object of this section is to lay the axe to the root of this evil and make it impossible hereafter to create any offices of a commercial character simply to provide a place for an importunate politician.

It is said that we must have inspectors of diseased meats; well, that is under the regulation of the municipalities and is all right and proper. It is said that we must have inspectors of mines. That is for the protection of the public life and the safety of human lives, and that we cannot avoid.

But what we want to aim at is the creation of these offices for inspecting simply commercial commodities, or in order to give somebody an office. We have a bank inspector, a leather inspector; who can say for a moment that that is necessary for the protection of the public life or safety? Or who would say that the inspection of certain articles of dry goods, that the ingenuity of some office seeker may conceive proper to give him a place—would promote the general health?

It will be, therefore, apparent to every gentleman of this Convention, that the direct effect of this section will be to give the Legislature a rock to stand upon, so that when it is proposed to create these offices for the benefit of certain individuals, unless it can be plainly indicated that the offices are absolutely necessary for the protection of the public health or safety, the Legislature may defeat the bill, or it may be vetoed by the Executive. It is an assistance to the Legislature in preventing this abuse.

Mr. LEAR. Mr. Chairman: From the start, this section has been a mystery to me, and it is getting no clearer under the discussion. I confess that when I read that section, and after I had heard it discussed yesterday, I turned to the Convention Manual to ascertain the names of the members of this Committee upon Legislation. I knew the intelligent chairman of that committee, and that he was a gentleman of great ability and many accomplishments. But I knew, at the same time, that his legislative and constitutional making capacity was distributed between the State Senate and this body; and that by the performance of this dual duty, it was stretched out to an attenuated condition, by which it was scarcely able to bear the ponderous pressure of its own weight. But when I examined the names of the other members of this committee in connection with this subject, I made up my mind that this section was a huge joke. They ought not to undertake to palm off upon this Convention a joke of this kind. Some of us country men, who come from the rural districts, ought not to be taken advantage of in this way, by having our inexperience imposed upon by a section proposed to be put into the Constitution of this State to abolish inspections except for particular purposes, when it must be apparent that it is not in our power to do that which is proposed here.

Now this is a provision in restraint of the powers of the Legislature. The legis-

lative power, as we say, and as we have always said, of the State of Pennsylvania, is in a general assembly. That is the people's body. The Legislature of the State represents the sovereign will of the people, and every provision that we put in our Constitution to circumscribe the power of the General Assembly is a restraint upon the personal and political freedom of the people of Pennsylvania.

When we undertake to restrain the legislative power by constitutional inhibitions, we should do it in such a manner as to make it become practical. I know nothing, by experience, as about fifty of the members of the Convention do, how an act of the Assembly is made. I never was present at its birth, nor witnessed the travail of that body; nor was I ever at the act, nor present in the hour of its parturition, but I have assisted as dry nurse of many of the legislative births, in the shape of statutes, which we have been for twenty years aiding and strengthening, until these imbecile and infantile creations which have been sent forth and cast abroad upon the community, until they have become strong enough to walk alone, or, in other words, so that the people of the State could understand, by judicial decisions, what they meant.

But we suppose that when the Legislature is about to pass a law, a bill is presented by some member who thinks he knows of some special grievance. It is passed through the two Houses and goes to the Governor for his inspection and approval or rejection. The Governor, if it becomes a question as to whether it is constitutional or not, calls in the aid of his Attorney General, and in doing so, if under this section some gentleman has provided for the creation of some inspector, he will ascertain, in the first place, whether that inspection comes within any of the exceptions provided in this section. What are those exceptions? This shall "not affect any office created, or to be created, to protect the public health and safety." Well, then the Attorney General must be a man of science, and he must have a laboratory in his office, because he is not to determine the constitutionality of the act by any of the constitutional tests that are applied to it, but he is to determine by some test involving matter of fact and, probably, scientific inquiry. An inspector is created to inspect some villainous compound that has been manufactured for the purpose of giving light to the people, and it must be analysed. In

this instance you will have the spectacle of the Attorney General of the State, with his chemicals and his compounds, his weights and his scales, determining the constituents and ingredients of an article that is proposed to be inspected, and if he fails in that, as he will most probably, he must secure outside assistance, and obtain information from practice and experience.

I once heard of a physician who attempted to institute a new theory of medicine, and establish a system of therapeutics, and he started out to establish the soundness of his practice of medicine upon the inductive system. His grand specific for all diseases was roast beef and brandy. The first patient he had was a burly butcher, who had been attacked with a furious fever, and he administered his remedy, and the butcher got well. He immediately entered upon his diary, "roast beef and brandy cure a butcher." His next patient was a tailor, with the same disease, to whom he administered the same remedy, but the tailor died, and he then entered upon his diary, "but kill a tailor;" and if the Attorney General, in ascertaining whether roast beef and brandy were dangerous to the public health and safety, should inspect the diary of this man who had undertaken to establish his theory by the inductive method, he would be thrown into uncertainty, and would receive no light from his experience. If he could not ascertain in that manner the dangerous qualities of an article, he could consult the opinions of men of learning in their particular departments. For instance, there is the opinion, which was delivered in the Supreme Court of Pennsylvania yesterday, by the present chief justice, who has determined, not judicially, because it happens to be a dissenting opinion, that Schuylkill water, mixed with Knickerbocker ice, is dangerous to the health of the people, and that the guests of the centennial exhibition in 1876 will have their health injured by the use of Schuylkill water, seasoned with Knickerbocker ice. Then there will come up a bill for an office for the inspection of Schuylkill water, and the Legislature will give the opinion of the Chief Justice in evidence before the Attorney General, to prove the necessity of having this water inspected.

Some enterprising member from the city, Samuel Josephs, for instance, or William Elliott, will get up a bill and have it passed through the Legislature,

to provide for the inspection of bricks in the city of Philadelphia, and it will be submitted to the Attorney General to know whether that is prohibited by this constitutional provision. It will be said that bricks are not detrimental to the public safety. Ah! but says this solon from Philadelphia, we recently had a case in which one of the most valued citizens, in passing along the street, under the careless management of a hod carrier, had a hodfull of bricks tumbled upon him, which crushed him to death, and therefore bricks are dangerous to the public safety, and there must be an inspector of bricks.

Take a case from the smoke-enveloped city of Pittsburg. A citizen, passing along the street, drops dead on the sidewalk. A coroner's jury is summoned, and they bring in a verdict that he died of asphyxia; strangled with smoke. An intelligent member from that district rises in his seat in the House of Representatives, or the Senate of the State, and proposes that there shall be an inspector of smoke for the city of Pittsburg. I say that this whole section will end in smoke. There is nothing, not even flour itself, that cannot be used by ingenious politicians to defeat the constitutional provision. It is said that an old pastor said to his repentant and dying parishioner, quoting from the great Book, "man cannot live by bread alone." "No," said the dying man, thinking of the words of the text, "and I have just sent for a bottle of old Bourbon." Bread seems to be dangerous; man cannot live by that alone, and there will have to be inspectors of flour.

The gentleman from Indiana (Mr. White) says, how does leather affect the health of the people, and how can they get an inspector of leather under this section. The very fact that it is porous and insufficient against the dampness of the snow and the cold of the winter weather, and colds are taken, and pulmonary consumption results therefrom, and thus it is dangerous to the public safety, and there ought to be a leather inspector. If you can find anything by which the public safety is not endangered, by which ingenious politicians cannot create offices for their constituents, I am at a loss to see it. It has been judicially determined, by the present chief justice, that ale is a wholesome beverage, and it will, no doubt, be put in the syllabus of that opinion; but a cask of ale may roll over a man and

crush him to death, and therefore it is dangerous to the public safety.

What I propose to show by this course of argument is that this is entirely too loose, and that we are undertaking to prohibit that which is not subject to prohibition, which is not of the character which we can prohibit, and because some people have been wronged by the inspectors of the city of Philadelphia, it does not follow that we should take away this great arm of the people for the purpose of protecting them against the machinations of men who would make money out of the health and safety of the people of the State of Pennsylvania. There are villainous compounds and vile substances mixed together, which, in their use, will poison the people. There is no doubt about the propriety, I suppose, of whiskey inspection, as long as we have whiskey. We have a case in point in our own county, where a man, within a month past, after taking a drink at a bar, fell and never rose again. It happened that he took a drink when the fluid had been reduced to nearly the bottom of the bottle, which had been shaken up a little, and the compounds which had settled there were too much for his physical constitution.

When we find these evils which we wish to remedy, do not let us go to the other extreme, but let us keep a fair mean between the two, for remember the rule of the Jehu tribe is, "*Medio tutissimus ibis*," and let us pursue that middle course in our action in this Convention, and see that we do not bring ourselves into ridicule by undertaking to legislate upon these subjects, which properly belong to the Legislature of the State of Pennsylvania, and which we can never remedy. It is out of the question; it is beyond our power to provide for what may be in future, for what may occur, for what may be invented, and for what may be discovered. It is out of our power to say that we shall never require inspectors for the purpose of keeping people from being cheated, as well as for the preservation of their health and their personal safety, by the inventions of men who desire to make money at the risk of the health and the strength, the life and the happiness of the people, as well as by imposing upon them with such things as they should be protected against, in the name, and possessing the appearance, of those articles which are generally deemed useful to the public.

The CHAIRMAN. The question is upon the amendment of the gentleman from Allegheny (Mr. S. A. Purviance) to the amendment proposed by the gentleman from Allegheny (Mr. Guthrie.) The amendment to the amendment will be read.

The CLERK read :

Insert after "manufacturers" the words, "including the inspection of live stock."

The amendment to the amendment was rejected.

The CHAIRMAN. The question is upon the amendment proposed by the gentlemen from Allegheny (Mr. Guthrie.) It will be read.

The CLERK read :

Strike out the section, and insert, "the Legislature shall not create any office for inspecting, gauging, or weighing merchandise, produce, or manufactures, except such offices for inspection as may be necessary to protect the public health and safety, and to furnish correct standards of weight and measures."

Mr. BROOMALL. I move to insert after the word "produce," the words live stock."

The motion was not agreed to, there being, upon a division, twenty-eight in the affirmative, not a majority of the quorum.

Mr. W. H. SMITH. Mr. Chairman: I offer the following amendment:

The CLERK read :

Strike out the section, and insert: "The Legislature shall direct the Secretary of Internal Affairs to prepare a system of weights, measures and gauges, for solid and liquid merchandise, and also the requisite implements, tests and instructions; and complements of these shall be furnished to each county or municipality, which may each for itself appoint offices for inspection of merchandise, manufactures, or live stock, but no State offices shall be formed for such purposes."

The amendment was not agreed to.

The CHAIRMAN. The question is upon the amendment of the gentleman from Allegheny (Mr. Guthrie.)

Mr. LILLY. I move to strike out the exception.

The CHAIRMAN. The Clerk will read the portion proposed to be struck out.

The CLERK read :

"Except for such offices, for inspection, as may be necessary to protect the public health and safety."

Mr. LILLY. Mr. Chairman: I agree with all that has been said by the gentleman from Bucks (Mr. Lear) upon this

subject. The reason why I make this motion is that I believe it will be leaving the doors too wide open. If the section is adopted with the exception, you might as well adopt no provision in reference to the subject at all. I am not so particular about this, but I merely make the motion for the purpose of calling the attention of the committee to the subject. If we can do away with these inspectors, it would be well enough, but if we have them at all, let there be no doubt about it. Let us fix it so that there will be no ambiguity about it, so that there will be no chance whatever for the Legislature to get around it, because I can tell this Convention from past experience, and most of the members will bear me out in what I say, that if there is any possible way of getting around it, if there is a place that you could put a pin into, they will very soon make it into a hole big enough to hold an inspector, and they will appoint all the inspectors they want. If we *do not want* these inspectors, and, as I said before, I am perfectly willing to dispense with them, we should get rid of them absolutely and perfectly; not hold out hope of a reform that will be entirely delusive. I am for and want absolute prohibition of unnecessary inspections.

Mr. MACVEAGH. Mr. Chairman: I wish to call the attention of the committee to the great danger of going too far in this matter. If we propose to go so far as this amendment invites us to go, I ask whether it is not better to insert a clause at once, that there shall be no legislative branch of the government at all in Pennsylvania. That would protect us entirely, and there is no other way of affording the full protection that some gentlemen seem to desire. It is not necessary to close our eyes to the corruptions that have existed in our own State, and in almost all American States, and, for one, I do not propose to do so; but on the other hand, I utterly scout the idea that I am sent here to regard the future Legislatures, or the present Legislature of this State, as a nest of rogues, simply, who are endeavoring, somehow, to outwit the honest and worthy men gathered here. I am not acting on any such principle. I recognize, to the fullest extent, that there has been corruption in our State Legislature, and so much corruption that the result also is often corrupt, and legislation for private advantages is bought and sold. Are we, therefore, to have no Legislature at all? To tell me that you cannot trust your legislative

department with deciding whether a necessity exists for some inspection or not, in order to protect the public health or the public safety, is to tell me that you cannot trust any legislation to the legislative branch at all, and that no reasonable discretion is to be left with it. If that department is not allowed to decide when inspectors, in its judgment, are necessary, it seems to me it would be better simply to move an amendment, abolishing the legislative department of the government altogether.

I shall vote for the section, because, as I understand from the chairman of the committee, it is intended to establish the line of distinction that I suggested yesterday—that the inspectors spoken of by the gentleman from Philadelphia (Mr. J. Price Wetherill) are no longer required in the community, in order to fix the grade and the value of any article in the market, but that inspectors may be necessary to protect the public health and safety. I therefore trust that we will not seriously think of taking all the power to establish inspections from the legislative department of the government.

Mr. H. W. PALMER. Mr. Chairman: The amendment proposed by the gentleman from Carbon (Mr. Lilly) would abolish the office of mine inspector. That result would be very decidedly to the advantage of the owners of the mines, but not at all to be desired by the thirty thousand miners and laborers whose lives and safety depend, in some measure, upon it. It has been said before now that the law providing for the health and safety of persons employed in mines was the offspring of Avondale, where one hundred and eight men met a fiery and awful death in the space of half an hour. Any section that looks towards abolishing this most useful act, appointing a mine inspector, which was designed to protect the lives and health of men employed in the coal mines, I must vote against. The working of the law has been beneficial; under it a great many safety appliances have been placed in and about the mines and breakers. It has provided an intelligent supervision over these great operations, and, while it laid some small tax upon the operator, it has proved beneficial in a high degree to the operative. I am well aware that the time never has been, and, probably, the time never will be, when the capitalist will be willing to dole out of his great possessions any small pitance for the protection of his workmen.

The legislative power has seen fit to throw some safeguards around the men who are engaged in this dangerous occupation, and I trust this Convention will not, at the behest of mine owners, strike down that protection, nor make it impossible for any future Legislature to throw even additional safeguards around these operations, if ever the time comes when it may be found necessary.

Mr. J. W. F. WHITE. Mr. Chairman: I was at a loss to know what was the meaning of this section when I first read it, and I have listened very attentively to the debate that has sprung up on it, and the various amendments that have been proposed, and my mind is even now more confused than at first. It seems to me to be an effort to do what it is impossible to do. I can conceive of but one of two things possible for us. One is: To abolish all inspectors, and prohibit the creation of any such office in the future, or leave it to the sound discretion of the Legislature. All the efforts at trying to modify this seem to me to be utterly unavailing, as has been suggested by the gentleman from Bucks (Mr. Lear.) If I can get at what appears to me the meaning of this section, and the various amendments proposed, I think it may be embodied in a very short section, to take the place of this section, and, perhaps, of several other sections of the Constitution. Although not in order to move such a section now, I will read it for the information of the members. I believe it will be utterly useless, to put in the Constitution this section, or any of the proposed amendments, for they will be ineffectual in the way of restraining the power that must be vested in the Legislature, and in whose sound discretion some trust should be placed. I may hereafter offer this brief section, and I suggest to the members of the Convention that it might, perhaps, meet with unanimous consent and relieve us, not only of the difficulty that we encounter in this matter, but relieve us also of the difficulty of discussing a number of other matters in connection with our Constitution. The amendment I would propose is this: "The Legislature shall pass none except good and wise laws." [Laughter.] That principle covers all these things at once. There we have the very quintessence of the whole of these amendments. Why not, therefore, insert this, and in that way get rid of the difficulty which we find surrounding this section, and which we will, perhaps, find

surrounding many other sections of a similar character.

Mr. TEMPLE. Mr. Chairman: I have a remark or two to make in answer to the proposition stated by the gentleman from Indiana (Mr. Harry White.) He stated in the course of his arguments that the Legislature wanted "a rock to stand upon." I undertake to say that the reasons pointed out by that distinguished delegate for that kind of legislation, of which we are speaking here this morning, were not sound; and I propose to state the reasons for my belief in that direction. All bills of a private character which are introduced into the Legislature—I mean of a *specially* private character—are introduced with a full knowledge of their real character. I make bold to say that if the Legislature and the Executive department were honest to the people, there never would be anything in the shape of special legislation. If I understand it right, when a bill, such as has been spoken of here this morning and yesterday, is introduced into either branch of the Legislature, it is a notorious fact that the other delegates in that branch of the Legislature, and in the other House also, dare not oppose its passage. I was told a few days ago by a gentleman who is a member of the Legislature, and who had an important bill to introduce, a bill of general importance to the people, that he was *afraid* to introduce it into the House of Representatives, for the reason that it would go to a certain committee, and upon that certain committee was a gentleman from the city of Philadelphia who would be opposed to his bill, unless this member who introduced the bill would vote for a bill which had been introduced by the other member in the other branch of the Legislature.

Now, Mr. Chairman, I believe that this is one of the greatest sources and reasons of all this trouble, and I would like the distinguished gentleman from Indiana, (Mr. Harry White,) who has had such large experience in the legislative branch of this government, to say whether it is not the truth, when a member introduces these private bills into one branch of the Legislature, that the members, either in the same House or the other branch of the Legislature, are afraid to oppose them in any particular whatever, but upon the contrary that they render all the assistance they can to secure their passage. Well, now, Mr. Chairman, so much as to the rock upon which legislators would have

to stand. Why talk to us in this Convention about giving to the legislator a rock upon which to stand in such matters as these. It is enough, I submit, to acknowledge either the weakness of the Legislature or its corruption at once. Now, Mr. Chairman, I am in favor of this section if the proposed amendment is adopted, or if it is not adopted I am in favor of voting down this whole section, principally for the reasons stated by the gentleman from Bucks (Mr. Lear.) I think those reasons were stated in a more forcible manner than I could have stated them; and for the reasons he gave I am in favor of voting down this whole section, with the exception of the provision contained in the amendment.

The CHAIRMAN. The question is on the amendment to the amendment, proposed by the gentleman from Carbon, (Mr. Lilly.)

Mr. LILLY. Mr. Chairman: I withdraw the amendment.

Mr. TEMPLE. Mr. Chairman: I renew the amendment.

The question being taken, the amendment to the amendment was not agreed to.

The CHAIRMAN. The question recurs upon the amendment offered by the gentleman from Allegheny, (Mr. Guthrie,) which will be read.

The CLERK read as follows:

To be inserted, in place of section twenty-fifth: "The Legislature shall not create any office for inspecting, weighing, gauging or measuring any merchandise, produce or manufactures, except such offices for inspection as may be necessary to protect the public health and safety, and furnish correct standards of weights and measures."

The question being taken, the amendment was not agreed to.

Mr. HEMPHILL. Mr. Chairman; I offer the following substitute for the section:

The CLERK read as follows:

"All offices for the weighing, measuring, culling and inspecting of any merchandise, produce, manufactures or commodity are hereby abolished, and no such offices shall hereafter be created by law; but nothing contained in this section shall affect the supplying the public with correct standards of weights and measures."

Mr. BEEBE. Mr. Chairman: I offer the following as an amendment, to be inserted after the word "affect," in the substitute: "Any office created, or to be created, to protect the public health and safety, or

for supplying the public with correct standards of weights and measures."

The amendment was not agreed to.

The question was then taken on the substitute, and it was not agreed to.

The CHAIRMAN. The question recurs on section twenty-five of the report of the committee.

Mr. DARLINGTON. Mr. Chairman: I call for a division of the question.

The CHAIRMAN. The first division will be read.

The CLERK read as follows:

SECTION 25. The Legislature shall not create offices for inspecting, weighing or gauging any merchandise, produce, manufactures or commodity.

The question being taken, a division was called, which resulted as follows: Ayes, thirty-six; noes, thirty-eight.

So the first division was not agreed to.

The CHAIRMAN. The Chair will state that it was doubtful whether the section could have been divided; but as it has been divided, the question must recur on the second division of the section. The second division will be read.

The CLERK read as follows:

"This shall not, however, affect any office created or to be created to protect the public health and safety, or for supplying the public with correct standards of weights and measures."

The question being taken, the second division of the section was not agreed to.

The CHAIRMAN. The next section of the report of the committee will be read.

The CLERK read as follows:

SECTION 26. No act of Assembly shall limit the amount to be recovered for injuries to person or property, and in case of death from such injuries, the right of action shall survive, and the Legislature shall prescribe for whose benefit such action shall be prosecuted.

Mr. BIDDLE. Mr. Chairman: I offer the following amendment, to be added at the end of the section.

I. No act of Assembly shall prescribe any limitation of time within which suits may be brought against corporations for injuries to person or property, or for other causes different from that fixed by the general laws prescribing the time for the limitation of actions, and existing laws so prescribing are annulled and avoided.

II. No act of Assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees in the bonds or stock of any private corporation; and existing laws so au-

thorizing are annulled and avoided, saving such investments heretofore made in good faith.

The CHAIRMAN. The Chair will call the attention of the gentleman from Philadelphia (Mr. Biddle) to the fact that the second division of the amendment is not germane to the pending question.

Mr. BIDDLE. I will then withdraw the second division of the amendment, and will offer it as an additional section.

Mr. BIDDLE. Mr. Chairman: I desire to say one or two words in favor of the amendment which I have offered to this section. I entertain no feeling of hostility against corporations, so long as they are kept within the limits in which they ought to move. They are probably indispensable adjuncts to existing civilization; but I am absolutely opposed to different statutory rules affecting them than those by which the rest of the community is bound. The object of the section, to which I have offered the present amendment by way of addition, is to remove what seems to me is a great evil, and probably an evil which, if attempted to be remedied by judicial decision, will be found not to be within the limits of constitutional power. There is no more reason why one class of persons in the community—artificial persons—should have limitations made in their favor for injuries to persons or property, than should be made in favor of private or natural persons; and I suppose there will be little difference of opinion in regard to the section as it stands reported by the committee. In regard to the other object, which is not embraced in the amendment to this section, there is a great deal to be said on both sides. I intend to offer it as an independent section. Now, this being the case as to the main or principal subject, why should laws of limitations be different in their application to these artificial persons than to this class of natural persons. If there be a difference it ought rather to be the other way, because the artificial person has a permanency of being, and an order of succession which does not belong to natural persons.

Stale claims certainly are not to be favored, but it strikes me as a monstrous anomaly, as well as a great injustice, to allow a party injured in his person or property a reasonable time within which to bring his action against the person or party injuring him, while you cut the limitation down in regard to his right of action against these artificial persons to no time

at all, or very little more than a nominal time. Why, for instance, if a man carelessly and negligently drives his vehicle against me in the street, shall he be subject to an action for six years, and if a conductor of a passenger railway car carelessly and negligently drives his car against me to my injury, shall the remedy be cut down to six months? Now, perhaps, gentlemen are not aware that the existing system of law is upon this subject. I have taken some pains to examine our statute books in regard to the subject embraced in the amendment or addition to this section which I have offered, and I have found that in the city of Philadelphia, in regard to all passenger railways whose routes lie wholly in the city, you can bring no suits against them for damages for injuries or for death caused by them, unless within six months from the time the right of action accrues.

This law was passed in 1868, about four year ago. Now, when I called this a monstrous anomaly, as well as a great injustice to the citizen, I think I was using language entirely proper and within due limits. I want to place these corporations—very valuable when confined within their proper spheres—on precisely the same footing as the rest of the community, and I wish to take from them no single right, properly conferred, but I do wish to take from them the privileges injuriously exercised against the rest of the community, and which, if suffered to remain, must ultimately redound to their disadvantage, if not to their destruction. So, also, in regard to *death*. This, we may say, being a statutory right, conferred for the first time by the Legislature, may properly be limited by the law which confers the right. I agree to that proposition. But when the right is once given I can see no good reason for limiting it unduly, either in point of amount or as to limitation of time. If it is said that the right of action for damage resulting from death as regards all classes of persons, private individuals as well as corporations, shall be limited to a smaller time than the right of action for injuries not so resulting, be it so. I will admit that there is a show of reason in this. Let us not, however, make a distinction in this respect between artificial and natural persons. It was only yesterday that a gentleman, to whom I showed the amendment which is now before the Convention, told me of a case which had occurred within his own knowledge, of a lady who was grievously in-

jured by the death of a relative, on whom she relied for support, overstepping her time for suit one day beyond the year. Gentlemen will doubtless argue that this might have been, if the limitation had been extended over six years. That is quite true, and I am prepared to consider that as a valid objection, where the limitation affects all classes equally; but I desire that uniformity in this limitation should be established. I do not want the citizen to be perplexed by multifarious and inconsistent enactments in that which comes home so closely to him in his every-day life. I want him to feel that when he is dealing in this respect with an artificial person, he deals precisely on the same footing as with a natural person. I say, therefore, leave this question to the Legislature to decide what a proper limitation of time may be generally, but require that these enactments be uniform throughout the Commonwealth, and applicable to all alike.

MR. CUYLER. Mr. President: It is a grave question, when this Convention shall have finished its labors, and the people of the State adopt the result they arrive at, whether any corporation can survive in the State of Pennsylvania, and it is a difficult and grave question, which ought to engage our consideration, whether, in view of the limitation we are proposing to impose upon the Legislature, in the future, some ingenious mechanic may not devise a wooden mechanism that may perform all the functions of the Legislature, and save the Commonwealth all the expense and inconvenience that attends its existence. Now, I find myself wholly unable to agree with my friend from Philadelphia, (Mr. Biddle,) either in his defence of the section as reported or in defence of his special proposition. There are many reasons why there might be a different statute of limitations in reference to actions against corporations from those which exist against private individuals. Corporations—especially the larger railroad corporations of the State, deal with an ever-changing, shifting set of employees. When these corporations turn, after the lapse of two or three years, or as it may be under existing statutes, five or six years, to find the witnesses to be used in their defence against unreasonable claims, they find themselves unable to gather those witnesses together. The right of action exists to a citizen in every county in the Commonwealth; nay, he has the right through the process of a foreign at-

tachment, or by service upon any general officer of a corporation, to seek the jurisdiction of courts in other States, and thus it is corporations are compelled to defend themselves against suits that may be instituted in a vast variety of jurisdictions at a great distance from where the occurrence took place which formed the basis of the action, and after a long lapse of time, when those who could have been summoned as witnesses, have either passed from their employment or become scattered over the State, so that it may have become impossible to gather together the testimony that may defend them against unreasonable claims. The very thought that underlies the statute of limitations is that, by reason of the fading memory of witnesses, the imperfect preservation of papers, the death of those who could have testified after the lapse of a little time, it comes to be impossible to arrive at the truth of the transaction, and there is reason therefore why the statute of limitations, as to actions against corporations, should be more restricted as to its time than the general laws of limitation. I agree with the gentleman, however, as to his criticism upon the limitation of actions against passenger railway companies, for none of the reasons I have spoken of apply to them. There is no justice in limiting the right of action against passenger railway companies to six months time, or in drawing a distinction so far as they are concerned between them and the usual suitors who defend themselves in our court of justice. I am willing to leave this question to the Legislature, where it belongs. I am in favor of letting the Legislature decide all such questions. If there are reasons why statutes of limitations should be broader as to corporations than as to individuals, leave the Legislature with the power to pass upon it, but do not take away from the Legislature, by Constitutional limitation, the power to do this at all. In regard to the body of the section itself, I would suggest what it seems to me is perfectly just. The right of action in the case of death is purely statutory.

It is scarcely thirty years that such action has existed in Pennsylvania at all, but at common law, in the event of death, there is no right of action. The same authority which generously gives the right of action may fairly limit and prescribe the terms upon which it shall be enjoyed. This limitation which exists, not merely in the laws of Pennsylvania, but in the

laws of three-fourths of the States of the Union, limiting the right to recover to five thousand dollars in the event of death, speaks the common mind and sentiment of the whole country, arising out of the impositions which have been practiced upon corporations by the action of juries, rendering the enactment of such a law a necessity. It is the expression of the general and popular sentiment and conviction all over the country of the necessity for some limitation because of these impositions. There is no gentleman upon this floor who is a member of the bar, and who has been accustomed to practice in cases of this kind, but must know the peculiar findings of juries upon this subject. In one sense of the word, and very truthfully, no limit of value can be placed upon human life. Nothing can compensate for its loss; but juries decide the valuation of life with absolutely nothing to restrain their judgment, and the result of their verdicts upon railroad corporations especially is sufficient to paralyze and almost destroy them. I hope, therefore, that this provision which has been proved to be so salutary by common experience, and acknowledged all over the country, will not be taken away by a constitutional limitation imposed by this Convention. I have to say, in connection with the section as written, it is simply powerless to effect the result, and that it would be so pronounced in a court of justice.

MR. WORRELL. Mr. Chairman: As has been remarked by the gentleman who preceded me, there are two classes of these suits. The one, in which the right of action is a common law remedy, and the other, in which the right of action is conferred by statute. I suppose it is perfectly competent for the Legislature, which creates a liability and bestows a right of action which did not theretofore exist, to limit by statute the amount of damages to be recovered in the cases upon which the legislation is had. The question whether such limitation is wise and expedient is a matter for discussion; but my judgment is that such restriction is improper and injudicious.

But with regard to the other class of cases, that in which the remedy is at common law. I take it that the section now under consideration is nothing more than a distinct enunciation of one of the provisions of our present Constitution. Section eleven of the Declaration of Rights is in these words: "That all courts shall

be open, and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered without sale, *denial* or delay."

The Supreme Court of this State, in a recent decision, in an opinion by Judge Agnew, intimated their judgment that the act of 1868, limiting the amount of damages to be recovered in these cases was violative of that section of the Constitution which I have just read. In my judgment, the act of 1868 is as clearly unconstitutional, in so far as it repeals and destroys the common law measure of damages, in the common law class of actions, as any statute ever adjudged to be in contravention of the organic law.

It is a *denial* of right and justice for an injury done to the person. In every case to which the act of 1868 has been made to apply, and in which a suitor has been compelled to receive three thousand dollars in satisfaction of an injury inflicting damage to an amount exceeding that sum, the suitor has been refused his constitutional rights, the courts have *not* been open to him, and right and justice have *not* been administered without *denial*. Now this act of 1868 pleads the necessity of the provision now under consideration. The fact that the Legislature of 1868 departed from their just functions, and enacted the unjust and unconstitutional law to which I have referred, admonishes me that we should lay a strong hand upon the legislative department, and say to it, you shall *not* restrict the liability of a corporation or individual in these classes of cases. The prohibition of legislation should be clear, distinct and emphatic, so that there can not possibly be an evasion of its provisions. I thoroughly endorse the purpose and sentiment of this section.

Mr. CAMPBELL. Mr. Chairman: I think the section as reported by the committee is one of the best sections in their whole report, and I think the amendment offered by the gentleman from Philadelphia (Mr. Biddle) makes it still better. The gentleman from Philadelphia in front of me, (Mr. Cuyler,) has stated that there seems to be a *popular* feeling all over the country to have some legal provision, limiting the amount to be recovered in actions for damages on account of railroad accidents. I think it is just the contrary. The very fact that juries are disposed to give, as he calls it, "excessive" damages, shows that there is a feeling among the people that something

should be done in cases of railroad accidents, to compel the companies, through fear of heavy verdicts against them, to keep their roads in such a condition that these accidents would not be continually occurring. The popular feeling is against any limitation of the amount to be recovered. These very verdicts of juries, excessive though they may be in some instances, are really a key to the popular feeling upon the subject. That feeling leads juries, sometimes, to give such damages as will teach these corporations a lesson, and will make their officers take such precautions that it will be next thing to impossible, that accidents, occasioned by gross negligence of their employees, should occur. I think that the law of 1868, the second section of which I will now read, is simply infamous, and now that we are considering the subject matter of that law, we should, if at all possible, provide that it shall be wiped out, and prevent the possibility of any such law being passed in future in this State. The section I have referred to reads as follows:

"In all action now or hereafter instituted against common carriers, or corporations owning, operating or using a railroad as a public highway, whereon steam or other motive power is used, to recover for loss and damage sustained and arising either from personal injuries or loss of life, and for which, by law, such carrier or corporation could be held responsible, only such compensation for loss and damage shall be recovered as the evidence shall clearly prove to have been pecuniarily suffered or sustained, not exceeding, in case of personal injury, the sum of \$3,000; nor in case of loss of life the sum of \$5,000."

In other words, it says that when a man gets on a railroad train to go from one place to another, and by the negligence of the railroad officers or employees, in not keeping the road in proper condition, or in not taking proper precautions against accident, suffers an injury to his person, by reason of that negligence or want of precaution, no matter how serious the injury may be, short of death, is only to be compensated by a sum not exceeding \$3,000; and when a man's life is lost, his family shall only recover a sum not exceeding \$5,000, which, at the current rate of interest, will give them but \$300 a year, and a paltry sum like that is to compensate that family for the loss of their entire support and sustenance. Just

consider the monstrous injustice of such a law as this. Every fair-minded man, who wishes to protect the rights of the people to their fullest extent, should desire to see such a law wiped out from our statute books. Let us then do what we can in this direction, by voting for this section and the amendment thereto, offered by the gentleman from Philadelphia (Mr. Biddle.)

MR. NEWLIN. Mr. Chairman: I do not rise to speak at any length upon this proposition. I simply do so to thank my friend and colleague from Philadelphia (Mr. Cuyler) for the instruction which he invariably gives us when any matter concerning the railroad company of which he is counsel is before the Convention. Indeed, sir, whenever I hear his persuasive tones, and listen to the easy manner with which he seeks to convince us that the corporation which he represents is everything that is innocent, and good, and proper, and that its effects upon the public morals of the State of Pennsylvania has always been beneficial, I greatly admire his skill. The gentleman has referred to a popular feeling throughout the United States in favor of protecting the railroad companies against the people, and in favor of preventing juries from taking advantage of the helpless condition in which these companies find themselves when they have transgressed the rules of right and justice, as they so frequently do. If that gentleman had said "a popular *railroad* feeling," instead of merely "a popular feeling," I think he would more nearly hit the mark. I think, sir, that all that is proven by the fact that these "blood acts"—for that is the name by which they should be known—the only argument, the only thing which can be shown by the existence of these infamous acts upon the statute books of other States is that the same influence which was brought to bear upon the State of Pennsylvania to put that infamy upon our statute books was used in other States as well. It is a notorious fact, it is well known to every one in this community, that the act of Assembly of Pennsylvania which limits the liabilities of railroad companies, in cases of accidents; it is perfectly well known and notorious that that act was *bought* and *paid for*, and that it passed the Legislature of this State by corrupt means.

MR. DARLINGTON. Who bought and paid, and who received the money?

MR. NEWLIN. I say it was a matter of public notoriety at the time, that that bill

was passed by corrupt means. It is not customary, I presume, for the parties interested to publish a schedule of what was paid for votes on such occasions. But it is very certain that no individuals could have got any such act passed, and I think that instead of leaving the matter where it is, if we, in aid of these helpless corporations, should put in a provision by which they may be authorized to kill as many people as they please in accidents, and without any price at all, it would be more logical. It is a matter of common notoriety that the agent of the road was on the floor of the House at the time this bill passed, going around looking for and soliciting votes.

MR. TEMPLE. State the name. Who was the man?

MR. NEWLIN. I do not propose to mention the name of a man who is not here, and who cannot have an opportunity of defending himself. I speak of matters of common notoriety, and there is no one here now who was then in the Legislature who will deny that it was a matter of common notoriety at that time.

MR. WOODWARD. Mr. Chairman: I rise to a point of order. I submit that this whole discussion, in regard to the limit of liability in cases of railroad accidents, is out of order now. The subject has been under the consideration of the Committee on Railroads, and will be reported on in a few days, but it is not raised by any question now pending.

THE CHAIRMAN. An amendment is now pending to which the remarks which have been made seem to be pertinent. It is not for the Chair to determine the line of argument which gentlemen may take in opposition to a question pending, but the remarks seem to the Chair to be in order.

MR. WOODWARD. I understood that the amendment of the gentleman from Philadelphia (Mr. Biddle) related to limiting the *time* for bringing an action against a corporation, and not to limiting the amount of damages.

THE CHAIRMAN. The twenty-sixth section is before the committee, and the amendment proposed by the gentleman from Philadelphia (Mr. Biddle) was germane to that, and is now before the House. The Chair cannot sustain the point of order.

MR. WOODWARD. Mr. Chairman: There is no gentleman on this floor who is willing to go farther in regulating and restraining our railroad corporations than I

am, and whenever it is necessary to interpose for the protection of the people against the aggressive character of all corporations—for all corporations are aggressive—I am ready to stand up for the people against the corporations. But, sir, this is to be said: We live in a railroad era, and in a country and at a time when we can no more do without railroads than we can do without a home, without houses or dwellings! If they are an evil, they are a necessary evil; they are inseparable from our condition and civilization.

I am no railroad advocate. I am the retained counsel of no railroad on earth. I own no share of any stock in any railroad, I have no interest in them which every citizen of the Commonwealth has not, but, sir, my learned friend from Philadelphia suggests that there is no reason why an artificial being like a railroad company shall be put upon a different basis of limitation, as to action, from a natural person. He will allow me to suggest that there is one reason. All these railroad companies, being corporations, are bound to render accounts for the deeds done in the body every year, to their constituents, and if there is to be a series of suits or possible suits outstanding for six years, in which illimitable damages may be recovered against them, how is it possible for any railroad company to tell its stockholders anything about the fiscal condition of its affairs until these damages are assessed? It is simply impossible to give any amount whatever.

The *natural* person renders an account for the deeds done in his body only *once*; he has got no stockholders over him, to whom he has to account; he does not make a balance sheet, unless it is for his own satisfaction.

This is a circumstance that distinguishes the natural from the artificial person, somewhat, and I think one which is entitled to some consideration. The Legislature seems to have attached some importance to it, for they required those having claims against railroad corporations to present them promptly, so that these companies should be enabled to show to the world and their superiors what their actual condition is. The reason given by the gentleman from Philadelphia, before me, (Mr. Cuyler,) for a distinction in the right of action between a corporation and a natural person, struck me as having much force in it, especially when applied to railroads that run into other States, and are doing business as largely as the Cen-

tral railroad does. But now on this other point I wish to say a word.

The Committee on Private Corporations had the subject of limiting the amount of damages in cases of personal injury under consideration. Their commission did not embrace railroads, for you had a Committee on Railroads, of which my friend from York (Mr. Cochran) was chairman. But the commission of *that* committee did not embrace any other corporations than railroads; and yet there were many corporations whose employees might do injury, and against which actions might be brought. Under these circumstances the two committees felt themselves embarrassed, (as I knew in the beginning they would be, by splitting up the Constitution into so many fragments,) and they agreed to have a joint meeting. They met jointly, and this, among other matters, was considered. It does not become me, probably, now to state what was the result of the deliberations of this joint committee, because as yet neither committee has reported to this Convention; but the probability is that the Committee on Railroads will waive this whole subject, and the Committee on Private Corporations will report a provision denying to the Legislature the power to limit the damages which individuals, injured by corporations, may recover. That is what my friend here on the right, Mr. Campbell, and others seem to think ought to be done *now*.

The amendment and discussion, I think, are premature and out of place at this time, and ought to be postponed until the report of the committee comes in. But that the opinion of this Convention may not be forestalled, that we may, if we must pass upon it now, pass upon it in view of all the facts, allow me to say that if you do not allow the Legislature to impose a limit like that which they have imposed, you will ruin some railroad companies in this State. They cannot stand the wild verdicts of juries. It will simply be their ruin. I have seen some of these verdicts. I am told that the remedy for an injudicious verdict is in a motion for a new trial. But suppose you get a new trial, what better chance have you with a second jury than with the first? And will you get your new trial? That depends upon the judge, and my experience of forty years, and better, has led me to feel just as much confidence in juries as I do in judges. If judges were angels, and juries only men, perhaps an appeal from

the jury to the bench would be something of value, but the mischief of it is that judges are no more angels than are jurors, and, in general, I think that jurors are just as sound on the question of damages as any body who sits on the bench, and yet we find, with the passionate appeals which counsels are able to make to juries, in those cases, extravagant verdicts are made. Why, sir, the first one that was rendered in Pennsylvania was rendered in behalf of some maiden ladies whose bachelor brother, a drover, was killed upon a railroad, and his whole estate went directly to them as a consequence of his death. We borrowed from the English courts the doctrine that nothing was to be given *pro so lationem*, by way of solace for the loss of a relative, but only as a pecuniary compensation for a pecuniary injury, and notwithstanding the rule of the law was laid down in that case I think the verdict was for four or five thousand dollars.

MR. J. S. BLACK. Was that recovery wrong?

MR. WOODWARD. I do not say it was wrong, but I say it was excessive, under the circumstances.

MR. J. S. BLACK. Well, I think it is wrong in law and in justice, and my friend (Mr. Woodward) went for it, and I went against it. Laughter.]

MR. WOODWARD. That only proves what the Convention has been told many times before, that my friend (Mr. J. S. Black) was never wrong and was always right.

MR. J. S. BLACK. I thought I was right then, at any rate, and you were wrong.

MR. WOODWARD. Well, I don't remember about that.

MR. J. S. BLACK. I do.

MR. WOODWARD. I know that Judge Lowrey, who was as wise a man as either of us, delivered the opinion of the court in that case.

MR. J. S. BLACK. I dissented, and you concurred.

MR. WOODWARD. I do not know how that was, but I think the gentleman will agree with me that that case was the one that brought this subject to the notice of the people. At that time we had no act of Assembly on this subject at all. There was the doctrine that nothing was to be given for the solace of friends; but only a pecuniary compensation for a pecuniary injury. The court stands upon that ground to-day. Here were ladies claiming pecuniary compensation for a pe-

cuniary injury, whereas there had been no pecuniary injury; on the contrary they were pecuniarily benefited by their brother's death. No doubt they had been greatly distressed; no doubt their sisterly hearts were wrung by the loss of their brother, but there is not a word to be said on that point, because the judge tells the jury that they are not to measure damages by that scale, at all. It is simply a matter of *pecuniary values*. It is ridiculous to suppose that these ladies suffered any *pecuniary* injury by the loss of their brother, yet the jury gave them the sum of, I believe, four or five thousand dollars. My friend from York, (Mr. J. S. Black,) who never forgets anything, will probably remember the exact amount.

Then the Legislature passed this act of Assembly. I do not know anything about its secret history. I do not know that it has any secret history, and I do not care if it has. In my humble judgment it is a wise law, and I shall be sorry to see this Convention abolish it; and for just this reason, sir, that if you throw the vast interests that are involved in these railroad companies into the jury box, under the lash of counsel's eloquence and persuasive appeals, you will ruin all the feeble railroads. You will compel the strong companies to buy up the feeble ones, and I do not know but, if it goes as far as some of them have gone, and I think some of them have gone up as high as twenty thousand dollars for a leg being broken, or some personal injury like that; if they go on at that rate I do not know but that the strong ones will be ruined also.

That is not my way of getting rid of anything. If we want to get rid of railroads, let us attack them in front. Let us restrain them by open, fair and manly means. This picking them to pieces, by means of excessive damages, is a paltry sort of persecution that I do not feel willing to submit railroads to. They are a vast convenience to our people. As I have said, we could not do without them. Those who have got their charters already have, it is true, large powers that I would be glad to cripple and restrain somewhat, if we could do so; but they have got their powers, such as they are, and we cannot take them away. But, sir, this attempt to make the existence of every railroad company depend every time upon the verdict of a jury, keeping them in perpetual agitation as to whether they shall be able to do business in this

country or not, is a sort of oppression and persecution to which I do not feel willing to submit corporations of so much usefulness; and therefore I am opposed to this provision, whether it is offered now, or whether it comes from one of the committees. I am opposed to any provision that will deprive the Legislature of the right to impose limitations upon these verdicts.

Mr. ALRICKS. Mr. Chairman: I do not know that I am at all affected with *cacosthes loquendi* this morning, but I beg leave, however, to say a few words on this subject. I will vote for the section of the committee and for the amendment offered by the gentleman from Philadelphia, (Mr. Biddle,) because of its eminent propriety. Can any gentleman on this floor show us why a different rule should be laid down for artificial persons from the rule prescribed for natural persons? I can see no objection to the amendment that has been offered. It is simply this: "When you bring a suit against a person for an injury done you, if it is a civil action, you bring it within a period of six years." Now, can any gentleman show me why a natural person should remain responsible for six years, and an artificial person should only remain responsible for five years, as is the limit in one case, or *two* years, as is the limit in another, or for *six months*, as the Legislature has provided, in a suit for any injury done by a passenger railroad company? Therefore, I can see no objection to the amendment. The gentleman from Philadelphia (Mr. Cuyler) has told us that it is difficult for railroad companies to secure the witnesses after a certain period. Why, I suppose that after a year or two has elapsed a natural person will find difficulty in hunting up his witnesses just as much as a corporation will. A corporation may have millions of capital, and I am sure that that is a strong instrument by which they can appeal to the members of the bar to aid them in securing their rights. A corporation receives moneys and has franchises that are not given to private individuals, and if you sue a corporation to recover damages for the wrong they have done you, you cannot get out a *ca. sa.* against them.

We are told that they have no souls. I am not certain, sir, that you can take out a *fi. fa.* against them. You must pursue them with your writ of sequestration, and then they can get rid of their property. I would like any gentleman in this house to show me the propriety of saying that if

a natural person does you a wrong you can resort to a court any time within six years, but if it is a corporation that has wronged you, you must bring your suit within six months.

I have known this matter to work injuriously. I remember in our own county, where land had been taken by a corporation, which had been used by them for a period of years, after the parties had brought their action of ejectment for the recovery of the land—the husband was dead, and the title had been in his wife during all this time—they came into court and plead the act of Assembly, and showed that unless that suit was brought within three years the party had no right to recover. Very fortunately there was a provision in that act of Assembly which reached our case, because it was passed after our right of action had occurred; otherwise we would have been turned out of court.

I trust there is no gentleman in this Convention (unless he is tied to a corporation) who will not feel it to be his duty to vote for the amendment which has been offered by the gentleman from Philadelphia (Mr. Biddle.)

Mr. HARRY WHITE. Mr. Chairman: I merely have a word to say in favor of the amendment of the gentleman from Philadelphia, (Mr. Biddle,) and in this connection allow me to say that I am exceedingly gratified to hear the expressions of approbation which have come from some members of this Convention as to the propriety of the original section. It is not improper for me to say that I had the honor of being a member of the State Senate in 1868, when the legislation complained of, limiting the amount to be recovered, was enacted into a law. I also had the honor to resist its passage by all the earnestness and what little ability that I possessed. I have thought from that time, and think now, that that legislation was unwise, and if the people of the Commonwealth had an opportunity to correct it, they would speedily do so. Enough as to that. I shall not further comment upon it.

I entirely approve the amendment offered by my friend from Philadelphia, (Mr. Biddle,) and hope it will be adopted. The only difficulty that I had was as to the propriety of adding it, in this place, to the section. The necessity for something of the kind is apparent. Only last winter—and I think I can look in the face of a delegate who was present at the time of its discussion—in the Senate of the State,

a bill was offered and read in its place, seeking to change the statutory limitation with regard to personal actions, with regard to the action of assumpsit, if you please, from six years to one year, and it was with the utmost effort, by an appeal to the professional gentlemen of that body, that the passage of the act was resisted; and if some constitutional inhibition of this kind is not created, the day is not far distant when an entirely different rule of proceeding, and an entirely different rule of practice will be obtained by statutory enactment towards corporations, from that which now obtain towards individuals. Men of experience and observation see the wisdom of some such constitutional provision in this respect to preserve the rights, I might say the liberties, of the individual.

MR. GOWEN. Mr. Chairman: I understand, and I would like to know whether I am correct or not, that the amendment, which is now the subject of consideration, simply proposes to place corporations, with reference to statutes of limitation, upon the same ground as that occupied by individuals, and that it does not propose that the statute of limitation in the case of an action of assumpsit shall be the same as the statute of limitation in an action brought for the recovery of damages resulting in injury or death. I think I am right. If that is the scope of the amendment I am decidedly in favor of it, and I am in favor of the section as reported. There are some reasons which I consider of the utmost importance, not only to the people, but to the corporations of this Commonwealth, why there should be, in the estimation of the community, no difference whatever between the corporation and the individual. It is very well known that this right of action, for injury resulting in death, is entirely a creation of the Legislature; that, at common law, no such right exists. The right was given by the English Parliament in England, and it has been successively given by almost all the Legislatures of the American States.

When you once admit the right of the representatives and relatives of the deceased person to recover for injuries which resulted in his death, I am at a loss to find why there should be any distinction between a corporation and an individual other than that which is founded upon the glaring injustice which has frequently been done by juries in giving excessive damages against corporations;

but excessive damages are always within the control of the court, and the injury resulting to corporations from excessive damages, in my opinion, is not nearly so great an injury as that which results from creating in the minds of the community a feeling of distrust and hatred against corporations because they are exempted from the rules which govern individuals. If this statutory right is given to the representatives of a deceased person, why should that right depend upon the character of the person who caused the injury? Why should they recover \$20,000, if he is killed by a natural person, and only \$5,000 if he is killed by an artificial person; and by what right or reason does the Legislature prescribe a Procrustean bed upon which the dead body of the person is laid, so as to give to the relatives of a man who earns \$200 a year, \$5,000, and the same sum to a man who may have been earning \$30,000 a year. Is not the measure of damages much greater in the one case than in the other? Is not the family whose husband and father earns \$20,000 or \$30,000 a year entitled to more damages from the pecuniary loss, than in the case of a man who simply earns \$200 or \$300 or \$400 a year, and who may have contributed nothing whatever to their support. If these general principles are right, it is hard to see, upon any reason, why the distinction should obtain between corporations and individuals.

Now, then, what reasons are there in favor of abolishing that distinction? There are two reasons which, in my own mind, are of the utmost importance. The conveyance of passengers in this country, and in all modern countries, is gradually being committed to the care of corporations.

In the origin of these corporations, especially railway companies, forty years ago, the railroad was simply a road way upon which an individual could put his motive power and his car, and transport passengers, and you had not only an individual liability in case of accident, but you had the privilege of having an individual inspect the machinery and the works, in order to see that they were proper and correct. But the course of trade, the necessities of commerce, require that all this shall be done by the railroads themselves. Therefore every passenger has to submit his person and his life to the custody of a corporation, over whom he has no control whatever. It is for the interest of the public that life should be sacred, and I think that nothing can so surely bring the

corporate powers of this State to the realization of their duty than a proper degree of punishment where they have transgressed it. I know that very wild verdicts have been given, and I remember my friend from Philadelphia (Mr. Cuyler) telling of very heavy damages that were awarded in suits in this State. I do not know what the amounts of the verdicts were, but they were very excessive.

Mr. CUYLER. Twenty-eight thousand dollars for a father, and eighteen thousand dollars for a mother, both killed at the same accident.

Mr. GOWEN. Mr. Chairman: There is no doubt that this was very wrong, but whose fault was it? It was the fault of the judge who tried the case, and who permitted such a verdict to stand. I doubt whether, in the whole length and breadth of this Commonwealth, you could have found another judge who would have failed to reduce that verdict, or to make a new trial the condition of its not being reduced. The fault is with the court. Let us have good courts. Let us have a pure judiciary, and if the judges in the country courts do not regulate these improper verdicts, let the Legislature vest in the Supreme Court, as an appellate court, the power to exercise a supervisory power over the verdict, but let us do this in the courts themselves, which the people look up to with much greater respect than they do to the acts of any other branch of the government. Let us prescribe some judicial proceeding whereby the evils of these large verdicts may be corrected, but do not let us place before the community the wealth and the power that has been accumulated by corporations, and say to an individual who has been injured that that wealth and that power is sacred from their touch. If you are killed by a man your family can get twenty thousand dollars, but if you are killed by a corporation, you can get but three or five thousand dollars. My recollection of the statute is that there is a difference between the individual and the corporation, so far as the right of action is concerned, and the amount of money that would be recovered in that action. It is only when it is a corporation that the statute of limitations refers to the time in which the suit shall be brought. If, therefore, the only argument that can be urged against this proposition is that juries give excessive verdicts, let us prescribe some method whereby, in the regular course of judicial proceedings, a higher tribunal

may correct that evil, if the lower judge refuses to do it, rather than make this distinction.

The last reason which I have to offer, and one to which I have already adverted incidentally, is this: I want to divest myself on this floor, if I can, in the minds of the members of the Convention, of any interest that I represent outside of this floor. But if I came into this Convention as the representative of any incorporated interest in this Commonwealth I should urge the adoption of this proposition on behalf of that interest. And for this reason: That nothing can so directly and surely bring those interests into jeopardy, and into contempt, and into danger, as to array against them the hatred and ill will of the community from which they derive their powers. The very moment you draw the distinction, the moment the property of the corporation is more sacred than the property of the individual, that moment you create a feeling in the minds of the individuals against the exercise of corporate power, a feeling which does not belong to it, and which ought not to be there, and which cannot be justified upon any other ground than that you are giving to these corporations powers which you deny to an individual. And I take it that the corporate powers of this State will never be in any such great jeopardy. The property they represent will never be in any such great danger, and the interests that their officers are called upon to protect will never be so likely to be taken away from them as when you raise a whirlwind of storm and indignation in the minds of the people throughout the State, which no man can put down, and which no man can stand up against, and which, when it is once raised, will crumble into dust corporation after corporation, like all mob power does, without any regard to which was the offender, to which was in the right, or which was in the wrong. I take it that every man upon this floor who has the real interests of corporations at his heart, who has property invested in corporations, who may own stocks in them, will be in favor of withholding from the statute books of the State every law and every statute which gives to them an advantage which is not given to an individual. If this one evil of enormous, excessive, inordinate, outrageous and unjust verdicts against corporations must be controlled, let it be controlled openly and publicly by the judicial power of the State, which will always be respect-

ed, and not by the passage of laws through the Legislature, which the people are not so likely to respect.

Mr. SIMPSON. Mr. Chairman: I desire to ask leave to withdraw the amendment which I have proposed.

The CHAIRMAN. The gentleman from Philadelphia withdraws his amendment.

Mr. DARLINGTON. Mr. Chairman: There are certain observations which, it seems to me, are necessary to be made in approaching the consideration of this subject. I shall make no reply to the observations of the gentleman from Philadelphia, (Mr. Newlin,) based upon the supposed evil influences brought to bear upon the Legislature in passing the law to which reference has been made, and I do not do so because his statement is wholly unsustained by any proof, and we are not at liberty to presume that this law was passed upon any such ground.

Then two questions present themselves, and they may be briefly stated.

First, are laws limiting the amount of damages to be recovered for injuries or for death, necessary and proper? Secondly, should the time within which such action is to be brought be limited in the manner in which the law now limits it?

In the first place, I dissent entirely from the idea which has fallen from my friend, the gentleman from Philadelphia, (Mr. Gowen,) that the life of any one man is any more important than the life of any other. I dissent entirely from the notion that any representatives of an individual are entitled to any more damages for the result of an accident which has caused injury or death, than are the representatives of any other individuals by reason of any difference in the amount of the incomes of the respective parties. A wealthy man is no more important to his family or to the community than a man who is not wealthy.

Mr. GOWEN. Mr. Chairman: Will the gentleman from Chester allow me to explain? A wealthy man who is worth \$5,000,000, if he is only earning \$200 a year for his family, his family could not recover anything like so much damages as a poor man who is not so wealthy. The question is, what a man earns, and if a poor man, by his professional skill, may be getting \$20,000 a year, his family should recover more damages than the family of the wealthy man, who may only earn \$200 a year. The question is not one of wealth, but it is the earning power.

Mr. DARLINGTON. Mr. Chairman: I thank the gentleman from Philadelphia for his correction, and will devote myself to the question of the earning power. A man who is able to earn a support for his family in any other condition of life which might only secure five hundred or one thousand dollars, is just as important to his family, and just as important to the community as a man who is enjoying a salary of thirty thousand dollars a year. It may require, perhaps, that sum to support his family; but I dissent, *in toto*, from the notion that in providing a remedy for the loss of a man who is the head of a family, we are to be governed in the slightest degree by the amount which that man may earn for his family. I say this upon the well understood and acknowledged ground, recognised by our Supreme Court in cases which have come before them, that it would be unseemly to go into an inquiry before a court or jury, or anywhere else, as to whether the deceased individual was, or was not, of importance to his family. We cannot enter into that question at all. Otherwise we should be driven into the question whether a man who was drunken, and worthless, and thriftless, had better be killed than not; or, whether a man who is making money had not better be kept alive. Therefore you must exclude from the consideration of this subject all notion of one man being any better than another. In the language of the Marseilles hymn, "Man is man, and who is more?" We are all men, and we are no more, and if there be one idea for which I have more sovereign contempt than for all others besides, it is that any man should suppose himself to be better than another by reason of his having money. I despise a man, from the bottom of my heart, who supposes himself any better, or more important in the community, by reason of his possessing means. We are all upon the same level, and we must never forget it.

Now, sir, upon what is this right of action for the deceased relatives given? It is for the pecuniary damages which they pecuniarily suffer by his loss. Now that is precisely the same, or very nearly the same, in one case as another. But it will not do, on the one hand, to exempt the company from liability, because, during the life of the individual killed, the claimants were receiving no money, as in the case put by the gentleman from Philadelphia, (Judge Woodward,) nor on the other hand, to mulct the company in large

amounts because a large income was being received by the man killed. It is, therefore, as it strikes me, capable of some reasonable average in the public mind, and therefore those laws, in this State and elsewhere, which fix the average value of human lives at five thousand dollars, if you please, will be found to be, in the main, just and right. No man, by reason of the accidental death of a relative, should be allowed to recover more. It may be that it may be too much, or that it may be too little. I do not say that it is an inflexible standard, but it is an approximation to justice, and it is better that we should have a standard than that wild and uncertain verdicts should be given, which wild and uncertain judges will feel bound to sustain, and by which wild and uncertain injustice is inflicted upon those upon whom they are imposed.

I do not think, therefore, that the right to recover, and the amount to be recovered for an injury resulting in death, is to be affected in any degree by the condition of the individual in life; nor do I think it is to be affected in the slightest degree by any consideration of negligence or carelessness on the part of the railroad company who inflict the injury. It is a pecuniary loss to the family that is suffered by reason of the death, and they have to stand it. But that pecuniary loss is no greater, no less, whether there be malice on the part of the railroad conductors or not. The most innocent accident, the breaking of a rail on a frosty morning, which no man on earth can foresee, which no care can guard against, may result in the death of the head of a family. The drunkenness of an engineer, recklessly running over a rock on the road, which he ought to have seen and avoided, may produce the same result. But the injury to the family which loses its head is precisely the same in the one case as in the other, and could not in justice be affected in the slightest degree by the motives of those who conduct the train.

Mr. WORRELL. Mr. Chairman: I would like to ask the gentleman from Chester whether, in the first case mentioned by him, there would be any right of action? If the accident is the result of any unavoidable occurrence, which no care could have prevented, does right of action lie in such a case against a railroad company?

Mr. DARLINGTON. Mr. Chairman: I will answer the gentleman from Philadelphia by saying that negligence is a question for a jury, and when it goes to a jury

they always find negligence. They would consider it negligence in a railroad company to let a rail be used which would break, just as they would consider it negligence if the train was wrecked on a rock which fell from the hillside. A jury would say that the railroad company should have put a man there to keep the rock from falling.

Wherever there is a question of negligence, it will always be found by the jury to exist. As to the other question, there is no distinction properly to be made between the life of one man and the life of another. No injury can result to the wife of one man more than to the wife of another, by the destruction of her husband, and that cannot, and ought not, to be justly influenced by any consideration of impropriety of conduct on the part of employees, or by any consideration that the utmost care was taken by them in the management of the train. Still, if there is a right to recover, it must be a right to recover in one case as well as in another. Now what are you to do to prevent this unseemly exhibition of an inquiry into the value of a man's life to his family? Necessarily, if you let in evidence on the one side of that question, it lets it in on the other. If you can show that one man's life was more valuable than another's, you can show that another man's life was less valuable, that he was idle and thriftless, and earned no support for his family, and that his family is better off without him than with him.

Keeping these things in view, it is a question for the Legislature, in their wisdom, to determine what shall be the average sum, which shall not be exceeded, in damages allowed in cases of this kind. If these excessive damages can be imposed upon the railway corporations they result in excessive burdens on the people. The railroads that are compelled to pay these excessive damages necessarily increase fares and freights, and it becomes a burden upon the whole community, and injustice is done to all the people that injustice may be done to the party claiming these damages.

So much upon the general question. I am in favor, therefore, of a limitation, and if \$5,000 is not the right one let the Legislature fix another. But should there be no limitation to the time in which a suit can be brought? Why, unquestionably, we will all say. There is no reason for delay. Different kinds of actions in the wisdom of the Legislature have been

made subject to different limitations. An action on a book account may be brought within the six years. An action for slander, or a case affecting character, must be brought within one year; and an action for assault and battery, within two years. Society is protected just as much in the one case as in the other, and the principle is a correct one, that a fixed limitation of time should apply to a suit not only against a railroad corporation for damages, but against any one else. There is no reason why all suits should not be brought with more speed. It would be better for all concerned if they were, and while I would not object to the proposition of my friend from Philadelphia, (Mr. Biddle,) that they ought all to be put on the same footing, I would put that limit down, and I would require action to be brought within one year. There is no reason why it should not be so in this advanced stage of civilization. Put them all on the same footing, and the shorter the time the better. That is all I have to say on this general subject.

Mr. J. S. BLACK. Mr. Chairman: I did not rise to make an argument, and would not do so after what has been said by the gentleman from Philadelphia, on my left, (Mr. Gowen.) His exposition of the subject is full and clear, and if it does not impress every man in this body, then we are not as receptive of the truth as we ought to be. I do not intend, therefore, to gild his refined gold.

The proposition that railroad companies should never be compelled to pay more than a certain amount of damages for violation of contract or failure of duty is an exquisite absurdity, when it comes to be viewed in the light of reason, law and natural justice. When a passenger goes upon a railroad train, with a ticket which binds the company to carry him a certain distance and let him down safely, the company makes a contract with him by which they agree not to commit any injury to his person, if it can be prevented by human skill and care. If they fail in the performance of their contract surely the passenger is entitled to damages, which will be a fair and a just compensation to him for all the injury which he has actually suffered, and there is no way provided by the laws of this country to ascertain what is a just compensation, except a trial by jury as in other cases.

Some persons think, and among others my friend from Philadelphia, that trial by jury is a failure in cases between in-

jured individuals and railroad companies, who have committed the wrongs.

Mr. GOWEN. I did not say that.

Mr. J. S. BLACK. That is the inference from what he said. He spoke of enormous damages as having been unjustly given, in divers occasions, against railroad companies, for injuries of this kind. He proposed that the verdict of a jury should be over-ruled in some way, either by the judge who presided at the trial, or else by some superior tribunal. That is all a mistake. I admit that it is possible for juries, in the excess of their indignation against the railroad company which has been guilty of gross negligence, to let their feelings run rather wild, as they sometimes do in other cases of tort; but I have never heard of one case of excessive damages against a railroad company, where I have heard of hundreds of such cases against individuals for slander, for seduction, and for various other offences of that kind. When a jury gets its blood up it is intended that it should wield its lash with a good deal of power.

Remember that no railroad company is ever permitted to suffer one dollar except in cases where it is proved by the clearest evidence that it has been guilty of unquestionable negligence, and that there was no concurrent negligence on the part of the injured party. Is not that a fair and just case for vindictive damages? Can we blame a jury that sees a man mutilated, and his limbs broken up, and his body shattered for life by the gross negligence of a railroad company, for saying that the wrong doers shall pay heavy damages? They do say so, most righteously, not merely because one man has suffered, but in order that other men may not suffer hereafter.

Mr. GOWEN. I would not blame a jury if my friend, Judge Black, had to make a speech on behalf of the plaintiff. [Laughter.]

Mr. J. S. BLACK. Ought he to blame juries if they act upon their convictions of justice and propriety, no matter who makes the speech?

The gentleman from Philadelphia (Mr. Gowen) is not afraid of being sued, because he permits no negligence on his road, and injuries of this kind are not committed there. But why? Because those heavy verdicts he speaks of have struck a salutary terror into the hearts of the Reading company, which makes it, and all its servants, careful.

But, Mr. Chairman, suppose I, or some member of the profession to which I belong, should go to the Legislature and ask for a law which would protect us when we do wrong, against the just indignation of courts and juries. Lawyers sometimes neglect their duty; sometimes they fail to pay over the money of their clients, which is very gross negligence. What would you think of a statute which would confine the client's right to recover within certain fixed limits, which might not reach to compensate the tenth of his loss. Juries are quite as much prejudiced against professional dishonesty as they are against the culpable negligence of common carriers, and it is just and proper in both cases, for it springs from the love of right and the scorn of wrong.

You cannot say that a man who has suffered an injury at the hands of another shall not recover full compensation without committing an outrage upon the elementary principles of justice. If you give him less than that you may say he shall have nothing. If a man who has suffered to the amount of \$20,000, shall be permitted to recover only \$3,000 or \$5,000, why can you not say that he shall go uncompensated altogether?

But we all want to hear the gentleman from Philadelphia, (Mr. Cuyler,) who favors the license of railroad corporations to kill and maim men, women and children for a certain sum per head. We are already aware that, in his opinion, a railroad company, when it cripples a citizen's body, ought to be permitted, at the same time, to cripple his right of getting redress in the courts. But none of us understand the reason of the thing. We are anxious to know why such legislation as this should be tolerated, and unless he has some objection we would be glad to learn from the gentleman how this particular statute came to be passed. We expect him to lift the flood gates of his eloquence.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Philadelphia (Mr. Biddle.)

Mr. HARRY WHITE. I appeal to my friend (Mr. Biddle) to accept an amendment.

The CLERK read:

Strike out of the amendment the words, "no act of Assembly," and insert the words "nor shall any act."

Mr. BIDDLE. I accept the amendment.

The amendment of Mr. Biddle, as modified, was agreed to.

The CHAIRMAN. The question is upon the section as amended.

Mr. DARLINGTON. Mr. Chairman: I hope that the committee will give their unanimous consent to the gentleman from Philadelphia (Mr. Cuyler) to reply to these arguments.

Unanimous consent was granted.

Mr. CUYLER. Mr. Chairman: I can scarcely say that I have any desire to speak upon this subject; but the kindness of the Convention entices me to my feet, and does not permit me to sit still, although I would desire to do so.

I hope nobody sympathizes with the feeling which the gentleman from Philadelphia (Mr. Newlin) affects, that I am here as the representative of any other party than the people. I hope no one else thinks so meanly of me as to suppose I would come here as the representative of any corporation; and although he may not be capable of rising above the feeling that he is here as the representative of a client, I trust he will not continue to include me in that category. I am here as no man's representative, as the representative of no corporation, but as a citizen simply, having the interests of a citizen in the question that comes before this Convention. I say this much in justice to myself, although I think it is scarcely necessary that I should say it here.

One would suppose, from the remarks of my friend from York, (Mr. J. S. Black,) that these corporations wantonly and with purpose assault the safety of those whom they carry, and yet no man ought to know better than he does that that is an injustice, and a great injustice, to such companies. No train ever passes over their roads in which the lives of their employees and the property of the company is not exposed to whatever risk or peril attends the passage. It is a matter of actual fact, that could be demonstrated by an examination of the returns of the Auditor General of the State, that there are few spots safer for any man within the Commonwealth than a railroad train in the State of Pennsylvania; that the hazards of life to an individual who walks up Chestnut street in the city of Philadelphia, from the fall of a brick from a roof, or the chance dropping of a stone or a piece of timber from a scaffold, are greater than the perils of life that attend those who travel in the railway trains of this country, as a general thing. Every train that runs requires, upon the

part of the company, the largest possible precaution.

If no other motive dictated it, pure selfishness, alone, would lead to that result. Now there is a reason for the limitation which is placed in this section as to the extent of damages which shall be given in the case of death, and that reason is to be found in the fact that, in the case of death, there is no standard by which those damages can be estimated. There is no ordinary standard that can be applied. "Skin for skin; all that a man hath will he give for his life." No money can compensate for the loss of life; certainly none to the one whose life is lost, and surely none to those who survive and suffer in consequence of his death, whether it be in their feelings or whether it be in their fortunes. How then, and why then, should we hand over to the tender mercies of a jury, with unlimited control of the amount of damages they should give, not simply to a jury, but to a jury inflamed by the closing speech of eloquent counsel? Do the rights of men and the rights of corporations rest, or ought they to rest, upon so uncertain a basis as that? Is that the foundation on which any human right ought properly be placed? If a man's property is damaged there is a measure for that damage, and it is easily ascertained. If the wrong is repeated, to some extent at least, there is the punitive justice to the community, in the damages that are inflicted, as a warning against others indulging in the same offence; but where it does occur, as it does, in point of fact, in almost every instance of an action for damage against a railroad corporation, that accident has occurred after every precaution possible to be taken by men has been taken; we cannot inflict punitive, nor do we attempt to give compensatory damages, for we can not ascertain what they should be.

Mr. J. S. BLACK. Could the party in that case recover any damages at all?

Mr. CUYLER. I will come presently to answer the question of the gentleman, which is a very proper question indeed. I say it is impossible, by any ordinary standard, to ascertain those damages. A corporation must work through agents; it has everything to sharpen its capacity and to inspire its intelligence and diligence in the selection of proper agents; its own property and the lives of its own employees are imperilled on every train that runs; but, after all the care that is taken, men are liable to err. Switch tenders

will become careless; engineers become nervous; it may be from a momentary condition of ill-health, which passes away. The most vigilant will sometimes sleep on their posts. Who is there who has not known of occasions wherein he himself has fallen below his own proper standard of what is right and proper, with reference to his own conduct? Now, we are to take a corporation, which must work through just such agencies as those which I have mentioned, and which has exercised the utmost prudence and care in the selection of those subordinates, and you are to hand them over, in case of an accident, against which every human precaution was taken, to the tender mercies of a jury, whose feelings are moved; whose passions are roused and inflamed by the eloquence of counsel, and who have no possible restraint to be found in any standard that can be presented to them by which they may measure the amount of their damages.

What then? You must average one life with another. You must say what, after all, averaging one case with another, is about the fair result. In some instances these juries have given enormous verdicts. In other instances they have given verdicts too low, but the experience of mankind has shown that the average of about \$5,000 is a fair and reasonable compensation. There are cases in which it will not reach the justice of the case. There are cases where it far transcends the justice of the case. But, after all, it is by averaging these cases, one with another, that about the fair result is obtained. That I understand to be the theory upon which such statutes as this are framed.

I know of no other instance that can be presented in the law, in which a jury can be called upon to assess damages without any possible standard, except their own passions and feelings, inflamed to the last possible degree, just when they should be called upon to apply their judgments.

Mr. DODD. I would ask the gentleman how it is in breach of promise cases. Are damages not generally higher in those cases?

Mr. CUYLER. The gentleman's question admits of a very easy answer. Part of the evidence, as he as a lawyer knows, in every breach of promise case, has reference to the estate of the offending party, and in measuring the damages, the defendant's pecuniary ability is taken into consideration, and in no case more so

than in actions of breach of promise of marriage. I ask the gentleman to tell me when you come to a case of death, how you are to measure the damages that should be allowed? By what possible standard can you do it? Many a man lives a burthen to society as well as a burthen to himself and to his family, and yet if you take that very case before a jury in a court of justice, when, inflamed by the artful appeal of eloquent counsel, the jury will give just as large damages as they would if my learned brother from York (Mr. J. S. Black) had been, to the great loss of the world, cut off, instead of suffering the damage he did to his arm. So it is, simply because there is no standard, and hence the law must make a substitute by creating an artificial standard.

There is, therefore, a necessity arising from the nature of the case of establishing an artificial standard by which such damages may be measured.

After all, Mr. Chairman, what does it come down to? Does any gentleman suppose that these outrageous and unreasonable verdicts which are given against railroad companies for damages fall, at last, upon the corporations? Not at all. They fall upon the community, upon you, and upon me, and upon the entire society; they fall as a burden upon the trade and business, the traffic and transportation of passengers and property, for the railroad company *will* earn a competent dividend for its stockholders; and if you burden the expenses of this company by unreasonable verdicts, you are at last but laying that burden upon the traffic and the general prosperity of the community in which you live. It comes ultimately to that. I do not appeal to this Convention in the name of corporations, but I appeal to the members as citizens, as men who have an interest in the general trade and prosperity of the community. Every burden you lay upon such a corporation comes, ultimately, upon the general business of the community, so that if no other motive than an enlightened selfishness should regulate the action of this Convention, that, of itself, ought to be felt to be sufficient. I am sorry to have taken up so much of the time of the Convention. I have spoken most unwillingly on this question, and should not have uttered a word had I not been absolutely enticed, compelled to speak, through the kind voice of the Convention, requesting me to do so.

The CHAIRMAN. The question is upon the section as amended.

Mr. COCHRAN. Mr. Chairman: I wish to offer an amendment to the section, which I will send to the desk.

The CLERK read the amendment, as follows:

Strike out the first line, and the second line up to and including the word "property," and insert in lieu thereof the following words, to come in at the commencement of the section: "No limitation of the amount to be recovered for the loss of life, or injuries to person or property, shall hereafter exist in this State; and in case of death from such injuries," &c.

Mr. COCHRAN. Mr. Chairman: I had no intention this morning of cutting off the gentleman from Philadelphia from addressing the committee; but as the rule has obtained here that only one speech of twenty minutes should be made by each member, I felt disposed to call the attention of the chairman to the matter, upon the principle that equality is equity, and I simply desired that the rule should apply in *all* cases, or none.

With regard to this amendment, I did not like the phraseology of it in the first place, because I was not certain, from its language, whether or not the case of loss of life was provided for. I wish to make that explicit, by putting it *in words* into the section, that there *shall* be no limitation imposed hereafter in cases of loss of life or injuries to person or property. I mean that no limitation should hereafter exist in this State. The section as read was unsatisfactory to me on that ground, and for that reason it is, sir, that I offer the amendment which is now pending before the committee. Nor do I deem it necessary, after having stated the object of the amendment, to go into the discussion of the matter which has been so thoroughly discussed already.

I am perfectly satisfied that there can be no good reason assigned why this limitation should continue to exist any longer. It has existed too long already in this State. We have already discriminated too long against individuals, and in favor of corporations; for in point of fact, although not in the express terms of the law, the limitation chiefly operates on them. Let us, then, make this matter explicit and clear, that this limitation shall no longer exist in this State, as to the amount of damages to be recovered.

It is unnecessary, it seems to me, to say to a body like this, that to attempt, as the gentleman from Chester (Mr. Darlington) has suggested, to impose an arbitrary limitation or to fix an arbitrary sum in a case of this kind, would be to go, not only against what is advisable and just, but against all the analogies which prevail in similar actions. This is always an action in the form of a tort, and the damages there are to be recovered according to the circumstances and rules that control the particular action. There is no reason in the world why we should attempt to impose an *arbitrary* limit here to the amount of recovery, more than there is in any other action which we bring in the same form. Let us put it on the same principle exactly, and under the same rules which govern all other such actions, and submit it to the same tribunal to which we submit other actions upon which our property, and our reputation, and all the other interests that are dear to us, are staked. Why should we make any discrimination?

It seems to me, sir, that the argument which says that this matter should not be left to a jury, which is said to be "dazzled" by the eloquent speech of the closing counsel for the plaintiff, is an argument that should never come in here. Why, sir, *some* counsel must close on one side or the other; the burden of proof is on the plaintiff, and he has burden enough to sustain an action against a wealthy corporation and against distinguished counsel, as already stated, when the courts are continually throwing in his way this doctrine of contributory negligence. He must make himself perfectly clear of the charge of having contributed in the slightest degree to the injury which he has himself sustained. Having cleared himself of that, why, then, should it be said that the closing speech of his counsel should not have its appropriate weight before the jury? Sir, it has no more appropriate weight before the jury than the closing speech of a counsel in a criminal case against the man who stands accused of murder, and is in peril of his life; no more weight than the concluding speech in any other case; and we submit these cases to precisely the same tribunal to which we submit the disposition of the question of life and death in other cases. Why, then, should we discriminate in cases like this, contrary to the usual manner and against the plaintiff, who has been injured by the negligence, the abso-

lute, unqualified negligence, of a corporation, or an individual either?

It has been said that this remedy of a recovery for damages to life or limb is a remedy not of the common but of statute law, of statutory origin. We admit it, sir; but it was put upon the statute book because public sentiment, and that, too, of the entire community, required that it should be placed there. It was a concession—it was one of those points to which the principles of the common law would not extend, and the demand of public sentiment required that this should be imposed in addition to the remedies which the common law provided for other injuries. If the Supreme Court of this State has said, as has been stated here, by gentlemen of this Convention, this morning, that that part of the law which interferes to make the damages for personal injuries not resulting in death, is unconstitutional, why then is there any reason that we should impose a limitation, merely because the remedy is statutory in its origin, to the case where a man's life is taken, and his family deprived of the benefits and advantages of his labor.

I hope I have so phrased this amendment that it will be unobjectionable, and that by introducing these words we will remove from the section all doubt in regard to its operation, and make it so intelligible that there can be no mistake about the meaning and intention of this body.

MR. HARRY WHITE. Mr. Chairman: I merely wish at this time to make an observation about the appropriateness of the amendment. I was going to remark that I would be very glad to accept the amendment of the gentleman from York, (Mr. Cochran,) in lieu of the first words of the section; but it seems to me not to be so comprehensive. It is but another way of expressing the same thing, and the remedy that is desired to be applied here, is to prevent the passage of an act of Assembly hereafter, or to prevent any present act of Assembly from limiting the amount of damages, and the expression in the section is, to by mind, more explicit and less liable to misapprehension than the expression of this amendment. As to the apprehension of the gentleman from York, (Mr. Cochran,) about a doubt as to the section prohibiting limitations for loss of life, or injury resulting in loss of life, I think there can be no

doubt upon the subject. Listen to the section :

SECTION 26. No act of assembly shall limit the amount to be recovered for injuries to person or property, and in case of death from such injuries, the right of action shall survive, and the Legislature shall prescribe for whose benefit such actions shall be prosecuted.

The whole section is to be read together, and, of course, it comprehends the practical remedy, given by the act of 1845, for the loss of life.

Mr. EWING. Mr. Chairman: In addition to what has been said by the gentleman from Indiana, (Mr. Harry White,) I wish to call the attention of the committee to the wording of this amendment offered by the gentleman from York (Mr. Cochran.) As I read it, if this were adopted, and a case of the kind referred to in this section were on trial before a court and jury, the judge could not lay down any limit whatever, as a rule of law as to the amount to be recovered, for the amendment says that there shall be *no limitation of the amount*. Now, the verdict may be one hundred thousand dollars or one cent. Now I say that in all these actions there is a limitation by law as a part of the measure of damages. What we want to get at is to prevent the Legislature from limiting the amount by an act of assembly. I think, therefore, that the amendment offered is very objectionable on that point. I have not any doubt about the section as it stands here, preventing the limitation of the amount to be recovered in case of death. The right of action accrues at the very instant that the injury occurs, and if it survives it necessarily survives with all its incidents and liabilities, just as in any other case of trespass, or a case of "mesne profits," or anything of that sort. But this is certainly objectionable. I would suggest to the gentleman, if he will allow me to do so, that as chairman of the Committee on Railroads, he give the matter a careful consideration, and if he can report a section that will be more comprehensive and less doubtful, when it comes up on second reading the Convention can determine which one it will take. This section has been considered with care, and I think covers the ground.

Mr. DODD. Mr. Chairman: I think that not only is the amendment open to the criticism made, but if we change the language, as the gentleman from York (Mr. Cochran) suggests, we will have to change

the language of the amendment already passed, because it refers back to the language, "no act of Assembly." I think that an amendment is required, which shall leave no question whether the section applies to injuries resulting in death. If delegates will refer to the section they will find, by the insertion of the words "resulting in death or" after the word "injuries," that there will be no further difficulty. I therefore offer to amend the section by inserting those words.

Mr. COCHRAN. I accept the modification.

The question being taken on the amendment offered by Mr. Cochran, a division was called, which resulted as follows: Ayes, twenty-five; noes, thirty-seven.

So the amendment was not agreed to.

Mr. CORBETT. Mr. Chairman: I move to strike out the word "Assembly," and insert the word "Legislature."

The amendment was agreed to.

The question being taken the section as amended was agreed to.

Mr. BIDDLE. Mr. Chairman: I now offer the following as an additional section to the report :

No act of Assembly shall authorize the investment of trust funds by executors, administrators, guardians or other trustees in the bonds or stocks of any private corporation; and existing laws so authorizing are annulled and avoided, saving such investments heretofore made in good faith.

Mr. BIDDLE. Mr. Chairman: By our original law, before the act passed, some four years ago, which I am about to refer to, certain specific investments were authorized which, if made in the manner pointed out, by persons acting in a fiduciary capacity, relieved them from all responsibility for the keeping of trust funds. Those investments were United States loans, our own State loans, and the loans and mortgages of the city of Philadelphia. From time to time the public loans of other municipalities existing in the State were added to the securities already named, because it was supposed that trustees residing in the immediate neighborhood of such bodies might naturally and properly prefer such investments to the investment of municipalities at a distance from them. It was supposed that they could readily understand the value and character of such investments. So the law stood until 1870, when a marked departure from its conservative principles occurred. Now, in what I am about to say I mean no reflection at all upon par-

ticular corporations to which I will have to refer, but it is necessary to enter somewhat into details. Until 1870, then, the first marked departure was made, and a new list was added to the class of investments which a trustee might lawfully make.

In 1870 the Legislature inaugurated a totally different policy, and in my judgment, one which was most inexpedient. The Legislature, authorized by the act of the 1st of April, 1870, which will be found on page forty-five of the pamphlet laws of that year, that the bonds of the Pennsylvania railroad company secured by its general mortgage, dated July 1, 1867, should be a trust investment. In 1872, and we see how very rapidly progressive such legislation is, by the act of March 29, to be found on page thirty-one of the pamphlet laws of that year, the bonds of the Philadelphia and Reading railroad company, secured by its general mortgage, were also made a trust investment. It requires no very prophetic eye to see, that once a change so radical is made in our law, trustees will be authorized to invest in the bonds and probably in the stock of all favorite private corporations, or rather private corporations favored by the Legislature; and thus the very security which was intended by the limitation passed half a century ago, will be entirely defeated. Now, what takes place when one of these improvement companies is sued upon one of its mortgages? I do not, of course, refer to either of the two corporations in which trust funds are now authorized to be invested. I hope we, in Pennsylvania, may never see the day in which their corporate property may be brought under the hammer; but what has been may be again, and it is to arrest this possibility that I have proposed this section, and desire to make these remarks in regard to it. I suppose there are not less than fifty gentlemen on the floor of this Convention, who are perfectly aware what takes place when a railroad is sold—which, by the bye, is not a very unfrequent proceeding—and for the benefit of those who may not be familiar with the subject, I will explain very briefly what does take place. When an improvement company is unable to pay the interest on its bonds, when the time stipulated in the mortgage passes and the usual expedients resorted to have failed, a combination takes place between the large bond-holders, and they agree to sell out and buy in generally on terms tolerably liberal to all the bond-holders; but it not unfrequently, indeed

I think I may say it invariably happens, by reason of the distance from the scene of action, or by ignorance, or from poverty, many of the smaller bond-holders are not reached or asked to contribute to the fund to be raised for expenses.

The corporate property, however, is sold and bought in by the large holders, and the company is usually re-organized upon what is supposed to be a better basis; but those who do not enter into the arrangement, into the combination, are entirely cut off, because it never happens that the fund is sufficiently large to reach all the claims that legally exist against it. Now, who are the persons most likely not to be reached if such a contingency occurs? It is the widow, the orphan, and their trustee. The shrewd business man, who has large sums invested in the bonds of the company, is on the look out. The man or woman with a small investment of \$500, or a \$1,000, is not heeded, and the result is frequently very disastrous. Now, I think we are bound to say to what extremes the Legislature shall be permitted to go in the regulation or changing of the class of investments in which trustees may properly invest the funds committed to their care for the investment and protection of those beneficially interested, or what the lawyers call *cestuis que trustent*. This Convention may say to trustees: "You may invest in the securities of the general government; you may invest in the loans of this Commonwealth; you may invest in the loans of this municipality; you may invest in mortgages, in ground rents, and in real estate, but you shall not commit the funds entrusted to your care to hazardous commercial speculations, which all improvement companies are more or less engaged in." I know it will be said in answer to this argument that a mortgage bond of a large improvement company gives all the security of real estate; but what kind of security is it?

In the first place, in regard to two of the instances to which I have just referred, the mortgage bonds are not first liens at all; they are not second liens, and I do not think in one case they are even third liens. In the first case which has been cited to me, the mortgage bond is a third lien, and it is liable, therefore, to be divested either under the first or second lien; but that is not the only objection. If the liens previously existing are small, this difficulty might be obviated. It is nevertheless, to a certain extent, a hazardous investment, and partakes and pos-

sesses none of the characteristics of a security afforded by a mortgage upon a farm, a house, or an improvable lot. It is wholly unlike the security afforded by the general, State or municipal governments, where taxes can be imposed upon all property to meet the interest upon their indebtedness. Mortgage bonds of improvement companies are essentially a speculative investment. I suppose it will be said that the two cases to which I have referred are beyond all possibility of a contingency. I hope sincerely that this may be the case; but with what reason can the Legislature, after granting the privilege to the Pennsylvania and the Reading railroad companies, refuse the same privilege to the Lehigh Valley, the Lehigh navigation company, the North Pennsylvania railroad, or any of the many improvement companies by the lines of which this State is traversed? The claims of these companies may be urged upon the attention of the Legislature, fortified by arguments that their property, in proportion to the amount secured upon it by first mortgages, is a much safer investment than the investment already authorized by the Legislature in railroad securities against whose property many sets of mortgages are held.

The claims of other roads will be urged with all that persuasiveness and pertinacity which persons having so much at stake usually adopt when their interests are concerned. I desire that this question of trust funds shall be placed on a perfectly secure basis. No class of cases appeals so strongly to our sympathies and to our sense of duty as the property of these persons, who are in a state of pupillage, not *sui juris*, and who thereby become, as it were, the children of the Commonwealth, to whom they rightfully look for protection, as their common parent. I might extend this argument very considerably, but I think I have said enough to show that when, in 1870, the Legislature departed from the rule which it had previously laid down, it made a radical and vicious change in the law, and one which should be arrested and corrected by a constitutional provision somewhat like the one just offered by me. I hope, therefore, Mr. Chairman, this section will be adopted as part of the article now under consideration.

MR. J. PRICE WETHERILL. Mr. Chairman: It seems to me the only question in regard to this matter of limiting the investment of trust funds is a question of

safety. The first mortgage bonds of the Pennsylvania railroad and the first mortgage bonds of the Reading railroad are, in my opinion, just as good an investment as city sixes, and there can be no harm whatever in leaving the power with the Legislature to say whether they conceive them to be a good and sufficient investment for trust funds. The question, therefore, as I understand it, is purely a question of safety.

In the city of Philadelphia there are five or six large trust companies, and if I were to name the amount of trust funds held by these companies it would surprise a great many members of this Convention, for it would be found that it would amount to perhaps fifty millions of dollars. If they invest their trust funds in United States securities, they must pay 115 for them, so that they do not net six per cent. to the holder of the trust or the party benefited. If they invest in State funds they are compelled, in the same way, to pay a large premium for an investment which does not net six per cent. to the holder of the trust. The consequence is that a very large amount of these trust funds are invested in but one security; that is the loan of the city of Philadelphia, because the securities alluded to are generally above par, and the parties having trust funds to invest desire to, if possible, in the first place, invest them at par, and secondly that they should pay the recipient six per cent. interest, and therefore invest them in this one security. The consequence is that a very large amount of the trust funds, not only of the city of Philadelphia, but also of the State, are being absorbed by this one security, and no matter how good it may be, is not, therefore, a prudent course.

Now, sir, if this is the case, should we not be extremely careful how we direct by this section the investment of the trust funds held and to be invested by the different trust companies of the city of Philadelphia in one particular direction. I can see no harm in the Legislature, by acts of Assembly, assenting that the first mortgage bonds of these great roads is a good investment, and there is no doubt that the first mortgage bonds of these two roads will be just as surely paid at maturity as the investments fixed by law. If the first mortgage bonds of these two roads will meet their interest promptly, I cannot see why a trust fund invested in these two corporations is not as good as a trust fund invested in city sixes, a State or a govern

ment loan. If they yield more interest, there is an additional advantage. If the general mortgage loan of the Reading railroad company pays seven per cent. interest, why should the Convention, by their action, deprive the holders of that trust of that one per cent. additional income—yielding to the beneficiary seven per cent., instead of six per cent. The whole question, in my mind, depends upon the security of the investment, and if the Legislature should so decide, it seems to me that it is wise and proper to leave it in their hands.

Mr. GOWEN. Mr. Chairman: I think I speak within bounds when I say that there is no known instance in which the first mortgage bond of a large American railway company has ever proved a disastrous investment, or upon which the interest has not been paid. We all know to our sorrow, and some citizens of this State know it to their shame, that while private corporations have not repudiated their obligations, municipal corporations and territorial governments have frequently done so. I do not believe that there can be adduced a single instance in which trust funds invested by order of the court, in the first mortgage securities of any of our large railway companies, have ever turned out to be either worthless or to be depreciated. We know too well that trust funds, invested in the obligations of municipal corporations have time and again proved almost worthless. The question therefore is simply one of safety, as the gentleman from Philadelphia (Mr. J. Price Wetherill) has well remarked.

Unfortunately here in Pennsylvania, and especially here in Philadelphia, no large enterprise has ever struggled into existence and prosperity that has not met at the outset with opposition from our own citizens. We are in the habit of driving our money away from our State, and forcing it to seek investment elsewhere. There is to-day, in the city of Philadelphia, not one-third, or one-fifth, of the money for the legitimate purposes of business which is required by the demands of the business community. The reason is, that our rate of interest is lower than the rate of interest in adjoining States, and our money is sent out of the State in order to secure the large interest which is given by neighboring States. As allusion has been made this morning to both of the acts of Assembly, which gives to the trustee the power of investing trust funds in the loan which is practically a first

mortgage upon property worth four or five times the extent of the mortgage. In both of these cases, the acts of Assembly require that the judge of the orphans' court, having control of the trustee, must approve of the investment before the trustee is relieved. Now, while I would be in favor of an amendment to the Constitution, which should prohibit the Legislature from making the securities of any private corporation an investment for trust funds without the previous sanction of the proper court, thereby making it a judicial act and permitting the courts to have some custody and control over the money, I am not in favor of the amendment as proposed, for the reason that it will destroy and prevent the power which a great many trustees now have, under the sanction of the court, of investing the money of their wards and the money of their *cestuique* trusts in securities that will give them one or one and one-half per centum more interest per annum than they could get if under the obligation to invest only in municipal securities.

Those of us who are lawyers, here in Philadelphia, know very well what the operations of these two statutes have been. I know myself that I can speak of one of them, with a more thorough knowledge of it than any other man in the world, because the act was prepared at my direction, and it was prepared at the urgent request of two or three large corporations in this city, who are large holders of trust funds, and who wanted an opportunity of investing their trusts. They were responsible for their trusts. They have amply guarded them, but they were obliged to go to court in order to have their investment approved, and these trustees, these large trustees, like the Fidelity company, the Pennsylvania company for the insurance of lives and granting annuities, and three or four others, that are the strongest and best in the city, and in the whole State, were anxious for the opportunity of investing these funds in this very class of securities.

But how did it operate on the courts? The courts looked with a little distrust upon any innovation of the old established custom. The court in Philadelphia very properly selected a board of skilled financiers, gentlemen thoroughly conversant with the business, and requested them to report to the court the names of such corporations whose obligations were made legal investments as would be perfectly safe, and I apprehend there is no instance

of any wrong having been suffered, that there is no one who will venture to assert, that so far as this system has already gone, there is no possibility of any instance happening in the future. Why then should this system be interfered with when it is a notorious fact that in the past no wrong or injury has resulted from it?

If there is an amendment proposed to this effect, that the Legislature shall not authorize the investment of any trust funds in any corporation, or in any private corporation, without the sanction of the proper court, then I should vote for it. But I earnestly trust that unless their is some such amendment as that effected, it will not succeed.

Mr. BOWMAN. Mr. Chairman: Before the gentleman sits down I would like to ask him this question: When has any municipal corporation north of the Ohio river repudiated or dishonored its obligations?

Mr. GOWEN. The Allegheny county bonds is an instance.

Mr. BOWMAN. The Allegheny county bonds were paid to the last dollar.

Mr. GOWEN. They were paid at last. But did not the county repudiate them for years? The interest could not be collected, and did not they go down to forty cents on the dollar?

Mr. BOWMAN. Mr. Chairman: Does not the gentleman know they were paid?

Mr. GOWEN. They were not paid until the authorities were compelled by law to pay them. Butler county and Lawrence county repudiated their bonds, and for years and years the widow and the orphan who relied upon them for investment were deprived of their income, and forced by their poverty to sell the bonds for thirty or forty cents on the dollar, to the wealthy capitalist, who, when recourse was had to law, and the counties were compelled to pay, reaped the benefit of their purchase.

Mr. KATNE. Mr. Chairman: I look at this section as now offered as one that is calculated to prevent the very worst kind of special legislation, notwithstanding what has fallen from the gentleman from Philadelphia (Mr. Gowen.) Everything that he desires that trustees or executors or administrators should have a right to do, they have a right to do already under the general law of this Commonwealth. If a trustee or executor desires to make an investment of any funds in his hands, he can do it without the ac-

tion of a court or any body else, upon his own responsibility. But if he desires to be relieved from personal responsibility in that regard, all that he has got to do is to go into the orphans' court of the county of Philadelphia, or in any other county in the Commonwealth, and get an order, which he can get upon proper cause shown, to invest the money of his ward, or the trust money in his hands, in the bonds of Reading railroad company, or in the bonds of the Pennsylvania railroad company, or in the bonds of any other institution in this State, if the court think it proper and right. There is already a statute on the books on that subject, a general law.

Mr. GOWEN. Mr. Chairman: Does not this amendment wipe that statute out, except so far as any investments which have already been made?

Mr. KATNE. I do not think it does. I do not think it will interfere with any general law.

Now, Mr. Chairman, the objection I have to that kind of special legislation is this, that any corporation, no matter how insolvent or how ruined, goes to the Legislature and gets an act passed that their bonds shall be a legal investment for trust funds of any kind, thereby giving them a false credit in the market, and giving them a credit which they are not entitled to at all. This is a kind of judicial legislation that ought never to have existed, and I hope that this Convention will now put in the Constitution something such as is proposed by the gentleman from Philadelphia, (Mr. Biddle,) to prevent it hereafter. If the general law is not sufficient on this subject now, it is very easily made so. I would prefer having this provision put in the eleventh section, "that the Legislature shall pass no special law regulating the investment of trust funds," which, I think, would cover everything that the gentleman from Philadelphia (Mr. Gowen) desires. I submit to my friend from Philadelphia, whether that would not cover the case? At any rate, I think the latter part of his provision is entirely unnecessary, and I would suggest to the gentleman the propriety of striking it out.

Mr. BIDDLE. Which part do you refer to?

Mr. KATNE. I refer to that part which provides that all laws upon this subject now in existence shall be repealed thereby. Mr. Chairman, let us have that read.

The CLERK read as follows:

"And existing laws so authorizing are annulled and avoided, saving such investments heretofore made in good faith."

The CHAIRMAN. Does the gentleman from Fayette offer that as an amendment?

Mr. KATNE. Mr. Chairman: No, sir; but I take it that a provision of this kind, "no obligation or liability of any railroad or any act of Assembly shall limit the amount to be recovered," would render nugatory and of no account, after the adoption of the Constitution, any law that may be in existence at the time it was adopted. I throw out that suggestion to the gentleman from Philadelphia who has offered this amendment and who seems to have a very great interest in it, but I decline to make any motion.

Mr. CAMPBELL. Mr. Chairman: I wish to make a suggestion to the gentleman who has offered this section, that he will insert before the words "private corporations" the words, "railroad, canal or any other," so as to make it as explicit as possible.

Mr. BIDDLE. Mr. Chairman: I think it is sufficiently explicit, but if the Convention thinks it is not, I have no objections. I want to make it explicit.

Mr. DARLINGTON. Mr. Chairman: I, at the proper time, will move this. I read it now only for information:

"The Legislature shall not pass any law authorizing the investment of trust funds in the bonds of any municipal or private corporation, without the sanction of the proper court."

The CHAIRMAN. The question is on the section proposed by the gentleman from Philadelphia, (Mr. Biddle,) which will be read.

The CLERK read as follows:

SECTION —. No act of the Legislature shall authorize the investment of trust funds by executors, administrators, guardians or other trustees, in the bonds or stock of any private corporation, and existing laws so authorizing are annulled and avoided, saving such investments heretofore made in good faith.

The section was agreed to.

The CHAIRMAN. The question is on the twenty-seventh section, which will be read.

The CLERK read as follows:

SECTION 27. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be regulated by law.

Mr. KATNE. Mr. Chairman: I think

that this section is unnecessary, after what we have adopted in the eleventh section, which I will read. We have already adopted, in the fourth paragraph of that section, that:

"The Legislature shall not pass any local or special law changing the venue in civil or criminal cases."

Mr. ALRICKS. Mr. Chairman: I appreciate the difficulty suggested by the gentleman who has just taken his seat, and, in order to meet it, I will move to amend the section, by inserting before the last word, "law," the word "general." That, I think, will put this section in its proper shape and prevent us from re-enacting the same section.

Mr. CORBETT. Mr. Chairman: The two propositions which gentlemen seem to regard as similar are entirely distinct, and intended to reach an entirely different result. It is provided under the eleventh section of this article reported by the Committee on Legislation, that the Legislature cannot, by special or local law, change this venue of any civil or criminal case. This section provides that the power to change this venue shall be vested in the courts as shall be regulated by law. Now, of course, "law" in this case means "general law." It cannot mean special law, for the Legislature is prohibited from passing any special or local law on this subject.

Mr. WOODWARD. Mr. Chairman: If you were on the floor and not in the chair, I expect you would say what I am going to say. This subject of the change of venue properly belongs to the Judiciary Committee, and is under consideration by that committee, and they will most certainly report a provision upon the subject. Now, I am not at liberty to allude to what will probably be the report of the Judiciary Committee, but there will be a report from that committee, as the chairman very well knows, on the subject of a change of venue, that I trust will obviate all necessity for legislation on that subject. Meanwhile, what is the wisdom of adopting this provision? The provision is:

"The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be regulated by law."

Well, but we propose to vest it in the courts, to be regulated in such manner as the Constitution shall prescribe, not that it shall be regulated by law, for that is exactly the evil now. Parties go to the

Legislature and get a change of venue by an act of Assembly.

The Judiciary Committee will probably report a scheme to give parties a change of venue when they ought to have it, by the action of the judiciary, independent of the Legislature, and therefore, in my opinion, this section ought to be re-committed until we get before us the report of the Judiciary Committee. But this body seems to be so much in love with everything that this Committee on Legislation has reported, that I suppose they will not part with any of its provisions. They have amended their report in one or two instances; but they have refused to vote down anything which the Committee on Legislation has submitted. Therefore I will not move to strike it out; but I tell the gentlemen who compose this Convention, that we will embarrass our future action on this matter if we now adopt this section as it stands.

Mr. H. W. PALMER. Mr. Chairman: I do not desire to discuss this section at all, but to state my belief that the views of the gentleman from Philadelphia (Mr. Woodward) should prevail at this time. The present methods of obtaining change of venue are justly subject to great criticism, and, probably, we all agree that some change should be made. Under existing acts of Assembly a railroad company may obtain a change of venue from the county, where a cause of action arises, to some distant county through which their road does not pass, and thus force a party, plaintiff, to transport his witnesses a great distance, at an expense which, possibly, he may not be able to bear. Courts have no discretion on the subject. An affidavit on the part of the company that justice cannot be obtained, is sufficient. Discrimination is thus unjustly made between classes of citizens. It is quite desirable that such evils may be remedied, but perhaps the Committee on Legislation is not the proper one to deal with this subject. The Committee on the Judiciary, it is understood, are prepared to report a section on the subject. Would it not be wise to await the report of that appropriate committee, and for the present vote down this section?

Mr. DARLINGTON. Mr. Chairman: An additional reason why the committee ought to adopt the suggestion of the gentleman from Philadelphia (Judge Woodward) has been made by the gentleman from Luzerne (Mr. H. W. Palmer.) That is, that the section proposes to confer upon

the courts the right to change venue in criminal cases. Now, that will be found to be slightly in conflict with the provisions of the Bill of Rights, from the committee on which we have no report. The Bill of Rights provides that every man accused of a crime shall be entitled to a speedy trial by a jury of the vicinage in which the crime has been committed, and that has always been understood to be the place where the offence has been committed, or, at least, in the county. Now this change of venue may take a man accused of crime, out of the county where a crime has been committed, into another county, perhaps one hundred miles distant. These are considerations which, with me, have influence, and inasmuch as the Committee on the Judiciary and the Committee on the Bill of Rights have not yet reported, I think the section as offered ought to be voted down, with the understanding that we do not get rid of the subject, but only postpone action on it now to let it come up again in its proper place hereafter.

Mr. CORBETT. Mr. Chairman: I hope the committee will not vote down the section. That is not the remedy. If a better section is reported by the Judiciary Committee, the Convention will have it in their control on second reading. I hope the committee will adopt the section as it is, or amend it, if they can suggest improvements, but leave it stand until the Judiciary Committee shall report. I have no wish that the Committee on Legislation should do anything that it is the province of that committee to do, or take away from that committee anything that belongs to them, and if they report a plan by which this subject will be vested in the courts, and in the courts alone, and take it altogether away from the Legislature, even by general law, to regulate it I will support that plan. I am in favor of that. It is not because I oppose anything of that kind that I ask this committee of the whole to adopt this section. When it comes up on second reading we may have other propositions from these other committees which have been referred to. But we have this section now, and it is all we have. Let us adopt it; afterward, if anything better be offered, it will be easy to make the substitution.

Mr. CHARLES A. BLACK. Mr. Chairman: I was not here when the previous part of this report was before the committee of the whole. But it seems to me that if what was done in reference to the eleventh section was right, then this or

something like it should be adopted now. You have already, by the fourth paragraph of the eleventh section, taken away from the Legislature the power to change venue in criminal and civil cases by special law. That has passed this committee. Then of course, having done that, you must say who shall exercise this power. Somebody must have the right to say so in cases where it not only is important, but necessary, that the change of venue be made, and hence this section ought to be adopted. We have already taken away this power from the Legislature, and now we should adopt this section, or something like it, to say who shall exercise this power, and this it seems to me is the proper time to say it.

Mr. S. A. PURVIANCE. Mr. Chairman: I hope we will take final action on this subject now. The gentleman from Philadelphia (Mr. Woodward) seems to entertain the idea that if we do not vote down the section, and await the report of the Judiciary Committee, that it will produce great disarrangement in the transaction of our business. I confess that I am not aware that the Judiciary Committee, will make any report on the subject of a change of venue. I think it has not taken action on that subject, and even if it had it seems to me that we ought not to pass this section ever now.

Mr. MANN. Mr. Chairman: Only an additional word to what has been said in favor of the adoption of the section as it stands. The committee of the whole have already adopted a clause which prohibits any special legislation on this subject of changing venue. Now this section simply provides that, by a general law, power to change venue shall be vested in the courts. If the Convention is opposed to that method of changing venue, then this section ought to be voted down. If not, then it ought to stand as it is, and I submit to the committee of the whole, what subject ever came more properly before the Committee on Legislation than this one. The matter of changing venues in the Legislatures has been an evil.

Mr. KAINÉ. Mr. Chairman: Before the gentleman leaves that branch of the subject, will he allow me to ask him a question?

Mr. MANN. Certainly.

Mr. KAINÉ. When we have placed in this Constitution a provision that the Legislature shall not pass any special law on the subject of changing venue, does that not imply that they have the right to do

it by a general law, and if they have that right what is the use of putting it in the Constitution?

Mr. MANN. Mr. Chairman: I will answer that by saying that the Committee on Legislation thought it was better to say to the Legislature that they should put it in the courts, to provide some mode of changing venue. The Committee on Legislation was of the opinion that the matter of changing venue should be vested in the courts. If the committee of the whole think differently let them vote the section down. But clearly, if this section is not adopted the Legislature may by general law regulate the matter as they may deem best, and they may provide some other mode of changing venue. The Committee on Legislation thought the courts were the proper channels to regulate that subject.

In answer to the gentleman from Ches. (Mr. Darlington) I will say that it is now the practice for the Legislature to change venues in criminal cases. They do it now, but it seemed to the Committee on Legislation that it was an improper exercise of power; that it was improper for parties to go to the Legislature, asking them to change venue in criminal cases. But changes have been made in the venue in criminal cases.

Mr. DARLINGTON. At the instance of the accused, however!

Mr. MANN. It does not make any difference at whose instance it was done. The Legislature has exercised that power, and it seemed to the committee that it was improper to be done by them, and ought to be done by the courts.

Mr. HARRY WHITE. Mr. Chairman: I merely wish to say, in confirmation of what my friend from Potter (Mr. Mann) has said, that I hope the committee will pass the section. There is no one subject which has tormented the Legislature more than this subject of the change of venue. Every session of the Legislature there are repeated applications to change venues in numerous cases, and it was to prevent such a recurrence after this that the section was adopted. About it, Mr. Chairman, there was no division of sentiment in the Committee on Legislation, and I apprehend there is no division of sentiment in the minds of any gentlemen who have observed the course of legislation in this regard. It is clear, then, that there ought to be some general law on the subject, and it was deemed wise and proper, inasmuch as it was the duty of the Com-

mittee on Legislation to prevent the passage of special acts by constitutional provision, that the same committee should also indicate the tribunal where the power of changing venues should be reposed. Now, it is wise and proper that it should be vested in the courts. I am not sure but that the courts, if the Legislature should refuse to pass any general law on the subject, might not have the power to change venues themselves, by virtue of their own inherent power to make their own rules. But, of course, this is an admonition direct to the Legislature to pass a general law upon the subject, as soon as the Constitution is adopted.

Mr. WOODWARD. Mr. Chairman: I desire to explain. I find, upon conversing with my friend, the gentleman from Pittsburg, (Mr. S. A. Purviance,) that I was under a mistake regarding the statement that I made just now. I supposed that the report of the Committee on the Judiciary would contain a provision on this subject. He tells me that the report is prepared. It must have been done at a meeting when I was not present, and that it contains no provision on that subject. The Judiciary Committee have, however, had before it a proposition that does cover this whole subject, and I supposed before the final report can be agreed upon that question would be passed upon by the Judiciary Committee. I am informed, however, that such is not the fact.

Mr. CUYLER. Mr. Chairman: This is the first I have heard of a report from that committee.

Mr. WOODWARD. There is an amendment before the Judiciary Committee, which covers this subject, and I trust before the final report of that committee is made the proposition, in some modified form, will be presented. The report may be made without touching the subject, and if so an appropriate amendment will be moved.

Mr. HARRY WHITE. Mr. Chairman: I trust the committee will pass this section.

Mr. J. W. F. WHITE. Mr. Chairman: I am in favor of the principle contained in the section, but shall vote against it because I regard it as utterly useless in the Constitution. We have already adopted a section which prohibits the Legislature from passing any special law on the subject, which necessitates a general law. We do not need a section to give power to the Legislature to pass a law of this kind. They possess that power, unless we prohibit it. We have prohibited it in special

cases, leaving it open for a general law. Now, it is true that the Legislature might confer this power to change the venue in the King of England or of France, and that is just about as likely as they will vest it anywhere else than in the courts of the State. I am opposed to putting in our Constitution any useless provision, or making it any longer than it need be. I fear that one of the evils which we will commit in this Convention will be the putting of useless and unnecessary provisions in the Constitution.

Mr. MANN. I would like to ask the gentleman a question. Does not this section vest the power in the courts, instead of the Legislature?

Mr. J. W. F. WHITE. No, sir; it says the Legislature shall vest it in the courts.

Mr. MANN. I beg the gentleman's pardon; he has not read the section. "It shall be vested in the courts."

Mr. J. W. F. WHITE. I should object to that, because the Legislature will not, in all human probability, place it anywhere else than in the courts. They will have to pass a law upon the subject, even if you, by a provision of your Constitution, say that it shall be vested in the courts; it will require an act of the Assembly to place it there.

Mr. MANN. I would like to ask the gentleman another question.

Mr. J. W. F. WHITE. Certainly.

Mr. MANN. Does not this section vest the power absolutely in the court, and whether, under that, they might not exercise it without any act of the Legislature?

Mr. J. W. F. WHITE. The section reads: "The power to change the venue in civil and criminal cases shall be vested in the courts, in such manner as shall be regulated by law." Now, until an act of the Legislature be passed, the court cannot exercise that power, even under this constitutional provision. We must have an act of the Legislature to carry it into effect. I oppose this section, therefore, because I believe it to be useless, and I shall oppose every unnecessary provision in the Constitution, making it long, cumbersome and objectionable.

The CHAIRMAN. The question is upon the section.

The section was agreed to; there being, on a division, forty-nine in the affirmative, and fifteen in the negative.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 28. No money shall be paid out of the treasury but in consequence of appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof.

Mr. DARLINGTON. I will ask the intelligent chairman of that committee whether the word "pursuance" is not the proper word, instead of "consequence?"

Mr. HARRY WHITE. In answer to the intelligent gentleman from Chester, (Mr. Darlington,) who was a member of the Convention of 1837, I will remind him that that is the exact expression of that famous Constitution.

Mr. KAINE. I will also ask the gentleman from Indiana, (Mr. Harry White,) what is the necessity of adding to the section the words "and on warrant drawn by the proper officer, in pursuance thereof?" That is not in the old Constitution.

Mr. HARRY WHITE. That is true, and I would say in answer to the intelligent gentleman from Fayette, (Mr. Kaine,) that that was put in as an additional caution. Very frequently money is paid out of the treasury without being paid on a warrant signed by the proper accounting officer of the Commonwealth, and this provision is to make such a course hereafter impossible, if it can be done.

The twenty-eighth section was agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 29. No obligation or liability of any railroad, or other corporation, held or owned by the Commonwealth, shall ever be transferred, remitted, postponed, or in any way diminished by the Legislature; nor shall such liability or obligation be released, except by payment thereof into the State Treasury.

Mr. HEMPHILL. Mr. Chairman: I move to amend that section, by inserting between the words "be" and "transferred," in the second line, the word "exchanged."

The amendment was agreed to.

Mr. CUYLER. I do not want to say anything against the passage of the section, but I wish gentlemen to understand that whatever stocks and bonds are in the sinking fund of the Commonwealth will be utterly incapable of being disposed of, but must remain there until they are redeemed. In other words, if the Commonwealth, exercising the wise sagacity that a private owner of such stocks and bonds should exercise, should feel it would be promoted by disposing of them,

because there might be peril of the failure of the corporation in which they were vested, or other causes might arise where the Commonwealth would be powerless to do so, but will have to stand by and see these assets perish, by reason of the constitutional provision which we now propose to adopt.

Mr. HARRY WHITE. Just one word of explanation. What the gentleman has stated is quite clear. It occurs to some gentlemen, who have had to vote from time to time upon different propositions made before the Legislature, which are commonly known as bills, that the present Constitution prohibits the Legislature from changing or affecting those securities.

Mr. CUYLER. In *Gratz vs. Philadelphia and Erie railroad*, the Supreme Court decided differently.

Mr. HARRY WHITE. In that case Judge Strong delivered an opinion, that where the security was perishing, and to save the security from loss, the Legislature might exercise its discretion and thus save it. What constitutes the sinking fund to-day? Some nine millions of dollars, 3,400,000 of which are a loan upon the Allegheny Valley railroad, endorsed by the Pennsylvania Central, the Northern Central and the Philadelphia and Erie, which certainly are good endorsers. The other \$6,000,000 are on the Columbia branch of the Pennsylvania Central railroad, which yields an annual revenue to the State of \$460,000. This is all that Pennsylvania has to-day in the sinking fund, and we have no reason to be afraid that it can be affected hereafter. I, for one, as a citizen of the Commonwealth, am perfectly willing to take the risk, and I would be unwilling to let the legislative discretion hereafter be exercised in changing or affecting those securities, and if this section passes and goes into the Constitution, we will never hear any more of the \$9,000,000 steal.

Section twenty-nine was then agreed to.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 30. No bill shall be passed giving any extra compensation to any public officer, servant, employee, agent or contractor, after services shall have been rendered or contract made, nor providing for the payment of any claim or part thereof, now existing or hereafter created, against the Commonwealth without previous au-

thority of law; and all such unauthorized contracts and agreements shall be void.

The thirtieth section was agreed to.

The CLERK read:

SECTION 31. Every bill which shall have passed both Houses shall be presented to the Governor; if he approves he shall sign it, but if he shall not approve he shall return it, with his objections, to the House in which it shall have originated, who shall enter the objections at large upon their Journals, and proceed to re-consider it. If, after such re-consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, with the objections, to the other House, by which likewise it shall be re-considered, and if approved by two-thirds of that House, it shall be a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill, shall be entered on the Journals of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of the Commonwealth, and give public notice thereof, by proclamation, within thirty days after such adjournment.

Mr. CORBETT. As this section is covered by two sections adopted in the report of the Committee on the Executive, I presume the better way to dispose of it will be to vote it down.

The thirtieth section was rejected.

The CHAIRMAN. The next section will be read.

Mr. HAY. Before the next section is read I desire to offer an additional section.

The CLERK read:

When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those particularly mentioned in the proclamation of the Governor, as reasons for holding such session.

Mr. HAY. I simply desire to say that is substantially the same section that I offered as an amendment to the report of the Committee on Legislature, which was not accepted because it was thought that it should come up as an amendment to the report of the Committee on Legislation. It is substantially the same amendment,

which then seemed to meet the views of the committee.

Mr. HARRY WHITE. Mr. Chairman: I trust the committee will not hastily adopt a provision of this kind. We have not experienced any evil from this in the past. This is an innovation, and some objection has been made to legislation. It occurs to me that it would be wise and proper to let the future take care of itself in this regard. I pause to hear the gentleman who offered it, or some other gentleman, to state some flagrant instances calling for a change of this kind.

Mr. HAY. I do not think it is necessary to state such an instance in order to show the necessity for the adoption of some such amendment as this. If we are to have biennial sessions of the Legislature, we ought to provide that there shall be no other sessions than biennial sessions, unless some great public necessity exists for holding such sessions. There ought to be no legislation upon subjects which are not of sufficient public importance to justify the Governor in convening the General Assembly in public session.

The amendment of Mr. Hay was agreed to, there being, on a division, forty-one in the affirmative, and twenty-six in the negative.

The CHAIRMAN. The next section will be read.

The CLERK read:

SECTION 32. No corporate body for banking or discounting privileges shall be created or organized in pursuance of any law, without three months previous public notice, at the place of the intended location, of the intention to apply for such privileges, in such manner as shall be prescribed by law. Nor shall a charter for such privileges be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators.

Mr. DARLINGTON. Mr. Chairman: I move to insert, as an amendment, in the fourth line, after the word "intention," the words, "with the names of the applicants."

Mr. LILLY. Mr. Chairman: I hope that amendment will be adopted. We have several instances in our county where bills have been passed which nobody was willing to father, and after they have

been passed by the Legislature have been hawked about the streets by irresponsible parties.

The amendment was agreed to.

The CHAIRMAN. The question is upon the section as amended.

Mr. J. PRICE WETHERILL. Mr. Chairman: I desire to offer an amendment.

The CLERK read:

After the word "privileges," insert the words, "and every stockholder shall be individually liable to its creditors."

Mr. J. PRICE WETHERILL. Mr. Chairman: It seems to me that there should be a certain liability of stockholders, and for this reason I offer the amendment.

Mr. HARRY WHITE. I hope that we, making a Constitution for the State of Pennsylvania, will not adopt a clause of this kind. You will remember that this is the clause of the Constitution adopted in 1837, when the prejudice against the banking system was on tip-toe in Pennsylvania. This is only changed so as to make it possible to organize banks under general laws. Now we have a number of banks in Pennsylvania, and will doubtless have a banking policy. We certainly, as citizens of Pennsylvania, do not wish to discriminate in favor of national banks and against our own. This is a more stringent provision than the provision with regard to national banks. I would allow every case to take care of itself. No doubt a general law will be adopted, and provisions made with reference to individual liabilities, but if this amendment is made the liability of the individual is unlimited, whereas the national currency act of 1863 only requires a liability to the extent of the individual stockholder. I trust that, as Pennsylvanians, we will not discriminate against our own institutions in that regard.

Mr. J. W. F. WHITE. Mr. Chairman: I see the chairman of the Committee on Private Corporations (Mr. Woodward) is present, and I suppose he will call the attention of the committee to the fact that that committee has the subject of this section under consideration. I think they properly belong to the Committee on Private Corporations, and had better be passed over until we get a report from that committee.

Mr. HARRY WHITE. I would remind the gentleman from Allegheny (Mr. J. W. F. White) that they are put in here because they are under this title in the old Constitution.

Mr. J. W. F. WHITE. Mr. Chairman: I am aware of that, but at the same time they certainly would be far more appropriate in the article on the subject of corporation. There they legitimately belong, much more so than in this article on legislation, and it will be saving time if the committee will vote down these two sections, and let them come up when the Committee on Corporations makes its report. If we undertake to discuss them here, we will have to go over the same subject again when the Committee on Corporations makes its report, because there would be some other provision then brought forward, not now embraced in these two sections. I thought we would hear from the chairman of the committee (Mr. Woodward.)

Mr. J. PRICE WETHERILL. Mr. Chairman: I do hope that, as this is an important matter, we will not act upon it hastily, and we might, as suggested by the gentleman from Allegheny, (Mr. J. W. F. White,) vote down this section, and take up the subject in the report of the Committee on Corporations. In reference to the remarks of the gentleman from Indiana, (Mr. Harry White,) I will say that all stockholders of national banks are liable to the amount of their stock, and the stockholders of State banks, under some charters, are not. The charters granted by the Legislature for State banks, in my opinion, do grant improper privileges. They allow no individual responsibility of stockholders. They allow discounts at any rate of interest, and other privileges, which I think are pernicious, and I do hope, before we act upon this matter, that there will be some delay, and that the matter will be fully considered.

Mr. HARRY WHITE. The gentleman has made the statement that stockholders of national banks are liable. The gentleman is aware that they are only liable to the amount of their stock. They lose their subscriptions.

Mr. J. PRICE WETHERILL. They are liable, as prescribed by law, just exactly as the liability that I desire to put on the State bank.

Mr. HARRY WHITE. Mr. Chairman: I beg pardon. The gentleman's provision makes them liable to all their creditors to any amount.

Mr. J. PRICE WETHERILL. Not at all.

Mr. HARRY WHITE. I beg the gentleman's pardon. That is the reading of it.

Mr. J. PRICE WETHERILL. Mr. Chairman: I call for the reading of it.

The CLERK read:

"No corporate body, for banking and discounting privileges, shall be created or organized in pursuance of any law, without three months previous public notice at the place of the intended election, of the intention to apply for such privileges, and every stockholder shall be individually liable to its stockholders, in such manner as shall be prescribed by law."

Mr. HARRY WHITE. Mr. Chairman: Then it is unnecessary.

Mr. WOODWARD. Mr. Chairman: This subject is before the Committee on Private Corporations, and they will report a provision, applicable not only to banks, but to all corporations, on this subject, and the evil of considering it now and taking a vote upon it at this time is, that gentlemen commit themselves to a particular view of the subject, when they have got but one part of the subject before them. If they would reserve their judgments until they get the whole subject before them, I would think that a better decision would be likely to be arrived at.

Mr. CORBETT. Mr. Chairman: The trouble is, now, that if you vote down this section it is gone. How are we to have it before us again in committee of the whole after you go through this report and adopt what is not rejected? It will be reported to the Convention, and then the section will be gone. Now, there is a way to meet this, without placing ourselves in any difficulty, to amend this section, adopt it and report it, and if there is a section reported by the committee of which the gentleman from Philadelphia (Mr. Woodward) is chairman, which is better than this, on second reading it can be adopted; the other can then be stricken out, and that will relieve us of all difficulty. In that event the striking out of the section depends altogether upon what provision the other committee will report.

Mr. SIMPSON. Mr. Chairman: I suppose that the gentleman from Clarion (Mr. Corbett) is aware of the fact that it is perfectly competent to amend this or any other section, when the article is before the Convention, on second reading, or to introduce any new section without going into committee to do so; when the article reaches its third reading, then it can only be amended by sending it to the committee of the whole for that purpose, so that if these two sections be voted down now, and any member desires so to do, they can be offered again when we reach it on second reading in Convention. In cor-

roboration of what has been said by the chairman of the committee, (Mr. Woodward,) I have here a printed report of what has been already passed, and is ready to be reported, and which will probably be reported within a very few days from to-day. The sections in the article on private corporations cover all that the thirty-second and thirty-third sections do, in more brief and comprehensive terms, and I think it will be far more satisfactory to the Convention than either of these two sections can be, and it will cover all the ground covered by both of them. I trust, therefore, that the committee will vote down these two sections and let the matter come up in the report of the other committee.

Mr. GOWEN. Mr. Chairman: I think the difficulty spoken of by the gentleman from Clarion (Mr. Corbett) would be gotten over by one plan, and that is to move, as I now do, that the thirty-second section be referred to the Committee on Private Corporations.

The CHAIRMAN. That cannot be done.

Mr. GOWEN. Then I move to postpone it for the present.

The CHAIRMAN. That cannot be done either.

Mr. JOHN PRICE WETHERILL. Mr. Chairman: Under the supposition that the Convention will vote down the section, I withdraw the amendment.

The CHAIRMAN. Then the question recurs on the section as amended.

It was agreed to.

Mr. HARRY WHITE. Mr. Chairman: I move that the committee do now arise.

It was not agreed to.

The CHAIRMAN. The thirty-third section will now be read.

The CLERK read:

SECTION 33. The Legislature shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any hereafter to be conferred by or under any law, whenever in their opinion it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

It was agreed to.

Mr. BIDDLE. Mr. Chairman: I move that the committee do now rise.

Not agreed to.

The CHAIRMAN. The thirty-fourth section will be read.

The CLERK read:

"Every order, resolution or vote to which the concurrence of both Houses may be necessary, except on the question of adjournment, shall be presented to the Governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be passed by two-thirds of both Houses, according to the rules and limitations prescribed in the case of a bill."

It was agreed to.

Mr. J. R. READ. Mr. Chairman: I move that the committee do now rise.

Not agreed to.

Mr. DUNNING. Mr. Chairman. I move to postpone this section for the present.

The CHAIRMAN. That cannot be done.

Mr. GOWEN. Mr. Chairman: I trust we will all read this very carefully, and understand what it means before we pass it, for it seems to me that as this section reads, it would give to any court in Pennsylvania the right to annul an act of Assembly, notwithstanding the fact that the court of a neighboring county had declared it to be binding; and you might have fifty decisions in Pennsylvania upon one act of Assembly, twenty-five of which would be in favor of its validity and twenty-five against it. Can you give to a court the power to annul an act of incorporation not only when it is *not* the subject of judicial investigation, but on a suit of the private party, on a collateral question, without its being put on the pleadings at all? You give to the court the power to declare that an act of Assembly is void. I speak now as a lawyer, and I speak in favor of the solemnity of judicial proceedings, which Pennsylvania, with one or two

other States in this Union, has always adhered to.

Mr. DUNNING. Will the gentleman from Philadelphia (Mr. Gowen) give way to a motion that the committee now rise?

Mr. BIDDLE. Mr. Chairman: This is a very important question, and the section seems a very dangerous one.

Mr. GOWEN. Mr. Chairman: I give way.

Mr. DUNNING. Mr. Chairman: I move that the committee do now rise, report progress and ask leave to sit again.

Agreed to.

IN CONVENTION.

Mr. ARMSTRONG. Mr. President: The committee of the whole have had under consideration the report of the Committee on Legislation, and have directed me to report progress and ask leave to sit again.

Leave was granted.

THE INDUSTRIAL ASSOCIATION FOR THE BLIND.

The PRESIDENT presented a communication from the Industrial association for the blind, inviting the members of the Convention to a musical entertainment to be given at the institute of the association, 3921 Locust street, this evening.

Mr. JOHN PRICE WETHERILL. Mr. Chairman: I move that the invitation be accepted, with the thanks of the Convention.

It was agreed to.

Mr. STANTON. I move that we adjourn.

It was agreed to.

The Convention then, at two o'clock and fifty-four minutes, adjourned.

SEVENTIETH DAY.

WEDNESDAY, *March 19, 1873.*

The Convention met at ten o'clock A. M., the President, Hon. Wm. M. Meredith, in the chair.

Prayer was offered by the Rev. James W. Curry.

The Journal of yesterday was read and approved.

WOMAN SUFFRAGE.

Mr. BROOMALL presented a petition from the citizens of Delaware county, praying that a provision be inserted in the Constitution extending the right of suffrage to females, which was referred to the Committee on Suffrage and Election.

LEAVES OF ABSENCE.

Mr. CORBETT asked and obtained leave of absence for Mr. Andrews for a few days.

Mr. CHURCH asked and obtained leave of absence for Mr. Finney for a few days.

Mr. McCLEAN asked and obtained leave of absence for a few days.

THE COMMITTEE ON IMPEACHMENT.

Mr. BIDDLE presented the following report of the Committee on Impeachment and Removal from Office, which was read and ordered to be printed.

ARTICLE XII.

OF IMPEACHMENT AND REMOVAL FROM OFFICE.

SECTION 1. The House of Representatives shall have the sole power of impeaching.

SECTION 2. All impeachments shall be tried by the Senate; when sitting for that purpose the Senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present.

SECTION 3. The Governor and all other civil officers under this Commonwealth shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit under this Commonwealth; the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial,

judgment and punishment, according to law.

SECTION 4. All officers shall hold their offices only on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime; appointed officers may be removed at the pleasure of the power by which they are appointed; elected officers, other than Governor, Lieutenant Governor, members of the General Assembly and judges of courts of record, shall be removed by the Governor for reasonable cause, on the address of two-thirds of the Senate.

THE ARTICLE ON LEGISLATION.

Mr. MANN. Mr. Chairman: I move that the Convention resolve itself into committee of the whole on the article reported by the Committee on Legislation.

The motion was agreed to.

IN COMMITTEE OF THE WHOLE.

The Convention then resolved itself into committee of the whole, Mr. Armstrong in the chair, and proceeded to the consideration of the article reported by the Committee on Legislation.

ACTS OF ASSEMBLY.

The CHAIRMAN. The question is upon the thirty-fifth section, which will be read.

The CLERK read as follows:

SECTION 35. Any bill passed in disregard of the provisions and directions prescribed in this article shall be void and of no effect; and when the validity of any law passed by the Legislature is questioned in any court of record, it shall be competent for such court to inspect the Journals of either House, and if it does not appear thereon that all the forms of legislation, in both Houses, as hereinbefore prescribed, have been observed in the passage of such law, the same shall be adjudged by such court to be void.

Mr. GOWEN. Mr. Chairman: At the adjournment, yesterday, I was about to call the attention of the Convention to the fact that this section introduced an innovation into the established judicial proceedings of this Commonwealth.

What have those proceedings been in the past? If it was alleged that an act of Assembly, creating a corporation or creating a franchise, was unconstitutional, it was the settled law of the land, and very wisely so settled, that nobody but the Commonwealth, upon the relation of the Attorney General, could inquire into the validity of those franchises; and I say very properly settled because any other system of judicial investigation than the one which confines the subject matter of investigation to one particular tribunal, to be commenced in one particular manner, would lead to the greatest possible evil.

Let me suppose that this section is adopted into the Constitution. It says that, "when the validity of any law passed by the Legislature is questioned in any court of record." Now, a corporation owes its existence to the act of Assembly which created it. That corporation brings suit against the individual, and the individual questions the validity of the act of Assembly incorporating the company. By this section any court is authorized to send for the Journals of the House, and pass, so far as that case is concerned, upon the validity of that act of incorporation, and if the judgment of that court is against the act, the corporation has no existence before that tribunal, although twenty other courts in Pennsylvania may decide directly the reverse, and you may have the anomaly presented of a corporation claiming its franchises under one act of Assembly, which, in one judicial tribunal of this Commonwealth, is void; and in another, perfectly good. It will not do, therefore, to permit such an act of Assembly to be questioned, except where it is the direct subject of judicial proceedings, and except where there are proper parties upon the record, so that the decision of the court, made one way or the other, is final for all purposes over the State, and that no two conflicting decisions upon the same subject matter may be had in different courts.

I remember a very funny story in reference to a justice of the peace out in the mountains somewhere, during the reign of General Jackson, who felt a great deal of animosity against the Bank of the United States. One day an action for debt was brought before him to recover five dollars, which had been loaned to some one; and, upon the trial of the case, it appeared that these five dollars had been in the shape of a bill of the Bank of the United States. The justice, out of de-

ference to General Jackson, immediately entered a judicial decision that the charter of that bank was void, and, from that day until his death, I believe that nobody could ever convince him that the Bank of the United States had any existence, because, he said, he knew it had not, for he had decided the matter himself.

Now, just such a system will result from adopting this section. You will have three or four or five or six different decisions upon the same subjects by petty tribunals, where the act is not the direct subject of controversy, where the decision is upon a matter not thought of probably at the time the suit was brought, but a collateral issue, which never ought to be considered.

Again, suppose there is a contested election case of a local officer in one of our courts, one party claiming, and the other party holding, the office. One says that the act of Assembly which requires a particular form probably to protect the ballot-box, was not passed according to the constitutional forms, and, in a decision simply to test the right, the court, in order to give this office to the one person or the other, may send for the Journals of the House, and overturn the whole act of Assembly.

Again, let me call the attention of the committee to this great peculiarity. "When the validity of any law passed by the Legislature is questioned in any court of record, it shall be competent for such court to inspect the Journals of either House, and if it does not appear thereon that all the forms of law, &c., the act is to be declared void." In other words, the Journals of the Houses are to be not only *prima facie* but conclusive evidence of the validity of the act of Assembly, and a dishonest or corrupt clerk, by falsifying the Journals or failing to record thereon the proceedings of the tribunal, has it in his power to overturn the whole legislation of the Commonwealth, no matter if you bring every member to prove that the bill was properly introduced, read the proper number of times, and every form complied with, yet if the clerk fail to record the fact upon the Journal, the Journal is conclusive evidence of the invalidity of the act. Surely this cannot be proper. Surely it ought not to be in the power of the clerk, by failing to do his duty either as an act of omission, or intentionally, to defeat the will of the Legislature.

Why should courts have this power upon a collateral question? What is the

necessity at all for adopting such a section as this in the Constitution? Surely the courts have the power now to declare an act of Assembly unconstitutional, but it must be done according to known judicial proceedings. Suppose you leave this out, Mr. Chairman? You remember, and the gentlemen who are lawyers will remember, that a few years ago the Constitution of Pennsylvania was amended so as to require that no bill should contain more than one subject matter, which should be clearly expressed in its title, and from that time to the present courts have the power and have exercised it, of inquiring into the constitutionality of any bill which it was asserted had been passed in violation of this provision; and if you leave the whole section out, the courts will still have the power, in a proper manner, to inquire into the validity of every act of Assembly, but it must be done according to the known usages of judicial proceedings, and in many cases, especially when a franchise is created, it must be the direct subject of the investigation. It dare not be brought into question on a collateral issue; it must be a writ of *quo warranto*, issued upon the relation of the Attorney General. Now if it is necessary to provide, in addition to the well-known powers of the courts as they at present exist, any constitutional method whereby the validity of an act of Assembly can be tested, let us provide that it shall be done only when the act itself is the direct subject of investigation, and only upon the relation of the law officer of the Commonwealth. That would be all that it would be necessary to make any change in reference to the subject, but if this provision is adopted any court, in a collateral proceeding, can over-ride the will of the Legislature, and break through a solemn enactment, simply because the clerk who kept the Journal of the House had failed properly to record the proceedings of the body of which he was an officer.

Mr. HOWARD. Mr. Chairman: I offer the following amendment:

The CLERK read:

Strike out the section, and insert: "The Governor shall not give his approval to any bill until he shall have ascertained that all the forms of legislation, as prescribed in this article, have been observed in the passage of the same, and in his approval he shall so certify, and his certificate shall be conclusive that all the forms prescribed have been observed."

Mr. HOWARD. Mr. Chairman: I am satisfied that this section, as it stands, will be found to work very mischievously in practice, yet I am satisfied that there should be some one, whose duty it should be to ascertain, carefully, before any bill shall receive the signature of the Governor, whether all the forms prescribed have been complied with. Undoubtedly it will be the duty of the Governor, under the general provisions we have already provided, to ascertain that the forms of law had been complied with; yet if it were required that he should attach his certificate as a part of the approval, that all these forms have been complied with, he would make it his special business to examine the Journals, or cause them to be examined, so that he would be able to certify that all the forms of law had been complied with. Then, after that examination, that certificate should be conclusive.

It seems to me to be very unwise that, at any time, perhaps ten, fifteen or twenty years after the passage of a law, the question might be raised, in any action in a court of justice, that some form had been lacking upon the part of the Legislature. Great injustice would arise in this way, and I hope that this section, as it now stands, will not be adopted by this committee.

The suggestion of the gentleman from Philadelphia (Mr. Gowen) that the question, if raised at all, should be on the part of the Commonwealth to test specifically the validity of the act itself, and not leave it to be raised upon some collateral question, and by any person, and at any time, years after the passage of the act perhaps, when hundreds of thousands of dollars, perhaps millions of dollars, are interested under it; I think it would not be so dangerous, or liable to work such great injustice, but I am opposed to either plan, without a saving clause to protect vested rights under the act.

Mr. WORRELL. Mr. Chairman: This question has been the subject of judicial decision, but the decisions have not all been in the same line in the various courts of the United State. I think the Supreme Court of Illinois has determined that it is competent for the judicial department of the government to inquire and decide whether the proper forms of legislation have been adopted in passing an act of Assembly. The Supreme Court of the State of Pennsylvania has taken the other ground, that the certificate of the legisla-

tive department of this Commonwealth is conclusive, as to all the forms which the Constitution requires for the passage of a law, and this has also been the determination of the Supreme Court of the United States. Having regard, therefore, to the decisions in this Commonwealth, and the decision of the Supreme Court of the United States, it is not competent for the judicial department of this Commonwealth, in the most glaring case of fraud, to inquire and determine whether a bill had been properly and constitutionally passed, if the party sustaining the bill presents a formal certificate from the legislative department.

Now, I agree entirely with the gentleman from Philadelphia (Mr. Gowen) that, if the proper passage of a law is to be the subject of judicial inquiry, it should be when the law itself is the specific subject of investigation, and if gentlemen will refer to the pamphlets of propositions offered in the Convention, page sixty-four, they will find that I offered, early in the session, a proposition which will entirely cover this objection. I think that the judicial department of this Commonwealth should have the opportunity to inquire and decide whether the forms of the Constitution have been adhered to in the passage of a law, and I desire to offer now, as an amendment, what I proposed in the early portion of the session, to strike out all after the word "article," in the second line, and insert as follows: "Shall be avoidable, and the Attorney General of the Commonwealth shall have authority to proceed by *scire facias* in any of the courts of the Commonwealth, to try and determine the validity of any act of Assembly."

MR. H. W. PALMER. Mr. Chairman: I suppose there will be very little difficulty in regard to the propriety of adopting this particular section reported by the Committee on Legislation. The manifold evils that will attend the adoption of this section are apparent, and now it seems to me the only question is whether it will be wise to allow the courts, under any circumstances, to investigate the facts of an illegal bill procured by corruption in the Legislature. I understand it has never been possible heretofore in this Commonwealth for any court to investigate questions of fact as to whether an act has been passed through the Legislature by means of the proper and ordinary forms which are required to be observed. Now, the main question is whether it will be pru-

dent to open that door and give the courts that power. If it is to be done, most unquestionably the law, as provided, is to be carefully considered, and with a view of meeting the difficulties of the case, and at the suggestion of the gentleman from Philadelphia (Mr. Woodward) and other members of the Convention, I have drawn a section which I intend offering as a substitute for the section now under consideration. The substance of it is that the trial of any case in a court of justice of the validity of an act of Assembly, when called in question, shall be based upon the proper affidavit of the party making the application, and if the court shall be satisfied that there is *prima facie* evidence in the case, they shall direct a feigned issue to be framed, under the direction of the Attorney General, to try the allegation contained in the affidavit; that the trial shall be had by a judge of the Supreme Court in such county as he may direct, and if it shall appear on the trial that the forms provided in the Constitution shall not have been observed, or that improper or undue means to effect the passage of the act have been used, it shall be declared null and void. Now, the advantages which will attend the adoption of some such plan as this will be obvious.

In the first place, all trials of the validity of acts of Assembly will be had before one tribunal, and it will not, therefore, be possible to have fifty or sixty interpretations of the same act. There will be uniformity; and in the second place, the trials will be had at the suit of the Commonwealth in relation to the party interested, and can only be instituted upon sufficient grounds.

Now, it seems to me that it will be quite prudent and quite wise to provide some method by which acts of assembly procured through improper or undue means may be set aside. It seems to me to be quite useless to prescribe a variety of forms in the Constitution as to the manner in which acts of Assembly shall be passed and certified, unless some method is provided for the enforcement of these forms. They will be as efficacious as the Pope bull against the comet, unless some method is devised for this purpose. If a bill approved and signed is conclusive evidence of its passage through the Legislature, it is, of course, a matter of very little question whether the Legislature ever complied with any particular form or not. During the debate upon the main question, I should like to hear the argu-

ments as to whether it would be wise or prudent to open this door and give the power to the courts to declare acts of Assembly that are passed by means of corruption, or any undue influence, unconstitutional and void, and if so, what is the best method of providing a remedy there for this evil? With a view of reaching this question I offer the amendment to which I have referred as a substitute for the section.

The CHAIRMAN. The substitute will be read.

The CLERK read as follows :

SECTION —. Whenever, in any judicial proceeding, either party shall claim, under or by virtue of any act of Assembly, and the other party, upon proper affidavit, shall allege that such act of Assembly was passed in disregard of the provisions and directions prescribed in this article, or by fraud, bribery or undue means, and the court before which such judicial proceedings is pending shall be satisfied *prima facie* that such allegations are well founded, it shall be the duty of the said court to order a feigned issue to be framed, under the direction of the Attorney General, upon proper pleadings, in which the Commonwealth, upon relation of the party in interest, shall be plaintiff, and the party claiming, under such act of Assembly, defendant to try the truth of the allegations in said affidavits contained and the validity of such act of Assembly; and said issue shall be certified to the Supreme Court and tried by one of the judges thereof, in whatever county he may direct; and if it shall appear to the court and jury, upon such trial, that all the provisions of legislation in both Houses, as hereinbefore prescribed, have not been substantially observed in the passage of said act, or that the same has been procured by bribery, fraud or undue means, such act of Assembly shall be adjudged null and void, either party to have the right to a writ of error, as in other cases.

Mr. BROOMALL. Mr. Chairman: I acknowledge it is desirable that some means should be provided to compel the enactment of laws in accordance with the provisions of the Constitution; but I think if all the amendments which have been proposed are considered, the Convention will agree that it is better to have no provision at all upon this subject than to adopt the one provided by the committee or any of the proposed modifications of it. If an act of Assembly that is all right upon its face, that carries with it no suspicion of a want

of constitutionality, is to be questioned in any court of common pleas in the Commonwealth, and declared void after it has been acquiesced in and operated under for ten or fifteen years, and after titles to land, for example, have vested under it and passed by sale or descent possibly many times, it would look more like repealing laws, *ab initio*, than deciding upon their validity, and it would place the laws of the Commonwealth upon a very unsafe foundation. No man would know how the courts would pronounce upon the various acts of Assembly when called in question. No lawyer could form an opinion upon what is or what is not law in any given case.

I think it is better that the system under which we have been living so long should be continued, and that a judge should not have the right to go behind an act of Assembly and inquire into the means by which it has been obtained. In the case of acts of Assembly granting powers to private corporations, it would not do so much harm if the means by which these laws were obtained were permitted to be inquired into, and the laws pronounced null and void if fraudulently procured. But this section applies to public acts, acts affecting the whole Commonwealth, and under which the vested rights of a citizen may be overturned by a decision in any part of the State, without any notice to him whatever.

The proposition seems to me to be monstrous, that where I hold my title to land under an act of Assembly, the very act upon which my title depends may be called in question by a court in Erie.

Now, the amendment offered by the gentleman from Luzerne (Mr. H. W. Palmer) is not open to quite all the objection that the original section is because that amendment proposes to allow these acts of Assembly to be questioned only in a single tribunal, and at a single place, and it allows a possible opportunity for the citizen who has perhaps held his title good under such an act for twenty years to obtain some notice of the pendency of such action in the court, and to prepare to defend his rights. In regard to the other objection to the section, that after an act has been considered valid, and has been acquiesced in, it should not be questioned in this way, it seems to me that the proposition of the gentleman from Luzerne is quite as bad as that of the committee. He is altogether mistaken in the functions of a court in considering

an act of Assembly. He seems to think that the courts are to declare a law void. That is a mistake.

The business of the court is to decide a question between the parties when it arises; and although the constitutionality of an act may come up and may rule the case, yet the action of the court only binds the parties. The same court, in a case between other parties, when the validity of the law is questioned, may decide the other way, holding the law good. To allow the court the power to declare a law absolutely null and void, no matter whom it may affect, is to constitute a third branch of the Legislature, with a veto power over both Houses, and the Governor also. I know very well that some of these objections would apply to an act declared unconstitutional on account of its provisions, and that, too, where it is so clearly unconstitutional that there is no danger of the court reversing its decision; but in the case of a law, unconstitutional upon another ground than the want of some formality in its passage, there is something upon the face of the law itself to excite attention. In the class of cases contemplated by the committee, there is nothing to call attention to the law; nothing on its face to excite suspicion. I submit that we should take some other means of compelling the Legislature to observe the necessary forms in the passage of bills by prescribing, for instance, a punishment upon the officers and members of the Legislature, if they should fail to obey the requirements of the Constitution in this particular. I think, Mr. Chairman, we had much better take an act of Assembly as we find it promulgated, and then the community will always know what a law is.

The CHAIRMAN. The Chair has been examining the proposed amendment to the amendment, suggested by the gentleman from Luzerne, (Mr. H. W. Palmer,) and upon careful examination the Chair is disposed to hold that it is not at this time in order. It is not an amendment to the amendment.

Mr. PALMER. I withdraw it, then, for the present.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from Allegheny (Mr. Howard.)

Mr. COCHRAN. Mr. Chairman: I move the following as an amendment to the amendment, and a substitute for the section.

The CHAIRMAN. Did the Chair correctly understand the gentleman that it is a

proposed substitute for the entire section and amendment?

Mr. COCHRAN. Yes, sir.

The CHAIRMAN. It is not at this time in order. No amendment is in order except an amendment to the pending amendment. The gentleman from Allegheny (Mr. Howard) has a right to have the amendment passed upon by the Convention. It will be in order after the present amendment is disposed of.

Mr. J. W. F. WHITE. Mr. Chairman: I hold in my hand an amendment that I propose to offer when it shall be in place, but as I understand the ruling of the Chair now, this amendment is not in order at this time. I will read it, however, in order that the members of the committee may know what it is that I propose. I propose to strike out of the section as reported by the committee all after the word "void," in the second line, and insert these words: "And the journals of the two Houses shall be conclusive evidence of the facts in the case." I think, Mr. Chairman, that the principle aimed at by the section before us is an important one. If we intend that the limitations and restrictions we have imposed upon the Legislature, and their mode of passing bills, shall be of any validity or any force, we must have some means of ascertaining whether they have complied with the directions or not.

The mere fact that we declare in the Constitution that certain forms and certain modes of proceeding shall be observed in the passage of laws is of no use, unless we enforce these modes, or unless the act passed in defiance of them shall be declared void. The only way that I apprehend that the question can be raised at all, will be by having some constitutional provision on the subject. I believe it has been decided, and correctly decided, and acquiesced in throughout the State, that when a law is passed, or at least when it is certified by the Secretary of State, and has been published in the pamphlet laws as one of the enactments of the Legislature, the courts do not go behind that to inquire whether the bill was properly passed or not.

I differ very widely with the gentleman from Philadelphia (Mr. Gowen) when he says that the Journals shall not be looked to, to see whether the law has been passed in accordance with the provisions of the Constitution, because a clerk might put something in that Journal not in accordance with the fact. It must be remembered that the clerk is a sworn officer, and,

besides, the second section of our Constitution requires that the two Houses shall keep a Journal of their proceedings, and publish that Journal *daily*. That Journal ought to contain all that is necessary to show whether an act has gone through the forms required, and whether the Legislature has complied with all the requirements of the Constitution. Every member of the Legislature can see, when the Journal is printed and laid upon his desk, whether it contains evidence that the bill has gone through the necessary form. In addition to that, every person who looks at the Journal to see how the act of Assembly has been passed, if he desires to know whether the question can be raised as to its constitutionality, can see from the Journal whether the Legislature has complied with these requirements.

The courts then would require no evidence outside of that Journal, as to the facts in the case. The Journal would be conclusive as to these facts. I would enable the courts, therefore, to look at these Journals, and at them only. We know that the Journals are printed officially, and copies of them are to be found in every part of the State. When a question of fact is raised in court, the question of the constitutionality of the law would be decided precisely in the same way that questions of constitutionality are now decided by the courts. I think it would be far more simple and effective than any of the suggestions made here.

MR. LILLY. Mr. Chairman: After reading this section very carefully, and listening attentively to all that has been said upon it, I have come to the conclusion that it is entirely unnecessary, and, indeed, a very improper requirement to place in a Constitution. The only necessity at all for it is to prevent a bill becoming a law that has not passed through the regular forms. We commence, in the first place, by saying that the bill shall be signed, after the title is read in the presence of the two Houses, by each presiding officer. If the bill is not properly passed, every member sitting in his seat should be ready to object to it. When passed, it goes to the Governor, and he signs it. I take it to be the duty of the Executive of the Commonwealth, before putting his name to a bill, to be sure that that bill has passed through all the forms required by the law or the Constitution. If you make a section—if this committee, or the Committee on the Executive, should make a section, requiring the law officer

of the Commonwealth to see that each law has passed through these constitutional forms in the making of the law, that would, probably, cover the point, and would be all that would be necessary. To take this matter into every court of the Commonwealth would, it appears to me, be a monstrosity. It would unsettle and upset every kind of litigation going on in the courts. The law is now considered to be a great uncertainty; but the uncertainty would then be multiplied a hundred, and even a thousand fold, and it will make the operations of all the courts in the Commonwealth, "confusion worse confounded." I think that every amendment to this section should be voted down, and the section itself be then voted down without any hesitancy whatever. It must be apparent to every delegate here that the section is a very improper one, and that it never ought to be agreed to.

MR. COCHRAN. Mr. Chairman: The question immediately pending before the Convention is on the amendment of the gentleman from Allegheny, (Mr. Howard,) which does not involve in itself those considerations with regard to judicial action upon acts of Assembly which have been so much discussed here this morning. There is an evil here that ought to be met and remedied. You have passed several sections requiring certain forms of legislation to be pursued and adopted in the passage of laws. How are you going to enforce these provisions? How are you going to see that these forms have been complied with? Why is it necessary that any provision of this kind should be made at all? The reason is because very often laws are passed which have not only not passed through the forms of legislation, but sections have been actually interpolated into the very body of these laws, which sections have never been acted upon in either House at all; and this by some "hocus-pocus" which I do not profess to understand. We ought, sir, to have some provision which is calculated to have these matters looked into, to have it understood whether or not those laws have actually passed through the necessary forms of legislation, and whether the *whole* law has been passed by the Legislature under the forms prescribed in the Constitution.

The original section I believe nobody favors, so far as I have been able to gather the expression of the Convention. The amendment of the gentleman from Allegheny (Mr. Howard) goes far to supply the

deficiency, but, at the same time, I think that it is not exactly in the best form. I proposed, if I had had an opportunity, to have offered an amendment to his amendment, or perhaps, should that amendment not be adopted, to offer an amendment to this section, which, I think, will act fairly and provide a constitutional protection in this particular. I propose, first, that when a bill is passed in the Legislature, and has been presented to the Governor for his signature, the Secretary of the Commonwealth shall inspect the Journals and see whether or not the forms prescribed by this article have been complied with.

Mr. McVEAGH. Mr. Chairman: I trust the gentleman from York (Mr. Cochran) will read his substitute, so that the committee may hear it. I think it will meet very nearly the views of the committee.

Mr. COCHRAN. Mr. Chairman: I will first state its objects and then read it. The Secretary of the Commonwealth is to inspect the Journals of both Houses of the Legislature, and if it does not appear from these Journals that all the forms of legislation in both these Houses, prescribed by the preceding sections of this article, have been observed in the passage of the law, then the same shall not receive the Executive sanction and approval, but it shall be returned to the Legislature accompanied by a statement, in writing, of the reasons which induced its return, and it shall not become a law unless it shall be enacted according to all the forms prescribed, and shall then have been approved by the Governor in the usual way.

Now, Mr. Chairman, it must be very evident to gentlemen here that if we were to adopt any more stringent provisions than that, a law might be defeated because of defects or omissions innocent in themselves. For instance, something might be innocently, not to say purposely, omitted from the Journals. The mere omission of a clerk would defeat the law entirely and absolutely. But here is an opportunity afforded, that if it should be found, on inspection, that the Journals do not show that the forms prescribed have been pursued, the law may be returned to the Legislature, in order that it may advisedly reconsider it, and pass it through all the prescribed forms, and then send it again to the Governor.

This section, Mr. Chairman, let me say, does not in the slightest degree interfere with the established rules with regard to

the action of courts, or the proceedings of the Legislature, which have heretofore been adopted. This section does not require the courts to act upon the constitutionality of these laws, and to look into the Journals of the Legislature. It is very evident that if the courts are to be required to inspect the Journals of the Legislature on every trial that comes before them, it will add a great annoyance and a great delay to the trial of cases. This placing upon them a duty which is not properly judicial does not belong to their department at all. This is a matter for the Legislature and the Executive, and when they have acted upon it, it seems to me that it is right and proper that that action should be conclusive, as it is now, so far as the proper passage of the act is concerned. Now, sir, I should propose, if the opportunity should be presented, to offer a substitute for the section in these words:

"It shall be the duty of the Secretary of the Commonwealth, whenever any bill requiring the signature of the Governor shall be presented to him, to inspect the Journals of both Houses of the General Assembly, and if it appears thereon that all the forms of legislation in both Houses, as hereinbefore prescribed, have been observed in the passage of such bill he shall so certify thereon to the Governor; but if it shall not so appear the Secretary shall so certify in like manner, and the bill shall not receive the Executive approval or signature, but shall be returned to the House in which it originated, accompanied by a statement of the reasons which induced its return, and shall not become a law unless it shall thereafter be passed through all the requisite forms of legislation, and be approved, as in other cases, by the Governor, whose approval shall be conclusive that said act has passed through all the required forms of legislation."

Mr. MINOR. Mr. Chairman: I think, sir, that it is very manifest that our duty to the people requires us to provide that laws shall not be ambulatory as to place or time—valid to-day and invalid to-morrow, right in one county and wrong in another. On looking over this article I find it will be very difficult, perhaps practically impossible, to carry out any provision like this particular section, or even the amendment suggested by the gentleman from Allegheny (Mr. J. W. F. White.) Now, if we rely on the Journals of the two Houses we will find, it occurs to me, more difficulty than we will if we rely on almost

anything else. In this connection I call the attention of the committee to some of the other provisions of this very article, in order to enable us to see where we will land. It will be observed that section thirty-five, now under consideration, requires the Legislature to conform every bill to all the provisions and directions contained in this article, and that a bill shall be valid only when all these forms have been complied with, and that the Journal must show the same. If the Journal does not show that these forms have been regarded the bill is void.

By turning to section eight of this article it will be observed that it requires, among other things, that all amendments to any bill shall be printed before the final vote shall be taken. Now, sir, we have amendments to offer of every size and form, coming in at every conceivable stage of legislation, in committee of the whole or on second reading and elsewhere, amendments of a single word, amendments to the amendments, and I imagine that according to this article each amendment must be printed, and it must be printed before the bill passes. Now, sir, if we are to take the Journals of the House as conclusive evidence as to what has been done in this respect, we are to require every judge of every court in the State, upon the request of any suitor, to look over the Journals and see whether all these matters of mere form have been regarded? It is possible that the validity of a law of this State, involving large amounts of property, should depend upon the recollections of a clerk as to what is not in the usual line of his duties, and his failure to state that an amendment of a single word was not printed, and that, too, before the bill passed. I take it that we, as Constitution makers, would be unworthy of our position, if we sent down to the people such a Constitution as that. I call attention, therefore, to that provision as one which it is utterly impossible to carry out.

Then, as to another provision of the same section, that "every bill be read at length on three different days." The clerk must state these things in the Journal. If he happens to forget it, it is all wrong, and could be brought up twenty years afterward to destroy the act. Without dwelling upon that, I pass to another section.

Section seven of this article recites that no bill shall be passed containing more than one subject, which shall be clearly ex-

pressed in its title, except appropriation bills. Are we going to send down to each section of the State a Constitution declaring a law unconstitutional, because this has not been complied with, or because the clerk does not so state? One man may think that it is complied with, while another man may think it is not. One judge may think there is but one subject, another that there are two, and the clerk is made a judge for all. If you make a directory clause essential, you endanger the rights of suitors.

Then, passing to another section of this article. Section five provides that "no bill shall be so altered or amended, in the course of its passage through either House, as to change its original purposes." Is the clerk to state that on the Journal as to each bill, and if he fails to do it, is the law to be held void? Or if he does so state, is it to be conclusive? He is made a judge to construe, and then a clerk to record.

It seems to me that if this section, or anything like it, is to be adopted, that there is a similar difficulty there.

Then passing still to another section, section three, we find that "each House shall keep a Journal of its proceedings, and publish them daily, except such parts as may require secrecy." Who is to decide what requires secrecy? Is the clerk to do it, and is the fact that the rest is not stated by him to have been published daily, to vitiate all the laws of the session? Is the clerk to know the fact that they were published daily, and if he fails to know that fact, is a law to become null and void, because the proceedings were not published daily? That is the way the article provides and the way it must stand, if we depend simply upon the Journal.

Then passing to section thirteen. Section thirteen requires that the presiding officer of each House shall sign all bills publicly, in the presence of the House. How is that to be ascertained? Is the clerk necessarily to know that fact? Is he to note that on the Journal? He may note it and he may not, and if he does not is a law not so signed to be void? Or if so signed but not so stated, is it to be void? His Journal, as to a bill, is closed before such signing oftentimes. Is he to go back and change what the House has declared to be complete? We are making confusion worse confounded.

Then, again, turning over to section forty which, it is true, has not yet been adopted, but may be; that section says that a

member who has a personal or private interest in any measure or bill proposed or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not have the right to vote thereon. How are you to find that out? Is the clerk to note upon the Journal whether all the members are interested or whether they are not? It is utterly impossible. He cannot know it—yet he must state it—and will he undertake to state what may be false? And if he does not state that all are disinterested as to each law, such laws are void.

Let us, by committing it to the Governor, as is suggested by the gentleman from Allegheny (Mr. Howard) or to the Attorney General, or both in connection, require them to perform such a duty that when a law has been finally passed, signed by the Governor, published and sent to the people, its constitutionality as to matters of mere form cannot be affected. Its constitutionality, in its substance, of course is always open, but there ought to be an end as to questions of legislative form. I think, therefore, that the amendment of the gentleman from Allegheny (Mr. Howard) contains the right substance. Perhaps it ought to be changed in phraseology, but I rose simply to point out these difficulties, and to show the absolute necessity that the law itself, so far as form is concerned, shall be completed before it is published to the world.

Mr. TEMPLE. Mr. Chairman: I think a moment's reflection will satisfy this committee that the suggestions of the gentleman from York (Mr. Cochran) and the gentleman from Allegheny (Mr. Howard) are altogether unnecessary. I take it, before the Executive signs a bill he is fully aware of what it is, and how it will operate, and no other officer is necessary to assist him perform the duties of his office, so far as the signing of bills is concerned, unless the Governor himself summons some one of his executive counsel to his aid. The proposition of the gentleman from York requires that this Constitutional Convention shall impose upon the Secretary of the State a duty which is now imposed on the Governor. The duties of the office of Governor require him to procure information as to whether a bill is right and proper, and if the substitute of the gentleman from York were adopted it would take away part of the duties of the Executive. That seems to be altogether useless.

Now, the same objection applies to the amendment of the gentleman from Allegheny. It seems to me that we are undertaking to put something into the Constitution without knowing the meaning and effect of it. What necessity is there that the Constitution should contain a clause which says that the Secretary of State shall advise the Governor of the correctness of an act of Assembly before he puts his signature to it? It strikes me that this is the sheerest nonsense. If gentlemen will look at this for a moment, and particularly the gentleman from Dauphin, (Mr. MacVeagh,) who has manifested so much interest in this special subject, they will see that the scope of this proposition will be to take away part of the duty of the Executive. It is not necessary for the Constitution to contain a clause directing him what course he shall pursue in order to ascertain whether an act of Assembly is correct and proper or not.

Mr. DARLINGTON. Mr. Chairman: I dislike very much placing in the Constitution anything at all which looks like going beyond the enrolment of a law. I think it will be found very difficult, if not impracticable, to carry out such an idea. But if it be the intention of the committee of the whole and of the Convention to make some provision which shall authorize an inquiry whether the law has been passed through all the forms prescribed, by some tribunal, I do not think that that tribunal should be the one suggested by my friend from Allegheny. I say so for the reason that it would be simply impossible for the Governor, or for the Secretary of the Commonwealth, no matter how great their knowledge of legislation may be, to go through the Journals and ascertain whether the forms of the Constitution have been complied with in every particular case.

Mr. HOWARD. Mr. Chairman: Will the gentleman from Chester allow me to make a suggestion? We propose, under our present plan, that we are to do away, in a great measure—I judge, with nineteen-twentieths—with all the forms of special legislation; perhaps more. Under the force of that suggestion, I would ask the gentleman whether it would be a mistake to charge the Governor with the duty of ascertaining what is simply a clerical duty, before a law shall go forth as a cheat and a snare upon the public, whether the forms of law have been complied with, and that his certificate on that point shall

be conclusive on that point that the forms have been complied with, before he shall sign it?

Mr. DARLINGTON. Mr. Chairman: I will answer that by saying that the Governor is supposed to carefully examine every law that comes before him, and he is presumed, also, to rely upon the fact that all the necessary forms have been complied with.

Mr. TEMPLE. Mr. Chairman: I would like to ask the gentleman from Chester, if the Governor attaches his signature to an act of Assembly without knowing what its contents are, if it would not be a misdemeanor?

Mr. DARLINGTON. Mr. Chairman: I do not know that the Governor does any such thing, and therefore I do not presume that he commits any misdemeanor. His duty, of course, is to examine the bill; but it is not his duty to examine whether it has passed through all the stages on the days prescribed. He has to assume that each co-ordinate branch of the government does its duty, and we could get along with no other system than that. You must assume that your Legislature, in each branch of it, will discharge its duty. Recollect, we are purifying that body. We have got it nearly pure already, and before we have completed our labors we will have it entirely pure. There will be no dishonest men in it. The voters will all be pure, and therefore we must assume, as honest men, that the Legislature will properly reflect the will of the whole Commonwealth. Very well; you cannot base your government on any other theory than that it is to be administered by honest men, and therefore you must assume that every Legislature, and each branch thereof, will conform to all the requirements of the Constitution. You might as well allow the Legislature to inquire whether the Governor has done his duty in examining a law before he signs it, as to allow the Governor to inquire whether the Legislature has done its duty in passing it. You must assume that each branch of the Government has done its duty, and it will be simply impractical, I say, to require the Governor to examine into all the forms of legislation through which the law has passed.

The gentleman from Allegheny (Mr. Howard) suggests that we will not have many laws when we have done with special legislation. Do not let us hug that delusion to our bosoms. There certainly will be special legislation, or we

will be a nation without any laws at all, for we must have, and we cannot avoid having, a certain amount of legislation. The people of Pennsylvania certainly will not deny themselves the privilege of having such laws passed as their interests require.

Now, what is the evil intended to be remedied? It is said that certain laws have found their way into the Governor's Chamber, and have been signed and placed upon the statute book which never actually passed the Legislature. I do not know how numerous they may be. There may have been one law, there may have been two or there may have been ten in the course of the last seventy or eighty years. Now, rather than hedge around these bodies so that they can pass no law with any hope of its being valid, had we not better submit even to the partial inconvenience, if such it be, of a law getting upon the statute book which never passed, and making it necessary for the next Legislature to repeal it? Occasionally we had better submit to this than to deny to ourselves the power to do good. I do not think that the evil requires so vigorous a remedy, but if it be designed by this Convention to keep open the question whether the law is constitutionally passed or not, how long? Certainly not so long as that titles may pass under it without notice, money be invested and rights acquired, for you would do infinite wrong by this. You must, therefore, if you adopt any principle like this, fix a limit, and that, too, a very short limit, within which this question can be raised. Now, who is to raise it? Not, I take it, individual suitors in the contest between man and man. I trust individual contests will not be arrested in their progress by raising side issues as to whether the law under which they claim is constitutionally passed before their rights are decided; otherwise in all the laws that you have throughout the Commonwealth, incorporating banks, insurance companies, water companies, gas companies and thousands of others—if any man is sued for a note upon which he has borrowed money from a bank, or any man is sued for the gas which has been sold to him, he may raise the question that the law is not constitutional under which you are claiming and say "I want that decided first by your court before you shall recover your debt of me." That is all wrong. It is certainly a well settled principle of jurisprudence in Pennsylvania that no man can stop the

progress of a cause for such collateral issues as this. A water company organized by act of Assembly or by decree of court cannot be stopped in the trial of such a case by the inquiry, whether it is properly incorporated or not. That question can alone be raised, as the law now stands, by a writ of *quo warranto*, issued, not at the instance of a private individual, but issued by the law officers of the Commonwealth. The question whether a man intrudes upon or claims the franchises of the Commonwealth is only to be decided between the Commonwealth and him, in a proceeding to be instituted by the Commonwealth or at the instance of a private individual in the name of the Commonwealth.

The Commonwealth alone can say whether she has been encroached upon. She alone is entitled to go into court and see if she has been encroached upon.

I, therefore, would not tolerate the idea that any man, before a justice of the peace or before the court, litigating private questions between themselves, might raise the question, whether the law under which the contract arose was or was not constitutional. That is a question to be decided otherwise.

Now, sir, if it be the intention of this Convention to repose this authority in the courts, then I have a suggestion to make at the proper time, following the example of some other gentlemen, which I suppose to be a better remedy than those which have been suggested. I will propose, at the proper time, to amend this section, by striking out all after the word "void," in the second line, and inserting, so that it shall read thus: "Any bill passed in disregard of the provisions and directions in this article shall be void, and may be so declared in any legal proceeding instituted for that purpose, on behalf of the Commonwealth, within one year after its passage."

Mr. EWING. Mr. Chairman: We have in the past few days been passing numerous and very radical sections to prevent hasty and fraudulent legislation, and to correct the many evils which all admit have grown up by reason of the manner in which the legislation of this State has been conducted. Those sections have been passed with almost entire unanimity. The differences have been rather as to the wording than as to what was to be accomplished. Now, I suppose that the Convention does not intend to leave the Constitution in such a shape that those

sections shall be but a dead letter. I shall not enter at large into the objections made by some of the gentlemen to allowing the validity of an act of Assembly to be inquired into. The gentleman from Philadelphia, (Mr. Gowen,) I think, has stated the objections with as much clearness, at least, as any other gentleman who has objected to the section. He raised the objection yesterday, that in any case on trial in a court, without any notice whatever, the question of the passage of an act of Assembly might be raised in a court, and the party sustaining the act be unprepared to meet it. Now, I think he made a mistake in that. I think there are two classes of cases in which the validity of an act of Assembly may be called in question in court; one of which is a case where a defect is apparent on the face of the act; there it need not be pleaded specially, but I suppose that in every case where a defect is not apparent on the face of the act it must be plead specially, and full notice given to that effect.

Mr. GOWEN. How in the case of a public statute? The rule of pleading, I think, is that a private statute, only, must be specially pleaded, and a public act need not be.

Mr. EWING. No, sir; not an objection that the law has not been passed. That very point has been decided in three or four cases in the State of New York, and I wish to call attention to those hereafter. The gentleman from Philadelphia (Mr. Gowan) also says that a case may be decided one way in one county, and another way in another, until twenty decisions may have been obtained, each of different import. The same thing has occurred with regard to the interpretations of wills and many other cases, but they go up to the Supreme Court, and at last a decision arrived at, which generally settles the case, but not always. We have the Supreme Court, upon the very same act of Assembly, deciding one way at one time, and another way at another time. The same objection would apply equally to other litigated questions.

I wish to call the attention of members to what, in my opinion, would be the effect of striking out this section. We have passed different sections, in this same article, some of which are merely directory. Strike out this section and, I presume, that a bill passed in disregard of these provisions that are merely directory, would be good and valid, that it could not be inquired into unless specially provided

that that shall be the case; otherwise if you strike out this section you destroy the life from those sections that are merely directory. I cannot agree with the positions taken by several of the gentlemen, that if you strike out this section the certificate of the Secretary of the Commonwealth that a bill has passed and has been signed by the Speakers of both Houses, and by the Governor, would be conclusive that the act was legally passed. I do not think that the provisions will bear that interpretation. Those in regard to the passage of an act of the Assembly, by a majority of all the members elected to each House, and those which require a different vote on some other matters, are practically copies of the New York Constitution on the same subject. We have no such provisions in our present Constitution, and consequently our courts very properly decided that the mode of the passage of a bill, and its validity, cannot be inquired into, or anything connected with its passage. So of the decisions spoken of by the gentleman from Philadelphia, (Mr. Worrell,) as having been made in the United States court.

There is no such provision in the Constitutions in question, but in New York their Constitution of 1821 contains a provision of this nature, with regard to a series of acts, some of them for municipal corporations, some of them in regard to general tax laws, requiring a special vote, and the record of that vote on the Journals. The New York Constitution of 1846 provided that "no bill shall be passed unless by the assent of a majority of all the members elected to each branch of the Legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the Journal." The same Constitution provides that "on the first passage of the question in either House of the Legislature, on any act which imposes, continues or revives a tax, or creates a debt or change, or makes, continues or renews any appropriation of public or trust money or property, or discharges or commutes any claim or demand of the State or county, shall be taken by yeas and nays, which shall be duly entered on the Journals, and three-fifths of all the members elected to either House shall in all such cases be necessary to constitute a quorum therein." There are numerous other provisions in the Constitution similar to that, requiring a three-fourths vote, if I recollect aright. Now,

for fifty years the manner of the passage of these acts has been brought under the consideration of the New York courts from time to time, and I believe that it has been uniformly held that it must appear from the Journals that there was the requisite vote recorded there to pass it. And I have yet to hear from any person, or see it suggested in the report of any of these cases, that any evil has arisen from that being the constitutional law of New York. On the contrary, it appears to be a provision that suits them. I see that in the revised Constitution of 1867 they propose to leave in similar restrictions. It is true, as a gentleman behind me says, that that Constitution was voted down, but they had had provisions of that sort for fifty years. They had had decisions of their courts running through a long series of years. It had been a matter of discussion in courts and with the public, and it does not seem that any one thought of changing the provisions on the subject. I do not think, from the experience of New York, that we will find the great evils that some gentlemen imagine will arise, if in a case on trial in a court one of the parties is allowed to allege that one of the acts presented there was not properly passed, and provide for the proof.

In addition, I may say that the Supreme Court of New York have also decided, on a similar provision to this that we have already adopted, that the Journals are the evidence of this vote, and if the Journals show that the proper vote has been taken on the bill, then it has been properly passed so far as that vote is concerned. If the Journals do not show it, it has not been passed. We have the same provision, but a little stronger, in what we have already adopted here; and, for one, I would be very unwilling to leave that question so that it could not be tested in the court. I imagine one examination of the Journals would decide it. Probably the question would never again arise, and I think it a very safe provision. In regard to these sections which are merely *directory*, a very different question arises, and it may be that some better provision can be gotten up than this section under consideration; but it strikes me that to have no provision in regard to this would render these directory sections which we have already passed, almost entirely worthless. I would be entirely satisfied with the amendment offered by the gentleman from Allegheny (Mr. J. W. F. White.) I think it would cover all

that probably is necessary. My objection to the amendment offered by the other gentleman from Allegheny (Mr. Howard) is, that it weakens the force of the provision in regard to the vote that must be had for the passage of any bill. I would rather, so far as that section in regard to the final vote is concerned, that the whole section now under consideration should be voted down, because I think that without it, it would still be the rule that the journals must say, *affirmatively*, that the proper vote was had upon the bill, and that that question could be inquired into in a court, and besides, I think that it is making the certificate of the Governor have an effect that it should not have. It would require him to certify to facts not within his knowledge. I would prefer, if it has to come in that way, a certificate from the Speaker of each House attached to the bill, that the forms of legislation had been complied with.

MR. HOWARD. Mr. Chairman: Before the gentleman (Mr. Ewing) takes his seat I would like to ask him one question upon this section. The gentleman seems to think that such matters as are merely directory are not covered by this section. The section reads thus: "Any bill passed in disregard of the provisions and directions." I would ask whether that word "directions" does not cover the *directory* clauses as well as any other?

MR. EWING. Mr. Chairman: The gentleman (Mr. Howard) misunderstood me. I did not say that the directory provisions were not covered by this section. I have no doubt that they are. I said that there were directory provisions in other sections, and that there were provisions which were mandatory, and that if this entire section was voted down and no substitute placed there for it, the mandatory provisions would be binding, and that a law passed in disregard of these would be invalidated and could be inquired into in the courts, but that a law passed in violation of the merely *directory* provisions could not be inquired into in the courts, if this section was voted down.

MR. MACVEAGH. Mr. Chairman: I beg the attention of the committee for a few moments, while I suggest what I think will meet their views; not that it exactly represents my own, but from the tone of debate while this section has been under consideration I think it will meet the views of a majority of the committee. That is, to recognize the broad division between the *directory* clauses of the Con-

stitution, as we propose to frame it, and the other question, much graver and more extensive, that of the use of corrupt means to secure the passage of a law. I think the majority of this committee does not intend to hand over to the court the decision of the question, whether the directory clauses have or have not been literally complied with; but, on the other hand, I think that the majority of this committee is entirely prepared, is anxious, as well as willing, to allow any suitor to allege that his adversary *bought* the law under which he claims to deprive him of his rights.

If anybody in this Convention secures a decree, even of the highest court of the land, against his adversary, that decree may be impeached everywhere by the allegation that it was obtained by the use of corrupt and fraudulent means; and if, instead of going to the courts, or while in the courts, a litigant steals away to the State Capital and *buys* a law, then your courts of justice are dumb before that outrage and refuse to hear even the question whether any redress is due.

I trust, therefore, that the amendment to be proposed in time by the gentleman from York, (Mr. Cochran), which imposes upon the Secretary of the Commonwealth the duty of ascertaining, once for all, that the directory clauses of the Constitution have been complied with, will be adopted, for it is entirely true that we must, in framing this organic law, always bear in mind that other departments of the government are to be trusted to perform the duties that we devolve upon them, and surely if we make it an express constitutional duty of a constitutional officer to see that these directions are complied with, under the stringent and complete terms of the proposed amendment, we have done all that we ought to do before we clothe a law with the solemnity of a statute. Then if, after that, any person asserts that law and brings it into a court of justice, I trust we will insert a clause, substantially such as I have drawn, that when the validity of any law passed by the Legislature is questioned in any court of record, it shall be the duty of the judge of such court to investigate and decide, when required so to do, whether bribery or corruption was used to secure the passage of said bill; and if it shall be judicially established that bribery or corruption was so used, the said law shall be adjudged to be null and void, as to all persons claiming thereunder, who had or ought to have had knowledge of such bribery or corruption.

Certainly such a clause can do no harm. It is but simple justice. It is no longer singular for an adversary in a litigation to go to the Legislature and get a law which cuts away his opponent's rights of action; and though he may not approach the court with corrupt propositions, he may get his law by corrupt means, and the courts have decided that without express constitutional sanction they cannot inquire into the use of these corrupt means. Now, that does not affect every body. That does not affect investors, for instance, in gas companies, and in order to get the vote of my friend from Chester (Mr. Darlington) I will agree that gas companies shall not be affected by it, as he is a large owner of gas stock. [Laughter.]

MR. DARLINGTON. I want to ask the gentleman what he means by the clause he is about to submit to the committee. Whether in any private suit, civil or criminal, before a judge in a court, at the instance of either party, he means that judge must stop to inquire into these proceedings at Harrisburg?

MR. MACVEAGH. I mean this: That whenever a party in a suit presents now the decree of a court of competent jurisdiction, even the decree of the Supreme Court of this Commonwealth, the gentleman from Chester (Mr. Darlington) knows that he is at liberty to impeach it collaterally for fraud. *That doctrine is, at least, as old as the Dutchess of Kingston's case, and is undoubted law; but if instead of getting a decree against him, his adversary has obtained the passage of a law against him, which has been done in repeated instances within the last half dozen years—done in cases in which I was myself concerned as counsel—he may not inquire whether that adversary bought the law. Now, I say I would not put an act of the Legislature on higher ground than the supreme and solemn judgment of your court of final judicature, because I do not think that, as a general rule, laws are passed with more consideration, or with greater regard to law and equity, than the decisions of your Supreme Court are attained. Even to-day the Legislature of this State is investigating whether a most vital and radical supplement to a law, changing its entire force, as I am told, was not affixed in the rooms of one of the clerks, never having been seen by the eye of more than a single member. I say it ought to be possible to investigate these matters, when a party claims under the law, and when you allege that he has, or*

ought to have had, knowledge of the corruption or the fraud. What rule of justice does it violate, or what rule of the common law does it impair? I grant that I would not put these questions of directory provisions before the courts of law. I think they belong to the political departments of the government, and I accept therefore, in the fullest spirit, the amendment that is to be proposed by the gentleman from York, (Mr. Cochran,) making it the duty of the Secretary of State to see that these provisions have been complied with, and therefore making the signature of the Governor final upon these questions; and I think that provision, if I am not mistaken, avoids many of the difficulties suggested by the gentleman from Philadelphia (Mr. Gowen.)

MR. HOWARD. Will the gentleman allow me to ask a question?

MR. MACVEAGH. Certainly, sir.

MR. HOWARD. I would ask the gentleman whether the fact that the Secretary of the Commonwealth shall ascertain that the forms of law have been complied with will make it any better than it will, if we say that it shall be the duty of the Governor himself, before he signs that bill, to ascertain that these forms have been complied with, and that, in his approval, he shall make it a part of his certificate.

MR. MACVEAGH. I do not object to making it the duty of the Secretary of the Commonwealth, or the Governor, if the gentleman prefers the latter officer, to go and examine these Journals. It seems to me more in harmony with the relative duties and dignities of these offices that the duty of going to the one House and the other, to inspect the Journals and to discover the methods by which a bill passed, should be imposed upon the Secretary of the Commonwealth. If gentlemen think that the Governor should be charged with the duty of going to the clerk's room of the House, and of the Senate, and from one body to another, and find whether these things have been done, they will move to substitute the Governor for the Secretary of the Commonwealth. But I think the gentleman from York (Mr. Cochran) was happy in the suggestion that this should be the express constitutional duty of the Secretary of the Commonwealth. I am quite willing that he should make a certificate to that effect as an officer. But the broad line of demarcation still remains, which I hope the committee will at least appreciate, even if they do not adopt, and I earnestly hope

they will adopt it, to put the duty of seeing that there is a compliance with the directory provisions upon an officer of one of the political departments of the government, and to give every suitor affected by a rotten law an opportunity in a court of justice to prove its utter corruption and rottenness.

Mr. HOWARD. Mr. Chairman: I would like to ask the gentleman a single question before he takes his seat, and call his attention to what we propose to do in this matter. The gentleman has spoken of special legislation, and of acts that have been passed in special cases. I know that perfectly well. We propose, however, to provide against this kind of legislation by saying that no local or special bill shall be passed unless sixty days public notice of the intention shall be published in the locality where the matter or thing to be affected is situated.

Mr. MACVEAGH. The gentleman will remember that long ago I stated to the Convention, what I am sure other gentlemen who have had larger experience believe, that in correcting our evils by destroying special legislation we are, at least, five years behind the lobbyists. They, long since, have discovered that it was far easier to secure a corrupt end by general than by special laws, and many instances have occurred in which the worst and most corrupt laws have been general and not special.

Mr. ELLIS. Mr. Chairman: I rise simply to express my concurrence with the proposition which has been offered by the gentleman from York (Mr. Cochran.) It certainly must be evident to this committee that we are getting very much at sea in the discussion of the present section of this article.

Now, I think we ought clearly to keep in view, as we proceed in the consideration of this section, that portion of the Constitution to which it expressly and particularly refers. Many of the propositions that have been suggested are purely and entirely matters that should be considered by the Committee on the Judiciary, in defining the duties, powers and jurisdiction of the courts.

There is another matter that ought not to be forgotten, and it is that the Convention has created a Committee on Constitutional Sanction. From that committee we expect some action that will harmonize the provisions of the Constitution which we shall adopt on the subject of sanction. I entirely agree with the gen-

tleman from Dauphin (Mr. MacVeagh) that if a bill has been passed through the Legislature by corrupt means, it should be declared unconstitutional, but in our haste to cure these evils we should be careful before we insert in the Constitution a provision which affects materially the jurisdiction that ought to be prescribed and well defined between the legislative department and the judicial department. Now, the proposition of the gentleman from York (Mr. Cochran) is a simple, plain and proper one. It is that in these matters it shall be the duty of the Secretary of State to inquire and examine into all bills passed by the Legislature, before they shall be signed by the Executive. This duty will constitute one of the most important functions of his office, and will prove a check upon the legislative department. This being evident, the amendment offered by the gentleman from York (Mr. Cochran) is very plainly and clearly within the scope of the duties of the Executive department. This far, I think, we can go in this article with perfect safety, but I submit anything further than that would be very dangerous in its effect. I rose, Mr. Chairman, simply for the purpose of expressing my concurrence in the provision contained in the amendment which has been offered.

Mr. HUNSICKER. Mr. Chairman: I desire to add a single word in condemnation of the section and in favor of the amendment offered by the gentleman from Allegheny (Mr. Howard.) So far, I believe, there has been but one gentleman found courageous enough to defend the section, and that has been my valiant friend from Allegheny (Mr. Ewing.) An examination of the section will show this: There are thirty judicial districts in the State of Pennsylvania, and whenever the validity of an act of Assembly is questioned before any one of those tribunals the Journals of the Legislature shall be inspected. Now, suppose that some suitor alleges that the names appearing upon the Journal are forgeries? What, then, becomes of the question? It becomes, then, purely a question of fact, and the court wherein the act of Assembly is thus questioned directs a feigned issue to be tried by a jury, as in other cases. Then suppose the jury should find that the signatures on the Journals were forgeries? This would compel that court to declare the act void. Then suppose a similar issue was at the same time tried in another county, and the verdict should be the

other way? In this latter case the court would be compelled to declare the act valid. Thus you would have two judgments equally binding, the one sustaining, the other annulling the act.

Then suppose, again, that both cases be removed to the Supreme Court of the State by writ of error. That court would review the records, and, not finding any error of law, for it does not review facts, would affirm both judgments. Thus we reach the anomaly of two decisions of the Supreme Court of the State—the highest judicial authority of the State—one declaring the act void, and the other declaring the act valid.

This seems to me quite sufficient to dispose of the section. That some mode securing the observance of the constitutional provisions by the Legislature is required, is undeniable.

Mr. EWING. I would like to ask the gentleman if he supposes a case of the kind to which he has referred, by which the Supreme Court of the State would both affirm and deny the validity of an act of the Legislature, could ever occur?

Mr. HUNSICKER. I was endeavoring to explain the anomaly which would be presented if such a case should ever arise. Suppose in one county the names upon the Journals were alleged to be forgeries, and that were to be a question of fact for the jury, and —

Mr. EWING. The gentleman does not appear to understand my question. It has been ruled, over and over again, in New York that the official Journals of the Legislature itself is conclusive evidence of the fact of the passage of an act.

Mr. HUNSICKER. I am very well aware of that fact; but the section under consideration does not so prescribe. Now, let me go one step further. I think I have made myself understood upon the point to which I referred. Whether I am right or wrong time will determine. Now, the amendment offered by the gentleman from Allegheny (Mr. Howard) meets the whole question, and I think it should receive the support of the gentleman from Dauphin (Mr. MacVeagh) and of the gentleman from York (Mr. Cochran.) I would like to call the attention of the gentleman from Dauphin to the amendment of the gentleman from Allegheny. The amendment offered by the gentleman from Allegheny (Mr. Howard) reads as follows: "The Governor shall not give his approval to any bill until he shall have ascertained that all the forms of leg-

islation, as prescribed in this article, have been observed in the passage of the same, and in his approval he shall so certify, and his certificate shall be conclusive evidence that all the forms prescribed have been observed."

Mr. MACVEAGH. The only difference between myself and the gentleman from Allegheny (Mr. Howard) and the gentleman from Montgomery (Mr. Hunsicker) is, that I think this duty had better be imposed upon the Secretary of the Commonwealth, but of this I am not at all tenacious.

Mr. HUNSICKER. I suppose, then, we can consider you as a co-worker for this substitute?

Mr. MACVEAGH. In substance, yes.

Mr. HUNSICKER. I will now resume my remarks. *You must trust somebody; why not the Governor?* Have you any safeguards? You will have an iron-clad oath for the members of the Legislature, an iron-clad oath for the clerks, and an iron-clad oath for the Governor. Notwithstanding all these oaths, it is proposed to scrutinize every act of Assembly that is passed by that body, to see if all the forms prescribed have been observed, and, if I understand the gentleman from Dauphin (Mr. MacVeagh) aright, it is further proposed to try the questions of fact in courts whether the act was passed through corrupt means, or by undue influence. I would like to know whether legislation, under this kind of restriction, would amount to anything, and whether you would not be bothering the courts, from year to year, by trying questions of fact, as to whether these acts were corruptly passed or not, and thus keep the people in suspense. There must be an end somewhere to this kind of legislation in this Constitutional Convention, and I think we had better "endure the ills we suffer than to fly to others that we know not of." I trust the committee will consider the proposition that has been offered by the gentleman from Allegheny (Mr. Howard.) It seems to me that by adopting this substitute we will make a Constitution that will not keep us in constant suspense and anxiety, until we shall be relieved by the final judicial judgment that an act of Assembly is valid, but will make an act valid and unquestionable so soon as it is certified and signed by the Governor. If any better mode can be devised, I shall be free to support it. This is the best yet offered.

Mr. BUCKALEW. Mr. Chairman: The several provisions in this article regulating the passage of bills require a sanction, require that some means for their enforcement independent, of the Legislature, should be provided; but, sir, in my opinion the committee has reported a section which will be of very little value if it shall be agreed to by the Convention, and adopted by the people. A mere inspection of the Journals of the two Houses will, in almost every conceivable case, be quite insufficient to reach the evil aimed at, and to extirpate it from our legislative proceedings. Most commonly these frauds committed upon bills, and which eventually take the form of law, do not appear upon the Journals, and the Journals afford no means of detection. Let me illustrate: A bill, with a given title, is introduced into the House. The Journal shows that the House went into committee of the whole and amended the bill, and that it passed afterwards. The Journal of the Senate will show again that the Senate went into committee of the whole where amendments were made, and then passed the bill. The Journals might show further, that upon a conference between the two Houses the bill underwent further modification. That modification might certainly appear in the report of the committee on conference, but suppose a bill that has gone through the proceeding I have described is carried into the transcribing room on the last night of the session, and some transcribing clerk, or assistant, or the clerk to the committee to compare bills, is paid fifty or one hundred dollars by a party, to add a section to the bill. That section is simply added to or interjected into the transcribed copy, and goes to the office of the Secretary of Commonwealth, and inadvertently the Governor signs the bill. That, sir, has happened over and over again. It is the common, the accepted mode in which frauds in legislation are committed, and yet an inspection of the Journals of both Houses will not detect the fraud, and a provision that they shall be inspected is of no value whatever in a case of this kind.

Now, sir, I know the cases of two or three bills in which fraud was detected, not by the Journals of the two houses, but by going to the original manuscript bill, as introduced originally into one of the Houses, and to the proper bill which was sent from one House to the other, because thus you are able to find the origi-

nal marks made by the clerks of the respective Houses upon all amendments when they are offered and when action upon them is had. In that manner, in the cases to which I have referred, we were able to ascertain that certain amendments had not gone at all through the hands of the principal clerks of the Senate and House, and yet they were foisted into those bills, which, being sent to the Governor and signed by him, became laws of the Commonwealth, and no power of this State was able to touch them, except the Legislature, at a subsequent session by repealing them, should strike them from the statute book. I remember my experience in one case where a fraud was detected. The repealing bill was passed through the Senate upon the showing of the original records of the two Houses, not the Journals, but the other records of the two Houses, and the bill was sent to the House of Representatives, and there there was a grave and earnest debate, and the repealing bill was manfully voted down. The law stands there yet upon the statute book; a law passed by a transcribing clerk of the House, and by no other authority whatever.

But I need not go over the history of sundry cases of that sort. There ought to be some section in our Constitution, not to render the two Houses honest in their observance of the principal forms, because they will be observed, but to protect the two Houses and the honest officers thereof, as well as the people of the State, from the introduction into our laws of enactments that never received the proper lawful assent.

But the Committee on Legislation have reported a section that all the courts in the Commonwealth shall set at work, at the pleasure of any party before them, to overhaul the proceedings of the Legislature. The courts in Greene, in Wayne, in Philadelphia, in Dauphin and in Northumberland, possibly all at work at one time, at one law, to test its validity. Why, sir, that will not do. It seems to me that, of all absurd propositions of amendment, of all remedies, this would be about the worst.

Now, Mr. Chairman, the gentleman from Dauphin (Mr. MacVeagh) has touched another subject which is not covered by this section, but which is more important than anything which this section covers—the case of a bill passed by fraud. These cases are not only possible, they are actual. We all rest under a

moral conviction which is immovable—the conviction that laws are passed in this manner—and one of our principal efforts here should be to stop them hereafter, and yet, so far as I can discover, this long and elaborate article provides no remedy whatever.

My idea is this: That here, upon the face of the Constitution, you should place the provision that a party or an interest that obtains the passage of a law by corrupt means, or that expends one dollar corruptly to that end (whether the result is achieved by the corrupt means or not) shall take nothing by the enactment; that upon proof shown (you must have it judicially shown, you cannot investigate it in any other way) that a party or an interest has pledged or paid one dollar to take that which is a part of the sovereignty of this Commonwealth—because our laws are an emanation of the sovereignty—upon that showing the enactment, with reference to which the outlay has been made, shall be void. But, sir, I would not put all the courts of the Commonwealth in action to reach this object of purification and amendment. I would proceed by proper regulations. I would provide somewhat after the fashion of the amendment suggested by the gentleman from Chester (Mr. Darlington.) I would provide that within a certain time after the passage of a law, say one year after its publication, that it shall be the right of the people of the State, or of an officer of the State representing them, or of a certain number of citizens interested in the subject, to apply, if you choose, to the judges of the Supreme Court, or to one of them, and upon showing probable cause that a law was passed by corrupt means, or in violation of any of these provisions of the Constitution, that an investigation shall be ordered, the investigation to be regulated by statute, of course, that shall provide all the details necessary to a prompt, efficient, thorough and just prosecution of the investigation, and with complete power at the end of it for the court exercising the power of the people, to pronounce the enactment void, and to punish the parties concerned in its enactment, or order their prosecution in the proper courts of the Commonwealth.

I see nothing of all that, or anything like it, or looking to that end, on the face of this elaborate article reported by the Committee on Legislation. Of course now, in the midst of debate, it is not convenient for me, or for any one else to put ideas of this

sort in form, and propose them to the committee of the whole. Therefore at present all that I can say is, that for reasons already given I shall vote against this section, thinking it unimportant and useless. A mere examination of the Journals of the two Houses would be of little account. And I shall also vote against the amendment to the section, which is subject to the same remarks, and open to the same objection. But if any gentleman will propose a proper section—

Mr. WOODWARD. There was one offered, which the Chairman ruled out of order at this time.

Mr. BUCKALEW. Mr. Chairman: I am only speaking of what is before the committee. If any proposition shall be presented, looking to the objects of which I have spoken, I shall most cheerfully support it, both now and when the article shall be upon second reading.

Mr. MACVEAGH. Mr. Chairman: I simply desire to suggest to the gentleman from Columbia (Mr. Buckalew) that, as he and I seem to be in thorough accord about the end we desire to reach, I shall not be tenacious of the method. I do not see the wisdom of requiring the opponents of a corrupt measure, the parties who are to suffer from it, to take the burden of attack upon them before they know it is to be used against them. Nor, on the other hand, do I see the justice of including in the consequences parties who have been wholly innocent.

The section I propose has no limitation as to time, because it is, in my judgment, indispensable that whenever a corrupt law presents itself anywhere then the right should exist to strike it anywhere. But I protect the rights of all persons who are presumed not to have knowledge of the corrupt means which have procured its passage.

Mr. BUCKALEW. Mr. Chairman: I was not arguing the proposition stated by me. I was simply stating it. The reasons why a limitation of time should be imposed in the Constitution, or in a statute passed under it, is a matter that will properly arise when we have that proposition before us. But I will suggest one thing: A vast number of private rights may grow up under a statute in the course of a few years; a vast amount of money may be invested under it, and it would be extremely inconvenient, after the lapse of any considerable period of time, to permit the statute, and everything that has taken place under it, to be declared void.

Mr. WOODWARD. Mr. Chairman: Before the gentleman from Columbia takes his seat, I wish to call his attention to the substitute which the chair ruled out of order. I am so struck with his views of this whole subject that when he tells me he did not hear the amendment which the gentleman from Luzerne (Mr. H. W. Palmer) submitted to the Chair, I would like to have that amendment read for information, that the gentleman from Columbia may see if it does not exactly meet his views.

The CHAIRMAN. The substitute will be read for information.

The CLERK read as follows:

SECTION —. Whenever in any judicial proceedings either party shall claim, under or by virtue of any act of Assembly, and the other party, upon proper affidavit, shall allege that such act of Assembly was passed in disregard of the provisions and directions prescribed in this article, or by fraud, bribery or undue means, and the court before which such judicial proceeding is pending shall be satisfied, *primo facie*, that such allegations are well founded, it shall be the duty of the said court to order a feigned issue to be framed under the direction of the Attorney General upon proper pleadings, in which the Commonwealth, upon relation of the party in interest, shall be plaintiff, and the party claiming under such act of Assembly defendant, to try the truth of the allegations in said affidavit contained and the validity of such act of Assembly; and the said issue shall be certified to the Supreme Court and tried by one of the judges thereof, in whatever county he may direct; and if it shall appear to the court and jury upon such trial that all the provisions of legislation in both Houses, as hereinbefore prescribed, have not been substantially observed in the passage of said act, or that the same has been procured by bribery, fraud or undue means, such act of Assembly shall be adjudged null and void, either party to have the right to a writ of error as in other cases.

Mr. MANN. Mr. Chairman: Nearly every gentleman who has spoken upon this section; I believe every gentleman with one exception, has admitted the necessity of some such provision in the Constitution as the one reported. True, they are not satisfied with this section, and no two gentlemen who have proposed amendments are agreed as to what shall be substituted in place of the section reported by the Committee on Legislation. No

two gentlemen agree as to the precise form of the remedy. Now, sir, this clearly indicates the difficulty which the Committee on Legislation had to agree upon this section, and it seems to me, with great deference, to the gentleman from Columbia (Mr. Buckalew) that a portion, at least, of this section ought to be agreed upon by this committee of the whole. That will preserve the principle, that if the forms of legislation required by this article are not complied with, a bill shall be void. I think nearly all of the gentlemen who have spoken upon this subject are agreed upon that.

We have in previous sections said that no bill shall become a law unless it has been read three times on three separate days. Now, that is a mere declaration, and under the construction which has been given by the courts it will not be valuable without the operation of the twenty-fifth section; and I ask the members of this committee, before they vote down this section, to consider of what value are the requirements that we have made in previous sections without this declaration that a bill passed in disregard of them shall be void. So much of this section, I trust, this committee will endorse. If it shall stop at the second line, at the word "void," for one, I am satisfied, for that covers the whole principle of the section; and let me ask you if we ought not to assert so much that "no bill passed in disregard of the provisions and directions prescribed in this article shall be valid." If we are agreed upon that let us say so this morning, and when the article comes up on second reading, if more is required, there can be a consultation and agreement as to what more is needed. Let us say that much; that will be an assertion of the principle that we intend to put into this Constitution, a provision that will enforce these requirements.

If we accept the statement made by the gentleman from Columbia, (Mr. Buckalew,) that it has come to be the common practice that some of the most important provisions of law in this Commonwealth have been passed in the transcribing room, and under the construction of the courts there is no remedy whatever, then this section is a necessity. A bill is now upon the statute books, affecting vitally the interests of this Commonwealth, passed in the transcribing room, and with this fact staring us in the face, shall we hesitate to provide a remedy? The section under discussion will furnish a remedy.

for the gross outrages which have been described by the gentleman from Columbia (Mr. Buckalew.)

I am satisfied, with the adoption of two lines, additional requirements can be provided before this Constitution shall be passed upon by the Convention, and it is very easy to add the other idea insisted upon by the gentleman from Columbia (Mr. Buckalew) and the gentleman from Dauphin, (Mr. MacVeagh,) that fraud shall also vitiate the passage of the bill. It will require but a simple amendment to insert that in this same provision. "Any bill passed in disregard of the provisions and directions composed in this article, or that shall have been procured by fraud, shall be void," will assert the principle, and the method of the remedy can be taken care of afterwards.

I trust, therefore, that the principle asserted in this section will be passed upon by the committee, and to enable us to do that without injuring the principle of the section, I hope all the amendments will be voted down; then we can come to the square issue of whether we shall provide a remedy for the outrages that have been committed upon the people of this Commonwealth, by injecting into a bill sections that never were passed. It seems to me there is no difficulty whatever of asserting this principle, this morning, in this section, without encumbering or prejudicing, in any way, the remedies that are sought to be provided for.

MR. CORBETT. Mr. Chairman: I do not intend to occupy at any great length the time of the committee. It is evident to every person that this discussion has taken a very wide range. The section reported is not intended to cover all the propositions here made. All that was intended by the section was to provide for the enforcement of previous sections reported by the committee, and which have been adopted by the committee of the whole. Now, I am not very particular myself about the wording of the section as it is here. I am perfectly willing to adopt the amendment offered by the gentleman from Allegheny (Mr. White.) I am willing to adopt his proposition, strike out all after the word "affect," and add as he proposes. There has been much said about the Legislature, and about corruption. Now, for my own part, I think there are but few members of the Legislature who have been corrupt, either in the present or past Legislatures; but one thing in legislation has enabled a bare majority of

a quorum to pass bills; consequently many members do not vote, and bills are passed by probably a little over one-fourth of the House. Corruption in instances of that kind has a large power, and is enabled to pass very iniquitous laws. We have provided in a section adopted by the committee that laws shall only be passed by a majority of the members elected to each House. Now, there is an evident necessity that this provision of the Constitution shall be enforced. If it is merely directory and not obligatory, and laws are to be held of full force and effect as they have been heretofore, merely because they are enrolled, the necessary consequence will be that this provision will be of no effect whatever.

The section as reported is not intended to cover the case of bills or laws passed by fraudulent means; the section covers only the other sections reported by the committee, and is intended to enforce those provisions. As to corrupt legislation, if a remedy is needed, it is left to the Committee on Constitutional Sanction, and it will be sufficient, Mr. Chairman, when that committee reports for us to discuss these questions with reference to what sections or provisions will be necessary in the Constitution in order to meet fraudulent and corrupt legislation.

I ask the committee now, at least, to put some provision here, and in this place, so as to enforce the different sections that already have been adopted by the committee of the whole with reference to legislation; and if you do not do it, and leave them merely as directory, they will be of no avail and of no benefit.

Objection has been made that this will lead to difficulty. I confess, for myself, I do not see it. The Journals of the Houses are written evidence. Why those Journals should not be resorted to, in order to determine whether the provisions of this article have been complied with, I cannot perceive. The section does not propose to go outside, and to admit parole evidence. It allows, where a bill is enrolled, and where it has received the signatures of the officers of each House and of the Governor, that you may go to the Journals for the purpose of seeing whether the provision, with reference to a majority of members elected to each House voting in its favor, has been complied with, and also as to the other provisions adopted with reference to hasty legislation. Now, if there is not something adopted so as to enforce those several provisions with ref-

erence to legislation, all our work, thus far, on this article has been of no effect whatever.

Mr. ALRICKS. Mr. Chairman: It is admitted by every member of this committee that wherever the constitutionality of the law is to be tested, it must be before the proper court, and that the proper law officer of the Commonwealth must be employed for the purpose of investigating the matter. There is only one thing that has escaped the attention of the gentleman who offered this amendment, and that is this, that all our statutes are to the effect that wherever proceedings are to be commenced at the suit of the Commonwealth, they are to be commenced in the county court in which the capital is located. I, therefore, propose an addition to the amendment that has been offered by the gentleman from Luzerne, (Mr. H. W. Palmer,) directing the proceedings to be commenced in that court. I do not know whether it is in order here to move to strike out the amendments that are before the Chair and offer a substitute. That is the rule, I believe, in our national Congress. I submit to the Chairman whether it is in order or not.

The CHAIRMAN. The gentleman will send up his amendment to the desk, as the Chair cannot decide whether it is in order or not, without seeing it.

The CLERK read:

"On a petition, in writing, made under oath or affirmation by a party interested, to the Attorney General, representing that the said alleged act of Assembly was invalid or fraudulently enacted, it shall be the duty of said law officer of the Commonwealth, who may have private counsel associated with him, to sue a writ of *scire facias* out of the court of common pleas of Dauphin county to determine the validity of said reputed statute, and any parties who would be benefited by said alleged law shall be made defendants."

The CHAIRMAN. It is not in order at this time. The question is upon the amendment of the gentleman from Allegheny (Mr. Howard.) It will be read.

The CLERK read:

"The Governor shall not give his approval to any bill, until he shall have ascertained that all the forms of legislation prescribed in this article have been observed in the passage of the same, and in his approval he shall so certify, and his certificate shall be conclusive that all the forms prescribed have been observed."

The amendment was not agreed to.

The CHAIRMAN. The amendment properly in order will be the one proposed by the gentleman from Luzerne (Mr. H. W. Palmer.)

Mr. PALMER. Mr. Chairman: I move the adoption of that amendment.

The CHAIRMAN. The amendment will be read.

The CLERK read:

"Whenever in any judicial proceedings either party shall claim, under or by virtue of any act of Assembly, and the other party, upon proper affidavit, shall allege that such act of Assembly was passed in disregard of the provisions and directions prescribed in this article, or by fraud, bribery, or undue means, and the court before which such judicial proceeding is pending shall be satisfied *prima facie* that such allegations are well founded, it shall be the duty of the said court to order a feigned issue to be framed under the direction of the Attorney General, upon proper pleadings in which the Commonwealth upon relation of the party in interest shall be the plaintiff, and the party claiming under such act of Assembly defendant, to try the truth of the allegation in said affidavit contained, and the validity of such act of Assembly, and the said issue shall be certified to the Supreme Court, and tried by one of the judges thereof in whatever county he may direct; and if it shall appear to the court and jury, upon such trial, that all the provisions of legislation in both Houses, as hereinbefore prescribed, have not been substantially observed in the passage of said act, or that the same has been procured by bribery, fraud, or undue means, such act of Assembly shall be adjudged null and void, either party to have the right to a writ of error, as in other cases."

Mr. WOODWARD. Mr. Chairman: I arise to support that amendment.

Mr. MACVEAGH. Will the gentleman permit me to offer an amendment?

Mr. WOODWARD. Certainly.

The CLERK read the amendment as follows:

Strike out the words, "in disregard of the provisions and directions prescribed by this article."

Mr. WOODWARD. I am authorized by the gentleman from Luzerne, (Mr. H. W. Palmer,) who moved this amendment, to accept this modification. It has been agreed on all hands that there is need for a constitutional provision on this subject, and that the report of the committee is

entirely inadequate to meet that need. I believe that those two things are conceded by almost every gentleman who has addressed the Chair this morning. Then it comes down to the question of modes. Well, sir, some of the modes which have been suggested are impracticable. For instance, the gentleman from Philadelphia (Mr. Worrell) proposes that, in case of the doubt of the validity of an act of the Assembly, the Attorney General may issue a *scire facias* to try the validity of that act of the Assembly. That, as a remedy, I think is entirely inadequate. In the first place, a *scire facias* is not adapted exactly to the question that we have to try, and, in the next place, the authority of the Attorney General to move in the matter would involve all the political considerations that might be touched by the act of the Assembly, and he would, or would not, act just according to his views of the political interest of the party to which he belongs.

What is wanted, sir, is this: When in any judicial proceeding, in any court of justice, one of these purchased acts of Assembly which the gentleman from Columbia (Mr. Buckalew) explains so well, is produced, and the party stands in that court of justice, claiming under the corrupt act of Assembly, some judicial power in this Commonwealth should be able to determine whether that act of the Assembly is a law or not. Some judicial power should determine the question. It is not a political question; it becomes a judicial question instantly. If the question is the constitutionality of the law, it certainly is a judicial question. If the question is whether it was obtained by bribery and corruption, it is a judicial question because fraud vitiates all things, and this question of fact ought to be tried by a jury under the direction of a court of justice. Now, according to the law of Pennsylvania, fraud vitiates all things, except an act of Assembly. It does not vitiate that, for in the Commonwealth against Biddis, reported, I think, in the sixth Binney, you will find it decided by the Supreme Court, that these blue covered pamphlet laws which are distributed all over the Commonwealth are the evidence of the statutes of the State. The courts receive those blue covered pamphlets as final and conclusive evidence upon the question of what is statute law of Pennsylvania and what is not.

Now, when a gentleman goes into a court of justice with one of those sickly

looking pamphlets under his arm, there is no judicial power in Pennsylvania that can apply the principle which can be applied to a decree or a judgment of any court of justice, or to a deed or a mortgage, or a will or any other instrument or writing, to wit, that fraud vitiates everything. It is immaculate, sir, and the most infamous wrongs and frauds have been perpetrated, and courts of justice have felt themselves degraded in being made the instruments of carrying out those frauds, when they have moral convictions upon the subject that are just as clear as a demonstration of Euclid, but have no power. Now, sir, I propose to give them the power, and if this Convention allows this opportunity to go by without planting in the Constitution somewhere an efficient remedy for this evil, why, sir, we make ourselves parties to these enormous wrongs for all time to come.

The Supreme Court of the United States decided in *Fletcher vs. Peck*, that the validity of a statute law cannot be drawn into question collaterally, and if it can be passed upon by the judiciary at all, it can only be at the suit of the Commonwealth, and that I understand to be the law of the Supreme Court of the United States to this day, and therefore all these palliatives which gentlemen suggest in the form of amendments, if they were to be adopted, would not prove worth the paper they are written on, because the Supreme Court of the United States would hold them to be unconstitutional. We can no more violate the Constitution of the United States by constitutional provisions of this State, than we can by an act of the Legislature of this State. Now, we must meet these objections. We must provide a mode in which the Commonwealth shall be the party, and in which the inquiry shall be a direct inquiry, and not a collateral one. This amendment, sir, is drawn to meet all these conditions. I do not know whether other gentlemen were impressed as I was, but my friend who sits behind me, (Mr. Buckalew,) and who told me that he had not seen or heard of this amendment, and yet his clear and logical mind, in discussing this subject, and presenting it to our consideration, presented every single point that is in that amendment. The only one about which he suggests any doubts, is that there shall be some time limited, within which judicial inquiry should take place. Now, to his mind, that amendment had not suggested any ideas at all, because he had not heard it, and yet his mind, drawn

ent on this subject, resulted precisely in that amendment, with the exception of the limitation of time. I have suggested to him since, privately, that it would not do to limit the time of this inquiry, because the moment that you do that the rogue will not institute his judicial proceedings, until that time has expired, and then investigation would be shut out, and hence there ought to be no limitations in favor of fraud. There are none now, and we ought to put none into this Constitution.

Mr. MACVEAGH. Will the gentleman allow another suggestion?

Mr. WOODWARD. Certainly.

Mr. MACVEAGH. I desire to have his judgment, in reference to this proviso, and I ask the attention of the committee while I read it: "Provided, That no rights shall be impaired, which shall theretofore have been acquired by fraud, of said act or , in good faith, and for a valuable consideration."

Mr. WOODWARD. I do not know that I have any particular objection to that. Here we are brought face to face with this great subject, and we have had no graver question before us since we met. Now, shall we meet it and plant in the Constitution a remedy for it? Everybody seems to be agreed that we ought. What shall that remedy be? I tell you it must be a remedy in which the Commonwealth is a party, and in which the proceeding is a direct and not a collateral proceeding. The amendment which I am supporting meets both those points. I do not, at present, see that the proviso of the gentleman from Dauphin (Mr. MacVeagh) would impair the force of this amendment, but I would rather that he would offer it as an amendment to the amendment. If there is any better way, sir, of obtaining this end that we all have in view, I am ready to embrace it when any gentleman points it out. I am ready to travel any better road if any gentleman will show a better. But what I beg of gentlemen, is to bear in mind all the necessary conditions of the case.

Mr. DARLINGTON. Will the gentleman allow me to ask him a question?

Mr. WOODWARD. Yes, sir.

Mr. DARLINGTON. Suppose a law of public nature is passed by corrupt means, which might be done, and rights are vested in good-faith under it, should there be no limitation as to the time that the Commonwealth should seek to avoid the law?

Mr. WOODWARD. The amendment provides, that in any judicial proceeding the party claiming under any act of Assembly, be it a public law or a private law, goes into court to claim any rights under it, that act of Assembly is open to this inquiry.

Mr. DARLINGTON. Mr. Chairman: Does the gentleman contend that private rights, vested in good faith under a public law, ought to be in any case divested by the fraud in the passage of the law?

Mr. WOODWARD. Mr. Chairman: I do not see that that question belongs to this subject. If private rights have vested, undoubtedly they cannot be divested. The courts will be very careful not to divest them. But I do not see that that touches the question that is now before the committee of the whole, which is a remedy for purchased and bribed legislation.

Mr. MACVEAGH. Mr. Chairman: If the gentleman from Philadelphia will allow me to make a suggestion, he does not appear to see the point of the inquiry of the gentleman from Chester. Suppose a bill incorporating a company is passed by fraud, or suppose any other bill be so passed, and then innocent parties have acquired property under the conditions of that bill, by purchasing shares of stock or anything else. Now, subsequent investigation, under this provision as it now stands, may establish this fraud in the passage of the bill, and the bill may be declared null and void, and all the rights acquired by innocent parties, without any knowledge of the fraud, will fall with it. That is not intended, certainly. The rights of purchasers who have acquired property without knowledge of fraud are not to be affected.

Mr. DARLINGTON. Mr. Chairman: What I meant to inquire was this: Whether the gentleman proposes to invest any court with authority to declare a public law void under which private rights may have vested, because some individual interested in getting the public law through may have had a hand in corrupting and bribing the Legislature to get it?

Mr. WOODWARD. Well, sir, I do not still see that the question is applicable here. Either an act of Assembly obtained by bribery or corruption is to be sustained, or it is to be defeated. If you can prevent an investigation and a defeat by issuing a bond or certificate of stock to somebody, and calling that a vested right, why then

we are in the hands of the Philistines, and still have no remedy.

Mr. BROOMALL. Mr. Chairman; Will the gentleman allow me to ask him a question?

Mr. WOODWARD. Certainly. I believe in interlocutory discussions.

Mr. BROOMALL. Suppose the law of descent of real estate should be changed by improper means, or by some means in violation of the provisions of this act, and the matter had run on for twenty years before it was inquired into. Would the gentleman declare that law void, and divest the titles of all the persons who were claiming real estate under it?

Mr. WOODWARD. Certainly not.

Mr. BROOMALL. Yet the provisions of that section would go that far.

Mr. MACVEAGH. Not with my proviso.

Mr. WOODWARD. Mr. Chairman: When we are attempting to restrain wrong, we must be very careful that we do no wrong. Nobody desires to do any wrong. Vested rights are not to be divested.

Mr. BROOMALL. That may be, but if a law is void it is void from the beginning.

Mr. WOODWARD. Well, then, if that is the condition to which this discussion must reduce the advocates of the amendment, then I accept it, and I say that there is no time that sanctifies a fraud. There is no statute of limitations in behalf of fraud, and in the case of Jackson vs. Summerville, with which the legal gentlemen are familiar, a fraud of, I believe, more than twenty years old, certainly a very venerable one, was ripped up from stem to stern, and a valuable estate, supposed to belong to Mr. Jackson, to wit, the town of Gaysport, was delivered over to its proper owner, Summerville.

Mr. RUSSELL. Jackson had notice of the fraud.

Mr. WOODWARD. I do not know that, but it made no difference. The Supreme Court decided it was immaterial whether he had notice or not. They decided that it was immaterial what consideration had been paid. They placed themselves upon the broad moral ground that fraud vitiates anything it touches, and vitiates it forever.

Mr. S. A. PURVIANCE. Was not that case of Jackson and Summerville afterward over-ruled by the case of Pearsol and Chapin, from Elk county?

Mr. WOODWARD. I was not aware of that; I have heard the case of Jackson and Summerville cited in the Supreme Court this very week as good authority, and I have heard no judge of the Supreme Court

except to it. I admit that it was a very rank case. It was a case in which violent remedies were needed, but the court did not hesitate to apply them. They did not talk as gentlemen do here about vested rights. There can be no vested rights under a vile fraud.

Mr. Chairman, I do not presume that the extreme case put by the gentleman from Delaware (Mr. Broomall) ought to scare anybody from supporting this amendment. If extreme cases are arguments you can imagine any sort of cases; but the principle on which I plant myself is that this is a fraud of the most grievous and iniquitous character. It cannot be sanctified by time nor by the issuing of a certificate of stock to some convenient friend and calling that a vested right, and therefore, in any judicial proceeding that may arise, it is a question for the courts to investigate the validity of that law.

Mr. CORBETT. Can you inquire into fraud, even into actual fraud, after twenty-one years? Did not the case of Kribbs and Downing settle that? If over twenty-one years it is presumed to be right.

Mr. WOODWARD. I cannot speak about the case to which the gentleman from Clarion alludes, because it is not in my mind.

Mr. CORBETT. I think your Honor was on the bench.

Mr. WOODWARD. Mr. Chairman: I do not think there is any statute of limitations in Pennsylvania in favor of fraud. I am not aware of any. I do know that the most solemn judicial record may be impeached for fraud. I could name an instance of that. I do not know how old it was, but it was after some time had gone by. Judge Read, at *nisi prius*, decided that an issue should be formed to try the validity of a previous judgment on the alleged ground of fraud. That issue came on for trial before another judge at *nisi prius*, and the fraud was sustained and found and the whole proceeding was set aside. That has been the course of the judicial proceedings in these cases. The judiciary have tried to confine everything to this maxim, that "fraud vitiates everything it touches." We have got to trust this thing to the judiciary by a direct open inquiry or else let it remain as it is. However, Mr. Chairman, I have been led to say more than I intended by these questions addressed to me, and I leave the subject.

Mr. CUYLER. Mr. Chairman: I do not know whether this debate has arisen out

of the resolution which I introduced into the committee some weeks ago or not. Several weeks ago I offered the following proposition, to be found, No. 270, in the volume of amendments and propositions, presented to the Convention, or suggestions made in committee, page 143:

"No act of Assembly passed in violation of the foregoing provisions, or which shall have been procured by bribery, fraud or corruption shall have the force and effect of law. The Supreme Court shall prescribe by general rules the method of investigating and ascertaining whether any act of Assembly is invalid by reason of bribery, fraud or corruption used to procure its passage or by reason of a failure to observe the requirements of the Constitution in its passage."

I introduced that proposition and it was referred to the Judiciary Committee, from which committee no report has yet been made. It seems to me that the subject belongs very properly to the province of that committee, and that, perhaps, it were better to dispense with action upon it here until that committee, to which the subject was specially referred, make its report.

I will venture to state to this committee of the whole why I introduced that proposition. I had just returned from arguing, in the court of Chancery of New Jersey, a question of that character. There a bill had been introduced into the Legislature of New Jersey to incorporate what was called the Stanhope railroad company, to build a short line of railroad, seven miles long, from the base of the Wallkill mountain to Lake Hopatcong, in the northern part of New Jersey. The bill was printed in two forms. In the one form it was a bill which simply provided for what I have just stated. Two copies were printed, however, in another form, and in these two copies there was inserted, under the name of an addition to the eighth section, a clause which, it was contended, transformed the Stanhope railroad company into a corporation, with the right to build a through line of railroad between New York and Philadelphia.

The clerks of the Legislature were taken into the conspiracy. On the desk of each member was laid the truly printed bill. The clerks of the House and of the Senate held in their hands the bill with the fraudulent section, and when they read the bill they read only the portion which corresponded with the printed bill on the

tables of the members. Thus it passed both branches, and the bill was certified by the committee to compare bills. The page containing the real eighth section was then slipped out, and a page containing the fraudulent copy slipped in, and the certified copy taken to the Governor, and a gentleman who was interested in this fraud, carrying the bill to the Governor for his signature, represented it as a very harmless bill, benefiting only the people of his region of the State. The Governor asked if it had been compared, and he said no, but it could be compared then. The true bill was given to his clerk, and the false bill retained by this gentleman, who read it, omitting this fraudulent section, and then the Governor signed it. It was taken to the Rolls office of the Commonwealth, and a certified copy taken, and then, in this litigation, it was held high up before the court that the fraud, though substantially admitted, could not be remedied. The answer made to the counsel was, how do you propose to remedy it? Do you propose to go behind the great seal of the State, which declares this bill to be a genuine bill? How will you get redress? That was one of the great questions of that cause, and it was after the argument of that case that I offered this proposition here.

Now, that fraudlike this one proved in New Jersey could be possible in our Legislature, of course none of us could endure the thought of for a moment. That it is the high duty of this Convention to provide some method by which it shall be prevented, is equally clear. What that method shall be is the question. The principal objection to the one under consideration in the committee is, that it seems too long and cumbersome, and I think that if the committee would vote it down that a substitute of this character might reach the evil:

"No act of Assembly passed in violation of the foregoing provisions, or which shall have been procured by bribery, fraud or corruption, shall have the force and effect of law. The Supreme Court shall prescribe, by general rules, the method of investigating and ascertaining whether any act of Assembly is invalid by reason of bribery, fraud or corruption used to procure its passage, or by reason of a failure to observe the requirements of the Constitution in its passage."

I would move this as a substitute for the article under consideration.

The CHAIRMAN. The gentleman cannot move it as a substitute now. There is an amendment to the amendment pending.

Mr. WALKER. Mr. Chairman: I think we are not doing exact justice to the Committee on Legislation, nor yet are we doing justice to ourselves in passing, if we should pass at this point, the different amendments, or any one of them, touching the question of fraud. The clause that is now under consideration, section thirty-five, is exclusively confined to the forms pointed out in the preceding section. It begins: "Any bill passed in disregard of the provisions and directions prescribed in this article shall be void."

Now, what we want is a substitute for that, for I agree with every gentleman who has spoken here, that in its present shape it ought not to pass. What we want is a provision by which it is to be ascertained that all the forms required in order to pass a bill or resolution have been complied with.

It strikes me, Mr. Chairman, that the amendment offered by the gentleman from York (Mr. Cochran) more nearly approaches that than any that has been offered. Perhaps that of the gentleman from Allegheny (Mr. Howard) is as good. But what we are after now, Mr. Chairman, is to see that all the matters of form have been complied with, and that, too, not after the bill has been signed by the Governor, and enrolled and become what we call a law, but before it is signed, before it is enrolled, in order that the general public may know that the forms of legislation have been complied with. Then when that is provided for, the bill is signed by the Governor, and is enrolled and becomes a law. We are to treat it, so far as the form is concerned, as an act of Assembly.

It is another question, and an essentially different question, and a more important one than that which is agitated by the amendment now before us. Let us pass either the amendment offered by the gentleman from York, or the amendment offered by the gentleman from Allegheny.

Mr. MACVEAGH. That has been voted down.

Mr. WALKER. Then the amendment offered by the gentleman from York, providing that the requisites to legislation have been complied with. And when that is done, let the gentleman from Luzerne (Mr. H. W. Palmer) introduce his resolution as to fraud. There is no

gentleman in this body, I presume, that will not go to every extent to root up and kill every possibility of fraud being practiced upon the Legislature. But we do not want, Mr. Chairman, and that is what I am speaking about now; we do not want to mix up that question with the question that is presented by the Committee on Legislation. That is a question of fraud. Now, sir, every gentleman has his own panacea, and I have one myself. I do not think that it is any better than that of the gentleman from York, but every one is fond of his own child.

This is what I would propose: "It shall be the duty of the Secretary of the Commonwealth, when a bill or resolution is presented to the Governor for his approval, to inspect the Journals of each House, and if the Journals say that all the forms have not been complied with, and that fact is so certified by the Secretary to the Governor, then he shall withhold his approval. But if the Secretary certifies that all the forms have been complied with, and the Governor approves the same, it is enrolled, and its enrollment shall be conclusive that all the forms of legislation have been complied with." I think this is substantially the same as that of the gentleman from York. Now, do not let us, Mr. Chairman, do injustice to the Committee on Legislation. Do not let us say that they are providing against fraud when that is a subject matter that they may yet have to act upon. It is important that the public shall know, and know before the Governor puts his signature to a bill, before it is enrolled, that all the forms have been complied with. When that is done, then for all purposes of form it is a law. But if outside of that there is fraud, guard against that by the section of the gentleman from Luzerne, drawn with just care enough as is necessary to reach and cut up the fraud.

In my judgment this is the way we ought to dispose of this question. Let us now vote down the amendment of the gentleman from Luzerne, that is before the Convention, not with a view to kill it, not with the view that the opinion of this committee is against it, but because it is not now in its place. Then offer it immediately after as an additional clause, and I shall most cheerfully and heartily sustain it.

Mr. H. W. PALMER. Mr. Chairman: I am quite satisfied that the proposition of the gentleman from Erie (Mr. Walker) is the correct one, and for the purpose of

carrying out his ideas I desire to withdraw this section, for the purpose of allowing the section reported by the Committee on Legislation to be voted upon. I see that there are two propositions contained in this section. One is a matter of form, and the other a matter of substance. Now, as mine is one of substance and not of form, and as I am satisfied that there must be some additional safeguards thrown around the matter of form, I will withdraw the proposition for the present.

The CHAIRMAN. The gentleman from Luzerne withdraws his proposition.

Mr. COCHRAN. Mr. Chairman: I move the following as an amendment:

"It shall be the duty of the Secretary of the Commonwealth, whenever any bill requiring the signature of the Governor shall be presented to him, to inspect the Journals of both Houses of the General Assembly, and if it appears thereon that all the forms of legislation in both Houses, as hereinbefore prescribed, have been observed in the passage of such bills, he shall so certify thereon to the Governor; but if it shall not so appear, the Secretary shall so certify in like manner, and the bill shall not receive the Executive approval or signature, but shall be returned to the House in which it originated, accompanied by a statement of the reasons which induced its return, and shall not become a law unless it shall thereafter be passed through all the requisite forms of legislation, and be approved, as in other cases, by the Governor, whose approval shall be conclusive that said act has passed through all the required forms of legislation."

Mr. LILLY. Mr. Chairman: I suggest to the gentleman from York, (Mr. Cochran,) that he modify his amendment in a small particular. After the words which have fallen from the gentleman from Columbia (Mr. Buckalew) this morning, it is clear that frauds in legislation, or in passing bills through the Legislature, get beyond the Journal. In order to reach them we must get at the manuscript bills. The modification that I suggest to the gentleman from York is, that he include in his amendment, "manuscript bills."

Mr. COCHRAN. Mr. Chairman: I wish simply to state, in reply to the gentleman from Carbon, (Mr. Lilly,) that this section provides that when it does not appear on the Journal that everything necessary to be done has been complied with, the Governor shall not sign the bill. Now, if there is a section inserted in that bill, sur-

reptitiously or otherwise, and it does not appear on the Journal, then the Governor is not to sign it, but to return it. The very fact that it does not appear on the Journal is the reason why it shall be returned.

Mr. LILLY. Mr. Chairman: That is all right, as far as it goes. The Journals, we all know, are matters of public record, but this amendment does not reach the evil described by the gentleman from Columbia. The fraudulent insertion may appear on the Journal when it would not appear on the original bill.

Mr. MACVEAGH. The Journal is to be read as a protection.

Mr. WALKER. Mr. Chairman: I offer the following as a substitute.

The CHAIRMAN. A substitute cannot be offered at this time. When the section is before the House it is competent for any gentleman to move a substitute, which is to strike out the section and insert; but if an amendment is pending a substitute cannot be offered to the amendment. An amendment to the amendment will be in order, but not a substitute.

Mr. WALKER. What I propose is not an amendment, but another substitute.

The CHAIRMAN. It is not in order at this time.

Mr. MANN. Mr. Chairman: I ask that it be read for information.

The CHAIRMAN. It is in order to read it for information, and the Clerk will read the substitute.

The CLERK read as follows:

"It shall be the duty of the Secretary of the Commonwealth, when a bill or resolution is presented to the Governor for his approval, to inspect the Journals of each House, and if the Journals say that all the forms have not been complied with, and that fact is so certified by the Secretary to the Governor, then he shall withhold his approval. But if the Secretary certifies that all the forms have been complied with, and the Governor approves the same, it is enrolled, and its enrollment shall be conclusive that all the forms of legislation have been complied with."

Mr. CUYLER. Mr. Chairman: I have but a very few words more to say. Our government is one of distributed powers, and the true philosophy, I suppose, in framing a Constitution, would require us to see that those powers are not encroached upon, but are kept separate. My objection to the pending amendment is, that it takes away from judicial inquiry that which comes properly within the range

of judicial inquiry. It puts it in the power of the subordinate bodies, wherever they may charge fraud against the passage of an act of Assembly, to take wholly out of the reach of judicial inquiry that which is a legitimate subject for such investigation and inquiry. If it can become apparent to the sense of every man who opens the Journal that the requirements of the Constitution have not been complied with, then a fraudulent and bribed clerk, certifying that this has been done according to these provisions, will forever remove the whole thing from the possibility of investigation.

I am not willing to do that, for two reasons:

First, because it is taking away from the judiciary a power that properly belongs to them; and second, because it is depositing with a subordinate clerk a power that I am not willing to deposit with him, where it may, under any circumstance, be a subject of criticism and dispute.

It is not in order for me at this time to offer an amendment, but I will read, as part of my remarks, what seems to me to cover the ground in this case entirely:

"No act of Assembly passed in violation of the foregoing provisions, or which shall have been procured by bribery, fraud or corruption, shall have the force and effect of law. The Supreme Court shall prescribe by general rules the method of investigating and ascertaining whether any act of Assembly is invalid by reason of bribery, fraud or corruption, used to procure its passage, or by reason of a failure to observe the requirement of the Constitution in its passage."

That is putting the whole subject just where it belongs, in a system of government like ours, namely, in the hands of our judiciary, and it is not permitted to a clerk, a mere subordinate who may be bribed or mistaken, by his certificate, to over-ride the whole justice of the case, and counteract the common sense and fair intelligence of all the people of the State. It is putting it in the hands of the judiciary, where it ought to rest, and I propose, if the record assumes a shape to permit me, to offer it as an amendment at some future time.

Mr. MACVEAGH. Mr. Chairman: I trust the committee will adhere to the distinction which seems to be generally adopted, that is, of putting these directory provisions where the gentleman from York (Mr. Cochran) proposes to put them.

I dissent from the doctrine of the gentleman from Philadelphia (Mr. Cuyler.) I do not think it was ever a judicial question, whether the preliminary forms of legislation have been complied with, and I think we have to trust the legislative and Executive branches of the government with these preliminary matters. We cannot attack the decree of a court of competent jurisdiction because of irregularities in the decision. You can, however, go to the root of it for fraud, bribery and undue means. Let us preserve this doctrine and treat the legislative branch of the government, reformed and purified as we hope it will be, with the respect that is due to a co-ordinate branch of the State government.

Mr. BUCKALEW. Mr. Chairman: I agree with the gentleman from Dauphin (Mr. McVeagh) that we should treat the two subjects separately. With that view, the gentleman from Luzerne (Mr. H. W. Palmer) withdrew his amendment relating to the general question of fraud in the passage of bills. But this amendment seems to me to be defective.

I do not understand what the Governor is to do with the bill in case the requirements of this article should not be complied with. I take it for granted he can only veto it. He cannot certainly pocket it, although the amendment makes no provision in that regard.

Mr. MACVEAGH. Yes, it makes a provision that he is to return it with his reasons.

Mr. BUCKALEW. Well, he has to veto the bill, and then suppose they pass it by a two-thirds vote?

Mr. MACVEAGH. No, but he returns it with his reasons.

Mr. BUCKALEW. But suppose the Legislature, along with the gentleman from Dauphin, (Mr. MacVeagh,) and others, shall hold that these clauses of the Constitution are directory, and not imperative, and that two-thirds of them, on that construction, vote for the bill, what becomes of the check?

Mr. MACVEAGH. The provision itself distinctly states that a bill shall *not* be a law until it has passed through all the required stages of legislation.

Mr. BUCKALEW. That is just what I say. It will take a two-thirds vote.

Mr. MACVEAGH. No, sir. It has nothing at all to do with a two-thirds vote.

Mr. BUCKALEW. Then the bill has to start again?

Mr. MACVEAGH. Yes.

Mr. BUCKALEW. And go through the same process?

Mr. MACVEAGH. Yes.

Mr. BUCKALEW. Well, that would certainly be bringing a novelty into legislative practice.

Mr. MACVEAGH. That is the proposition. That is what is wanted.

Mr. BUCKALEW. Well, I am only inquiring what the amendment is. It is open to investigation, surely.

Mr. MACVEAGH. Certainly. Is there any objection?

Mr. BUCKALEW. Well, the Secretary of the Commonwealth, it seems, is to examine the Journals. I suppose he will have to run all over Harrisburg, to the State Printer's, where the written Journals usually are for the first ten days after they are prepared by the clerks, and he is to inspect these Journals. What then? Why, a great many things required in this article, of course, never appear on the Journals. For instance, the seventh section says that "no amendment shall be agreed to, or acted upon, or added to a bill, until it has been printed." That is one of the solemn requirements here. The Journal will not show anything about that. The twelfth section states that "no local or special bill shall be passed unless public notice shall have been given for three months," and due and adequate proof, of course, produced to the committee of the House who report the bill; but the fact whether publication has been made or not, will not appear on the Journal. So in regard to the passage of banking bills—bills establishing banking institutions or corporations, with discounting or other banking privileges, notice should be published for three months; and there are a number of other requirements in this article, compliance or non-compliance with which will not be shown by the Journals. It seems to me that matters will stand, after you have adopted this proposed amendment, very much as they do now. The Governor of the Commonwealth, if he be fit for his place, if he be a vigilant public officer, and desirous of performing his duty, will make reasonable inquiry in the most convenient manner, which, upon experience, he will find open to him to ascertain whether a bill, as it comes to him, has the sanction of the Constitution. I do not see, sir, that putting such a section as this in the Constitution will give us any guarantee which we do not now possess. If you put it in, it will be understood that after the

Secretary has walked down to the Public Printer's and read over the Journals, and hears nothing against the bill, the Governor is to take everything as right, and sign it.

The CHAIRMAN. The question is upon the amendment proposed by the gentleman from York (Mr. Cochran.)

Mr. BROOMALL. Mr. Chairman: I desire only to say that the present Constitution, and the one we propose, require that all bills shall be signed by the Speaker of each House, and when the Speaker of each House signs the bill he certifies that all these forms have been gone through with. Now, I very much doubt the propriety of allowing any officer connected with the Executive department to question the certificate of the Speaker of the House upon matters of form.

The question being upon the amendment of Mr. Cochran, it was rejected.

Mr. CUYLER. Mr. Chairman: I now move to substitute the following:

"No act of Assembly passed in violation of the foregoing provisions, or which shall have been procured by bribery, fraud or corruption, shall have the force and effect of law. The Supreme Court shall prescribe, by general rules, the method of investigating and ascertaining whether any act of Assembly is invalid, by reason of bribery, fraud or corruption, used to procure its passage, or by reason of a failure to observe the requirements of the Constitution in its passage."

Mr. DARLINGTON. Mr. Chairman: I am unwilling that a vote should be taken on that without calling the attention of the committee to what I conceive to be a blending of two entirely distinct objects here. This report of the committee contemplates merely a conformity to the forms of legislation without any regard to the question of fraud. The proposition of the gentleman from Philadelphia (Mr. Cuyler) is to insert a provision against fraudulent legislation, which, of course, he does not mean to apply, I presume, to the case of a public bill, and therefore it is improperly drawn.

Mr. CUYLER. My object is to provide a method of investigation into those circumstances, be they what they may, that render an act of Assembly invalid. A failure to observe the requirements of the Constitution in the method of its passage would be attested, as every question of that character is in the courts, by an inspection of the record. If the Constitution says that a bill shall pass by yeas and

nays, recorded, and an inspection of the Journal is necessary, the Supreme Court would prescribe that method in its general rules.

Mr. DARLINGTON. I understand that; but the proposition goes further. It is to invalidate laws which are passed by fraud, and without regard to whether they are general and public in their nature, as they may be, or the result of mere private cupidity, because special legislation, it is well known, has very frequently taken, and will again take, the form of public law.

A man has a grievance which he wishes to remedy in his particular case, and he thinks a public law, covering all cases all over the State, of similar character, would be the right way to do it, and in order to get that law, in which he has a special interest, passed, he may use corrupt means. Now, surely, although that may be the case, and although it may be passed by corrupt means, yet if it to be a general law, of general utility, I would not have it declared fraudulent and corrupt, at any remote distance of time, and without regard to any rights which might be vested under it. I think we had better dispose of this now, in so far as it affects merely the forms required. Let us have the most stringent provisions, as they may be proposed hereafter by some gentlemen who have the matter especially at heart, carrying out precisely the idea of the gentleman from Columbia, (Mr. Buckalew,) that no company or individual shall obtain legislation by fraudulent means, and benefit by it. For that object I will go with the gentlemen, but, as to this, it is a general provision.

The question being upon the amendment of Mr. Cuyler, it was rejected.

Mr. DARLINGTON. I now propose to amend, by striking out all after the word "void," in the second line, and inserting the following: "And may be so declared, in any legal proceedings instituted for that purpose on behalf of the Commonwealth, within one year after its publication."

Mr. CUYLER. Then, if I may be pardoned one remark more, I would say that all that is necessary is, that the person desiring and securing the passage of a bill by fraud, shall "salt down" his bill for twelve months, and then raise it.

Mr. DARLINGTON. It does not raise the question of fraud at all.

The question being upon the amendment of Mr. Darlington, it was rejected.

Mr. BUCKALEW. Mr. Chairman: I now move to strike out all the section after the word "effect," in the second line, and make the section read, "any bills passed in disregard of the provision and directions prescribed in this article shall be void and of no effect."

Mr. J. W. F. WHITE. Mr. Chairman: I move to add as an amendment to the amendment, after the word "effect," the words, "and the Journals of the House shall be conclusive evidence of the facts in the case."

It was not agreed to.

The CHAIRMAN. The question recurs on the amendment.

Mr. MACVEAGH. Mr. Chairman: I trust that the committee has the full effect of this proposed amendment before them, because it really would leave us at sea. No law, as it seems to me, could possibly be worth anything to us in Pennsylvania under such a provision. No man could take title or anything else by virtue of any law.

Mr. BUCKALEW. I simply want to say that my object in offering this amendment is to leave the principle on the face of the bill, so that on the second reading gentleman may have an opportunity to mature their propositions.

Mr. HEMPHILL. I move the following amendment to the amendment of the gentleman from Columbia, (Mr. Buckalew,) to come in after the word "effect." "And every bill, after it has been transcribed shall be submitted to the Speakers of the two Houses, who shall certify to the Governor that all the forms and requirements of the Constitution, in its consideration and passage, have been complied with in their respective Houses."

It was rejected.

The question recurring on the amendment of Mr. Buckalew, a division was called for and resulted, in the affirmative forty-two, in the negative thirty-nine.

So the amendment was agreed to.

Mr. H. W. PALMER. I now move the following as a substitute for the section.

Mr. LILLY. I rise to a point of order. We cannot now go to striking out what we have just voted on and adopted.

The CHAIRMAN. The Chair overrules the point of order. A motion to amend can be made, if the amendment be coupled with such other matter as may make it substantially a new proposition. The Clerk will read the amendment of the

gentleman from Luzerne (Mr. H. W. Palmer.)

The CLERK read :

"SECTION —. Whenever, in any judicial proceedings, either party shall claim, under or by virtue of any act of Assembly, and the other party, upon proper affidavit, shall allege that such act of Assembly was passed in disregard of the provisions and directions prescribed in this article, or by fraud, bribery or undue means, and the court before which such judicial proceeding is pending shall be satisfied *prima facie* that such allegations are well founded, it shall be the duty of the said court to order a feigned issue to be framed under the direction of the Attorney General upon proper pleadings, in which the Commonwealth, upon relation of the party in interest, shall be plaintiff, and the party claiming under such act of Assembly defendant, to try the truth of the allegations in said affidavit contained, and the validity of such act of Assembly; and the said issue shall be certified to the Supreme Court and tried by one of the judges thereof, in whatever county he may direct; and if it shall appear to the court and jury, upon such trial, that all the provisions of legislation in both Houses, as hereinbefore prescribed, have not been substantially observed in the passage of said act, or that the same has been procured by bribery, fraud or undue means, such act of Assembly shall be adjudged null and void, either party to have the right to a writ of error as in other cases."

Mr. MANN. Mr. Chairman: I rise to a question of order. The section, as now amended, refers entirely to the forms of legislation, and the amendment proposed changes it entirely and makes it refer to fraud.

The CHAIRMAN. The Chair cannot sustain the point of order. It is competent for a gentleman to change a proposition before the Convention so as to make it an entirely different proposition, if it relates to the same general subject.

Mr. S. A. PURVIANCE. Mr. Chairman: I offer the following amendment to the amendment, to come in before the proviso :

"And a certified copy of the Journal relating to the law in question shall be referred to as *prima facie* evidence that the requisitions of the Constitution have been complied with, and the law, if assailed for fraud in its enactment, shall be contested in a public proceeding under the direction

of the Attorney General of the Commonwealth, as may be prescribed by law."

It was rejected.

The CHAIRMAN. The question recurs on the amendment of the gentleman from Luzerne (Mr. W. H. Palmer.)

Mr. W. H. PALMER. Mr. Chairman: This is the main question of the case. For the purpose of passing on the question of mere form I withdraw the amendment, as it seems that the Convention has seen fit to vote down that section, or at least to emasculate it so that there is nothing of it left. Now, the question arises whether we are willing to meet the pinch of this issue—whether we are ready to say that the rule which has heretofore prevailed in the Commonwealth of Pennsylvania shall continue to prevail—whether we are ready to say that an act of Assembly which was procured by bribery, fraud and corruption shall remain unimpeached and unimpeachable.

I do not know whether this amendment is in the best form or not. I do not know but what some other gentleman may provide some better and more expeditious means of reaching the difficulty. If that can be done I am not tenacious about the form. I only desire that the principle shall somewhere be inserted in this Constitution, and I therefore appeal to the Convention not to vote down this substitute, but to pass it, so that the principle may be inserted here, and on second reading, or at some future time, if anybody can conceive a better plan, I should be ready to adopt it. But I hope that this Convention never will adjourn until it makes some provision by which these infamous acts that are procured by bribery, fraud and corruption, may be set aside by the proper tribunals, to wit, the courts. If you are ready to allow matters to go on as they hope gone—to allow the courts to be put in the position which they have heretofore occupied—then vote down the substitute; but if you are willing to engraft this new principle in the Constitution, which is founded in justice, which can do no man harm, because the proviso takes care of innocent parties, who have acquired rights for valuable considerations and without notice, and who have not been concerned in the passage of the bill, and only strikes at the fraudulent and guilty parties, who have prostituted the forms of legislation for their own purposes.

Mr. MANN. Mr. Chairman: I am a little surprised that this amendment

should be again pressed by the gentleman from Luzerne (Mr. H. W. Palmer.) I should be glad to vote for it if submitted as a separate proposition, but as now submitted I cannot do it, for it proposes to strike out the provision that a bill passed in disregard of the forms of legislation shall be void. It proposes to strike out the entire subject of this section, and introduce a new subject and a new section. Here is a proposition requiring the Legislature to observe all the forms of legislation required in this article, or their action to be void. The gentleman from Luzerne (Mr. W. H. Palmer) moves to strike that out, and if this amendment is adopted, then every proposition of this Constitution may be disregarded, and laws may be proven to have been passed without the necessary form of legislation, and yet they cannot be questioned, because there can be no fraud proven. I undertake to say that a hundred acts of Assembly may be passed in disregard of the necessary forms of legislation when you cannot prove any fraud. Yet you give validity to just such acts of Assembly as was referred to by the gentleman from Columbia, (Mr. Buckalew,) because you cannot *prove* the fraud, for under the provisions of this section the fraud must be proved.

The section reported by the Committee on Legislation does not require such a stringent rule. It requires that the forms of legislation shall be complied with or the acts are void, and it does not put upon the Commonwealth or anybody else the necessity of *proving* fraud. The amendment will destroy the very object aimed at by the section, and it will be impossible under it to declare any act of Assembly void.

Mr. MACVEAGH. Will the gentleman allow one moment's interruption?

Mr. MANN. Certainly.

Mr. MACVEAGH. I am sure the gentleman from Luzerne (Mr. H. W. Palmer) and a number of other gentlemen, feeling the same way, accepted the vote of Convention on the amendment of the gentleman from York, (Mr. Cochran,) as their judgment that they did not desire further guards, as to the directory provisions—the matters of form; and that, therefore, this was offered, because they did not desire to vote on that section. If it is believed by anybody to be the sense of the Convention that that section would be adopted the amendment, I have no doubt, would be withheld for the present.

Mr. MANN. I simply desire to ask this committee whether they will say that the Legislature shall observe the forms of legislation or not? It was just as easy to submit this amendment as an independent proposition, as to put it in here. I want to vote for some such proposition, but I do not want to vote so as to say that the Legislature may disregard the forms of legislation. You could not prove in any court that acts were obtained by fraud. The act of Assembly which took from the State the ten thousand dollars annuity which the Erie railroad should have paid to the State could not have been proven to have been obtained by fraud, but it could have been proven that it was passed in violation of the forms of legislation. If such an amendment as this is adopted that money would be kept perpetually from the Treasury of the State, and without a remedy.

Mr. KAINE. Will the gentleman permit me to ask him a question?

Mr. MANN. Certainly.

Mr. KAINE. Suppose the amendment he refers to, voting to another railroad the ten thousand dollars which was to have been paid to the State by the Erie railroad, was put upon the bill in committee of the whole, would it appear on the Journals anywhere that such an amendment was ever before the House?

Mr. MANN. This section as now amended does not refer to the Journal. It says that "any bill passed in disregard of the provisions of this article, shall be void." That bill was passed in violation of the forms of legislation, and is to be void.

Mr. H. W. PALMER. Mr. Chairman: I am quite convinced again, by the eloquence of the gentleman from Potter, (Mr. Mann,) and will withdraw my substitute, and will allow the House to vote on the section, with the understanding that I am to offer it as an independent proposition. I desire to bring the Convention, some time or another, in the course of this mortal life, to a vote on this proposition. I withdraw it for the present.

Mr. HOWARD. Mr. Chairman: The amendment having been withdrawn by the gentleman from Luzerne, I offer the following as a substitute for the section.

The CHAIRMAN. The substitute will be read.

The CLERK read as follows:

"In all cases of the passage of any bill the Speakers of both Houses shall certify to the Governor that all forms prescribed by law have been complied with by the re-

spective Houses, and the Governor shall not give his approval to any bill until he shall ascertain that all the forms of legislation, as prescribed in this article, have been observed in the passage of the same, but in his approval he shall so certify, and his certificate shall be conclusive evidence that all the forms prescribed have been complied with."

Mr. D. N. WHITE. Mr. Chairman: I am opposed to the original section and to every amendment that has been offered in the Convention to-day. I do not think either the original section or the amendments are needed to secure honest legislation. If you look at section eight, which has been adopted by the committee, you will find it reads as follows:

"Every bill shall be read at length on three different days in each House; all amendments thereto shall be printed before the final vote is taken, and no bill shall become a law unless, on its final passage, the vote be taken by yeas and nays."

Now, the Journals are always right. We never find any fault with the Journals. A bill cannot be passed through the Legislature unless it is read at length on three different days, and unless it is printed, and unless the yeas and nays are taken on its final passage. Now it is well known by those who are conversant with legislation, that the Governor has a printed file of every bill that is introduced into the Legislature, and as no bill and no amendment can be passed without its being printed, the Governor and the Secretary of the Commonwealth, by simply looking at the printed file of bills, can discover whether any fraud has been committed after the bill passed the Legislature. It is a clear and definite way of testing the question at once, as there can be nothing inserted into the bill if the Governor or the Secretary of the Commonwealth examine the file of printed bills. Previously, bills were not printed, and in a great many instances were introduced and rushed through the Legislature without being printed, and without being read, except by its title. According to the practice which we have agreed to establish, all bills and all amendments must be printed. How can any fraud be committed if the Governor exercises any care or diligence in the examination of bills placed upon his files?

Mr. KAINE. Suppose the gentleman from Allegheny desired to offer an amendment in the Legislature and desire to have that amendment printed, is there

any provision in this section that it shall be printed?

Mr. D. N. WHITE. I will read the section which has been passed by the Convention. It reads as follows: "Every bill shall be read at length on three different days; all amendments thereto shall be printed before the final vote is taken."

Mr. KAINE. It is not so then.

Mr. D. N. WHITE. The section says distinctly, "all amendments thereto shall be printed before the final vote is taken." Of course, if the Governor is provided with a file of printed bills, he can tell, by an examination, at a glance whether any fraud has been perpetrated since the passage of the bill through the Legislature.

Mr. HAZZARD. I would like to ask the gentleman a question. Suppose these bills are printed, but that two of them should be printed in a manner referred to by the gentleman from Philadelphia (Mr. Cuyler,) either by mistake or by manipulation, in the manner he narrated this morning. How will this section provide for such a case indicated by that gentleman?

Mr. D. N. WHITE. Well, Mr. Chairman, there will be more difficulty in inserting snakes where the bills are printed, and the final vote is taken by yeas and nays, because amendments made to bills in committee of the whole, on second reading or third reading, will have to be printed before they are passed, and a bill on second reading, a bill on third reading and a bill with amendments will have to be printed, and if there is anything inserted in the bill that is not printed, the Governor will know that there has been a fraud committed.

Now my experience in legislation has showed me that the Journals always conform to the action of the House on bills, or its purported action. It is true that bills, in very rare instances, have been passed through both Houses of the Legislature without ever having been read at all, and without ever having been voted upon, but the Journals were in order, and gave a description of the different forms of its passage. If, therefore, any one thinks a mere provision that the Journals shall be evidence of a passage of a law, he will be mistaken. It will not in any manner prevent frauds from being committed. The provision we have adopted in this article, that the yeas and nays must be recorded on the passage of every act, will be one of the strongest preventions of fraud that we can adopt. Besides that, in the

large House it is proposed to create, any two members can call the yeas and nays on any stage of the bill, and as the yeas and nays must be taken upon the final vote, it will be very difficult indeed to commit any fraud. I do not believe that such a thing would be possible. I do not believe, under the provisions which will be incorporated in this reform Constitution, it will be possible to commit such a fraud as this section is intended to prevent. I am therefore opposed to this section, because it might produce a great deal of trouble. It might, possibly, invalidate a bill after the Legislature had acted upon it, and large interests had been vested under its provisions. I consider the section not only useless, but dangerous, and I am therefore opposed to it.

The CHAIRMAN. The question is on the amendment of the gentleman from Allegheny (Mr. Howard.)

The question being taken, the amendment was not agreed to.

Mr. BROOMALL. Mr. Chairman: Before the vote is taken I only desire to say that if this provision is placed in the Constitution, that all bills passed in disregard of the provisions and directions prescribed in this article shall be void; no man will know what the law is in Pennsylvania. No man will be able to depend upon the validity of any act of Assembly, and I am afraid that the people of the State will think the one hundred lawyers composing this Convention have not been unmindful of their own interests, and have been desiring to get up litigation in order that each one of them may go to Harrisburg at his client's expense, and hunt over the records there to see whether all the formalities have been observed in the passage of laws.

Mr. KAINE. Mr. Chairman: I understood when the motion was made by the gentleman from Columbia, (Mr. Buckalew,) to strike out that portion of the section which has been stricken out by a vote of this committee, it was with the understanding that some other gentleman who was conversant with this subject should offer a section, to be inserted at the proper time or upon the second reading of the article. It was with that understanding that I voted to strike out that portion of this section, and I think that was the understanding of other gentlemen of the committee—that a new section prepared upon this subject should be offered when the section comes up on second reading.

While I am up I desire to say a single word upon this section. I do not think the section as it is reported by the committee will be worth anything to prevent what is intended. Now the gentleman from Allegheny (Mr. D. N. White) thinks that every bill and amendment will be printed in regular order, and in a perfectly honest manner, according to form, but I do not anticipate anything of the kind. I calculate after we have made every amendment to the Constitution on the subject of legislation, that the same things will be done at Harrisburg that have been done heretofore, notwithstanding the vigilance of the gentleman from Allegheny, (Mr. D. N. White,) and the gentleman from Potter (Mr. Mann.)

Mr. D. N. WHITE. I would like to ask the gentleman a question, and it is whether he does not know that the rules cannot be suspended except by a two-thirds vote.

Mr. KAINE. They can get three-fourths if necessary.

Now, sir, it is the intention to surround the legislation of this State with all kinds of guards, and I will go with the member of this Convention that will go the farthest in that direction. But I do not desire, so far as I am concerned, to put anything into the Constitution that will be of no value whatever. I take it that it is the duty of the Executive, before he signs bills passed by the Legislature, to examine them, in order to ascertain whether they are correct, and I do not think a provision of this kind is required in the Constitution. There is a committee of this Convention that has been referred to in the debates very frequently. Now, Mr. Chairman, that committee proposes to report an oath of office, and I submit to the Convention whether it will not be found sufficient for all the purposes proposed in this section. It reads as follows: "Members of the Legislature and all judicial, State and county officers, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation: I do solemnly swear or affirm that I will support, obey, and defend the Constitution of the United States and the Constitution of this Commonwealth, and discharge the duties of the office to which I have been elected with fidelity."

Now, after the Executive of the State has taken an oath of that kind, if it should be adopted by the Convention, it would then be his duty to examine all bills passed by the Legislature to see that the pro-

visions in regard to the passage of bills contained in the Constitution had been strictly complied with.

I feel a deep interest in regard to the other branch of this question, which proposes to provide a remedy when a fraud has been perpetrated upon the people by the Legislature. When an act has been placed upon the statute books without having been passed at all by the Legislature, this provision will afford no other means of prevention than have existed heretofore. When an act has been passed through the Legislature I would provide a tribunal of some kind which shall decide the act null and void, if corruption or undue means were used in obtaining it. I do not care where this power shall be placed in the Constitution, but I desire to see some provision of this kind incorporated into our organic law.

Mr. GOWEN. Mr. Chairman: I have already spoken once upon this subject, but I understand the amendment which has been passed gives me the opportunity to do so again. The section as amended removes the objection which was originally urged against it, that it introduced new forms of judicial procedure. That objection has been removed, and I take it under that section no act of Assembly could be decided to be unconstitutional, except in pursuance of the known rules of judicial proceedings. That is to say, that a private statute can never come before a court unless it is specially pleaded. That is to say, that an act of Assembly creating or incorporating a company, or creating a franchise, can never be determined to be unconstitutional except upon the relation of the Attorney General and upon a writ of *quo warranto*. Therefore the amendment already adopted removes this section from so much of that objection as was directed to the interminable proceedings at law, but it is still open to this objection; it is open to the objection that an act of Assembly is to be determined void, simply because some mere direction of form has not been pursued.

Upon what principle do we assume—what right have we to assume—that hereafter the members of the Legislature, who swear to obey and defend the Constitution of Pennsylvania, intend to violate their oaths, and that the judges who take the same oaths intend to keep them. Why draw that distinction in the future? I take it that upon the adoption of this Constitution the halcyon days of the republic are to return, and that we are to have as

members of the Legislature such gentlemen as the gentleman from Fayette, (Mr. Kaine,) who, after the confession he has just made for the good of his soul, I think deserves, at the hands of this Convention, plenary absolution for all his past offences. If it is true that such gentlemen as my friend from Fayette, (Mr. Kaine,) and other gentlemen in the Convention, were in the Legislature many years ago, and who, probably, have some hope of returning there again, after the adoption of this Constitution, by what right do their fellow-members assume that when they take the oath to support the Constitution of Pennsylvania they intend to break it; but, forsooth, the judge when he takes the same oath to keep it. I do not think we are assembled here to legislate, or to make a Constitution upon the assumption that every man who is a representative of the people in this State is hereafter to be considered as a perjured scoundrel. If we are not here to do that, why not permit all these matters of form to rest conclusively upon the certificate of the Governor, as suggested by some gentlemen in this Convention?

Mr. CORBETT. I would like to ask the gentleman this question. The Convention has adopted a provision requiring a majority elected to each House to vote upon a bill. I ask if this is not a reform? Or is it a mere matter of form?

Mr. GOWEN. Certainly, it is a matter of form.

Mr. CORBETT. Then a bill passed by less than a majority would become a law?

Mr. GOWEN. No. Because members of the Legislature are prohibited from passing such a law, and therefore it could not be declared as passed. They are as much prohibited from passing such a law as the judge, who, in deciding upon its constitutionality, would be compelled to declare it unconstitutional. Therefore, the distinction I would draw, is this: A distinction between matters of mere form and matters of corruption. Now it is well known that our own courts have no power, either to declare an act of Assembly void for a failure of the preliminary forms, or for the fact that it was obtained by corruption. That is well known. The first is right, for I submit if the representatives of this great State of Pennsylvania, having sworn to obey this Constitution, which prescribes these forms are not to be trusted with carrying them out, there will be no safety left in the courts.

If we are to place upon our records the solemn opinion of the members of this Convention, that in the future it is impossible, within the length and breadth of this Commonwealth, to select one hundred and thirty-three members of the Legislature who will not violate their oaths, then we had better disband, go home, and every man pack up his bag and clear out of the limits of the State as quickly as possible. Is the administration of law, as well as the administration of justice, a mere mockery and farce, and are the representatives of the people for all time to be considered as perjurers? Is a bill to be passed, a right to be vested, an office to be created, and a corporation to be launched into existence, and fifty years afterwards, when every man who had any hand in securing the passage of that act, shall have gone to answer before a higher tribunal for the crimes he has committed, and when every person who owns one dollar of that property is as innocent as a child unborn of any crime, is that act of Assembly, I say, to be declared invalid? Is the wealth and property held under it a mere phantom to be exorcised at the will of a judge, because fifty years before a man corruptly secured the passage of the act? Certainly not. Why should it be? Upon what principle of right is the innocent holder of the property to be dispossessed on account of the crime of a man with whom he had no connection, and over whom he had no control?

Therefore, upon these mere matters of form, let the certificate of the Governor of the State be conclusive that every form has been complied with. Let us hold our titles to property secure from a constant repetition of such inquisitorial investigation. *Interest republica ul sit finis librum*—is a good maxim of law. But if this provision to the Constitution is adopted no man who holds lands under a title created by the State, no man who holds stock in an incorporated company created by the State, will ever be safe from the inquisitorial vengeance of a judicial tribunal. So much then as to mere matters of form, but now as to bribery and corruption. I admit that the Constitution requires an amendment in regard to this subject, and the one amendment I would suggest would be this: That courts shall have the power to declare acts of Assembly unconstitutional if procured by bribery and corruption, provided that justice shall be administered according to known usages, and provided that no act of Assembly

shall be declared unconstitutional for corruption and bribery unless so declared within a given number of years after its passage. That, I take it, would cover everything, but if you do not hedge it in—

Mr. MACVEAGH. Why not allow him who is to suffer by a law fraudulently passed to assail it whenever it is used against him? Why not allow the blow to be given to destroy the law whenever the law is to be used for attack?

Mr. GOWEN. Because the party guilty of corruption may have so slight an interest in the subject matter of legislation that it would be manifestly unjust that ninety-nine innocent men should suffer on account of the guilt of a single person? Where the law affects solely one person then the right to investigate might be without limitation. But where that would exist in one case, in a thousand cases the guilty author of the corruption would either have ceased to have any interest in the act or would have an interest so slight that it would be manifestly unjust to punish the innocent for the crime of the guilty.

Mr. MACVEAGH. Then, ought that ever to be allowed, even within six months, or within any time after the passage of a bill? Ought an innocent purchaser for value, under a public statute, ever to be deprived of the rights he has acquired?

Mr. GOWEN. Yes, and for this reason: That where this statute of limitations as to the power of a court to investigate exists by virtue of a constitutional amendment, there never is an innocent purchaser, for every purchaser takes his property, subject to the right of the court to investigate the title by which he holds his franchise, within a given number of years from the time at which the corporation was established; therefore, he buys with full notice. If no act of Assembly is safe from the searching investigation of a judicial tribunal, until two or three years after its passage, there is no innocent holder without notice under that act, for any clause in the Constitution of the State affecting it, is part of the contract between the supreme legislative power and the individual who is benefitted by it. This is the answer to that objection. Now, unless we hedge this power about, so that it must be exercised according to known judicial proceedings, we will have the anomaly in this State, to which I referred this morning, that exists in the State of New York. Let me dissent most earnestly from the remarks of the gentleman from Allegheny

(Mr. Ewing) that we are to be governed by the decisions of the courts of New York, or by the judicial proceedings of that State. Do we not know that in New York, and in some other of the States of the Union, the course of judicial proceedings has been so modernized that you can file a declaration in an action of assumpsit for recovery of goods sold and delivered, and in that form of action you can obtain an injunction in equity, to prevent the building of a railroad. It is a known fact. I have had a client from Massachusetts come to me to consult me on corporation and mining law. I suggested a bill in equity, but he sent me back a declaration in assumpsit, with the common counts added, and at the bottom a prayer for relief in equity; he filed this declaration in a common law court, and got an injunction in equity to restrain the working of mines.

God forbid that we should ever go so far back of our old English precedents as, in the State of Pennsylvania, to get mixed up in medley of that kind. To return to the subject, let this Constitution make bribery and corruption a hissing and a scorn. Hang the man who offends if you want to. Take the franchise away from the company whose agents have been guilty of corruption in procuring it, but let this justice be administered according to old established usages. Do not let every Tom, Dick and Harry throughout this Commonwealth, in every petty tribunal that you may create, investigate the title by which a large corporation holds its franchise.

Mr. H. W. PALMER. Mr. Chairman: By what known usage in this Commonwealth, or by what usage of proceedings, can a general act of Assembly be impeached now?

Mr. GOWEN. Mr. Chairman: A general act of Assembly can be impeached now, at any time, whenever it comes properly before the jurisdiction of the court. Add bribery and corruption to the causes which will enable the court to declare it void, and let justice be administered according to known precedents. Why, only two weeks ago we had a law that is general in its operation, I refer to the local option law, investigated before the courts in this city. That was a general law. Add bribery and corruption to one of the causes for which the courts have the right to declare an act of the Legislature unconstitutional, and you accomplish all that you want to accomplish.

Then, if a corporation is created upon an act of Assembly obtained by fraud, you go to the Attorney General, and, upon his relation, a writ of *quo warranto* is issued to show cause by what title it holds its franchise. The corporation, by its counsel, pleads the act of Assembly creating it. A replication is filed by the Attorney General that that act of Assembly was obtained by fraud, and is not, therefore, valid. An issue is joined upon that, and the case goes down for trial as all other cases do.

Mr. WOODWARD. Suppose the Attorney General refuses to issue the writ?

Mr. GOWEN. That is not to be supposed, and I say with great earnestness we dare not suppose it.

Mr. WOODWARD. It has been done a great many times. You will find that he never will issue a writ of *quo warranto* when it is likely to injure the party to whom he belongs.

Mr. GOWEN. I doubt that very much. I think there never could be an Attorney General of this State—the leader of the bar of Pennsylvania—who, upon an affidavit, properly made before him, by a private individual, that an act of Assembly was procured by bribery or corruption, would dare to hesitate to issue a writ of *quo warranto*. I have known, over and over again, where upon the instances of private parties, the Attorney General has issued units of *quo warranto*, although he himself was doubtful of the propriety of the movement, and when the case came on to be argued in court, had to say to the court that he could not urge it, but that he thought it was his duty as a public officer of the Commonwealth to issue the writ.

Amend the Constitution by making it obligatory upon the Attorney General to issue this writ, and you accomplish everything you desire. Do not give to the courts the power to declare an act of Assembly void for the mere omission of some form. Give them the power to declare it void for bribery or corruption, but let that power be exercised so that the decree will be made according to the known usages of judicial proceedings.

Mr. WOODWARD. I would like to know how, if the court in Wayne county should declare the law to be void, for bribery and corruption, and the court in Greene county declare it not void, for bribery and corruption, what would be the condition of the people in the central part of the State?

Mr. GOWEN. Neither decision would be respected until the case came before the Supreme Court.

Mr. WOODWARD. The Supreme Court do not touch the question of facts. The forms of law would be observed by both courts.

Mr. GOWEN. Therefore it is that it is wrong to permit such a state of things to exist. There should not be such a difference of decisions. It should be made impossible. Take the case of a large corporation. Take the Pennsylvania railroad, that owns property in almost every county in the State. Is it to exercise its franchise in Dauphin county, because the court has decided its acts constitutional, and not to exercise them in Allegheny county, because the court has decided them the other way? Why should we permit such a state of things to exist if it be possible to prevent it?

[Here the hammer fell.]

Mr. DALLAS. Mr. Chairman: I move that the gentleman have unanimous consent to preceed.

Mr. LILLY. I object.

Mr. CORBETT. Mr. Chairman: We are again running wild in this discussion. The gentleman from Philadelphia (Mr. Gowen) comes in, and he opens up all this discussion again. Having been out he does not understand what had taken place. Now let us proceed and do something. The gentleman from Columbia (Mr. Buckalew) has moved an amendment. He moved that amendment for the purpose of letting the balance of the section stand until it came to a second reading, so that it could be amended. The gentleman from Philadelphia (Mr. Gowen) comes in and opens up the whole discussion. We do not expect this to stand as it is now and be perfect, but, I presume, when it comes to second reading, gentlemen who have had a great deal of experience will offer something which will perfect the section. It can be voted down, if it is not amended so as to render it unobjectionable.

Now I want to say a word further: The provisions that we have adopted in this report already are numerous. Some of them are of substance, and some are merely directory. I will say, speaking for myself, that so far as the provisions are merely directory, I care but little about them, but as the argument of the gentleman from Philadelphia (Mr. Gowen) shows that there are others of substance. Now, for myself, I am unwilling

that any law shall stand upon the rolls in the Secretary of the Commonwealth's office as the the law of the State of Pennsylvania that was not voted for by a majority of the members elected to each House.

One word further: I am totally opposed to the adoption, at this time, of the proposition presented by the gentleman from Luzerne, (Mr. H. W. Palmer,) and I will state my reasons. When the time comes I shall vote for any fair mode of determining an act to be void that has been obtained by fraud. I say that now, but I am totally opposed to taking up this subject at this time, the members of this committee generally having thought nothing about it, and it having not emanated from any committee. I do not think there is anything in the fact that it does not come from a committee, except that it is more likely to be matured. I am totally opposed to adopting any additional section at this time. We have a Committee on Constitutional Sanctions, with a very able gentleman at the head of it, whom I know has this matter at heart.

I want to see what that committee will report. I want a section on this subject to be reported by some committee, and well matured.

Mr. MACVEAGH. Will the gentleman allow me to make a remark?

Mr. CORBETT. Certainly.

Mr. MACVEAGH. I think I do not err in saying that the proposed section of the gentleman from Luzerne (Mr. H. W. Palmer) has been carefully considered, and has had the advantage of the experience of one of the most able and distinguished gentlemen of this body; and as it will be best, as the gentleman from Columbia (Mr. Buckalew) proposes, to adopt this section in its most complete form it would be well to put this in it, in order that the proposition may, on second reading, be complete; for I believe it is admitted not to be complete in its present form. If it is adopted at once, as I hope it will be, the Convention will be prepared, on second reading, to make it complete and satisfactory.

Mr. CORBETT. If that proposition has ever had the sanction of the gentleman from Columbia (Mr. Buckalew) I am much mistaken.

Mr. MACVEAGH. I did not say that it had.

Mr. CORBETT. Mr. Chairman: I do not propose to go into a discussion of this matter at this time. It is got up certainly on

the spur of the moment ; it is ill-digested. The idea that when in a trial at law a party comes in and states by affidavit that a certain act is unconstitutional, the case has to be continued and the whole thing gone over again, and you are to go to Harrisburg and present your affidavit and obtain some proceedings to be instituted by the Attorney General, and the matter is then to go before the Supreme Court, and they are to designate one of the judges, and he is to order a trial in some county, and, of course, it must be a trial at law. Why, it is evident that the scheme is ill-digested. I say this with all respect. I want some definite and matured plan.

I say here that the proposition of the gentleman from Philadelphia (Mr. Cuyler) was much better than this. I hope this committee will adopt no additional section of that kind at this time. I hope they will let it lie over, and let it be well matured and well digested. When it is brought forward in proper shape I will vote for it or some similar proposition, but I cannot support it now, thrown in here, as it is, on the spur of the moment, and in the midst of this other matter.

The question being upon the section as amended, it was rejected.

Mr. H. W. PALMER. Mr. Chairman: I now offer my proposition, to come in here as a new section.

The CLERK read :

SECTION —. Whenever, in any judicial proceeding, either party shall claim under or by virtue of any act of Assembly, and the other party upon proper affidavit shall allege that such act of Assembly was passed in disregard of the provisions and directions prescribed in this article, or by fraud, bribery or undue means, and the court before which such judicial proceeding is pending shall be satisfied *prima facie* that such allegations are well founded, it shall be the duty of the said court to order a feigned issue to be framed under the direction of the Attorney General upon proper pleadings, in which the Commonwealth, upon relation of the party in interest, shall be plaintiff, and the party claiming under such act of Assembly defendant, to try the truth of the allegation in said affidavit contained, and the validity of such act of Assembly, and the said issue shall be certified to the Supreme Court and tried by one of the judges thereof, in whatever county he may direct, and if it shall appear to the court and jury upon such trial that all the provisions of legislation in both Houses, as hereinbefore prescribed,

have not been substantially observed in the passage of said act, or that the same has been procured by bribery, fraud or other undue means, such act of Assembly shall be adjudged null and void, either party to have the right to a writ of error as in other cases.

The question being upon the section, it was rejected.

The CHAIRMAN. The next section will be read.

The CLERK read :

SECTION 36. A member of the Legislature shall be guilty of bribery, and punished as shall be provided by law, who shall solicit, demand or receive, or consent to receive, directly or indirectly, from any corporation, company or person, any money, testimonial, reward, thing of value, or of personal advantage, or promise thereof, for his vote or official influence, or with an understanding, expressed or implied, that his vote or official action in any way is to be influenced thereby, or who shall, after his election and during his term of office, consent to become or continue to act as the agent, attorney or other employee of any corporation or person, knowing such corporation or person has or expects to have any personal or special interest in the legislation of the Commonwealth.

Mr. EWING. Mr. Chairman: As has already been stated in the Convention, there was a difference of opinion in the committee on this, among other subjects, and while the minority on this question did not deem it necessary to present a minority report upon the subject, I suppose I do not betray any confidence when I say it was distinctly understood at the time that we reserved the right to express our dissent from this section.

Mr. LILLY. I would like to ask the gentleman a question, as he is relating what the committee does. Do they expect to exempt railroad passes in that section?

Mr. EWING. I am not responsible for this section, nor am I authorized to speak for its friends. This section and the next section relate to the subject of bribery, a subject that is an unpleasant one, but bribery of the legislators is a thing that we have heard a great deal about here. If one thousandth part of what has been said on this floor is correct, it is a very important subject, and one to which the Convention should give its attention, and if any remedy can be found for it it should be adopted. I am not one of those who think

that all the virtue of this world belonged exclusively to our grandfathers, and that all the vices and corruptions of the world are concentrated in the people of the present day. I am not prepared to suggest or to say, nor do I believe, that the Pennsylvania Legislature is worse than any other body. That there are many corrupt men in it and have been there, I have no doubt. That many measures have been passed in the Legislature of Pennsylvania by corrupt means, I have no doubt, and even to those gentlemen who have a superabundance of that charity that thinketh no evil and believeth no evil, and who believe that even the "repeal of the *tonnage tax*" was not passed by corrupt means, and do not believe that these great corporations have ever been guilty of bribery, I would suggest that some remedy be adopted in this Constitution to prevent this public scandal and to prevent people from talking as they do about corporations and the Legislature. I believe that corruption, to some extent, among Legislatures will usually follow where there is a great concentration of wealth, where there are measures to be passed in which a large amount of money, or property, or capital is to be specially affected. The States that have great cities have been usually those States whose legislators have been charged with corruption.

The gentleman from York, (Mr. J. S. Black,) a few days ago, gave us Louisiana as a special example to show us to how deep a pit of corruption legislators could sink, and, in that connection, instanced the rapid progress which negroes and carpet baggers could make in that direction. If I am not misinformed, however, long before negroes or carpet baggers had anything to do with legislation in Louisiana, some of the legislators of that State were none of the best, and I have been told of things that occurred there, in times past, that would excite admiration in the breast of the most illustrious "rooster" or pincher at Harrisburg at the present day.

In latter times the great corporations, with their concentrated capital and great power, and with no corporate conscience, if such a conscience there be, seem to be the great sources of corruption in the different States. Perhaps the corrupt influence exercised by these corporations has, for the most part, arisen as intimated by the gentleman from Philadelphia, (Mr. Cuyler,) who so frequently has told us that "he does not on this floor represent any corporation." He intimated the other

day that the Pennsylvania railroad might have sometimes procured legislation, or bought legislators, not to pass laws that it needed, but to prevent the passage of bad laws against the company. They did it in self defence, I believe, if I understand him aright, very much as a good brother in a certain church who fell from grace one day in a quarrel, and was guilty of profanity, and when brought up before the church court he claimed that he had sworn in self defence. Everybody knows that bribery is not usually committed under the name of bribery. Human ingenuity is taxed to devise means that will evade the statute on the subject, and to appease the consciences of those who take the bribes. I suppose that something more specific and more comprehensive than this section should be adopted in order to stop bribery. If you want to set a trap for game of any kind you must study the habits of and ascertain the haunts of the animal. So, if you are enacting a provision in regard to bribery of legislators, you should take into consideration the manner in which such bribery is usually accomplished.

I wish to call the attention of the committee to the first portion of this section, thirty-six, as reported by the committee, provides that a member of Legislature shall be guilty of bribery and punished therefor, if he takes a gift, money, reward, or thing of value, for his official influence with the *understanding*, expressed or implied, that his vote or official action is in any way to be influenced thereby. What legislator ever took a gift with any such understanding as that? Of course he never *understood* the gift to be to "*influence his vote*." It was "a matter of friendship, fee for services, an opportunity to make a profitable investment." We have a statute already on the subject. I will not take time to quote it. The members of the Convention can examine it for themselves. They will find that it is just as broad, if it is not a little broader, than this section. The minority of the committee think that when a member of the Legislature takes a *gift* from any party that has a private interest in legislation, he ought to know that it is intended to *bribe* him. He ought to know that it is intended to influence his vote on some particular subject. He ought to know that a gift perverted judgment, and he has no right to take a gift.

If a member of the Legislature is employed and given a fee or retainer by any

person or corporation having a special interest in legislation, he ought to know that it is *intended* to influence his official conduct. If he is already so employed he ought to know that his views as to his public duty are likely to be influenced by his continuance in that employment.

Now, the minority of the committee propose to change this section, and say when a man who has been elected a member of the Legislature, and during the term of his office shall accept a gift from any party, having a private interest in legislation, that that of itself is bribery, and that when he is prosecuted in court, that it shall not be necessary to prove what the understanding was. We also propose to define some of these parties, who so commonly, who so uniformly, have a special or private interest in legislation, that it is to be presumed, as a matter of law, that they have such an interest in legislation, that we propose to say to the members of the Legislature, that they must not receive gifts from those persons and corporations. We also propose that those worthy gentlemen, who make their abode in Harrisburg, for the purpose of procuring for pay the passage of bills, and who are known as the third House, and as paid professional lobbyists, shall be prevented from privately soliciting members on any subject connected with legislation, and that it shall be a penal offence so to do; and we propose to make it a criminal offence for a member to knowingly and willingly listen to such private solicitation. In conclusion, Mr. Chairman, I desire to offer the following amendment to the section:

AMENDMENT TO SECTION THIRTY-SIX.

"A member of the Legislature shall be guilty of bribery and punishment as shall be provided by law, who, after his election and during his term of office shall solicit, demand, or accept or consent to receive, directly or indirectly, upon any pretence whatever, for himself or any other person, from any candidate, person, association or corporation having a special or private interest in legislation, any gift or promise of money, property, office or thing of value, or personal advantage, or shall make any contract which gives him

a private interest in the legislation of this State, or who, after his election and during his term of office, shall consent to become or continue to be and act as the agent, attorney or employee of any person, association or corporation, knowing that such person, association or corporation has, or expects to have, any private or special interest in the legislation of the State.

"All corporations holding franchises by grant from the State or doing business in the State, their officers, agents, attorneys and employees; all contractors or persons having an interest in contracts with the State; all officers, judicial, Executive and ministerial, of the State and of the United States; all candidates for any office in the gift of the Legislature, including candidates for the Senate of the United States, shall be conclusively presumed to have a special interest in legislation.

"All persons who engage themselves for hire or reward to promote or oppose the passage of any measure by the Legislature, shall be conclusively presumed to have a special interest in legislation. No such person shall address to any member of either House any private solicitation, speech or argument, orally or in writing, to influence his vote on any subject whatsoever; both the person offering such solicitation, and the member who voluntarily and knowingly hears it, shall be taken for criminal offenders, and punished as the law may provide."

Mr. DALLAS. Mr. Chairman: I move that the committee rise and report progress.

The motion was agreed to.

IN CONVENTION.

The committee then rose, and the President resumed the chair. The Chairman of the committee, Mr. Armstrong, reported progress, and asked leave to sit again, and to-morrow was named and agreed upon.

ADJOURNMENT.

Mr. NEWLIN. Mr. Chairman: I move the Convention do not adjourn.

The motion was agreed to.

So the Convention thereupon, at two o'clock and fifty minutes, adjourned.



ERRATA.

On page 611, eighteenth line from bottom of second column, for "endured" read "endorsed."

On page 618, fourth line from top of second column, for "too" read "two."

On page 621, thirteenth line from top of first column, for "denounces" read "announce."

On same page, last line of first column, for "pull" read "rule."

On same page, second column, strike out three paragraphs, the first one commencing "We will thereby," &c., being a repetition of what precedes them.

On page 794, nineteenth line from bottom of first column, for "*Interest republica ul sit finish librum*" read "*Interest reipublicæ ut sit finis litium.*"



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*Debates of the Convention to Amend the
Constitution of Pennsylvania (1873) – Volume 6*

DEBATES
OF THE
CONVENTION

TO AMEND THE
CONSTITUTION OF PENNSYLVANIA:

CONVENED AT
HARRISBURG, NOVEMBER 12, 1872;

ADJOURNED NOVEMBER 27,

TO MEET AT
PHILADELPHIA, JANUARY 7, 1873.

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BENJAMIN SINGERLY, STATE PRINTER.
1873.

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DEBATES

OF THE

Convention to Amend the Constitution.

ONE HUNDRED AND TWENTY-SIXTH DAY.

TUESDAY, June 24, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. Jas. W. Curry.

The Journal of yesterday's proceedings was read and approved.

LEAVE OF ABSENCE.

Mr. MANTOR asked and obtained leave of absence for Mr. Craig on account of ill health.

CORPORATIONS.

Mr. STANTON. I move that the Convention proceed to the consideration of the article reported from the Committee on Private Corporations, report No. 21.

The motion was agreed to, and the Convention resumed the consideration or second reading of the article on corporations.

The PRESIDENT *pro tem.* When the Convention adjourned yesterday the question was on the eighth section. It will be read.

The CLERK read as follows:

SECTION 8. No banking or other corporation shall receive or pay directly or indirectly a greater rate of interest than is allowed by law to individuals.

Mr. FUNCK. I move to strike out all after the word "section" and insert the following:

"The legal rate of interest shall be six per cent. per annum; and banks of issue shall not be allowed to pay interest on deposits."

The PRESIDENT *pro tem.* The question is on the amendment.

Mr. FUNCK. Mr. President: I conceive it important that the rate of interest should be fixed by this Convention. An immense number of "shaving shops" are daily springing up over the country, and they are oppressing the business of the country very greatly. If there is any source from which the community at large suffers, it is from this extortion; and if this Convention will adopt some method by which they can get relief, it will be a great blessing. Banks of issue, regularly chartered, in consequence of the pressure which has been brought to bear upon them by these "shaving shops," have entered the money market and all of them have become borrowers; and in consequence of the course which they are pursuing, all the money of the community finds its way into their vaults. There it is held. No business man any longer is able to go to his neighbor and borrow money at six per cent. or five per cent. interest as was customary heretofore; but every man who goes into business without having capital enough of his own to carry it on is obliged to submit to a shave in order to prosecute it.

These banks first make money scarce, and afterwards take advantage of that scarcity to run up the rate of interest, and consequently no new enterprises are springing up in the State; no forges, manufactories or other industries are built and prosecuted, because of the scarcity of money. Real estate is selling below its actual value because there is no desire for it. If a man wants to buy a farm and has two-thirds of the money ne-

cessary he cannot buy it, because he does not know where to get the balance of the money; consequently the business community is impoverished through this system; and when we reach the proper stage of our deliberations I shall offer a section to the report now before the Convention, calling upon the Legislature to annul the charters that have heretofore been issued to these "shaving shops," in such manner, however, that no injury to the corporations shall be done, and to prevent the Legislature hereafter from granting like privileges to corporations of that character. I believe they are an unmitigated nuisance, from which the country desires to be delivered. If individuals seek to engage in business of this kind, let them do it on their individual responsibility, because it is a business utterly selfish in its character. The community derives no benefit from it. If it were some manufacturing or productive industry that was to be advanced, by which laborers were to be employed and the community benefited, it would be different, but it is a privilege to individuals only for their exclusive benefit, to the detriment of the community. For this reason I hope the Convention will think favorably of the amendment I have offered and adopt it.

Mr. NILES. Mr. President: I am opposed to the amendment and to the section. I would have had no particular objection to the section if the Convention yesterday had put the word "private" in before the word "corporation;" but if we adopt this section as it is pending to-day, it will be utterly impossible for any municipal corporation in this State to erect any public buildings or to borrow money to build school houses or anything of that kind. Now, sir, if we are to limit any corporations whatever in this State—I am speaking particularly about municipal corporations—if they are to be limited to six per cent., it will either prevent the loaning of a dollar by one of these corporations, or it will succeed, as the delegate from Columbia told us yesterday, in forcing the rate of interest up to a point that will satisfy all the corporate bodies of the State. That is just exactly what this proposition is to result in, to force up the legal rate of interest to a point that will be acceptable to the corporations, or else it will prevent the building of additional improvements in the State from this day henceforth. I, sir, am unwilling to go upon the record as voting for this proposition. It is to tie up all the industries of

this State from this day henceforth. We are putting here into the organic law a proposition that no delegate on this floor can begin to comprehend the final results of. It is in my judgment the worst species of legislation. It has no business in the Constitution; and if we were in the Legislature it would be an article of very exceptional propriety.

For these and for other reasons I hope the Convention will vote down this proposition. And if anything of this nature is needed, let it be done by law that can be repealed if found to work disastrously to the best interests of the people.

Mr. BROOMALL. Mr. President: I am not so much opposed to the amendment as I am opposed to its taking the place of the section, which, as it reads now, is to my mind a most valuable one and one that ought to have a place in the organic law. The gentleman who has just taken his seat says that if this section is passed as it stands, no corporation will be enabled to live in effect and make its improvements. I want him to tell me why. If it is true, it is because at present they are enabled to sweep the money market and no individual is allowed to compete with them. If it is true, it is because the rates of money by the laws of trade are at this time higher than individuals are allowed to give openly; and if he wants this kind of favoritism for the corporations, either public or private, to be continued, I am perfectly willing that he should be allowed to cast his vote for that unrighteous discrimination.

I do not want corporations to be deprived of a fair chance in the money market. What I want is that they should not have all the chance. What I want is that individuals should have a fair chance with them. If you want to make the community rise in a mass and by revolution put down these giant bodies that have so long ruled them with an iron hand, only keep on discriminating in their favor; only continue the process by which I, if I want to borrow, must sneak into the money market at the back door and deal with the first scamp who chooses to ask me an extortionate rate, while the agents of corporations can go in boldly at the front door and take money at the rate which the laws of trade fix, and sneer at me because I cannot compete with them.

Sir, this unfair discrimination has existed too long. In my county such a thing as borrowing upon mortgage by a

private individual at the rates at which private individuals can deal by law is a thing of the past; it is heard of no longer. I grant that the farmers there get money, some of them must get it or be broken up, but they get it how? They get it at an enormous shave; they get it at twelve per cent. and from that down to eight, and sometimes up to fifteen, while the corporations, with no better security, can get it for seven or eight; and why is this difference? Because the corporations are allowed to go in at the front door and openly bid, while we must sneak in at the back door and deal with those who are dishonest enough to take advantage of our unfortunate situation.

Now, sir, let this section go in; and what will be the result? Not that corporations will be crippled unless, indeed, they are afraid of the competition of individuals, unless, indeed, they want all the capital of the country and are not willing to let individuals come in and get their share. That I do not myself believe. I believe they would be satisfied with their share, though they have an unfair advantage as the matter now stands, because undoubtedly if individuals are allowed to deal openly, they will get no more than their share of the money of the country. But what will happen if we put this in? Simply that the corporations which have, as gentlemen say, controlled the Legislature, will force the money market open for us as well as for themselves, and the laws of trade will regulate the rates of money; and why not? This section does not say that corporations shall be limited; it only says that corporations shall be limited if individuals are. This section puts no clog upon the operations of corporations; it only says that individuals shall not be clogged unless corporations are. This section does not forbid corporations from borrowing; it only says that if you shut the money market to me, you shut it to all the world. I demand the right to buy in the markets of the world at such rates as are allowed to others. I deny your right to say that I must not buy flour when flour gets to eight dollars a barrel, but that the rich corporations shall still live. I deny your right to say that I must violate the law if I can get money at more than six per cent., and hence must pay for the risk of that violation of the law in one way or another; and yet that the gentleman's favorite corporations, about which he seems to be so particular, should be al-

lowed to get money at the market rates often at half the price which I am compelled to give. I hope the section will pass as it is.

Mr. COCHRAN. Mr. President: The question now before the Convention is not at all that which has been discussed by the gentleman from Tioga, (Mr. Niles,) as I understand it, and especially not that which has been discussed by the gentleman from Delaware (Mr. Broomall.) It is simply whether this amendment shall be substituted for the original section or not. Now, sir, it seems to me that the argument which was well stated by the gentleman from Lebanon (Mr. Funck) ought to prevail. What is the object of this amendment? The object of the amendment is to prevent corporations from forestalling the money market just as you would prevent people from forestalling any other market. They go to work and draw into their vortex the money of the country; and having it there, when individuals come to borrow from them they have to pay exorbitant rates of interest in some form or other by which the provisions of the law as it exists are evaded or violated. Now, the object of this amendment is to leave the corporation and the individual on the same footing at the legal rate of interest and no other, and not to allow the individual borrower to be put at a disadvantage.

Mr. President, this is opposed by the gentleman from Tioga, as I understand, on the ground that it would prevent municipal corporations from obtaining the funds necessary to enable them to make their improvements. Such has not been my experience or observation in the section of the State from which I come. Municipal corporations in our section of the State have always been able to get money at the legal rate of interest. They have got it heretofore; they can get it to-day; and the reason is, because the people have confidence in the security that is offered to them, and they will take the bonds of the county of York, or the obligations of the borough of York, and lend money on them at six per cent. Why, sir, the county of York is indebted in the sum of nearly \$300,000, on its own bonds, and on that sum, as I understand, it pays no more than the rate of six per cent. interest, and it always has been able, except in cases when there was suspicion thrown upon it, to obtain money at that rate;

and so has the borough of York on the few occasions when it has had to borrow money. I do not believe that it is necessary for any well managed municipal corporation which has the confidence of the public to pay one cent more than six per cent. interest, and I believe I am sustained by the experience of the section of country in which I live.

But, sir, we understand the purpose for which this section was framed, which was well pointed out yesterday by the gentleman from Columbia. It is an attempt to reach indirectly that which this Convention has refused to allow to be done directly; and that is to put power in the hands of those who wish to raise the rate of interest in this State which will enable them to work with force upon the Legislature. The idea is to compel the Legislature to do that which they have never been able to make them do yet: and that is to increase the legal rate of interest, and thus, by bringing the force and power and influence of all the great corporations in this State to bear upon the Legislature, to compel them to raise the rate of interest. Now, that is the open and undisguised purpose, and it has been avowed here, I may say, by the gentleman from Delaware this morning. What, farmers pay thirteen per cent.! Farmers pay twelve per cent.! Why, sir, no man who pays twelve per cent. as a farmer can live under it; he must go down inevitably; and my observation has been that I have never known farmers who were compelled to pay these rates of interest who were able to survive. They went into the hands of the sheriff or their property into the hands of assignees, or they go now into the court of bankruptcy whenever they are compelled to pay these rates. A farmer had better at once sell his farm and give up before he borrows money at such rates of interest. I protest here on behalf of that interest, an interest which is the foundation of all the wealth and all the prosperity of this Commonwealth, and not great corporations or any other class of the community. I protest on behalf of the agricultural interest of this State against any provision which will have the effect, directly or indirectly, of compelling them to submit to the exactions of money-dealers at the rates which they choose to place on the money which they lend.

Mr. DARLINGTON. Mr. President: I am opposed to the amendment of the gentleman from Lebanon and I am op-

posed to the proposition of the committee, and I think this Convention would do wisely to take the suggestion of the chairman of the committee and vote the section down. I think it would be unwise for us to make any provision in the Constitution whatever on the subject of interest unless we are prepared to say that the Legislature shall not at any time fix any rate of interest. This is a restraining provision. The Legislature have entire power over the subject and will act exactly as the people desire them to act from time to time unless we think it wise to take that power away. I do not; but that is the only thing we ought to say if we say anything.

Now, what would be the effect of fixing in the Constitution either the rate of six or seven per cent.? Remember that we are making an instrument for a long series of years. Such a provision might not be acceptable to the people for a year and would require to be changed. The rate of interest for money would change probably with every varying year. It might be too great now; it might be too little next year; and therefore it is unwise to fix it in the Constitution.

Now, as I am not in favor of saying that the Legislature shall never fix the rate of interest for the non-payment of money, and because I think it is wise there should be a limit fixed when a debt is unpaid what the damages shall be for non-payment, I believe such a provision is wise and should be retained. It is, therefore, that I am opposed to denying the Legislature the power to fix the rate of interest. As they have fixed it wisely and as it does suit our circumstances, I shall be entirely opposed to saying that they shall never fix any rate, and thus leave that open. I think, therefore, the best thing we can do is to negative the proposition of my friend from Lebanon and then negative the report of the committee itself.

Mr. CAREY. Mr. President: In the interest of labor, whether it is agricultural, manufacturing, or of any other description, I beg of the Convention to vote this down. It is the very worst sort of legislation. We seem to be going around in every direction to find opponents to make opposition to the Constitution, and if you go on piling them up one after another—you did a great deal in that direction yesterday—we may just as well adjourn. It is utterly impossible that our Constitution shall ever be adopted unless we put

an end to this system of legislation. We were appointed here to revise a Constitution and not to make laws. We have been making laws all the time, and we are now making worse laws than we have made yet.

I beg and pray that this whole question of money may be left out of the Constitution. It belongs to the Legislature. For years and years this has been pushed and urged on the Legislature, by the money-lenders, the men that want nine, ten, fifteen and twenty per cent. They have been begging the Legislature; but the Legislature has steadfastly refused to give them the power they want. They now tell us the reason is that the people are so stupid that they cannot understand it. Sir, the people understand their true interests. The people do not believe in paying ten per cent. or twenty per cent. The people do not believe in building up the fortunes of city millionaires, or country millionaires either.

Now, we have in this city forty thousand houses of working men, that are under mortgage. Are you going to enlist all those people against your Constitution? Are you going to compel every man who thinks as I do, that this is an abomination, to go into the field against you when the Constitution is submitted? I say distinctly, that you may make a Constitution as good as you can, you may make it as perfect in all other respects as you can, and if you put in these provisions that are asked for, they will so far counterbalance all the good there is in it that I shall feel it my duty to advise everybody by speaking and by writing to oppose the Constitution, and I will do it. I know one thing is certain, that the working men of the State will believe in me. For one vote that the gentlemen who urge this can command in this city on this subject, I will engage to furnish a thousand.

Now, are we to go around and beg and pray people to oppose the Constitution? Are we to seek everywhere opponents for the Constitution? Would it not be a great mistake? Remember, I am not asking you to omit anything that ought to be put in the Constitution. I am asking you not to legislate on this, the most important question that can come before us. Let us make a Constitution and let us quit the idea of making laws. Then we shall have some chance of having the Constitution adopted.

Mr. MACCONNELL. I merely rise to say that I desire to call the attention of the Convention to the tenth section of the article on legislation, which has been already adopted. It reads thus: "The Legislature shall not pass any local or special law fixing the rate of interest." It seems to me that that covers the whole ground. If you will make a law authorizing corporations to pay more or receive more interest than individuals, certainly that will be a special law, and it is prohibited by the provision that I have read.

Mr. WOODWARD. Mr. President: I do not intend to discuss this subject; I merely rise to say that I think this amendment to the section and the section ought both to be voted down.

Mr. CAREY. Yes; let us vote them down.

Mr. WOODWARD. The reason presented to my mind why this should be done, is not exactly the reason that my venerable friend from the city (Mr. Carey) has put forward. All this legislation to interfere between the relations of borrower and lender is injudicious. We must leave our fellow-citizens free to make their own bargains. I suppose that a constitutional provision which would regulate the manner in which these young men shall court and marry their wives would be judicious; but if that were proposed they would answer that they preferred to attend to that business in their own way. And we should leave this matter of borrowing and lending money to be regulated by the parties who sustain those relations. If one man has money to lend and another wants to borrow, let them agree upon the terms on which they shall borrow and lend. I object to a constitutional provision on the subject.

In justice to the Committee on Private Corporations, let me say that they have reported no such section. It has been interpolated upon us. I am going to vote against it, and I hope the House will vote it down.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was rejected.

Mr. LEAB. I propose to say a word on the section. There seems to be an intention on the part of the chairman of the Committee on Private Corporations (Mr. Woodward) to inform the Convention that this section crept into this article without the aid of that committee, and he says that it was interpolated. I believe that it ought to pass, if not in its present,

in some other form. Whatever effect it may have upon the Legislature with regard to this question of interest we may not be able to foresee, nor do I consider it important; but I consider it important for the financial and the business interests of Pennsylvania that there should be some regular established rate of interest by law in the State, and that that rate of interest should be left so that we can enforce it. For that reason it is that I think we should not have these shaving shops that have been sprinkled all over our State, paying interest for deposits and shaving the people at enormous rates of interest, when the regular monied institutions, the national banks of the State, are prohibited by an act of Congress from charging more than six per cent. for the money which they loan.

Why should there be this great difference? Why should these private banks be allowed to charge ten or twelve or fifteen per cent. for their money, which enables them to buy up all the deposits at the legal rate of interest, five or six per cent., which the national banks ought to have for nothing, in order that they may accommodate the whole business community with money at the regular legal rate of interest in this Commonwealth? I am connected myself with an institution of that kind, and in discounts in one year in a little bank in our county we have reached the sum of two millions of dollars, on notes that did not average three hundred dollars each, and all those discounts went to the farmers, mechanics and laboring men to pay their hands, and purchase stock and materials, at the season of the year when their means are small, because they are receiving no return from their crops, and in their regular course of business. Now, this money was diffused throughout a whole community for the regular business purposes of that community at six per cent. But there may be a bank upon the opposite side of the street, that pays six per cent. for its deposits, and loans its money, not to all the people of the community, but to a few favorites, or lame ducks who are engaged in some irregular pursuit or speculative employment, by which they can pay a rate of interest which would be ruinous to a regular and legitimate business, and thus enable the shaving banks to buy up all the deposits at interest, which the national banks ought to have for nothing in order to furnish the business community with the necessary means

to carry on the legitimate trade and traffic of the people.

We look to the national currency as the best currency we have. Our national banks are prohibited from loaning more than ten per cent of their respective capital to any one individual. These private banks may loan any sum they please to a single party. I was connected, in a professional way, not long since, in collecting money against an estate where it appeared that a private bank in a neighboring county had loaned one man \$80,000, and that at enormous rates of interest. I say this is all wrong. It is wrong to allow these private banks to do that, and it is proper that we should put into our Constitution some rate of interest which will regulate these transactions between borrowers and lenders. It ought to be a fair rate. I do not care whether it is six per cent., or seven, or eight, or five; but there ought to be a fair and equal rate for every man as well as every corporation, for every firm as well as every company; and I also do not see how there can be any objection to prohibiting these banks from receiving, directly or indirectly, a rate of interest which allows them to buy up at a legal rate all the money of the community, and thus keep it out of the business channels of the State.

I want the section to go further. I want to say that Jay Cooke & Co., Drexel & Co., DeHaven & Bro. and E. W. Clark & Co., and all the other private banks shall not go into the market with their money and say, "here, you can have money by discounting this paper at ten per cent." You can go to Third street to-day and buy the notes of corporations or of individuals, or of private banks. You can buy the paper, of a man who has recently been quoted in the public papers of the State as being worth twenty millions of dollars. I allude to Ario Pardee. You can buy his paper, guaranteed by the Lehigh Valley railroad company, at a discount of ten per cent. You can buy Asa Packer's paper guaranteed by the Lehigh Valley railroad company, at a discount of ten per cent. Yet gentlemen say that the legal rate of interest in Pennsylvania is six per cent. So it is, but if you have a legal rate of interest, that is not or cannot be enforced, it is no legal rate at all, and there is no legal rate of interest when you can buy all these men's paper at this large discount. The national banks cannot do that, and they are the banks on which you rely, the banks that have not

only to deposit dollar for dollar with the government of the United States, the bonds of that government as security for their notes, but can then only issue notes to the extent of ninety per cent. upon those deposits, and hence their paper is as good in California as it is in Philadelphia. Even if one of these banks, by some mismanagement, or some dishonest conduct upon the part of its officers, should fail, the notes of that national bank will still sell in the market at a premium after it has failed. Yet you cripple these institutions for the purpose of building up speculative interests, for the purpose of building up private corporations, for the purpose of building up those men and firms who are amassing enormous fortunes, who should be looked to as a portion of the oppressive power upon the poor in this Commonwealth, for we should not look to corporations alone.

I am opposed to them all, all of them having a different rate of interest in this State from that which the law allows. I say that we should confine them all, and let us put in a prohibition that no banking company and no corporation shall receive more interest than the legal rate fixed by the law of the State; and, if you please, I am willing to fix it in the Constitution if they are afraid that it will drive the Legislature to fixing a higher rate of interest. Why, we have to-day \$50,000,000 and probably \$100,000,000 invested by the trust companies of Philadelphia in Missouri and Illinois, where they have their agents regularly appointed to invest their money and collect their interest, and that money goes out of the material interests and the enterprises of Pennsylvania to where they can get a higher rate of interest, and that is because we are looking to that narrow and contracted policy, as I think, that we prohibit parties from making a bargain for the rate of money they shall have directly instead of indirectly.

Everything else has raised in price. I say that I am in favor of raising the rate of interest, and if we have a rate of interest let us have it universal and not partial. I am in favor of raising the rate of interest because I believe it would be to the interest of those very working classes with whom the gentleman from Philadelphia has not associated more than I have. He knows nothing more about the agricultural interest of this State, although he has theorized it, and wrote about it for years; but a year's experi-

ence is worth a life of dreaming, and I would not give a farthing for all the theorizing, unless it was based upon well-established and sufficiently proved facts or personal experience; and I know what our farmers, laborers, mechanics and business men require, and need, from actual observation and in the practical business of life.

Mr. ARMSTRONG. Mr. President: I desire to say only a few words on this question. I think it is highly injudicious that this section should pass. Prior to 1723, as is very well known, the legal rate of interest in Pennsylvania was eight per cent. In that year it was reduced to six per cent. This section I think would be wholly nugatory, it could not be enforced, and is therefore useless, and would be a mere incumbrance to the Constitution, and as such would be a reproach to the Convention which should insert it. The section prohibits any banking or other corporation to receive or pay, directly or indirectly, a greater rate of interest than is allowed by law to individuals. It is the law as to banking institutions now, and it has been over and over so held by the Supreme Court that they may purchase paper at a discount, and yet that is only a mode of receiving interest. So also corporations when they make their bonds and put them into market sell them at what they are worth. They have a certain market value and selling them at a reduced rate is their privilege to do. It is not usury and they have the right to do it, and when they cannot get more than a certain selling rate they would be forced to sell at such rate or stop their work. The law would be evaded in that respect by a hundred devices which no law could prevent.

But it is said that they shall not receive or pay a greater interest than is allowed by law to individuals. By the act of 1857 commission merchants and agents of parties not residing in this Commonwealth may contract for interest at seven per cent. Thus we find that it would be the easiest thing in the world for the Legislature to render a provision of this kind nugatory by simply enacting that some individual or class of individuals might receive interest thus and so. I think it is far wiser and safer to leave this provision under the protection of that section which we have already adopted in the article on legislation, that no local or special act fixing the rate of interest shall be passed. It is safely vested there,

and any act or any provision of the Constitution which undertakes to carry it beyond that will be an entire failure, because the modes of evasion are so easy that such law could not be enforced.

The two many reasons why it ought not to pass, but to my own mind these reasons are conclusive.

Mr. BIDDLE. I am in favor of this section. I have listened with great attention to the arguments for and against it; but I think it is right to place in the fundamental law a provision of this kind. What does it tell us? Simply that equality is equity. Simply that no distinction shall be made hereafter between the private corporation, the bank or the railroad company, and the individual.

Now, sir, I do not propose to discuss here whether it be wise or not to establish in the fundamental law a specific rate of interest; probably I should vote against that; but I do say that so long as you adhere to the principle of having a fixed rate of interest, of prohibiting a free traffic in money, no distinction should be made between the individual and the corporation. The corporation starts already with many advantages over the individual. It has got rid of the principle of individual liability. It starts on the principle of liability only to the extent of the stock, whereas an individual in business is obliged to jeopard every cent of his property. Now, what reason is there for the distinction? If the corporations, as we are told by their advocates, cannot compete in making lines of public improvement without borrowing at a higher rate of interest than that established by law, then I appeal to the common sense of every man here if it is not an irresistible argument against laying down a fixed rate of interest. Let the rate of interest be fixed by the Legislature, and expanded and contracted according to the exigencies of the community; but if you do fix it, say to the corporations, "you shall deal and be dealt with just as the individual." I cannot see a single argument against this section, and I see many for it, and I trust it will receive the sanction of the House.

Mr. MACVEAGH. Does the gentleman know that it has not been fixed in reference to individuals at all in the Constitution?

Mr. BIDDLE. I am perfectly aware of that. I started with saying that it had not been, and that I thought it unwise; but ever since we have been a people,

ever since we have been a province and a republic, this State has from time to time by enactments regulated the rate of interest beyond which it is illegal to go.

Now, I do say that if it is wise to regulate the rate of interest at all, it is wise to apply the limitation to everybody alike, and there is no reason why a great corporation should be allowed to lend or borrow, I do not care which, (take it in the alternative,) at a higher rate than the rest of the community. I therefore earnestly hope the section will pass.

Mr. COCHRAN. Will the gentleman from Philadelphia allow me to call his attention to the fact that it is avowed by the friends of this section that the expected effect of it will be to compel the Legislature by the influence of corporations themselves to raise the rate of interest?

Mr. BIDDLE. I do not understand that it is so avowed by the friends of this section. I listened with great attention to the argument yesterday and to-day. I know well that the gentleman from Columbia presented that as a new view of the question; but I never heard it avowed by the friends of the section that that was its purpose. I do not care if it is its purpose, if it is right that a large portion of the community should have the right to traffic in money at a rate different from that established by law, then it is right and fair for all; and gentlemen cannot get out of this dilemma. If they vote against this provision, they are saying to the individual undertaker of an enterprise, "you start handicapped and handcuffed in the race of commercial enterprise, but the great corporations shall be entirely discharged from the obligations to obey the law, and they may distance you in the race. Compete with them if you can under this great disadvantage." I can not imagine anything fairer than such a provision as this.

Now, as I am about to sit down, I do not intend to answer any more questions. Gentlemen may discuss the subject as they choose.

Mr. MACVEAGH. I simply rise to protest against such morality for the guidance of a Constitutional Convention from such a source. It seems to me that it is unworthy of the distinguished gentleman whose candor has been such a charm in his arguments in this Convention to tell us that it is perfectly right, after we have agreed to leave the entire question of the rate of interest to the Legislature, after we have rejected a provi-

sion fixing the rate of interest, that we should then insert a provision having no necessary or proper relation whatever to it in order to put a compulsion upon the Legislature to compel them to legislate as he desires them to do.

It appears to me to be an unworthy view, come from whatever source it may. If we want to say that no law shall be passed regulating the rate of interest, it is our duty to say so, and if a majority of this Convention decide that they will not say that, it is not worthy of him to ask us by an indirect and cowardly provision to put that in the Constitution which will, he thinks, compel the Legislature to pass such a law.

Now, it is perfectly right for men to differ on the question of usury laws. We heard elaborate arguments upon both sides of that question. We were asked to put a provision in the Constitution by the gentleman from Philadelphia on my left, whom we all respect so thoroughly, (Mr. Knight,) forbidding the Legislature to regulate the rate of interest, and we listened to elaborate arguments from the gentleman from Delaware and other gentlemen in favor of that proposition. We heard an elaborate and exhaustive argument from the gentleman from Philadelphia on my right, (Mr. Carey,) whose studies in this direction have given him a fame all over the civilized world. And upon a balance of the arguments this Convention decided to leave it to the Legislature without a binding provision in the Constitution. Now, I say it is not wise, according to my view of things, to take an indirect, unworthy and cowardly method of securing a proposition that upon a direct vote we voted down. I understand that this proposition was declared yesterday by two or three gentlemen in favor of it to lead directly to that result, to secure the repeal of the usury laws by indirection, by compelling the great corporations, I suppose, to buy their repeal from the Legislature and thus re-inaugurate some of the worst evils we are endeavoring to escape.

Mr. LILLY. Mr. President: I do not desire to add very much to what has been said on this question; but I believe in the truth of what was said by the gentleman from Delaware (Mr. Broomall) and the gentleman from Philadelphia (Mr. Biddle;) and it must be very refreshing to this Convention, as it is to me, to hear the gentleman from Dauphin, (Mr. MacVeagh,) like satan, rebuking sin. Instead of

meeting the question fairly and arguing it, he undertakes to say it is cowardly and sneaking to vote for such a thing as this. It is only putting corporations on an equality with everybody else, and it is right and proper to do it, and I will stand by it. The gentleman from Lycoming (Mr. Armstrong) talked about the corporations selling their bonds in the market at the market rates. You will not allow an individual to do that; it is usury for an individual to do it. All we ask is that individuals shall stand along side of corporations on the same basis.

Mr. BROOMALL. Mr. President: I am somewhat surprised at the language of the gentleman from Dauphin—

Mr. CARTER. I rise to a point of order.

The PRESIDENT *pro tem*. The delegate from Lancaster will state his point of order.

Mr. CARTER. It is that the gentleman from Delaware has spoken once.

Mr. TEMPLE. Only on the amendment, which has been voted down.

Mr. BROOMALL. I have not spoken on the section since the amendment was voted down.

The PRESIDENT *pro tem*. The gentleman's remarks before were on the amendment, and he is now entitled to the floor on the section.

Mr. BROOMALL. Mr. President: I had the honor to offer the provision in this section which has been characterized in language so extraordinary, at an earlier stage of the business of this Convention. If there is anything sneaking or cowardly in it, it belongs to me. I take the responsibility of having offered the provision. I trust the gentleman from Dauphin knows the district I represent and one of its representatives well enough to know that it is not he who should import Harrisburg morality to set up against the morality of the district of Chester and Delaware! He knows both places too well. He knows that there is nothing sneaking or cowardly in this proposition. He is too shrewd a man not to see that if there is anything sneaking or cowardly, it is a sneaking and cowardly blow, nay, more than that, a bold blow in the face of Harrisburg borers who made money by getting legislation for the benefit of corporations and against individuals. If this is passed, no longer can the agents of corporations go to the men skilled in manipulating legislators and say, "if you will get us a special privilege that is not allowed to individuals in the way of entering the

money market, we will pay you so much money." If it is a blow at anything, it is a blow at that business; and if that business is sanctioned by Dauphin county morality, I trust that this Convention will not incline much to it.

Sir, this proposition is an open one and a fair one. It is nothing more than every individual has a right to demand of his government, and to denounce his government if it does not give it to him. It is nothing more nor less than that every individual has a right to take up arms even against his government to get—and that is equality in the law and before the law—the right to do under and before the law what every other individual or individuals associated together have the right to do. "Sneaking!" "Cowardly!" When those who represent men upon this floor demanding rights come here to say that corporations shall not have special privileges in order that they may traffic in Harrisburg law, when delegates come here and demand for individuals the same rights that these favored creatures of Harrisburg legislation have, we are to be told that we are acting sneakingly and underhandedly, and that we are making a cowardly attempt. Sir, I deny it. It is a bold attempt, and it is the boldest blow that has been struck at corrupt legislation for years and years.

Sir, you know when this thing began, when the first corporation got a special privilege to allow it to enter the money market by the front door and boldly crowd out private individuals. Then it was that this government had disgraced itself by its legislation. That was the worst of all special legislation and the business has gone on from that day to this, until to-day the only bidder that is excluded from the market of one of the most important commodities of the world is the man, the individual, the citizen, and he is excluded by these Harrisburg creations who undertake by their representatives to foist Harrisburg morality upon this Convention.

I hope this section will pass, and I hope that every man who votes against it will go home to his constituents and say to the poor farmers who have to give twelve and fifteen per cent. for their money, while the corporations can get it for eight and nine, "we have done the deed; we have crushed you for years and you cannot get from under the load that we have placed upon you." We have given these corporations a lease of life, and a

lease of all you own that will hold until at least the time arrives when another change in the Constitution can be made.

Sir, if there is anything that we have a right to demand of this Convention, it is equality before the law for every man in the community, and that at least, if there is to be any inequality, the inequality be in favor of the individual and not in favor of the corporation.

Mr. AINEY. Mr. President: If this section is to pass, it seems to me that it requires modification. I should be in favor of a uniform law, if it were possible to make one that would put all business transactions upon an equality. I am not prepared to say that such a thing is possible. I will state my amendment. I move to amend by striking out the words "to individuals," the two last words in the section, and inserting after the first word "no" the words "individual firm or," so that the section will read:

"No individual, firm or banking or other corporation shall receive or pay directly or indirectly a greater rate of interest than is allowed by law."

Mr. President, the gentleman from Bucks (Mr. Lear) is in favor of putting the national banks upon a par with other bankers in the State by limiting all to the legal rate of interest, in discount charges. Now, I doubt very much whether any gentleman could go into the county-seat of the county which the gentleman from Bucks represents on this floor and obtain the discount of a note at six per cent. interest, the present legal rate. If I were to present myself at the national bank with which the gentleman is connected in his county town and were to ask to have a note discounted at six per cent. interest I would be told, "No, sir, you must keep an account with this bank before we can discount your note. We discount only for such as keep deposits with us." It is a rule that is well understood by every business man. No notes are discounted at six per cent. The rate is nominally six per cent., it is true, but unless a deposit is kept in the bank which makes the discount equivalent to eight, nine, ten or twelve per cent., as the market value of money runs, you can get no discount. I appeal to the experience of every member on this floor at all acquainted with business transactions with national banks to say if this is not so.

A section of this character, in my judgment, is simply void and of no effect. It is folly to put into the organic law any-

thing which is inoperative. If it were possible, as I said in the outset, to make a uniform provision that would be operative and of any reliable validity I should be in favor of it. I believe it would be a wise and judicious measure of reform because we should then have a rate of interest fixed in this Commonwealth that would retain our money here and not as now, drive it out of our State into other communities by illiberal restrictions. If this section is to pass I hope my amendment will prevail. It widens the scope of the section and makes it apply to all alike. I hope it will be made as uniform in this respect as language can make it if it is the purpose of the House to adopt it, though I firmly believe it will practically prove inoperative.

Mr. HUNSICKER. I move further to amend by inserting after the word "other," the word "private."

Mr. TEMPLE. That was voted down yesterday.

The PRESIDENT *pro tem*. The amendment is not in order. It was moved yesterday and voted down.

Mr. HUNSICKER. This is an amendment to the amendment of the gentleman from Lehigh.

Mr. AINEY. I accept the amendment if it is in order for me to do so.

The PRESIDENT *pro tem*. The gentleman from Lehigh modifies his amendment by accepting the suggestion of the gentleman from Montgomery.

Mr. DALLAS. I move to amend the amendment by inserting the word "general."

Mr. AINEY. I misapprehended the amendment of the gentleman from Montgomery. I do not accept it in that form. That would shut out municipal corporations. I desire them to be included in the provision.

Mr. HUNSICKER. Then I renew the amendment.

The PRESIDENT *pro tem*. It is not in order.

Mr. DALLAS. I move to amend the amendment of the gentleman from Lehigh by inserting the word "general" between the words "by" and "law" in the second line, so as to make it read:

"No individual, firm, or banking or other corporation shall receive or pay, directly or indirectly, a greater rate of interest than may be allowed by general law."

To leave it as it is would be to permit a special law to allow it.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment, to insert after the word "by" the word "general."

Mr. DALLAS. Otherwise the amendment of the gentleman from Lehigh would leave it for the Legislature to make it valid by law; by a special act in any case. We certainly do not mean that.

Mr. ANDREW REED. If this section would have the effect which its friends on this floor claim for it, I should be in favor of it. As the section read before it was amended, and as it was reported from the committee of the whole, the object intended was, I think, a good one. I see no reason why a corporation should have an advantage which a private individual has not. But I do not think, in the manner in which the original section stands, it will have the effect for which its friends contend; it will be entirely nugatory. I agree with the able speech which the gentleman from Bucks (Mr. Lear) made on the floor. He has stated that you can go to Third street now and get the paper of the best men in the State at nine or ten per cent. Will this section have the effect of remedying that? Clearly not. It only prevents banking and other corporations from paying any greater rate of interest than is paid by individuals. You will not by this section prevent the buying of paper at a discount. A man can sell the paper of another person which he has, at any rate that it will bring in the market, and that is the way it is done. That is perfectly legal; it is not amenable to the law of usury; and what will be the effect then of this section? It will be that we shall then have no bonds bearing a greater rate of interest than six per cent., but we shall have bonds selling on the market at ninety per cent., at eighty per cent., or perhaps at seventy-five per cent.; whenever there is an industry which requires money that can pay such a rate of interest for its development, that industry will get the money. They will sell their bonds at a great sacrifice, for that they can do, and that will be the effect of this section. A railroad company will trade its bonds and pass them over to a broker, and the broker will sell them for what he can get, and in that way, indirectly, the corporations will get their money. It is true that the amendment of the gentleman from Lehigh would make the section more effective; but what will be the effect of that? It will be to cripple the interests

of this whole State. It is just the same as saying that unless a person can get money at the rate of six per cent., he must do without, unless by giving his commercial paper in such a way as to avoid the law, or by some back-door arrangement.

This will not be done where it can be avoided, and it can be avoided by going to another State. Our people will go to New Jersey or New York or some other place outside of the State, and pay there seven or eight per cent. for what money they need. The effect will be to drive capital out of the State. It is, in my opinion, the worst provision that could be put in the Constitution, because the Constitution is not the place to regulate this question of the value of money. Money may be worth six or seven percent. at one time or in a certain section of the State, and at another time or in another section it may be worth eight. Far better leave the subject to the Legislature, to be controlled at different periods, according to the requirements of the time. The best thing that this Convention could do would be to leave money free between the lender and the borrower up to a certain rate, which would be inconsiderable, and within which it should be restricted. Then individuals and corporations would be on a par. If you want to borrow money, you go to a man who has it and you give him what he is willing to take. There should be, I concede, some limit which would protect persons from unconscionable contracts, the effect of which they did not see at the time they were entering into them; but outside of that the best provision that could be made, and which would do away with all these evils, would be to let persons agree upon the rate of interest between themselves, face to face. For that reason I must vote against this section, because, in the first place, I think if the section is amended so as to make it effective, it will have a bad effect; and in the next place, if we pass the section as reported from the committee of the whole, I do not think it will have the effect intended by its friends, but will be a mere *brutum fulmen*.

Mr. BAER. I desire to call the attention of the gentleman from Philadelphia, who moved to insert the word "general" before the word "law," to the fact that there can be no necessity for adopting that amendment. We have already provided in the tenth section of the article on legislation against legislating either by general or special law on the subject of the

rate of interest. Therefore there is no necessity for the word "general" in the section.

Mr. AINEY. If in order at this time, I would like to modify my amendment.

The PRESIDENT *pro tem*. It will be better to take the question first on the amendment of the gentleman from Philadelphia (Mr. Dallas) to the amendment.

Mr. BIDDLE. I should like to have it read.

The PRESIDENT *pro tem*. It is to insert the word "general" before the word "law."

The amendment to the amendment was rejected.

Mr. J. R. READ. I would suggest to the gentleman from Lehigh the insertion of the word "or" before "firm," so as to read: "No individual or firm, or banking or other corporation," &c. I think that will read better, and accomplish what the gentleman desires.

Mr. AINEY. I accept the modification.

Mr. MACVEAGH. Upon this amendment I desire to say that I do not see that it prevents special privileges being granted to corporations. This is legislation—

Mr. AINEY. If the gentleman will allow me, I wish to modify my amendment so as to withdraw that portion of it and strike out the words "to individuals."

Mr. MACVEAGH. Then let us have it read as modified.

The CLERK read as follows:

"No individual, firm or banking or other corporation, shall receive or pay, directly or indirectly, a greater rate of interest than is allowed by law to individuals."

Mr. MACVEAGH. The objection I see to this section still, as it occurs to my mind—although in that I may be entirely mistaken—is that it is direct legislation and that the gentleman from Delaware (Mr. Broomall) is entirely mistaken in the consequences of the adoption of it. This section will require immediate action by the Legislature. It repeals the laws now existing. It repeals the privileges given to corporations, or to individuals if you choose, to sell their securities indirectly at a higher rate of interest, and thus it compels the great corporations to go to Harrisburg to lobby for a law to suit them; and it was in that direction, after the speech of the gentleman from Columbia, (Mr. Buckalew,) and the adoption temporarily of that argument by the gentleman from Philadelphia, (Mr. Biddle,) that I made the remarks I did. The suggestions of the gentleman from Columbia were that

the section was urged for this reason, and it seemed to me to be so wide a departure from the tone of arguments I had formerly heard in this body, that when the gentleman from Philadelphia openly avowed that reason I was greatly surprised. I am told by a gentleman on my right that in the heat of that discussion I used adjectives or epithets that I should not have used. If I did use them, I withdraw them as to the gentleman from Philadelphia (Mr. Biddle.) I would withdraw them as to the delegate from Delaware who became so excited, (Mr. Broomall,) except that I had not in my mind the idea that he was the father of the section. In fact I did not know that he had introduced it at all, or spoken in favor of it—I did not happen to be in the room when he spoke. I was alluding exclusively to the argument he made on the subject of the usury laws when that question was before the Convention; I thought I was complimenting him all the time and that he was smiling his gratification about it. I had no idea he was applying to himself remarks which had no shadow of reference to him. His excitement was wholly unnecessary.

My objection is this still, that it is an indirect way of getting at the result that this Convention decided, when directly offered by the gentleman from Philadelphia, not to adopt. Now, will it prevent corrupt legislation, because that we are told is one of its objects? I may be mistaken, but remember this is an act of Assembly you are putting in the Constitution. It says that the moment this Constitution goes into effect no bond shall be sold above the rate of interest allowed by the statute. What does that compel? It compels every railroad corporation and every other corporation—railroads are not alone in this matter—to go to Harrisburg and lobby for a change of that law—and to continue corrupting the Legislature as they have been doing.

Do they need any special legislation now? They need buy nothing now. But if you put this in the Constitution then they will need to buy legislation. If this Convention wants to prevent any laws regulating the rate of interest, the gentleman from Philadelphia has a section that does that in a fair, square, manly way, and if it is desired to adopt any such measure, that could be passed. But I cannot conquer my repugnance to this method of doing it, and I do not believe that under the laws we have passed that

the Legislature will pass one set of laws for corporations and another for individuals. If that is what is meant, to require all laws relating to the rate of interest to bear equally upon corporate and individual enterprises, I have no objection to that, none whatever, but I have objection to putting a repealing statute in the Constitution that will compel these corporations to go to Harrisburg and purchase legislation, for they will be driven to the necessity of doing that by such a section as this. Therefore, as we voted down the other section it seems to me that we ought to vote this down also. Even if I was in favor of the repeal of the usury laws I would not consent to secure their repeal by this indirect method.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Lehigh (Mr. Ainey.)

Mr. AINEY. I call for the yeas and nays.

More than ten members rising to second the call, the yeas and nays were taken with the following result:

Y E A S .

Messrs. Ainey, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Boyd, Brodhead, Broomall, Cochran, Cuyler, Davis, De France, Ellis, Fell, Gibson, Gilpin, Harvey, Hemphill, Kaine, Knight, Lamberton, Lear, Lilly, M'Clellan, M'Culloch, M'Murray, Mann, Patton, Purman, Read, John R., Reed, Andrew, Runk, Russell, Smith, Henry W., Wherry, White, Harry and Wright—37.

N A Y S .

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bardsley, Black, Chas. A., Bowman, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Church, Clark, Corbett, Corson, Cronmiller, Curry, Dallas, Darlington, Dodd, Dunning, Edwards, Elliott, Ewing, Finney, Fulton, Funck, Guthrie, Hall, Hanna, Horton, Howard, Hunsicker, Lawrence, Littleton, Long, MacConnell, MacVeagh, Mantor, Metzger, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purviance, John N., Purviance, Samuel A., Simpson, Smith, H. G., Stanton, Stewart, Struthers, Temple, Turrell, Walker, Wetherill, John Price, White, David N., Woodward and Worrell—67.

So the amendment was not agreed to.

ABSENT—Messrs. Addicks, Baker, Barclay, Bartholomew, Beebe, Bigler, Black,

J. S., Cassidy, Collins, Craig, Curtin, Green, Hay, Hazzard, Heverin, Landis, M'Camant, Minor, Mitchell, Newlin, Reynolds, Rooke, Ross, Sharpe, Smith, Wm. H., Van Reed, Wetherill, J. M., White, J. W. F. and Meredith, *President*—29.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. COCHRAN. Mr. President: Now that we have come back to the section itself, I hope that the Convention will vote it down. It is just one of those things which are in themselves mere *brutum fulmen*; they amount to nothing substantially; and although I voted for the amendment because I supposed if the section was to pass it would be an improvement upon it, I earnestly hope that the section will be voted down. The inevitable result of passing a section of this kind is to bring to bear upon the Legislature of the State the very worst kind of influence, that kind of influence which obtains special legislation under the color and cover of general laws, and there has been as much mischief done in the way of legislation by such laws as there has been by the most narrow private individual laws that have been enacted at any time by the Legislature.

Now, sir, the idea of its creating an equality between individuals and corporations, and taking away from the latter a special privilege or capacity which they now enjoy, although it has been sustained by the distinguished gentleman from Philadelphia, (Mr. Biddle,) whose opinions I always receive with profound respect, appears to me to be entirely delusive. The laws now make no such distinction except as they are based upon special enactments. Those enactments are passed, and we have no further control over them; they are gone; and for the future we have established all the equality which we can establish by the section in the article on legislation to which the attention of the Convention was called by the gentleman from Allegheny this morning, and there is no necessity for inserting in this Constitution an article of legislation like this, for it is that if it be anything, or what is, in my opinion, a section which has no force, no effect and scarcely any meaning whatever. It will tend to no good, and I hope, therefore, that the section will be voted down.

The *PRESIDENT pro tem.* The question is on the eighth section.

Mr. HUNSICKER. I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

The *PRESIDENT pro tem.* The Clerk will call the roll.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Achenbach, Ainey, Alricks, Andrews, Baer, Baily, (Perry,) Bannan, Biddle, Brodhead, Broomall, Bullitt, Campbell, Curry, Cuyler, Dallas, Davis, De France, Dodd, Fell, Finney, Gibson, Gilpin, Guthrie, Harvey, Hay, Hemphill, Horton, Howard, Knight, Lear, Lilly, Long, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mott, Patton, Russell, Smith, H. G., Smith, Henry W., Stanton, Struthers, Temple, Walker, Wetherill, Jno. Price and Wright—48.

N A Y S .

Messrs. Armstrong, Bailey, (Huntingdon,) Bardsley, Bigler, Black, Charles A., Bowman, Boyd, Brown, Buckalew, Calvin, Carey, Carter, Church, Clark, Cochran, Corbett, Corson, Cronmiller, Darlington, Edwards, Elliott, Ellis, Ewing, Fulton, Funck, Hall, Hanna, Hunsicker, Kaine, Lamberton, Lawrence, Littleton, MacVeagh, Mantor, Metzger, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Stewart, Turrell, Wherry, White, David N., White, Harry, Woodward and Worrell—56.

So the section was rejected.

ABSENT.—Messrs. Addicks, Baker, Barclay, Bartholomew, Beebe, Black, J. S., Cassidy, Collins, Craig, Curtin, Dunning, Green, Hazzard, Heverin, Landis, M'Camant, Minor, Mitchell, Newlin, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Van Reed, Wetherill, J. M., White, J. W. F. and Meredith, *President*—29.

The *CLERK* read the next section as follows:

SECTION 9. All insurance companies incorporated by other States, and doing business in this State, shall be subject to the same rate and measure of taxation as similar companies incorporated by this State.

Mr. EWING. Mr. President: When a new section on a new subject is incorporated in the Constitution, there should be some good and sufficient reason for it; it should be intended to remedy some ex-

isting evil, which legislation apparently will not remedy or cannot remedy, or to promote some great public good. I was absent when this article was disposed of in committee of the whole, and have been at a great loss to understand why some of the provisions reported by the Committee on Corporations were stricken out and this one left in; and in the absence of knowing those reasons, I can only suppose that the Convention must have got in the way of voting down everything at one time and voting in everything again at another time.

Now, here is a section applicable to the manner of taxation of foreign insurance companies. Why they should be selected out rather than all foreign corporations, I am unable to see; or why foreign corporations at all should be touched in this article. Has there ever been any great evil in the State from foreign companies being overtaxed? I do not believe there has been. My own belief is that our own domestic corporations have been taxed at a higher rate than the foreign corporations have, and I can see no advantage in incorporating this section in the Constitution, and I can see several reasons why this should not be here and wherein it may be found to be very disadvantageous to the State.

We can tax our own insurance companies in a great many different ways. We can tax their capital stock; we can tax their entire business; we can tax their entire receipts. We have them and their property entirely within the control of the legislation of the State, but we cannot so tax the foreign insurance companies. About the only tax we can put on them is on the business that they do in the State or a license, and this section would probably prevent the taxation of the business of a foreign insurance company, or a license for it at a higher rate than that of a domestic insurance company, leaving it free from all other taxes, and our own companies being subject to numerous taxes; and, in fact, the Legislature might under this provision be compelled either to remove the taxes on our own companies or to give the foreign companies a very great advantage. I can see no necessity for putting any such section here in the Constitution. If there be any evil in this State arising from the question of insurance that has not been met by legislation, I take it to be this, that we have had until very recently—

Mr. MACVEAGH. Will the gentleman allow me? Perhaps there is nobody earnestly in favor of this section. It is a matter of legislation purely. If there is not, we might take the vote at once. If there is I do not want to interrupt the gentleman.

Mr. EWING. It is only from the fact that it had gone through the committee of the whole that I rose to say a word. I think the only subject on which there was any doubt about the necessity of a constitutional provision was this: Heretofore the Legislature of this State has not provided for the inspection of insurance companies so as to make them safe; and I venture to say that two-thirds of the companies doing business in this State are unsafe either as life insurance companies or as fire insurance companies. They have no sufficient capital paid in. Recently there has been an act of Assembly passed which looks towards curing those matters; and I think the whole subject may be safely left to the Legislature.

Mr. WOODWARD. Mr. President: This section was put into the report of the committee at the instance of a delegate from Allegheny county. Now, another delegate from Allegheny having convinced me and the whole House that it never ought to have been put in, I trust the House will vote it down.

The section was rejected.

Mr. WOODWARD. I offer the following amendment, as an additional section:

"It shall be the duty of the Legislature to provide by general enactment that any five or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all requirements of law, form themselves into an incorporated company, with or without limited liability, as may be expressed in the articles of association, and such publicity shall be provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been subscribed."

I want the attention of the Convention for a very few minutes while I explain this subject. You are aware, sir, that our venerable friend from Philadelphia, (Mr. Carey,) the oldest man in this body, and who ought to be the wisest, and perhaps he is, was the chairman of the committee to whom the industrial interests of this

great State were referred. That gentleman made a report which was printed and which I have read attentively and carefully. That report concluded by recommending a constitutional amendment to the effect of that which I have offered. I have before me a printed copy of the very text which his committee recommended, and I am going to ask that it may be read in order that the Convention may have both before them. In drawing and submitting the section which I have offered, I did it because I preferred the phraseology which I have used to that which is in the section reported by the Committee on Industrial Interests; but they are both designed for the same purpose.

Now, what is that purpose? They are intended to introduce into Pennsylvania a principle of legislation that has long prevailed in England and in New England, and under which a vast amount of development has taken place, both in old England and in New England—the right of any number of citizens (which I have put at not less than five) to associate and become a corporation, with limited or unlimited liability as they shall agree and stipulate in their articles of association, for the purpose of prosecuting any lawful business that they may be disposed to engage in. If gentlemen will read the report of Mr. Carey they will see something of the development to which this principle has led in New England and in Great Britain; and assuredly there is reason for introducing into Pennsylvania a principle that has worked so well in those localities. We need it, for we have industries to be developed equal to theirs. True, they have been developed to a great extent; but not at all to the extent that they ought to be, and I trust will be in the immediate future.

Mr. President, we have the partnership law, which is entirely inadequate for these enterprises; we have the limited partnership law; and we have our mining and manufacturing acts of Assembly; and without going into a minute analysis of all this legislation, it is enough to say that none of them, singly or together, are adequate to the wants of Pennsylvania in this regard. If this amendment be adopted, the Legislature will be enabled to provide the people of Pennsylvania such a law on the general subject as will accomplish the results that have been accomplished under the British statutes and in several of the New England States.

Now, sir, for anything more that can be said in behalf of this amendment, I refer the Convention to the gentleman who is really responsible for the proposition (Mr. Carey.) I am in no wise responsible for it; he inspired it; I am only acting as his agent in bringing it before the Convention; and in order that the Convention may have his thought in his own language, I ask the Clerk to read the proposition as reported originally by him, and they will then choose between his language and mine, or reject both as they think proper.

The CLERK read as follows:

"The right of the people of the State to associate together for all lawful purposes, and for trading on principles of limited or unlimited liability, shall not be questioned; but it shall be the duty of the Legislature to provide by law for the organization of associations, and for securing a publicity so complete as to enable all who trade with those which adopt the limited form to become familiar with the fact that no liability exists beyond that of the joint capital which may have been subscribed."

MR. BIGLER. Mr. President: I think well of this proposition. I think it would answer the business interests of our State admirably. We have, it is true, some laws on this subject; but they are full of confusion—the limited partnership law and our mining and manufacturing laws. We need something more simple, more efficient and thorough, or rather more searching. I am inclined to favor this proposition; but I desire to suggest to the chairman of the committee an amendment which, in view of the sensitiveness that has existed on the subject, I think ought to be incorporated. I offer the following amendment, to come in at the end of the section moved by the gentleman from Philadelphia:

"Except that the stockholders shall be liable in their individual estates for all debts due to labor."

This is a subject that has been discussed for many years in Legislatures, ours and elsewhere. I am aware that the opinion is entertained by some gentlemen of large experience that the omission of this clause will be harmless, but I do not think so. The usual escape from its responsibilities is attained by by-laws which forbid entirely the creation of debts for labor. There ought to be no such thing in any corporation or association for ordinary business purposes. They ought to make provision for prompt payment for labor;

every week I prefer to a longer time. So far as I have had any connection with organizations of this kind, I have insisted on that kind of payment of labor. I do not think the clause would be restrictive.

MR. MACVEAGH. I should like to know if the gentleman does not think that the preferences already given by the general law to laborers is amply sufficient in that regard. It gives them, in case of the inability of a company, corporation, or individual in this State to pay its debts, a preference now to the extent of two hundred dollars of back wages.

MR. BIGLER. I am aware of that large protection; but this refers to a new system; this has reference to a law which shall spring out of this provision.

MR. MACVEAGH. But those laws will still apply.

MR. BIGLER. Those laws will apply if they are not repealed; but they may to some extent be superceded by the law which will grow out of this provision.

MR. CAREY. MR. President: The proposition contained in the article reported by the Committee on Industrial Interests is somewhat different from that offered by the gentleman from Philadelphia; and for myself I prefer it, for the reason that I think it more properly goes into the Constitution. It is a declaration of a right, with an instruction to the Legislature to carry that right into effect, whereas, the other is legislation. Nevertheless I accept with great pleasure the section just exactly as my friend (Mr. Woodward) has proposed it, and am perfectly willing to agree to it. What I want to see established is the right of the people to associate and to so associate freely. The grand difficulty in this State has been throughout, the imposition of liabilities of every sort and kind, by which capital has been driven and forced out of the State. Now, labor and land need to invite capital; and all these restrictions that are put, like the one that my friend from Clearfield has just presented, have a tendency to prevent people abroad from taking an interest in our improvements. Two years ago the Legislature passed an act by which the liability was restricted to the property of the company, and I believe that is all we want in the interest of labor for the purpose of bringing capital to the aid of labor. That is what I believe we ought to do; we ought to leave the law just as it stands now on the statute book.

No man likes to become a member of a concern where he is liable to be called upon for contributions over and above those which he has agreed to make. We have been piling one restriction upon top of another, and in preparing the report referred to I had occasion to look at our various laws; and from year to year they have been changed and twisted and turned until it seemed to me almost that it would require half a dozen Philadelphia lawyers to understand what a man's real liabilities were as a member of a corporation. Now, in the English law there is no liability of any sort or kind beyond the property of the company. But there is nothing in this proposition connected with that. That question is for the Legislature. All I want to see established is the right of two, three, five, ten or twenty people to come together and do business on such terms as they may agree with their neighbors. Nobody will doubt for a moment that my friend and I might come together and agree to be responsible for ten or twenty thousand dollars apiece, provided we got all the people to come and write their names down and agree to it; but that would be very troublesome. The English law has done very much better. The English law says that the word "limited"—and that is what we ought to do—shall in all such cases be the last word in the name of the company. No man doing business with them can ever doubt the fact that he is dealing with persons subject to a limited liability. Going to its office the word "limited" stares him in the face. He gets a note, a bond, a bill of lading, or anything of that company, and there is the word "limited." He is cautioned that there is a limitation; and it is his duty, his business, to take care of himself. Now, the more you require people to take care of themselves and think for themselves, the better. In all the charters we grant, a large portion of the people imagine that the Legislature has done something to take care of them, and consequently they do not take care of themselves; but the moment we provide that in all cases the word "limited" shall be used in the title of these companies, no man can make a mistake, and every one will take notice. All that is left for the Legislature. What is provided by either of these articles is the declaration of the right of the people to associate, and I believe that the adoption of this section will be of more use to the State than almost anything else this Convention can do. It

will do more towards bringing capital into the State, towards aiding in developing our resources than almost anything we can do.

Look around in this city and see how many hundred people there are who are now in subordinate positions who are perfectly capable of being heads of establishments. They have not money, but if they could go around to half a dozen men who know them, and say "here, I want you to give me a thousand dollars apiece and I will make ten or twenty thousand for you," there is no difficulty, they can get plenty of money. But the difficulty is not only with the small people, but with the large ones. The owner of one of the largest chemical establishments in this city said to a friend of mine, "we could double and treble our business if we had capital, and if we had limited liability we could have all the capital we want." I know it. These difficulties in our laws now are so great that we need some one principle established that will put an end to them.

Now, as regards these two propositions, I am entirely indifferent which is accepted. They both have the same effect; but I prefer my own for the simple reason that as a declaration of right it is better in my opinion than the other, which is legislation.

Mr. STEWART. I move to amend by striking out all in the first line—

The PRESIDENT *pro tem*. There is an amendment to the amendment pending, which is that offered by the delegate from Clearfield (Mr. Bigler.)

Mr. BIDDLE. I wish to say a few words on this proposition. More than thirty years ago the Legislature of this State, having in view the propriety of allowing persons to associate together with limited liability, passed the statutes which we find in our digest of the laws of the State under the head of "Limited Partnership." From time to time various amendments have been made to the original act of 1836. The principle of that act was this: That a man of capital might embark his whole, or so much of his capital as he desired, in any commercial enterprise, without incurring a greater liability than the sum staked by him—a principle certainly very wise and very adaptive to the interests of this country, and of this State in particular, with its very varied classes of interests. It was found, however, in consequence of many of the provisions by which it was hedged, that it was only ap-

plicable to a very limited class of cases; indeed it never had anything like a very general trial. For instance, a provision which is found in the original law and which still remains is to this effect: That while the special partner, (that is the limited partner; the man who put in a specific sum beyond which, theoretically, he was not to be liable,) might advise as to the management of the business, he should transact no business on its account, nor be employed for that purpose as agent, attorney, or otherwise; and if he interfered contrary to this provision he was to be deemed a general partner; that is to say, the effect of this limitation was that the old, retired merchant or manufacturer of vast business experience and ability was practically prevented from interfering at all in the management of the concern; and while he might have twenty, thirty, forty, or fifty thousand dollars at stake under the language of this act, if he interfered beyond advising—and it was difficult to say how far he might go in that direction—he made himself liable generally. This was found to be a great defect. It was tantamount to saying, "you may enter into a special or limited partnership; but if you give your experience, if you give to the firm the benefit of the enlarged business views you have been for many years acquiring, if you interfere at all, you shall become a general partner." This was found to be a very serious evil; and twenty-five years ago the British government, looking to the importance of allowing persons to embark in any enterprise no matter what its character was, established this principle of limited associations, which were nothing more than partnerships in which the liability of each partner was fixed in advance, so that the whole world might know precisely how he was dealing. From time to time we endeavored to apply this principle to mining and manufacturing associations; but owing, as the chairman of the Committee on Industrial Interests has shown, to the very complicated and sometimes inconsistent provisions of the law, it did not tempt capitalists to embark in the way they should. Instead of the small dribbets of capital which are invested in savings funds and in other institutions at low rates of interest being used to foster and develop the large interests of the State, they were practically locked up.

Now, this proposition comes before the Convention recommended by the experience of more than a quarter of a century

in a country which is eminently practical. It comes before this House recommended by a principle which we adopted nearly forty years ago, but which, unfortunately, we placed in a condition in which it could not work. It says in effect that you may make partnerships to any extent you like, putting in just such sums as you like, restricting the liability to the sum originally embarked, provided you forewarn the whole community that your liability shall not be beyond the sum placed in, by adding at the end of the name of the association, and probably by adding on all the business announcements of the association, the bill heads, the promissory notes, the engagements, and all the different classes of paper which they emit, the same principle of limited liability. I can imagine, after having read with some attention the very able report of the chairman, (Mr. Carey,) giving as it does the experience of Great Britain now for more than a quarter of a century on this subject, an experience which has led them to expand rather than to contract the whole system, nothing more valuable; and I trust, therefore, that we shall be allowed to try it unhampered at all.

While I am not at all unmindful of the claims of the laborer for his wages, yet I wish to start this principle entirely untrammelled. There is no more danger of the laborer being deceived, if he is employed by a partnership of this limited liability than of anybody else being deceived. It is difficult sometimes precisely to discriminate between different classes of laborers. The amendment of the gentleman from Clearfield, it seems to me, would be going a great deal too far. "Provided," he says, "that individual liabilities shall apply to labor." Now, what is labor? An associated company like this buys, if you please, a steam engine from a firm which embarks in that kind of business. When you say that labor shall be a specific charge upon all the property of the association, as well that which is specially placed in the firm as that which they have outside and beyond it, you mean the whole labor which makes the machine valuable, you mean everything over and above the mere crude material that is employed in the manufacture. I apprehend that the gentleman does not intend to go so far. He probably would confine his provision to the mere wages of labor, although he does

not say so, and if we are to pass it it ought to receive that limitation.

I, however, for one, would be disposed to give this system—knowing that advantages have resulted from it for more than a quarter of a century abroad; knowing the success it has there obtained; knowing that instead of hampering it abroad they are giving it greater development and expansion—a fair trial here, and I am disposed to vote for it as it is found in the original provision. I trust that this Convention, mindful of the powerful arguments which have been presented in support of the provision contained in the report of the Committee on Industrial Interests, which I trust has been read substantially, if not absolutely, by every member of the Convention, will allow this provision to be adopted precisely as it is, as a declaration of the right of the people of this State to associate together for all lawful purposes, whether associated on principles of limited or unlimited liability.

Mr. MACCONNELL. Will the gentleman permit me to interrupt him.

Mr. BIDDLE. Certainly.

Mr. MACCONNELL. Why confine it to associations of five or six? Why not extend it universally?

Mr. BIDDLE. The gentleman is referring to the article as presented by the learned chairman of the Committee on Private Corporations. I am referring to the article originally reported by Mr. Carey, of Philadelphia, as the chairman of the Committee on Industrial Interests and Labor. I will read it to show that it contains no limitation.

"The right of the people of the State to associate together for all lawful purposes, and for trading on principles of limited or unlimited liability, shall not be questioned; but it shall be the duty of the Legislature to provide by law for the organization of associations, and for securing a publicity so complete as to enable all who trade with those who adopt the limited form to become familiar with the fact that no liability exists beyond that of the joint capital which may have been subscribed."

I prefer this article, because, as was so well said by the gentleman from Philadelphia, the chairman of the Committee on Industrial Interests and Labor, when he spoke a little while ago, it is a declaration more suitable to the organic law. It merely starts out with the enunciation of the great principle of allowing people,

provided the public is sufficiently cautioned in advance, to deal on the limited principle, and gathering into one heap all their little hoards of capital, to foster and promote the general interests of the community, leaving to the Legislature afterward the laying down from time to time of such restrictive clauses as in their wisdom may seem best.

I trust, therefore, the section will pass in this shape. Of course, in saying this, I do not wish in any way to trench upon the understanding which seems to exist between the chairman of Industrial Interests and Labor and the chairman of the Committee on Private Corporations. I merely indicate my preference. If the gentleman who has this subject so much at heart is willing that the article should be presented in the shape in which it comes from the Committee on Private Corporations, so be it. I am merely indicating my preference between the two plans. I think, for instance, that it is wiser not to put into the organic law any condition as to the number of associators. As was well asked by the gentleman from Allegheny, (Mr. MacConnell,) why not extend it to three as well as five? I can see no reason why it should not be so. I would go for the smallest possible number. I would go for no restrictions of any kind except so thorough a caution, in advance, to all who deal with the association when formed, that they may be said to have fairly become familiar with the fact, in the language of the original article, that "no liability exists beyond that of the joint capital which may have been subscribed." I trust, therefore, that the article will be adopted in this shape.

Mr. BIGLER. I desire, with reference to my amendment, to say that I intended it simply to apply to the wages of labor, but as I am exceedingly interested in the question, and desire to have this measure untrammelled, I will withdraw the amendment.

Mr. AINEY. I now move to amend by inserting after the word "persons," the words "a majority of whom are."

Mr. CUYLER. If the gentleman would enlarge that amendment by striking out the words "five or more," so that it would read "any persons, of whom a majority are citizens of this Commonwealth," I think his amendment would be in better shape.

Mr. AINEY. I think that would be an improvement, and I therefore modify my amendment accordingly.

Mr. WOODWARD. I have no objection at all to these suggestions if they will recommend the subject to gentlemen. But allow me to say that the original amendment was most carefully prepared. Our mining law mentions "five," and we are all familiar with the Pennsylvania mining law, and therefore this number was selected as the limit for an association. One of the great objects of this provision is to encourage the laborer to become a partner with the capitalist in the prosecution of a common enterprise, and that would be a curious enterprise in which the capitalists and the laborers did not amount to five. There is no good reason why the number should not remain at five. In my opinion, five is exactly the right number. I do not think the Legislature ought to be called upon to incorporate companies of less than five capitalists and laborers. The probability is that in process of time these gentlemen will act generally upon that principle, and the number will be largely increased instead of ever presenting any necessity for its being reduced. However, I have no feeling about five or more. I only believe it would be unwise to make it less.

Mr. KATNE. Will the gentleman from Philadelphia allow me to make a suggestion?

Mr. WOODWARD. Certainly.

Mr. KATNE. I suggest that you strike out the word "enactment" and insert the word "law" so that it would read: "It shall be the duty of the Legislature to provide by general law."

Mr. WOODWARD. Oh; that is hypercriticism. [Laughter.]

Mr. AINEY. I desire to say that my object in moving this amendment is to require only a majority of the persons associating themselves together in business to be citizens of this Commonwealth. I would allow the benefits of this provision to be extended to people of other States, so as to allow citizens of New Jersey or New York, or any other Commonwealth, or of any other country, to come in here and use their capital for the development of our resources.

Mr. DODD. The question has arisen whether the benefits of this article could not be applied to two as well as to five. I would like to ask why it should not be applied to one as well as to two. In other words, sir, why should corporations or associations have greater rights than individuals? That they should not have has been the principle for which I have labor-

ed and voted since I took my seat in this Convention, both as a member of the Committee on Private Corporations and as a delegate on this floor. I consider it only fair and right that individuals should have under the law the same liberties and privileges that are allowed to corporations. If this principle of limited liability should be applied to associations then it should be applied to individuals; and if it will not bear that test there is something wrong about it. If two or five men who desire to put capital together and start an iron mill have the right to limit their liability by so stipulating in their articles of association, why have I not that right as an individual if I want to enter into the same enterprise? What right have five men, associated together, to have a principle applied to them as to their liability which should not be applied to me as an individual operator in the same business?

Individuals have or should have the same rights, in entering into business, as associations or corporations. If men associated together so conduct their business that they can have no losses above a certain sum there is no necessity for this section; but if they so transact their business that there will be losses above the sum to which their liability is limited, that loss must fall on some one, and the simple question to be tested here is whether the loss shall fall upon those who contracted the debts or upon those who trusted the association, "not wisely but too well?"

The unlimited right to associate together is already granted by the sections adopted. We have required the Legislature to pass general laws and have prohibited it from incorporating any company by special law. In enacting that general law the Legislature may fix a limited or unlimited liability as it sees fit. But this experiment had better be left to the Legislature. Let it experiment on the subject, and if it does wrong it can correct it by speedily changing the law, which we cannot do.

It is argued that this favors the association of capital. Capital will always associate itself together whenever the business is safe, and if it is not safe let the capitalists suffer and not the laborer. I object to this section because it is a dangerous experiment and because it is class legislation in favor of capitalists. It cannot favor laborers to any great extent. It will rob them of their labor on one

hand, and on the other will induce them to enter into dangerous associations which will rob them of their little capital.

If this is a rule proper to be applied to individuals I will consent that it be applied to associations of two or more individuals. I am in favor of putting everybody on the same level, whether laborers or capitalists, whether individuals or association of three or more individuals make all liable in the same manner, give all the same rights, make no distinctions whatever. I hope that no such dangerous experiment as this will be adopted here. Let the Legislature do as it sees fit in regard to this matter. If it makes mistakes it can correct them. If we make mistakes they will last for years.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lehigh (Mr. Ainey.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. STEWART. I move to amend by striking out all of the first line and inserting before the word "subscribed," the last word in the section, the words "invested or," so as to read, "joint capital which may have been invested or subscribed."

The purpose of this is to leave it simply as a declaration of right. The amendment as offered provides that it shall be the duty of the Legislature to provide by general enactment so and so. The amendment I have proposed, if adopted, leaves it simply a declaration of right and in constitutional form, as I think.

SEVERAL DELEGATES. Let the amendment be read.

The PRESIDENT *pro tem*. The clause will be read as it will read if amended.

The CLERK proceeded to read as follows:

"Any five or more"—

Mr. STEWART. "Any two or more." It is so in the original I used, and it should read, "any two or more." I include that in my amendment.

The CLERK. The clause will then read:

"Any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all requirements or law, form themselves into an incorporated company, with or without limited liability, as may be expressed in the articles of association, and such publicity shall be

provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been invested or subscribed."

The amendment was agreed to.

Mr. DALLAS. I move to amend by adding after the word "know," on the next to the last line, the words, "the amount of capital subscribed and," and striking out all after the word "that," in the same line, and inserting "amount," so that it will read:

"And such publicity shall be provided for as shall enable all who trade with such corporations as adopt the limited liability to know the amount of capital subscribed, and that no liability exists beyond that amount."

My amendment extends only to this purpose: That in addition to the publicity of the fact that no liability exists beyond the amount subscribed, publicity shall also be given of the amount subscribed, so that every person dealing with the corporation shall know not only that its liability is limited to its capital, but what its capital at the outset was. That does not require extended argument, in my opinion, but a simple statement, and I leave it to the Convention.

Mr. DARLINGTON. Allow me to suggest to the gentleman from Philadelphia to put in the word "invested" instead of "subscribed."

Mr. DALLAS. Well, put in "invested or subscribed."

Mr. DARLINGTON. There is no more fruitful source of fraud than just that one thing. Insurance companies and companies of every kind say "subscribed capital," so much. But what I want is invested capital paid in.

Mr. WOODWARD. They are liable for all they subscribe. What larger measure of liability can you have? Whether they have paid it in or not, if they are responsible for what they subscribe, you have the very largest liability.

Mr. DARLINGTON. I want the largest.

Mr. KNIGHT. The subscriptions may be made by irresponsible parties, and you cannot hold them liable.

Mr. FELL. "Subscribed and paid."

Mr. DARLINGTON. "Subscribed and paid" is better.

Mr. MACVEAGH. That weakens it; that prevents their being responsible for the stock not paid.

Mr. WOODWARD. If gentlemen would have a little confidence in their own language, they would find that the largest liability is expressed when you say they shall be liable to the extent of the stock subscribed.

Mr. FELL. I would rather have any man's money than his subscription, I do not care who he is.

Mr. CAREY. In all these cases it is provided that the stockholders shall be liable for the whole amount subscribed. That is the extent of their liability. They may have paid ten per cent. or twenty per cent. or fifty per cent., but they must pay up to the last dollar as the measure of their liability. It seems to me the whole ground is covered by the words used here; and all these changes weaken it rather than strengthen it.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Dallas) to the amendment.

The amendment to the amendment was rejected.

Mr. CUYLER. I move to amend by striking out in the third and fourth lines the words "of association and complying with all requirements of law," and inserting the words "expressing the conditions and purposes of their association," so that it will read:

"Any five or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles expressing the conditions and purposes of their association, form themselves into an incorporated company," &c.

My object in the amendment is simply this:—

Mr. CAREY. I accept it.

Mr. CUYLER. My venerable friend (Mr. Carey) permits me to say that he approves the amendment. My object in it is chiefly this: The use of the words "and complying with all requirements of law" has a tendency to clothe the Legislature with a power which may practically destroy the value of the section. They may prescribe so many conditions and limitations, and of so difficult and obscure a character, that the value of the law would be practically taken away. Now, my own estimate of the value of this provision is that there is nothing which this Convention has acted upon which is more important to the development and prosperity of the State than this very section; and that it is founded upon a wise thought, because I think the

thought that underlies this section is simply that those who deal with corporations are put on their guard and are taught that they are to rely on the character, and the integrity, and the standing of the men who control them, rather than upon enactments of the Legislature, which are after all but deceptive traps that lead to destruction.

I do not believe that any of those laws which have been from time to time passed, which were intended to provide special protections for laboring men and for the humbler classes of men, have amounted to anything else than mere delusions which have led them to their destruction, and I think the thought that underlies this is therefore wise and prudent.

Mr. WHERRY. It strikes me that the amendment offered by the gentleman from Philadelphia goes much further than perhaps he is aware of. The words to be stricken out are, "of association and complying with all requirements of law."

Mr. CUYLER. The gentleman will pardon me, I propose to follow it up by another amendment adding, in the third line from the end, after the words "provided for," the words "by law."

Mr. WHERRY. That meets the objection I was about to make.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia.

Mr. WHERRY. I still think this amendment is objectionable. It is putting in the power of this association to lay down the conditions upon which this notice shall be given.

Mr. CUYLER. Not at all.

Mr. WHERRY. Clearly so, to express the conditions and purposes of the association.

Mr. CUYLER. The gentleman will pardon me—

Mr. WHERRY. It certainly gives the very widest door for fraud.

Mr. CUYLER. Will the gentleman pardon me for calling his attention to the subsequent clause: "Such publicity shall be provided by law." The publicity shall be provided for by law.

Mr. WHERRY. Yes, the publicity is to be provided for by law; but still the conditions and purposes for which that association was formed may be concealed under words and phraseology, in the articles of agreement and association, so as to blind the public as to what the purpose and condition are. Now, I claim that the Legislature shall exercise a supervision over these articles of association so as to

declare on what conditions these associations shall be formed.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Cuyler.)

The amendment was rejected, there being on a division, ayes thirty-seven, noes forty-six.

Mr. ARMSTRONG. Mr. President: I have very strong sympathy in the purposes proposed to be accomplished by this amendment. I believe that the material interests of the country have largely outgrown the capabilities of merely private capital, and that there are vast interests of the county which require associated capital to accomplish them in their best form, and to meet the necessary competition of other States and other interests.

I propose an amendment to the section which I believe preserves all that is valuable, and will strike at much that I think is of no importance. In the first place, I do not like that form of expression in a Constitution which simply provides that it shall be a duty of the Legislature to do so and so. I prefer that the expression of the Constitution shall be imperative, so that the amendment I propose will read thus:

"The Legislature shall provide by general law that any five or more persons, a majority of whom shall be citizens of this Commonwealth, may form themselves into an incorporated company, with or without limited liability, as may be authorized by law and expressed in the articles of association; and such publicity shall be required as shall enable all who trade with such corporations who adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been subscribed."

I have no objection to making it "three or more" if gentlemen desire.

Mr. STEWART. I think any language that is directory on the Legislature is objectionable. I think the best possible shape to put this in, is to make it the declaration of a right. Now, the proposition of the gentlemen from Lycoming just offered requires the Legislature to pass a general law for this very thing. It would be a great deal better simply to make it a declaration of right on the part of the individuals. Let it read: "That any two or more persons, citizens of this Commonwealth, or a majority of whom shall be citizens of this Commonwealth,"

shall have a right to do so and so. That is preferable, I think.

Mr. MACVEAGH. I move to amend the amendment by striking out "five" and inserting "any citizens of this Commonwealth."

The PRESIDENT *pro tem*. This is an amendment to an amendment.

Mr. MACVEAGH. I trust then the mover will modify it. We voted that in on the amendment proposed.

Mr. EWING. I trust the gentleman from Lycoming will not modify it so as to make it less than five. That is a small enough number to be allowed to go into any association of the sort. One of my principal reasons for allowing five or more to go into such an association would not apply to a smaller number. Ordinarily, where there are but two or three, they can give the business a personal supervision and should be responsible.

Mr. WOODWARD. Mr. President: I hope the House will understand that the amendment of the gentleman from Lycoming leaving it to be provided by law will bring special legislation into each one of these corporations. Now, the amendment as originally drawn intended to exclude that. The gentleman's amendment as expressed will introduce special legislation.

Mr. ARMSTRONG. If the gentleman is correct in his criticism, I shall certainly desire that it should be amended, for I do not wish that there should be special legislation in the case; but it is to be observed that the first clause requires that the Legislature shall provide by general law and the second clause where it speaks of "being provided by law" is in subjection to the first, which requires that it shall be a general law; but if there be any doubt about it, I have no objection to making the proper modification.

Mr. WOODWARD. The introduction of the second clause has reference to the liability, limited or unlimited, as the Legislature shall direct. That defeats the very object.

The PRESIDENT *pro tem*. The Chair would call the attention of the delegate from Lycoming to the fact that the first line of the original amendment has been stricken out by the motion of the delegate from Franklin.

Mr. ARMSTRONG. But I am offering an amendment now which stands by itself.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lycoming.

Mr. H. G. SMITH. Mr. President: I have paid some attention to this question; and as the debate has gone on my mind has reached the firm conviction that this Convention ought not to give power to do what is asked in either one of these propositions. The power to go as far in that direction as the wants of this Commonwealth demand exists already in the Legislature, and it can be exercised by the Legislature from time to time as the interests of the Commonwealth demand, and will no doubt be so done.

There was much force in the argument urged by the gentleman from Venango, (Mr. Dodd,) and it must be remembered that in this day of ours throughout this Commonwealth, individual enterprise is called upon to make what seems to be fast becoming a hopeless fight against combined capital. I am opposed, not to the Legislature going as far as it may be proper from time to time in this direction, but I am certainly opposed to putting any imperative requirement of this kind in the Constitution and saying in the fundamental law that the Legislature shall provide for associations of a certain kind with certain privileges. Having come to that conclusion, I shall vote against both these propositions in the shape in which they are presented, or either one of them; and I think if the members of the Convention will reflect seriously on this question, they will be perfectly willing to leave this matter in the hands of the Legislature, feeling assured that coming from the people from year to year as it does, it will provide for the material interests of the Commonwealth and go as far in this direction as may be necessary.

The PRESIDENT *pro tem*. The question is upon the amendment of the delegate from Lycoming (Mr. Armstrong.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. HUNSICKER. I rise to ask the gentleman who is the author of this section whether by this section the joint assets of the corporation are liable for all the debts, or whether it limits the liability to the joint capital subscribed, because I think if it is not included, an amendment of that kind should be added, so that the entire assets of the corporation shall be liable for its debts.

Mr. WOODWARD. The liability is to be measured by the subscription, by the amount subscribed. Each stockholder is

to be liable for the debts of the company to the extent of the stock subscribed.

Mr. HUNSICKER. What is to become of the surplus capital?

Mr. BIDDLE. The word "invested" includes that.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Woodward) as amended.

Mr. EDWARDS. I call for the yeas and nays.

The yeas and nays were ordered, more than ten members rising to second the call.

Mr. TEMPLE and others. Let it be read.

The PRESIDENT *pro tem*. The amendment as amended will be read before the yeas and nays are called.

The CLERK read as follows:

"Any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all the requirements of the law, form themselves into an incorporated company with or without limited liability as may be expressed in the articles of association, and such publicity shall be provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been invested or subscribed."

The question was taken by yeas and nays, with the following result:

YEAS.

Messrs. Armstrong, Baer, Baily, (Perry,) Barclay, Biddle, Bigler, Bowman, Boyd, Brodhead, Broomall, Bullitt, Calvin, Carey, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Darlington, Dunning, Edwards, Ellis, Ewing, Fell, Finney, Fulton, Guthrie, Hemphill, Horton, Howard, Hunsicker, Knight, Lear, Lilly, MacVeagh, M'Clean, M'Culloch, Mann, Mantor, Newlin, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Read, John R., Reed, Andrew, Runk, Russell, Smith, Henry W., Stanton, Stewart, Struthers, Temple, Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, Harry, Woodward and Wright—68.

NAYS.

Messrs. Ainey, Airicks, Andrews, Bailey, (Huntingdon,) Bannan, Black,

Charles A., Brown, Buckalew, Church, Clark, Davis, De France, Dodd, Elliott, Funck, Gibson, Gilpin, Hall, Harvey, Hay, Kaine, Lamberton, Lawrence, Long, MacConnell, M'Murray, Metzger, Minor, Mott, Niles, Parsons, Patton, Purman, Purviance, John N., Smith, H. G. and Worrell—38.

So the amendment as amended was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Campbell, Cassidy, Collins, Craig, Cuyler, Dallas, Green, Hanna, Hazzard, Heverin, Landis, Littleton, M'Camant, Mitchell, Purviance, Samuel A., Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Van Reed, White, J. W. F. and Meredith, President—31.

Mr. FUNCK. I offer the following amendment as an additional section:

"The Legislature shall take immediate steps to annul all charters heretofore granted to individuals and corporate bodies, with banking and discounting privileges, other than banks of issue, but this power shall be so exercised as to do no injury to corporators; and hereafter the Legislature shall confer such privileges only upon banks of issue.

Mr. President, I have myself very decided opinions upon the subject-matter covered by this amendment. Under the twenty-sixth section of the article on the Legislature in the Constitution of 1838, with the amendments, it will be found that the Legislature has authority to revoke the privileges conferred upon corporations for these and other purposes. This is a direct blow at the "dime savings institutions" and "banks of deposit" that have been springing up all over the State. I have heretofore had occasion to advert to this matter, and I now bring it before the Convention in a specific form, so that the sense of this body can be ascertained on this question. I believe that the interest of the community requires that these institutions should be wound up, and for the purpose of bringing about this end I have submitted this section as an amendment. It will be observed that, if it be adopted, it will take from the Legislature all authority in the future to create institutions of this character.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lebanon (Mr. Funck.)

The amendment was rejected.

Mr. HARRY WHITE. I offer the following as an additional section:

"The Legislature shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this Constitution, or any hereafter to be conferred by or under any law, whenever, in their opinion, it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation."

This is the identical section which I offered yesterday, and the section of the present Constitution with a saving clause in it. The only difference from the old Constitution is that the amendment of 1857 allows the Legislature to alter, revoke or annul charters of corporation hereafter granted, and I do not want the Legislature to lose the power over the acts of incorporation passed between 1857 and 1838. Hence the words "now revocable."

Mr. MACVEAGH, I trust the proposition will be adopted.

The amendment was agreed to.

Mr. WOODWARD. I offer the following amendment and ask gentlemen to give me the yeas and nays without saying one word upon it:

"No suspension of specie payments shall be permitted or sanctioned by law."

I ask for the yeas and nays on it.

The yeas and nays were ordered, more than ten delegates rising to second the call.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on this amendment.

The yeas and nays were taken and resulted as follows:

Y E A S.

Messrs. Baer, Bannan, Church, De France, Ellis, Gilpin, Guthrie, Harvey, Hemphill, Kaine, Long, M'CLean, M'Murray, Metzger, Smith, Henry W., Wherry, Woodward, Worrell and Wright—19.

N A Y S.

Messrs. Ainey, Alricks, Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Clark, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Darlington, Davis, Dodd, Edwards, Elliott, Ewing, Fell, Finney, Fulton, Funck, Gibson, Hall, Horton, Howard, Hun-

sicker, Knight, Lamberton, Lawrence, Lear, Lilly, MacConnell, MacVeagh, M'Culloch, Mann, Mantor, Minor, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Russell, Stanton, Stewart, Struthers, Turrell, Walker, Wetherill, John Price, White, David N. and White, Harry—77.

So the amendment was rejected.

ABSENT. — Messrs. Achenbach, Adicks, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Boyd, Cassidy, Collins, Craig, Cuyler, Dallas, Dunning, Green, Hanna, Hay, Hazzard, Heverin, Landis, Littleton, M'Camant, Mitchell, Pughe, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Temple, Van Reed, Wetherill, J. M., White, J. W. F. and Meredith, President—37.

Mr. T. H. B. PATTERSON. I wish to call the attention of the Convention for a single moment to the fact that the twenty-fifth section of the present Constitution was reported as section thirty-two of the article submitted by the Committee on Legislation and was stricken out with the understanding that it was to go into the article on corporations. Section twenty-five provides for six months' advertising for applications for banking privileges, limits the bank charters to twenty years and provides that they shall always be revocable at the pleasure of the Legislature. In accordance with what was the understanding at the time this section was before the Convention, I now offer section twenty-five of the present Constitution as a new section of this article.

The PRESIDENT *pro tem*. The new section will be read.

The CLERK read as follows:

"No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges, without six months' previous public notice of the intended application for the same in such manner as shall be prescribed by law, nor shall any charter for the purpose aforesaid be granted for a longer period than twenty years, and every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same whenever, in their opinion, it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done

to the corporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation."

Mr. MACVEAGH. I would like to suggest to the gentleman that he strike out the revocable clause. We have just passed it in express terms in the amendment of the gentleman from Indiana.

Mr. T. H. B. PATTERSON. I am satisfied to withdraw that part of the section, if it has been passed before. This section is one that I think the Convention ought to retain. It provides for matters that we have not provided for in any other section or article. It was stricken out of the report of the Committee on Legislation by the committee of the whole, with the understanding that it would be re-inserted in the article on corporations. Instead of reporting this section the Committee on Corporations reported another section, in a very different form from this one, which was also voted out in committee of the whole. The section ought now to be introduced. It was reported by the Committee on Legislation as necessary in addition to all the other restrictions which have been put in. At least the substance of this section ought to be here preserved. If delegates wish to amend the language of the old Constitution that is another matter, but I move to insert it here in order that the Convention may vote, fairly and squarely, whether they will retain this section or not.

Mr. HARRY WHITE. I move to amend by striking out all after the word "years."

The PRESIDENT *pro tem*. The Clerk will read the part proposed to be stricken out.

The CLERK read as follows:

"And every such charter shall contain a clause reserving to the Legislature the power to alter, revoke or annul the same whenever in their opinion it may be injurious to the citizens of the Commonwealth; in such manner however that no injustice shall be done to the corporators."

Mr. HARRY WHITE. We have just reserved to the Legislature the power to alter or revoke any charter granted under any law whatever. That was done by the adoption of my amendment, and that meets the entire situation. If my amendment now be adopted, it will leave the section read:

"No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges, without six months' previous public notice of the intended application for the same, in such

manner as shall be prescribed by law. Nor shall any charter for the purpose aforesaid be granted for a longer period than twenty years."

This is almost an exact transcript of the present Constitution in this regard, and the propriety of some provision of this kind must be manifest to every member of the Convention. There is nothing in which the business public is so much interested as in the laws providing for the charter of banking institutions. Undoubtedly we shall have a general banking law authorizing the creation of banks of discount and savings institutions, and it is only right that the public shall be advised by an extended advertisement of an intended application for a charter, and of the terms of the association of the persons who are to be thus associated. That is just what this provides.

Mr. LILLY. If I heard this amendment read aright by the gentleman from Allegheny, it was one which was tacked on in the committee of the whole to the report of the Committee on Corporations and after a full discussion was voted down, or at least a portion of it was. That was that no corporation should extend over twenty years. It was discussed very thoroughly, understood fairly and deliberately voted down. The article that was rejected in the report of the Committee on Corporations said that all corporations except railroads, canals, turnpikes, &c., should expire at the end of twenty years. It was shown then that there were other corporations, besides railroads and canals, which would be greatly injured by stopping their chartered privileges at the end of twenty years. If this amendment, which I heard imperfectly when it was read, applies only to banks, I have no objection to it. If it is intended to reach the case of other corporations, I am entirely opposed to it.

Mr. HARRY WHITE. The gentleman from Carbon will observe that it applies only to banking institutions.

Mr. LILLY. Then it is all right.

On the question of agreeing to the amendment proposed by Mr. Harry White, a division was called for, which resulted sixty in the affirmative and ten in the negative. So the amendment was agreed to.

Mr. STEWART. I desire to say that I never saw any occasion for the introduction of this section into our Constitution, in view of the fact that we have already restricted the Legislature from granting

any charters in the manner indicated by this amendment. We have provided for general laws; all these charters must be granted by general laws. On reference to section ten of the article reported by the Committee on the Legislature, line forty-five will be found to read as follows:

"The Legislature shall not pass any special or local law creating corporations or amending, renewing or extending the charters thereof."

It would seem to me incongruous to introduce this amendment now in view of the action taken by the Convention on this section of the article on legislation.

Mr. HARRY WHITE. If the gentleman will allow me I will explain—

Mr. STEWART. Certainly.

Mr. HARRY WHITE. The statement of the delegate is perfectly correct, but the section to which he has referred does not contain the prohibition that it is intended shall be given by this section now under consideration. That is intended to prevent any special law being passed to create or extend the charter of any corporations. This present section applies only to banks and corporations of discount, and simply provides that notice shall be given to the public of the manner in which their organizations shall be effected. Even suppose the provision does exist, there must be an organization under the general law, and this requires a publication of the intended application and all the details thereof. These are necessary for the protection and the information of the public.

Mr. STEWART. Then if that be so, the phraseology of the section is certainly unfortunate, and it ought to be modified.

Mr. HARRY WHITE. If the gentleman from Franklin will read the section carefully, he will see that it is all right.

Mr. MACVEAGH. Oh, yes, it is all right.

Mr. BUCKALEW. I desire to inquire whether the limitation is three months or six.

The PRESIDENT *pro tem*. It is six months.

Mr. BUCKALEW. Then I move to strike out "six" and insert "three."

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is on the amendment as amended.

The amendment as amended was agreed to.

The PRESIDENT *pro tem*. The article is concluded. The question is, shall it be transcribed for third reading?

Mr. WOODWARD. Before that vote is put I wish to offer an amendment that I have not yet had the opportunity to offer.

The PRESIDENT *pro tem*. The Chair will receive the amendment.

Mr. WOODWARD. I offer this amendment as a new section:

"The term 'corporations' as used in this article shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships."

The committee introduced that section into their report, desiring it to stand at the head of this article; but the Convention in committee of the whole struck it out. A question arose in debate afterward as to what would be a corporation under the provisions of this article and what would not, showing the necessity of defining what shall be held by the courts to be corporations. I propose to put it in here. It is entirely harmless. It encounters no man's prejudices. It is a rule for the courts. It makes all these associations corporations for all these purposes, and I can see no possible objection to putting it in; and if it is put in I hope the Committee on Revision will put it at the head of this article. That is all I have to say.

The amendment was agreed to.

Mr. MOTT. I offer the following amendment as a new section:

"That no incorporated company organized for mining purposes or possessed of mining privileges shall own, hold or possess the soil or surface right of more than one thousand acres at any one time, exclusive of lands held for the right of way for railroad purposes, by due appropriation of law."

I ask for the yeas and nays.

More than ten members rising to second the call, the yeas and nays were ordered and taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Bailey, (Huntingdon,) Bigler, Black, Charles A., Buckalew, Campbell, Cochran, Dodd, Ewing, Finney, Funck, Gibson, Gilpin, Guthrie, Howard, Kaine, Long, M'Culloch, M'Murray, Metzger, Mott, Palmer, G. W., Patterson, D. W., Porter, Purman, Russell, Simpson, Smith, H. G., Smith, Henry W., Stewart, Temple and Turrell—33.

NAYS.

Messrs. Ainey, Baer, Bailly, (Perry,) Bannan, Barclay, Biddle, Bowman, Boyd,

Brodhead, Broomall, Brown, Bullitt, Carey, Carter, Church, Corbett, Cronmiller, Curry, Curtin, Darlington, Davis, De France, Edwards, Elliott, Ellis, Fell, Fulton, Hall, Harvey, Hay, Hemphill, Horton, Hunsicker, Lamberton, Lawrence, Lilly, MacConnell, MacVeagh, Mann, Mantor, Minor, Niles, Parsons, Patterson, T. H. B., Patton, Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Stanton, Struthers, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, Harry, Woodward and Worrell—60.

So the amendment was rejected.

ABSENT—Messrs. Addicks, Andrews, Armstrong, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Calvin, Cassidy, Clark, Collins, Corson, Craig, Cuyler, Dallas, Dunning, Green, Hanna, Hazzard, Heverin, Knight, Landis, Lear, Littleton, M'Camant, M'CLean, Mitchell, Newlin, Palmer, H. W., Reynolds, Rooke, Ross, Sharpe, Smith, Wm. H., Van Reed, White, David N., White, J. W. F., Wright and Meredith, *President*—40.

Mr. BIDDLE. I move that this Convention take a recess until half-past three o'clock.

Mr. LILLY. I move to reconsider the vote on the sixth section. I do not ask for a vote on it now.

Mr. BIDDLE. I insist on the motion for a recess. It is one o'clock.

The *PRESIDENT pro tem.* The hour of recess is at hand. The Chair therefore now adjourns the Convention until half-past three o'clock this afternoon.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

CORPORATIONS.

The *PRESIDENT pro tem.* The question pending is on transcribing for third reading the article on corporations.

Mr. HALL. Mr. President: I desire to move a reconsideration of the vote by which section six of this article was adopted, and I ask leave to state the reasons on which I make the motion.

The *PRESIDENT pro tem.* Did the delegate vote with the majority?

Mr. HALL. Yes, sir. I ask leave now to state the grounds on which I make the motion. ["No."]

The *PRESIDENT pro tem.* Is the motion seconded?

Mr. LILLY. I second the motion.

The *PRESIDENT pro tem.* The question is on the reconsideration.

Mr. LILLY. I hope the gentleman will have a chance to make his statement.

Mr. LAWRENCE. I should be glad if the gentleman from Elk should have liberty to make his statement, so that we may know the reasons for the reconsideration. ["No; no."]

The *PRESIDENT pro tem.* The question is not debatable.

Mr. MANN. I call for the yeas and nays.

Mr. COCHRAN. I second the call.

The yeas and nays being required by Mr. Mann and Mr. Cochran, were as follow, viz;

YEAS.

Messrs. Ainey, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Black, C. A., Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Church, Clark, Corson, Curry, Curtin, Darlington, Elliott, Ewing, Fulton, Gibson, Gilpin, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Hunsicker, Kalne, Knight, Lamberton, Lilly, M'CLean, Mantor, Palmer, G. W., Palmer, H. W., Pughe, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Runk, Russell, Simpson, Smith, H. G., Stanton, Stewart, Struthers, Temple, Walker, Wherry, White, David Woodward, Worrell and Wright—59.

NAYS.

Messrs. Alricks, Andrews, Baer, Bailly, (Perry,) Campbell, Carter, Cochran, Cronmiller, Dallas, De France, Edwards, Ellis, Funck, Guthrie, Horton, Howard, Lawrence, Long, MacConnell, M'Murray, Mann, Metzger, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Purviance, John N., Smith, Henry W., Van Reed, and Wetherill, J. M.—30.

So the motion to reconsider was agreed to.

ABSENT—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Bullitt, Calvin, Carey, Cassidy, Collins, Corbett, Craig, Cuyler, Davis, Dodd, Dunning, Fell, Finney, Green, Heverin, Landis, Lear, Littleton, MacVeagh, M'Camant, M'Culloch, Minor, Mitchell, Newlin, Parsons, Patton, Porter, Read, John R., Rooke, Ross, Sharpe, Smith, Wm. H., Wetherill, J. Price, White, Harry, White, J. W. F. and Meredith, *President*—44.

The *PRESIDENT pro tem.* The section will be read.

The CLERK read as follows :

SECTION 6. No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business; and the Legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages made by viewers or otherwise; the final determination of the amount of such damages shall in all cases of appeal be determined by a jury.

Mr. HALL. The reason why I have moved the reconsideration is this: The latter clause of this section so provides that in the case of an appeal from a view for damages, it is imperative that the trial shall be by jury. While I believe that the right of trial by jury should remain inviolate, I do not see the propriety of compelling the parties in a case like this to submit to a trial by jury when they might be better pleased with some other mode which the Legislature may provide for determining difficulties between them. Another mode may be less expensive, less tedious, and more convenient to all concerned. It is, of course, proper that the right of trial by jury should remain to either party; but the parties ought not to be compelled to accept what may be a tedious, troublesome and more expensive mode.

I therefore move to amend the latter clause of the section so as to read, "the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury."

That will save the right without making the mode of trial compulsory.

Mr. CORSON. I submit whether it would not be better to say, "shall on the demand of a party."

Mr. HALL. I have said "either" party.

Mr. CORSON. There may be three parties, and would it not be better to say "on the demand of a party."

Mr. DALLAS. "Any party."

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was agreed to.

Mr. BUCKALEW. I move to further amend by inserting after the word "damages," in the fifth line, the words, "against a corporation."

But a word: I mentioned on second reading that the language as it now stands in this section would apply to an ordinary assessment of damages. The observation is correct. What is intended is an assess-

ment of damages against a corporation. It is not necessary to say "a private corporation" here, because the chairman of the Committee on Private Corporations has added a section to the end of the article which defines the meaning of the word "corporation" wherever it is used in this article. Therefore it will be simply necessary to say "damages against a corporation."

On the question of agreeing to the amendment proposed by Mr. Buckalew, a division was called for, which resulted fifty-six in the affirmative and one in the negative.

So the amendment was agreed to.

Mr. DARLINGTON. I move further to amend by striking out the words, "the final determination of." As it stands now the Convention will perceive that "the final determination of the amount of such damages shall in all cases of appeal be determined by a jury," which is a little awkward as a scholarly expression, and I suppose crept in by inadvertence. I propose to so amend as to make it read:

"The amount of such damages shall in all cases of appeal be determined by a jury."

On the question of agreeing to the amendment proposed by Mr. Darlington, a division was called for, which resulted fifty-two in the affirmative and three in the negative.

So the amendment was agreed to.

The PRESIDENT. The question is on the section as amended.

Mr. HOWARD. Let it be read.

The CLERK read as follows:

SECTION 6. No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business; and the Legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against a corporation made by viewers or otherwise. The amount of such damages shall, in all cases of appeal on demand of either party, be determined by a jury.

The PRESIDENT *pro tem*. The section as amended is before the Convention.

The section as amended was agreed to.

Mr. BOYD. Mr. President: I move to reconsider the vote adopting the third section.

The PRESIDENT *pro tem*. Did the delegate vote in the affirmative?

Mr. BOYD. Yes, sir.

The PRESIDENT *pro tem.* Is the motion seconded?

Mr. BIDDLE and Mr. H. W. PALMER. I second the motion.

The motion to reconsider was agreed to, there being on a division ayes forty-nine, noes twenty-seven.

The PRESIDENT *pro tem.* The section will be read.

The CLERK read section three as follows:

"The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking by the Legislature of the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals. And the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such a manner as to infringe upon the equal right of individuals or the general well-being of the State."

Mr. BOYD. Mr. President: I propose to amend this section, in the fourth line, after the word "companies," by inserting the words, "not in actual use."

Mr. President, I will state the effect of this section, if I comprehend it aright, and I think I do because I have consulted with a great many gentlemen who are authority and who concur with me in opinion. I will read it:

"The exercise of the power and right of eminent domain shall never be so construed or abridged as to prevent the taking by the Legislature of the property and franchises of incorporated companies."

Now, I apprehend that under this section, the Legislature would have it in their power to incorporate a company who would have the right to take the entire property and franchise of another company to their use, for public use. For instance, a large railroad company could get an act of the Legislature authorizing them to build a railroad where there is now one in existence, say between Philadelphia and Norristown. Under such authority, such corporators would have the right to take the present railroad, which belongs to the Philadelphia, Germantown & Norristown railroad company. So it would give a right to take away from a turnpike company their road. We all know that turnpike roads are often built and for very many years no dividend is paid, no profit is made; and

just after it is established and likely to be a success, another company comes along with a charter from the Legislature authorizing it to build a turnpike between the same points, and this new company can take away the property and the franchises of that turnpike company; and so as to a bridge, or a canal, or a gas company, or a water company. That can be done cheaply by depressing the value of the stock previous to such action as this, and the compensation would be assessed according to the market value of the stock, so that when the new company came to settle the damages, or have a jury to settle and determine them, the measure of damage would be such market value of the stock, so that the owners of this stock would lose the advantage of the profits of the near future, which they should have after incurring all the risk of failure.

My amendment proposes that the Legislature shall have the right to take away the property and franchises of any incorporated company not in actual use. If a railroad company have more ground than they have in actual use, and another company comes along and wants to build a railroad, it can take the ground of that company which they have not in actual use, and build their road; and if you allow this section to stand they can take away the actual roadbed and the entire property and the franchise of such a company. I am perfectly convinced that there are not half a dozen gentlemen in this body who design to do anything of that kind; and yet as the section stands it can be done. A company incorporated under this section could go and take a portion of the property and franchise of a railroad company or any other corporation, just enough of it to destroy the whole of it, and in such a way as that could get the control of it. So that if they would choose to do so and the Legislature should see fit, they could make the larger fish swallow up the smaller ones all the time. Therefore I have thought it wise to introduce into this section these words so that no company shall have more property and franchises than are actually necessary to operate their own road and all over and above that can by the Legislature for any other public use. The section will read with this amendment:

"The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking by the Legislature of the property

and franchises of incorporated companies not in actual use."

Mr. CUYLER. I should be very glad to go with my friend, the delegate from Montgomery, at all times, if I could; but I cannot go with him upon this matter. The law of Pennsylvania to-day is, and it always has been, in exact harmony with this section as it reads. It cannot be that there should exist anywhere within the Commonwealth any property, be it a franchise or be it property of any description, which should be wanted for public use, which the State cannot take. The law of Pennsylvania to-day is that the State may take the franchise of any corporation she thinks proper to take, making compensation according to law. That always has been the law. But I cannot consent, for one, that there shall be any property within the bounds of the Commonwealth which the public may want and which it cannot have, making compensation for it. I think therefore that the section is an unnecessary one, because the law would be as the section places it if the section were never written into the Constitution; but it is not objectionable on the ground taken by my friend from Montgomery.

Mr. BIDDLE. Undoubtedly under the law as laid down by the Supreme Court of the United States the franchise or any property of a corporation can be taken for public use; but there is no reason why we should not put some limitation here against the abuse of such a power as that. The decision of the Supreme Court of the United States is negative; all they have said is that it is no violation of a contract to take a franchise or the property of a corporation for public use. But it has never been said that we cannot limit this principle. All that we are asked to do by the amendment of the gentleman from Montgomery seems to me eminently fair and proper. A small company may have made its improvement, may have laid down its road, if it be a railroad company, and may be operating it to the profit of itself and to the advantage of the community. Then a large company comes along which has a covetous eye upon the franchise so used and so operated, goes up to the Legislature, and gets the right to take hold of this smaller franchise, this small improvement, making compensation.

If adequate compensation were in all cases made, perhaps there would be no objection to it, although it seems to me that even then it would be a hard case,

when, after years of struggle against adversity, a small company is just coming into the full fruition of its privileges, to take them from it at a fixed price. But I say if adequate compensation could be always obtained it would not be so hard; but how is this compensation settled? It is settled by a court and jury, and it is an extremely difficult thing to ascertain how a franchise which is swallowed up shall be exactly paid for. In nine cases out of ten it is destruction to those who have embarked in the enterprise; and while I do not object to seeing the surplus land, the surplus property of any kind of a corporation taken for public use, I should think it eminently wise and proper to say by a declaration fixed in here that that which is not actually used by a corporation operated to the advantage of the public, should not be swallowed up by a power greater than itself. I shall, therefore, vote for the amendment.

Mr. CORSON. Mr. President: I agree to the remarks made by the gentleman from Philadelphia, (Mr. Biddle,) and favor the amendment proposed by my colleague, (Mr. Boyd,) but it seems to me it would be better to insert the word "dispensable," in the third line, immediately preceding the word "property," so that they cannot take any indispensable property or franchises of incorporated companies, but may take that which is dispensable. Property might not be in actual use and yet it might not be dispensable; and it seems to me they ought to have the right to take that merely which was dispensable, which they could do without. If the words, "not in actual use," comprise the full scope and meaning of my colleague, it would be a better term to use; but it does seem to me that the word "dispensable," in the third line, would cover the question more comprehensively.

Mr. DALLAS. Mr. President: I cannot concur with the views expressed by the two delegates from Montgomery and by the gentleman from Philadelphia, who last spoke, (Mr. Biddle.) If I were in the actual occupation and use of a warehouse, and any corporation, authorized by the State of Pennsylvania, should require it for their business, that corporation, upon paying me due compensation, under the Constitution, might take that warehouse from me for their warehouse purposes as a freight depot, notwithstanding the fact that it might be in my use and indispensable for my purposes; and I can see no good reason why corporate

property should be put on a basis separate from that of the individual.

Mr. President, the question is not between large corporations and small corporations. I think the gentleman from Philadelphia, who last spoke, and the gentleman from Montgomery have mistaken the question in presenting it in that way. It is a question between the State of Pennsylvania and all corporations, that the people of Pennsylvania, through their Legislature, shall have the right and the sovereign power of eminent domain over all property in the State, whether it be in the hands of large corporations, small corporations or individuals, that is presented by this section. I trust, therefore, that the Convention will view it in that light and will consider that it would be improper, unjust and unfair to engraft into the Constitution that we are now framing a provision that the property of every kind in this State may be taken by the people of the State for any public use upon payment of just compensation, but that the property of corporations, large or small, because they happen to be corporations, shall be free from the exercise of the right of eminent domain in the State of Pennsylvania.

Mr. BROOMALL. Mr. President: I am sorry that I cannot agree with the gentleman from Philadelphia, who spoke next to the last, (Mr. Biddle,) and the mover of this amendment, (Mr. Boyd,) and I cannot think that the gentleman from Montgomery sees the full extent to which his amendment goes. It is that under the right of eminent domain the State shall not be able to take any property or franchises of corporations while in actual use. If we pass that, it will be impossible to lay out a public road across a railroad that is actually used.

Now, it may be that the gentleman from Philadelphia, who first spoke, (Mr. Cuyler,) is right that the provision is not necessary; that is, that there is no property which cannot be taken by the right of eminent domain; but it would be dangerous to put in this provision, by virtue of which, I take it, we could not take property that was not actually used by corporations under this power. Hence I say that it will not do to pass this provision, because then it will prevent us from taking any property that is in use by corporations, even for the purpose of laying out a public road.

But again, is the provision as it stands in the section at all dangerous? Can any

damage be done by the Legislature under it? We have provided that nothing of this kind can be done except by virtue of general laws. The gentleman from Montgomery talks about one railroad absorbing the property of another. Suppose it did; it must be by a general law that will allow that other to turn about and re-absorb it again, so that no damage can be done.

I take it, therefore, that the section should stand as it is, or if amended at all, we ought to take the view of the gentleman from Philadelphia, who first spoke, (Mr. Cuyler,) and strike out the whole provision; but by no means let us put in this amendment.

Mr. HUNSICKER. We passed a section this morning, which I will read:

"The Legislature shall have the power to alter, revoke or annul any charter of incorporation hereafter conferred by or under any special or general law, whenever in their opinion it may be injurious to the citizens of the Commonwealth, in such manner, however, that no injustice shall be done to the corporators."

That section, it seems to me, covers all that is intended to be covered by the section now under consideration. I am not in favor of the amendment offered by my colleague; but I do think that the section which I have just read covers all that is meant to be covered by section three.

Now, let us see. It is not certainly meant by this section that the Legislature shall grant charters of incorporation one year and the next year by general law take them away? It is not meant that a corporation shall have no rights at all by virtue of its act of incorporation? It is not meant that there is to be nothing like a contract between the State and the corporators. It is not meant that a charter of incorporation is to be granted to a company to-day—and after the corporators have invested their money in the enterprise the next Legislature may repeal that charter without giving them compensations, or what is worse than all, take away the property and franchises and subject them to some other public use, or give them to some other corporation. The language of this section is, "to take away the property and franchises of a corporation and devote the same to public use," &c. What are the franchises of a corporation? They are its special privileges; its permission under the sanction of the State to do certain things under which

and by authority of which they invested their money; and now you propose by this section, as I read and understand it, that the Legislature may take away, either by general or special law (it makes no difference which) all the property and all the franchises which have been conferred upon a corporation. I like the spirit of the section, and if it were so amended as to prevent the slaughter of corporations who have conducted their business upon just and fair terms in such manner that no injustice should be done to the corporators, I should be willing to vote for it.

Mr. ALRICKS. It behooves us to be careful here, and do nothing that will render us ridiculous. We have passed a section in which we declare that the Legislature shall have the same power over the franchises of a corporation that they have over the private property of an individual. I apprehend there is nothing strange in this declaration; but we have been told, and by able lawyers, for example by the delegate from Philadelphia, (Mr. Cuyler,) that by virtue of the right of eminent domain the Commonwealth always has control of the franchises of corporations just as it has control of the property of an individual; that it can take the one or the other, where either is necessary for the public good.

With great respect to my friend from Montgomery, (Mr. Boyd,) who is a great joker, I was not certain whether he was serious in this matter or not. History has told us of a piece of witicism that was practiced in the English Parliament, and I did not know but that he was attempting to repeat something of the same kind here. When William Pitt was in Parliament a subject of discussion was the militia bill, and a gentleman offered an amendment that the militia should never go out of the kingdom. William Pitt moved to amend "excepting in case of actual invasion," intimating that they might run off. (Laughter.) I certainly cannot comprehend my friend from Montgomery, if he desires us to say that we shall never take the franchise or the property of a corporation unless they have no further use for it. I cannot support his amendment. I think it would put us in a false position before the public.

Mr. HOWARD. If I understand this section it simply asserts a clear principle of law, that is now the law of the Com-

monwealth of Pennsylvania, and I agree with the distinguished delegate from the city of Philadelphia, that he has stated the law as it is, and I know no reason why it should be placed in the Constitution unless it is to save and secure to the people this important principle of law by incorporating it into the Constitution so that the Legislature shall not have the power to barter it away or the courts to construe it away. It is simply asserting a principle of law absolutely essential to every Commonwealth, namely, that all the property of that Commonwealth shall be subject to the public necessity and to the public use.

The distinguished delegate who moved this amendment says that under the section as reported certain things might be done which would be mischievous. I grant you the best thing in the world can be abused and always has been; but why should it be said that the property of a corporation may not be taken for the public use? The citizen holds his property by as high a title as a corporation, and the citizen may have his in actual use, too. He may want to keep his farm intact; but he cannot do it. This amendment provides that all that a corporation may have in use cannot be touched, if the public necessity is such that they may need it for some other purposes. All that they have in actual use, if this amendment is to be adopted, is to be totally, wholly and forever exempted from the public use. We cannot accept such a proposition as this. It would be far better to strike down the whole section and then take our chances with the Legislature, who may possibly barter away this great principle of law unless we incorporate it in the Constitution. It would never do to accept such an amendment as the proposed, and I hope it will be rejected.

The amendment was rejected.

Mr. DARLINGTON. I move to amend in the second line, a mere arrangement of words, by striking out the words, "or abridged," and inserting them in a different place, after the word "be." The sentence will then read: "The exercise of the power and the right of eminent domain shall never be so abridged or construed," &c.

And again, in the seventh line to strike out the word "upon," so as to make the sentence read:

"Corporations shall conduct their business in such manner as not to infringe the

equal rights of individuals or the general well-being of the State."

The amendment was agreed to.

The PRESIDENT *pro tem.* The question is upon the section as amended.

The section as amended was agreed to.

Mr. WHERRY. I move to reconsider the vote by which the fourth section was adopted.

The PRESIDENT *pro tem.* Did the gentleman from Cumberland vote in the affirmative?

Mr. WHERRY. He did.

The PRESIDENT *pro tem.* Who seconds the motion?

Mr. CHURCH. I second it. I voted in the affirmative.

Mr. CUYLER. I ask leave to say a single word by permission of the House.

The PRESIDENT *pro tem.* The question is not debatable.

Mr. CUYLER. I only desire to say that this ought to be reconsidered—

Mr. CAMPBELL. I call for the yeas and nays.

Mr. CUYLER. I can demonstrate that this thing is wrong, even for the purpose which gentlemen had in view when they adopted it. I ask them to pause and listen for a single moment.

The PRESIDENT *pro tem.* The Chair must remind the gentleman from Philadelphia that the question is not debatable.

Mr. KAINE. Mr. President: I move to postpone indefinitely the motion just made. That motion is debatable, and now the gentleman from Philadelphia can go ahead.

Mr. CUYLER. Gentlemen will observe that this section was originally written so that the last clause which was adopted, was dependent upon a preceding clause, which was stricken out. The section reads: "In all elections for the managing officers of a corporation, each member or share-holder shall have as many votes as he has shares, multiplied by the number of officers to be elected."

That was in the original section and it was adopted, but the clause that followed it was voted down. Now the remainder of the section is, "and he may cast the whole number of his votes." What votes? The votes that were indicated by the very clause that was stricken out. As it stands now it is entirely meaningless. It only fails to accomplish any purpose whatever. It leaves the thing precisely where it stood before the section was proposed at all.

I say nothing with regard to the merits of the proposition itself. I had an opportunity of discussing that yesterday. It is impossible for any gentleman to estimate upon this floor the extent of the misery and the annoyance that this section, if carried out in the manner in which it was originally planned, must inflict upon every corporation in the State. It proposes to plant in the bosom of every board of directors of every corporation in the Commonwealth a hostile party, a personal enemy, a person devoted to destroying and annoying the business of the corporation. But that is upon the merits of the question, and I shall not recur to that. I simply ask any gentleman to state what the meaning of the section is. "He shall cast the whole number of his votes." How many votes has he? He has just one vote for each director; and that is all he has now. You give him no more. You do not alter the law a particle, but you leave it precisely where it stood before; because having stricken out the previous portion, on the motion of the gentleman from Bucks, (Mr. Lear,) you have stricken out the part which defines what votes are meant, so that at present there is nothing in the section to explain it.

Mr. BUCKALEW. May I ask the gentleman a question?

Mr. CUYLER. Certainly.

Mr. BUCKALEW. I would like to ask the gentleman in case the vote is reconsidered what amendment he proposes?

Mr. CUYLER. I am asked to state what my amendment is. My idea of an amendment to this section is to vote it down, believing it is inherently wrong in its own nature.

Mr. BUCKALEW. I am astonished at the remarks just submitted. This change was made on the motion of the gentleman from Bucks (Mr. Lear) with the distinct understanding that its only effect on the section was that it could not affect certain old charters in the State by which the number of votes of certain large stockholders was limited. As the section now stands, whatever number of votes belong by law to any stockholder he shall cast in this manner.

Mr. CUYLER. The number of votes is just one for each director.

Mr. BUCKALEW. I heard the gentleman state that before. A stockholder holds one share of stock, and if there should be six directors he has six votes; by law he casts one vote for each of six

persons at present. It does not change the number of his votes at all. Under this plan he could give them to three persons instead of six. If he has more shares of stock than one, the number of his votes at present is increased six times for each share. I cannot understand what trouble is on the gentleman's mind. This is as simple as simple can be. It leaves to the Legislature the power, to be sure, of saying how many votes a stockholder shall cast. They can, if they please, limit the number that a man can give on shares beyond a certain number; or they can provide, as they have ordinarily provided, that for each share of stock he shall have as many votes as there are directors. This section has nothing to do with the subject of the number of votes. It is simply a provision that whatever number of votes the stockholder has by law, he may concentrate upon a smaller number than the whole number of managers to be chosen; and I do not believe that the English language affords words which if written down here would make it plainer.

One additional remark:

If this section is to mean nothing, is to have no effect, I do not understand why the gentleman is exercised about it. If it is entirely innocent of any of those dire results which he instanced to us in a former debate, why should he desire the section defeated? He has instanced the attempt of the late Mr. Fisk to secure control of the Pennsylvania railroad company. Let me tell the gentleman that if this section had stood in the Constitution of New York, the gigantic swindles by the great railroad men of the city of New York would have been impossible. The English stockholders and the estates, the widows and the orphans in New York, and other cities, would have had in the management of the board of directors of the Erie railroad company men who would have exposed the nefarious transactions of Fisk and his colleagues, and called in the aid of the courts before the mischief was consummated, and millions that were plundered from the stockholders would have been saved to them.

I think the gentleman is raising here a phantom which has nothing in it. If he is, however, correct in his construction of this section, it is perfectly harmless.

Mr. KAINE. The motion which I made having accomplished its object, I now withdraw it.

The PRESIDENT *pro tem.* The motion to postpone indefinitely is withdrawn.

Mr. COCHRAN. I ask for the reading of the section.

The PRESIDENT *pro tem.* The section will be read.

The CLERK read as follows:

SECTION 4. In all elections for the managing officers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer.

The PRESIDENT *pro tem.* The question is on the motion to reconsider the vote by which this section was adopted.

The motion was not agreed to, there being on a division ayes thirty-four, noes fifty-two.

Mr. WRIGHT. I move that the article be referred to the Committee on Revision and Adjustment.

The PRESIDENT *pro tem.* The question is on transcribing the article for third reading, and the delegate from Luzerne moves that it be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

EDUCATION.

Mr. WHERRY. I move that the Convention now proceed to the consideration on second reading of the report submitted by the Committee on Education.

Mr. LILLY. I move to amend by saying, "the article on railroads."

The PRESIDENT *pro tem.* The motion is not amendable. It may be voted down if the Convention so desire.

The question being put, there were on a division ayes forty-nine, noes thirty. So the motion was agreed to and the Convention proceeded to the second reading and consideration of the article on education, reported from the committee of the whole.

The PRESIDENT *pro tem.* The first section of the article will be read.

The CLERK read as follows:

SECTION 1. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this Commonwealth above the age of six years may be educated.

The section was agreed to.

The next section was read as follows:

SECTION 2. The Legislature shall appropriate at least one million of dollars for each year, to be annually distributed among the several school districts according to law, and applied to public school purposes only.

Mr. DARLINGTON. I am inclined to the opinion that inasmuch as we have nowhere, so far, in the Constitution prescribed any sum at which salaries should be fixed, nor undertaken to decide what sum would be right for all future time, the second section had better be negatived, leaving that to the Legislature.

Mr. EWING. I hope also that this section will be negatived. I believe it is the only place we have undertaken to put in a sum of money, and I think it is inexpedient that it should be put here. It may not be too much now. It is more than has been appropriated in any one year before this time. It may not be enough hereafter. But for one I hope that the time is coming when there will be neither necessity nor propriety in the State making any appropriation whatever and when the different districts will raise their own money for educational purposes.

Mr. H. W. PALMER. When the time comes that the Representatives of the people cannot be trusted to educate their own children and raise money for it, we shall not need any schools in the State, and, therefore, I am against this section.

Mr. LILLY. I am in favor of this section as it is, for the reason that I think it will help to pass the whole Constitution. I think the people, if they see a million of dollars are going to be appropriated to educational interests, will vote for it. I do not know that it is of a great deal of consequence, as many other things we have done here, except that it will assist in passing the Constitution before the people.

Mr. ALRICKS. I move to amend in the first line by striking out "at least one million of dollars" and inserting "make a sufficient appropriation." It will then read :

"The Legislature shall make a sufficient appropriation each year to be annually distributed among the several school districts according to law and applied to public school purposes only."

Mr. MANN. I hope this amendment will not prevail. This section as it is now is the most important section that has been reported from any committee and will secure for this Constitution the most votes of any section in the entire Constitution. It is one that appeals to the best class of people throughout this whole State, and every friend of education in the State has already read this section

and has become enlisted in favor of this Constitution because of this liberal devotion to the interests of the education of the children of the State. A million of dollars to-day is not as large an appropriation as was made to the common schools when the system was first established, and the Legislature has never kept up with the prosperity of the Commonwealth on this question of education. It lags behind now and has for twenty years lagged behind the appropriations that were made when the present system was first brought into existence, and it is because the Legislature has not come up to the demands of the interests of education that this ought to stand as it is. It is but \$300,000 above the amount now appropriated, it is true, but it is the endorsement and the pledge of this Convention that the cause of education is to receive a new impetus, that makes this section important. I therefore earnestly hope that the amendment of the gentleman from Dauphin will not prevail and that the section as it stands will be adopted by the Convention.

The amendment was rejected.

Mr. KAINE. I do hope that the Convention will vote this section down. A section of this kind certainly ought not to go into the Constitution of Pennsylvania.

Mr. EWING. I ask for the yeas and nays on the adoption of the section.

Mr. NILES. I second the call.

The yeas and nays were taken and resulted as follow :

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Bannan, Barclay, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Calvin, Carter, Cassidy, Church, Clark, Cochran, Curry, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning, Edwards, Elliott, Ellis, Fell, Finney, Fulton, Funck, Gilpin, Guthrie, Hall, Hazzard, Horton, Hunsicker, Knight, Lamberton, Lawrence, Lilly, Long, MacConnell, M'Clellan, M'Culloch, M'Murray, Mann, Mantor, Metzger, Minor, Newlin, Niles, Parsons, Patterson, D. W., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Runk, Russell, Simpson, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry, Worrell and Wright—81.

N A Y S.

Messrs. Ainey, Bailey, (Huntingdon,) Black, J. S., Bowman, Buckalew, Bullitt, Campbell, Corbett, Corson, Cronmiller, Darlington, De France, Ewing, Gibson, Hanna, Harvey, Hay, Kaine, Mott, Palmer, H. W., Patterson, T. H. B., Reed, Andrew, Wetherill, John Price and Woodward—24.

So the section was agreed to.

ABSENT. — Messrs. Addicks, Baker, Bardsley, Bartholomew, Beebe, Bigler, Carey, Collins, Craig, Green, Hemphill, Heverin, Howard, Landis, Lear, Littleton, MacVeagh, McCamant, Mitchell, Palmer, G. W., Rooke, Ross, Sharpe, Smith, Wm. H., White, David N., White, Harry, White, J. W. F. and Meredith, *President*—28.

The *PRESIDENT pro tem.* The next section will be read.

The *CLERK* read as follows:

SECTION 3. No money raised in any way whatever for the support of the public schools of this Commonwealth shall ever be appropriated to or used by any religious sect for the maintenance or support of schools under its control.

Mr. CORSON. I move to strike out the words "in any way whatever," in the first line.

The amendment was agreed to.

The section as amended was agreed to.

The *CLERK* read the next section as follows:

SECTION 4. The Superintendent of Public Instruction shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

Mr. DARLINGTON. There should be a verbal correction there. The word "The" should be "A," so as to read: "A Superintendent of Public Instruction."

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Chester.

The amendment was agreed to.

Mr. CURTIN. I would call the attention of the Convention to the fact that we have provided in the report on the executive department for the election of a Superintendent of Public Instruction.

Mr. DARLINGTON. No, sir; that was stricken out.

Mr. CORSON. It certainly was agreed that this officer should be elected somewhere or other.

The *PRESIDENT pro tem.* The question is on the section.

Mr. COCHRAN. I should like to hear the section of the report of the executive department relating to this subject read.

Mr. CURTIN. I think the Convention had better pause until we ascertain that. My impression is that it has already passed.

Mr. H. W. PALMER. The article on the executive department provides that:

"The Superintendent of Public Instruction shall exercise all the powers and perform all the duties devolved by law upon the Superintendent of Common Schools, subject to such change as shall be made by law, and the office of Superintendent of Common Schools shall cease when the Superintendent of Public Instruction shall be duly qualified."

That is the way it passed on second reading.

Mr. WHERRY. It was clearly understood when the report on the executive department passed on second reading that that section should be voted down for the purpose of retaining this clause in the report of the Committee on Education. That was certainly the understanding.

The *PRESIDENT pro tem.* The question is on the section.

The section was agreed to.

The *CLERK* read the next section as follows:

SECTION 5. Neither the Legislature, nor any county, city, borough, school-district, or other public or municipal corporation, shall ever make any appropriation, grant, or donation of land, money, or property of any kind to any church or religious society, or to or for the use of any university, college, seminary, academy or school, or any literary, scientific, or charitable institution or society controlled or managed, either in whole or in part, by any church or sectarian denominations.

Mr. BUCKALEW. Mr. President: I hope that this section will be voted down. I would suggest to the chairman of this committee, that there is a section in the article on suffrage and elections which ought to be transferred to this article. I refer to the section which provides that women may be elected directors of common schools. I hope the Committee on Revision and Adjustment will make the transfer.

Mr. DARLINGTON. I thought about that and it will probably come before the

Committee on Revision and Adjustment. We had better adopt this section here.

The PRESIDENT *pro tem*. The question is on the section.

The section was agreed to.

Mr. HAY. I was requested by a delegate not now in his seat to offer an amendment to this article when it came before the Convention; and I now offer the following amendment as a new section:

"No board of school directors shall have power to issue bonds for any township, road or school district."

Mr. DARLINGTON. If the gentleman will indulge me a moment, there are two or three amendments agreed to in committee that I want to come in first.

Mr. HAY. I prefer to offer this. I was requested by Mr. William H. Smith, of Allegheny, to offer the amendment. I regret that he is not here to explain it, because he has not explained to me the reasons which actuated him in framing it. I leave the question to the Convention.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny.

The amendment was rejected.

Mr. DARLINGTON. I move a new section to come in as section six.

SECTION 6. The arts and sciences may be encouraged and promoted in colleges and other institutions of learning under the exclusive control of the State.

I wish to say one word with regard to this and two other amendments that I am about to offer, and they are amendments which were agreed upon by the Committee on Education; but when the article came before the committee of the whole we found ourselves with a very small body here, not even a quorum, and they were lost on that account.

Mr. CUYLER. Allow me to ask the gentleman what he means by the words "under the exclusive control of the State?"

Mr. DARLINGTON. Under the control of nobody else—under the control of no religious society.

Mr. CUYLER. My instinct would have led me that far, even without the aid of the gentleman from Chester; but I want to know what he means by adding those words to the section. Does he mean, for example, that taking an institution like the university of Pennsylvania, an utterly unsectarian institution, administered by a board of trustees elected in accordance with its charter—does he mean that that institution could not receive aid from

the State because it is not under the exclusive control of the State?

Mr. DARLINGTON. All I can say in answer to the gentleman is that after careful consideration by the committee of which I have the honor to be chairman, these were precisely the terms in which the section was couched; and the object distinctly was that no appropriation should be made of school funds to any sectarian school or any institution not under the exclusive control of the State.

Mr. CUYLER. I move to strike out the words "under the exclusive control of the State."

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. DODD. This amendment and some others which I suppose will be offered were before us on a prior occasion and were voted down simply because they were utterly unnecessary. The Legislature already has this power, and it is useless to put it in the Constitution.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia to the amendment of the gentleman from Chester.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the gentleman from Chester.

Mr. WHERRY. The distinguished gentleman from Venango (Mr. Dodd) is entirely mistaken when he gives the House reason to believe that these sections were voted down because they were deemed unnecessary. I trust gentlemen will recollect the history of this report when it was before the committee of the whole. These sections were lost simply because there was not a quorum of the House present and because the distinguished chairman of the committee of the whole refused to accept a majority vote of those who were present as carrying the sections. They were lost because there was not a majority of a quorum to vote for them.

Mr. GUTHRIE. I should like to have the amendment read.

The amendment was read.

Mr. H. G. SMITH. I hope this amendment will not prevail. Let the institutions of the State rest on their own basis. If we give this power to the Legislature, we do not know where they will land.

The amendment was rejected.

Mr. DARLINGTON. I move this amendment as a new section:

"SECTION. 7. The Legislature may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children."

Mr. WHERRY. I move to amend the amendment proposed by striking out all after the word "section" and inserting:

"The Legislature shall establish industrial schools for the education and training of delinquent and neglected children."

"No child in this State shall be permitted to grow up in ignorance, idleness and vice." [Laughter.]

Mr. DALLAS. I simply rise to ask the mover of this amendment a question; that is, what he means by "delinquent children;" and second, how he proposes to enforce the latter branch of the amendment.

Mr. WHERRY. I trust I shall have the floor on this amendment.

Mr. H. G. SMITH. I wish to vote intelligently on this amendment, and I should like to ask the gentleman from Cumberland what he means by the word "delinquent" in this amendment.

Mr. WHERRY. The gentleman from Cumberland desires to explain this proposition if he has an opportunity to do so.

The PRESIDENT *pro tem*. The gentleman will proceed.

Mr. WHERRY. Mr. President: I respectfully ask the indulgence and the attention of the Convention for a short time, not for my own sake but in view of the grave importance of the subject I am about to present. The question as it presents itself in the proposition now under consideration is narrowed down to this: the right and duty of the State to secure the moral, mental and industrial training of orphan, destitute, neglected, vagrant, truant, incorrigible, apprenticed, pauper and criminal children; children whom parents and guardians, society, the church and the schools fail to educate and train to usefulness and happiness, and who are learning in the streets, from countless teachers of vice, aided by those grim masters—hunger and want and despair—the malign arts that render the property of our households, the virtue of our women, and the health and happiness of our people insecure.

But we are met at the very threshold of the discussion by the question put to me the other day by the gentleman from Washington (Mr. Hazzard)—"Are there any such children in this State?" I an-

swer, yes, thousands of them. There are thousands of helpless children in our midst, growing up in ignorance, idleness and vice, trained from infancy to crime or suffered by neglect to fall into it, foredoomed from their birth to the police court, the prison and the gallows! Thousands who have never, so far as they can see, or I can see, received anything from society except the wretchedness of being, and owe it, of course, nothing in return but deadly enmity.

Let me call attention briefly to some well-authenticated statistics, and to some authorities of unquestioned weight.

The ninth census, that of 1870, reveals the startling fact that there are in this enlightened christian Commonwealth of Pennsylvania two hundred and twenty-two thousand three hundred and fifty-six persons above the age of ten years who acknowledge that they are unable to read and write. Of course the census-taker did not *examine* citizens as to their mental qualifications, nor did he qualify them as to the truth of their statements. It is fair to presume that the actual number who can not read and write is much higher than the number reported. So good authorities as Hon. John Eaton, Commissioner of the National Bureau of Education at Washington, Hon. J. P. Wickersham, Superintendent of Common Schools in Pennsylvania, Hon. J. D. Philbrick, of Massachusetts, and other eminent educationists, agree that if to the number returned by the census marshal was added the number who did not tell the truth, and to that again the number unable to read intelligently even in the lowest degree, the aggregate number of illiterates in the State of Pennsylvania would be nearly, if not altogether, doubled. That would make, in round numbers, four hundred thousand persons above the age of ten years without any education of practical value. If these life-long educators are not grossly mistaken (and it is scarcely possible to conceive how they could be, having every motive to make the best showing possible for their own work) we may be able at least to *conjecture* where the root of that cancer lies about which the distinguished gentleman from York (Judge Black) is so sorely exercised.

But of course we comfort ourselves with the thought that most of these illiterate persons are foreigners, immigrants, old persons, too, who will soon die off and leave behind them more intelligent children. It is a thin delusion, perfectly

transparent in the light of truth and fact. That same census report shows that of this number of illiterates actually reported as unable to read and write *at all*, thirty-one thousand five hundred and thirteen are between the ages of ten and twenty-one! In addition to this, our able and distinguished State Superintendent (who, I repeat, could have no motive for misrepresentation) declares in his report of 1872 that the actual number of children in the State between the ages of ten and twenty-one who cannot read and write at all is not less than seventy-five thousand! Think of it, honorable gentlemen, statesmen. Think of it! Seventy-five thousand children in the Commonwealth of Pennsylvania growing up to manhood and womanhood, to the dignity and sovereignty of freemen and the sanctity of motherhood, who, in the language of the Superintendent, are no better intellectually and morally than degraded heathens.

"But where are these children," members have frequently asked me. Well, sir, I will tell you where they are. There are not less than twenty thousand of them in this city alone. The honorable president of the Board of Public Education for the city of Philadelphia, the fifty-third annual report of this Board of Education, and the astounding report made by an able and impartial committee of this same board at a meeting held Tuesday, March eleventh proximo, fully bear me out in the assertion. Think of it! Nearly a thousand of these degraded beings raised to the privilege and duty of the elective franchise every year in this city alone! Is it any wonder your elections are impure, any wonder bad men are lifted to high places of honor and trust, any wonder honest tax-payers are plundered of a million dollars or more a year whilst the insatiable thieves go unwhipped of justice. Think of it, Honorable Mr. President and members of the Board of Education, who control the finest school system to be found on the face of the earth! Think of it, honorable members of this Convention, who have trouble about your grammars and spelling-books and other like weighty matters! Think of the twenty thousand children in your christian city who by no fault of theirs are doomed—doomed to lives of want and crime and woe *through ignorance*!

But these helpless ones are not all here. Fifty thousand of them are scattered elsewhere throughout the cities and boroughs and counties in the State. There are seven

hundred and fifty, on an average, in each county outside of Philadelphia. You will find them in wretched homes, under cruel, venal and debased guardians, in the open streets, on the public highways, in mills and mines, in factories and workshops, in almshouses, in jails, in penitentiaries, *everywhere* that human existence is possible. If members will take the trouble to examine the report of public charities for the year 1872, laid on their desks a few days ago, they will discover some facts with reference to their particular counties that will probably astonish them. Hundreds of these children are to be found in every county in the State.

There is not a single exception.

Less than one half the counties have provided either secular or religious instruction for the children in their county almshouses. There are seventeen thousand seven hundred and ten permanent paupers in the county almshouses of this State, two thousand of whom are children under sixteen, growing up in these hot-beds of vice and sinks of corruption and fraud—the county poor-houses—and one half of them receive no learning for this world and no light for the next. But besides these permanent paupers, there are thirty-eight thousand eight hundred and twenty-one habitual tramps, one-fifth of whom at least are children, and you have eight thousand more homeless, hopeless, helpless ones.

The PRESIDENT *pro tem*, The gentleman's time has expired.

MR. NILES. I move to amend the amendment, by striking out all after the word "children."

MR. WHERRY. Mr. President: There are in the State three hundred and thirty-six townships providing for their own poor. Of these only four *provide* educational means for the children under their care. Only sixty-two require the attendance of the pauper children at the public schools, and these for a term averaging but four months. But—tell it not in Gath—only twenty out of these three hundred and thirty-six christian communities provide, or require the attendance of their wards upon, religious instruction. God have mercy on the Commonwealth if we longer shut our ears to the cry of suffering and sinning humanity that goes daily up to Heaven!

But there are other motives than simple humanity to urge the State to a full measure of her duty in the matter of education. The relation of education and

labor is a great economic question now receiving the consideration of the best minds in this country and Europe. Much valuable information on this subject will be found in the report of the National Bureau of Education for the year 1870. I will give but a brief statement of the results of the inquiries in this direction, and in the language of the Commissioner:

"1. The increase of the laborer's wages on account of the simple knowledge of reading and writing, as estimated by observers, employers and employed, was put at an average of twenty-five per cent.

"2. The increase of wages caused by a better education, including a technical training in the particular mechanical occupation, was put at an average estimate one hundred per cent."

But I pass this over to the reflections of the Convention that I may call attention at greater length to the relations of education and crime. Here, too, I cannot but express the regret that the modicum of time allotted to me under the rules will necessitate a very brief and hurried outline of the subject.

Every man of any discernment whatever must have observed that the seeds of mature criminality are sown in childhood. Often, however, the fruit ripens on a tender bough. Mr. Mundella, a member of the British Parliament, asserts that in England one child out of every three hundred is a delinquent; that more than twenty-five per cent. of those poor wretches who barter the sanctity of woman for the wages of lust are under sixteen years of age. In the name of humanity can it be true? More than twenty-five per cent. of the vilest crime known to man or God committed by boys less than sixteen years old!

Authenticated records show that three-fourths of the petty larcenies committed each year in New York city are committed by children under eighteen. I doubt not the statistics of this city, if they were to be had, would make a similar showing.

There are now in the prisons of the United States twenty thousand convicted criminals—more men than the great Washington ever commanded in battle. Eighty per cent. of these are persons without education whatever. Ninety per cent. of them have never learned any trade or acquired skilled labor, even in the most common occupations. Ninety-five per cent. of them either had no homes, or else came from ignorant, idle or vicious homes. Five per cent. of the population commit

thirty-five per cent. of the crime, whilst less than one-fifth of one per cent. is committed by those who are educated. Or, as Dr. Wines curtly but forcibly expresses it, "One-third of the crime is committed by two one-hundredths of the population."

But I have said enough on this point. Volumes have been written and will yet be written on the relations of crime and education. We know enough—or can know enough if we take the pains to do it—to show us a straight path of duty in the rescue of ignorant, helpless children, even to the end that not one of them shall be permitted to grow up in ignorance, idleness and vice.

Mr. President, the time has gone by to question the right of the State to demand and command the moral, mental and industrial training of every child within her borders. Sir, if parents fail of their duty then must education be made compulsory. There are other rights to be observed besides those of a degraded parent. The child himself has a right to such training as will fit him for usefulness and enjoyment in life, just as much as he has a right to care and protection and food and raiment. The parent who abandons his child to physical want is punished; so ought he to be punished who starves to death his mind and soul. And when the parent fails and the child is about to die from physical want the State steps forward, in *loco parentis*, and gives him life. For what? To live in ignorance, in wretchedness and in toil; to curse society by his crimes, and reproach it by his blighted life for the evils it might have and should have prevented.

Society, too, has rights. It is of the highest interest to you and to me whether our fellow-citizens are ignorant or intelligent. We stand with shame at the ballot-box and see our ballot cancelled by some ragged sot too ignorant to comprehend the ballot he casts. The tendency of all civilized nations is to a full recognition of the truth that it is the right and the duty of the State to educate her neglected population. And she has the right to see that her supreme purpose is not defeated. What we need in our Constitution is a positive and immutable mandate of the people that the ignorant and vicious shall be instructed and subjected to wholesome reformatory discipline, and their children saved from their follies and their crimes.

Well may we tremble when we remember those burning words of the great

champion of universal education—"An uneducated ballot is the *winding-sheet* of liberty." The human imagination can picture no semblance of the destructive potency of the ballot-box in the hands of an ignorant people. The Roman cohorts were terrible; the Turkish janizaries were incarnate fiends; but each was harmless as a child compared with universal suffrage without mental illumination and moral principle. The power of casting a vote is far more formidable than that of casting a spear or javelin. In the uneducated ballot is found the nation's greatest danger; but the educated ballot is the nation's main tower of strength. Has society no power to protect itself? Has the republic no right to live? Shall she continue to nurse in her bosom the viper which will one day sting her to death? If these questions are not answered by the representatives of the people, answered by the enactment of a wise and just provision for the education of *all* the children of the nation, the historian will answer them for us when he portrays the downfall of a once mighty nation which forgot its origin, derided its destiny, sold its birthright and ended its career in shame and disgrace.

I accept the proposition of the gentleman from Tioga (Mr. Niles) and ask that my amendment as modified be read.

The PRESIDENT *pro tem*. The amendment to the amendment will be read.

The CLERK. The proposition is to amend the section offered by the delegate from Chester (Mr. Darlington) by striking out all after the word "section" and inserting:

"The Legislature shall establish industrial schools for the education and training of delinquent and neglected children."

Mr. MANN. I do not suppose a single delegate here present would take any issue with the very eloquent effort of the gentleman from Cumberland, (Mr. Wherry), as to the necessity of educating every child in the Commonwealth. We have already made provision for the very thing which the amendment he has offered aims to accomplish. The first section of the article under consideration, says that the Legislature "shall provide for the maintenance and support of a thorough and efficient system of common schools wherein *all* the children of the Commonwealth above the age of six years may be educated." Are there any other children than those provided for in

the first section, wherein all the children of the Commonwealth may be educated? If the gentleman desires to change the word "may" to "shall," I will very cheerfully vote to reconsider the section so as to say they *shall* be educated. But it certainly is a multiplication of words and of sections, first to provide that the Legislature shall establish common schools throughout this State, wherein all the children may be educated, and then go on to single out a particular class. The first section includes *all* the children, every child in the Commonwealth, no matter what its condition, rich or poor, favored or unfavored, clothed or unclothed. There can be no other children to be provided for, under the section offered by the gentleman from Chester as proposed to be amended by the gentleman from Cumberland, and it is an indication that this first section means nothing, to adopt another. Why, sir, I suppose this first section means all that it says and that it is an admonition to the Legislature to carry it out and provide that hereafter there shall be no children in the Commonwealth not taken care of and educated. That is what I suppose the first section means. If it does not mean that, blot it out; let us have no unmeaning sections in this grand article in relation to the education of children.

I am opposed to the proposed section for another reason. I assert that the true way to reform and to bring up into proper manhood these children now neglected is to bring them into the common schools of the State and not to build houses here and there about Philadelphia and other cities written upon them, "for neglected and abandoned children;" for that very thing will make them abandoned. You cannot reform children in that way. They are to be brought into the common schools of the State, or they are to grow up abandoned and criminal, and it is for that reason that I am opposed to the amendment offered by the gentleman from Cumberland.

You cannot take the favored children of a ward in Philadelphia and put them into one school and the poor and unfortunate into another school and give them the advantages that the system of education is intended to accomplish. All this separation and distinction of children is against the unfavored class; and in behalf of the poor and unfortunate children I appeal to this Convention to vote down both the amendment and the original sec-

tion. If this first section does not cover the ground, reconsider it and amend it so that it will cover the ground and will compel the Legislature of Pennsylvania to provide for all the children, rich and poor, favored and unfavored. Let us have no distinctions, no separate provisions for one class of children over another; provide for them all in the same section and all alike.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Chester (Mr. Darlington.)

Mr. DARLINGTON. One single word, Mr. President. This section is intended to provide for such children as it is true are admissible into the public schools, but who may not have the means to clothe or feed them to get them there. It is intended for a class neglected and abandoned by their natural protectors, to whom the State owes a duty not only to feed and clothe but to educate, and not only to educate but to feed and clothe. It is therefore that we have proposed to give to the Legislature the authority, and so far as our injunction shall go to enjoin upon them the duty of providing for the care and sustenance, maintenance, education, and clothing of this class of people who would otherwise grow up in ignorance and vice. I need say no more, I am sure, to commend this section to the favorable consideration of the Convention.

Mr. KNIGHT. I move to amend by striking out "may" and inserting "shall."

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. WHERRY. On that I call for the yeas and nays.

The PRESIDENT *pro tem*. Do ten gentlemen rise to second the call for the yeas and nays?

Ten gentlemen not rising to second the call, the yeas and nays were not ordered.

Mr. KNIGHT. I merely want to say, that in my judgment, the children alluded to in this section are very much neglected, particularly in this city, and I think if more attention were given to them, and more money spent to educate that class of the community, and less of it distributed for the higher branches of education in schools to which many children are sent when their parents are fully competent and able and sufficiently wealthy to edu-

cate them otherwise, it would be a great thing in the future for the State of Pennsylvania. I quite concur with the gentleman from Cumberland (Mr. Wherry) in the remarks he has made this afternoon, and I hope the Convention will give them full consideration and agree to put in the amendment that the Legislature shall not permit children to grow up in ignorance, idleness and vice.

Mr. HAZZARD. Mr. President: When the proposition was first read to the Convention it created some merriment, because it struck the Convention, I presume, as it did me, that the desire of the delegate was that there should be no more bad boys in the State; that no vicious persons should grow up in Pennsylvania. If it were possible that we could pass such a section and then find means to carry it out, it would be first-rate; but I think the section now under consideration will meet with the favorable, sober thought of this Convention.

Mr. President, there comes before the hotel at which I board a little girl, probably four years old, almost every night with her brother, perhaps about ten. They pretend to give us music. They have what I presume they call a harp, and the little girl has a triangle. They tinkle upon the triangle and play upon the harp; but they do not produce as much music to me as I used to make myself with a corn-stalk fiddle. I have talked to that boy. He presses his begging to the people in the house, and seems to be sorrowful and sad when he does not get pennies. I asked him one day how he came to be in this business. He said: "I have a master; I am bound to that master by my parents." Perhaps some unshaven wretch that sits in some dark corner in this city of churches and of schools and wealth, and in dissipation and debauch spends the money earned by these children. This boy told me: "If I do not obtain from you and from others forty-five cents to-day, and every day, I get a whipping." That little Italian boy and that little Italian girl are sent upon these streets to make their music for charity, and unless they acquire it they are whipped, and thus they grow up with nothing but a street education. Should there not be something put into the Constitution to restrain such things as this? Are we wise enough to do it? Are we capable of doing it? Does it not demand our serious attention rather than our sneers?

I do not know that this will be compulsory. I have not had time to examine it; but when I catechised the gentleman from Cumberland on its consideration before in the committee of the whole, I was not aware that this State had its seventy-five thousand uneducated children training for our prisons, training to rob our houses and steal our property; and I told him that I had known but a very few in Washington county, the county of colleges and of schools, and was astounded when he showed me the figures, as reported in the report of the common schools, of over twelve hundred in Washington county, and I would not have believed it had he not shown me the figures. Why, Mr. President, there are two boys in my town, and the only ones I knew at that time, who could not read or write. These figures are upon the books that are on the desk of every delegate here, and either the figures are falsehoods or we must believe them; and if this be so, can we not make some provision to alter such a state of things or alleviate the evil to some extent?

I said there were two such boys in our town. I went to the father of those two boys; I knew they could neither read nor write; and I asked him if he would not send them even to Sunday school, and that I would go there and undertake to teach them and any others who wished to learn to read and write. He told me he believed that reading and writing, and education generally, only made rascals, horse thieves and counterfeiters. One of these boys to-day, perhaps, may be able to read; but they are both vagabonds, they are rowdy boys, and have to be restrained by the police. And so it is all over this land. Twenty thousand in this great city, did I hear? Twenty thousand! From the ranks of these will be replenished the cells of your prisons; from these will your poor-houses be filled. You must lock your doors at night; you must provide all these trammels and devices to restrain those that are trained in this identical way upon your streets to rob your entries, to break into your banks, to kill and murder your citizens. Is there any way to stop it? Shall we not hesitate, shall we not pause rather than sneer at such a proposition as this? Shall we not pause and consider if this body, the intelligence of Pennsylvania here represented in this Convention, cannot in some way devise a remedy so that such things shall not exist any longer? or if not altogether

remedied such things shall be restrained to a considerable extent. A street education prepares the girls for brothels, and the boys for prisons. Industrial schools with limited educational advantages, would furnish ten thousand skilled artisans to the State, and instead of being so great an expense, as some have said, in the end the Commonwealth will be greatly the gainer, and thousands of neglected children furnished with the means to earn a respectable living.

Mr. STEWART. Mr. President: I have a single observation to make. I do not think there is a provision in this amendment that is not covered by the first section of the article reported by the committee, except the compulsory clause. The first section is very general in its terms. Its language is "all children;" and in referring to the education, it is "public school." There is nothing that compromises the character of public schools in any way at all. They may be industrial schools or they may be schools of another character. The only new provision that is added by this amendment is the compulsory clause. Now if we are to have that, do not let it be applied only to these industrial schools that it is proposed to establish, but to all. If it is good for one, it is good for all. If the amendment contemplates anything more than that—

Mr. DARLINGTON. I am going to offer another on that point.

Mr. STEWART. Then it has not been yet offered. I am going now to refer to the remarks of the gentleman from Chester. He indicated the purpose of this amendment as being the maintenance and support of these children by the Commonwealth. Under the language of this amendment, that cannot be done. I insist upon it, if that is its purpose, it falls far short. It simply requires the attendance of these children at these schools. It does not impose on the Commonwealth the duty of maintaining and supporting them at all. It simply requires their attendance; that is all; and if it is the purpose to throw on the State the obligation of supporting and maintaining these children, this amendment is not what it ought to be.

Mr. CARTER. Mr. President: I desire to say that I have full sympathy with the object intended by this amendment, and hope that it will receive the respectful consideration of this Convention.

If there is one thing in which the State bears the relation of *loco parentis* it is in

this matter of the neglected children of this State, the poor, the abandoned. I am in full accord with the remarks of the gentleman from Cumberland and I was touched by the remarks of the venerable gentleman from Washington, (Mr. Hazzard.) I hope that we shall not steel our hearts against the argument of one and the appeal of the other.

As to the reasons why this would be proper action on the part of this Convention, I wish to be permitted to say but a few words. If it be necessary that the State shall see to the education of the children of the State at large, it is imperatively necessary that the effort of the State in that direction should be directed to those that most require it; that is, to the poor, the neglected and the abandoned who have not parents and friends to care for them.

We all know, I presume, something of the character of the board of charities and of Mr. Harrison, its president. He chanced in here the day after we had voted down this proposition in the committee of the whole, and expressed the greatest regret at our action. Said he, "I could scarcely sleep at night when I thought that the Convention had passed over that matter in that way."

We have a perishing class, Mr. President, soon, alas, most certainly to become the dangerous class. That class increases, I am sorry to say, with the apparent growth and prosperity of our communities; and it behooves us not merely for the sake of humanity, not merely for the sake of those little children that are growing up, as the gentleman from Cumberland said, with no other prospect or future before them except the poor-house and the prison, or perchance the gallows. To that class, which has no protection, it is the bounden duty of the State to look to their interests, and to do something for them.

Why, sir, the despotism of Prussia has a compulsory system of education for all, believing that it is necessary to the interests of the German Empire that her children shall be educated. If that be true there, how much more true is it in regard to this country where every man is a voter, an equal and a freeman? I wish this Convention to take this view, that we have a numerous class, and a continually increasing class, to whom we should extend the protecting *ægis* of the State. I hope that the Convention will not vote down thoughtlessly this most eminently wise and humane provision.

A word in regard to the view taken by the gentleman from Potter (Mr. Mann.) They are not embraced, it seems to me, in the first section. It is true that the class referred to are those who can avail themselves of the advantages of the public schools. But there is another class, the class whose claims I am now advocating and presenting in this manner before the Convention, who cannot avail themselves of the public schools. Their parents may be inclined, as in the case of these Italian or other children, to prevent them from going to school, wishing to avail themselves of their poor services. Or they may be prevented by poverty, by many causes, and it is to this class that education should be so far compulsory. I am opposed to the compulsory education of all the children of the State. If I were opposed to it for no other reason it would be that the people of this Commonwealth are not prepared to endorse so strenuous a measure, and it would bring ruin and defeat on the work of this Convention; but I draw a distinction between the children of the Commonwealth at large and this poor, wretched, miserable class which is appealing to us with their poor, wan cheeks and sunken eyes. Our cities are crowded with them. For us to take them under our charge is due to them and for the safety of the State.

MR. CURTIN. Mr. President: I listened to the remarks of the gentleman from Cumberland (Mr. Wherry) with quite as much interest as I have to the remarks of any of the intelligent gentlemen of this Convention upon any of the questions which have been brought before it for its deliberation. I regard his amendment as the most important yet offered in this body, and so far as I am concerned, I endorse every sentiment that he uttered.

The statistics that that gentlemen offered to this Convention are wonderful and alarming, and in advocacy of the amendment offered by the gentleman from Philadelphia (Mr. Knight) to the section offered by the gentlemen from Chester, (Mr. Darlington,) the chairman of the Committee on Education, to put in the word "shall," I would supplement the statistics offered by the intelligent gentlemen from Cumberland with one I read in a newspaper in this city the other day. That column of figures reported that there are ninety-two thousand skilled workmen in the city of Philadelphia, there are thirty-five hundred apprentices, and there are twenty-three thousand aban-

doned boys on the streets without any visible means of living, occupation or support.

How is this army of children, otherwise uncared for, to be educated? It will not do to say that the Legislature can do it. There was in the Constitution of 1790, power given to the Legislature to establish a better system of education, and yet before that power was exercised by your Legislature, forty-five years had elapsed, from 1790 to 1835, and then it was only by the courage of the executive, George Wolf, and the wonderful eloquence of the great advocate of education, Thaddeus Stevens, in the Legislature of this State that induced the government to accept the system. And we all understand after that system of education was adopted, how it was rejected with scorn and contempt in many of the counties of this Commonwealth, how it struggled through an uncertain existence, and how it received so grudgingly from the Treasury of the State, year after year, its small pittance until it worked itself into popularity; and now the members of the Legislature, the representatives of the people, are liberal and generous in their donations to the system of public education. So now if you put into this new Constitution a provision that the Legislature may do more than it has done, forty-five years may elapse before they will meet your wishes in this regard, and in that forty-five years destitution and ignorance and abandonment will be growing continually upon you, keeping pace with the increase of the population of the State; and these wretched boys, who are now without occupation, may find their places in your poor-houses, your jails or your penitentiaries.

Besides that, you need skilled labor and the highest morality; the most rigid economy that the people of this rich State could practice would be to take these children from the highways and the by-ways, the lanes and the alleys, and erect institutions for them and put them there and give them education and teach them skilled labor to supply the place of the skilled labor you now have and which could be supplied in no way except by emigration. The gentleman who has just taken his seat (Mr. Carter) says that he is opposed to compulsory education. I do not know that compulsory education would receive the approbation of this Convention. I scarcely think from the disapprobation with which the proposition of

the delegate from Cumberland was treated that it can. But it does no harm, as gentlemen are in the habit of expressing personal opinions upon this floor, for me to say as a delegate that I am in favor of compulsory education.

Mr. CARTER. Will the gentleman allow me to explain?

Mr. CURTIN. With pleasure.

Mr. CARTER. The gentleman did not understand me correctly. I merely meant that I was opposed to a general system of compulsory education throughout the State. Of course I think that these neglected children, the abandoned miserable waifs and outcasts of society, should be taken under the protection of the strong arm of the State and educated. Certainly I am in favor of that. What I objected to was a general system of compulsory education which would not only include all these but all other children.

Mr. CURTIN. I do not still agree with the delegate from Lancaster. Where the common schools are opened as they are in this State to receive all the children of the Commonwealth and parents send the children to be educated, it is well so far as it prevails. Where a parent has ability, and does not send his child, the law should compel the attendance of that child. Where a parent has not that ability then the first, the highest and the holiest duty of a rich and prosperous people is to take the child and save him from abandonment and crime, to put him in an institution, to educate him and to teach him skilled labor that in the future he may earn an honest living, that he may be an ornament and support to government and society instead of an abandoned wretch and an inmate of the poor-house, or worse still, the jail or the penitentiary. I trust that the amendment offered by the gentleman from Philadelphia will prevail, and we will not be content with the article until we have carried it further. I hope that the good sense of the Convention will come back to the sound principle and to the true morality and duty of the sentiment of the delegate from Cumberland. I shall give the amendment offered by the delegate from Philadelphia my hearty support, and will vote for it with great pleasure.

Mr. HUNSICKER. I am in perfect sympathy with this amendment, and I may say here that this is not the first reform that has been greeted with sneers or ridicule. Nearly every measure of reform when first broached was received with

disfavor, and if you desire to accomplish a reform and if this Convention is prepared to take a long step in that direction, let us make this section obligatory upon the Legislature. If you adopt the section as it stands and leave it optional with the Legislature to introduce this system, it will be a mere *brutum fulmen*, because the Legislature *may* do it without our recommendation if we do not prohibit it from so doing. If you desire to adopt this reform, say that the Legislature *shall* provide for the education of the neglected children of this Commonwealth.

I also have had some little experience on this subject, and I was in favor of the first part of the proposition of the gentleman from Cumberland from the time that he broached it. I was prosecuting attorney of Montgomery county for three years, and during that time a large portion of those who were convicted in our courts and sent to the penitentiary were children under twenty-one years of age. The fruitful source of pauperism and crime amongst children lies in the fact that they are neglected and have no education. We have trades unions now existing which preclude trades people from taking apprentices. We no longer bind our children out to learn honest trades, and if the great State of Pennsylvania is now prepared in this enlightened age to take hold of these abandoned and neglected children and educate them to useful trades, she will make them ornaments to society, and Pennsylvania will be the pattern State of the Union.

I trust that this subject will receive the serious consideration of this Convention. I trust that every member will not be anxious to save the public time but that this question will be discussed until it is thoroughly understood. If this plan is not free from objection let it be matured. Let us get the best plan, and what we do want is that there shall be a plan devised by means of which the State shall be saved from this disgrace.

MR. STANTON. Mr. President: As I understand the question before the Convention, the section offered by the gentleman from Chester, (Mr. Darlington,) the chairman of the Committee on Education, provides that the Legislature may establish industrial schools and require the attendance at those institutions of children who are neglected or abandoned. The question immediately pending is the amendment of my colleague from Philadelphia (Mr. Knight) to render this im-

perative by changing "may" to "shall." There seems to be a difference of opinion in regard to what shall be done with this section, and many gentlemen favor the proposition offered by the chairman of the Committee on Education. As that is proposed to be modified by the amendment of the gentleman from Philadelphia to provide a safe and broad system of compulsory education, I would undoubtedly favor it, and I am also in favor of the proposition submitted by the gentleman from Cumberland (Mr. Wherry.)

I am certainly in favor of compulsory education, and if we cannot get that then let us have the next best thing to it. In reference to the remarks of the gentleman from Cumberland, I endorse every word that he has said. He has referred to an investigation made under the direction of a committee of the Board of Public Education of the city of Philadelphia with reference to the number of children in this city who are deprived of the facilities for obtaining education. His statement was correct. A committee was appointed by that board who carefully gathered the necessary data from every quarter of the entire city, from the by-ways and alleys of its populous districts and from its more rural portions, and they disclosed the alarming fact that there are over twenty thousand children in this city of christian influence and christian liberality who have no education and are receiving none, and who have no other means of maintaining themselves than by selling matches or small fruits in the public streets, or else by begging or stealing.

In one of my reports to the Board of Public Education, I discussed this question of compulsory education. I differed with some of my colleagues upon the subject, but I recommended the Board to urge the Legislature to establish a series of schools to be called rescue schools, and the plan then suggested still presents advantages to my mind. I did not then care, nor do I now have any preferences as to where these schools should be located. They might be placed in the interior of the State or near this city, but wherever they can be most useful there they should be located, and to them the destitute and deserted children of the city should be gathered, should be educated and should be taught practical trades. The expense of such a plan would be no serious difficulty and would mainly consist in the first cost. Under proper

management, in the course of a very few years the State would receive sufficient revenue from the results of the labor of these children for their maintenance, and the institutions would become self-supporting. As it is now, they are without education and without home training. Many of them have no home. They lie at night in market houses, sleep upon cellar doors, and seek shelter in any convenient shed or out-house.

The subject has been neglected too long already. Every day the numbers of these children increase, and the consequences that must follow the rearing of this army of vagrants will one day return to plague us for our inattention and recklessness. We must prepare a place for them, and the sooner we attempt to curb this evil, the easier our task will be. Our excellent ex-Governor (Mr. Curtin) has spoken of skilled labor, and shown you that with ninety-two thousand skilled workmen in our city to-day, we have only three thousand five hundred apprentices, but little over one apprentice to thirty workmen. The only way in which we can reach this labor problem, is by the education of our wandering vagrant children, and only with education can any mechanic in this country make his calling effective and his work appreciative.

I have not time to illustrate this thought and do not believe it at all necessary to do so. To one practical lesson in this direction which has carried the subject home to my mind with convincing force, I may however, be pardoned for advertising. Some three years ago, under the direction of the board of Public Education in this city, a series of schools were instituted which were called Artisan Night Schools. They furnished to mechanics and laboring men the opportunity of receiving evening instruction in the ordinary elementary branches of education, and the result has been that those who availed themselves of this means have increased the value of their labor from twenty-five to fifty per cent. Education, even in a limited sense, increased their usefulness, and while it made them better members of society, and increased their respect for law and the usages of a civilized community, it made their work more productive. The same result would attend the education of the children. I do not care what their habits or associations may be. I do not care if they are

vagrants or vagabonds, or even thieves. Even an educated convict on the dock receives more consideration than an ignorant one.

But all that could be said on this broad subject will not add to the force of what has been so well presented by the gentlemen from Cumberland. Education is the fundamental groundwork of our government. Let us strengthen the foundations of our own Commonwealth, and let us provide that all our outcast children shall be educated and trained to useful trades. If we do that to-day for our twenty thousand children who are growing up in ignorance and crime, our society will be so strengthened and improved that the generations of the future will find no such statistics at their doors.

Mr. GIBSON. Mr. President: The new section proposed by the delegate from Chester raises a question much broader in its scope than would be implied from its language. I rise only for the purpose of proposing an amendment to the section, but desire to make a few brief remarks in regard to it. In the first place I desire that the section be read.

The CLERK read the section as follows:

"The Legislature may establish industrial schools, and require the attendance of vagrant, neglected and abandoned children."

The PRESIDENT *pro tem*. The question now before the Convention, is the amendment of the gentleman from Philadelphia (Mr. Knight) to the amendment, to strike out "may" and insert "shall."

Mr. GIBSON. I move to amend by striking out all after the word "schools."

The PRESIDENT *pro tem*. That would be an amendment to the section and not an amendment to the amendment. There is an amendment to the section already pending.

Mr. GIBSON. Then, sir, in regard to the word "shall," I trust I may be indulged in a few remarks, and my amendment may be hereafter offered to the section. I think that the wants of the people of this Commonwealth, and the good of the Commonwealth itself are not entirely contained in this word "education," or what is understood by the term "education." Every one understands what the word education means. It is being taught in those branches of knowledge which are to fit persons for the useful duties of life. It is to teach them the ordinary branches of reading, writing and arithmetic and such other

additional branches as the laws may provide shall be taught in the public schools. But there is nothing in this term "education" or in the term "public schools" which implies what is meant by the term "industrial schools," where children may be taught trades, and not be left when they have taken the ordinary branches of education, to seek for clerkships or for professional employment of some kind, in order to earn a living; or to be on account of their education above learning useful trades.

Citizens of this Commonwealth, respectable, and well-to-do men, have endeavored to have their sons taught trades by apprenticing them or by placing them in our mechanical shops and have failed to do so, because of secret and arbitrary trade rules, or could only attain that end by submitting to the conditions which are imposed upon all persons who seek to do so by the rules that govern what are known as the trades unions. I think, sir, that not only are the vagrant, abandoned and neglected children of the Commonwealth to be taken care of in this respect, but the children of respectable parents are to be taken care of. Sir, I shall adopt the words of an article that has been handed to me from a newspaper, which expresses much better than I can express it, an argument in favor of teaching children trades, which I submit to this Convention and which I am willing to adopt as my own. It reads as follows:

"THE PROBLEM OF THE HOUR.—Philadelphia has eight thousand manufactories and workshops, says the *Star*, in which are employed ninety-two thousand one hundred and twelve journeymen, and only six thousand five hundred apprentices, and of these latter perhaps not more than one in twenty regularly indentured. At the same time, it is stated that there are about twenty-five thousand boys and girls between the ages of sixteen and twenty-one in the city who are without useful employment."

"This is a startling statement. It challenges the attention of every man interested in the future of the rising generation, and in the prosperity of the skilled professions of our country. As has been stated on a number of occasions, the large majority of our skilled workmen are from foreign countries.

"It is safe to assert that not more than one in five of the regular journeymen employed in American workshops and manufactories are of American birth, and

under the present system the disparity must daily become greater, until finally an American skilled workman will be a rarity.

"This is a subject of overshadowing importance and the discussion of which is imperatively demanded in order that there may be a satisfactory solution to the problem—What shall we do with the boys?

"The same conclusions will apply in Columbia (the place of publication of the newspaper from which this article is taken.) An advertisement for a "clerk wanted" will receive from one thousand to twenty-five hundred applications or answers in Philadelphia. In Columbia a similar advertisement will receive proportionately the same number, while the trades go begging for good apprentices. Honest labor is respectable, and the sooner our boys are impressed with the truth of this, the better for them and the community.

"Among the hundreds of men that crowd our prisons, and women that throng the chambers of death and hell, are few who have learned honest trades. Industrious persons with trades know what they can do, and know just where to go for steady and remunerative work. But others, who in early life spend much and earn little, who are too proud to learn trades, and too lazy to do drudgery, of course, look out for an easier way of getting a living; and while men, by theft, swindling, robbery and murder, work out the legitimate result of early idleness, extravagance and pride, women plunge into the depths of shame and infamy, and bid adieu to hope and joy for time and for eternity."

Thus for the article, and it certainly expresses in very strong language the very great want that is felt in this country for American skilled workmen, and also that there is arising in this community a class of young persons who are above the learning of honest trades.

Now, sir, I also wish to add as part of my remarks a letter from a gentleman of some distinction in this State, and I do not mention his name because it might not be his desire that it should be mentioned; but it also expresses in very strong language an objection to the provision that is added to this proposed section with regard to vagrant children:

"I was greatly disappointed in reading the section of Mr. Darlington's report on industrial schools to find it coupled with

a clause implying that these schools were intended for vagrant, neglected and abandoned children.

"Depend upon it, you could not more effectually prevent all other classes of children from attending these much needed schools than by attaching to it a provision of this kind. Our old Constitution contains a clause requiring the Legislature to establish schools where the poor should be taught gratis, and our public schools were a complete failure until this invidious distinction was abandoned, and the same evil fate will attend the industrial school if this unhappy clause is retained. Let the power to compel this class of children to attend schools be inserted in a separate section, and let the Industrial schools be open for all who choose to attend them, and we may hope to see a reduction in the number of unhappy young persons who grow up without having learned how to earn their own living."

I think, sir, that I could not add anything to the arguments contained in these two papers. I therefore submit to this Convention that if we are about to adopt a provision with regard to industrial schools, we should do as we do with regard to the schools for public education—open them to all classes of the community. Let the son of the rich man, as well as the poor vagrant, be entitled to go in, learn his trade, and not let him be subject to rules and conditions which must exclude him or with which he cannot comply, and let our skilled labor of America compete with that of foreign countries.

I have nothing further to add. As soon as the amendment to the amendment is passed upon, I shall ask that the section be so moulded that it may include all classes of persons, and, if necessary, to compel the attendance of vagrant children, and I hope that may be adopted in another section or by some sort of proviso.

Mr. J. PRICE WETHERILL. Mr. President: I desire to say a word upon this subject, and touch upon a matter which has not been touched upon by any gentleman who has spoken.

No one living in Philadelphia can be more impressed with the importance of just such a section as this than those who have seen the trouble and distress by which we are surrounded. And, sir, I speak for Philadelphia when I say that the vagrant and neglected children of Philadelphia have not been overlooked,

but they have been as far as is possible cared for and protected. The vagrant children of the city of Philadelphia can be taken to the mayor to-day and the mayor can send them to the homes of which there are some seven or eight scattered over the city of Philadelphia, and the vagrant and neglected children can be cared for in those homes, and the councils of the city of Philadelphia appropriate every year thousands of dollars to those homes for this privilege. Any vagrant child can be taken by a policeman, or by the gentleman from Allegheny, if he sees fit, to the mayor, and a good home and an honest trade can be given to that vagrant child. But by the action of this Convention to-day that privilege has been taken away from the city of Philadelphia, and no other equal remedy has been provided, and therefore I stand in my place and urge that something may be done by a section of this sort to take the place of the only remedy at the hands of the councils of the city of Philadelphia, the only remedy they seem to have been able to secure, so that they may take care of these poor and neglected and vagrant children. This remedy we have taken from the city of Philadelphia by our action to-day.

Mr. H. W. PALMER. What section?

Mr. J. PRICE WETHERILL. We have just passed a section by which no municipal corporation can grant or donate land or money to any church or religious society, or to any charitable institution managed by any church or sectarian denomination. These homes are supported by sectarian denominations; and the mayor of the city of Philadelphia, and the councils of the city of Philadelphia have seen fit to secure their aid and their help so that the vagrant children of the city of Philadelphia might be cared for, and might be protected and have a secure and comfortable home. The councils of Philadelphia, with a praiseworthy liberality, do appropriate year by year thousands of dollars in order that the mayor may secure that privilege; but we to-day have by our action closed the door of that charity to the mayor. We to-day have said to the councils of the city of Philadelphia, "Your vagrant children and your neglected children must continue to wander houseless and homeless through the city."

This is the condition in which by our action this city is placed, and shall we say that the State shall provide no remedy? I hope not. It is true that we have to use

denominational benevolent institutions for this purpose; but the State gives us no remedy. The evil is pressing upon us; something must be done for the vagrant children of the city of Philadelphia, no matter by whose hand protected, and no matter by whose hand cared for. The necessity is upon us, and the councils of Philadelphia were bound to secure the remedy at hand, and have for years made the appropriations to which I have alluded. By our action to-day these appropriations can no longer be made. By our action to-day we are helpless in the matter of appropriations, and therefore, we as a Convention are bound, in my opinion, to provide a remedy, having deprived the city of Philadelphia of the privilege which they have heretofore enjoyed.

Again, sir, the city of Philadelphia spends every year \$1,400,000 in the education of her children. Let any one look about him in his walks through the city of Philadelphia, and he will find dotted here and there thick over its broad expanse school houses of which any city might be proud, and of which the people of this State may well be proud. These school houses cost the city of Philadelphia millions upon millions of dollars, and they would be filled to overflowing if these 20,000 children to which allusion has been made were sent to school; but the good effects to be derived therefrom will be secured if we pass a section of this kind, or reconsider our action when the article on public education was up before, and reinstate the section which this Convention saw fit to reject.

Now, sir, I hope that the section will be passed, and I understand that the gentleman from Chester will follow it up by another section setting forth that the Legislature may pass laws compelling every child in this city and in this State to be educated. Pass that section and we shall have secured the desired result. Do this and the school houses which the city of Philadelphia has built with a free and liberal expenditure will be filled. Do that and the twenty thousand children now uneducated and without any visible means of support will be cared for, will be educated, and will hereafter secure substantial means of self-support. Let us do what the Committee on Education saw fit to recommend us to do and let us reinstate these two sections, the one now before us and the one which will be offered in a little while by the gentleman

from Chester, (Mr. Darlington,) and I think we shall have performed to-day a good and noble work.

Mr. MANTOR. Mr. President: I am more than pleased this afternoon with the course of this Convention, better pleased I believe than I have ever been since I have taken a seat in this body. The effect of introducing this subject before the Convention and calling the minds of the delegates that are assembled here from the different parts of the State to *one of the most needed reforms*, in my opinion, that could interest the minds of the delegation that has assembled in this Hall from day to day, has been beneficial. But what is their real duty? I have ever held it to be a *principle in this government that if we succeed in establishing that grand foundation on which this government has been based, education is certainly necessary*, and therefore I have always favored "compulsory education."

This proposition this afternoon reads that the "Legislature may establish industrial schools and require the attendance of *abandoned and neglected children*;" with the amendment which was offered by the gentleman from Philadelphia, (Mr. Knight,) inserting the word "shall" for "may," I most heartily concur in. Sir, it is not the city of Philadelphia alone that this question appeals to but it is to the whole State. The necessity shows itself everywhere; pauperism and crime are the sure result of a neglect somewhere in society. A well ordered system of public schools such as we have in this State goes far, very far, towards eradicating many of the evils that we have to contend with; and yet they do not meet the entire demand. We have a class of persons in every city and almost every community who fail to do their duty to those who are placed under their charge. It is for the benefit of this class and to this class that this proposition refers. I feel quite sure that if such schools are established in this State thousands and thousands of now neglected and abandoned children will be provided with suitable homes, will have the opportunity for a fairer race in life, and at the end of such race, society will have been benefited a thousand times, ten thousand for all the pecuniary cost it may be to the State. It is a duty the State owes to itself; and proud will be the day when we shall endorse this principle.

Mr. President, I did not arise for the purpose of making extended remarks, but for the purpose of endorsing and second-

ing this proposition, and I sincerely hope that this Convention may adopt this or some similar section.

Mr. BOYD. Mr. President: If I resided in the city of Philadelphia it is quite likely that I should vote for this proposition, for the necessity of it seems to be confined to the city of Philadelphia; the advocates of the measure are almost entirely from the city of Philadelphia; the statistics that have been furnished us are almost entirely of the city of Philadelphia. I shall vote against it because I object—

Mr. KATNE. Will the gentleman give way for a moment?

Mr. BOYD. I should rather go on while I have the heat up.

Mr. KATNE. The honorable chairman of the Committee on Education, who has this article in charge, has just informed me that he had to leave here a few moments before half-past six and could not be here to participate further in the proceedings upon this question? Therefore, if agreeable to the Convention, I will make a motion now that this Convention adjourn. I move that the Convention adjourn if the gentleman gives way.

Mr. BOYD. I do not give way. ["Go on."]

The motion was not agreed to.

The PRESIDENT *pro tem*. The gentleman from Montgomery will proceed.

Mr. BOYD. I was going on to say that I shall vote against this proposition because I object to the counties who have none of these delinquents, or at least very few of them within their borders, paying the expense, and I am opposed to my county paying large sums of money in the future for the education of this class of people. I hold it to be the duty of the city of Philadelphia to incur that expense, if it should be necessary.

I have yet to learn that there existed in Montgomery county to any extent the class of persons that this section is intended to provide for and protect; and the people of Montgomery county, as I have said, will never agree to be taxed for the support of this class in the city of Philadelphia or any other large city where they are numerous.

Mr. KNIGHT. I would suggest to the gentleman, if he will allow me, that Norristown will soon be a large city.

Mr. BOYD. Norristown is a city; but we have no statistics from that city nor can any be obtained from that county showing the exhibition, or approaching it even,

which has been furnished to us by gentlemen residing in the city of Philadelphia and the majority of the counties in this State.

Mr. WHERRY. I desire to ask the gentleman if he has ever seen the statistics of Montgomery county on this subject.

Mr. BOYD. No, I have not.

Mr. WHERRY. I will show them to the gentleman if he will come to my desk.

Mr. BOYD. I shall be very happy to see them, and I doubt very much that you can show to any great extent that class of people in the county of Montgomery.

Mr. WHERRY. I can show the gentleman that there are twelve hundred children in his county between the ages of eight and twenty-one who cannot read and write.

Mr. BOYD. I have no doubt of that, and so you can in almost any county in the State of the same population. But they are not the class of people you are undertaking to provide for as I understand it, but a class of people whose morals have been neglected and where no efforts have been made to redeem them and make them moral, and you seek now to impose on the broad Commonwealth a tax for the purpose of maintaining and supporting an evil which exists mainly in the city of Philadelphia.

I take it that my remarks will apply to the majority, yes, nine-tenths of the counties of this State, that the people of this State are not burdened with that class at all; and wherever they do exist, as they must exist in every county to some extent, ample means and provisions are always ready to be made to take care of them, and I maintain that it is extremely unjust and unfair to impose a burden of this kind on the counties throughout this State who have a very inconsiderable number of that class of people to support. It is for these reasons that I shall vote against the whole thing from top to bottom.

Mr. KATNE. Mr. President: I should have preferred in this article on education to have adopted simply the first section:

"The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this Commonwealth above the age of six years may be educated."

That would be a sufficient charter, in my opinion, for the Legislature to establish all kinds of schools for the education

of all the children in the Commonwealth and also the kind of schools provided for in this amendment. It was with the view of giving the Legislature the largest liberty on the subject of education, that I voted against the second section of this article providing that the Legislature should appropriate a million of dollars annually for the support of common schools. I feared that a provision of that kind in the Constitution would be taken by the Legislature as a limit, and that it would appropriate that sum and no more; that for years to come that would be looked upon by the Legislature as a limit beyond which they would not go. I know it says "at least;" but I know that the Legislature on the subject of appropriations for common schools and educational purposes has been very careful to make the sums very small. The sums heretofore appropriated by the General Assembly of the Commonwealth for the purposes of common schools have been a mere pittance, nothing more than enough to keep the establishment at Harrisburg going. I hope to see the day, and that not very far distant, when a much larger sum than a million of dollars—yea, thrice that sum—will be appropriated by the Legislature of Pennsylvania for the support of the common schools of this Commonwealth.

I therefore would rather have confined this article to the first section; but it seems to be the desire of the Convention to do otherwise; but I am not willing to go with the gentleman from York (Mr. Gibson) to provide for establishing general mechanical establishments by the Legislature of the State for all persons. I want to confine it, if at all, to the kind of people that are named in this section, those that are found in cities like Philadelphia and other large towns and cities in this Commonwealth. They are persons that ought to be provided for. They are the persons that I suppose are intended to be provided for by this section—poor, indigent and neglected children, such as have been described here so well by the gentlemen on my right from Washington (Mr. Hazzard)—those foreign children that are now in the streets of Philadelphia and other towns and cities of this Commonwealth. If put in educational establishments where they can be fed and clothed and educated and learn mechanical occupations, they will then become important and valuable citi-

zens to the Commonwealth. I am not like the gentleman from Montgomery; (Mr. Boyd;) I do not care whether they come from Philadelphia or Pittsburg, or from any other county in the Commonwealth. If they are the kind of children that are contemplated by the section under consideration, they may be placed in institutions of this kind.

Our system of common schools as now conducted under the acts of Assembly of this Commonwealth will not accomplish this purpose. The common schools have no power to clothe children and feed them and teach them mechanical occupations. That requires a different kind of system from any that we have ever had in Pennsylvania or any that we desire to have for the general education of our people. I do not desire that the children of all persons, as is contemplated by the gentleman from York, should go there, but just such as are contemplated by this section.

The gentleman from York is mistaken, and the gentleman whose letter he read is mistaken, in regard to the system of common schools in Pennsylvania. The letter from which he read states that it was not until the Legislature provided that all should be taught together in the same schools, that up to this time the common school system of Pennsylvania had been a failure. Sir, up to 1831, there had been no common school system in Pennsylvania. The article of the Constitution of 1790, which authorized the Legislature to provide a system of common schools at which the poor should be taught gratuitously, had been on the statute book for forty-one years before anything was done under it except a provision in an act of Assembly of 1825 that made some provision for the creation of a common school fund; and it was not until 1831 that an act of Assembly was ever passed under the Constitution of 1790 providing for the establishment of a system of common schools. Forty years had that constitutional provision been in force in Pennsylvania and nothing done under it. Strange as it may appear, and strange as it is, the Convention of 1837-'38 adopted that provision from the Constitution of 1790 *verbatim et literatim*, added nothing to it, let it remain as it was, although the common school system of Pennsylvania then was in its infancy.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment,

striking out the word "may," and inserting "shall."

The amendment to the amendment was agreed to.

The President pro tem. The question recurs on the amendment to the amendment.

Mr. CAMPBELL. I hope this amendment will not prevail. I should like to call the attention of the Convention to where they are drifting. When the gentleman from Cumberland (Mr. Wherry) first offered the amendment, the Convention laughed at him. There was a universal —

Mr. WHERRY. Will the gentleman give way until I make an explanation which is really due to myself? The words which caused the merriment were really no part of the amendment at all, but were hitched on by my friend from Tioga (Mr. Niles) thoughtlessly, for the very purpose of being stricken off in order that I might make my speech. [Laughter.] I make this explanation in justice to myself.

Mr. CAMPBELL. Very well. Now, Mr. President, what will be the practical effect of this section? If it be adopted, we shall declare that the State of Pennsylvania is to provide schools enough to take care of, feed, clothe, and educate, all those children that gentlemen here denominate as "vagrant, neglected and abandoned." This of itself is a huge undertaking; and I would ask the members of the Convention to look at it seriously before they commit themselves finally to vote for it.

Can the State of Pennsylvania do this thing? Can it, year after year, appropriate immense sums of money for the purpose of carrying on these industrial schools? Can we, out of the Treasury of the Commonwealth, provide schools for these twenty thousand children in the city of Philadelphia, that are so pathetically spoken of? Will the people of the Commonwealth submit to be taxed for such enormous appropriations as will be required for the support of these schools?

Mr. President, outside of the money consideration involved in the establishment of such a system, there is another matter to which I wish to call the attention of members. How will the administration of this proposed scheme be carried into effect? How will these vagrant and neglected children be collected and put into these schools? Is it intended merely to provide schools and then invite vagrant children to come to them? That of it-

self would be an absurdity. If they are the class that they are represented to be, you cannot get them to go to school voluntarily; you must provide your State officers, your State agents in every county to take them from the streets and put them into the schools. Then, after you do provide your State agents, your State police, or whatever you choose to call them, you have to make your schools prisons; if you allow them to have open doors the children will go out again; in plain language, you have to establish numerous houses of refuge throughout the State at the public expense for the maintenance and education of neglected and abandoned children. Are we prepared to do that? Are we prepared to say to the people of Pennsylvania that their Legislature must every year appropriate money for the establishment of *prisons* in which to incarcerate the children taken from the streets, or, perhaps, taken from their homes, and in which such children will be provided for, clothed, fed and educated?

Mr. President, there is another feature of this proposed scheme which to my mind is the most dangerous of all. It will, under color of reclaiming vagrant, abandoned and neglected children, allow your State agents, who may become the mere officers of religious denominations, to go into the houses of private citizens, and on the plea that the fathers or the mothers or the guardians do not educate in the proper way the children entrusted to their care, take them out of their homes and put them into the proposed prison schools. Will you permit that? Will you permit the State to be turned into a machine for religious persecution? That will be the effect of it. That will be one of the first results of it.

I believe that the first section of this article is a good one. In my opinion we should provide ample means for carrying on our public schools. I am perfectly sincere in my belief that the public school system of Pennsylvania is a good one. I myself owe my education to it. I have been educated in public schools from the time I was six years of age until I was seventeen, from the lowest up to the highest of them, and I believe they are good institutions. I believe that the State should appropriate all the money that is necessary for perfecting the common school system and making it still more useful. But I do protest against the passage of the section

now before us, incorporating as it does a principle of compulsory education of the kind proposed into the Constitution of Pennsylvania. What the gentlemen who advocate this section declare they wish to effect, can be accomplished by having your school system so perfected that it will invite of its own accord all the poor children of the Commonwealth to come to the public schools provided for them. The reason now that such a large percentage of your population will not attend your public schools, is because your public schools are run in many instances in the interest of sectarian denominations. You will find that large numbers of the people do not regard them with favor because the religious faith of their children is tampered with and attempts are made to pervert those children from the faith that they believe in; and, Mr. President, that is the danger that we have to fear from a section of this kind. If we have the danger under our present system as it is now, when it is not compulsory, how much more danger will there be when it will be compulsory. How much danger will there be when you will allow a State officer to go into a man's house, take out a child and put that child into a house of refuge, or perhaps allow him to walk into a religious orphan asylum and on the plea that the children in that orphan asylum have been neglected and abandoned, take those children out of the asylum and put them into a State institution?

I tell you if you attempt to enforce anything of that kind, the people of this State will, sooner or later, reverse your action.

I do protest against the passage of this section, and I hope the good sense of the members will lead them to vote it down. We voted it down in committee of the whole, and I hope we shall do so here. The true course is to so perfect your common school system as to remove all sectarian influence from it and make it inviting to all the people of the State to send their children to reap the benefits to be derived from it. By doing this you will get clear of your difficulty, and have your large class of neglected and vagrant children provided for.

MR. ANDREW REED. I desire to state the reasons for the vote which I expect to cast. Were I in the Legislature I should vote for a section of this kind. I am in favor of its principle; and had the section remained as originally moved by the chairman of the Committee on Education,

(Mr. Darlington,) I should have voted for it; not because the Legislature would not have the power without it, but for the sake of showing the favor of the Convention to that measure. But this Convention having adopted the amendment of the gentleman from Philadelphia, (Mr. Knight,) making it compulsory on the Legislature to do it, I shall vote against the section, because I believe the matter should be left to the Legislature, and then if it does not work well it can be repealed.

MR. HANNA. Mr. President: I fear that quite a number of the members, in discussing this question, have confounded compulsory education with the establishment of industrial schools. The subject before us is not compulsory education, but a section requiring that the Legislature shall establish industrial schools where neglected children shall be taught mechanical pursuits.

That is a very different question; and for one I am not prepared to vote in favor of compelling the Legislature to do this very thing. The first section of this article covers the entire subject; and as has been well stated by the gentleman from Mifflin, this is a question entirely for the Legislature. Why, sir, what are we about to do? Authorize the establishment and the location in four, or five, or half a dozen different sections of the State of institutions governed by State officers, with their agents and their police authorities. Why, sir, they cannot be organized without it, and I submit they will in time become unpopular and the source of complaint.

Again, it will impose a vast burden of expenditure upon the State at large. As my colleague from Philadelphia referred to that subject, I will not again advert to it, but I do insist that the State now, the people at large, are not prepared to introduce into the Constitution of the State any such principle as this. Why, sir, our soldiers' orphans' homes and other institutions under the charge of the State have been from time to time the source of very serious criticism. Time after time have charges been made in the Legislature against the improper management and control of those institutions; and for one I am not willing to increase the number of such institutions. I think that all the State at large has to do is to provide for the expense of our common schools, and as regards compulsory education, I submit that is a question which should be left to the school authorities of the several

school districts of the State. Let the Legislature confer upon the boards of education throughout the State such authority as will enable them to introduce compulsory education, in such a manner as will meet with the favor and approval of the people.

In the State of Massachusetts they have a form of compulsory education which as far as I know meets with the approval of the people, but they make no distinction between the children. They have their truant officers going about the streets of Boston and other places throughout the State, and they have the power whenever they see a boy they think should be at school to question him, to examine him, and if they find him to be a truant to conduct him back to his school-house. That is as far as we should go.

I cannot close without alluding to another remark of my colleague (Mr. Campbell) from Philadelphia. In referring to our common schools, he has pronounced them to be under sectarian rule and government. That, sir, I deny.

Mr. CAMPBELL. I rise to an explanation. I did not say any such thing. I said that in many instances schools are run in the interest of sectarian denominations, and I say now that this sectarian influence is becoming so general that at least one religious denomination has withdrawn its children from the public schools.

Mr. HANNA. The gentleman has attempted to explain; but he did, in his

seat, say that the common schools of Philadelphia were sectarian institutions and that the effect of them was to pervert the children from the faith of their fathers. That, sir, I deny. From the earliest establishment of the common schools of Philadelphia no one ever complained of them but one single denomination. Why? Because the Holy Bible was read in our public schools; that is all, and if that is sectarian, I should like to know it.

Now, in regard to the question before us, I do submit that this proposition should not be agreed to, because it belongs to the Legislature of the State to make such rules and regulations, to pass such acts of Assembly as will perfect our common school system. This is provided for in the first section of the article.

Mr. GIBSON. I offer an amendment to the amendment. I move to strike out all after the word "schools," and insert the following:

"For the children of the Commonwealth the Legislature shall provide by law for the selection of proper skilled mechanics and the establishment of proper places and buildings at the public cost, in which said children may be instructed in the arts and mysteries of useful trades."

Mr. C. A. BLACK. I move that we adjourn.

The motion was agreed to, and at six o'clock and fifty-four minutes P. M. the Convention adjourned.

ONE HUNDRED AND TWENTY-SEVENTH DAY.

WEDNESDAY, June 25, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday's proceedings was read and approved.

LEAVES OF ABSENCE.

Mr. DARLINGTON asked and obtained leave of absence for Mr. D. N. White, for a few days from to-day.

Mr. WHERRY asked and obtained leave of absence for himself, for a few days after to-day.

PLACE FOR SUMMER SITTINGS.

Mr. BRODHEAD. Mr. President: I offer the following resolution:

Resolved, That a committee of five be appointed by the President to inquire what facilities are afforded by different places for the sitting of this Convention during the summer months, and report at their earliest convenience.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted ayes 37, noes 31.

The resolution was read a second time and considered.

Mr. J. N. PURVIANCE. I move to amend by striking out "five" and inserting "three" as the number of the committee.

The amendment was rejected.

Mr. LILLY. I move to strike out "five" and insert "the committee of the whole."

The PRESIDENT *pro tem.* That is not in order.

Mr. KNIGHT. I move to postpone the further consideration of the resolution.

The PRESIDENT *pro tem.* The question is on postponing the consideration of the resolution.

The question being put, there were a division, ayes 34, noes 38.

Mr. BOYD. I call for the yeas and nays, Mr. President.

Mr. EDWARDS. I second the call.

Mr. STANTON. I trust the Convention will either accept it or postpone it, and not spend another day on this question.

The PRESIDENT *pro tem.* The yeas and nays are ordered, and the Clerk will call the roll.

The yeas and nays being taken, resulted as follows:

Y E A S .

Messrs. Achenbach, Andrews, Bailly, (Perry,) Bannan, Bardsley, Bigler, Black, Chas. A., Boyd, Broomall, Bullitt, Calvin, Carter, Darlington, Edwards, Fulton, Guthrie, Hall, Hay, Hemphill, Kaine, Knight, Lawrence, Lilly, Littleton, M'Camant, M'Culloch, Mann, Mantor, Mott, Palmer, G. W., Palmer, H. W., Patton, Porter, Pughe, Purman, Purviance, Samuel A., Rooke, Smith, H. W., Stanton Turrell, Wetherill, Jno. Price, Wherry and Wright—43.

N A Y S .

Messrs. Ainey, Alricks, Baer, Bailey, (Huntingdon,) Beebe, Black, J. S., Bowman, Brodhead, Brown, Church, Cochran, Corbett, Cronmiller, Curry, Curtin, Davis, Dunning, Elliott, Ellis, Ewing, Funck, Gibson, Gilpin, Greene, Hazzard, Horton, Hunsicker, Lambertson, Long, MacConnell, M'Clean, M'Murray, Minor, Niles, Parsons, Patterson, T. H. B., Purviance, John N., Reed, Andrew, Runk, Russell, Struthers, Van Reed, Walker, Wetherill, J. M., White, J. W. F., and Woodward—46.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks, Armstrong, Baker, Barclay, Bartholomew, Biddle, Buckalew, Campbell, Carey, Cassidy, Clark, Collins, Corson, Craig, Cuyler, Dallas, De France, Dodd, Fell, Finney, Hanna, Harvey, Heverin, Howard, Landis, Lear, MacVeagh, Metzger, Mitchell, Newlin, Patterson, D. W., Read, John R., Reynolds, Ross, Sharpe, Simpson, Smith, H. G., Smith, Wm. H., Stewart, Temple, White, David N., White, Harry, Worrell and Meredith, *President*—44.

Mr. BIDDLE. Mr. President—

The PRESIDENT *pro tem.* The motion is not agreed to.

Mr. BIDDLE. I desire to vote.

Mr. WOODWARD. I object to that vote being recorded. It was given after the Chair had declared the result.

The PRESIDENT *pro tem*. If objected to, it cannot be recorded.

Mr. BIDDLE. I rose and addressed the chair before the vote was announced.

Mr. WOODWARD. What I stated was absolutely true. The vote of the gentleman from Philadelphia was cast after the decision of the chair was declared, and I object to any vote being received after the Chair has announced the result.

The PRESIDENT *pro tem*. The vote cannot be received, as objection is made. The question recurs on the resolution.

Mr. J. PRICE WETHERILL. On that question, I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The yeas and nays were taken, and were as follow, viz:

YEAS.

Messrs. Ainey, Alricks, Bailey, (Huntingdon,) Beebe, Black, J. S., Bowman, Brodhead, Brown, Buckalew, Calvin, Cochran, Corbett, Cronmiller, Curtin, Davis, De France, Dunning, Ellis, Ewing, Funck, Gibson, Green, Hazzard, Hunsicker, Lamberton, Long, MacConnell, McClean, McCulloch, Minor, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Rooke, Runk, Russell, Smith, H. W., Struthers, Temple, Van Reed, Walker, Wetherill, J. M., Wherry, White, J. W. F. and Woodward.—50.

NAYS.

Messrs. Achenbach, Andrews, Armstrong, Baer, Bailly, (Perry,) Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Boyd, Broomall, Bullitt, Campbell, Carey, Carter, Church, Clark, Curry, Dallas, Darlington, Edwards, Fulton, Gilpin, Guthrie, Hall, Hay, Hemphill, Horton, Kaine, Knight, Lawrence, Lilly, Littleton, McCamant, McMurray, Mann, Mantor, Mott, Patton, Porter, Pughe, Purman, Stanton, Turrell, Wetherill, John Price and Wright—47.

So the resolution was agreed to.

ABSENT.—Messrs. Addicks, Baker, Barclay, Bartholomew, Cassidy, Collins, Corson, Craig, Cuyler, Dodd, Elliott, Fell, Finney, Hanna, Harvey, Heverin, Howard, Landis, Lear, MacVeagh, Metzger, Mitchell, Newlin, Patterson, D. W., Read, John R., Reynolds, Ross, Sharpe, Simpson, Smith, H. G., Smith, Wm. H.,

Stewart, White, David N., White, Harry, Worrell and Meredith, *President*—36.

Mr. H. W. PALMER. Mr. President: I have received a telegram, which I ask may be read.

The CLERK read as follows:

WILKESBARRE, June 24, 1873.

H. W. Palmer, *Constitutional Convention, Philadelphia:*

The city of Wilkesbarre invites the Convention to hold its sessions here. Every provision will be made for the convenience and comfort of its members in and out of session.

H. M. HOYT,
G. M. HARDING,
STANLEY WOODWARD,
CHARLES PARRISH,
W. LEE, JR.

Mr. EWING. I move that the communication be referred to the committee to be appointed under the resolution just passed.

The motion was agreed to.

EDUCATION.

The PRESIDENT *pro tem*. The first business in order is the consideration of the article on education, the question being on the amendment offered by the gentleman from York (Mr. Gibson) to the amendment of the gentleman from Chester (Mr. Darlington.) The amendment to the amendment will be read.

The CLERK. The amendment to the amendment is to insert after the word "schools," the words, "for the children of the Commonwealth, and shall provide by law for the selection of proper skilled mechanics and the establishment of proper places and buildings at the public cost to which said children may be instructed in the arts and mysteries of useful trades."

Mr. PURMAN. Mr. President: The section as proposed by the delegate from Chester provided that "the Legislature may establish industrial schools and require the attendance of vagrant, neglected and abandoned children," and the amendment follows in its wake.

Mr. President, I regard this proposition as a very mischievous and dangerous proposition for several reasons. In the first place, it employs terms that are exceedingly vague and undefined. What children are "neglected" so that the strong arm of the Commonwealth should be employed for the purpose of picking up a child here and there on the streets and in

the townships throughout this Commonwealth? Where would the line begin when you should say a child was not neglected and where would it end where you would say a child was neglected? The whole theory of our government is based upon the idea that the parents have the right to control their children, and not until they have ceased to make any provision for them whatever, has the State a right to come in and take the children out of their hands, and say to them, they have been neglected. What I might regard as gross neglect on the part of parents as to the industry of the child or the education of the child, my neighbor might regard as the highest care. The State has no right to compel the children of the State to labor as long as the parents maintain them. The State has no right to compel any citizen of the Commonwealth to labor as long as he may maintain himself.

This is not merely for "abandoned" children, such as may be found in the streets of the city of Philadelphia and other cities of the State, but it is for those who are "neglected" by their parents. "Neglected" in what? Neglected in their religious training? My good Presbyterian neighbor would come along to me and say, "I am sorry that you are so unmindful of the interests of your children; here you have a son and a daughter which have reached fifteen or sixteen years of age, and those children have not yet been baptized. Why should you be so neglectful of the best interests of your children, for their morals here and their life hereafter?" I would smile in the gentleman's face and I would tell him that those waiting at Jerusalem for the promise made to their fathers baptized none but believers, and that I had an abiding confidence in that doctrine; I was holding fast to the doctrine of the fathers.

I might come along and say to my Catholic neighbor, "Why do you carry your children off to the Cathedral and point them to the cross and the Virgin Mary, and all the balance of the paraphernalia of that Church? Are you not likely to destroy the moral and religious sentiments of your child?" He would answer, "Why, sir, this is the mother Church. This I regard as the highest teachings my child can receive."

Has the Convention thought for a moment where this proposition will lead us? It is mischievous indeed, and would lead

to the destruction of the power of parents over their children, lead to religious conflicts the end of which no man can foresee. Perhaps this argument may excite a smile on the faces of delegates and may not reach their thoughts, may not be sufficient to arouse their energies and make them reflect what they are about to do. I want it to appear in the Debates of this Convention that the mischievous and dangerous consequences of this section was most fully pointed out, and then let the Convention do whatever it may see proper. This is a rock upon which the State will burst into fragments—a stumbling block and a pitfall. The principle involved in this section is a total disregard of the inalienable right to the enjoyment of life, and the unfettered pursuit of happiness. It violates the natural rights of parents over their children, and the rights of conscience of both the parents and the children. The first section of this article establishes "a thorough and efficient system of public schools wherein the children of this Commonwealth may be educated." From this it will be seen that ample provision is made to educate all the children of the State, but the section of the gentleman from Chester proposes to "require" the attendance of all the children. This would enable the Legislature to pass laws authorizing such authorities as it might create to enter the house of each man and enquire how he was educating his children, and finally to carry them away if they supposed they were neglected in their education. This I submit violates all the principles of religious *freedom* and *equality*. This article contains in it the spirit which drove Rodger Williams out of Massachusetts, and are akin to Smithfield and Oxford. This system of compulsory education and compulsory moral reform, however plausible on the outside—inasmuch as they profess to cure ignorance, idleness and vice; infirmities and evils detrimental always to public life and destructive of the common welfare—is one of great difficulty and delicacy, but in its vigor and life is destructive of the liberty of men and women to keep their children at home and educate them in their own way.

Mr. BAER. Mr. President: I am heartily in favor of the amendment of the gentleman from Chester; but I voted yesterday in favor of striking out "may" and inserting "shall." On mature deliberation I have come to the

conclusion that that vote was wrong. Much as I am in favor of all that is contemplated there, I cannot conceive that it would be proper for the members of this Convention to incorporate such a provision in the fundamental law. I fear that to do so will have the effect of estranging many of the friends of the instrument from voting for it when it comes before the people for adoption. The eloquent address of the gentleman from Cumberland, (Mr. Wherry,) and the simplest story told so well by the gentleman from Washington, (Mr. Hazzard,) had the effect yesterday to unman this Convention, and they were on the very eve of doing what they would regret in the future by incorporating in the fundamental law a principle which may or may not be of great advantage to the State, but which it is not wise in the Convention to insert here. For that reason the word "may" should be restored if you go so far as to adopt the amendment of the gentleman from Chester, and I now move, in order to bring this matter before the Convention, a reconsideration of the vote by which "shall" was inserted and "may" stricken out, so that "may" shall again be inserted.

The PRESIDENT *pro tem.* The gentleman rises to a privileged question.

Mr. BAER. Yes sir.

The PRESIDENT *pro tem.* The gentleman from Somerset moves a reconsideration of the vote on the amendment of the gentleman from Philadelphia (Mr. Knight) to the amendment of the gentleman from Chester striking out "may" and inserting "shall."

Mr. LILLY. I second the motion.

Mr. DARLINGTON. That is not in order at this time. We have another matter under consideration.

The PRESIDENT *pro tem.* The motion will be a subsequent question. The question now is on the amendment of the gentleman from York (Mr. Gibson) to the amendment of the gentleman from Chester (Mr. Darlington.)

Mr. DARLINGTON. I want to say one word before the vote shall be taken on this amendment. Some gentlemen seem apprehensive —

The PRESIDENT *pro tem.* I believe the delegate spoke to this point yesterday.

Mr. DARLINGTON. Not on this amendment.

The PRESIDENT *pro tem.* If the gentleman did not, he will proceed.

Mr. DARLINGTON. I was about to say, and I will say it in a very few words, that the apprehension of some of the gentlemen as to the difficulty of determining who are vagrants, who are neglected and who are abandoned children, is rather fanciful than real. I do not think the community have any difficulty in deciding when a child is a vagrant child, any more than a magistrate, the least informed in the country, has in deciding who is a vagrant grown person. What is meant by "neglected children?" Those whose parents or natural protectors do not afford them necessary protection and care, everybody understands. "Abandoned" are those whom their parents and guardians abandon to the charity of the world. No more difficulty exists, therefore, in the Legislature defining, or in the officers of the law who may be entrusted with the duty, determining who are vagrant, neglected and abandoned, than there would be in determining who now is a pauper and entitled to charity.

I apprehend, Mr. President, there is no more sacred, no more holy, no more imperative duty resting upon the community than to take care of the poor and neglected and abandoned. No more holy duty rests upon us than to see that every child in the community shall be educated so as to fit him for the duties of citizenship. Does any gentleman fear that if this Convention shall merely recommend to the Legislature or choose to order the Legislature to take care to provide for instruction in the industrial arts of neglected, vagrant and abandoned children, we thereby endanger the safety of this Constitution? It is probable that any gentleman within the sound of my voice has any fear about the response that will be given by the people of the State with one universal voice on a question like that? If we suppose that the people of this Commonwealth are in favor of ignorance, vice and crime, then let us make the worst Constitution that we can, and go home and submit to our fate. But if we are here as statesmen to provide what is best for the whole community, let us not flinch or hesitate in doing that which every man in his conscience believes ought to be done. The State has the duty of the care of the poor. As the Scripture says—and I am not apt to quote it often—the poor we always have with us, and we probably always shall have the poor with us; and those who are more fortunate have the

solemn duty imposed upon them of taking care that the poor do not suffer unnecessarily by the circumstances of their position. We are to have a care over society that crime shall not prevail; that society shall be safe; that every man shall be educated. It is the very foundation, I need not tell this Convention, of our institutions themselves. They rest upon the integrity and the intelligence of the whole people. I would like to see the man who has the fear of the popular judgment before his eyes, and for that cause should hesitate to vote in favor of providing, at the expense of the State, to take care of the neglected and abandoned children of the State so as to make them honest men, make them industrious men, make them artisans, make them mechanics, fit them for every condition of life, and make them good and useful citizens. It is money well expended.

Mr. MACCONNELL. I should like to ask the gentleman a question.

Mr. DARLINGTON. I have no objection.

Mr. MACCONNELL. Does the gentleman know that there are seventy-five thousand of these children in the State; and will he explain to us how much money it will take to buy ground and erect the necessary houses and put up the buildings and provide furniture and provide them with the necessary teachers and implements in order to accommodate those seventy-five thousand children?

Mr. DARLINGTON. I have not stopped to inquire what the cost will be. If a man comes to my door seeking charity and in distress, it is not my business to inquire how he came so. In such a case as this, it is no part of our business to inquire whether we can do this thing. We all know that we can, and we all know that we must. We know that that class of the community must either prey upon us and live upon us by thieving and by crime, or they must be instructed and directed how to take care of themselves by proper education, and by proper training. It is not a question whether it will cost so many dollars and cents, either more or less. It is a duty that rests upon us, that rests upon every community, from which we cannot shrink, if we would, and from which we dare not shrink if we could. We must appropriate enough money to carry out these objects if we wish to make good citizens of these neglected and abandoned children. The State is able to do it. Will any man tell me that she can not?

Look at the returns made by your census officers! In the county of Chester, small as it is, we have not less than seventy millions of property. I do not pretend to give the exact figures, but we have in this whole Union, according to the census returns, property of the value of forty thousand millions of dollars. Then let us never say that we cannot take care of a few neglected and abandoned children. They are small in number in comparison with those that are better off, the happy members of the community. The consideration of the expense should be discarded. The expense is nothing. It may be \$10,000 or \$100,000 or \$1,000,000, but whatever it is let it be made. The great State of Pennsylvania should never flinch from an appropriation of whatever may be necessary to save our citizens from this vice of ignorance that is growing up all around us.

Mr. BOWMAN. I have no disposition to protract this discussion; but I regard this question as one of the most important which this Convention has had under consideration. At a very early stage of its sessions, I had the honor to introduce a resolution which was referred to the Committee on Education, looking to the establishment of a system of compulsory education in the State. I believed then, as I do now, that the safety of the State and the safety of the government depends upon the education of all the children. If we would preserve republican institutions, if we would preserve our present form of government, it is absolutely necessary that all the children in the Commonwealth and in the United States should be educated.

Let us look at this question fairly. Last year there were expended in this Commonwealth over eight millions of money to defray the expenses of the common school system of the State. Over five millions of that money were wrung from the pockets of the tax-payers of the Commonwealth, and we have the fact before us that there are over seventy-five thousand children between the ages of six and twenty-one years who never have entered a school-house door.

I am in favor of this proposition if I cannot get anything better. I believe that it is important that all the children of the Commonwealth should be compelled to attend the public schools. It was argued yesterday that it would entail a very great expense upon the Commonwealth, and that it would be impossible almost to

erect buildings for the purpose of feeding and clothing our indigent and abandoned children. We have to take care of these children now. So far as their food and clothing are concerned, they are to be provided for at the public expense, and this section and its amendment simply look to the education of that class of children for the support of which we are already compelled to provide. What was it that gave the Prussian army such decided victories over the French in the recent contest between those powers? What was it that enabled the Prussians to gain victories over the French at Gravelotte and at Sedan, and enabled them to carry to the walls of Paris the approaches by which that city was compelled to surrender to the Prussian army? It was simply because the Prussians were educated, not only in the arts of war and the manual of arms, but in the sciences, that gave them the advantage over the French army, that compelled the surrender of the proudest and gayest city in the world.

In view of the expenditures of public money it is important that we put something in the Constitution that will compel the Legislature to pass a law providing for the education of all the children in the Commonwealth. The safety of the State depends upon it. The welfare and future prosperity of the people depend upon it. You erect school houses, you employ teachers, you throw wide open the doors of the public schools throughout the State, and invite the children to come in. Yet seventy-five thousand of them stay away. Their parents, their guardians, those having them under their control, refuse to send these children to school. The result of it is that they grow up in ignorance and in crime. Does not that ignorance and crime entail upon the State an expense far greater than would be the cost of their education? It would be far better to support the children in the public schools than to support them in the almshouse, in the jails and in the penitentiaries. It would be to the interest of the State to educate them first, and then in the end the State would make a very large pecuniary saving.

The proposition of the gentleman from Philadelphia leads to the education of children and it is objected that these are a class of abandoned, neglected children. Well, the rich provide for their children. Those who are able to send their children to school usually do it, and the exceptions are very few. I once heard of a man of

wealth who refused to educate his children for the reason that as soon as his eldest boy learned to write he had counterfeited his father's name, and he was determined that if his children were prone to do evil their ability should be limited and they should be rascals upon a limited scale. We have, unfortunately, a few men in this Commonwealth belonging to that class who are able to educate their children, but do not. It is creditable that they are few, and it is to be hoped they will become less.

In view of the importance of this question, I hope that the proposition of the gentleman from Cumberland, with the amendment of the gentleman from Philadelphia, will prevail. As was said yesterday, we had in the Constitution of 1790 a similar provision, that is, that the indigent children and the poor should be taught gratis, and that the Legislature might provide means for the education of these children. But it was more than forty years before the Legislature adopted any measures looking to the education of all the children in the Commonwealth, and it is but recently that all the school districts in the State have adopted the present common school system. Do I under-rate this question when I say it is important? It is important. It is one that should interest every delegate on this floor. If the tax-payers of this Commonwealth are to pay out of their pockets annually over five millions of money they are entitled to know how that money is spent and they are entitled to receive therefrom some benefit.

One word more and I am done. Thousands and thousands of the tax-payers of Pennsylvania to-day, and ever since the organization of the common school system, have paid their school taxes and have never received a particle of benefit therefrom personally. They have no children to send to the common schools and that is why they are not directly benefited by this great system. Still they are compelled to pay their money for this particular purpose, which has in view the accomplishment of a particular object, although they cannot be benefited in the education of their own children, for they have none. Even by some of those who have children the benefits of the common school system are not enjoyed. They send their children to be educated at private institutions in other States, remote from home, and to the seminaries and colleges scattered all over the country. Nevertha-

less they are bound to pay their taxes and do pay them without receiving any personal benefit therefrom.

Now, unless this proposition or something similar to it is adopted, we may as well abandon the common school system altogether.

The PRESIDENT *pro tem.* The gentleman's time has expired.

Mr. KNIGHT. My object in offering this amendment, striking out "may" and inserting "shall," was in part to do away with special legislation. If we pass the section submitted by the gentleman from Chester it will simply be that the Legislature may make this appropriation. That will only call out in the Legislature as many different opinions as there are in this body, and influences will be brought to bear upon the Legislature to control their action in the premises. My idea simply is that if this measure is proper and worthy to be carried out, it is better for us to provide that the Legislature *shall* do it. I know no body better able to judge upon this subject than the one hundred and thirty-three gentlemen assembled in this Convention. Let the decision be made here. If the provision is not proper, let us vote it down entirely; but I think it is proper.

As I said yesterday, I think if we would pay more attention to this class of abandoned and poor children of the Commonwealth and less attention to that portion of our children who are educated in the high schools, where they are taught the languages and the higher elements of education of which they do not probably stand in need to fit them to become good citizens and enable them to earn an honest living, and devote the time and money thus used to these poor and destitute classes, we should, perhaps, accomplish a greater good than we are now securing. We might receive the curses of the parents and masters of these children; but when they grow up we shall receive their praise and blessings.

What is the situation to-day? There are so many idle children in this city that if there is any excitement at the corner of a street, you will find five hundred of these idlers there. This would obviate that to a very great extent, remedying that great evil of vice and idleness which is broadcast all over the land.

In addition to that, it is stated that there are seventy-five thousand children of this class in the State; that would be about one to every fifty of the popula-

tion. Now, I take it for granted that if this provision were in force, many of the parents of these children not wishing them to go into these industrial schools would give them some attention, be forced to take care of them themselves, and I believe the result would come to this: That there would be more than one out of four at present existing, reducing it probably to eighteen thousand seven hundred and fifty, which would be only one out of two hundred of the population of the State.

I trust, sir, that this amendment will not be voted down. I think that there is a great deal more in a preventive than there is in a cure. Let us prevent this evil, and if we adopt this amendment and carry this provision into effect as a part of the fundamental law of the State, made by this Convention, we shall then adopt a remedy to prevent this state of things in the future, or at least that is my opinion.

Mr. BULLITT. Mr. President: I know that this is not the time to say anything that seems adverse to general education, and I suppose there is no one in this Convention who more thoroughly and more fully appreciates the value of education than I do myself; but it does seem to me that the gentlemen of this Convention under-rate the values of the system that now prevails and over-rate the proposed good effects from the one which is proposed to be introduced, and I do not think that they properly appreciate the evils which are likely to grow out of the introduction of this compulsory feature into the Constitution.

The gentlemen of this Convention have shown, as far as I am able to judge from the short time I have been in it, and from the observation I have been able to give of the work which they already done, a most tender regard for the rights of the citizens in almost every respect, their rights of person, their rights of conscience, their rights of speech, their rights of property, and while you have been apparently so guarded, so careful, so tender of the rights of the people in these respects, it is now proposed to introduce a feature which seems to me to be inconsistent with the previous action and opinions and sentiments that seem to have prevailed among you. There are evils growing out of the too great freedom and licentiousness of speech and of the press. There are evils growing out of the abuses of the other rights of the people which you

have endeavored to guard and protect, and yet, Mr. President, it has been recognized, not only in this State, but throughout this country, that one of the elements which we regard as of most value in a republican form of government is that the people should be protected in certain of their rights, even though there may be seen evils to flow from the extreme care with which you guard them.

Now, in this matter of education, while we all desire to see a system accomplished which may be promotive of education in the highest degree; while all intelligent and sensible men at the present day must be led to give their support, their countenance and their aid to educational institutions which will be calculated to improve, to elevate, to refine the character of the people at large—yet you may be carried to a point where the very good you propose to do may be turned into an engine of oppression.

Mr. President, the system, as it seems to me, which is now proposed, is calculated to introduce a class of people which are regarded as among the most odious and detestible in a community. If you undertake to require that all men shall have their children educated, that the Legislature must provide a system by which this shall be done, and that there shall be no longer any option on the part of parents with reference to whether they will send their children to school or not, you must provide police detectives to carry your law into force. And let any gentleman who wishes to see the working of that system go into the quarter sessions of the city of Philadelphia on any Saturday morning when *habeas corpus* cases are being heard and he will see an illustration of it there. There sits an old, respected and venerable gentleman of, I think, some eighty odd years of age, a man who is respected and esteemed as one of the most benevolent, philanthropic, upright and just men that the city of Philadelphia has ever produced. He has devoted himself during a long lifetime and a useful lifetime to objects of benevolence. He has devoted himself for years past to this very thing of gathering vagrant children, or rather to representing the House of Refuge in their efforts to gather up these vagrant children and take them there for the purpose of reform and education. Yet go there on Saturday morning and you will find case after case brought before that

court, and although this home is governed by people who are actuated by the highest and purest motives, and endeavor to do their duty in a christian and benevolent manner, and although this old gentleman, as the advocate of that institution, endeavors to do his duty with honesty, with fairness and with tenderness, yet almost the uniform result of these cases is that the children are set at liberty, and the universal feeling among the audience, among the bar and with the court, is that it is a misplaced and misjudged effort on his part to attempt to hold these children. The sympathies of all the audience seems to be with the parents and the poor, neglected children, and although they may feel that it is hard that these children are not redeemed, as they think they ought to be, there is that sympathy with the parent which is stronger than any other feeling, and I believe that it is a sentiment which will prevail if you attempt to enforce this system, and instead of having it on the small scale that you have it there, you will have it throughout the State, and this system will be almost universally condemned.

Mr. President, men rebel against restraint. This system of public education is one which will meet with favor, is one which will be nurtured, is one which will be cherished, is one which will produce results of the most beneficial character if it is promoted in a proper manner; but the moment you begin to adopt a compulsory system of this character, I believe you will make it odious.

You are putting this into the Constitution. Recollect that you are putting many other things into this Constitution which are calculated to array against it large classes of the community. You are trenching upon interests which are of importance, which have their advocates and their friends, interests which have their power throughout the State of Pennsylvania. You are endeavoring to protect the people against those who may be engaged in corrupt legislation. Recollect that the power of those men is very great. You are endeavoring to curtail corporations within bounds which you believe to be conducing to the interests of the State. Recollect that the corporations of the State of Pennsylvania are powerful in themselves and you may array enemies against this Constitution that may be too powerful for you. Add one and another and

another of these elements, and your Constitution will be broken down by the weights you have put upon it.

Now, Mr. President, I submit that it is proper to leave this question of education with the Legislature. I do not believe that this State of Pennsylvania is in so heathenish and benighted a condition as might be inferred from some of the remarks which have dropped from the gentlemen here. I do not believe it will be found that the city of Philadelphia is in such a sad and horrid condition when you contrast or compare it with other cities of a similar character in the world. To-day I believe that the people of Philadelphia, as a city, are better housed, better fed, better cared for, have more of the family comforts and quite as much of intelligence, integrity and purity as you will find in any other city of a similar character on the face of the globe. I do not believe you will find anywhere else a larger number of comfortable dwellings for the same number of people. You have benevolent institutions of every character, you have public schools flourishing in every part of the State and every child can be educated throughout the city of Philadelphia. Leave something to the people; leave something to the benevolent; something to the stimulus which is given by the inducements that are offered for education and the benefits which are to arise from it; and I hope that you will not, by the adoption of this proposed feature, introduce into the system of government for the State of Pennsylvania, that which, as I said before, you have condemned and endeavored to guard against in almost every other part of your Constitution.

Mr. STANTON. Mr. President: I have received this morning, through Hon. George L. Harrison, statistics in a foreign paper from Miss Mary Carpenter, the celebrated English philanthropist, which I desire read.

The CLERK read as follows:

"SCHOOLS FOR THE NEGLECTED CHILDREN OF THE STREET.

"The following memorial has been addressed to the Lords of the Committee of Council on Education:

"The humble memorial of the undersigned, Managers of the Day Industrial School, Bristol,

"Sheweth, That this school, then called the Bristol Ragged School, was founded more than a quarter of a century ago for

the education of neglected and destitute children, not admissible by reason of their condition into ordinary day schools.

"That the managers always aimed, to the best of their power, to bring the school under the regulation of the Committee of Council on Education, so as to obtain a fair share of the educational grant.

"That experience proved that in many respects this was impossible, on account of the condition of the children; and that in proportion as a higher educational standard was attained, the miserable arabs of the city ceased to attend, their places being supplied by a better class of children.

"That it was found that casual attendance at a purely educational day school produced no appreciable results on the wild and uncared for children, who might be occasionally induced to attend the school.

"That the efforts of the school board in Bristol failed to affect this portion of the population, and that your memorialists have learnt that this is found to be the case in other large cities.

"That in order to reach these children, your memorialists at the commencement of last year, re-organized the school; excluded all the children who appeared able to attend a British or national school, and detained the other children the whole day from eight to six, giving them three very simple meals, and occupying them during part of the day with industrial work.

"That those very destitute and neglected wild children have attended the school regularly, under these circumstances, and that their orderly and civilized demeanor elicited the commendation of her Majesty's Inspector of Schools on a recent visit, though their educational condition was not such as to entitle them to a pecuniary grant.

"That the Bristol School Board has shown its appreciation of the importance of such a school, by accepting the transfer of it, thus undertaking all the expenditure connected with it as an elementary school, and leaving the expense of the feeding to be borne by your memorialists.

"That sufficient supplies for the food of these children, which is a necessary part of the system, will be raised with great difficulty by voluntary contributions, especially as an educational rate is now levied on the city.

"That, in a number of cases, the children who attend the school have parish

relief, and that it is not right that this should be given to the parents while the child is receiving food as charity, yet the guardians of the poor cannot as the law now stands transfer the allowance to the school.

"That in many other cases the parents are dissolute and squander the money which should feed their children, and yet there is no means of making them pay the cost of the food.

"That great public expense is caused by the practice of sending children to certified industrial schools at a cost of about \$20 a head per annum, while, if the needful alteration in the law were made, most of these children could be brought under proper discipline without breaking the parental tie or superceding the parental obligation, at a cost of one-fourth or even one-fifth of that amount.

"Your memorialists therefore pray that in order to enable the existing evil to be properly grappled with, and at the same time to throw the burden of maintenance in the right quarter, additions may be made to the existing act, investing school boards with the following powers:

"1. Power to school boards to establish and maintain such day industrial (feeding) schools, the expense for food not exceeding 1s 6d per week for each child, or to certify as fit and proper such schools established by voluntary effort and to make the necessary allowances to the managers.

"2. Power to send compulsorily to such day industrial schools all children who cannot, or will not, attend the ordinary elementary schools.

"3. Power to recover from parents the whole or part of the money so spent in food, and from the guardians of the poor the whole of the expense of food and education if the child is chargeable.

"These schools could be established and maintained at a very much less expense to the country than certified industrial schools, which the present act allows school boards to establish, and would extend the benefit of a suitable education and training to the very lowest in the country, from whence workhouses and reformatories are constantly recruited at a great loss to the nation.

"Your memorialists respectfully hope, therefore, that you will give the matter your kind consideration.

"Signed by the managers."

Mr. STANTON. In the same connection I desire to have read a letter from E. E.

Wines to Mr. Harrison, which he has kindly furnished me.

The CLERK read as follows:

NATIONAL PRISON ASSOCIATION }
OF THE UNITED STATES, }
NEW YORK, June 23, 1873. }

George L. Harrison, Esq.,

DEAR SIR: On my recent visit to Philadelphia I heard from you, with deep regret, that the Constitutional Convention, now in session in that city, had passed to a third reading an article forbidding any and all appropriations of money to institutions of whatever kind and for whatever purpose other than those founded by the State. Such an article, if adopted and made a part of the Constitution of the State, will be an insuperable bar to the creation in your State of what I conceive to be the most statesmanlike, the most effective, and therefore the wisest system to save children from becoming criminals, and to reform them when they have. The system to which I refer is, in brief, the following: The State to pass a general law authorizing private citizens, whenever and wherever, in their judgment, they might be necessary in their several localities, to found industrial and reformatory schools; such establishments, when ready for occupancy, to be examined and certified by the State, through duly authorized agents, as places suitable for the purposes intended, the State thereupon to guaranty a given sum per week to be paid to each of the said establishments for every inmate cared for by it; the State, as a matter of course, exercising the right of stated inspections, to see that the money it grants is not squandered or misapplied, and reserving the power of revoking its certificate and withholding its appropriation whenever it judges that there is occasion so to do. The first class of institutions named—the industrial school—designed for destitute, exposed or viciously trained children, is of a strictly preventive character; the second—the reform school—designed for children already fallen, is of the curative type, and together they cover the whole field of delinquent juvenile treatment. It is easy to see, (for it lies upon the surface,) what a stimulus such an act as I have referred to would be to private enterprise, and how it would dot a State all over with preventive and reformatory institutions, larger or smaller, according to the locality in which they might be situated.

Nor is this an untried or mere theoretical system. It has existed and been in active operation in England for more than twenty years, with results the most marked and auspicious. In some localities it has cut up juvenile vagrancy by the roots, and almost destroyed juvenile crime; and everywhere it has changed the character of youthful crime, bringing it down to a far milder and less virulent type. The number of such institutions in England, Scotland, and Ireland is, I think, something like three hundred—equal to some fifty or sixty in Pennsylvania. To a general reform throughout the country in the direction of this system, the efforts of the National Prison Association will be earnestly directed; and an article in the amended Constitution of Pennsylvania such as that mentioned by you would be of very evil influence. I can but hope that if the article is adopted, it will be with an amendment declaring that such industrial and reformatory schools as I have described, founded and managed by private citizens, but recognized and certified by the State, shall be deemed State institutions within the meaning of the Constitution, or some other amendment similar in effect. There can be no doubt that the prevention of crime is cheaper and every way better than its punishment; and this is the way to do it.

Yours truly, E. C. WINES.

Mr. LAWRENCE. I hope we shall now have the vote on this question.

Mr. BAER. I rise to ask whether the motion for reconsideration is now in order? I made a motion for the reconsideration of the amendment striking out "may" and inserting "shall."

The PRESIDENT *pro tem.* The motion has been made and seconded.

Mr. LILLY. Will not the question be on that reconsideration first?

The PRESIDENT *pro tem.* The question now pending is on the amendment proposed by the gentleman from York (Mr. Gibson) to the amendment of the gentleman from Chester (Mr. Darlington.)

Mr. RUNK. Mr. President: I have as yet taken up but little of the time of this Convention, and I had not anticipated now occupying any portion of its time, but I feel as though the main question now pending before this Convention should not pass without at least a word from myself upon the subject.

I care but little whether the motion of the gentleman from Somerset to reconsider, be adopted or not. In the standing committee from which this proposition originally emanated, I was rather disposed to favor it upon the ground of expediency than upon the ground of necessity. I shall favor its adoption now. I voted for it when the question was submitted to this Convention. I voted for the adoption of the amendment of the gentleman from the city (Mr. Knight.) But, sir, whether the motion to reconsider shall be adopted or not, is perhaps a matter of small importance to this Convention and to this State. While I favored the amendment upon the ground of expediency, for the purpose of introducing into this Constitution a provision that the Legislature shall have the power to enact a compulsory education law, I feel as though the first section of this article were sufficient in itself to confer upon the Legislature the power to establish a compulsory system of education.

But, sir, I do not agree with the gentleman from the city who last spoke upon this subject, (Mr. Bullitt,) that the proposition now before this Convention does establish a general compulsory system of education. If I believed that it did establish a compulsory system, and if that were its sole object, I should not vote for its adoption here. But it is because I am willing to incorporate into the Constitution which shall go before the people the power to provide a system of compulsory education that I shall vote against this motion to reconsider. I voted for that amendment, not upon the ground of expediency, but upon the ground of right, because I believed it right and just that the Legislature of this Commonwealth should incorporate into its action a compulsory system of education. I was willing that the report of the committee should contain the word "may" instead of the word "shall," because I believed that the members of this Convention and the people of this State would incline to adopt a Constitution in which the power should be vested in the Legislature to provide a system of this character, rather than that they should be compelled to do so. I voted for the amendment of the gentleman from this city, (Mr. Knight,) to incorporate the word "shall" because I believed that was right. I shall vote against the proposition of the gentleman from Somerset (Mr. Baer) to reconsider, because I believe it is right that the

members of this Convention should compel the Legislature to pass a compulsory system of education to the extent provided for in the amendment of the gentleman from Chester (Mr. Darlington.) If, however, I belieged with the gentleman from the city, who has just taken his seat, (Mr. Bullitt,) that the amendment of the chairman of the Committee on Education did provide a system of compulsory education in all cases, I should vote against it. It is because I think the amendment of the chairman of the Committee on Education does not embrace that broad sphere that I shall support it, and shall vote against the motion of the gentleman from Somerset to reconsider.

We have in the first section of this article progressed as I think beyond the Constitution of any State in this Union, and beyond the provision of any State or nation upon the face of this broad globe. We have provided in the first section of this article that the Legislature shall provide and maintain a thorough system of instruction, whereby all the children of this Commonwealth above the age of six years shall be educated.

Mr. NILES. "May."

Mr. RUNK. Well, "may be educated." I care not whether it is "may be educated," or "shall be." It affords the opportunity, and there is where the virtue lies. For that I have zealously contended here before, and for that I contend here to-day.

It is said by gentlemen upon this floor that that is broad enough to cover the proposition now before the Convention. I care not whether it be or not. There is a possibility that there may be a doubt whether the Legislature of the Commonwealth under the provisions of that section would have the power to compel the attendance of the class of people which have been so ably and so eloquently described by the young and earnest delegate from Cumberland (Mr. Wherry.) The first section is that the Legislature *may* provide and maintain schools for general education. As the gentleman from Cumberland argues, it should be "*shall* provide and maintain." I contend that the proposition of the chairman of the Committee on Education does not cover the class of people that is intended to be embraced in the first section of this article. There is, as we are told by the gentleman from Cumberland, as we are told by the president of the board of public education of the city of Philadelphia,

(Mr. Stanton,) who is a delegate on this floor, and the statement has neither been denied, nor can it be denied, a class that number in this city more than twenty thousand children between the school ages who cannot read and write and who are not provided for by the present system of public education. There are within this broad Commonwealth more than seventy-five thousand children that are not educated, as they should be, under the training protection and guidance of the laws of the Commonwealth. Shall this Convention not place within the power of the Legislature the authority to provide not only that these children *may*, but that they *shall* be educated? Why is it not so now? Why is it not the right of the citizen of this Commonwealth, though he dwell in the humblest hamlet in the State, to have his Legislature provide for him that his children growing up between the ages of six and twenty-one shall be educated? Civilization and christianity give no answer why this should not be the duty of the law-making power of our State.

I listened with attention; I listened with interest; I listened with pride to the remarks of the gentleman on my right, (Mr. J. Price Wetherill,) who told us of the provision made by this city for the education and care of her children. We were told of the homes for friendless children: we were pointed to the magnificent structures provided here for the education of the destitute and the homeless. I rejoice in this spirit which Philadelphia shows. I have passed some of these edifices almost daily since the meeting of this Convention in this city, and I never passed one without an exhilaration of pride in my breast at the christian benevolence of this powerful metropolis. I rejoice in the great efforts and the great expenditures of money that Philadelphia has made for the education and for the elevation of her children. But Philadelphia is not alone in this noble work. Let me call the attention of gentlemen to a few facts on this subject.

I have the honor to represent one of the smallest counties in this Commonwealth, and I ask the attention of the gentlemen representing this great, this growing, this magnificent city in which I have so much pride, to the fact that my little county and other counties of our State are not idle in this great mission. In proportion to the number of our inhabitants, our county has actually done more than dou-

ble the amount of labor in this direction toward providing for the education of our children that Philadelphia has. Taking the census of 1870, and the report of the State Superintendent of Public Instruction for 1871—and these are the latest statistics on the subject—I have multiplied the population of my county by twelve in order to get that number as a maximum for comparing the relative efforts of districts in the cause of common education, and when multiplied by twelve, and the population of Philadelphia multiplied by twelve, I find that the proportion of value of school property in my county, compared to the value of the school property of this vast and growing and wealthy city, in which I have so much pride, is as twelve to five and a half. My own little county of Lehigh more than doubles the vast proportions and the vast expenditures of this growing, this grand, this christian city in her provisions for the cause of education. May I not claim, therefore, that this city is far behind in this respect? I do not compare her with the other great and growing cities of our nation; but I compare her with my own little county and find her less than half as effective in her operations for the education of the people. I find also that the county of Allegheny is eight and a half, still less than Lehigh, which is twelve. The county of Dauphin, the capital county of the great Commonwealth, is eight; and there are great counties like Luzerne and Lancaster, which are less than six. Have then this Commonwealth and these great communities of the Commonwealth done their duty in this particular? I might refer to what has been done in other counties, but the time which, under the rules of this Convention, is allotted to each member is entirely inadequate for such a purpose.

Mr. EWING. Go on. We will give you time.

Mr. RUNK. It has been said repeatedly that the Prussian system is, above all others, the best system of education. Possibly it may be for the Prussian government. It is not the best for Pennsylvania. Under the kingdom of Prussia—I do not know how it is under the present empire—that great country was divided into ten territorial districts. The districts were divided and sub-divided until they came down to the parochial schools.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. DARLINGTON. I trust he will have unanimous consent to proceed. I am exceedingly interested in his remarks.

The PRESIDENT *pro tem*. Does the gentleman from Chester make a motion to that effect?

Mr. DARLINGTON. I do.

Mr. EWING. I second it. I want to hear him.

The PRESIDENT *pro tem*. Is there any objection? The Chair hears none. The gentleman from Lehigh will preceed.

Mr. RUNK. I will occupy but a few more moments of the time of the Convention. In the parochial schools the pastor of the parish was the last supervisor; and if gentlemen will take the trouble of examining into the matter, they will find that in no other country on the face of the earth is the same extended and extensive provision made for religious education. I do not claim that in this Commonwealth there should be a provision for religious education incorporated into the Constitution. It is a source of continual pride to me, and it is equally so to every other delegate present, that among all the communities of this great nation, Pennsylvania was first to recognize the fullest religious freedom. Every man here was permitted to enjoy and exercise, under his own vine and fig tree, those religious convictions which his own conscience might dictate. I regret that it has been the pleasure of this Convention to introduce into the Constitution which we are to submit to the people of the State a provision that contravenes this ancient, this well recognized, this inherent principle of ours, that every man may be free to worship God according to the dictates of his own conscience. It has been said by the gentleman from Philadelphia (Mr. J. Price Wetherill) that if you adopt the fifth section of this article, you will abridge that privilege. When that question was submitted to this Convention and the yeas and nays were called, I was almost the only member as far as I heard, who voted no, in objection to the adoption of the fifth section.

Mr. J. PRICE WETHERILL. Will the gentleman allow me to make an explanation just here. We are not opposed to the fifth section if the State will provide the remedy and take care of the vagrant children herself. But if we do not pass this section and if we do not allow the State to take care of vagrant children, we must have some remedy.

Mr. RUNK. Will you allow me to answer the question by the Yankee mode and ask whether the gentleman from this city voted against that section.

Mr. J. PRICE WETHERILL. I really do not recollect.

Mr. RUNK. I know and am willing to concede that he does not recollect. I voted against it and my voice was the only one heard against it in this Convention by me. There are two other sections in another article of this Constitution against which I voted, and when they first came to my knowledge from the report of the standing committee, I marked them as disgraceful. I have not changed my opinion upon their character now. They prohibited the Legislature of this State from exercising the common and the highest duty of every christian—charity. They prohibited the Legislature from extending the hand of charity to every community, simply because a school, or a community, or an association, or a society might entertain religious opinions. I marked them as disgraceful; I characterize them as such now. I voted against them; and whatever may be the opinion of this Convention or of the people of this State, I shall never entertain any other thought than that they are disgraceful to the institutions of Pennsylvania and to the highest dictates of humanity and christian duty.

I recognize, Mr. President, as the highest rule of conduct that which is specified in the Scripture: "Whatsoever ye would that men should do unto you, do ye even so unto them. Whatever transgresses that maxim, transgresses the highest duty of civil government. It transgresses, and surpasses, and tramples upon the highest rights of conscience. I am not here to maintain the views of any particular sect. I maintain with the gentleman from Delaware (Mr. Broomall) that the religious sentiment of the people should be free as the air, and while I maintain that there is one God, I am not willing, and I would vote against introducing into the Constitution of this State "the existence of the being of a God!"

Mr. President, to come down practically to the question before this Convention, it is this: If we can believe the report of the controllers of the public schools of this city, there are within the limits of Philadelphia alone more than twenty thousand children who do not have the benefits that arise from the public schools of the State of Pennsylvania. I would

reach that, not, sir, in the manner proposed by the gentleman from York, (Mr. Gibson,) by establishing schools in which the people of the State of Pennsylvania may be educated in the mechanical arts or in the industrial pursuits, for while I have the highest regard for them, while I desire to see, and I believe it is within the power of the Legislature under the first section of this article to provide, the most broad and comprehensive system, there may be a doubt whether the Legislature has the power to compel the neglected pauper children of this Commonwealth to attend the public schools.

I believe, Mr. President, that it is the duty of this State not only to provide the means whereby the children of this Commonwealth shall be educated, but I believe if the statistics are true that there should be a compulsory provision by which the children who are now running the streets of Philadelphia, who are now running the streets of other cities in this State and other localities, should be gathered by the State into proper schools and be educated. I say it is not only within the power, but it is the right of the well educated citizen to demand of the State that this should be done.

I am not apprehensive of the dangers which the gentleman on my right from this city (Mr. Campbell) anticipates, that if we adopt a system of this kind we shall interfere with the rights of conscience. If I believed such a result as that would ensue, I should oppose it. I believe in the freest exercise of the rights of conscience, but I believe in the adoption of this plan. It is not new. It may be new to the citizens of this city, it may be new to the citizens of this State, but it is not new in other countries. We have the example of the Hebrew Society in London.

There is an association in London, that of the Hebrew Society. It is a society heartily despised by many partisans and by many christians, and perhaps of which the gentleman who so smilingly looks at me (Mr. Furman) may not approve. I care not whether it be the Hebrew society; I am not a member of that society; I do not know that I have ever been in it; but I know that it is a society having for its object that which I regard as one of the highest elements of christian duty. They provide that every member of that society shall be looked after. There are as members and supervisors of that society gentlemen who would do honor to

this Convention, gentlemen whose duty, whether you regard them as christians or not—

The PRESIDENT *pro tem*. The gentleman's time has expired. ["Go on."] The gentleman cannot proceed the second time unless the House unanimously agree that he shall go on.

Mr. RUNK. I shall not occupy ten minutes.

Mr. CARTER. I object.

Mr. LILLY. I object, and I give notice to the Convention that I shall hereafter object to any one speaking over ten minutes.

The PRESIDENT *pro tem*. The delegate from Lehigh cannot proceed at this time, objection being made. The question before the Convention is the amendment of the delegate from York (Mr. Gibson) to the amendment of the delegate from Chester (Mr. Darlington.)

Mr. D. W. PATTERSON. Mr. President: I shall delay the Convention but a few moments. I am opposed to compulsory education, whether applied to the common schools at large or whether applied to a class of people. I think it is manifest that the common school law to-day would never have had so many friends, never advanced as it did, step by step, to its present universal acceptance if a compulsory condition or clause had been embraced in it by which it would have been made imperative. A compulsory provision in this amendment will make it odious. At the same time I want the Convention to consider what they are making imperative. They have stricken out the word "may;" they make it "shall," and what is it? Why, to cultivate skilled mechanics by the establishment of proper places and buildings to teach the arts and mysteries of useful trades. Not in one place, not in two, but to avoid an invidious distinction or partiality they must locate them all over the Commonwealth. The Legislature *must* do this without regard to cost. They must teach all the trades. The State in her capacity must become a carpenter, a cabinet maker, carriage maker and a blacksmith.

The PRESIDENT *pro tem*. The delegate will suspend until the House resumes order.

Mr. LAWRENCE. Let us have a vote.

Mr. D. W. PATTERSON. I will not delay the Convention five minutes. I say the State would become in her State capacity a mechanic of all kinds, and she

then would throw her products upon the State in competition with private enterprise and private industry and labor. That is to be considered. It is a question involving the great question of capital and labor, and I maintain that there is now enough of the products of convict labor, and too much of it, coming in conflict with the labor and industry of the honest artisans and mechanics of this Commonwealth. But this would double that amount, and therefore it is manifestly improper and unfair to honest citizens of the Commonwealth. It is besides utterly impracticable—the provisions of this amendment.

If you require uniformity and to avoid partiality carry out this law, which is made imperative, it will require a greater appropriation annually than the present common school system. It will render both unpopular, because of its being so expensive and onerous, and I want this Convention to reflect and consider whether they are prepared to make it imperative on the Legislature to go into this wholesale matter and thus render both systems—the great common school system—unpopular as well as render this branch of it odious to all. Leave this matter to the Legislature. Leave it to the wisdom, experience and humanity of the Legislature, and then if it is a necessity they will begin gradually, according to the means which they have, and according as the people will support them in this direction, but do not make it imperative by the fundamental law. If you do you render it entirely impracticable to carry out your imperative demands. I hope that nothing of this kind will be adopted by this Convention.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York to the amendment of the delegate from Chester.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Chester.

Mr. BAER. I now renew my motion to reconsider the vote by which "may" was stricken out and "shall" inserted.

Mr. H. G. SMITH. I second the motion. I voted with the majority.

Mr. RUNK. Is that motion debatable? The PRESIDENT *pro tem*. It is not debatable.

On the question of reconsidering the vote, the yeas and nays were required by

Mr. Baer and Mr. Campbell, and were as follow, viz:

Y E A S .

Messrs. Achenbach, Alricks, Baer, Baily, (Perry,) Bardsley, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Corbett, Cronmiller, Dallas, De France, Dunning, Ellis, Ewing, Gibson, Gilpin, Green, Guthrie, Hall, Hanna, Hay, Heverin, Kaine, Lawrence, Lilly, M'Camant, M'Clean, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Smith, H. G., Smith, Henry W., Struthers, Turrell, Walker, White, J. W. F. and Worrell—64.

N A Y S .

Messrs. Andrews, Armstrong, Bailey, (Huntingdon,) Barclay, Black, J. S., Bowman, Church, Corson, Curtin, Cuyler, Darlington, Davis, Edwards, Elliott, Fell, Finney, Funck, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Littleton, Long, MacConnell, M'Murray, Mann, Runk, Russell, Stanton, Wetherill, J. M., Wetherill, Jno. Price, Wherry, and Wright—35.

So the motion to reconsider was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Baker, Bannan, Bartholomew, Brown, Collins, Craig, Curry, Dodd, Fulton, Harvey, Hazzard, Landis, Lear, MacVeagh, M'Culloch, Mantor, Metzger, Mitchell, Newlin, Porter, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N. White, Harry, Woodward and Meredith, President—34.

The PRESIDENT *pro tem*. The question now recurs on striking out the word "may," and inserting "shall," in the original amendment, which will be read.

The CLERK read as follows:

"The Legislature may establish industrial schools and require the attendance of vagrant, neglected and abandoned children.

Mr. RUNK. Mr. President: When interrupted before, I had almost completed what I designed saying on the important question now before this Convention, and I desire in the brief remarks I shall now make the attention of the delegates, whether they concur with me or not. I

do not wish to speak even without the attention of the delegate from Carbon, (Mr. Lilly,) who I know objects to everything that does not concur with his own views. I do not desire now to occupy the time of this Convention without the attention even of the gentleman from Carbon.

Mr. LILLY. I will leave then, Mr. President, because I do not want to hear him. [Laughter.]

Mr. RUNK. I do not ask him to listen to me. I know he is a gentleman who has his own views upon every subject that comes before this Convention.

The PRESIDENT *pro tem*. Personal discussions are out of order. The delegate will confine himself to the matter before the Convention.

Mr. RUNK. I had said to the Convention that I believe it was a matter of little importance whether the amendment of the delegate from the city on my right (Mr. Knight) prevailed or not. I was satisfied that the eloquent remarks of the gentleman from Cumberland (Mr. Wherry) would awaken in the minds of the members of this Convention and in the minds of the people of this State such an attention to the great and crying evil which the amendment of the delegate from Chester is designed to amend, that, whatever might be the result of the motion to reconsider and the action of this Convention upon that question, it would yet tend to remove the great and enormous evil that is now oppressing the citizens of this great Commonwealth. That there is a large number of children between the ages of six and twenty-one who are not now provided for under the present general laws of education, there can be no doubt. That there are more than twenty thousand children unprovided for in the city of Philadelphia, as appears by the report of the Board of Education, is clear. We have been told that there is a report of a committee confirming the fact that there are within the city of Philadelphia more than twenty thousand children between the ages of six and twenty-one not now provided with the means of a sufficient education. There seems to be no doubt whatever on that point. There is a very large number of children in each county of the Commonwealth in the same condition. I have heard gentlemen of this Convention say that within their own counties there are none such. I deny that that is true. I have stated that my own county has provided for the education of its children two to one beyond the provision

of this great city of Philadelphia; and yet I have reason to believe that there are within my own county and within every county of this Commonwealth children between the ages of six and twenty-one who are not included within the educational privileges of the common school law of this State.

Possibly that may be owing to the fault of the parents of the children. If it is owing to the fault of the parents of the children, if the privileges are provided and the parents do not avail themselves of these privileges, they are neglecting a duty that is incumbent upon them as parents and good citizens of this Commonwealth. I hold that it is the duty of the State, I hold that it is the duty of every parent within the State, to provide for the highest culture of his children which his circumstances and ability, and the means the State has provided, afford. I care not whether it goes beyond reading, writing and arithmetic; it is the duty of the parent, it is the duty of the citizen, not only to afford, but to compel the attendance of his children to acquire those attainments.

There may be gentlemen in this Convention who think it is derogatory to the freedom that prevails in the State of Pennsylvania, and throughout this Union, to confer upon the authorities of the State the power of requiring this attendance. I say without fear of successful contradiction that that is not so. If we have a republican form of government, if the perpetuity of this government depends upon the intelligence of the people, then it is the duty of the parent, and if the parent fails to exercise it, it is the duty of the State to require the parent to educate his children to the highest degree that may be necessary for the preservation of our great Commonwealth and of our great nation.

At the conclusion of my remarks upon a previous amendment to this section, I was about to say to the Convention something in regard to what the Hebrew society in London had done in this regard. I was cut short by a gentleman of this Convention who has, perhaps, occupied as much time as any member of it; a gentleman for whose judgment I entertain the highest respect, but whose action in this particular I do not at all commend. I was cut short when I was about to relate that the Hebrew society of London, which no member of this Convention ought to feel himself degraded by coming in con-

tact with, provides for the education of its children at least to as high a degree, and for the protection and elevation of its members as any member of this Convention —

The PRESIDENT *pro tem*. The delegate's time has expired.

MR. CORBETT. I wish to say a word on this section. Although I am a friend of the system of instruction by public or common schools, I cannot vote for this section. I shall not undertake now to discuss the question whether compulsory education is right or wrong, though my own mind inclines to it. I do not undertake the advantages of education to the youth by any means; I feel favorably towards it; and I do not know but that it would be right that parents should be compelled to send their children, for a certain period of time, between certain years, to schools and give them an education. I do not know but that such a provision would be right, the public providing where the parent has not sufficient means.

But there is one thing that is certain, Mr. President. This question of compulsion upon the parent is within the powers of the Legislature. The Legislature has the control of the relation of parent and child. It has ample power over it, and also of the relation of guardian and ward, and husband and wife. Its powers are ample in this respect, and I think it very impolitic for us to mould a policy with reference to merely indigent or abandoned children. In the hands of the Legislature anything it may do can be modified or amended; it will be pliable. It can build up a system with reference to these children which it will be impossible for this Convention to do, and it is no use for us to distrust the discretion of that body in the future. We are not sent here for purposes of legislation; we are not sent here for the purpose even of building up a system of public instruction. That has already been done, and done well, by the Legislature, but as yet it is imperfect. It is in its infancy; but in the hands of the Legislature. I am confident that system will progress until it becomes as nearly perfect as human experience can make it.

After the passage of this first section, have we not done all that we should do in this respect? Clearly without the section, no restriction being put upon the Legislature, they would have this power. That is not doubted. If not restrained by some provision that we incorporate into

the Constitution, if adopted, they would have the power without the section; and if you only want the section as declaratory of the power of the Legislature, you have a sufficient declaration of that power in the first section of the article.

When you come to the consideration of the section now before us, is it necessary? I think not. Is it the intention of this section to provide for a system different from the common school system of the Commonwealth? Is it the intention of this section not to allow this subject to remain in the hands of the local authorities, as the public school system does? Is it the intention to take away from these local authorities the power of control over their schools that they have always exercised, and place it in the hands of the Legislature, and allow them to build up a different system? If that be the intention, and that be done, who is to appoint the teachers? Is it to be done by the State, or by the authorities of the State? Is it to be done by politicians; because, recollect, you must under these industrial school support the whole machinery, and the whole machinery must be within the powers pointed out by the Legislature?

Again, where are these schools to be located? In every county of the Commonwealth, in every school district; or are you to confine them merely to the cities and the populous counties of the Commonwealth? I beg this Convention to pause, because I tell you that when the people of this Commonwealth outside of the populated counties and cities receive this proposition, they will closely scan it and look upon it with suspicion. I beg the delegates to pause. I say that the Legislature has the power to grant all the relief that this section will give, without it. If the Legislature choose to exercise the power, they can do so, and they have this great advantage in all of their action upon the subject, that if they pass an act that operates unwisely, they can remedy it; but our action must be final even though the results be terrible. Look at this matter. Are these industrial schools to be under the control of the Superintendent of Public Instruction? If so, is he to appoint the teachers, or are they to be referred to the local authorities? I ask members to pause and think of what they are doing? I am in favor of taking every child in the Commonwealth and educating him; but I would give him that education without regard to sect or

creed of religion. I have my own religious convictions, but I do not wish to force them upon any other person. As has been well said here, we had better consider whether there are not sections of the State where, without regard to creed, party, or anything else, this will be looked upon with suspicion. If to that be added any sectarian bias, it will carry hundreds and thousands of votes against the Constitution, even the votes of those who are in favor of educational privileges.

Beside all this, I have demonstrated, and I know every lawyer will agree with me in that demonstration, that as far as compulsory education is concerned, the Legislature has power to enforce it without our aid. If they exercise that power, they will do so with discretion; but the moment you incorporate anything in this Constitution that will look like compulsory education, I tell you you will array against your instrument whole creeds, and creeds that are to be respected. They have as much right to their convictions as any of us have to ours; and any action of ours on this delicate subject will not only array these creeds against us, but every minister and clergyman identified with these creeds will be made a worker against the adoption of the Constitution. They do all that is necessary for the education of their own children and they will construe your action with reference to vagrants, abandoned and neglected children, to mean that all their own poor children shall be taken by the strong arm of the State and placed under teachers other than those of their own sect. They claim now, and will claim under any circumstances, that they have the right to educate their own children, not only in the common branches of education, but also in religious instruction, and if it is necessary to the maintenance of that claim that your Constitution shall be defeated, defeated it will be.

This subject of parent and child, of guardian and ward, is safe in the hands of the people. I pray this Convention to do nothing to interfere with it. The Legislature have ample powers in this matter. Let us trust them. They will mould a system that will be flexible in their hands, and it will undoubtedly be more perfect than anything that we can do.

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Knight) to the

amendment, to strike out "may" and insert "shall."

On the question of agreeing to the amendment to the amendment, a division was called for, which resulted twenty-one in the affirmative. This being less than a majority of a quorum, the amendment to the amendment was rejected.

Mr. DARLINGTON. Mr. President: I desire to ask unanimous consent to make a verbal correction in the pending amendment offered by me as a new section. The word "therein" was omitted after the word "attendance" by a typographical error. It was in the copy but slipped out when the copy was furnished the Printer. The sentence should read: "The Legislature may establish industrial schools and require the attendance therein of vagrant, neglected and abandoned children."

Unanimous consent was given and the correction made accordingly.

Mr. J. M. WETHERILL. I offer the following amendment to the amendment: I move to strike out all after the word "Legislature" and insert: "May provide for the establishment and support of schools for free instruction in agriculture, mining, and the mechanical arts and sciences."

It seems to me that the amendment which the gentleman from Chester, the chairman of the Committee on Education, has offered, would, if adopted, embody in the Constitution a distinction that I should regret very much to see placed in that instrument. It provides for the education of vagrant, abandoned and neglected children in the industrial arts and sciences. It seems to me that that principle is one that we should not recognize. The children of the State might be instructed only in whatever means of education may be provided by the Constitution and laws, and the children who are neglected, abandoned and vagrant should be instructed only in the arts which pertain to industrial pursuits. For my part, I will consent to no such distinction. I consider instruction in the industrial arts and sciences, in those particularly of agriculture, manufacturing and mining, as among the most noble branches of instruction which can be offered to the youth of this State, or any other; and it is for the purpose of avoiding that distinction that I have offered my amendment, namely: That the Legislature may establish schools for the free instruction of all the people of this community in the industrial arts, in agriculture, manufacture, mining and me-

chanics. If I had the power, I would apply this broad instruction to all the people of the country who might avail themselves of the advantages which this system could offer for that purpose.

However, I do not feel disposed in the present temper of this Convention to advocate my views upon the subject any further. I hope that the Convention will take the subject into consideration, and will see the importance of avoiding a distinction which is, at least to me, so apparently invidious to a certain class of the children of this State, who by no fault of theirs, but by the misfortune or the accident of birth, are placed in a position to be vagrant and abandoned. I should be sorry to see a provision embodied in the Constitution in the language of the gentleman from Chester, to which my proposition is an amendment.

Mr. BUCKALEW. This section as now presented, I read in this fashion: "The Legislature may do what they can do on the subject of establishing particular forms of schools." I am not in favor of putting into the Constitution such a nugatory, useless, surplus provision as this. The Legislature already can establish industrial schools or any other form of schools they please under their general powers; and as the section is now amended, we are simply saying to them that they may do what they already can do. I submit that this is not a fit section, in this form, to be placed in the Constitution of the State; and as the Convention has already passed the question of establishing a rule for the Legislature, or rather rejected a provision for compulsory education, I hope they will reject this.

Mr. BROOMALL. I move to recommit this article to the Committee on Education with instructions to report forthwith the first and fourth sections alone.

I desire only to say that this is a ready mode, as the Convention will see, of getting by a single vote these two sections before this body, when if anybody chooses debate can be closed, and we can vote at once. The subject which is open before us is endless, and it looks to me as if by the time we have all told all that we know upon it, 1873 will come upon us.

On the question of agreeing to the motion a division was called for, which resulted forty-six in the affirmative. Before the negative was taken,

Mr. STANTON said: Mr. President, I would have no objection to vote for this

recommittal, if gentlemen would promise to make no more speeches when the Committee on Education again reports. Otherwise I would prefer to sit the subject out now.

Mr. WHERRY. I call for the yeas and nays and desire to debate the motion to recommit.

Mr. CORBETT. It is not debatable.

Mr. D. W. PATTERSON. I second the call.

The PRESIDENT *pro tem*. The Clerk will proceed with the call.

Mr. WHERRY. I desire to debate this question.

Mr. BOYD. It cannot be debated.

Mr. WHERRY. Is it not debatable?

Mr. BOYD. Not after the yeas and nays are called and ordered.

The PRESIDENT *pro tem*. The yeas and nays have been called for, and the Clerk will proceed with the call.

The yeas and nays which had been required by Mr. Wherry and Mr. D. W. Patterson were as follow:

YEAS.

Messrs. Alricks, Andrews, Baer, Bannan, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Campbell, Carey, Cassidy, Clark, Corbett, Corson, Cronmiller, Curry, De France, Dodd, Dunning, Ellis, Ewing, Funck, Gibson, Gilpin, Green, Guthrie, Hay, Hazzard, Heverin, Horton, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, M'Camant, M'Clean, M'Culloch, Mott, Niles, Palmer, G. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Smith, H. G., Stanton, Walker, White, J. W. F. and Wright—58.

NAYS.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Beebe, Bowman, Calvin, Carter, Church, Cochran, Curtin, Dallas, Darlington, Davis, Edwards, Elliott, Fell, Finney, Hall, Hanna, Littleton, Long, MacConnell, M'Murray, Mann, Mantor, Minor, Palmer, H. W., Parsons, Patterson, D. W., Read, John R., Reynolds, Runk, Russell, Smith, Henry W., Turrell, Wetherill, J. M., Wherry and Worrell—40.

So the motion to recommit was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Brown, Collins, Craig, Cuyler, Fulton, Harvey, Hemphill, Howard, Knight, Landis,

Lear, MacVeagh, Metzger, Mitchell, Newlin, Porter, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Struthers, Temple, Van Reed, Wetherill, J. Price, White, David N., White, Harry, Woodward and Meredith, *President*—35.

Mr. BROOMALL. Mr. President: As I understand the practice, the article is now before the Convention (because the instructions dispense with the form) with the first and fourth sections alone in it; and as such is to be acted upon as if reported from the committee of the whole. Am I right in that?

The PRESIDENT *pro tem*. The vote was to refer to the committee. The committee has not reported.

Mr. BROOMALL. But they were instructed to report forthwith, dispensing with the form.

The PRESIDENT *pro tem*. That is correct; but the Chair would rather take the views of the House than decide the question himself.

Mr. BROOMALL. I only wish to know what the practice is.

The PRESIDENT *pro tem*. I cannot answer the question. I am not aware of any practice on the subject.

Mr. BROOMALL. I suppose the chairman can make a formal report if that is deemed necessary.

The PRESIDENT *pro tem*. The Chair is of the opinion that on the vote the article must go to the Committee on Education, and the committee must report forthwith, as instructed.

Mr. BUCKALEW. Mr. President: The practice in such cases has been that the chairman of the committee *pro forma* makes a report. It is the duty of the gentleman from Chester receiving this article to report it back forthwith.

The PRESIDENT *pro tem*. I suppose that to be the practice.

Mr. DARLINGTON. Mr. President: The Committee on Education, in obedience to the order of the Convention, have instructed me to report the first and fourth sections of the article that they have heretofore reported, according to the order of the House.

The PRESIDENT *pro tem*. The Committee on Education report the article on education with the first and fourth sections, as instructed by the Convention.

Mr. DARLINGTON. I now move to amend by inserting an additional section. Is it necessary that I should move that the Convention proceed to the further consideration of the article. If it is, I

make the motion that the Convention now proceed to consideration of the report of the committee.

The PRESIDENT *pro tem*. It is moved that the Convention now proceed to the consideration of the article just reported.

The motion was agreed to.

The PRESIDENT *pro tem*. The article is before the Convention, and the first section will be read.

Mr. BUCKALEW. I rise to a question of order. It is that the only question before the Convention now is upon accepting the report of the committee, covering both sections; that we do not take this up as if we were starting on second reading, but act on the report of the committee. If any gentleman wants to make a motion to amend, he can move to amend the report.

The PRESIDENT *pro tem*. The Chair entertains that view.

Mr. WHERRY. I move to amend the report.

The PRESIDENT *pro tem*. The question is as stated by the delegate from Columbia. Will the Convention receive or accept the report of the Committee on Education?

The question being put, it was decided in the affirmative.

Mr. WHERRY. I move the following amendment to the report of the committee, as an additional section.

The PRESIDENT *pro tem*. First the section will be read.

The Clerk read as follows:

SECTION 1. The Legislature shall provide for the maintenance and support of a thorough and efficient system of public schools wherein all the children of this Commonwealth above the age of six years may be educated.

Mr. WHERRY. I send up an amendment.

Mr. MANN. I move to amend the section by adding:

"And the Legislature shall appropriate at least one million dollars each year for this purpose."

And upon that I call for the yeas and nays.

Mr. WHERRY. I have sent an amendment to the desk.

The PRESIDENT *pro tem*. I recognized the gentleman once before.

Mr. WHERRY. And my amendment was sent to the Clerk's desk.

The PRESIDENT *pro tem*. The first section is under consideration.

Mr. WHERRY. To which I have offered an amendment.

The PRESIDENT *pro tem*. There is an amendment already pending to the first section, the amendment of the gentleman from Potter.

Mr. BROOMALL. Now, Mr. President, I rise to make a privileged motion.

Mr. WHERRY. I rise to a question of privilege. Before the amendment of the gentleman from Potter was offered, I myself had been recognized by the Chair and offered an amendment to that section and the amendment was sent to the Clerk's desk. I therefore insist on my right to have my amendment considered first.

The PRESIDENT *pro tem*. It was not a motion to amend the section.

Mr. WHERRY. It was to add to the section.

The PRESIDENT *pro tem*. To add a new section.

Mr. WHERRY. To add to the section.

The PRESIDENT *pro tem*. The Chair understood it was a new section and the Clerk so understood. The Chair himself did not understand it exactly, because he had it not before him, but the Clerk understood that it was a new section. The Chair therefore recognized the amendment of the delegate from Potter to the section, and so recognizing he will persist in it until the House over-rules him. The question now is on the amendment of the delegate from Potter (Mr. Mann.)

Mr. BROOMALL. Mr. President: I rise to call the previous question upon the report of the committee, and I hope it will be sustained. That will not cut off the amendment of the gentleman from Potter, because that is already in, and I would also be willing to let in the amendment of the gentleman from Cumberland (Mr. Wherry.) What I desire is at some time or other to get to an end of this proceeding.

Mr. WHERRY. Well, we accept that. We do not desire to discuss this question one moment longer. All we ask is simply a vote on our propositions.

Mr. BROOMALL. If that is the case, I withdraw the call for the previous question, if it is understood that the debate is closed.

Mr. WHERRY. I am obliged to the gentleman.

Mr. MANN. I call for the yeas and nays on the amendment which I offered.

Mr. RUSSELL and Mr. BOYD seconded the call.

The question was taken by yeas and nays, with the following result :

YEAS.

Messrs. Alricks, Andrews, Armstrong, Baily, (Perry,) Bannan, Bardsley, Beebe, Brown, Carey, Carter, Cassidy, Church, Clark, Cochran, Curry, Curtin, Davis, Dodd, Dunning, Edwards, Elliott, Fell, Finney, Funck, Hall, Hazzard, Heverin, Horton, Hunsicker, Lamberton, Lilly, Littleton, Long, M'Culloch, M'Murray, Mann, Mantor, Niles, Parsons, Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Russell, Smith, Henry W., Stanton, Struthers, Turrell, Van Reed, Wherry, Worrell and Wright—55.

NAYS.

Messrs. Achenbach, Baer, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Broomall, Buckalew, Bullitt, Calvin, Campbell, Corbett, Corson, Cronmiller, Dallas, Darlington, De France, Ewing, Gibson, Green, Guthrie, Hanna, Hay, Howard, Kaine, Lawrence, MacConnell, M'Camant, M'Clean, Mott, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Read, John R., Reed, Andrew, Runk, Walker, Wetherill, J. M., Wetherill, Jno. Price and White, J. W. F.—43.

So the amendment of Mr. Mann was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bartholomew, Brodhead, Collins, Craig, Cuyler, Ellis, Fulton, Gilpin, Harvey, Hemphill, Knight, Landis, Lear, MacVeagh, Metzger, Minor, Mitchell, Newlin, Palmer, G. W., Porter, Ross, Sharpe, Simpson, Smith, H. G. Smith, Wm. H., Stewart, Temple, White, David N., White, Harry, Woodward and Meredith, *President*—35.

Mr. WHERRY. I desire to amend the report of the committee by the introduction of a new section, which is at the Clerk's desk.

The *PRESIDENT pro tem.* It will not be in order at this time. The question now is on the first section as amended.

The section was agreed to.

The *PRESIDENT pro tem.* The fourth section of the article will now be read, being the second section as it now stands.

Mr. WHERRY. I now move to amend the report by the insertion of the following, as a new section to be called section two :

"The Legislature shall establish industrial schools, and require the attendance therein of vagrant, neglected and abandoned children."

I call for the yeas and nays on this amendment.

Mr. BOYD. I second the call.

Mr. TURRELL. I rise to a question of order. The action of the Convention in instructing the committee to report in the manner they have, is practically striking out this amendment which was before them before, and it cannot be inserted again after just leaving it out.

The *PRESIDENT pro tem.* The Chair would like to entertain and sustain the point of order, because he is opposed to the section and thinks it is not proper to be in the Constitution, but he cannot. [Laughter.] The Clerk will call the roll.

The question being taken by yeas and nays resulted, yeas thirty-one, nays sixty-two.

YEAS.

Messrs. Andrews, Bailey, (Huntingdon,) Beebe, Bowman, Carter, Church, Cochran, Corson, Curry, Darlington, Davis, Elliott, Fell, Finney, Funck, Hazzard, Hunsicker, Lamberton, Long, M'Culloch, M'Murray, Mantor, Minor, Palmer, H. W., Parsons, Reynolds, Russell, Stanton, Van Reed, Wetherill, John Price and Wherry—31.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Clark, Corbett, Cronmiller, Dallas, De France, Edwards, Ewing, Gibson, Green, Guthrie, Hall, Hanna, Hay, Hemphill, Horton, Howard, Kaine, Lawrence, Lilly, MacConnell, M'Camant, M'Clean, Mann, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Smith, H. G., Smith, Henry W., Struthers, Turrell, Wetherill, J. M., White, J. W. F. and Worrell—62.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bartholomew, Brodhead, Cassidy, Collins, Craig, Curtin, Cuyler, Dodd, Dunning, Ellis, Fulton, Gilpin, Harvey, Heverin, Knight, Landis, Lear, Littleton, MacVeagh, Metzger, Mitchell,

Newlin, Palmer, G. W., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Walker, White, David N., White, Harry, Woodward, Wright and Meredith, *President*—40.

Mr. DARLINGTON obtained the floor.

The *PRESIDENT pro tem.* The Chair will ask the privilege of stating that in his opinion he made an error in stating the point of order raised by the delegate from Susquehanna, (Mr. Turrell,) that when the Convention decided to recommit with instructions to report the first and fourth sections of the article only, and the committee so reported, that ended the matter.

Mr. H. W. PALMER That would cut off the amendment of the gentleman from Potter (Mr. Mann.)

The *PRESIDENT pro tem.* It has resulted in no mistake with the exception of the amendment offered by the delegate from Potter (Mr. Mann.) That was adopted. If it was not adopted the Chair would certainly correct his error.

Mr. STANTON. Does that prevent any further amendment?

Mr. COCHRAN. Is any amendment in order? I wish to move an amendment.

Mr. DARLINGTON. I believe I have the floor.

The *PRESIDENT pro tem.* The delegate from Chester.

Mr. DARLINGTON. I move to amend by adding a new section.

The *PRESIDENT pro tem.* Is it a section which was offered before.

Mr. DARLINGTON. No, sir; it is new.

The *PRESIDENT pro tem.* The amendment will be read.

The CLERK read as follows:

"The Legislature may by law require that every child of sufficient mental and physical ability shall attend the public schools, unless educated by other means."

Mr. BROOMALL. I rise to a question of order. The question of order is, that the report of the chairman of the committee having been adopted, cuts off all amendment. The only question is on the report of the committee.

Mr. BOYD. Else what was the use of referring it back to the committee, with instructions to report only those two sections?

The *PRESIDENT pro tem.* The Chair does not sustain the point of order. It would cut off all amendments entirely.

Mr. DARLINGTON. Mr. President: I desire to vote distinctly upon this question. ["Question." "Question."] One

moment; I have the floor. I have no desire to detain the Convention five minutes upon this question. I propose to be heard.

Mr. CAMPBELL. I rise to a point of order.

Mr. DARLINGTON. I object to interference.

The *PRESIDENT pro tem.* The delegate from Philadelphia rises to a question of order.

Mr. CAMPBELL. The delegate from Chester has spoken two or three times on this subject, and also he is not in his seat.

The *PRESIDENT pro tem.* The delegate is not in his seat.

Mr. DARLINGTON. I will go to my seat. I am ready to obey the ill-natured suggestion of any gentleman who wants me to go to my seat.

Mr. President, I propose to ask the serious consideration of this Convention to the amendment which I have presented as a new section. It was agreed to, I may fairly state, by the Committee on Education, and it is entitled to the fair consideration of this House. I want engrafted into the Constitution a provision which shall compel you and me to educate our children. If we are so forgetful of our social duty, so regardless of what we owe to them and to society as to be unmindful of that duty which is incumbent upon us, I want the power committed to the State, and I want the State to exercise it. Whenever I so far forget myself as to leave my child without education, I want the State to compel me to do it, and I want them to compel every gentleman of this Convention to do it and every man in the Commonwealth, who is able, to do it; and I want a vote on that question.

Gentlemen think it is unpopular to compel the people to educate their children. It is somewhat unpopular to take the child out of the street and put him to jail. You take him from his parent then. It is unpopular with a certain class, perhaps, but that must be a class that I have not been living among. Where I have the good fortune to reside, everybody educates. Everybody ought to educate, and everybody ought to be compelled to educate. I do not know that I shall convince anybody, but I want the yeas and nays upon this question; and if any gentleman will allow me to have them, I will stop speaking the moment that purpose is indicated.

Mr. BOYD. I will.

SEVERAL DELEGATES ROSE.

The *PRESIDENT pro tem.* The yeas and nays are ordered on the amendment of the gentleman from Chester. The Clerk will call the roll.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Andrews, Baily, (Perry,) Beebe, Cassidy, Church, Curry, Curtin, Cuyler, Darlington, Davis, Edwards, Elliott, Fell, Finney, Hazzard, Littleton, M'Murray, Mantor, Palmer, H. W., Patterson, T. H. B., Pughe, Reynolds, Runk, Russell, Stanton, Turrell, Van Reed, Wetherill, John Price and Wright—29.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Cochran, Corbett, Corson, Cronmiller, Dallas, Dodd, Dunning, Ellis, Ewing, Funk, Gibson, Green, Guthrie, Hall, Hanna, Hay, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, Mann, Minor, Mott, Niles, Parsons, Patterson, D. W., Patton, Purman, Purviance, John N., Purviance, Samuel A. Read, John R., Reed, Andrew, Rooke, Smith, H. G., Smith, Henry W., Struthers, Temple, Walker, Wetherill. J. M., White, J. W. F. and Worrell—69.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Brodhead, Carey, Clark, Collins, Craig, De France, Fulton, Gilpin, Harvey, Knight, Landis, Lear, MacVeagh, M'Culloch, Metzger, Mitchell, Newlin, Palmer, G. W., Porter, Ross, Sharpe, Simpson, Smith, William H., Stewart, Wherry, White, David N., White, Harry Woodward and Meredith, *President*—35.

Mr. H. W. PALMER. I offer the following amendment as a new section and desire to say a word on the subject—

The *PRESIDENT pro tem.* Is it a provision that was offered before?

Mr. H. W. PALMER. No, sir.

The *PRESIDENT pro tem.* The amendment will be read.

The CLERK read as follows:

"No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school."

Mr. BAER. I raise a point of order. The same thing is in the article.

Mr. H. W. PALMER. The same section is not included in the article. It is a different section.

The *PRESIDENT pro tem.* It will depend on whether that amendment was before the Convention before.

Mr. BAER. I refer to section three.

Mr. H. W. PALMER. This is not section three. It is a different section, worded differently and applies to a different case. I desire to explain to the Convention the manner in which, intentionally or unintentionally, we have been defrauded.

The *PRESIDENT pro tem.* The Chair thinks the amendment is in order.

Mr. H. W. PALMER. I do not understand that the Convention meant in agreeing to the motion of the gentleman from Delaware to allow the public school fund of this State to be diverted for sectarian purposes. I do not think the Convention intended that; but such was the effect of that motion, and I therefore move this new section. This matter is not covered by the article on legislation, for this reason: The article on legislation applies only to legislative appropriations. The taxes levied in the various school districts of the State by the school boards may be applied to sectarian purposes in spite of the restrictions contained in the legislative article unless this section be passed, and I charge upon the gentleman from Delaware that he dropped this section knowingly and intentionally.

The *PRESIDENT pro tem.* The gentleman will make no charge of a personal character. It is out of order.

Mr. H. W. PALMER. I charge him with desiring that the money raised for the public schools shall be used for sectarian purposes so long, in his words, as such sectarian books as the Holy Bible are allowed to be read in the public schools. For my part I believe the Bible ought to be read in the schools, and do not believe an appropriation of the public money should be made for sectarian purposes; not regarding the Bible as in any sense a sectarian book, and I therefore move this section, hoping and believing it will be adopted by the Convention.

Mr. BROOMALL. Mr. President: As far as I am concerned I had hoped debate on this matter was ended, and most assuredly I shall not reply to the somewhat remarkable charges of the young man who has just taken his seat. The time will come when with his abilities he will

be sufficiently versed in legislative bodies to learn that there is something in the notions of Chesterfield. I have only to say that I shall vote against this section because I think all that is good in that direction has been secured in the article on legislation. I am willing to entrust the Legislature with this subject and the people of each school district with the proper appropriation of their own school moneys, and if, as the gentleman from Philadelphia (Mr. J. Price Wetherill) says, they can get Protestant vagrants educated in the Protestant Home cheaper than they can elsewhere, and Catholic vagrants in the Catholic Home cheaper than they can elsewhere, I am perfectly willing to let them do it if the people of the respective districts are willing to let them do it. That is to say, they may bargain with the Catholic Home to maintain Catholic vagrants and the Protestant Home to educate Protestant vagrants if the people of the respective school district are willing to do so. I am willing to leave that matter with them, and I think they can properly be entrusted with it. The whole subject is rather for the Legislature than for us.

I object, most certainly, to sectarianism in the schools. I do not understand that the young man who last addressed the Convention is in favor of it. He says he is not. If he does not think so now, the time will come, doubtless, when with his abilities he will come to the conclusion that sectarianism in the schools is wrong. I trust that the Convention will see that all that is necessary in that direction has been done in the article on legislation and will vote down this amendment.

Mr. BUCKALEW. Mr. President: It is to be observed that we have dropped the fifth section of this article, which was intended to cover this subject of sectarianism and does most completely. Having done that, I think we ought to retain this third section, because it will be the only provision anywhere in the Constitution which will prevent local appropriations of the school moneys raised by taxation of all the people, for these objects. I did not understand that there was any considerable objection to this third section. I confess I was in error in supposing that the fifth section was still a part of this article. With that dropped, I am in favor of replacing the third section. The fifth section as agreed to in committee of the whole read in this manner:

"Neither the Legislature nor any county, city, borough, school district or other public or municipal corporation shall ever make any appropriation, grant, donation of land, money or property of any kind, to any church or religious society, or to or for the use of any university, college, seminary, academy, school or any literary, scientific or charitable institution or society controlled or managed, either in whole or in part, by any church or sectarian denomination."

You will observe that that was very stringent and sweeping; and there was an argument made here that had some force against so comprehensive a section; but the third, which is substantially the one now before us, although changed to avoid the rule, is that no money raised in any way for the support of the public schools of the Commonwealth shall ever be appropriated for these objects. I think we ought to have that in, and that its retention will be strongly sanctioned by the people.

Mr. WORRELL. I call for the yeas and nays.

Mr. NILES. I desire simply to call attention to the legislative article—

Mr. BUCKALEW. The legislative article applies to State appropriations.

The PRESIDENT *pro tem*. The yeas and nays are called for. Does a sufficient number second the call?

The call for yeas and nays was seconded by ten members rising.

The question was taken by yeas and nays, with the following result:

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Bannan, Bardsley, Bigler, Black, Chas. A., Black, J. S., Bowman, Boyd, Brodhead, Brown, Buckalew, Calvin, Campbell, Carter, Cassidy, Church, Cochran, Corbett, Cronmiller, Curry, Cuyler, Dallas, Darling-ton, Davis, Dodd, Dunning, Edwards, Elliott, Ellis, Ewing, Fell, Finney, Fulton, Guthrie, Hall, Hanna, Hay, Hazzard, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, M'Culloch, M'Murray, Mantor, Minor, Mott, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Runk, Russell, Stanton, Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., Wethe-

rill, John Price, White, J. W. F., Worrell and Wright—85.

N A Y S .

Messrs. Baer, Baily, (Perry,) Biddle, Broomall, Bullitt, Corson, Funck, Mann, Smith, H. G. and Smith, Henry W.—10. So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Barclay, Bartholomew, Beebe, Carey, Clark, Collins, Craig, Curtin, De France, Gibson, Gilpin, Green, Harvey, Knight, Landis, Lear, Littleton, MacVeagh, Metzger, Mitchell, Newlin, Palmer, G. W., Patton, Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Wherry, White, David N., White, Harry, Woodward and Meredith, *President*—38.

The *PRESIDENT pro tem.* The hour of one o'clock having arrived, the Convention takes a recess until half-past three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

The *PRESIDENT pro tem.* The Convention will come to order. There is not a quorum of members present.

Mr. WHERRY. I move that the roll be called.

The *PRESIDENT pro tem.* The Clerk will call the roll.

The roll being called, the following delegates answered to their names:

Messrs. Ainey, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Beebe, Biddle, Bigler, Black, Chas. A., Bowman, Boyd, Broomall, Brown, Buckalew, Campbell, Carter, Cochran, Corson, Cronmiller, Darlington, De France, Dodd, Elliott, Ewing, Fulton, Funk, Gibson, Gilpin, Guthrie, Hall, Hanna, Harvey, Hay, Hemp-hill, Horton, Hunsicker, Kaine, Knight, Lamberton, Lilly, Long, MacConnell, M'CLean, M'Culloch, M'Murray, Mann, Mantor, Minor, Niles, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T., H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Runk, Russell, Smith, Henry W., Struthers, Turrell, Wetherill, J. M., Wetherill, J. Price, Wherry, White, Harry, White, J. W. F., Worrell and Wright—74.

The *PRESIDENT pro tem.* There is a quorum present.

PLACE OF SUMMER SITTING.

The *PRESIDENT pro tem.* announced that he had appointed the following gentlemen as the committee authorized to be raised this morning to select a suitable place for the summer sittings of the Convention should it agree to adjourn to any other place than Philadelphia: Messrs. Brodhead, H. W. Palmer, M'CLean, Russell and Howard.

EDUCATION.

The *PRESIDENT pro tem.* The article on education is now before the Convention, and the question is on the fourth section of the original article, the third section of the article as amended, which will be read.

The *CLERK* read as follows:

SECTION 4. A Superintendent of Public Instruction shall be appointed by the Governor by and with the advice and consent of the Senate. He shall hold his office for the term of four years, and his duties and compensation shall be prescribed by law.

The section was agreed to.

Mr. COCHRAN. Mr. President: I offer the following, to come in as a new section:

"There shall be no distinction made in regard to sex in the compensation of teachers in the public schools."

Mr. President, I feel constrained to offer this amendment by what I believe to be a principle of justice. I think it will be agreed on all hands that the sex which is disfranchised so far as the right of voting is concerned is the best educator of the young. It is on it that we are to rely to bring up the young of this country in such way as to make them good citizens and profitable to the Commonwealth. Why, then, should this distinction which has so long prevailed in regard to wages between male and female teachers be longer continued. The section which I propose contains a practical principle, and a rule which would have the effect, if adopted, of doing what is simple and impartial justice. The services of the female teachers are as valuable, their work is as worthy, their qualifications and aptitudes are in some respects better for the great duty of teaching than those of the other sex. And yet they have no power, and no representative to defend them. You do not allow them to vote. You do not allow them even to take any part in the selection of the teachers of your public

schools. You have given them in this Convention the poor boon of allowing them to be elected to take part in the management of the public schools, provided the greater and the nobler sex will condescend to give their suffrages to one of them for such a position.

That is the relation in which you so far have proposed to stand towards those whom you profess to reverence and almost worship as the best class of humanity. And shall it be said that we are willing to go on and continue this course of injustice towards them; that we are willing to take their services and pay for them just what we choose to give, and that we shall take advantage of their necessities and compel them to serve in this capacity, without having any control themselves in any manner in the fixing of their compensation?

What reason is there that any distinction should be made between the sexes in this regard? I say that as teachers they are better qualified in many respects for the purpose than men are, and that the schools which are taught by them are productive of greater and better results in very many cases than those which are taught by men. They govern by affection—they obtain the respect and the love of their pupils, and they are enabled in that way to be more useful and efficient as teachers than we can be however much we may endeavor to become so, whether it be in your Sunday schools or in your public schools established by the Commonwealth.

I hope that there will be some sense of chivalry manifested by this Convention in a question of this kind, and that when those who are without defenders or who are unable to defend themselves come here, or are brought here, to ask for a meed of justice that there will be found a majority of this Convention who are ready to render them this simple act of equity and fairness.

Mr. RUNK. Before the gentleman sits down I want to ask him a single question, with his permission.

Mr. COCHRAN. Certainly.

Mr. RUNK. What would the gentleman fix as the standard of compensation for the male teachers?

Mr. COCHRAN. I fix no standard. I simply propose that the standard shall be equal and just to both.

Mr. RUNK. One more question. In some of the counties of this State the salaries of male teachers average about forty-

eight cents per month for each scholar, which amounts to about \$28; in others it is upwards of \$40, and in cities it is probably higher. What should be the standard in the estimation of the gentleman?

Mr. WHERRY. I will state that in my district the average standard of compensation for female teachers is higher than that for males.

The PRESIDENT *pro tem*. The question is upon agreeing to the new section.

Mr. COCHRAN. On that I call for the yeas and nays.

Mr. WHERRY. I second the call.

The CLERK proceeded to read the roll.

Mr. BEEBE. [When his name was called]—I vote "nay," because the clause offered has no respect to qualifications.

The CLERK resumed and continued the call of of the roll, with the following result:

Y E A S .

Messrs. Ainey, Andrews, Black, Charles A., Boyd, Broomall, Campbell, Cochran, Corson, Darlington, De France, Fell, Fulton, Gibson, Guthrie, Horton, Knight, MacConnell, M'Murray, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, Samuel A., Russell, Smith, Henry W., Temple, Turrell, Wetherill, J. M. and Wright—30.

N A Y S .

Messrs. Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Beebe, Biddle, Bigler, Bowman, Buckalew, Carter, Church, Cronmiller, Dallas, Dodd, Elliott, Ewing, Gilpin, Hall, Hanna, Harvey, Hemphill, Hunsicker, Kaine, Lamberton, Lilly, M'Camant, M'Clean, Mann, Mantor, Minor, Niles, Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Reed, Andrew, Runk, Smith, H. G., Struthers, Walker, Wetherill, Jno. Price, Wherry, White, Harry and Worrell—48.

So the amendment was rejected.

ABSENT—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Black, J. S., Brodhead, Brown, Bullitt, Calvin, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Edwards, Ellis, Finney, Funck, Green, Hay, Hazzard, Heverin, Howard, Landis, Lawrence, Lear, Littleton, Long, MacVeagh, M'Culloch, Metzger, Mitchell, Newlin, Pughe, Read, John R., Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Van Reed, White, David N., White, J. W. F., Woodward and Meredith, *President*—55.

Mr. J. M. WETHERILL. I offer the following amendment as a new section :

"The Legislature shall provide for the establishment and support of schools for free instruction in agriculture, mining and the mechanic arts and sciences."

The PRESIDENT *pro tem*. Was not that amendment offered before?

Mr. J. M. WETHERILL. I have altered the phraseology a little to come within the rule. It is in substance the same, but the phraseology has been altered.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Schuylkill (Mr. J. M. Wetherill.)

Mr. J. M. WETHERILL. On that question I call for the yeas and nays.

Mr. COCHRAN. I second the call.

Mr. RUNK. I desire to state now if it is in order the reason for my vote upon this question. I think the power proposed to be conferred by this section is conferred by the first section of the article.

The question being taken by yeas and nays, resulted: Yeas eleven; nays seventy-six, as follow:

Y E A S .

Messrs. Andrews, Corson, Fell, Gibson, Knight, M'Camant, M'Murray, Parsons, Van Reed, Wetherill, J. M. and Wright—11.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brodhead, Broomall, Buckalew, Calvin, Campbell, Carter, Church, Cochran, Cronmiller, Dallas, Darlington, De France, Dodd, Elliott, Ellis, Ewing, Fulton, Funck, Gilpin, Green, Guthrie, Hall, Hanna, Harvey, Hay, Hemphill, Horton, Hunsicker, Kaine, Lamberton, Lawrence, Lilly, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Runk, Russell, Smith, H. G., Smith, Henry W., Struthers, Temple, Turrell, Walker, Wherry, White, Harry, White, J. W. F. and Worrell—76.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Brown, Bullitt, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Ed-

wards, Finney, Hazzard, Heverin, Howard, Landis, Lear, Littleton, Long, MacVeagh, Metzger, Mitchell, Newlin, Pughe, Read, John R., Rooke, Ross, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Wetherill, Jno. Price, White, David N., Woodward and Meredith, *President*—46.

Mr. C. A. BLACK. I offer the following amendment, to come in as an additional section :

"No teacher, State, county, township or district school officer shall be interested in the sale, proceeds or profits of any books, apparatus or furniture used or to be used in any school in this State with which such teacher or officer may be connected, under penalties to be prescribed by the Legislature."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Greene (Mr. Charles A. Black.)

The amendment was rejected.

Mr. RUSSELL. I offer the following new section as an amendment.

"The arts and sciences shall be promoted in one or more seminaries of learning."

I wish merely to state that that is the provision of the old Constitution. It was reported from the Committee on Education, and in a House in which there was not a quorum of members was rejected. I think we ought to put it into the new Constitution.

The amendment was rejected.

Mr. MANN. I now move that the article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

RAILROADS AND CANALS.

Mr. COCHRAN. I move that the Convention proceed to the second reading of the article reported by the committee of the whole on the subject of railroads and canals.

On the question of agreeing to the motion proposed by Mr. Cochran, a division was called for, which resulted forty in the affirmative, and forty in the negative.

So the motion was not agreed to.

OATHS OF OFFICE.

Mr. BUCKALEW. I hope the Convention will indulge me with a single remark. I am in favor of taking up those articles on which there is no serious contest and sending them to the Committee on Revision and Adjustment this week, before we proceed to the consideration of

the articles that will necessarily involve debate.

Permit me to read a list of the articles that are yet not acted upon :

The article on cities and city charters.

On county and township officers.

On future amendments.

On revenue and taxation.

On oaths of office.

We can certainly get through all these articles this week, and then there will be left but three on which there will be discussion. Those three are :

Railroads and canals.

The Legislature.

The judiciary.

I move that the Convention now proceed to the second reading and consideration of the article on oaths of office.

The motion was agreed to.

The PRESIDENT *pro tem.* The first section will be read.

The CLERK read as follows :

"Members of the General Assembly and all judicial, State and county officers shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation :

"I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth ; and that I will discharge the duties of my office with fidelity. And I do further solemnly swear (or affirm) that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the salary and mileage allowed by law. Nor will I vote for or advocate any matter in which I have or expect to have, directly or indirectly, any private interest whatever."

Mr. KAINE. I move to amend the section by striking out all after the word "I," where it last occurs in the seventh line, and inserting what I send to the Chair.

The CLERK read the words proposed to be inserted as follows :

"That I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except for actual and proper expenses ; nor have I knowingly violated any election law of this Commonwealth or procured it to be done by others in my behalf. And I do further solemnly swear (or affirm) that I will not

knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law.

"The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken. Any person refusing to take said oath or affirmation shall forfeit his office ; and any person who shall be convicted of having sworn or affirmed falsely or of having violated said oath or affirmation shall be guilty of perjury and be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth."

Mr. KAINE. Mr. President: I have changed the phraseology of that oath in order to meet the views of several gentlemen who voted against this proposition upon a former occasion. They complained that candidates were necessarily put to expense in procuring their nominations and elections, such as printing tickets and things of that kind ; so I have added there that they have paid out no money except for necessary and proper expenses in obtaining their appointment, nomination or election.

I think that will meet the views of every gentleman upon this floor who is anxious to destroy the fraudulent practices that now prevail not only in obtaining nominations but in procuring elections afterwards. The Convention has already adopted an oath for members of the General Assembly very nearly similar to this ; but I see no propriety in requiring members of the Legislature to take an oath of this kind and excepting equally important officers in the Commonwealth. If members of the Legislature are required to take an oath such as I hold in my hand and such as has been adopted by the Convention, I hold that sheriffs, prothonotaries, and all elective officers, many of them more important than a member of the General Assembly, should be required to take a similar oath. If the amendment which I have now offered is adopted, we shall have then a general oath to be taken by all officers of the kind there enumerated, as well as by members of the General Assembly.

This subject has been discussed heretofore very fully. The members of the Convention understand it as well as I do, and I do not intend to detain the Convention by any extended remarks upon the subject. All I desired to do was just to explain wherein the change has been made from the report as made by the committee.

Mr. HAY. My ear did not catch much of the amendment, excepting the exception it contained, which has been read by the chairman of the Committee on Oaths of Office. That exception seems to me to be very objectionable, and if retained the amendment should not be accepted. It proposes to confirm the propriety of candidates paying money to *procure* their nominations. To that I think there is very grave objection, and for that reason if for no other I shall not vote for the amendment. It should certainly be altered in this respect, or rejected. Such a principle is very reprehensible.

Mr. LAWRENCE. Let us have the amendment read.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK again read the amendment.

Mr. BUCKALEW. That section would of course require an amendment after the word "expenses." It would be a very vague term indeed to mention "expenses" without having them defined. In England the character of the expenses has been defined carefully by statute. Several statutes have been passed in recent years specifically setting forth what expenses are proper and legitimate for a candidate, which he may incur without bringing himself or his agents within the laws in relation to bribery or bringing them within the condemnation of the statute in relation to frauds in parliamentary elections. It is necessary, I think, to amend the amendment by inserting after the word "expenses" the words "expressly authorized by law," or something of that sort. Then by statute from time to time the Legislature can draw the line between those outlays which shall be innocent and lawful and those which shall be condemned. I hope the chairman of this committee will accept that idea in some form.

Mr. KAINÉ. I propose to amend the amendment—

Mr. BUCKALEW. I believe I should be willing to vote for it then, though applied to all the officers in the State.

Mr. KAINÉ. I propose to amend the amendment by inserting after the word "expenses" the words "expressly authorized by law," so as to read: "Have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except for actual and proper expenses expressly authorized by law," &c.

Mr. BUCKALEW. I will say a word more. I am willing to vote for this oath. Although I do not myself place as much confidence in oaths as some gentlemen seem to do, I am willing to take their judgment upon the materiality of this check upon official delinquency, and I think, coupled with a statute regulation as to the character and extent of the expenses which candidates for office may incur, the oath may perhaps be useful in our future polity. In the form in which it was first proposed, I should not vote for it.

Mr. HARRY WHITE. Mr. President: I understand this is reported by the Committee on Oaths as a substitute for or to prevent the necessity of passing a special provision relative to different and particular officers. Now, I observe in the report of the Committee on the Legislature that the ninth section, which provided for the manner of swearing and the character of oath to be administered therein, remains intact. I want the attention of the chairman of the committee to this question: Do I understand that it is not the intention of the Committee on Oaths to interfere with the oath as reported and adopted by the committee of the whole, on the legislative report? I would like to have an answer to that interrogatory.

Mr. KAINÉ. I do not understand the gentleman's question.

Mr. HARRY WHITE. I observe in the report of the Committee on Legislature, the form of oath as reported by that committee, and which has passed second reading. Is it desired to interfere with that?

Mr. KAINÉ. No, sir. If this oath is adopted in this form, then it will be a matter for the Committee on Revision and Adjustment to arrange it.

Mr. HARRY WHITE. Oh, no.

Mr. KAINÉ. Mr. President: I would prefer to have one general oath. In explanation to the gentleman from Indiana, I will say that this subject had been spoken of both in the report of the Committee on Legislation and the Committee on Legislature, and it was suggested that

a general oath should be prepared by the Committee on Oaths for all officers, and a report was made accordingly. Since that report has been made an oath has been adopted by this Convention as contained in the report of the Committee on the Legislature. I would prefer having this one general oath; but if such is the desire of the Convention, it will be very easy to strike out "members of the General Assembly" in the first line of this proposition, leaving it to apply to all other officers.

Mr. HARRY WHITE. I do not agree with the delegate from Fayette, that this is a proper matter to leave to the Committee on Revision and Adjustment. It is a question for the Convention itself to settle primarily. I have no feeling on this subject, but I do not like the general manner of administering the oath as provided for in the section under consideration. I prefer to have the oath administered to members of the Legislature in the formal manner provided by the report of the Committee on the Legislature, and if it is the sense of the Convention to leave that as it is, I will take it. I now move, for the purpose of testing the sense of the Convention on this subject, to strike out the words "members of the General Assembly" in the section under consideration. The effect of this will be to leave the form of oath and the manner of administering it to members of the Legislature, the same as have already been adopted on second reading in the report of the Committee on the Legislature, and then this oath will apply to all judicial, State and county officers.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Indiana (Mr. Harry White.)

The amendment was rejected, there being on a division, ayes thirty-eight, noes thirty-nine.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Fayette (Mr. Kaine.)

Mr. CORSON. I understand that if we adopt the oath prescribed by the gentleman from Fayette, we shall then have two oaths to be administered to members of the Legislature. I presume the idea is to hold this one in reserve for use when the other wears out. (Laughter.)

Mr. MANN. I rise to a question of privilege. I move to reconsider the vote by which the amendment of the gentleman from Indiana (Mr. Harry White) was defeated. I voted against it supposing I

was voting against the amendment of the gentleman from Fayette.

Mr. KAINE. If the gentleman will wait until the amendment offered by myself has been disposed of, then the motion of the gentleman from Indiana can be reconsidered.

Mr. MANN. Why not now?

Mr. KAINE. The amendment offered by the gentleman from Indiana was not in order. It was not an amendment to the amendment at all. It was a motion to strike out part of the original proposition that was before the House. When the pending amendment is disposed of, then the amendment of the gentleman from Indiana can be considered, and then I shall be willing to go with him and fix it in that way.

Mr. MANN. If the whole action upon the latter motion shall be treated as not having been taken at all, then the remark of the gentleman from Fayette will be correct.

The PRESIDENT *pro tem*. The Chair will entertain the motion to reconsider. Is it seconded?

Mr. CORSON. I second it.

The PRESIDENT *pro tem*. The delegate from Potter moves to reconsider the vote taken on the amendment offered by the delegate from Indiana.

Mr. HARRY WHITE. I appeal to my friend from Potter—

The PRESIDENT *pro tem*. The motion is not debatable.

Mr. HARRY WHITE. I can appeal to him to withdraw it for the present, so that the amendment offered by the chairman of the committee can be voted upon, and then he can renew his motion.

Mr. MANN. I should like to know what sense there is in withdrawing it. But I withdraw it if the gentleman wants me to do so.

The PRESIDENT *pro tem*. The question now recurs on the amendment offered by the delegate from Fayette.

Mr. KAINE and Mr. HEMPHILL called for the yeas and nays, and they were ordered, ten delegates rising to second the call.

Mr. CORBETT. I move to strike out in the seventh line of the old print of this amendment the words, "I do further solemnly swear (or affirm)" and also in the eleventh and twelfth lines, the words, "I do solemnly swear (or affirm)." It will leave the sense of the section the same and prevent tautology and repetition, which is unnecessary. I dislike very

much that expression, "I do further solemnly swear (or affirm.)"

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Clarion (Mr. Corbett) to the amendment of the delegate from Fayette (Mr. Kaine.)

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem.* The amendment of the delegate from Fayette as amended is now before the Convention.

Mr. LAWRENCE. Let it be read as modified.

The CLERK read as follows:

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity, and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election, or appointment, except for actual and proper expenses expressly authorized by law; nor have I knowingly violated any election law of this Commonwealth, or procured it to be done by others; and further that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law."

Mr. HENRY W. SMITH. That oath requires the candidates for the offices named who are elected, to swear that they neither paid nor promised any money to procure their nomination. I should like to know how that oath can be taken by a successful candidate who runs as a volunteer or independent without any nomination?

Mr. EWING. As most of the Convention will recollect, at an earlier stage of the proceedings here, I advocated at different times very strict and stringent provisions in regard to bribery and corruption at elections and of officers. I should be very glad to see those provisions incorporated in the Constitution now, but the Convention has decided that they shall not be so incorporated. Now, to my mind it is utterly absurd to put an oath here, that officers are to take, swearing that they have not done certain things which we have already said we would not prohibit them from doing. You have got no law, you have got no Con-

stitutional provision which forbids the doing of these very things, and to my mind the oath now offered is an absurd one without something to back it. I should be very glad to see the suggestion of the gentleman from Columbia adopted in a little briefer form, so that they would answer if such laws should be passed, and I will offer here an amendment which is not my own; it will be found in the article reported by the Committee on Legislation, and I believe is in the words of Judge Black. I think it will apply to the case. In my opinion it contains all that ought to be in a preliminary oath. I therefore move to strike out the amendment of the delegate from Fayette, and insert:

"And I do furthermore swear that I believe myself to be lawfully elected to this office without any false return, bribery, corruption, or fraud committed by me or others with my consent."

The amendment to the amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the amendment of the delegate from Fayette, (Mr. Kaine,) upon which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted, yeas sixty-six, nays thirty-one, as follows:

Y E A S .

Messrs. Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Beebe, Bigler, Black, Charles A., Black, J. S., Boyd, Brown, Buckalew, Calvin, Carter, Clark, Corbett, Cronmiller, Cuyler, Dallas, De France, Dodd, Dunning, Elliott, Ellis, Fulton, Funck, Gibson, Gilpin, Guthrie, Harvey, Hay, Hazzard, Hemphill, Heverin, Horton, Hunsicker, Kaine, Lawrence, Long, MacConnell, M'Camant, M'Murray, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Russell, Smith, H. G., Struthers, Temple, Turrell, Wherry, White, Harry, White, J. W. F., Worrell and Wright—66.

N A Y S .

Messrs. Achenbach, Ainey, Barclay, Biddle, Bowman, Broomall, Campbell, Church, Corson, Curtin, Davis, Edwards, Ewing, Fell, Green, Hall, Knight, Lilly, M'Clean, M'Culloch, Mann, Mantor, Minor, Patterson, D. W., Porter, Pughe, Rey-

nolds, Smith, Henry W., Walker, Wetherill, J. M. and Wetherill, Jno. Price—31.

So the amendment was agreed to.

ABSENT. — Messrs. Addicks, Baker, Bardsley, Bartholomew, Brodhead, Bullitt, Carey, Cassidy, Cochran, Collins, Craig, Curry, Darlington, Finney, Hanna, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, Metzger, Newlin, Parsons, Rooke, Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Van Reed, White, David N., Woodward and Meredith, *President*—36.

Mr. MANN. I now renew the motion to reconsider the vote by which the amendment of the gentleman from Indiana (Mr. Harry White) was rejected, which is a simple question whether it is necessary to swear the Legislature twice, and it is not necessary to say anything about it.

Mr. H. W. PALMER. I second the motion. I voted against the amendment.

The motion to reconsider was agreed to.

The *PRESIDENT pro tem*. The question recurs on the amendment.

Mr. KAINE. As an oath has been adopted in the report of the Committee on Legislature, it will be proper now, I suppose, to strike this out.

The *PRESIDENT pro tem*. The amendment is to strike out "members of the General Assembly and," in the first line.

The amendment was agreed to, there being on a division, ayes, sixty; noes, two.

¶ The *PRESIDENT pro tem*. The question recurs on the section as amended.

Mr. HUNSICKER. I want the yeas and nays on it now.

Mr. HEMPHILL. I second the call.

Mr. HUNSICKER. I want to state the reason why I called for the yeas and nays. If any persons on earth should have this oath applied to them, it is the members of the General Assembly. We do not need it for any body else so much as for them.

Mr. NILES. I desire to say simply that you relieve the members of the General Assembly from all responsibility in reference to the manner of procuring their nominations; they may have paid five thousand dollars in the primary meeting to obtain an election which they intend to have the benefit of when they come to occupy their office, but a poor county commissioner cannot pay for the dinners of his delegates at the county nomination. That is exactly what we have done here. It has always been the practice in every county of the Commonwealth, I under-

take to say, for the successful candidate to pay the hotel expenses of the delegates; and here you will not permit a county commissioner, as I said before, to pay for the dinners of his delegates, while a member of the Legislature may pay as much as he pleases and go scot free.

The question being taken by yeas and nays, resulted as follows:

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Beebe, Bigler, Black, Charles A., Brown, Buckalew, Corbett, Cuyler, Dallas, Elliott, Fulton, Hall, Hay, Hazzard, Horton, Kaine, Lawrence, MacConnell, M'Culloch, M'Murray, Mitchell, Palmer, G. W., Palmer, H. W., Patton, Purviance, Samuel A., Read, John R., Reed, Andrew, Russell, Smith, H. G., Turrell, Wetherill, John Price, Wherry, White, Harry, White, J. W. F. and Worrell—38.

N A Y S .

Messrs. Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Black, J. S., Bowman, Boyd, Broomall, Calvin, Campbell, Church, Clark, Cochran, Corson, Cronmiller, Curtin, Davis, De France, Dodd, Edwards, Ellis, Ewing, Fell, Gibson, Gilpin, Green, Guthrie, Harvey, Hemphill, Heverin, Hunsicker, Knight, Lilly, Long, M'Camant, M'CLean, Mann, Mantor, Minor, Niles, Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purviance, Jno. N., Reynolds, Rooke, Smith, Henry W., Struthers, Walker, and Wetherill, J. M.—54.

So the section was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Brodhead, Bullitt, Carey, Carter, Cassidy, Collins, Craig, Curry, Darlington, Dunning, Finney, Funck, Hanna, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, Metzger, Mott, Newlin, Purman, Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, *President*—41.

Mr. CORSON. I move that the article be referred to the Committee on Revision and Adjustment.

The *PRESIDENT pro tem*. There is nothing to refer. The Convention have voted the section down.

REVENUE AND TAXATION.

Mr. BROOMALL. I move to proceed to the second reading and consideration of

the article on Revenue, Taxation and Finance.

The motion was agreed to.

The PRESIDENT *pro tem.* The first section will be read.

The CLERK read as follows:

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. But the Legislature may, by general laws, exempt from taxation (except from the special assessments herein provided) public property used for public purposes, actual places of religious worship, places of burial not used or held for private or corporate profit, and institutions of purely public charity.

Mr. CAMPBELL. I move to amend by striking out the words "actual places of religious worship."

I offer this amendment because I do not believe in the policy of exempting church property from taxation. Such exemption is unequal and unfair. Large religious denominations are favored while those which are smaller in numbers are discriminated against. Such a policy is entirely in favor of the larger and richer denominations. We ought if possible to put a provision in the Constitution preventing the exemption from taxation of any church property. We should put an end to the abuses that we have suffered year after year in the passage of special exemption laws in the Legislature. I do not propose to discuss the matter at this time, but simply to call for the yeas and nays upon my amendment, as the principle involved in the amendment is familiar to all of us, and we are no doubt prepared at once to vote upon the question.

The PRESIDENT *pro tem.* Is the call for the yeas and nays sustained?

More than ten members rose.

The PRESIDENT *pro tem.* The call is sustained and the Clerk will proceed with the call.

Mr. HARRY WHITE. I understand the motion of the delegate from the city to be to strike out the words, "actual places of religious worship." I want to vote intelligently on that, and if I understand the construction of that sentence, it would be to prohibit the Legislature from exempting from taxation, parsonages.

Mr. BROOMALL. Certainly not.

Mr. HARRY WHITE. I submit, then, that the section itself excepts parsonages. As it stands it would allow the Legislature to exempt places actually used for religious

worship, but they could not exempt parsonages in connection with church property. We have had a policy in Pennsylvania in this regard since 1844. There was a general act passed in 1844 exempting a certain class of property from taxation—cemeteries, places of public worship, certain charitable associations and the parsonages used in connection with churches. From time to time there have been a number of special acts of Assembly passed making special exemptions in this State, and I am told that in this city these exemptions amount in the aggregate to about fifty millions of dollars. I do not know whether that is correct or not, but it was so represented by some of the Representatives from Philadelphia last winter; whereupon the Legislature passed a law repealing all those special laws and enacting a general law upon this subject which to-day is upon the statute book. That general law exempts from taxation all churches, all cemeteries, all parsonages, and I think, five acres of land if used in connection with a church, but I do not recollect how that fact is.

I submit that it is wise and proper to retain in the Legislature the power to pass a general law exempting from taxation parsonages which are used in connection with churches, and believing that this is wise and proper, I shall vote against the amendment offered by the gentleman from Philadelphia.

Mr. BROOMALL. I have no particular objection to the amendment proposed by the gentleman from Philadelphia. So earnest am I in my endeavor to get rid of the abuses of the principle of exemptions adopted by the Legislature, that I should be willing to prevent the Legislature from exempting from taxation any property whatever. But I incline to believe that it will be more satisfactory to the people to exempt actual places of public worship. I do not agree with the gentleman from Indiana in thinking that the present act of Assembly has hit upon the right plan with reference to this subject, that is the plan that exempts parsonages and cemeteries; because the term "parsonage" is a term that may be somewhat loosely applied, and under it we can hardly tell to what extent the Legislature may go in exempting property from taxation. The privilege of exemption from taxation has been very much abused by the Legislature, and the people desire a correction of that evil. I think, however, that they will be satisfied with simply

having their places of worship exempted, but would not be satisfied if the exemption were to be extended to the parsonages. Many churches have no parsonages, and for that reason this provision would act unequally upon the sects.

Mr. BOYD. Will the gentleman be kind enough to say why church property should not be taxed like other property?

Mr. BROOMALL. I have already intimated that I know no reason; but I think as we are cutting up a very great evil, it is better for us to be satisfied with what we know will be accepted by the people, rather than to ask so much that we shall get nothing. I think the masses will see that we have done a great deal in cutting down the exemptions to the point reached by this section and will be satisfied with our work; whereas, if we go further, we may array an opposition to us that, added to the opposition upon a great many other questions, will weigh down our work. I therefore would prefer to let the section remain as it is.

Mr. D. W. PATTERSON. It appears to me that if this amendment prevails the Legislature will not be able to exempt from taxation the actual places of worship of any denomination—

Mr. BOYD. Why should they?

Mr. D. W. PATTERSON. It has been the universal law in this State ever since we have become a Commonwealth. It does not deprive the treasury of any needed revenue; it does equal justice to all; and I hope we shall retain the section without amendment.

Mr. BOYD. They are the richest people alive.

The PRESIDENT *pro tem*. The question is upon the amendment of the gentleman from Philadelphia (Mr. Campbell.) Upon that question the yeas and nays have been ordered and the Clerk will proceed with the call.

The yeas and nays were taken and were as follow, viz:

YEAS.

Messrs. Boyd, Campbell, Ewing, Fell, Gilpin, Guthrie, Hemphill, Knight, MacConnell, McCulloch, Murray, Patterson, T. H. B., Reynolds and Smith, H. G.

—14.

NAYS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Banman, Barclay, Beebe, Biddle, Bigler, Black, Charles A., Black,

J. S., Bowman, Broomall, Brown, Buckalew, Calvin, Carey, Carter, Church, Clark, Cochran, Corbett, Corson, Cronmiller, Curtin, Dallas, Davis, De France, Dodd, Edwards, Elliott, Ellis, Fulton, Funck, Gibson, Green, Hall, Harvey, Hay, Hazard, Heverin, Horton, Hunsicker, Kaine, Lawrence, Lilly, Long, McClean, Mann, Mantor, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patton, Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Russell, Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry, White, J. W. F., Worrell and Wright—81.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Brodhead, Bullitt, Cassidy, Collins, Craig, Curry, Cuyler, Darlington, Dunning, Finney, Hanna, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, McCamant, Metzger, Mott, Newlin, Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, White, David N., Woodward and Meredith, *President*—38.

Mr. HARRY WHITE. I offer the following amendment to the section: Insert after the word "worship" the words, "also parsonages owned by any church or religious society, with the lands attached, not exceeding five acres."

I misapprehended the amendment of the delegate from Philadelphia (Mr. Campbell.) I thought his object was to include this clause. I now merely want to call the attention of the Convention in this connection to the general law which was passed upon this subject last winter by our Legislature. The amendment which I have offered is in entire harmony with the spirit of that law, and I trust that the Convention will adopt my amendment. This law, bearing date eighth of April, 1873, provides:

"That all real estate within this Commonwealth shall be liable to taxation for all such purposes as now are or hereafter may be provided by general laws."

Then it recites certain exceptions and among them that to which I specially refer, which is as follows:

"Also exempting from taxation all parsonages owned by any church or religious society, with the lands attached thereto, not exceeding five acres; also excepting and exempting from such taxation all burial lots exempted by the pro-

visions of the act of April fifth, one thousand eight hundred and fifty-nine, entitled 'An act relative to incorporated cemetery companies;' and the lands and premises of all cemetery companies where such property is held in trust for the sole purpose of improving said lands and premises, and whose revenues, of whatever kind, are devoted to that object, and in no way enure to the benefit or profit of the corporators or any of them; and also excepting and exempting from such taxation all lunatic asylums, almshouses, poor-houses, houses of refuge, penitentiaries, and asylums, schools and hospitals, supported by the appropriations annually made thereto by this Commonwealth, together with the lands attached to the same; and also excepting and exempting from such taxation all charitable institutions founded by charitable gifts or otherwise, the chief revenues for the support of which are derived from voluntary contributions, together with the lands attached to the same; and all laws or parts of laws inconsistent with the provisions of this statute be and the same are hereby repealed."

This is the general law upon that subject, which was passed last winter. It was passed after careful consideration, and it cuts up by the roots all the special laws upon that subject. I submit that the Legislature ought to have the power to exempt from taxation all churches and places of worship, if in their wisdom they see fit to do so; and they should also have the same power to a limited extent with reference to parsonages. This may be a hardship in some cases, but in some parts of this Commonwealth it is fair and right for poor congregations that it should be done. There are a great many congregations in certain sections of the State which have been able to build a little church, to get a little ground and erect a comfortable parsonage. Their revenues are small, and it is right and proper that when we exempt their places of worship the Legislature should have the power to pass a general law exempting their parsonages.

Mr. BROOMALL. I think this proposition liable to very great abuse, and I trust the Convention will not adopt it. The great body of the religious communities of the State have no parsonages, and I think this provision would act very unequally, because it would only benefit those churches who are wealthy enough to have parsonages.

Mr. HARRY WHITE. I will modify my amendment by withdrawing the part relating to the five acres.

Mr. BROOMALL. That does not help it any.

Mr. COCHRAN. I hope this amendment will not prevail. I see no necessity why we should exempt parsonages from taxation. I do not know that we should be controlled by the fact stated by the gentleman from Indiana, that the Legislature passed a certain act last winter. Such a proposition as this is capable of very great abuse. A church may erect a parsonage and may not occupy it. It may rent it out and receive an income from it, and in that way the parsonage would be exempt from taxation while occupied for other purposes, and the State will be deprived of a revenue to which it is justly entitled. You propose here to exempt nothing but simply churches or places of worship. Yet churches have put up for their use buildings which still are not churches and are not parsonages. They have buildings for Sunday-school purposes and lecturing purposes during the week. You do not exempt them under this provision of the Constitution; why, then, should you exempt the parsonages? There is no reason for it, and I think the exemption should extend no further than to places of public worship. If congregations are able to build parsonages, they are able to pay the taxes on them.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs upon the section.

The section was agreed to.

The PRESIDENT *pro tem*. The second section will be read.

The CLERK read as follows:

SECTION 2. All laws heretofore passed, or hereafter to be passed, exempting property from taxation, other than the property above enumerated, shall be void."

Mr. H. W. PALMER. Upon the section I desire to make a single remark. It is entirely unnecessary from every point in view. It provides that "all laws hereafter to be passed exempting property from taxation, other than the property above enumerated, shall be void." Of course they are void, whether this section is in existence or not. We have provided in the first section of this article "that all taxes shall be uniform upon the same class of subjects." Well, now, suppose the Legislature should pass a law by the operation of which taxes would not be uniform, what would become of the law?

It would be void, of course, and there is no necessity whatever for this section.

Mr. BROOMALL. The words include "all laws heretofore passed."

Mr. H. W. PALMER. I will come to that in a moment. I say that it refers to acts that may hereafter be passed, and for that purpose it is certainly unnecessary.

It also provides that laws heretofore exempting property from taxation shall be void. The very purpose of the first section is to provide that all taxes shall be uniform. When this becomes the organic law of the State and we find that there are laws inconsistent with it, what becomes of those laws? They are void of course. This section is entirely unnecessary and I hope it will be voted down.

Mr. BROOMALL. I submit that it is necessary as far as the words "heretofore passed" are concerned. Certainly it is. I grant that the words "hereafter to be passed" are unnecessary, and if the gentleman moves to strike them out, I have no objection whatever. But I hold that something is necessary there to specifically repeal existing laws, or at least it is necessary to have a provision there by which they are repealed, so as to operate upon the exemption laws that have been heretofore passed.

I move to amend the section by striking out the words "or hereafter to be passed."

The amendment was agreed to.

Mr. BUCKALEW. If we are to put a section of this kind into this article, we might as well declare at the end of every article that all laws of the Legislature inconsistent therewith shall be repealed or void. This is entirely unnecessary. If there are laws either already passed or hereafter to be passed, that conflict with the organic law of the State, of course they must crumble before the Constitution.

Mr. HAY. I move to amend by adding at the end of the section, as follows:

"And the value of all property exempted from taxation in each county shall from time to time be ascertained and published, as may be provided by law."

Mr. President, I do not know what reasonable objection can be made to the adoption of this amendment. It is certainly important, indeed necessary, to all safe and wise action upon the subject of the tax laws of the State, that the people and the Legislature should have afforded

to them the information which this proposition, if adopted, will secure to them.

The object of this amendment is to afford all the citizens of this State, sir, an opportunity of knowing what property and to what value in the State is exempted from taxation. There is now no means whatever by which this fact can be ascertained. Property exempted from taxation is simply passed over by the assessors in each county, when making up their lists for assessment, and no return of it whatever is made to any authority in the State, neither to the county commissioners or to the Legislature. My attention was directed to this matter last fall when endeavoring to ascertain how much property, and what kind of property, in my own county was exempted from taxation, either under general or special laws. And, sir, I was utterly unable to arrive at any exact or accurate data whatever upon the subject. Neither the assessor to whom I applied nor the commissioner of the county could give me any information. I could find, it is true, by diligent search into acts of Assembly for many years past, a few particular properties which were exempted from taxation under the operation of special laws. But it was impossible to find out what properties were exempted under the operation of general laws. I endeavored to ascertain this fact by application to the census bureau at Washington, thinking that the information I desired might be obtained from the returns made by the United States officers. But I found that the information which was obtained from that office was altogether too vague for my purpose, in many particulars inaccurate, probably from the incorrectness of the reports made, and not at all to be relied upon; and it certainly seems to me that we ought to have some means of ascertaining how much of the property of all kinds in the State is exempted from taxation, whether by general laws or by special enactments which have been heretofore passed.

I hope this amendment may be adopted in order that we may have such information which certainly is very necessary to be had in order that there may be proper legislation upon the subject of taxation, and the people of the State are entitled to know how the burdens of the State are distributed; where property exempted from bearing its share of those burdens is situated, of what it consists, and what is its value. My object is to give them this knowledge.

The amendment was rejected, there being on a division, ayes thirty-four, noes forty-one.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. ALRICKS. I move to strike out all the words of this section except the two first and the three last and to insert the words "inconsistent herewith;" and then it will read "all laws inconsistent herewith shall be void."

Mr. HUNSICKER. I cannot see what possible good there can be in this section. (I think the gentleman from Columbia

Mr. Buckalew) hit the nail on the head exactly, because every provision of our amended Constitution will be in violation of some act of Assembly, and the act of Assembly, as a matter of course, will fall before it. It will be the duty of the Legislature to remodel the acts of Assembly in conformity with our organic law, and if it is necessary to put a provision of this kind in here, it ought to be put in every other article. I hope that the lawyers of this Convention will not fall into this error, as it is if I am right about it, and I think I am, and that they will vote this unnecessary section down.

Mr. MANN. Mr. President: There must certainly be some mistake about this. It is not possible that we are repealing all the laws of this Commonwealth not consistent with this Constitution. That would create a revolution. There is no lawyer on this floor who stops to think about it who will assert that simply because laws heretofore passed are not in consonance with this Constitution, therefore they are repealed. There are hundreds of laws heretofore passed which will be inconsistent with this Constitution that will not be affected by it, as I believe, and I am very much afraid, if this section is not passed, that the vast amount of property exempted from taxation now will remain exempt, and therefore I appeal to the delegates to insist upon this section. I very much fear that this article will only affect laws hereafter passed unless we retain this section.

Mr. ARMSTRONG. Mr. President: It seems to me that the necessity for this second section depends entirely upon what construction is placed upon the language of the first section, which says that taxation shall be uniform upon the same class of subjects. There is no prohibition in the first section; it is directory, and requires that taxes shall be uniform upon the same class of subjects; but it is

by no means certain what interpretation is to be placed upon that phrase. What is a "class of subjects?" Why may not a general law which would exempt all parsonages be applicable to a class of subjects? and if there be doubt upon this, it is remedied by the second section, which is prohibitory. But the first section is purely affirmative and contains no prohibitory provision.

I agree entirely with the view of the gentleman from Columbia that it is unnecessary to insert any special provision in the Constitution declaring that a law is repealed by operation of the Constitution where it has a clear application; but it seems to me that it does not have in this place, nor can I find in the first section anything which would prohibit the Legislature, if they please, from exempting parsonages or other property which may form a distinct class in their judgment. It is not complete without the second section, and I think it ought to be retained.

Mr. EWING. Mr. President: A word in regard to the amendment offered by the gentleman from Dauphin (Mr. Alricks.) It would be proper enough, provided there was anything in this first section except the matter of exempting property; but the first part of it requires taxes to be uniform. Now, there will have to be a section in the schedule which will save certain things. I will give an example. By the consolidation of various boroughs with the city of Pittsburg, the debts of the old city and of those boroughs are kept separate, and separate taxes are assessed for them, although they are all in the same municipality. That is one class. I know of a number of other things in which we shall have to save the equities of municipalities by a section in the schedule, and therefore his amendment is not proper here.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. ARMSTRONG. I would move to amend this second section by striking out in the first line the words, "heretofore passed or hereafter to be passed," so that it will read, "all laws exempting property from taxation, other than the property above enumerated, shall be void."

The *PRESIDENT pro tem.* That is not an amendment to the amendment. The first question is on the amendment of the gentleman from Dauphin.

Mr. ALRICKS. I accept that as a modification.

The PRESIDENT *pro tem.* The delegate from Dauphin withdraws his amendment, and the amendment of the gentleman from Lycoming is now in order.

Mr. ARMSTRONG. I move then to strike out in the first line of the second section the words, "heretofore passed or hereafter to be passed," so that it will read, "all laws exempting property from taxation, other than the property above enumerated, shall be void."

The PRESIDENT *pro tem.* The words "or hereafter to be passed" have already been stricken out.

Mr. ARMSTRONG. Well, then, strike out the words "heretofore passed."

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Lycoming.

The amendment was agreed to.

The PRESIDENT *pro tem.* The question is on the section as amended.

The section as amended was agreed to.

The PRESIDENT *pro tem.* The next section will be read.

The CLERK read as follows:

SECTION 3. The Legislature may, by general laws, uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities, boroughs and townships the power to make, renew and maintain local improvements by special assessments of taxation of contiguous property or of property specially benefited thereby, without exception on account of use or ownership."

Mr. EWING. I move to amend the section by inserting after the word "townships," in the third line, the words "either separately, or where contiguous jointly."

Those words were in the section as agreed on, in the Committee on Revenue, Taxation and Finance, and by some blunder of the Printer were left out in the printing of the section. They are, I think, necessary and proper to meet some cases that may occur and frequently do occur, where, for instance, as in the suburbs of a city, as occurs very frequently in our county, we have boroughs adjoining closely built up, where no person could distinguish between them, and it is necessary that the dividing streets should be improved jointly. Again, where they are divided by a small stream, where it would be proper and necessary to construct a bridge by them jointly. It would cover that sort of cases, and I think it is proper, and was, as I say, agreed on in committee.

Mr. BROOMALL. The gentleman is mistaken about those words having been agreed upon in the final action of the committee. They were virtually embraced in the wording of the section. If the Legislature has power to make this provision at all, it has power to accommodate the law to the case of joining neighboring towns.

Mr. EWING. No, sir, I think not. I think there is another section that prohibits that, and I beg the pardon of the chairman of the committee for doubting his recollection. I drew this section. It was agreed on in consultation. It was passed with those words in. It was reported within five minutes of the time and there was no possibility of there being any such consultation as he speaks of.

Mr. BROOMALL. I may be mistaken.

Mr. EWING. It was agreed upon on full consideration by the parties who were considered in the committee especially representing the cities and boroughs. I think it important.

Mr. BUCKALEW. As this section reads it seems to me to be quite objectionable. In the first place I should like to strike out in the third line the words "and townships." No such power as this has ever been vested in townships; nor is there, as I understand, any demand for its extension to them in any part of the Commonwealth. This power of arbitrary assessment for the making of local improvements has been hitherto confined to cities and boroughs alone, and it is a power which, in my judgment, is neither necessary nor proper in the townships of the State.

Again, sir, I am not sure that I am speaking to the amendment; but I find in the fourth and fifth lines the words "special assessments or taxation of contiguous property"—that I can understand, but it goes on, "or of property specially benefited thereby." There you leave contiguity altogether, and you may go on to any point in the municipality where the discretion of the assessors conceives that an advantage may accrue.

Now, Mr. President, although this power of special assessments and taxation in our towns and cities seems a necessity to procure local improvements, it is a power very dangerous in its character and liable to oppression and abuse. Already we hear of great complaints at the arbitrary and capricious manner in which this power of the local authorities is exercised in our towns and cities, particularly in

our towns. The law is now in a state of uncertainty. There is no rule by which you can limit the assessment upon property benefited by the opening of a street or other local improvement in a town or city. The law does not yet, as a rule, clearly determine whether the property to be assessed is to adjoin the improvement, or to be upon the same square with the improvement, or to be anywhere along the line of the same street, whether half a mile or two miles distant.

This power of laying a particular, special, arbitrary assessment upon the property of the citizen, I repeat, is a very dangerous power. It is exercised in a summary manner by the town authorities. The persons who make the assessment relieve themselves to a certain extent from taxation by the imposition which they themselves place upon their neighbor's property, because these assessments lighten the common taxes of the municipality for the improvement.

I desire to amend by striking out the fifth line and inserting "or of property," so that the section will read, "the taxation of contiguous property specially benefited thereby."

THE PRESIDENT *pro tem*. That would not be an amendment to the amendment now pending.

MR. BUCKALEW. No, sir; I am only indicating on the printed section before me what I desire to accomplish. I desire to strike out the words "and townships." It is not in order now, and I will propose it afterwards.

THE PRESIDENT *pro tem*. It is proposed to strike out "and townships" after "boroughs" in the third line.

MR. EWING. I will modify my amendment by striking out the words "and townships," and inserting the words I proposed before, "either separately or where contiguous jointly."

THE PRESIDENT *pro tem*. The amendment of the gentleman from Allegheny is so modified.

THE CLERK. The section will then read:

"The Legislature may, by general laws uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities and boroughs, either separately or where contiguous jointly, the power to make, renew," &c.

MR. BUCKALEW. I object to the amendment. I object to the making of this assessment by the local authorities at all. At present, under the general borough

laws, the local authorities have no power over the assessments. Those assessments are made by persons appointed by the courts, and they make report to the courts. The local authorities can take the property for public use where they open a street, and they can ask for a jury to view the damages done to the adjoining property-owners, and the power of the jury may be extended to the assessment then to be made against property-owners; but the local authorities have nothing to do with these assessments, no control over them. They are made under the authority of the courts. This section as proposed to be amended is to give this power of assessment to the local authorities, and therefore it ought to be rejected.

MR. CUYLER. Mr. President: I am in favor of the section just as it is written, reported by the committee, without the amendment, and coming from the city of Philadelphia, which, so far as its highways are concerned, has been downtrodden and oppressed by the Legislature for years past, I see the greatest possible necessity for just such an enactment as this section provides for. Nor do I sympathize with the amendment proposed by the gentleman from Columbia, because I draw a distinct meaning for each branch of the section on the fourth and fifth lines; that is to say, I clearly perceive the distinction between the taxation for "contiguous property" such as would be done in the case of paving a street, and the charge upon "property specially benefited thereby," such as would be made in the case of the opening of a street. The one is intended to apply to the case where the improvement is directly in front of the particular property where the particular property of course would properly be charged with the expenditure. The other is intended to apply to an improvement which, affecting more than two or three directly on the street, benefits a neighborhood. Therefore I think both clauses are proper to remain in the section, and the section just as it is written is precisely what we want. I am, therefore, opposed to the amendment and in favor of the section as it stands.

MR. J. M. BAILEY. I am also opposed to the amendment suggested by the gentleman from Columbia, and might suggest another instance of what has been stated by my friend from Philadelphia (Mr. Cuyler.) That is the case of a sewer where it might pass down one street and might benefit property to quite a distance

from the street, not contiguous to it; and if this be stricken out, that property would have to pay no part of the assessment for the making of the sewer.

Mr. BUCKALEW. I beg to explain. No such amendment of mine is now pending.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny (Mr. Ewing.)

Mr. BUCKALEW. The only possible motive for such a clause as this in the Constitution is to settle a question of disputed power in the Legislature. Now, the courts of our State have held that the Legislature does possess the power to pass these very laws. There are such laws here in existence, and they are being acted on. Therefore there is no reason for putting the clause into the Constitution, and using words here that we do not exactly understand. That the power exists is now unquestioned in the State. It has been exerted. It has been gravely argued, not only in our State, but in other States of the Union, whether the Legislature have this power; but it is settled in this State. Therefore I submit we had better leave this section entirely out of the Constitution.

Mr. WHERRY. I desire to know what the precise amendment now before the Convention is.

The PRESIDENT *pro tem*. The Clerk will read the pending amendment.

The CLERK. The amendment is to strike out the words "and township" and insert "either separately, or where contiguous jointly," so as to make the section read:

"The Legislature may, by general laws, uniform as to the class and kind of improvements to be made, vest in the corporate authorities of cities and boroughs, either separately, or where contiguous jointly, the power to make, renew and maintain local improvements," &c.

Mr. WHERRY. I think the slightest consideration of members of this Convention will assure them that this is an absolutely necessary section. These are powers that have been conferred by the Legislature, I know, to a certain extent, and yet they are powers that are constantly disputed, not only in Pennsylvania, but in every other State of the Union.

But, sir, I rose to oppose particularly that amendment which strikes out the word "townships," and to give my reason for opposing it. If there be any reason in the world why these powers shall

be granted to cities and boroughs, there can be no reason given for withholding them from the other municipal corporations of the State. This sort of improvement is just as necessary in the country districts as it is in the city districts. There are proportionately just as many of these public improvements to be made in the country as there are in cities and in large boroughs.

I allude to one particularly—one which has been the subject of contest and dispute in almost every State in the Union—the opening of drains through contiguous land. It will not do for the gentleman from Columbia to say that the right and power of the Legislature to enact these laws is decided. He will remember, when I mention it, that the Legislature of New York two years ago passed a drainage law and that it was pronounced unconstitutional by the highest tribunal in that State, and although hundreds of thousands of dollars were invested in these drains, the parties who invested their money did it at their own expense, and they are now litigating for a recovery and will probably never obtain it.

I ask that if this section pass at all it be extended to the country districts, so that a general drainage law may be made applicable and be made constitutional.

Mr. HANNA. Mr. President: With due deference to gentlemen who have advocated this section, I must say that I do not see any necessity for it whatever, because we propose in this section to give the Legislature authority to pass general laws on the subjects mentioned, whereas in the report of the Committee on Legislation we have provided for this very subject by saying that the Legislature shall not pass any special or local law in regard to the very subjects contemplated by this section, namely, "regulating the affairs of counties, cities, wards, townships, boroughs;" "authorizing the laying out, opening, altering or maintaining of roads, highways, streets, or alleys;" "vacating roads, town plats, streets or alleys;" and many other instances of a similar character. Therefore the Legislature must provide for all the wants of the cities, counties, townships and boroughs by general law; and why place a special section to cover that in this article when we have already provided for it in the report of the Committee on Legislation?

I hope, therefore, that this section will be voted down.

Mr. WORRELL. Mr. President: I agree with my colleague who has just spoken, and trust that this section will be voted down. We are all aware that the Legislature is vested with all the powers which are not excepted by the Constitution; and the power to pass general laws with regard to improvements in the various municipalities would exist in the Legislature if it were not restricted by any provision which we insert in the Constitution. But under the language of this section the citizen would be improved out of his property by a general law, which is the most dangerous of special legislation, because apparently applying to a subject generally, but really intended only to reach a single instance of a particular class. Those laws I say are the most dangerous examples of special legislation; and under this section a general law could be passed which would improve the citizens of this city out of their property.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Allegheny (Mr. Ewing.)

The amendment was rejected.

Mr. CUYLER. I move to amend the section by striking out in the first line the word "may," and inserting "shall," so that it will read:

"The Legislature shall, by general laws, uniform as to the class and kind of improvements, vest in the corporate authorities of cities, boroughs and townships, the power to make, renew and maintain local improvements," &c.

The purpose of the section then would be simply this: It would deposit the power of determining whether it was proper that such improvements should be made in the local authorities. It would make those who are near the people who are to be affected by such improvements, who are to be benefited by them, who are to pay for them, the judges of the necessity for the improvements and of the manner in which they should be done. It seems to me to be only reasonable and proper. In other words, bringing it down directly to the point so far as the city of Philadelphia is concerned, it would require the Legislature to provide by general laws that the local authorities of the city should determine whether sewers should be built, whether paving should be done, whether streets should be opened, whether we have any control whatever of our highways; for as we stand here to-day in the city of Philadelphia, there is not the smallest power up-

on the part of the local authorities of the city over its highways. I cannot say this in censure of the Legislature at all, because I believe the fact to have been that the men who represented this city in the Legislature were themselves corrupt, and were the source of the corruption that has brought about the difficulty that we have suffered here, for I believe the general practice has been in the Legislature, so far as local questions were concerned, to refer them to the members from the particular district; but the actual effect of that in the city of Philadelphia has been that the men who have represented the particular district in the Legislature have been base men, corrupt men, and men who have forgotten the duty they owed to the people who sent them there. I am sorry to say that last night has shown that, notwithstanding the consciousness on the part of the city of Philadelphia of the infidelity of many of these men to their trust, they have been again renominated for office, and will probably be elected and sent there unless the adoption of this new Constitution shall work out a different state of affairs.

I am therefore in favor of the doctrine that the people who are to pay for these improvements, the people for whose especial use they are to be made, shall themselves, through their local legislatures, be the judges of the reasonableness and of the propriety of each particular improvement, whether it shall be made and how it shall be made. Therefore, I desire to see this section made imperative in its terms, and not leave it as the law now is, in the exercise of an option on the part of the Legislature, which option never would be exercised, for of course they would not willingly give up a power which had been deposited in their hands.

These, sir, are my reasons for this amendment.

Mr. BUCKALEW. I should like to ask the gentleman a question. Is he aware that in the legislative article all power to grant special laws by the Legislature on these subjects is taken away?

Mr. CUYLER. I consider the thing so imperative that I would pass it into every article of the Constitution, so as to ensure it.

Mr. BUCKALEW. You do not write so many other things into it.

Mr. TURRELL. The gentleman says he is in favor of this section because it makes the people who are to pay for these im-

provements the judges of their values, and of the damages, and so on. Now, I can point him to a city in this State where council ran into debt some \$700,000 or \$800,000, and the whole of them did not pay ten dollars tax. I say this section is an outrageous one, and it ought to be voted down.

Mr. CUYLER. I should like to ask the gentleman what proportion of the taxes of the city of Philadelphia are paid by the members of the Legislature, whom he would desire to have the power to pass on this question?

Mr. TURRELL. I do not know anything about that.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia, (Mr. Cuyler,) to strike out "may" and insert "shall."

Mr. CUYLER. I ask for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call, and being taken resulted as follow:

YEAS.

Messrs. Andrews, Baer, Bailey, (Huntingdon,) Boyd, Broomall, Calvin, Carey, Carter, Church, Corson, Cronmiller, Curtin, Cuyler, Fell, Guthrie, Harvey, Hazard, Kaine, Knight, Littleton, MacConnell, M'Culloch, Mott, Porter, Reynolds, Russell, Stanton, Struthers, Wetherill, Jno. Price and Wherry—30.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bannan, Biddle, Bigler, Black, Charles A., Bowman, Brown, Buckalew, Campbell, Clark, Cochran, Davis, De France, Dodd, Edwards, Elliott, Ewing, Finney, Funck, Gibson, Gilpin, Green, Hall, Hanna, Heverin, Horton, Howard, Hunsicker, Lawrence, Lilly, Long, M'Camant, M'Clean, M'Murray, Mann, Mantor, Minor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Putton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Smith, H. G., Smith, Henry W., Turrell, Walker, Wetherill, J. M., White, Harry, White, J. W. F. and Worrell—62.

So the amendment was rejected.

ABSENT. — Messrs. Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Bullitt, Cassidy, Collins, Corbett, Craig, Curry,

Dallas, Darlington, Dunning, Ellis, Fulton, Hay, Hemphill, Lamberton, Landis, Lear, MacVeagh, Metzger, Newlin, Palmer, G. W., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, *President*—41.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. EWING. If the gentleman from Columbia now can hear me, I should like to explain why I think there is some necessity for this section. He says that the Legislature has full power to do all this.

Mr. J. N. PURVIANCE. Allow me to ask the gentleman, does he desire that other members shall hear as well as the gentleman from Columbia? [Laughter.]

Mr. EWING. Yes, sir, I shall be very much obliged to them if they will listen because a number of them have expressed opinions which I think they would not have expressed if they had read the decisions of the Supreme Court and the laws relating to this subject. I venture to say that at the present time no man, be he lawyer or layman, can undertake to guess with reasonable certainty what the decision of the Supreme Court of this State will be in regard to any act of Assembly or ordinance of city councils with reference to opening streets, making sewers, or any municipal improvements of the kind. They have within the past few years laid down principles which will enable them to decide either way on any case that may arise. Take the Hammet case, in the city of Philadelphia; take the Washington avenue case, in Allegheny, and several cases of that sort. Now, I think it is necessary that we should put something in the Constitution which would set at rest these questions.

Mr. TURRELL. May I ask the gentleman a question?

Mr. EWING. Certainly.

Mr. TURRELL. I ask whether there is not a fair prospect that the district court of Allegheny might settle the question after the next election? [Laughter.]

Mr. EWING. I am not able to say. [Laughter.] That it is necessary that there should be some authority to assess the cost of local improvements in cities and boroughs on the property benefited, I think no one will doubt who has paid attention to the matter. Without that, you would absolutely stop a large portion of the improvements in every growing city. It is unfair and unjust to tax the

main body of the city to make improvements which are benefiting almost entirely some particular section; and even in the best way you can make them you will usually tax the old parts of the city for the benefit of the new in making their improvements. I undertake to say that it is done in this city, it is done in Pittsburg, and probably in every city in the State.

Mr. KAINE. I wish to ask a question. Would not the Legislature have the power to pass laws of this kind without this provision in the Constitution?

Mr. EWING. I undertake to say that the Supreme Court of the State has unsettled the law in regard to that so that it is very doubtful what the power of the Legislature is. They have decided in some cases that the Legislature have the power, and they have decided directly reverse principle, that they have not the power, in what I think are similar cases.

Now, further, in regard to the necessity of it, we have in the first section which we have just passed declared that "the taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax." That is a new constitutional provision and would still further complicate the questions arising from the decisions of the Supreme Court on the subject. I believe it will prohibit any such local assessments without this section.

Now, in regard to the difference between assessing on "contiguous property" and assessing on "property specially benefited thereby," that is a principle that has been recognized in the legislation of the State for many years. Ordinarily where a street is opened, the cost of it has been put on the contiguous property; but when sewers are made, or when some great leading avenue is made, then it has been considered proper to determine by a jury of viewers what property is specially benefited thereby and assess the cost on that. Property which is not contiguous is just about as much benefited and occasionally more benefited than the property which is contiguous. It is proper to make that distinction, and the Legislature must, in passing laws, make them general as to the class of improvements. The cost of one class of improvements might require to be assessed on property specially benefited thereby, whether contiguous or not, and others it would be proper to have the assessment on the property contiguous.

The PRESIDENT *pro tem*. The question is on the section.

Mr. ALRICKS. I call for the yeas and nays.

Mr. H. W. SMITH. I second the call.

The question being taken by yeas and nays, resulted as follows:

YEAS.

Messrs. Andrews, Baer, Broomall, Carey, Carter, Cochran, Corson, Cuyler, Ewing, Fell, Hazzard, Horton, Knight, Littleton, MacConnell, M'Culloch, Porter, Read, John R., Stanton, Wetherill, J. M., Wetherill, J. Price and Wherry—22.

NAYS.

Messrs. Alricks, Armstrong, Bailly, (Per ry,) Bailey, (Huntingdon,) Bannan, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Brown, Buckalew, Calvin, Campbell, Clark, Cronmiller, Curtin, Davis, De France, Dodd, Edwards, Elliott, Ellis, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hall, Harvey, Howard, Hunsicker, Kaine, Lawrence, Lilly, Long, M'Camant, M'Clean, M'Murray, Mann, Mantor, Minor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Smith, Henry W., Struthers, Turrell, Walker, White, Harry, White, J. W. F. and Worrell—68.

So the section was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Black, J. S., Brodhead, Bullitt, Cassidy, Church, Collins, Corbett, Craig, Curry, Dallas, Darlington, Dunning, Hanna, Hay, Hemphill, Heverin, Lamberton, Landis, Lear, MacVeagh, Metzger, Mott, Newlin, Palmer, G. W., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, President—43.

Section four was read as follows:

SECTION 4. The property and business of manufacturing corporations shall not be taxed in any other manner or at any other rate than like property and business of individuals.

Mr. DODD. I move to amend by inserting the words "or mining" after "manufacturing" in the first line. If this is a correct principle to be applied to manufacturing corporations, there is no reason in the world why it should not be applied

to mining corporations as well. I am in favor of applying it to both classes.

Mr. HARRY WHITE. This is an exceedingly important section and I call the attention of delegates to the question. If passed, it will seriously affect the revenues of the Commonwealth. I observe that the provision is that "the property and business of manufacturing corporations shall not be taxed in any other manner or at any other rate than like property and business of individuals." Now, it is well known that the reason why we were able to pass the act of 1866 exempting real estate from taxation, and last year to exempt nearly all personal property in this Commonwealth from taxation, was because of the reception of the revenue necessary for the State government from the taxes on certain kinds of corporations. It is very well known that by the act of 1868 we now impose a tonnage tax on the transportation of corporations, and that yields a revenue of over a million of dollars a year to the Commonwealth. We also impose a tax upon the capital stock of corporations, which yields a revenue of something over three hundred thousand dollars. We have imposed a tax upon the income of corporations. That was taken off by the last Legislature. We yet retain a tax upon the dividends of corporations. Now, if you pass this section, you repeal the laws upon the statute book regulating the reception of revenue to the Commonwealth. We to-day receive from corporations over three millions of dollars of revenue. If you pass this section you repeal those laws entirely. Now, I submit that this Convention should have a good reason for doing so before they do it.

Mr. NILES. Mr. President: I am surprised at the position taken by the delegate from Indiana, since the body of which he was a member last winter took the tax off corporations on their gross earnings, and I believe that the delegate from Indiana supported that measure.

Mr. HARRY WHITE. I did not.

Mr. NILES. The record does not show that the delegate opposed, it I believe.

Mr. HARRY WHITE. The record does show that the delegate from Indiana opposed it.

Mr. NILES. I have been informed to the contrary.

Mr. HARRY WHITE. The gentleman has not been informed properly. I spoke and voted against it.

Mr. NILES. I am glad to hear it. But, Mr. President, what is this proposition? It seems to me that it is eminently fair, and I should like to have the delegate from Indiana tell me or tell this Convention why the property of a manufacturing company should be taxed twice, which is done to-day all over the Commonwealth. I should like to know why ten men owning a saw mill with a thousand acres of land should pay all the local taxes, all the local assessments that are put upon it, just the same as upon the property of an individual, and then why their income, why their gross earnings, and if they declare no net dividends why their bonds or their stock should be taxed again? I know many of these concerns in my section of the State where the men are poor, not able in their individual capacity to make the proper improvements, and they are paying double taxes there; and they are paying them all over the Commonwealth. Now will the delegate from Indiana tell me why this is right? Can he give any reason why two individuals should pay a great tax upon their net earnings and their gross receipts, and if they pay no dividends, then on their stock, while the same property owned by an individual pays not a dollar of tax of that kind, and each of them bears the same burdens in reference to all local and State assessments.

Now, what this section proposes to do is simply to say that the property of a manufacturing company, a lumber company or a mining company, in the language of the amendment of the gentleman from Venango, which pays all the local assessments, pays all the State and county taxes, pays everything that is paid by the property of an individual, shall not again be assessed on stock or dividends or gross earnings. It seems to me that it is eminently fair; and it commended itself so much to the committee of the whole that there was no objection made against it.

Mr. BROOMALL. It is well known to every gentleman here that the property of certain corporations is taxed peculiarly, as for instance the carrying corporation. The Legislature has applied the same principle to certain local corporations, such as manufacturing companies, which are after all little more than mere business firms, and is taxing them in the same way. The committee thought that these local corporations should be treated as individuals; that there was no reason why ten men incor-

porated should pay taxes on the same property in a different manner from individuals. If, however, the Convention think otherwise, let them vote down the section. The committee that reported the article thought it wise to limit this peculiar taxation to the railroads and other similar corporations, and not to let it apply to these small corporations, owners of property that pay taxes just like individuals pay taxes, and many of which compete with individuals by their side, owning, probably, as much to the individual as these own to the corporation. We thought they should be treated as individuals are treated, and not as the great railroad carrying corporations are treated.

Mr. HARRY WHITE. The remark of the delegate from Tioga (Mr. Niles) makes it necessary for me to say a word—

The PRESIDENT *pro tem*. The rule of the House requires unanimous consent.

Mr. HARRY WHITE. I merely ask to explain. It is too important a question to pass by lightly.

The PRESIDENT *pro tem*. The rule forbids the gentleman speaking out of order. He has already spoken on this question.

Mr. MANN. Mr. President: The statement of the gentleman from Indiana certainly is worthy of consideration. This section will very seriously affect the finances of Pennsylvania if adopted, and the Convention has already in the first section of this article required equality of taxation. Now, this fourth section goes further and attempts to do a work which properly belongs to the Legislature, and we undertake to do it without the lights and guides that the Legislature would have. I venture to say there are not ten of the delegates on this floor who can tell the effect the adoption of this section will have. I confess I do not know what its effect will be, and I do not believe there are ten men on the floor who know what it will be. I do know that it will very seriously affect the finances of the State, and I believe that it will impose additional taxes on the farmers and workmen of the Commonwealth. For that reason I trust it is not to be passed without more light than I have yet heard shed on it.

I think it is one of those sections described by the gentleman from Philadelphia this morning, calculated to load down and burden unnecessarily the Constitution of the State which we are fram-

ing, putting a burden upon it that may do a possible good but is certain to do a great deal of harm.

There are many reasons why the business and property of associations of every description should be assessed differently from the property of individuals. By the privileges given to associations they acquire greater facilities for making money than individuals can have, and they are exempt from many burdens that are imposed upon individuals, and for that reason and for various others they have privileges and immunities that cannot be taxed in the way that individuals are, and it ought to be left to the wisdom of the Legislature, reflecting the will of the people, to devise such means of assessment as will equalize the burdens of taxation throughout the State.

I trust therefore this section will not be passed until we have more light than has yet been given us upon it.

Mr. ANDREW REED. I move to strike out "in any other manner or," in the second line.

Mr. EWING. Is that an amendment to the pending amendment, to add the words "or mining?"

The PRESIDENT *pro tem*. It is not, and therefore it is not in order. The question now pending is on the amendment of the gentleman from Venango (Mr. Dodd) to insert the words "or mining" after "manufacturing."

Mr. J. M. WETHERILL. I call for the yeas and nays.

Ten gentleman rising, the call for the yeas and nays was seconded, and they were taken with the following result:

Y E A S .

Messrs. Baer, Bannan, Boyd, Calvin, Campbell, Carey, Carter, Church, Cochran, Corson, Curtin, Davis, De France, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Gibson, Green, Guthrie, Hall, Harvey, Hazzard, Knight, Lawrence, Lilly, M'Camant, M'Clean, M'Culloch, Mantor, Niles, Palmer, H. W., Parsons, Patterson, D. W., Purviance, Samuel A., Russell, Smith, H. G., Struthers, Walker, Wetherill, J. M. and Wetherill, Jno. Price—43.

N A Y S .

Messrs. Alricks, Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Broomall, Brown, Buckalew, Cronmiller, Finney, Funck, Gilpin, Horton, Hunsicker, Kaine, Littleton, Long, Mac-

Connell, M'Murray, Mann, Mitchell, Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Reed, Andrew, Reynolds, Rooke, Smith, Henry W., Stanton, Turrell, Wherry, White, Harry, White, J. W. F. and Worrell—40.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Bullitt, Cassidy, Clark, Collins, Corbett, Craig, Curry, Cuyler, Dallas, Darlington, Dodd, Dunning, Hanna, Hay, Hemphill, Heverin, Howard, Lamberton, Landis, Lear, MacVeagh, Metzger, Minor, Mott, Newlin, Palmer, G. W., Pughe, Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N., Woodward, Wright and Meredith, *President*—50.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. H. W. PALMER. I am opposed to the section because it is in conflict with the first section which we have adopted. It is exceptional. That provides that all taxes shall be uniform. Now, this section excepts out certain corporations, to wit, mining and manufacturing corporations. It provides that the taxes on these corporations shall not be uniform because it provides that they shall not be taxed differently from the property and business of individuals. That leaves it to be inferred that other corporations, corporations other than mining and manufacturing, may be taxed in a different manner from individuals.

Now, either the first section means something or it means nothing. If all taxes on all classes of subjects are to be uniform, then the taxes on corporations ought to be uniform. Now, what are the subjects of taxation? They are horses and mules, lands, and such things, and the Legislature cannot make any distinction between corporations and individuals so far as property is concerned. You cannot make a class of mules and say this mule shall be taxed at one rate because it belongs to a corporation, and that mule at another because it belongs to an individual. And the same rule will apply to all the subjects of taxation. When you say in the first section that all taxes shall be uniform, you prohibit the Legislature from ever making any distinction in the taxation of any kind of property that is held in common by individuals and corporations. Now, I agree that you may tax the franchise of a company be-

cause no individual holds it. You may make the franchises of companies a subject and say they shall be taxed in a certain way, and that tax will not apply to individuals, because individuals are not possessed of franchises; and that is right, because franchises give companies advantages which individuals do not possess.

This section has no meaning whatever, and it ought to be voted down.

Mr. HUNSICKER. I oppose this section for quite a different reason, and that is, because we now tax these corporations more than we do individuals, and we raise a very large portion of our State revenue from such taxation, and notwithstanding we do raise that large revenue by that species of taxation, the manufacturing companies in the State are in exceedingly prosperous condition, and they can afford to pay the taxes. I think if we pass this section the State will be cut off from that source of revenue.

Mr. COCHRAN. Mr. President: It seems to me that there is a point of view in which this subject may properly be considered, which would appear to justify the passage of this section. If I remember aright, the Executive of this State, in his last annual message, for reasons which he stated, and which were satisfactory to him, urged the Legislature to relieve this particular class of corporations from the taxation which was levied upon them, because the effect of that taxation was to oppress that class of labor in the State, and to keep capital from coming into the State and being employed in this kind of productive industry.

It has been contended here that the section should not pass, because it will detract from the amount of revenue received into our State Treasury. I have not understood any gentleman yet to say that it would bankrupt it, or reduce the amount received below an amount which would be right and proper to be paid into the treasury. For my own part I believe that the great evil is, that the revenues of this State are redundant, they are beyond the actual needs of the State government, economically and carefully conducted, and it would be a movement in the direction of economy and of purity, if the revenues were reduced to something below their present amount. Those sources of revenue are such as are continually increasing, and the deficit which would seem to be made in the amount of receipts into the State Treasury by the passage of this section would soon be filled by the

natural growth and increase of revenues from the remaining sources.

Now, Mr. President, I believe it is a fact that from year to year there is an amount of at least \$1,000,000 carried over in the treasury and which is made a fund for the emolument of those who are immediately connected with that branch of the government. That million of dollars is of no public benefit. It may redound to private profit. Why should such an amount of money as that be constantly carried over in the Treasury of this State from one year to another? Whom does it benefit? Certainly it does not benefit the people of the Commonwealth. It is a dead fund lying there, unproductive to the State and unbeneficial to the people, and probably a source of corruption to political and public morality. Now, sir, I apprehend that some reduction in the amount of the revenues of this Commonwealth would not be detrimental to the Commonwealth itself or to the people of the State; and unless it can be made to appear to me that passing a section of this kind would be so injurious and would reduce the amount of revenue received to such a condition that the government of the State could not be conducted under those receipts, then I think this section should be passed.

Mr. BUCKALEW. Mr. President: I am fixed in my opinion with reference to this question of taxation. It is no new opinion with me. It is this, that with the exemption of the few objects which we have already enumerated in this article to be exempt, the taxing power of the Commonwealth shall be left unaffected by anything we do. In times of war, in times of financial distress, this great mother of ours, the Commonwealth, must be able to put her hand, if need be, upon all our resources in all possible forms. We have seen such times and we cannot be certain that they will not come upon us again.

Now, we have been told here that this tax on gross receipts, which was oppressive on some of the corporations, was repealed last winter as soon as a demand was made upon the Legislature, and if these corporations or any other of our corporations are oppressed by our revenue laws they will always be heard by the Representatives of the people at Harrisburg; their voice will be always powerful whenever injustice shall be done them. But do not let us here in the fundamental law impair the public power over

these sources of revenue which in future times may be necessary for the public welfare, possibly even to the existence of the State.

This looks specious on the face of it, that the property and business of mining and manufacturing companies shall not be taxed in any other manner, nor at any other rate, than the property of individuals. It is a plausible form to put it in. But the section is based on a false assumption, which is that these corporations and individuals engaged in similar business do stand on the same level. It is not so. These corporations have special laws which enable them to make money. These men who have large capital are permitted by your Legislature to invest it in those pursuits under provisions which are exceedingly advantageous to them and from which they reap higher rates of profit than the average rate in this State. They are not subjected to individual liability for all the debts accumulated in their business if they are unfortunate. They throw the burden upon the great mass of our people. Our laws protect this corporate property of theirs; our courts are open and are occupied by their business, and to the common expenses and burdens of government they should contribute when necessity demands it at different rates or in other fashions from the great mass of our people. They are not upon the same plane and level. To be sure I would not here in this Constitutional Convention regulate the manner in which they should be taxed. I would not say that they should pay a dollar upon any business in which they engage, upon their stock or upon their dividends, or upon any business of production or transportation in which they may engage. I would leave them where all our people are left, to the judgment and discretion of the political department of the government, which from time to time can adjust our revenue system, first to the public necessities, next to the ability and means which individuals or corporations may command as sources of contribution to the public necessities.

I beg gentlemen to let this business of adjusting the revenue laws alone. What do we know about it? Who has laid before us statistics? What financial officer of the government has reported to us the financial condition of the State and pointed out the sources of revenue which may be dried up, or other sources which may be opened? Without any information,

blindly and in the dark, here by a single vote you have placed all the mammoth mining companies of this State in this section. I do not see any reason why they should not be put in if manufacturing companies are put in. I do not see any reason or particular ground of equality why you should not put in other corporations. My idea is that you shall let this subject alone, because you are incompetent to pass upon it, you have not the means of passing upon it; you cannot judge of the necessities of the State. It is a subject which is not within your proper jurisdiction.

Mr. President, it is impossible, of course, for me to go into a general argument on the subject. All I can do is to throw out some of the general views which I hold, which I hope gentlemen will turn over in their own minds and make up their judgments to let this subject rest where it does now—where it always has rested from the time Penn founded this city on the banks of the Delaware to this moment. By this disposition of the subject we shall best perform our duty.

Mr. J. PRICE WETHERILL. Mr. President—

Mr. H. G. SMITH. If the gentleman will give way, as it is only one minute of seven o'clock, let us adjourn. I move an adjournment.

The motion was not agreed to.

Mr. J. PRICE WETHERILL. Mr. President: I suppose this Convention have almost made up their minds as to what they intend to do in regard to this section; but I feel that I must say a word upon the subject because I am satisfied that there are two sides to it, and not one merely as would appear from the remarks of the gentleman from Columbia. He talks about impossible emergencies that may arise in the State, and asks what shall we do if we so cripple the revenue laws of the State that we cannot raise money enough in time of war and in time of pestilence? Why, sir, when the day of pestilence comes and when another civil war takes place, we never will raise the money needed from direct taxation, but we will raise it as we should raise it, upon the faith and credit of the State of Pennsylvania, and it comes just as quickly, aye, more quickly in that way than by any direct taxation which we can possibly attempt to impose upon our people.

Again, the gentleman from Columbia says that we must not touch the revenue laws of the State, but that we must leave that matter to the Legislature, that we must not cripple these laws in that way. Why, sir, we have just limited the power of the Legislature by a section in regard to church and other property used for religious purposes. We have thus crippled the revenue of the State to a very large amount, perhaps, and this Convention in that way deem it right and proper for us to legislate in regard to the revenue of the State, and at the same time, in regard to corporations we have no such right! Is this consistent?

A great deal has been said in regard to the amount of revenue that these corporations pay. How much is it? We receive \$2,600,000 from all the corporations annually, and I venture to say that the manufacturing corporations do not pay an annual tax of over \$450,000. Shall we, because the manufacturing corporations of the State are taxed to a sum so insignificant as \$450,000, cripple that enterprise, for we do cripple that enterprise by levying a tax upon it greater than we do on individuals.

Mr. EWING. Will the gentleman give way for a motion to adjourn?

Mr. BOYD. The hour has come.

Mr. J. PRICE WETHERILL. I hope I shall not be interrupted, for I shall finish in a very little while.

How will this operate if we continue to tax these corporations? We have agreed to free them, as much as possible, from liability, because we have desired to invite capital into the State of Pennsylvania in order that our manufacturing enterprises may be encouraged.

Now, sir, I know of a case in the city of Philadelphia, occurring within ten days, where \$500,000 of corporate capital was proposed to be invested in an article made out of raw material which comes from this State, an article made out of raw material the monopoly of which is now enjoyed by a firm in a sister city, an article of importance in the arts, and our people are compelled through that monopoly to pay a very large price for its use. The corporation to which I have alluded would have been formed on a capital of \$500,000 for the manufacture of that article, but for the reason that the laws here were oppressive and the laws in New England were not oppressive, and that money and

that corporation will probably go to New England, and its investment be lost to the manufacturing interests of the State.

will pause. According to the resolution passed the House is now adjourned, seven o'clock having arrived, until to-morrow at nine o'clock A. M.

The PRESIDENT *pro tem.* The delegate

ONE HUNDRED AND TWENTY-EIGHTH DAY.

THURSDAY, June 26, 1873.

The Convention met at nine o'clock A. M., the President *pro tem* (Hon. Jno. H. Walker) in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday's proceedings was read and approved.

PERSONAL EXPLANATION.

Mr. J. N. PURVIANCE. Mr. President: I rise to a privileged question. I have just noticed in a Pittsburg paper the announcement of the death, at Harrisburg, of a gentleman from Butler county, and that he had upon his person a pass bearing the name of a member of the Constitutional Convention from Butler county. As I am a member from that county, I desire to say that the pass alluded to was not from me. I make this disclaimer as due to myself personally, as well as to the honor of my position as a member of this Convention.

LEAVES OF ABSENCE.

Mr. GREEN. I ask leave of absence for Mr. Brodhead for to-day and to-morrow. He desired me to state that he is a trustee of the Lehigh University, which has its commencement to-day, and his presence there is necessary.

Leave was granted.

Mr. H. W. SMITH asked and obtained leave of absence for himself for Saturday and Monday next.

Mr. PARSONS asked and obtained leave of absence for a few days from to-day for Mr. Metzger.

Mr. FUNCK asked and obtained leave of absence for himself for Saturday.

Mr. MANN asked and obtained leave of absence for Mr. Worrell for this afternoon.

REVENUE AND TAXATION.

The PRESIDENT *pro tem*. The next business in order is the article on revenue, taxation and finance, which is before the Convention on second reading, the pending question being on the fourth section, which will be read.

The CLERK read as follows:

SECTION 4. The property and business of manufacturing and mining corporations shall not be taxed in any other manner, or at any other rate, than like property and business of individuals.

Mr. J. PRICE WETHERILL. Mr. President: I do not intend to take up the time of this Convention in any lengthy speech upon this subject; but it seems to me that the argument advanced yesterday by the gentleman from Indiana (Mr. Harry White) and the gentleman from Columbia (Mr. Buckalew) and the gentleman from Potter (Mr. Mann) should be replied to. I do not intend to allude to the importance of the manufacturing interests of the State of Pennsylvania, because I believe that in this presence it would be useless.

The main argument against the adoption of the section is that the amount of revenue received from corporations, amounting to one-third of the entire revenue of the State, will be very materially lessened if we adopt this section. That idea was elaborated very extensively by the gentleman from Indiana in a very impressive speech, and we were led to believe that the repeal of the tax on the mining and manufacturing interests of the State of Pennsylvania would very materially lessen the revenue of the State. That I will reply to by some figures which I have before me, and I will endeavor to show that it is a mistake.

The gentleman from Columbia, carrying out that same idea, pictured to us the condition of things in the State of Pennsylvania in a case of great emergency; he alluded to war and pestilence; and that picture at first sight appeared to be alarming; but when we recollect that the mining and manufacturing companies of the State of Pennsylvania pay into the revenue of the State annually but a comparatively small sum, I think to rely upon the tax upon manufacturing companies to support us during a time of war or during a time of famine and pestilence would be a very weak support upon which to rely.

Another argument was advanced by the gentleman from Potter, (Mr. Mann,) who

said that the farmer, who already was taxed sufficiently, would not care to have his taxes increased if the revenue of the State should be lessened by the repeal of the taxes on mining and manufacturing, would oppose it.

Now, what are the figures in regard to the matter under consideration? It is true that corporations throughout the State of Pennsylvania do pay a very large tax. They pay a tax on corporation stock of \$1,300,000; on earnings, \$348,000; on receipts, \$457,000, and on loans \$492,000, amounting in all to \$2,600,000. These figures look large, and I do not wonder that the gentleman from Indiana was a little careful lest so large a source of revenue derived from the corporations of the State should be diminished. But, sir, the manufacturing companies of the State pay but very little of that amount. The bulk of that money comes from railroad companies, from insurance companies, and from companies other than mining and manufacturing in the State. In order to more fully understand this I will state that the manufacturing companies purely pay but about eight per cent. of this entire sum. We have throughout the State but about forty iron manufacturing companies; we have in the State but seventy-three miscellaneous manufacturing companies; we have in the State but about fifty gas companies, and those three classes of companies are the only companies in the State that can be called manufacturing companies purely, and when you come to look at the amount of tax which they pay and the amount of revenue which we receive from them it seems to me it is the height of folly for us to attempt to tax companies of this sort, especially when if you will remove the tax and aid the association of capital and the establishment of large manufacturing companies you will thereby greatly enlarge the industrial interests of the State.

Why, sir, the sum received from the manufacturing companies of the State of Pennsylvania amounts to little or nothing when you come to look at it. What tax do they really pay, and what amount of revenue do we receive from them? On the tax on corporation stocks we have one million three hundred thousand dollars. The iron companies pay on that their proportion, only forty-seven thousand dollars. The miscellaneous companies only pay fifty-three thousand dollars, and the gas companies only pay twenty-five thousand dollars. Thus it will be

seen that of a tax collected from railroad companies and others of one million three hundred thousand dollars, the only tax which these manufacturing companies pay—and which I should like very much if this Convention would relieve them from—they pay only one hundred and twenty-five thousand dollars. So I could go on with the other items and show that out of this enormous amount of \$2,600,000 that the gentleman from Indiana talks about, this great amount of revenue about which guards should be placed, the manufacturing companies only contribute eight per cent., \$211,000, no more, no less. These are the figures; and I think in the face of these figures, when we come to consider these manufacturing companies about which there is so much talk and which we should encourage, we should remove this tax, not that it is of any great amount; but when you come to associate capital, when the skilled labor which was talked about here the other day desires to associate capital with it, when two persons desire to form a company, what do they do? They first look at the taxes which they will have to pay, and then the liability which they will have to assume. Now we have removed the liability, and the only thing in the way of making this a perfect success so as to have a perfectly free manufacturing law is to remove this tax of \$211,000 of which I have spoken.

Let me give you an instance of that. We have in the city of Philadelphia two hotels, the Girard house, working on individual enterprise, and the Continental hotel, working on corporate capital. They both pay the same amount of taxation, they are both assessed equally, they both derive profits from the same kind of business, and yet one must pay a State tax of \$1,500 to \$2,000 into the State Treasury and the other pays nothing. That is an illustration of the manner in which this taxation operates, and when it comes to bear upon small companies, men of careful business habits, men who look closely into their annual expenses year by year will, of course, understand that these taxes will interfere with their business and they will not associate capital into individual companies with this tax hanging over their heads; and by that means we will check the very thing that we desire.

I think I have clearly shown that this great amount of taxation, \$211,000, will not interfere with the revenue of the State, if we release it altogether, and I have fully

answered the objections offered by the gentleman from Columbia (Mr. Buckalew) as to the difficulties that may arise in times of war and pestilence, and shown that that is rather an exaggerated idea. Having disposed of this what remains?

We come to the farmer. The gentleman from Potter (Mr. Mann) has said that the farmer will object to this tax because the farmer pays a certain amount of revenue into the State Treasury, and if the tax upon these corporations be removed, it will to that extent increase the taxes of the farmer. We have often heard of this old farmer, and I begin to think that there is a great deal of the myth about him. We heard about him when the question of the rate of interest was before the Convention, and he proved to be such a bugbear that he defeated what I conceived to be a very good measure. I hope that now he will not prove to be such a bugbear here as to defeat so good and wise a measure as this.

What do the farmers pay as State taxes, for the figures again become important in this additional phase of this argument? They pay \$500,000 of taxes annually on personal property, and out of that half a million the farmers of Potter county pay annually the enormous sum of \$650. I do not think the gentleman from Potter can complain of that amount of tax. And there is one thing that I want to allude to here, which is this: I would not insult the intelligence of the farmers of Potter county or the farmers of the State of Pennsylvania by arguing that when they pay an indirect tax it is not as hard a burden as a direct tax. When they pay a tax on coal, which they do, for every tax which is placed by the State upon a coal company, every tax which is placed upon a mining company, every tax which is placed upon an oil company, is indirect tax upon the consumer. It is not necessary to explain that. Every one who knows anything about political economy understands it. Corporations when they make their calculations of the cost of any article mined or manufactured put these taxes into their estimate of cost and charge them to the purchaser. I would therefore say to the farmers of Potter county that if they do not pay directly the taxes which are imposed upon corporations, they indirectly pay these taxes on every ton of coal which they use, on every gallon of oil they burn, and on every manufactured article that enters into their annual expenses. It is for the

benefit of the farmers that these taxes upon manufacturing and mining companies should be removed in order to do away with this indirect tax which the people of Pennsylvania pay to the amount of \$2,600,000 annually. It is true that they do not pay it directly, but they pay it virtually. The transportation companies and the mining companies and the manufacturing companies are the mere avenues through which the consumer pays these taxes.

Let us look at this rationally. Let us look at this as prudent business men, and I think if we do we shall see the justice of this section and pass it.

Mr. CAREY. Throughout almost our whole history we have done our best by the imposition of stupid liabilities and unjust taxation to drive capital out of the State, and to prevent it from coming into the State. Thank heaven, we have now abolished the liabilities. Let us now abolish the injustice. The time has come when it must be done. It must be done if we would preserve our position in the Union. The south and the west have advantages for manufacturing ten fold greater than ours. We are just at the extreme edge of the iron and coal. To find them in greatest abundance you must go to Alabama, to Virginia, or to Missouri. All over the South and West they have advantages for both the cotton and the iron manufacture, and for other manufactures, as well as for the mining of coal, far beyond our own.

What are they doing? Almost every city, every county, and every borough is begging people to come and bring capital, promising that they shall be free from every description of taxation; not only that they shall be put on an equality with other people, but that they shall be put above all others, and that their taxes shall be paid by their neighbors. Only this morning I have found in the *Press* of this city a letter from the South, which says that, "to encourage the establishment of industrial enterprises, the States of Georgia and Alabama have enacted that such enterprises shall be exempt from all State and municipal taxation for a period of ten years following their establishment, and this exemption applies to the entire property, machinery and working capital of the enterprise."

In Virginia, close neighbors to us, they are making a road, the Chesapeake and Ohio, that will give advantages for the

manufacture of iron ten fold greater than anything we have. Let that State offer bounties on the introduction of capital, while we maintain taxes on it, where will capital go? It will go to Virginia; it will go to Missouri, a State admirably adapted for manufactures; it will go anywhere but here.

It is said that the farmers will object to this section. Why Mr. President, for every dollar that we put into the treasury by these taxes upon manufacturing companies, our farmers pay ten for want of markets close at home for their products. I might say \$20 are paid by the farmers for every dollar that is paid by these corporations in the way of tax. But for these restrictions which are driving corporate capital away from us, the farmers would have a market at home for their products that would make every farm in the State vastly more productive. Already we have freed ourselves from some of these restrictions, and I now hope we shall be relieved of all the rest. Our manufacturers have always labored under disadvantages, and yet we have grown. We have great advantages as compared with the north and the east, but our natural advantages are small when compared with the south and the west. We have grown in despite of our bad legislation; we have grown in spite of our injustice; and we have grown in spite of all the stupidity that has been piling up restrictions on the introduction and employment of capital.

One of two things we must do. We must either give this up or we shall not be able to retain our position in relation to the other States of the Union. If we would keep pace with them this provision must be adopted.

MR. ARMSTRONG. I do not desire this Convention to take a vote upon this section without, in a very brief manner, expressing my views upon it. I believe that the policy of Pennsylvania has heretofore been disastrous in the extreme. I do not mean to say that our manufactures are not large, for they are; but I do mean to say that they are much less than they ought to be. They are not only less, but the material resources of Pennsylvania are carried out of the State and manufactured elsewhere, and I appeal to gentlemen of this State, particularly gentlemen from the border counties, who know the facts perfectly well, if millions of dollars of capital which were desired to be invested in Pennsylvania have not

stepped across the border, and been invested in Ohio and New Jersey, principally for the very purpose of avoiding the onerous taxations which are imposed upon those interests in Pennsylvania. I could now point across the river to within three miles of the very place at which we are now sitting, where not less than \$5,000,000, for aught I know three times as much, has been invested of capital that sought investment in Pennsylvania but was deterred by reason of our excessive taxation.

Now let me show just for a moment the difference between Connecticut and Massachusetts and Pennsylvania. In those States the manufacturing laws are very liberal and it has been their policy to invite the investment of capital. In Pennsylvania we have a population by the last census of 3,521,951. In Connecticut they have a population of 537,454. The products of manufactures in Pennsylvania were \$711,894,344. In Connecticut \$161,065,474. Now, upon the basis of population, if the populations were equal, which they are not, Connecticut would have an annual production of manufactures of over \$1,000,000,000; our population is more than six times greater than that of Connecticut, and upon the basis of an equal population the manufactures would have been considerably beyond \$1,000,000,000.

Our population exceeds that of Massachusetts about two and a-half times. Our population, as I have stated, is 3,521,951. Their population is 1,457,351. Their products were \$553,912,568. Upon the same basis of calculation as to population, Massachusetts would have manufactured \$1,384,000,000 in the same time, and with the disadvantage of being compelled to convey the resources of Pennsylvania hundreds of miles to be manufactured there, and chiefly because they have encouraged manufactures by a system which gives confidence to capital in its investment. We not only ought to relieve the manufacturing interests of our State from taxation which discriminates against them, but we ought to relieve the anxiety of capitalists so that we may restore such public confidence upon the question as will invite the investment of capital within the State. This policy has been pursued in the interior of the State to some extent, by that instinct of business which indicates to the people in particular instances the surest ground of investment.

I know very well that in the town of Bellefonte, in the county of Centre, when

it was proposed to establish a car factory, the citizens raised a bonus of \$10,000 and the town council passed an ordinance by which they exempted the works of the company from local taxation for ten years; I heartily approve such a policy, for the enhanced value of property and the increase of capital invested will so increase the subjects of taxation that the town will be greatly advantaged by this liberal policy. So I believe it would be in the State, for by a liberal policy pursued towards manufactures we would invite into the State an amount of capital which would ultimately render the State a largely increased revenue beyond that which could be provided by this system of taxation upon manufactures as they exist or would be likely to exist under the policy of excessive taxation which has heretofore prevailed in the State.

As to any apprehension of the future as was suggested by the gentleman from Columbia, I doubt not if any emergency arises in Pennsylvania when it will be necessary to tax the people and manufacturing interests in this State, it will be found entirely sufficient to tax the manufacturing interests and the people in their individual capacities alike. It is a principle of justice; and no calamity can befall the State which will not equally affect its associated and its individual capital alike. Under a liberal policy the amount of manufacturing capital invested in the future would so increase the subjects of taxation that the State would be largely the gainer.

The illiberal policy of taxation upon manufactures in Pennsylvania is known abroad; it has largely deterred the investment of capital within the State, and we ought to put it into the fundamental law that such investments shall not be inordinately taxed, in order that the public confidence may be increased and that capital may be invited into this State. I regard it as a matter of exceeding importance. I trust this section will prevail.

Mr. EWING. Mr. President: I believe this is one of two sections that have been introduced into this body that look towards encouraging and protecting corporations, and for one I am heartily in favor of it. As a member of the Committee on Revenue, Taxation and Finance, I supported it, and I shall vote for it here as amended. The gentleman from Philadelphia who first spoke this morning (Mr. J. Price Wetherill) showed very clearly I think, and my own investigation of the

Auditor General's reports for two or three years preceding satisfies me that he is accurate in his statements, of the very small amount of revenue that would be lost to the Commonwealth by the passage of this section.

I am in favor of this section because I believe it to be necessary to cure an evil of very considerable magnitude and age, and one that is not likely to be cured by legislation. The evil is this: By the laws of Pennsylvania as they have existed for about ten years manufacturing corporations have been practically driven out of existence in this State; they have certainly been greatly discouraged. Our laws are calculated to drive men of moderate capital into being money-shavers rather than to invest in corporations which will develop the industries of the State. If A and B each having one hundred thousand dollars wish to invest in an iron manufacturing concern, they do so as a firm. They can do it. They can manage their own business, there being but few of them, and can keep it in control. They buy their land; they erect their buildings and machinery; they go into business. Perhaps they borrow one hundred thousand dollars more. They do it without let or hindrance from any law of the Commonwealth. They are taxed on the value of their property according to its value. But let twenty men or fifty men of small means who have five or ten thousand dollars apiece that they would be willing to combine in a corporation to invest in a manufacturing enterprise that would develop the interest of the State and build up population and wealth in the Commonwealth, undertake it, and they will have to pay precisely the same taxes on their property that A and B with their two hundred thousand dollars have to pay, all the local taxes on the full value of the property to support the county, the city, the State, schools, roads, everything, and in addition to that they have to pay a tax on their capital stock of two hundred thousand dollars. They have to pay a tax on any loans that they make; they have to pay a tax on their receipts and a tax on their dividends. These taxes in many cases amount to what would be a fair income on the investment.

Gentlemen in the western part of the State have told me that manufacturing corporations that they were in have paid in those additional taxes actually eight per cent. annually on their whole capital. The result of that imposition is that those

men of small means who are willing to invest, and to whom it is necessary to have a corporation to carry on their business, are driven out of manufacturing enterprises. They cannot succeed; and that capital is often invested in other States. I know personally of very large amounts of money that have gone from the western part of the State into Ohio because there a manufacturing establishment is taxed on the value of all its property just as the property of the individual would be. They are not subjected to any of these onerous taxes that are imposed upon them in the State of Pennsylvania. As a matter of fact quite a large number of manufacturing companies that had started in the western part of Pennsylvania have gone out of existence because they could not live; they have wound up their affairs and gone into some other business.

I admit that ordinarily the Legislature ought to be permitted to control all these matters of taxation, but the experience of ten years of attempts on the part of those engaged in manufacturing has shown that the Legislature cannot be safely trusted with this power. I do not know why it is; perhaps because the great corporations of the State that are not engaged in that sort of business wish to join the manufacturing corporations with themselves in the taxation and thus make it odious and secure the repeal of all taxation on their business. That may be one reason. Another reason possibly may be that *legislators* from certain parts of the State, not being so patriotic as we are in this Convention, may deem it popular to declaim in the Legislature for their constituents and say, "if you take the tax off these manufacturing corporations, our farmers will have to pay the tax." That argument may have some effect in the Legislature. Of course it has none here. But from one cause or another the Legislature has failed to remove these taxes; it has imposed these onerous and unjust taxes year after year on the manufacturing corporations of the State until they have been destroyed to a great extent.

But again; the gentleman from Lycoming (Mr. Armstrong) gave another reason why this provision should be placed in the Constitution, and that is this: If these taxes are repealed by the Legislature, say at the next session, the fact that they have been in existence so long and that they may at the very next session be re-imposed, will prevent capitalists from

investing in manufacturing enterprises where they may at any session of the Legislature be taxed out of existence.

Mr. HARRY WHITE. Mr. President: This is too important a matter to pass by without mature consideration—

Mr. COCHRAN. Our rule is that a gentleman shall speak only once on any subject. I do not wish to interfere with the gentleman from Indiana, but I am afraid the gentleman has already spoken on this subject.

Mr. HARRY WHITE. I am very much obliged to my captious friend from York, but I will submit to him that I have spoken but once on the question before the Convention.

Mr. COCHRAN. That is all you are allowed.

Mr. HARRY WHITE. I have not spoken once on the particular question now before the Convention. The delegate will understand that there was an amendment offered by the delegate from Venango, (Mr. Dodd,) adding mining companies, and when I spoke before it was on that question.

The PRESIDENT *pro tem*. The delegate from Indiana will proceed.

Mr. HARRY WHITE. Mr. President: I listened with interest and profit to the very able remarks of the distinguished delegate from Columbia (Mr. Buckalew) on this question, and I wish they could go to the mind and heart of every delegate in considering this matter. He presented to us, in a very able and comprehensive way, the propriety of retaining absolute control in the hands of the Legislature over the taxing power of the Commonwealth. If you pass this section you encroach upon that power which is so dear to the people, and so properly reposed in their immediate representatives, the taxing power.

I have been taken to task by the gentleman from Philadelphia (Mr. J. Price Wetherill) for some mistakes in my utterances as to the amount of revenue which this section will indirectly affect. I am not mistaken in that regard. It is very well known that we receive from corporations over three millions of dollars of revenue. I do not say that all that comes from the manufacturing interests of the Commonwealth. On the contrary, it does not; but I do say that if you pass this section you interfere with the revenue of the Commonwealth from that source to the amount of from half a million to a million of dollars; and how?

It is very well known that under the act of 1864, consolidated by the act of 1868, we imposed a tax upon coal, we imposed a tax upon capital stock, upon dividends, upon net earnings and income. These aggregate over a million dollars. Now, mark you, in the section under consideration it is proposed to change this method of taxation as to mining companies and manufacturing companies. Remember, this is a tax on every coal company in this Commonwealth; it is a tax on every corporation authorized to mine and carry coal in connection with its railroad privileges. The tax on coal alone, according to the Auditor General's report of last year, amounted to \$299,000; the tax upon corporation stocks amounted to \$1,300,000; the tax upon loans amounted to \$492,000; the tax upon net earnings and income amounted to \$348,000.

Now, Mr. President, by this section you affect the entire revenue as derived from coal, which is practically \$303,000. You affect at least one-half of that which arises from loans. That is the tax imposed upon the bonds which are issued by these corporations. That is at least \$200,000. There is at least half a million dollars gone at once. Then of the tax upon dividends, amounting to \$265,000, I submit that \$100,000 is derived from this source. Then of the tax upon net income, which amounted to \$348,000, at least \$100,000 of that is derived from this source.

It will be seen by the figures thus cursorily glanced at, that the adoption of this section will affect the revenues of the Commonwealth to the extent of nearly a million of dollars.

I submit then that we should not do that in this incautious and hasty manner. There is no desire in this Convention, certainly none on my part, to be hostile to the manufacturing interests or corporations of this Commonwealth; but I submit there ought to be some difference in the manner of taxing corporations and taxing individuals. Suppose the delegate from Philadelphia and myself are incorporated by an act of the Legislature; we are clothed with the franchises of the Commonwealth; we throw in our capital; we embark in our business; if we fail in our enterprise, our private fortunes are saved and we are only affected to the amount of the capital thus invested. But if we embark as individuals \$100,000 in the same enterprise and are unsuccessful, our creditors are not satisfied with taking the effects thus invested, but they come to our private es-

tates and sweep our homes and all away, thus making a difference in the manner of our investments. I submit that in view of the fact that a man in a corporate enterprise is protected in his private estate differently from the individual who goes into a mere partnership there should be some difference in the system of taxation, and our Commonwealth has regarded this difference; instead of our manufacturing interests languishing and dying, it is the pride and boast of every citizen of the Commonwealth that Pennsylvania has made strides in the direction of developing her material resources and manufacturing enterprises far beyond and above any one of her sister Commonwealths; and so wise in this respect has our system of taxation been regarded, that the great State of New York has looked with applause and approbation upon our system of taxation. I submit then in view of this *prima facie* case, in behalf of our revenue system, we should refuse in a summary manner to encroach upon it. If it is wrong, as the gentleman from Lycoming says it is; if it is unwise, as the gentleman from Allegheny says, go to the Legislature, go to the representatives of the people, and there by an act of Assembly change our system in this regard. I followed the wise teachings of the Saver from Philadelphia (Mr. Carey) upon all labor and industrial and commercial questions. In his able arguments upon the interest matter, I also followed him. I voted against putting a hard, fixed iron law in the Constitution—a clause fixing inexorably the rate of interest. He said, and I approved him, “go to the Legislature and let them change this when it is necessary.” So on this question of taxation, I say let us refuse to put it in the Constitution, but let us go to the Legislature and let them make the changes required.

There is one word more to be said upon this question. Recollect in corroboration of what the delegate from Columbia said, that when the three million loan was negotiated for the State in 1861, it became necessary in 1864 to raise a revenue to meet it. A tax was imposed upon the gross receipts of corporations, and in the act of Assembly providing for the payment of the three million loan by the collection of a tax on gross receipts it was provided that when the three millions were paid the tax on gross receipts would be removed. The Legislature last year, in obedience to their

promise, fulfilled that pledge. They removed the tax from gross receipts and it no longer exists. Do not remove this power from the Legislature, but let them from time to time have the power by the Constitution to make any alterations of our system of taxation the necessities of our industries and the times require.

MR. BROOMALL. I voted against the introduction of the word "mining" into this section yesterday, because I believe there are reasons why this provision should be extended to manufacturing corporations which do not operate with respect to mining companies. The reason that is stated on this floor as the great argument in favor of protecting manufacturing corporations against the Legislature, is that they can be driven out of the State, and every gentleman living in the border counties knows instances in which this has been done to a very great extent. All that has been explained on this floor. It was that which induced the Committee on Revenue, Taxation and Finance, more than anything else, to report in favor of protecting those corporations against the Legislature, and induced them, at the same time, to refuse to protect the mining corporations, which cannot be driven out of the State by taxation. They thought as far as the latter companies were concerned that they could be safely left to the Legislature. If this section is to be passed, as I hope it will, I trust that the vote by which the word "mining" was introduced will be reconsidered and that word be stricken out. But still I think that section ought to be passed, even with that in it, because these manufacturing companies ought to be protected against the Legislature.

It is not enough that the Legislature can exempt them from taxation except as individuals are taxed. They require more than that. They have no confidence in the Legislature. The power of taxation will prevent capital from coming into this Commonwealth from elsewhere and expending itself in the development of our resources. The gentleman who last took his seat (Mr. Harry White) says, "send these people to the Legislature." Why, that is just what they have been complaining of heretofore. He has alluded to the beneficent manner in which the Legislature last winter repealed the law imposing a tax upon the gross receipts of corporations. I am told by a delegate upon the floor, who is here to correct me if I make a mis-statement, that this benefi-

cent legislation which the gentleman from Indiana has spoken of so highly as being the result of a solemn compact made between the State and these people in 1884 cost these companies last winter \$50,000.

Now, I do not wonder that the Legislature wants to retain that power. It is a very nice thing, a very pretty operation. I do not believe that the Legislature got money, but I believe that the masters of the Legislature, those who control them and hold them and wind them around their fingers—the wire-pullers at Harrisburg—got it. I believe that, and it is not to be expected that they will give up the opportunity of repeating that operation about once in two or three years. "Who knows," these manufacturing companies will say, "but this tax will be re-imposed in the course of a year or two, to be wiped out again at the same expense." The gentleman from Indiana must remember that we are not all members of the Legislature. No body, no association, no community, no organization ever yet voluntarily gave up power, and he would of course object to giving up the power of taxation upon these corporations. But we do not all look upon the matter in the same light. He may be willing to trust his fellow legislators when we are not and these corporations are not, and I trust that this body will protect them against being trampled upon and driven out of the State by taxation.

MR. BARDSLEY. I trust that this section will remain as it is. There is no State, in all the United States, where it is so necessary and so important to foster manufacturing interests as in the State of Pennsylvania. There is no State among all the States of our Union where there are so few manufacturing companies as in the State of Pennsylvania. The members of this Convention know that the Eastern States are full and crowded with manufacturing corporations, and it simply arises from the fact that they are there fostered and protected by the Legislatures of the States in which they do their business. The legislation of the Eastern States all tends to their support, and under the wise legislation that has been passed in those commonwealths, these manufacturing industries have been builded up until they can compete with the world in the ability to manufacture commodities for the use of the people. Pennsylvania, with more wealth than any of the States, has less of these interests than any other; and it is

a very pertinent question, and a very important question, to ascertain why this fact exists. I know, sir, of my own knowledge that there are hundreds of thousands of dollars to-day kept out of this State because the men who have that capital say that we in Pennsylvania do not protect the manufacturing interest. The license given to the Legislature to impose taxes upon corporations has prevented, and is to-day preventing, capital from entering our State. It may not be owing so much to the law as it now exists, as to the fact that capital, sensitive at all times to all restrictions, is aware that the power to tax manufacturing companies exists in Pennsylvania. Manufacturing enterprises and manufacturing capital are of that character that many men who otherwise would gladly embrace the many opportunities of investment afforded in this Commonwealth do not now dare to invest their money with us.

Again, few men like to embark their entire fortunes in manufacturing enterprises, who are willing to invest a part, and those men should be protected to the extent that they invest as well as the man who invests his all; the aim is the same, the object the same, the desire is the same, and this Convention should prevent the legislative power from taxing corporations any more than individuals.

I trust that this interest, which is and ought to be one of our most important interests, will receive more protection and more consideration from this Convention; and in the furtherance of that desire I ask this Convention to adopt the section.

Mr. J. M. WETHERILL. Mr. President: The gentleman from Delaware (Mr. Broomall) proposes to strike out the amendment which was yesterday inserted upon the motion of the gentleman from Venango, (Mr. Dodd,) to apply the benefits of this section to mining as well as manufacturing companies.

Mr. BROOMALL. I did not make a motion to that effect. I could not make a motion, I simply suggested it.

Mr. J. M. WETHERILL. Very well. I did not say the gentleman made a motion. If the language suits him better, he made an argument in favor of striking out the word "mining" from the section, upon the grounds that mining companies, being necessarily confined exclusively to the State, do not require the same protection from the hands of the Legislature as do manufacturing companies, which are

sometimes placed upon the borders of the State and which can easily be transferred to another Commonwealth.

The same argument applies with equal force to mining companies. If the gentleman has studied, even to a limited extent, the geology of this State and its surrounding territory, he will find in our border States of Maryland, West Virginia and Ohio, large deposits of mineral wealth, of coal and of iron. If hostile legislation in the way of the taxation of mining companies is to be permitted by the Legislature, why will not these companies be forced out of the State into the adjoining States of Maryland, West Virginia and Ohio? If the gentleman's argument has force as applied to manufacturing companies, it has equal force in regard to mining companies, because the same restrictions that, if placed upon manufacturing companies, will drive them away from our midst, will cause a similar movement when applied to capital engaged in mining.

The gentleman from Indiana (Mr. Harry White) argues that it is just and proper to place a tax upon coal, stating that the statistics as exhibited by the report of the Auditor General show that the revenue derived from coal has amounted in the last year to nearly \$300,000. Upon what principle is it that a tax should be placed upon coal, which is a prime article of necessity, when the same tax is not placed upon wheat, which is an article of equally prime necessity? The coal is equally necessary in our domestic economy as is wheat, and why should a discrimination be made against coal as compared with other articles no less imperatively necessary? The real truth is that the entire system of taxation which discriminates against mining and manufacturing companies, simply because they are companies and not individuals, is unjust, and should be removed. I hope the word "mining" will be left in the section, and that as it now stands it will be passed.

Mr. H. W. SMITH. Mr. President: I do not desire to occupy the time of the Convention for more than a very few moments.

I regard this section as of great importance. It is an attempt, as I view it, to exempt corporations, or at least two classes of them—manufacturing and mining corporations—from taxation, except as individuals are to be taxed. This section is extremely well drawn. If united

wealth and incorporated power seek exemption from taxation and to be taxed no further than individuals are taxed in the same business and are to be taxed in the same manner, let them engage in such business without incorporated power, and let them do as individuals do, and not seek incorporated power, which is a great advantage in this country and in all others. It is nothing more than a special exemption; and if special legislation is to be done away with, I trust that this Convention will not grant a special exemption, an exemption from taxation, to a few classes of corporations.

Gentlemen have said that individuals of small means unite in corporations. Look at your mining and your manufacturing corporations; it is not men of small capital, it is large and united wealth that seek this incorporated power, and seek it as a great advantage over individuals. Why is it that they should be exempt.

This is the first attempt to place two classes of corporations above others; but the rest will follow. Put such a provision as that in your organic law, and it will only enable other corporations to present it to the Legislature and ask to be put upon the same footing, and thus placed over individuals. We ought to be careful; we ought to guard the rights of the citizens against this "incorporated" power. Look at your pamphlet laws that are passed annually, numbering from one thousand two hundred to one thousand five hundred pages, and it will be found that a large part of those laws are special laws for corporations. Some are general, to be sure, but all giving advantages to corporations. It is high time that some restriction should be placed upon this.

Now, if mining and manufacturing corporations desire that they should be taxed the same as individuals, why do they not unite together and carry on business the same as individuals do, without the advantage of incorporated power? It is folly to deny that corporations have no advantages. Why, sir, they are a serious evil; they are increasing day by day. A very able and upright judge, as much so as any judge who ever graced the judgment seat in this or any other country, foresaw the dangers of corporations, and incorporated power, more than fifty years ago; and then, when corporations compared with their present extent, were but few in number, he saw the danger, he anticipated and he foretold

many of the evils that are now in existence. I allude to the late Chief Justice Tilghman, as early as 1822; and allow me to say that there never was a judge upon the bench who said less out of the point to be considered than that able and upright judge. And yet, upon a mere question whether a legal notice or summons could be served upon an officer of the corporation, not a principal officer, he went into this matter, and he held this language:

"We have a great number of incorporated road and bridge companies, besides charitable and literary societies without end. Indeed corporations are multiplied and are multiplying to a degree which threatens serious evil."

That was the language held as early as the year 1822, by this able and upright judge. Look at things now. You have more legislation for corporations than you have for individuals; and here it is sought to put in the great organic law an exemption of two classes of corporations from taxation, which other corporations are bound to pay; and you are to tell the individual business men of Pennsylvania who engage in the same business with the two classes of corporations named in this section, that if these corporations are taxed—I say, great as their advantages may be, and great as their profits may be, and small as yours are, you must be taxed in the same way. I trust that this Convention never will agree to this section.

MR. CALVIN. Mr. President: I desire to say just a word or two on this subject. This constitutional amendment is intended to affect merely mining and manufacturing companies, and no others. The State has a great interest in the development of our resources. This section only proposes that these corporations shall be taxed in the same manner, and at the same rate as individuals. Now, I can see no injustice in putting these corporations on the same basis as individuals. I would be utterly opposed to giving them any advantages over individuals, but when we take into consideration the great interest that the State has in the development of her resources, and in the diversification of the pursuits of her industry, I think it is but right and proper that we should put them on the same level. I think it is important to place in the Constitution a provision which shall say to capitalists, not only in our own State but in other States, that there shall be no discrimination on the subject of taxation against them if

they invest their capital in manufacturing and in the development of our immense mineral resources.

The first and the highest duty of government, it appears to me, is to protect the labor, to develop the resources of the country, to diversify its industry, and thereby to develop the almost infinitely various faculties and capacities of her people. Our State is full of immense mineral resources. We have manufacturing facilities of the highest character, and it is our duty to develop these resources and to diversify the pursuits of industry, and thereby develop the faculties and capacities of our people, and to furnish at the door of the farmer a market for his various products.

On the score of revenue, in reply to the remarks of the gentleman from Indiana, I would say that you will, by this section, greatly increase the subjects of taxation and the wealth of the State. Heretofore the capital of the State has gone out of it. Instead of attracting capital from adjoining States into this State, capital has gone, as has been stated here correctly, from this State to New Jersey, and elsewhere, just because of the refusal, in the first place, of the Legislature to pass the necessary acts of incorporation, and of the dread of this discriminating taxation against corporations.

It appears to me, therefore, that as a matter of public policy we should inscribe in our Constitution a prohibition against taxing these mining and manufacturing companies any higher than individuals. In that way we should invite capital to be invested in manufacturing and mining, and would immensely, in my judgment, promote the interests of the State.

Mr. AINEY. Mr. President: If I had not the section before me, listening to the argument that has been presented here by those who oppose it, I should infer that its object and purpose was to exempt all corporations from taxation wholly and entirely. If such were the purpose of the section or if such could be made out to be its effect, I should oppose it. Understanding it to be simply to put the men of small means in the same position as the rich men, I support it, and I do not rise to make any extended remarks; but I desire to call the attention of the venerable gentleman from Berks (Mr. H. W. Smith) to a fact that he has mis-stated.

He says that it is not the men of small means who will be benefited by this section, but the rich. I ask the gentleman if

he does not know that in his own county, in the small village of Topton, the men of moderate means, none of whom could start out in an iron enterprise or in a manufacturing enterprise by their own individual means, have combined and united their capital and are now building up important works which will benefit that locality and benefit the whole county? Does he not know that fact?

Mr. H. W. SMITH. The men engaged in that are wealthy.

Mr. AINEY. There are at least twenty-five or thirty men engaged in the village of Topton who have put in from five hundred dollars to one thousand dollars and two thousand dollars in that enterprise, and it was all they could spare to put into it, and it will be of great benefit to that locality.

In another town in the gentleman's county they are moving in the same direction. In the borough of Kutztown, they are endeavoring to start an establishment of that kind. In my own county, in the borough of Millerstown, they have recently organized, and individuals of small means have gone into the enterprise. As the laws now stand, as our statutes have proscribed manufacturing corporations, it has been virtually a prohibition against men of small means going into these enterprises. It has put a monopoly into the hands of rich men. A man of one hundred thousand dollars or two hundred thousand dollars or a half million of means does not ask any incorporated privileges. He starts out for himself individually, and he escapes all these taxes. Now, when a wealthy man starts out alongside of a dozen or two dozen men of moderate means engaged in the same kind of enterprise, the wealthy man escapes taxation and these men of moderate means engaged in the same business are overwhelmed with taxation.

I should like to have some gentleman who opposes this section tell us why this should be. Mr. President, it seems to me that this section does not go far enough. I do not understand that the section as it is now presented to us will exempt the capital of corporations from taxation. The property of corporations has always been taxed the same as that of individuals. Their business has been differently taxed. They have been taxed on their net earnings; they have been taxed on their gross income; they have been taxed on their dividends, and in a multitude of other ways. I believe, however,

that at the last session of the Legislature the gross injustice of this discrimination against men of small means who generally form these corporations was so apparent and so overwhelming to the legislative mind that they removed that disgrace from our statute books, but the capital of these corporations is taxable still, and it will remain so, even if this section is passed.

We have the decision of the United States Supreme Court upon a case which was taken up by the national banks on the question of whether the State could tax the capital of the banks for State purposes on the ground that the bonds which formed the basis of the bank and into which all the capital was invested being exempt from all local and State taxation, therefore the capital of the bank could not be taxed for State purposes. The Court held that while the capital of the bank was invested in bonds which were not taxable for purposes of taxation, the property of the bank, which was its bonds, was different from the capital, and the capital could be taxed notwithstanding, because that belonged to individuals. I apprehend that if this section should pass and become a part of our organic law, as I hope it will, the capital of corporations would still be taxable, and taxable differently from what the capital of individuals is taxed. It ought not to be. There is no justice in it, there is no sound policy in it. But the scope of this section would not prevent it. If this be true, if it be correct that the capital of corporations can still be taxed, ought you not by constitutional provision to prevent any Legislature from "bleeding" these corporations, from doing that very thing to prevent which perhaps more than any other thing this Convention has come together? We are here to take from the Legislature the power or the incentive to do corrupt and bad acts. If for any such purpose as that the Legislature should desire to tax the business of these corporations differently from that of individuals, ought we not to put in our Constitution a principle which will prevent it?

One word more, sir. I desire to see, at no distant day, and I hope we may all see it, the laboring men form a part of these great manufacturing corporations. The section introduced by the distinguished gentleman from Philadelphia (Mr. Carey) the other day, looking to that end, allowing companies to be formed with limited liability, I hope will bring about

that result; and when that day comes, I desire to see these corporations composed of the laboring men, of men of small means throughout this Commonwealth, placed on an equal footing with corporations composed of rich men. I hope, sir, this section will be passed.

Mr. BOWMAN. I do not rise for the purpose of making a speech on the question that we have now under consideration. I simply wish briefly to define my position. While I believe in the measure and would, were I a member of the Legislature, support a proposition of this kind, I cannot see my way clear to incorporate this section in the Constitution of our State, thereby depriving the taxing power, to wit, the Legislature, of the further exercise of the power to impose taxes upon corporations whenever the necessity may arise, when it shall become necessary to do so. Hence, I cannot vote to put this section into the fundamental law of the State, there to remain for long years to come, irrevocable; so when war, famine or other calamities overtake the people of our Commonwealth, the taxing power will be crippled, and when they go out upon the world for the purpose of borrowing money, they cannot borrow it safely and certainly as they did in 1861, and say, here is a source of revenue that we will pledge for the repayment of this loan. I think it would be unwise, impolitic and fraught with dangerous consequences. I would leave this power with the Legislature, where it properly belongs, and where, alone, it can be safely exercised.

Mr. BIGLER. I have but a few remarks to make on this subject, and they shall be mainly in reply to the remarks of the gentleman from Lehigh, (Mr. Ainey,) who makes it a matter of special complaint that the capital in organizations for purposes of mining and manufacturing should be subject to some kind of taxation. Now, sir, let us look at this question for a moment. I suppose that the agriculturists in this country are entitled to as much consideration as any other class of men. I suppose that agriculture is quite as essential to the welfare of the nation as any other pursuit. Let us suppose that the gentleman from Lehigh has \$10,000 and I have \$10,000. He chooses to put his \$10,000 into a manufacturing company. I choose to put mine into a farm. In all probability he will make ten dollars where I will make one; and yet he complains that he may have

taxes to pay. Surely I shall have to pay taxes on the farm, and this is a reason for taxing his capital in an organized company to make money.

Then, Mr. President, on a broader view, it always did seem to me that there was at least a slight difference between the natural man and the artificial creature. This being which we create by legislation we may approach with greater liberty than we approach the natural man. I do not mean to countenance the slightest idea of inequality or injustice; but I do countenance the idea of a larger measure of liberty in dealing with a corporation and its large profits, and especially where we deal with its profits and make exactions from its profits.

I object very decidedly to this section, and especially to the introduction of the word "manner," not only restricting taxation to the rate, which so far as individual property is concerned would be perfectly right, but providing that the manner shall be precisely the same. Suppose you reverse the proposition, and say that the individual citizen shall be taxed only in the same manner that you will tax a corporation, and make exactions from it.

Now, sir, I would not, in a matter of legislation, encourage the discrimination to the extent to which it has gone. I think it has been carried too far. I think it is the duty of the Legislature to discriminate rightly in this particular, to see that while it does ample justice to the coffers of the Commonwealth, it does not adopt a policy calculated to crush out manufacturing companies or manufacturing individuals. But, sir, to my mind it is utterly indefensible that you shall put into the Constitution of this State a provision of this kind. We had better trust it where it has been left heretofore, with the Legislature.

I cannot go over the whole ground without repeating the sound and conclusive views of the gentleman from Columbia, and it will be quite unnecessary for me to do that. I cannot present them with the force which he did, but they covered the whole of the argument and ought to be conclusive.

It is idle to talk about corporations not having advantages. They are subject to only a limited liability, whereas the individual citizen will be required to part with the last dollar to his debts. Exemption from liability is a valuable favor for which corporations should pay liberally.

For my own part I would allow them no such exemption.

Mr. HOWARD. Mr. President: I think this is a very important section. It is peculiarly proper that a section of this description should be incorporated in the Constitution of Pennsylvania; and the reason why it should be inserted in the Constitution is that the Legislature has heretofore discriminated against these special and particular Pennsylvania interests and driven some of them out of this Commonwealth by an unjust system of taxation.

I listened attentively to the argument of the gentleman from Indiana, (Mr. Harry White,) and also to the arguments of the gentleman from Clearfield, (Mr. Bigler,) who has just taken his seat, and a most singular argument it was. He says, "suppose the delegate from Lehigh should have \$10,000 and should put it into manufacturing business, and he, the delegate from Clearfield, should have \$10,000 and put it in a farm; then it is presumable that the delegate from Lehigh would make much more money in the manufacturing business than he would out of his farm, and then he asks why should he not pay more taxes?" Why, sir, he must pay more taxes if he has made more money. So there is nothing in the argument of the delegate from Clearfield. Under this section he must pay a tax upon the *property* and the *business* of the corporation and if he (Mr. Bigler) put his money into a business that did not pay so well, of course he would not pay so much taxes; but if the delegate from Lehigh was fortunate and made more money by putting his money in the manufacturing business, he would pay taxes just in proportion as his business was increased and the profits thereof. So that there is nothing at all in the argument of the gentleman from Clearfield on the agricultural side and the manufacturing side of the question, except that the whole argument is against him, and he did not state it right, but stated it all wrong and begged the whole question.

Mr. President, there is no reason for, but as Pennsylvanians every reason against, this business of discriminating against manufacturing companies. They are peculiarly a business for the Commonwealth of Pennsylvania, and I know from information perfectly reliable that very large companies have been driven from the State into other States because of this unjust discrimination in regard to

taxes. What reason can be assigned for it? I agree perfectly with the argument of the delegate from Lehigh. If a man is engaged in manufacturing any particular article, investing perhaps his three, or four, or five millions, why should he be taxed less than five or six men engaged in the same business under a charter of incorporation?

The delegate from Erie (Mr. Bowman) says that if you adopt this proposition, when trouble comes upon the Commonwealth, the power of the Legislature to tax will in some way be diminished. Not at all, sir. The power of the Legislature is in no way touched if trouble comes upon the Commonwealth. This section only provides for equal and exact justice upon a great Pennsylvania interest; that if the Commonwealth needs money and must resort to extraordinary taxation, she is to tax all alike—not all alike, perhaps—because this embraces but two classes of the corporations of the Commonwealth, the manufacturing and the mining companies.

Sir, as Pennsylvanians, sitting here to legislate for Pennsylvania, our legislation should certainly be in the interest of Pennsylvania. Surrounded as we are by the immense wealth of this Commonwealth that lies buried in our soil, we should encourage capital to go into the business of manufacturing and mining. These resources can be developed; they can be brought into the market, and Pennsylvania can be made one of the richest Commonwealths in the world.

Certainly every reason is in favor of the adoption of this section. Every sentiment of justice is in favor of it. The whole argument of the delegate from Indiana (Mr. Harry White) was merely this: If you do justice in taxing the manufacturing corporations the same as individuals, you will take away from the Commonwealth a certain amount of revenue that she now receives. What kind of an argument is that? That is just exactly what we intend to do. Why did not the delegate give some reason, some argument, for this discrimination against the manufacturing establishments of a great manufacturing State, whose special business is that of manufacturing and mining? To discriminate by our system of taxes against the great staple industries of the Commonwealth is a great mistake. There is no statesmanship or reason in it, in my judgment.

Mr. J. N. PURVIANCE. Mr. President: The revenue which the Commonwealth receives annually from the corporation tax upon manufacturing corporations amounts to a large sum, perhaps not less than \$600,000 to \$700,000. I state this fact to the Convention as important in the consideration of the question.

It is very questionable whether it is the policy of the State to tax this branch of enterprise and industry. But we should consider well whether it would not be a subject more properly for the action of the Legislature than for this Convention. The expenses of the Senate in

1872 were.....	\$171,845 01
The expenses of the House of Representatives in 1872 were	236,689 89

408,534 90

Public printing..... \$101,047 21

Twenty-five years ago the expense of the Senate and House was about \$100,000, and of printing about \$25,000. And it may be said that the expenses of all the departments of government bore about the same proportion. The increase has been so great that the people do and have a right to complain.

The annual income is now about seven millions, a sum far beyond the necessary wants of the government, economically administered.

The sooner taxation is reduced the better; and in no way can you more effectually bring about an honest administration of the government than by bringing the condition of the State Treasury to an amount to meet the proper and legitimate wants of the State. Anything beyond that begets extravagance and corruption. It leads to temptation to those in power, seldom resisted. Taxation should be uniform, and where all bear equally in proportion to their means of the expenses of the government, vigilance on the part of the people as to what is done with their money is the inevitable consequence. They watch and require their Representatives to give an account of the expenditure of their money, because it is raised from them.

I will here remark, Mr. President, that the expenses of this State have grown so enormously that the subject is attracting the general attention of the people throughout the whole State; and the burden would not be borne at all if it were not for the fact that the Legislature have from year to year selected out cer-

tain objects upon which to put the taxes so as to avoid the consequences which would result from their extravagant expenditures if they put them directly in a uniform scale all over the Commonwealth. If the taxes were raised in an ordinary way by some uniform system, you would not find the extravagance which now exists in the administration of our government. We now tax our manufacturing corporations to an extent, as I have stated it, of about \$700,000 a year. It is this selection of the industrial interests of the country and the placing of a specific tax upon them that brings into the treasury some \$700,000 every year.

In addition to that these manufacturing establishments also pay taxes upon their property as all other property is taxed. So long as you have class legislation of that character, by means of which you raise the revenue and by means of which you collect and bring into your treasury some seven millions of dollars every year, you may expect this corruption and extravagance to go on at Harrisburg. The single item of legislation costs \$480,000 a year now against only about \$75,000 to \$100,000 a few years ago.

These are enormous differences. The representatives of the people could not go to their constituents and justify any such expenditures if the taxes to meet them were raised in a uniform way throughout the Commonwealth. If our taxes were raised by means of each man having to contribute his share, the representative would in that case be called to account and he would have to answer to the people for his extravagance, which would incite the people to more vigilance. The whole revenue derived from all sources some years ago was only \$3,000,000. Now, as I have remarked, it is \$7,000,000. What becomes of this immense surplus? It is locked up in the treasury, and then those who have the means, who have the key, as it were, of that treasury in their pockets, unlock it and take out the money in some way or other.

We have Senators and Representatives in this body who for ten or twelve years have occupied seats in the Legislature. I ask them if any one of them all has ever been called to account when he has gone home from a legislative session, whether he has been asked at a public meeting of his constituents how all this great amount of money has been raised. The money is raised from corporations, from banks,

from manufacturing establishments, and from other sources, and the people do not feel that which is not assessed upon them by direct taxation, but which is paid indirectly by them. The Representative is never asked that question because no man of his constituents feels that he is directly paying a dollar of that tax. It is raised in an indirect manner, and the people do not feel it, and you will never have an honest government honestly administered, until the burdens of that government are brought directly home to the people and they feel them. Then whenever these burdens press upon them they will call their Representatives to account. In olden times the practice was that when a member of the Legislature returned home to his constituents, a county meeting was held and the member appeared at the meeting, where usually he was called on to give an account of his stewardship and to state what had been done at Harrisburg. Frequently he was asked how he had voted on every question and was held to strict accountability for his votes. Latterly, however, all this has gone by. The member returns to his constituents and is silent as to his whole course and has not a word of explanation to make concerning his action. The expenses of the government have been so arranged that the taxes are removed from the people. The people do not feel the taxes which are paid by the corporations, and because they do not directly feel the burdens of the government resting upon them, they ask no explanation of their representatives' conduct.

All this revenue of \$700,000 that is raised from the industrial enterprises of the people of this Commonwealth, under the name of tax upon manufacturing corporations, should not exist, and if I were a member of the Legislature I would urge and vote for its repeal because it is an unjust tax upon the enterprise, and industry, and the prosperity of the laboring men of this country. If you repeal it, what will be the effect? You will just take from those who have the power of appropriating and loaning moneys, from time to time, out of the Treasury of the Commonwealth, the temptation to do so, because the money is there.

I hope, therefore, that something will be done by this Convention by which unjust discriminations in taxation will no longer exist, and that just uniformity in taxation will be the rule.

Mr. MACCONNELL. Mr. President: An old adage says that "equality is equity," and the proposition commends itself to the instincts of every person. We have had some eloquent expressions upon this subject here this morning, which have had a convincing effect upon my own mind, and I have no doubt have had the same effect upon the minds of all the other members. Equality is equity, and we ought to shape our course here, so far as we are able to do it, so as to produce equality amongst all the people of this broad Commonwealth. There are different ways, however, of carrying this thing into practice. An anecdote with which I have no doubt you are all familiar sets forth one way of carrying it out. An Indian and a white man had gone out to hunt, and they had killed a turkey and a turkey-buzzard. When they came to divide them the white man said to the Indian: "Now, you take the turkey-buzzard and I will take the turkey; or, if you do not like that, I will take the turkey and you take the buzzard." The Indian said: "It seems very fair, but you never say turkey to me once." [Laughter.]

That is one mode of carrying out equality in practice. It does not approve itself to my mind, but it does seem to approve itself to the minds of those gentlemen who urge equality in regard to the taxation of corporations. "Put them on an equality with individuals," say they. I say so too. I say amen to that proposition. Let us put them on an equality with individuals; but let it be an actual equality, not a mere nominal one. We have, by a proposition which we have sanctioned and put into the Constitution, relieved the individual property of the stockholders of these corporations from liability for the debts of the corporations, whilst we have left common partners and individuals exposed to have their whole property swept away for the debts which they incur in business. Is not that a great advantage to the corporations? Is that putting them on an equality with individuals? Is it not raising them entirely above the individuals? Is it not giving them an advantage which will enable them to put their heels on the necks of individuals, when individuals come in competition with them? Who can say that it is not? The thing is too plain.

Now, to test the sincerity of this Convention, and to see how earnest the gentle-

men who are in favor of this section, and who talk so fluently about equality are in behalf of actual equality I propose to offer an amendment to be added to the section as it stands, in these words:

"And all the property of the stockholders of such corporations shall be liable for the debts of such corporations in the same manner as all the property of the members of any partnership is liable for the debts of such partnership."

Mr. HARRY WHITE. That is right.

Mr. MACCONNELL. That will put them on an equality. It will not be imposing any restriction upon corporations, and it will give individuals the same rights as corporations. I offer that to test the sincerity of the gentlemen favoring this section; and I will call the yeas and nays upon the amendment.

Mr. J. M. WETHERILL. I rise to a question of order. The amendment is not germane to the section. The section is upon the subject of taxation, and not liability.

The PRESIDENT *pro tem*. The Chair cannot sustain the point of order.

Mr. BROOMALL. I only have to say that if that provision is to be put into the section, we should also put in "franchises and capital." If we are going to make these corporations liable to the same extent as private firms, we should not tax their franchises and capital as the property of individuals is taxed.

Mr. ARMSTRONG. The gentleman from Allegheny presents this proposition not in good faith, to invite the confidence and action of this Convention to a proposition he deems to be wise, but he suggests it as one which he hopes will place this Convention in a false position.

Mr. MACCONNELL. No, sir; I deny the assertion!

Mr. ARMSTRONG. The gentleman may deny it, but he openly avows that the suggestion which he introduced here was simply for the purpose of testing the good faith of gentlemen upon this question. And he has not presumed to state to the Convention that he approves it himself, or that he would even vote for it, I would ask the gentleman if he does approve it.

Mr. MACCONNELL. I do approve of it, if this section is to pass.

Mr. ARMSTRONG. Yes, the gentleman approves of it with an "if," which means nothing. It is an amendment which he does not offer from conviction. It is a means by which he undertakes to defeat

a section of which he does not approve, without meeting the question fairly by argument based upon its merits. Why does not the gentleman say that these corporations shall be liable as partners under limited partnerships are liable? What is a corporation except a means by which individuals shall aggregate their capital for the purpose of accomplishing some public purposes? Whether they be great or small corporations, the aggregate effect on the community is to produce a large advance in the manufacturing and material interests of the country.

The amendment of the gentleman is an attack upon the fundamental principles upon which all corporate power rests. He forgets that we have authorized persons to organize themselves as corporations, with or without personal liability, and persons may thus incorporate themselves under that section with or without any general liability, and the credit of the company will largely depend upon the mode in which they are organized and the faith and credit which the people who deal with them place in the capability of the corporation to pay its indebtedness.

This proposition is simply a mode of striking down a section which the gentleman ingeniously attempts to oppose. It is not meeting the question fairly on its merits. He does not attempt to answer the suggestions that have been made on this floor that corporations in Pennsylvania require protection against taxation which is driving capital out of this State.

Let us come back to the merits of the question. Let us remember that the purpose in view is to invite capital into the State, to prevent millions of dollars going into Ohio and into New Jersey that ought to be retained or invested here, and to prevent the material resources of Pennsylvania from being taken across the border for the purpose of being there manufactured, in order to avoid the system of taxation in Pennsylvania which deprives us of our needed support and depresses enterprises that we ought to encourage.

This is not a fair way to argue this question. It is an attempt to put this Convention into a false position, and I trust the amendment will be voted down. Then let us come to the consideration of this question on its merits, and not upon the side issues of the gentleman from Allegheny.

Mr. MANN. It seems to me that the amendment offered by the gentleman from Allegheny is pertinent. It shows the absurdity and injustice of the section now under consideration more clearly than any argument that could be made. The very fact that the gentleman from Lycoming (Mr. Armstrong,) resists it so earnestly shows that there is point in the proposition offered by the gentleman from Allegheny. It shows that these corporations do derive very valuable privileges from the Commonwealth, over and above the advantages enjoyed by private individuals, and that therefore they ought to be taxed in a different way from individuals, otherwise there would be nothing in the amendment of the gentleman from Allegheny that would create all this anxiety upon the part of the advocates of the section. It does show most conclusively and emphatically the value of those privileges which those corporations receive from the Commonwealth. They are exempt from the liabilities of individuals and of partnerships and they have all these other privileges. Therefore it is but fair that the taxing power of the State should be able to reach them and require them to pay something for their privilege.

I submit that the amendment of the gentleman from Allegheny is the better and proper way of destroying the section under consideration. It is always resorted to by men of intelligence and of thought who see the injustice of any proposition the defeat of which is desired.

There is another feature not touched by the amendment, to which I ask the attention of delegates. They have been told once or twice, but I ask them again to consider if every argument made in favor of exempting manufacturing and mining corporations does not apply to every other corporation. If we are to have entire and exact equality and uniformity, why not say that all corporations instead of selecting two classes? We have charged the Legislature with being special in their privileges, and yet we are to incorporate into the Constitution of this State two of the most effective special privileges that can be adopted or thought of. This section, if adopted as it now stands, will say, "you shall not tax manufacturing and mining corporations differently from individuals," and thereby will say, "you may tax every other corporation in the State differently, thereby endorsing all the special privileges which the Legisla-

ture of Pennsylvania have ever granted, for that is what it means.

There is no lawyer here who will dare say that that is not the legal meaning of this section as it stands, that the prohibition to tax manufacturing and mining corporations differently from individuals is authority to tax all other corporations differently, and every argument made in favor of inserting these two is in favor of inserting all others.

If the section is amended in that way, if the Convention think that ought to be the policy of Pennsylvania, I will cheerfully yield to the judgment of the Convention, but to engraft on the Constitution of the State so unjust a discrimination as this, I believe, will array against it the thoughtful farming interest, and it ought to do it, for it is a discrimination against the farming interest.

There seems to be scarcely any voice raised here in favor of that interest. The gentleman from Philadelphia sneers at it even, and he brings up the free trade argument in answer to what I said, that if you put this tax on corporations it is but an indirect way of putting it on farmers. I have heard that kind of talk all my life from free traders, but I never heard such an argument before from a gentleman whom I suppose to be in favor of tariffs for raising revenue. I do not believe that argument myself, and I do not believe the gentleman would accept it if you applied it to a tariff. Why then should you apply it to raising revenue from corporations? The principle is the same in either case.

Now, sir, you talk about the hardships of imposing taxes on corporations. A tax is always a hardship, I suppose; but taxes must be collected. In Pennsylvania to-day if a farmer has but a thousand dollars and he purchases a farm for \$10,000 you require him to pay taxes on the whole value of the farm, \$10,000, and you authorize the vendee to insert in his mortgage that he shall also pay the tax upon the \$9,000 of debt. You do not propose to relieve the farmer from any of this injustice or hardship; but this morning there is an unusual degree of anxiety for corporations. One would think this Convention was turned into a body for the protection of corporations, listening to the arguments this morning. I do not comprehend it myself; and if I read the history of Pennsylvania a right, there is no excuse for it.

The manufacturing interest of Pennsylvania is increasing faster to-day than the manufacturing interest of any other State in the Union, and this city in which we now have our Hall has already become the greatest manufacturing city on the continent, and it is increasing with rapid strides under our present laws. There is in the district represented by the gentleman from Delaware, a little town upon the Delaware that is already the greatest ship manufacturing city of any in the Union, and it is increasing with great rapidity. The manufacturers are making more money to-day by five-fold than the farming interest of the State. Why, then, this sympathy for the manufacturing interest, especially over the farming? I cannot comprehend it.

In addition this section is liable to the objection that has been made to a great many others, that it is legislation, peculiarly, emphatically legislation, and legislation of the most dangerous kind. You cannot afford to put this section into the Constitution of Pennsylvania.

Mr. AINEY. I desire to ask the gentleman a question.

Mr. MANN. In half a minute.

I take it there is no gentleman here who will undertake to say that this section is not legislation. You have said in the first section all that need be said, all that ought to be said in this article, in relation to taxation.

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

"All taxes shall be uniform." What more shall you say? Then you want to say in the fourth section that they shall not be uniform! The fourth section contradicts positively the first section; and whereas you said at the commencement of the article taxes shall be uniform, you say in the fourth section that they need not be! I repeat you cannot afford to put such a contradiction into the organic law.

Mr. MacConnell and Mr. Porter called for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call.

Mr. PURMAN. Mr. President—

THE PRESIDENT *pro tem*. The yeas and nays have been called for.

Mr. PURMAN. I was only going to say that I shall vote against the section and for the amendment. I am for voting down the whole thing.

The question was taken by yeas and nays, with the following result :

YEAS.

Messrs. Andrews, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Boyd, Church, Corson, Cronmiller, De France, Dodd, Finney, Gibson, Gilpin, Harvey, Hazzard, Hemphill, Horton, Lawrence, MacConnell, M'Camant, M'Clean, M'Murray, Mann, Mantor, Mitchell, Patterson, T. H. B., Porter, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Turrell, White, Harry, White, J. W. F., Worrell and Wright—46.

NAYS.

Messrs. Achenbach, Addicks, Alricks, Armstrong, Baer, Bardsley, Broomall, Brown, Buckalew, Calvin, Campbell, Carey, Carter, Clark, Cochran, Corbett, Curry, Curtin, Dallas, Darlington, Davis, Dunning, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Funck, Guthrie, Hall, Hanna, Hay, Heverin, Howard, Hunsicker, Kaine, Knight, Lear, Lilly, Long, M'Culloch, Minor, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Read, John R., Reed, Andrew, Runk, Stanton, Struthers, Walker, Wetherill, Jno. Price, Wetherill, J. M., Wherry and Woodward—59.

So the amendment was rejected.

ABSENT.—Messrs. Ainey, Baker, Barclay, Bartholomew, Beebe, Brodhead, Bullitt, Cassidy, Collins, Craig, Cuyler, Green, Lamberton, Landis, Littleton, MacVeagh, Metzger, Mott, Newlin, Parsons, Sharpe, Simpson, Smith, Wm. H., Stewart, Temple, Van Reed, White, David N. and Meredith, *President*—28.

The *PRESIDENT pro tem.* The question recurs on the section.

MR. STRUTHERS. I wish to say but a few words on this subject. I hope this section as it stands now may be passed, and I think the reasons are very strong and decided why it should pass. We have provided in the article on corporations for the creation and organization of corporations. The disposition of the Convention seems to have been to carry that out, to give liberal privileges to corporations, or rather to give liberal privileges to all the people to assume and enjoy corporate privileges for manufacturing and other purposes.

Now, why should we cut all that down immediately by loading it with a system of taxation which will destroy and drive out capital, which has driven out of the State already large amounts of capital and is constantly doing it, and which is driving many of those corporations that have heretofore engaged in business to the necessity of winding up their business. They find themselves, under the force and power of an undue and unequal taxation, put upon them under this system, driven out of business, and some of them by reason of it are driven into bankruptcy.

Now, sir, it appears to me that in this matter of taxation, equality is the great matter to be looked at, and that is what we are providing for by this section, and not as to the terms and conditions upon which corporations shall be erected or created. Gentlemen contend here that it is necessary to retain power in the hands of the Legislature, that they may regulate this matter as they deem proper from time to time. Let us consider for a moment how the Legislature have exercised that power. How have they exercised the power in years past? There was a time within my memory and within yours when the whole property of the State was made equally liable for taxation for the support of the government, when the real estate of the country, the personal property of the country, all its property was made equally liable in proportion to its value for the support of the government.

Under this system of legislation which these gentlemen who have been *habitues* of the Legislature and who have been there manipulating for years have secured, they have on the idea of securing to themselves popularity and re-election, managed to release two-thirds of the whole property of the State from many of its responsibilities. The great value of the State consists in the real estate of the Commonwealth which is entirely relieved now under this system of one-sided legislation from the burdens of the State. They have to pay their county, their school, and their borough taxes, and all that, it is true; but the corporations have paid the same thing and in addition to that, corporations have to assume and bear the whole burdens of the Commonwealth. Where is the injustice, where is the equality of that? Why is it proper and necessary to encourage on the one hand the erection and formation of

corporations for the purposes of developing the State, and on the other hand to turn right around and cutting them down in this way? You induce men in the first place to put their capital in and undertake these manufacturing and other enterprises, and at the same time follow it up by a measure which will cut down and destroy them, which will either deprive them from going in altogether and thereby render your enactment on that subject nugatory, or after they have gone in and gone in under a delusion, to be cut down and destroyed by this one-sided taxation piling, placing upon them the whole burdens of the State to the relief of two-thirds or more of the whole value of the property of the State.

Now, sir, gentlemen contend that the farmers, the agricultural population desire this. That I contend is not true. The farmers are able to bear their share of the burdens. They are willing and desirous of doing it honestly and fairly. As was said by the gentleman from Butler, (Mr. J. N. Purviance,) this will induce them to call to account their representatives when they return home from their labor at Harrisburg, and until then we shall never have a fair, honest and pure discharge of the duties of those you send to Harrisburg, and when you come to that, it will be all right.

I remember very well when the tax on real estate was three mills. It was reduced from time to time. I remember very well when the first reduction of that was made. I remember very well when it was reduced to two mills, and still lower from time to time, and finally taken off altogether. Not a farmer in the whole State sent in a petition asking the Legislature for the purpose of court-ing popularity, as they supposed they for it. It was done merely by members of would do by it and secure their return; and in order to enable them to carry on affairs of the State, whilst they in that way catered to public sentiment with a view to secure popularity to themselves and votes, they piled up the burdens upon the corporations and other interest in the State.

I not wish to occupy more time on this subject, but I think it a very important one, one that we ought not to pass over lightly, one that has been well discussed; and I hope the section as it now stands will pass.

Mr. PURMAN. Mr. President: I desire to correct a misapprehension as to

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what I said when I was on the floor before the last vote was taken on the amendment, or rather as to what I intended to say. I suppose I stated that we ought to vote the amendment down, and then vote down the whole section. I intended to say we ought to vote the amendment in, and then vote down the whole section as amended. I desire to see the section voted down, and I voted for the amendment with that view.

The PRESIDENT *pro tem*. The question is on the section.

Mr. EDWARDS. I ask for the yeas and nays.

Mr. HEMPHILL. I second the call.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Addicks, Ainey, Armstrong, Baer, Bardsley, Boyd, Broomall, Calvin, Carey, Carter, Cochran, Corson, Curry, Curtin, Cuyler, Darlington, Davis, Dodd, Edwards, Elliott, Ellis, Ewing, Fell, Finney, Greene, Guthrie, Hanna, Hazzard, Howard, Knight, Niles, Purviance, John N., Stanton, Struthers, Walker, Wetherill, J. M., Wetherill, Jno. Price and Wright—33.

N A Y S .

Messrs. Achenbach, Alricks, Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Chas. A., Black, J. S., Bowman, Brown, Buckalew, Campbell, Church, Clark, Corbett, Cronmiller, Dallas, De France, Dunning, Fulton, Funck, Gibson, Gilpin, Harvey, Hay, Hemphill, Heverin, Horton, Hunsicker, Kaine, Lawrence, Lilly, Littleton, Long, MacConnell, M'Camant, M'CLean, M'Culloch, M'Murray, Mann, Mantor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Pugh, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Stewart, Temple, Turrell, Wherry, White, Harry, White, J. W. F., Woodward and Worrell—71.

So the section was not agreed to.

ABSENT.—Messrs. Baker, Barclay, Bartholomew, Beebe, Brodhead, Bullitt, Cassidy, Collins, Craig, Hall, Lamberton, Landis, Lear, MacVeagh, Metzger, Minor, Newlin, Parsons, Sharpe, Simpson, Smith, Wm. H., Van Read, White, David N. and Meredith, *President*—24.

The PRESIDENT *pro tem*. The next section will be read.

The CLERK read as follows:

SECTION 5. No debt shall be created by or on behalf of the State except to supply casual deficiencies of revenue, or to repel invasion, suppress insurrection, or defend the State in war, or to pay existing debt; and the debt created to supply deficiencies in revenue shall never exceed in the aggregate at any one time \$1,000,000.

Mr. BROOMALL. I can only say that this is in the present Constitution, except that \$750,000 in the present Constitution is raised to \$1,000,000.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 6. All laws authorizing the borrowing of money by and on behalf of the State shall specify the purpose for which the money is intended; and the money so borrowed shall be used for the purpose specified, and no other.

Mr. BROOMALL. That is also in the present Constitution.

The section was agreed to.

Mr. KNIGHT. I offer the following amendment as a new section:

"In the absence of special contracts, the legal rates of interest and discount shall be seven per centum per annum; but special contracts for higher rates, not exceeding ten per centum per annum, shall be lawful."

Mr. President, this section 'somewhat differs from that previously offered to the Convention in committee of the whole. It is a modification so far as relates to the usury laws, limiting their application to cases where the interest is more than ten per centum per annum.

Some say this section should not be in the Constitution. We have already passed an article which says that the Legislature shall not pass any special law fixing the rate of interest. Now, if we pass this section, then the Legislature may enact a law, fixing the penalty for a violation of it. I contend that we want a fixed, positive rate of interest in this State, and I doubt whether it can be obtained except through constitutional amendment.

Governor Hartranft recommended a change in the laws in regard to the rate of interest in his last message, but no action was taken upon it by the Legislature.

Thirty-two States in this Union have now a rate of interest different from that of Pennsylvania, all of them higher,

either by a repeal of the usury laws or else by an advance of the legal rate of interest. We see them drifting in that direction every day. I picked up a paper this morning, and I find that in 1872 Connecticut limited interest to six per centum, and taxes, insurance, and discount might be lawfully reserved. I find by the "*Ledger*" of this morning that the House also passed the usury law previously passed by the Senate, making the legal rate of interest in the State of Connecticut seven per cent. There were thirty-one before; here is another.

Now, I contend that we cannot afford to have our rate of interest restricted as at present in the State of Pennsylvania, for various reasons. Capital is leaving us and finding a better investment elsewhere. Only recently I had a conversation with a distinguished gentleman of New Jersey, the Speaker of the Senate, Mr. Bettle, on this subject. Formerly in that State the legal rate of interest was six per cent., and a violation of the usury laws caused a forfeiture not only of the interest above six per cent., but the principal also. I inquired from him, "Why did you make the change?" He replied, "We were forced to do it by the changes in other States, which were more liberal." I then asked him why they made the change increasing the rate of interest to seven per cent. He said that money was leaving the State and finding a better market, that it was going to New York and other places, and they were becoming bankrupt in their State. I then further inquired, "What has been the effect of raising your rate of interest to seven per cent.?" His reply was, "We are now draining Pennsylvania; money is coming into our State, and you see prosperity all around from that very cause."

Some may argue that this will be an unpopular section to be placed in the fundamental law. If a majority of the members of the Convention or even forty-five of them believe that to be the case, they have a remedy by requiring it to be submitted to a separate vote, as they can do with any article proposed by the Convention.

I know that the Legislature may pass a law fixing the rate of interest in accordance with this section; but the people want stability; they want a fixed rate of interest that they can depend upon, so that they may make their calculations with certainty and not have them ruined or upset at the next meeting of the Leg-

islature. That is one of the reasons why I am contending to have it fixed by this body in the Constitution.

Why, sir, merchants in foreign countries, and particularly in the island of Cuba, doing business with Philadelphia merchants, the very instant their balances become due order them away from the city of Philadelphia to New York, where they can get a better rate of interest. Hundreds of thousands of dollars are so ordered away every year. I state this because I know it to be so.

The government rate of interest to-day, so far as they are able to fix it, is seven per cent. The law declares that any banking institution shall charge the rate of interest that is legal in the State or territory in which it is located, and where there is no fixed legal rate of interest in the State or territory, then the rate to be charged is seven per cent.

Why should Pennsylvania hold out against the proposed change when it is acknowledged by thirty-two out of the thirty-nine States, and by the government of the United States itself, and ask that we should remain as we did in the olden times. Sir, theory may have been very well in the past, but theory will not do in the present. Forty years ago we had not our railroads, telegraphs and steamship lines, and the great financial enterprises of the State which we have at present. We are dealing freely in all other articles, but we are restricted so far as to degrade the great motive power of business, which is capital.

Sir, we know that bread is the staff of life and that money is the life of trade. Both are essential to the happiness and prosperity of the community. Let me ask gentlemen of this Convention, in case we have a law in force to-day that the legal price of a loaf of bread in this city north of Market street should be seven cents and the legal price of a loaf of bread south of Market street should be six cents, where would the bakers take their loaves of bread? Would they not all go north of Market street, where they can get seven cents a loaf? Certainly they would. What would the people do south of Market street for bread? Would they starve? No, sir; but they would do just exactly as we are doing to-day; they would pay for ten loaves and receive eight. That is what we are doing to-day in regard to money, and that is what I am contending against. I say the people are not educated up to understand the cost of this sac-

rifice of principle. They are making these heavy discounts all the time rather than pay the price that money is worth in other places. We are paying a higher rate of interest in the city of Philadelphia and State of Pennsylvania to-day, in my judgment, than they are paying in any other city or State in the United States. I believe really that to be the case. We are paying it indirectly; they do not see it; they do not know it; but it is so.

It reminds me very much of a story that I once heard of a sea captain who every time he came home put on a new suit of clothes. He met another captain who was going out at the same wages and who said he could not afford to do so. The latter said to the former: "How do you manage to put on a new suit of clothes for every voyage?" "Oh," said he, "my owners allow it to me every time." He was asked: "Do they make no objection to it?" and he replied, "Oh, no, not in the least." When the captain to whom this was told came home from his voyage, he rendered his bill and put in "for a new suit of clothes, forty dollars." The merchant inspected the account and said to the captain, "This bill is all right, except that I did not bargain to give you a new suit of clothes." "Well," said he, "other captains get it." The merchant replied, "No captains that I employ get it; you will have to strike it out." Soon after he met the captain who got a new suit of clothes every trip, and told him about the circumstances. "Oh," said he, "I do not fix it in that way; I put it in the bill as pork, beef, cabbage, &c." [Laughter.] The next time the other captain came home he had a new suit of clothes in the bill, but the merchant did not see it. The merchant looked at the bill and said: "Captain, this is all right; no suit of clothes here;" and turning to his clerk, ordered him to settle the bill. "Oh, yes," said the captain, "there is a suit of clothes there, but you don't see it."

That is our case to-day precisely. We are selling our money at ninety and eighty-five and eighty cents on the hundred, and do not get value for it. If we should raise our rate of interest and when we borrow a dollar get a dollar, then we should know exactly what we had to pay; and unless we do that we must remain in the crippled condition that we are in to-day.

My time being limited, Mr. President, I feel that it is not proper that I should

continue my remarks further on this subject.

Mr. WOODWARD. I wish to ask the gentleman a question. I understand that on Third street almost any day in the year, good paper is sold at a discount at the rate of ten, twelve, fifteen, or eighteen per cent. per annum. Now, I want the gentleman to explain to me how that is a consequence of our present legal rate of interest and how that state of things is going to be avoided by increasing the rate of interest.

Mr. KNIGHT. My explanation would be this: That if we should increase our legal rate of interest, capital would flow into the city; but now having our rate of interest lower than in other places where equal security is offered capital goes away from us, and when we want to borrow money we have to pay more for it in consequence of its not being abundant to loan.

Mr. WOODWARD. The fact is that capital is here now to lend at exorbitant rates. How are you going to rectify that state of things by raising the rate of interest?

Mr. KNIGHT. My impression is that if we had this law we should scarcely ever reach seven per cent., because it does not require a man to get seven per cent.; he can loan his money at two, three, four five or six per cent., and that would be legal. I think there would be so much money to loan that the rate would very seldom go above seven per cent., and perhaps not once in five years go above the limit fixed, of ten per cent. Now the very instant that you go above six per cent. you are violating the law. Many men in order to indemnify themselves for the risks of this violation of law, seek to get all they can for their money, while others who are not willing to take any risks whatever, who are conscientious and desire to obey the law, send their money to other places where they can get a higher legal rate.

Mr. President, since the previous action on this subject, the publisher of Jeremy Bentham's works, has sent me a copy of them, and I will read from them a short extract. Mr. Bentham says:

"In a word, the proposition I have been accustomed to lay down to myself on this subject is the following one, viz: That no man of ripe years and sound mind, acting freely and with his eyes open, ought to be hindered with a view to his advantage from making such bargain in the way of obtaining money as he thinks

fit; nor, what is a necessary consequence, anybody hindered from supplying him upon any terms he thinks proper to accede to."

These are my views.

Mr. DUNNING. Mr. President: This question has been before the Convention hitherto, and it has been before the people of the State. It has been in the Legislature. It has been before every State in this Union, and it is a question that addresses itself to every business mind in the land throughout this country; and it comes to us to-day in a shape for us to settle, and it is, in my judgment, a question of moral honesty.

It is a question whether we will continue or perpetuate what has been a fraud upon the statute book of this Commonwealth for a number of years, or whether we will place ourselves fairly in a position to act honestly with ourselves and with business interests.

Now, sir, there is not an individual, I take it, in this Convention to-day who has ever felt the need of money and been compelled to go into the market and procure it, but what would violate the law as it exists in this Commonwealth to-day. That is a pretty commentary upon the statute law. I do not believe there is a man in this Convention, not a delegate, however honorable he may be, who, it need be that he must raise money to protect himself and his interests, would not violate the statutes that exist!

Now, sir, are we to perpetuate this state of things, or will we do as other States do, avail ourselves of the best business interests within our reach? It was well said by my friend from Philadelphia (Mr. Knight) when this proposition was under discussion before, that the only reason we sustained ourselves as a State was because of the great and varied interests that we possessed over and above other Commonwealths.

Now, sir, is there any good reason, when compelled to procure money, why we should not have the advantages that citizens of other States have? Is there any good reason why the money of this State should not be kept within its own borders? Shall we persist in driving it out? Mr. President, we are dealing with the present, and not with the past. We are dealing with facts that present themselves to us to-day. We know what legislative action has been heretofore on this question. Gentlemen here do not forget the effort that was made last winter

to do away with the usury laws, nor do they forget the manner in which it was voted down, as it forever will be in the Legislature. Let us place it in our fundamental law, so that we shall at least be on an equal footing with our neighbors.

Mr. BIDDLE. Mr. President: I am opposed to the introduction of this section into the present article, or anywhere in the Constitution. I do not propose to go over the whole ground, because if any subject before this Convention has been fully discussed, it has been this very subject; and, in addition, we have had the debates published in a separate pamphlet for the use of members. I am one of those who believe that the traffic in money should be like the traffic in anything else, untrammelled; and it is just for that very reason that I think it unwise in the last degree to place in the fundamental written law of the State a limitation of the rate at which money may be lent and borrowed. With what propriety can my very excellent friend from Philadelphia who spoke last but one (Mr. Knight) talk of the necessity of educating the people upon this point of primary importance, when he is willing to take from the Legislature the right to change and fix this subject and place it in a shape in which, no matter what the exigencies of the community may be in the future, it must perforce remain unchanged.

How do gentlemen know here to-day that seven per cent. is to be the proper rate of interest for all time to come, or for the twenty or thirty years which you may suppose this Constitution may last? What is the use of talking of bringing ourselves in accord with the legislation of other States in this respect when you know that in regard to some of those very States touching on our borders the rate varies. I have learned that in Ohio the rate of interest is eight per cent. What it is in West Virginia I do not know. What it is in Maryland I do not know. In New York and New Jersey it is seven per cent. Why choose seven? My objection is that you are perpetuating an error by fixing it in the Constitution. There are some subjects which of necessity you must leave to the action of the people through their representatives, and this is one. Feeling as I do a deep conviction that it is unwise to legislate at all upon the subject, yet I would not force my individual convictions down the throats of the people against their wishes and feelings. That, in my humble judgment, is not the way to

educate them. That is the way to fix and perpetuate error, because people will not receive what is forced down their throats at the point of the bayonet.

Gentlemen forget that there has been an advance, and a very great advance, on this important subject by legislative enactment. Until some fifteen years ago there was a penalty affixed as to him who lent at a greater rate than six per cent.—the legal rate. An informer might recover double the amount of the loan, one-half to go to the State, and the other to be pocketed by himself. But some ten or fifteen years ago we modified this by legislation, and we now say (and it is a very considerable advance in the right direction) that no penalty at all shall be recovered for the taking of usurious interest, the only forfeiture being the excess above six per cent., which, if I recollect aright, must be sued for within one year. [A delegate remarked, "six months."] Six months, somebody says. That is still better. This is a very great gain, and my word for it, if the arguments are, as I believe they are, in favor of unfettered traffic in this article, the representatives of the people will ultimately place themselves in harmony with the laws of trade. But do not, in the name of all that is reasonable, in the name of all the arguments that have been put forward on the side which my friend from Philadelphia (Mr. Knight) advocates, tell us in advance in the very perpetuation of what is wrong in principle that the rate of interest must be seven per cent. or shall not be below that, except in regard to contracts where no rate is fixed, and thus instruct the people from the very source to which they have a right to look for soundness of view in this respect, that it is right to lay down an iron rule on this subject. For my part, I cannot imagine anything more utterly indefensible; and while I do not adopt the reasoning of my friend from Philadelphia, (Mr. Carey,) who addressed me some six or eight weeks ago on this subject, I heartily concur with him in the result which he has reached, and I hope this section will be voted down.

Mr. MOTT. Mr. President: I have listened with a great deal of attention to all the arguments that have been made on this section, and I desire to say a few words in reference to my own section of the State. I know the practical workings of the present law in relation to interest and usury there. I represent a district which is bordered by the State of

New Jersey and the State of New York for some eighty or ninety miles. In my little county every dollar of surplus earnings of our people goes to the State of New York or the State of New Jersey for investment, and whenever the estate of any man is inventoried we find that the surplus is invested, whether of \$30,000, \$50,000 or \$100,000, in New Jersey or New York. We are obliged to go to those States to get our discounts, and we have to pay our seven per cent. for them, and if we cannot get them there we must sell to our own shavers at from ten to fifteen per cent. for as good paper as circulates.

Sir, I believe in the principle of supply and demand. It does and will, in spite of all restrictive laws, govern prices as well in our circulating medium as in commodities. Under the circumstances, as they now exist in the border counties of the State, we cannot keep a dollar of surplus earnings there unless we conform to the regulations of other States. I could give numerous instances which have come within my knowledge in the last few months in corroboration of the statement that I have made. We are placed in just the position that I have stated, and unless we can get some legislation in this behalf we cannot transact the necessary business or make the improvements that would otherwise be made in our own State for the very reason that our capital is driven away by the laws of Pennsylvania as they now exist.

Sir, how can it be otherwise? Look at this subject for a moment. Our moneys at interest, in the first place, are taxed for local purposes. Every dollar that a man has at interest is taxed. There is no dodging it. The full value of it is taxed, and that taxation in my own town amounts to two per cent. of the six per cent. that we are entitled to receive, and in one township of my county the local taxation amounts to over five per cent. Sir, who is going to invest his money under such circumstances in this State?

Again, sir, when men have made up their minds that they have worked long enough and have made a competency and can live on the income of their earnings, what do they do? What other inducement is there for them to leave the State and take what they have gained in the State into the State of New York or the State of New Jersey, and build up the interests of those States as against the interest of Pennsylvania? It is this: That when they die, as much will be taken in

this State by the collateral inheritance tax as would support and educate a young son.

Sir, I declare here that the usury laws of Pennsylvania are a disgrace to civilization. You say to a man: "Yes, you may agree in writing to pay ten per cent. for the use of money and the next day you may sue to recover that amount, thus violating your own contract in writing." Such are the inducements held up by your law to men to act as rascals. I hope that this proposition of my friend from Philadelphia (Mr. Knight) will prevail, notwithstanding my distinguished legal friend from Philadelphia (Mr. Biddle) says that the Legislature ought to fix this thing. I do not know how he voted the other day; but we tried it once in a somewhat different form and failed. Now I hope the proposition will carry.

Mr. BOWMAN. I do not rise, Mr. President, to prolong the discussion of the question, but, on the contrary, I rise for the purpose of shortening it if possible. [Laughter.] If there has been any one question presented to the consideration of the members of this Convention that has received full and ample discussion, it is this question. While I should like to agree with the gentleman from Philadelphia (Mr. Knight) on every proposition that he presents to the consideration of this Convention, I certainly cannot agree with him in this. I think the minds of delegates have been made up on this question for weeks past. The gentleman however is mistaken in one thing. He tells us that Governor Hartranft called the attention of the Legislature last winter to the propriety of changing the law regulating the rate of interest in this State and that no action was taken by the Legislature on the subject. In that the gentleman is certainly mistaken. The Legislature had this question before them for two months, discussed it elaborately, fully, thoroughly and completely, and after a full interchange of sentiment with their constituents took a final vote upon the question and defeated it overwhelmingly. That is a part of the history of the legislation of last winter.

Now, sir, I think that we ought to come to a vote on this question. While I should be glad to hear all the gentlemen who have not spoken on this question heretofore in committee of the whole, I did hear a great many who did speak. I occupied no time of the Convention on this question myself, nor do I propose to do so

now, yet I will agree to do this, if they will postpone the discussion until next January, I will come back here then and hear them all.

In conclusion I wish to refer gentlemen of the Convention to one short paragraph that I find in a morning paper lying before me, as follows:

"COLUMBUS, OHIO, June 24.—In the Constitutional Convention this afternoon a proposition to so amend the Constitution as to prohibit the Legislature from passing any usury law was indefinitely postponed."

And I hope this will be disposed of in the same way, and so far as the action of this Convention is concerned, finally and forever.

Mr. STANTON. Mr. President: The rate of interest should at all times be calculated from a business point of view, and not from a speculative one. Viewed in the former light, interest is simply a compensation which the borrower pays to the lender, and the rate should be regulated so as to avoid the exaction of usury by the State.

To continue the present rate of interest, six per cent., in this great and growing State is to retard its progress in improvement, and withdraw a vast amount of foreign capital now invested, the use of which is so essential to its interest. Perhaps there is no other State in the Union that requires her legal rate of interest changed more than that of our own; for our capitalists are seeking investments in other States at higher rates than can be obtained here, and foreigners of course will follow their example.

It has been said that the organic law of the land should restrict the rate of interest to six per cent. I cannot see the philosophy of this, inasmuch as the growth of our State must naturally place money in the light of commodity, and regulate itself by supply and demand. States that have none or very few of the advantages we have, fixed their rate of interest at seven and eight per cent. To continue the old rate of interest in Pennsylvania is to limit our money operations by not allowing it to regulate itself by supply and demand.

Our merchants find use for all their capital, and, with few exceptions, employ it in their business. Where there is capital, and those who supply it are satisfied with the interest for their money, the poor will always find employment. In countries possessing great wealth, we see

great works undertaken. Railroads cut through hills, canals uniting rivers, bridges, splendid edifices for depot purposes, and a variety of other enterprises which give work to thousands, independently of the usual employment of men and capital in agriculture, manufacture and trade. What has made our State second to none in the Union? Capital! This capital must remain with us; it must not be withdrawn; hence it is for us to resist all attempts to retain a law on our statute books which will drive this capital away. A reasonable rate of interest is all that is asked. It is in order that the rich man may employ his capital, for in a secure and free government there can be no risk, and that is one reason foreigners are so anxious to invest money with us. If seven per cent. be made the "organic law" of our State, we shall have more applicants for investments than we can accommodate. Demand for labor will naturally follow, and industry will crown a people's labor with a "golden harvest."

Mr. PATTON. Mr. President: I am decidedly in favor of this new section offered by the distinguished gentleman from Philadelphia, (Mr. Knight,) and I hope it will be accepted by the Convention and become a part of the organic law of the Commonwealth. Then, sir, capital will return to the State and that which is here will remain, and prosperity will attend the commercial interests of the old Commonwealth.

Mr. CAREY. Yesterday the Convention declined to do anything whatsoever in aid of the seventy thousand vagrant children that we are told are to be found within the limits of the State; it declined to do anything whatsoever in aid of industrial schools; and why? Because it might impose a tax of half a million or a million of dollars on this great State. To-day we are invited to impose upon the houses, and lots, and lands, and labor of the State a tax of twenty or thirty millions of dollars; the proceeds of which are not to be applied to the building of school houses or the education of vagrants, but to filling the pockets of the already rich, and to increasing the distance between the rich and the poor; to enable the rich to build new palaces or enlarge old ones in close vicinity perhaps to the asylums for the new vagrants that are to be created!

My friend upon my left (Mr. Knight) tells us that money is to be made cheaper by this. I have no doubt in the world he believes it. I am sure he would not say

a word which he did not believe; but I know it is not true. It is, however, of very small importance what he thinks, or what I think. What we need to know is what the people think. What do the hundreds of thousands of small proprietors who are paying interest to-day, the small traders who are paying interest to-day, the bone and sinew of the State, the men who get their living by the sweat of their brow, what do they think about it?

You have just now had the answer. After years of trial in the Legislature, after the recommendation even of our Governor, General Hartranft, it was voted down by a vote so decided that it will be some time before it will be again brought up. Why is this so? Because, as a friend near me suggests, "our people are so stupid." They are so stupid that they cannot understand the advantage of paying ten or twelve or fifteen or twenty per cent. for money. They have borrowed at six per cent. They have five hundred millions borrowed at six per cent., and they are not wise enough to see the advantage of going to their mortgagees to beg and pray that they may be allowed to keep it at nine or ten or twelve or fifteen per cent. They are a very stupid people! [Laughter.] The Legislature has been very peculiarly constituted. It represents a remarkably stupid people; but let us remember that this Constitution is to be ratified by those very people! If we make it so intelligent, so enlightened that stupid people will not adopt it, what is the use of our work? There is none.

Sir, all of the foul birds of the State, the hawks that have been enriching themselves at the public cost, are pluming their wings and waiting and watching anxiously to see what we may do. They wish us to make this great mistake. Let us make it, and what will be the consequence? The State will be flooded with tracts—and I shall be very sorry to be compelled to add to the number—the State will be flooded with tracts teaching the people that this Convention has been carried on in the interest of capital, at the expense of labor. If that is done, how many votes can it command? I venture the assertion that if you put this into your constitution, that instrument will be defeated by two hundred and fifty thousand majority; it will be defeated in this city by fifty thousand majority.

My friend (Mr. Knight) has spoken of the action of other States. We have just now been told that the Convention of Ohio

has postponed indefinitely a provision there offered to prevent the enactment of usury laws. Connecticut repealed her usury laws a year ago, and she is just now re-enacting them, because it was made the great political question in the State. The policy was found so ruinous that it could not be carried out. Let this section be passed here, or let the Legislature pass this in the shape of a law, and it will be the one question to be settled at the polls next autumn. New York, after a prolonged discussion, after money to any extent had been used, and after efforts that were beyond anything that had ever before been known, has just now refused even to change the penalties for usury.

In face of all these facts, we are asked to make a cast iron law, and to deprive the Legislature of all power to repeal it or to change it in any form. Suppose the experiment proves as destructive here as it has proved in Connecticut, what are you to do? You cannot change it; it will be in the organic law and it cannot then be changed.

But we are told that one-third of the members of this Convention can have this proposition submitted to the people for a separate vote. Well, admit that; suppose it is so. Your Constitution will be found in such very bad company that all will be lost. What did the gentleman from Columbia tell you the other day about the liquor law? He said that to put it in your Constitution, even under such circumstances, would imperil the Constitution. I say that to introduce this section would destroy it. We had a little experience here a few weeks since in reference to the bad effects of keeping bad company. The Committee on Agriculture, Manufacture and Commerce reported a chapter of some half dozen sections, the first of which was this one. Among the rest, I think there were two that had some claim to consideration, and I rather think they ought to have been adopted, but the company was so intolerably bad that it killed all the rest! We went on killing one section after another, determined that the pestilent thing should never come back again, in any shape or form. Now, put this into your Constitution, and the people will do with the whole instrument as we did with that chapter.

Gentlemen, adopt it if you like; I have nothing more to say.

Mr. BAER. Mr. President: I have been a borrower all my life, and expect to be one while I live, and I am entirely in

favor of raising the rate of interest. I speak here as the representative of the borrowing class, and for them I say that they demand at the hands of this Convention that if the Legislature refuses to raise the rate of interest, this Convention shall. I do not speak for those who have money to loan; I never had any money to loan; but I speak for myself, as one of the continual borrowers who have made this State what it is to-day. The spirit of progression, advancement and improvement is to be found among the borrowers of money, and not among the money lenders. Those who have money to loan do not invest it in enterprises for the development of the State and for advancement of the national prosperity. It is those who are ready to hazard capital in investments of this character who borrow money to do so and who are willing to pay high rates of interest in order to command the capital necessary for such a purpose. It is for them I claim that the rate of interest should be advanced; but while I say that, I want this Convention to afford us some protection from the sharks who will take the last penny of property from us if they have the opportunity.

For that purpose I offer the following amendment, to come in at the end of the section:

"And all contracts hereafter made for a greater rate than ten per cent. are hereby declared usurious, and no action shall be maintained on such contracts."

MR. DUNNING. Mr. President: I am not going to prolong this debate as long as did the gentleman from Erie, (Mr. Bowman,) but I desire to make one or two remarks right here. It has become a very common thing in this Convention for gentlemen to say if certain propositions are not incorporated into the fundamental law, down goes the Constitution. Every pet theory that any gentleman has—it matters not of how long standing—becomes to him all-important; if not incorporated into the Constitution, why down goes the instrument. I have a great veneration, sir, for age and experience. I listen with great pleasure to the remarks that fall from the lips of gentlemen of experience, men who have studied and studied deeply these problems. There are lessons of truth to be gathered from what they say upon these great questions; but I do not forget that there are questions and that there are problems, as I have said before, that belong to the pres-

ent and not to the past, and we must meet them accordingly. Gentlemen who come into this Convention with ideas that were conceived fifty years ago, and which they advocate zealously as sound and wise as can exist under any Constitution, must understand the idea that if they cannot carry their purpose upon the same terms as they could have done half a century back they must do the best that they can in the present. So if you cannot borrow money to-day as cheap as you did fifty years ago you must borrow it upon the best rates of interest that you can obtain in the market.

Like my friend from Somerset, (Mr. Baer,) I am among the borrowers of money, and not of the lenders. And it is just that class of men, the borrowers of money, as he has so well said, who keep the business interests of this country moving and agitate improvements. It is not the Shylocks who hoard their funds who build up a Commonwealth. It is the men of labor, the men of adventure, the men of liberal ideas, who use money in such a way that it contributes to the wide development of the resources of the country. These are the money borrowers. They are the liberal men of this country, and we like to meet liberal men when we want to borrow. [Laughter.] We find that their rate for rate and cent per cent. is fixed, and they will bleed us to the last extent. When that must be done, let it be done according to law, and that is all we ask for. Gentlemen ought not to violate the law of the State every time they borrow money, and I do not want the lenders of money to violate the statute law every time they loan money. Let us fix the rate and then let us live honestly up to it.

MR. LEAR. Sometime or other upon this question I would to give some views that I have upon it, and I believe that this is the proper time. I desire to speak on behalf of that class of people of the State of Pennsylvania to which the gentleman from Somerset, (Mr. Baer,) the gentleman from Luzerne, (Mr. Dunning,) and myself, belong—the borrowers of the State of Pennsylvania, who have some rights as well as the lenders. It is very well for the gentleman from Philadelphia, (Mr. Carey,) and the gentleman from Dauphin, (Mr. MacVeagh,) who is not here to-day, to say in an airy, imperious way that to put such a section as this into the Constitution of the State of Pennsylvania is financial ruin. It is just as pro-

per for us to say on the other side of the question, that such a thing is not financial ruin but is financial prosperity;*and so do I assert upon this floor to-day. I assert it on behalf of the people who borrow, on behalf of the people who labor, on behalf of the people who produce, on behalf of the people who are the strength, and wealth, and prosperity of the State of Pennsylvania.

A few years ago in the county of Bucks, where I reside, a man could buy a farm for which he could pay one-third or one-fourth of the money down, and he might allow the rest to lie at interest upon it. But since money is commanding a high price, and the railroad and other corporations of the State, and the adjoining and surrounding States, are paying a higher rate of interest, the farmer is not permitted to buy his farm, and earn it from the surface and from the bowels of the soil which he tills. He dare not buy a farm to-day and pay half or three-fourths of the money, for the next year the vendor will say to him: "You must pay me the balance of the purchase money or pay five per cent. in addition to your interest for its retention for another year."

Therefore it is that the capitalists instead of the working men of the country are beginning to own the farms, and the men who now till the farms are men who pay exorbitant rates of interest; and the capitalists from your cities and the capitalists from the country are the men who own the farms, and not the men who with their energy, their muscle and their thrift were making the plains of Pennsylvania blossom as a garden. These are the men in whose interest I speak, and in their behalf I ask that there may be a fixed rate of interest. I am in favor of the amendment of the gentleman from Somerset, because I say that these Shylocks, who are ready to suck the last drop of blood like vampires from the veins of the toiling men of Pennsylvania, are ready to take advantage of their necessities and will hold them up for a year or two until they get their last acre so burdened with mortgages at enormous shaves that they cannot exist financially any longer.

To say that money shall not bring its price, to say that you must be burdened with this rate of interest which we have now imposed on us in the State of Pennsylvania, to say that we shall have a usury law which we have this very day,

which is a delusion and a snare, by which you may contract for any rate of interest that you please, but cannot collect more than the six per cent., and if you do collect it, it may be recovered back, if the suit be commenced within six months—I say that such a delusive enactment as that upon the statute laws of Pennsylvania is a disgrace to the legislation of the State, and shows that those who were concerned in its enactment were afraid to face the necessities of this case and the realities of their position.

Why, Mr. President, there are others besides those who vote for this Constitution. There are widows and there are others who are not able to take care of themselves, and who are dependent upon the little stipend that has been bequeathed to them perhaps by a will or fixed by the law as an interest upon which their capital is limited; and those people, so far as I have heard, have no advocate upon this floor. Men have gone down to their graves supposing that they had provided in their wills a proper competence for their widows to live upon, and in our frugal community where I live, if a man had left the sum of \$10,000 to be invested at lawful interest for the support of his widow, she could live upon it and it was thought that it was rather a munificent provision for her support, and that provision was made when the rate of interest, as it is now, was six per cent., and when all the necessities of life could be purchased for one half of what they can be purchased for now. And while clothing of all kinds, everything that she puts upon her table, and everything that she wears has increased in value fifty or one hundred per cent., this poor widow's interest upon her \$10,000, or whatever the capital may be that fixes her income, has not raised according to it, and yet the capitalists, because we do not plead for them, can get their interest because they have the means of going into the market where money brings its real value, while the trustee, who has this money in his hands for the widow or the orphan will put it in some fixed investment, in a mortgage upon the farm or in some other place where it is certainly fixed and where he gets his interest regularly and annually; but the capitalist now asks for no lifting up of the rate of interest in Pennsylvania, for he goes into the market and he buys his bonds which bring seven or eight per cent., or he buys his paper guaranteed by

some enormous corporation that can afford to do it at a shave or a discount of ten per cent. These men get their interest who are able to live without it, and amass enormous fortunes upon it, but those people who are fixed by law to a limited income by the interest provided by law upon a gross capital, are limited now to take the same income which they were obliged to take ten, twelve and fifteen years ago.

We say that it is unjust, improper, illegal and contrary to the policy of this State, and people who say that it would be financial ruin are talking without understanding the circumstances of the case.

The *PRESIDENT pro tem.* The delegate's time has expired.

Mr. BAER. I call for the yeas and nays.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Somerset (Mr. Baer) to add to the amendment of the delegate from Philadelphia (Mr. Knight) the words, "and all contracts hereafter made for a greater rate than ten per cent. are hereby declared usurious, and no action shall be maintained on such contracts. On this amendment the yeas and nays are called for. Do ten gentlemen rise to second the call?

The yeas and nays were ordered, ten members rising to second the call, and they were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Andrews, Baer, Curry, Davis, Fulton, Guthrie, Heverin, Howard, Knight, Lear, Lilly, M'Culloch, M'Murray, Mantor, Mitchell, Parsons, Patton, Ross, Runk, Smith, Henry W., Struthers, Walker and Wetherill, J. Price—25.

NAYS.

Messrs. Achenbach, Addicks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Church, Cochran, Corbett, Corson, Cuyler, Dallas, Darlington, De France, Dodd, Edwards, Elliott, Ellis, Ewing, Fell, Finney, Funck, Gibson, Gilpin, Green, Hall, Hanna, Harvey, Hay, Hazzard, Hemphill, Horton, Hunsicker, Kaine, Long, MacConnell, M'CLean, Mann, Minor, Mott, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Pur-

viance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Stanton, Stewart, Turrell, Wetherill, J. M., Wherry, White, Harry, White, J. W. F. and Woodward—77.

The amendment to the amendment was rejected.

ABSENT.—Messrs. Baker, Barclay, Bartholomew, Beebe, Boyd, Brodhead, Carter, Cassidy, Clark, Collins, Craig, Cronmiller, Curtin, Dunning, Lamberton, Lardis, Lawrence, Littleton, MacVeagh, M'Camant, Metzger, Pughe, Sharpe, Simpson, Smith, Wm. H., Temple, Van Reed, White, David N., Worrell, Wright and Meredith, *President*—31.

The *PRESIDENT pro tem.* The question recurs on the amendment of the delegate from Philadelphia (Mr. Knight.)

Mr. J. M. WETHERILL. I move to amend by striking out "seven" and inserting "six," and striking out all after the words "per annum." It will then read:

"In the absence of special contracts, the legal rate of interest and discount shall be six per centum per annum."

The amendment to the amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the amendment of the delegate from Philadelphia (Mr. Knight.)

Mr. KNIGHT and Mr. HUNSICKER called for the yeas and nays.

The call was seconded by ten members, and the question was taken by yeas and nays, with the following result:

YEAS.

Messrs. Addicks, Ainey, Baer, Boyd, Brown, Bullitt, Curry, Cuyler, Davis, Dunning, Edwards, Fell, Finney, Gilpin, Green, Guthrie, Hazzard, Heverin, Hunsicker, Knight, Lear, Lilly, M'Culloch, M'Murray, Mantor, Mott, Palmer, G. W., Parsons, Patton, Pughe, Purviance, Samuel A., Reed, Andrew, Stanton, Walker and Wetherill, Jno. Price—35.

NAYS.

Messrs. Alricks, Andrews, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Charles A., Black, J. S., Bowman, Buckalew, Calvin, Campbell, Carey, Church, Cochran, Corbett, Corson, Dallas, Darlington, De France, Dodd, Elliott, Ewing, Fulton, Funck, Gibson, Hall, Hanna, Harvey, Hay, Hemphill, Horton, Howard, Kaine, Long, MacConnell, M'CLean, Mann, Mi-

nor, Mitchell, Newlin, Niles, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, John N., Read, John R., Reynolds, Rooke, Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Stewart, Struthers, Turrell, Wetherill, J. M., Wherry, White, Harry, White, J. W. F. and Woodward—66.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Baker, Barclay, Bardsley, Bartholomew, Beebe, Brodhead, Broomall, Carter, Cassidy, Clark, Collins, Craig, Cronmiller, Curtin, Ellis, Lambertson, Landis, Lawrence, Littleton, MacVeagh, M'Camant, Metzger, Sharpe, Simpson, Smith, Wm. H., Temple, Van Reed, White, David N., Worrell, Wright and Meredith, *President*—32.

SEVERAL DELEGATES. Order of the day.

LEAVES OF ABSENCE.

Mr. KAINE. I ask leave of absence for Mr. Hanna for this afternoon.

Leave was granted.

The *PRESIDENT pro tem.* The hour of one o'clock having arrived, the Convention takes a recess until half-past three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

INVITATION TO GETTYSBURG.

Mr. M'CLEAN. I desire leave to send a telegram to the Clerk's desk to be read.

The *PRESIDENT pro tem.* A telegram, directed to the Convention, has been received. It will be read.

The *CLERK* read as follows:

Constitutional Convention, Philadelphia, Pennsylvania:

The town council of the borough of Gettysburg cordially invite the Constitutional Convention to adjourn to Gettysburg, and we tender to them the free use of Agricultural hall and four large committee rooms. While the members are engaged in revising the Constitution of the State they can restore their own exhausted constitutions by drinking Katalysine water free of charge.

DAVID WILLS,
President of Town Council,
Gettysburg.

Mr. DARLINGTON. I move that the invitation be thankfully received and referred to the committee on the subject.

The motion was agreed to.

LEGISLATION.

The *PRESIDENT pro tem.* The first business in order is the article on revenue, taxation and finance.

Mr. BUCKALEW. Before the Convention proceeds to consider that I desire to ask leave to present a proposition for reference to the Committee on Schedule.

Mr. HARRY WHITE. I ask that it be read.

The *CLERK* read as follows:

SECTION —. The provisions of the sixth and seventh sections of the article on legislation shall not apply to general statutes passed within three years for enforcing this amended Constitution, nor to revised statutes hereafter proposed by any commission for the general revision of the civil or penal laws of the State.

The *PRESIDENT pro tem.* The proposed amendment will be referred to the Committee on Schedule.

REVENUE.

The *PRESIDENT pro tem.* The Convention resumes, on second reading, the consideration of the article reported by the Committee on Revenue, Taxation and Finance. The pending question is on the seventh section, which will be read.

The *CLERK* read as follows:

SECTION 7. Neither the State, nor any county, city, borough, township or other municipality shall loan its credit or appropriate money to or assume the debt of, or become a shareholder or joint owner in or with, any private corporation or any person or company whatever.

Mr. HARRY WHITE. To the spirit of this section I have no objection whatever. I merely call the attention of the Convention to the fact that in words and in spirit it is provided for in the present Constitution, the language of which has already been adopted in the twentieth and twenty-first sections of the report of the Committee on Legislation. I am not devoted to anything that has come from any committee more than I am devoted to the present Constitution where it expresses the purpose that we have in view. I will read from the present Constitution:

"The credit of the Commonwealth shall not in any manner or event be pledged or loaned to any individual, company, corporation or association; nor shall the Commonwealth hereafter become a joint owner or stockholder in any company, association or corporation."

That is the fifth section of the eleventh article. Then the seventh section of the same article provides:

"The Legislature shall not authorize any county, city, borough, township or incorporated district, by virtue of a board of its citizens, or otherwise, to become a stockholder in any company, association or corporation, or to obtain money for, or loan its credit to, any corporation, association, institution or party."

This is the amended Constitution of 1857. It was the outgrowth, the offspring of the evils which then prevailed by reason of the subscriptions of so many municipal corporations to particular railroad companies, which resulted in repudiation practically, or rather some complaint (I will not use an offensive word) in Allegheny county, in Butler county, and in Lawrence county against certain subscriptions made there. The beneficent effect of this provision is to be found in the fact that every municipality in Pennsylvania to-day is free from a debt by reason of any bond issued since its provisions were adopted. Inasmuch, then, as this amendment was adopted in 1857, and its wisdom has been proved, and it is understood by the people, I am opposed to any change. This question was before us when we had under consideration the report of the Committee on Legislation, and I find that precise language adopted in the twentieth and twenty-first sections.

Mr. BROOMALL. It is true, as the gentleman says, that the Committee on Legislation reported, with some small changes of phraseology for the worse, the exact language of the amended Constitution of 1857. The Committee on Taxation condensed those two sentences into one and embraced within that sentence a prohibition to the smaller municipalities, counties, &c., from assuming the debt or becoming the joint owner in or with any other concern, which was not in those provisions. When the article on legislation was under consideration, the Convention may remember I said that that matter had been before the Committee on Revenue, Finance and Taxation, where the subject more properly belonged, and that I proposed then to let those sections pass, and when this one came up to let it pass also, and let the Committee on Revision and Adjustment report whichever they think answers the purpose best, and then we can act upon it. Gentlemen will find repeated instances in which the articles overlap one another, and they will have

to select. The matter is not very important, but I think it would be better to preserve this phraseology at least for the consideration of the Committee on Revision and Adjustment, inasmuch as it embraces a little more in less language. I do have a respect for the language of the old Constitution, but not so much respect for the amendments to it which were got up with less care and often somewhat hastily, and are somewhat diffuse. I therefore ask that the Convention adopt this section and let the Committee on Revision and Adjustment act upon it as they see proper.

The PRESIDENT *pro tem.* The question is on the section.

The section was agreed to.

The PRESIDENT *pro tem.* The eighth section will be read.

The CLERK read as follows:

SECTION 8. No county, township, school district, or municipal corporation shall become indebted, in any manner or for any purpose, to an amount (excluding indebtedness existing at the adoption of this Constitution) in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the last assessment for county taxes prior to the incurring such indebtedness, and all contracts by which indebtedness beyond such limits would be incurred shall be void.

Mr. BROOMALL. This section was modified in committee of the whole, but was left, as I understand it, very unsatisfactory to certain portions of the State. I have been talking with some of the delegates from this city and some others, and I now propose what I think will meet the views of everybody. It has the advantage of embracing the same idea and being a little shorter; the difference is this, that the section allows that—

The PRESIDENT *pro tem.* The delegate from Delaware had better first forward his amendment, and after he has done that he can draw the distinction.

Mr. BROOMALL. I will do that, and after the amendment has been read by the Clerk I will explain the difference in three words.

The CLERK read the amendment as follows;

"No county, township, school district, or municipal corporation shall become indebted to an amount exceeding six per cent. of the taxable property therein: *Provided*, That where an indebtedness at the time of the adoption of the Constitu-

tion exceeds that limit, the same may be increased three per cent. on such valuation."

Mr. BROOMALL, It will be observed that the difference is just this: Section eight allows those corporations that have no debt, or a less debt, to incur indebtedness to the extent of two per cent. of the value of property. This amendment allows a limit of six per cent.; and also that in the case of any debt existing at present to the extent of six per cent., the municipality or other corporation shall have the liberty to extend it three per cent. more. I think it more important that there should be a limit than that the limit should be at any precise point. I hope the Convention will adopt the amendment.

Mr. BOYD. On this amendment I call for the yeas and nays.

Mr. HARRY WHITE. I second the call.

Mr. CAMPBELL. I merely wish to say a few words. Six per cent. is entirely too great for the city of Philadelphia. If we are permitted to increase in this manner our debt will run up to an enormous amount. I hope if the gentleman intends to press this amendment that he will except from it the city of Philadelphia.

Mr. BUCKALEW. I want to make an inquiry. I desire to know whether if this amendment be agreed to I can then propose to substitute a different proposition for the section as amended?

The PRESIDENT *pro tem.* The yeas and nays have been ordered, and the Clerk will proceed with the call.

Mr. BUCKALEW. Before the call is taken I simply desire to press my inquiry.

The PRESIDENT *pro tem.* The Chair will withdraw the order for the yeas and nays and allow discussion.

Mr. BUCKALEW. I was quite willing to have the gentleman from Delaware move his amendment to the section before I submitted my proposition, but I am afraid that I shall be excluded if I wait.

Mr. BROOMALL. In order to prevent this discussion, if the Convention will allow me, I will modify my amendment so as to strike out all after the first half dozen words, which are the same as in the section reported from the committee of the whole, and insert the corresponding language there. Then the gentleman from Columbia can insert his afterward.

Mr. BOYD. I desire to inquire from the Chair if my call for the yeas and nays is to be maintained.

The PRESIDENT *pro tem.* The Chair directed the call for the yeas and nays to proceed; but the gentleman from Columbia rose to make an inquiry, and the Chair withdrew the order.

Mr. BOYD. The question in my mind is whether that is regular.

The PRESIDENT *pro tem.* I thought it better. The delegate from Delaware will indicate his amendment.

Mr. BROOMALL. It is to strike out all after the word "indebted," in the second line, and insert: "To an amount exceeding six per centum on the valuation of the taxable property therein."

Mr. STRUTHERS. I ask for information whether I can move an amendment after this has been acted upon, which will be to this effect, "for the building of court houses and school houses." I wish to have those words introduced because some of the counties have not yet built their court houses and are preparing to do it, and it would require more money than this would allow.

The PRESIDENT *pro tem.* The Chair supposes such an amendment would be in order, but he will not be committed by what he says. [Laughter.]

Mr. BROOMALL. I call for the reading of the section as it would be if amended.

The CLERK. The section, if amended as proposed by the gentleman from Delaware, will read:

"No county, township, school district or municipal corporation shall become indebted to an amount exceeding six per centum on the valuation of the taxable property therein: *Provided*, That where the indebtedness at the adoption of this Constitution exceeds that limit, the same may be increased three per cent. on such valuation."

Mr. TURRELL. I want to say a word in opposition to that. I will not make a speech, but I hope it will not pass. It is too large an amount to put in the power of the men who manage these localities. As it stood in the first place, the two per cent. is enough. It has been made often a matter of the greatest tyranny and oppression. To put six per cent. in addition to all the other taxes in any municipality becomes a burden too great to bear. I hope the gentleman will modify it. They always go to the highest mark they have the chance to go.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Delaware.

Mr. J. W. F. WHITE. I hope the amendment proposed will carry. On a former occasion I spoke against the extreme limit of the small amount reported by this committee, because in some localities of the State a larger amount than two per cent. is absolutely necessary. I have simply to answer to the remarks of the delegate from Susquehanna (Mr. Turrell) that we do not in this section authorize every district in the State to go to six per cent. That is not the effect of this constitutional section. There will have to be legislative action besides this before they can incur any indebtedness at all. The question with us is simply this: Shall we fix a maximum amount beyond which the Legislature shall never authorize any county or municipality to incur an indebtedness?

There certainly can be no danger in putting in the Constitution a limit of six per cent. when heretofore there has been no limit whatever. We have never in this State had any limit whatever in our Constitution. Now, the limit proposed of six per cent. is a wonderful limitation and restriction upon the power heretofore held by the Legislature, and I hope that we shall not insert a constitutional section which may and undoubtedly will be oppressive in some localities of the State, simply because one or two localities of the State have already had perhaps a large indebtedness.

Further than that, it is manifestly unjust to those cities and counties which have not heretofore incurred an indebtedness that we shall now limit them to six per cent. when Pittsburg and Philadelphia have already three or four times that amount of indebtedness, and we allow them to go three per cent. more. I can conceive of no danger whatever in putting the limit at six per cent., and on the other hand I would put it at more than that, and give them a wider discretion still. Trust this question to the discretion of the people's representatives and to the people themselves. I hope we shall not put in this narrow limit of two per cent. and make that procrustean bed for those localities which have not already made their improvements, and prevent them from making similar improvements to those made by the large cities already in our State.

Mr. BUCKALEW. I will move my amendment at this time. It is a fit subject to be before the Convention.

The PRESIDENT *pro tem*. The amendment to the amendment will be read.

The CLERK. The amendment if amended as proposed, will read as follows:

"No debt of any county, city, borough, township, school district or other municipality or incorporated district, except as herein provided, shall ever exceed five per centum upon the assessed value of the taxable property therein; nor shall any such municipality or district incur any debt or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property, without the assent of the electors thereof at a public election, in such manner as shall be provided by law: *Provided*, That any city, the debt of which now exceeds seven per centum of such assessed valuation, may be authorized to make loans not exceeding three per centum in the aggregate in existence at any one time upon such valuation in increase of its indebtedness until its debt shall be reduced below seven per cent. upon such assessed valuation."

Mr. BUCKALEW. The members of the Convention will recollect that this is substantially an amendment proposed in committee of the whole at a time when we had a very thin attendance and was not pressed, but was received with much favor at the time.

It consists of three parts. First, it fixes a general limitation upon the aggregate of municipal indebtedness in any case at five per cent., which is the provision in the Constitution of Illinois, the most recent Constitution of any importance which has been made. I think that would be sufficient, and at the same time it would be a great security to the people.

The second division of the amendment provides that no new debt or any increase of existing debt exceeding two per cent. shall ever be authorized in any municipality without the express assent of the electors of the municipality by a public vote.

The third and last division of the amendment, and in fact the most material one as distinguished from the proposition of the gentleman from Delaware, is the particular arrangement provided for the case of cities that already have large debts. The provision is that wherever a city has an existing debt exceeding seven per cent., which is the case of both Philadelphia and Pittsburg, the law-making power may authorize new loans not exceeding three per cent. of the assessed value of

property, and that percentage is not to be transcended by the aggregate of increase at any one time. There is a material difference between the arrangement of the gentleman from Delaware and this amendment in that particular. His amendment will allow the public debt of any city to be at all times at least eight per cent., whereas under this amendment if the debt of any city shall be reduced say to two or three or four per cent. at any future time the increase can never be more than three per cent. at any moment of time above the lowest mark to which the debt may be reduced. In the case of Philadelphia, their debt is something over ten per cent. as I understand. Then if the debt should be reduced to five or six per cent. hereafter, it can never go up as high as it is now. But, sir, as I understand the gentleman from Delaware does not care to have the debate protracted, I will say no more. I have said sufficient to explain my amendment.

Mr. BROOMALL. I will accept the amendment of the gentleman from Columbia.

Mr. LILLY. There is one question that I desire to ask; I do not intend to make a speech. I desire to know what the indebtedness here referred to covers. In the borough in which I reside we have three kinds of debts, all three of them coming under different heads and applying to different departments, no one of which controls the other. Each one is independent of the others. One is for water purposes, another for school purposes, and the other for the poor. Now, what does this section mean as applied to a case of that sort? Does the seven per cent. cover them all, or does it apply to each one? I should like to be informed on that point before I vote on the amendment.

Mr. BUCKALEW. I ask for the reading of the amendment again. That will explain it.

The CLERK read the amendment.

Mr. J. PRICE WETHERILL. Before the adoption of that amendment I should like to ask the gentleman from Columbia whether, if the city of Philadelphia desired to borrow \$1,000,000 when its indebtedness exceeded seven per cent. of the assessed value of its property, it would not have to go to Harrisburg and secure a law for that purpose?

Mr. BUCKALEW. I do not know what are the existing laws in this city with reference to that subject.

Mr. J. PRICE WETHERILL. The existing laws are that a majority of the select and common councils can authorize a loan on certain conditions. This proviso says that when the city desires to increase its indebtedness, it may do so as provided by law, which might compel the city to go to Harrisburg and get a law passed before it could make a loan.

Mr. BUCKALEW. I cannot answer the question of the gentleman from Philadelphia, because I do not know the character of the existing statutes upon this subject. If there is a power to borrow money this section can only limit that power to the extent of seven per cent. on the assessed valuation of property.

I desire to say in answer to the gentleman from Carbon, (Mr. Lilly,) that if the support and maintenance of the poor in his town of Mauch Chunk is charged upon the borough, it will be included in the general borough obligations; but if a borough is also a school district the five per cent. will not apply to loans for school purposes. The school district and the borough are kept separate in this regard, and it is necessary that there should be liberal power conferred upon school districts. Therefore, if the borough is indebted for school purposes, the five per cent. would apply to the school district, but the other two objects which he mentioned would be united together.

Mr. BOYD. I hope that the Convention will adhere to the section as it was reported from the committee of the whole. We all know that subject was thoroughly considered and elaborately discussed, and it is now in a shape that is easy of comprehension. I think I understand it thoroughly. I am perfectly aware that it is impossible to guard this kind of thing as it should be, but it seems to me that when we agreed upon the section reported for second reading, that we arrived at the best conclusion and the most intelligible one possible under the circumstances.

When I first heard the amendment read of the gentleman from Columbia, it seemed to me to be the thing; but when we come to consider that it contains the word "assessment," without referring to what assessment, a very plain difficulty arises. An assessment can be so fixed by those interested in swelling the valuation of property, just before the vote is taken, that practically the limitation of this amendment amounts to no limitation whatever. For example, those in authority

desiring to raise the sum to suit themselves will know just how to fix the assessment to raise the required amount. They will arrange among themselves to contract a debt of a large amount of money, and under the operations of this amendment they will of course submit it to a vote of the people and of course manipulate the vote to suit themselves. I therefore repeat that as far as the limitation is concerned it is of little value, because the assessments are entirely in the hands of the officials, to be so manipulated as to make the valuation of property pretty much to suit them. They could extend this abuse in reference to the valuation of property to a much greater degree under this amendment than they could under the section as reported from the committee of the whole.

I can understand why gentlemen from large cities like Philadelphia and Pittsburgh, both of which we have heard from, are opposed to any restriction. Everybody knows that they have a debt of untold millions in this city, and since we have been in session, we have not had any satisfactory or reliable statement of its magnitude.

Mr. MACCONNELL. Will the gentleman allow me to explain?

Mr. BOYD. I have not said a word yet about the gentleman.

Mr. MACCONNELL. I only beg to say that the Convention has not heard from any delegate from Allegheny city upon this question. We have heard from a gentleman from Allegheny county, and I desire to say, for one, that I am entirely opposed to the position taken by my colleague (Mr. J. W. F. White.)

Mr. BOYD. I did not allude to the gentleman on the other side of the House at all. I was referring to Mr. J. W. F. White.

We all know that things can be so managed that a debt can largely exceed even six per cent. of the assessed value of property. The actual debt may be so manipulated that it may be twelve per cent. instead of six. By issuing orders or certificates, not exactly of indebtedness, but a memoranda of indebtedness which is to be liquidated, but which can be so regulated that the term debt will not apply to it. It will be a floating and unascertained debt, and yet it is hardly in a shape to be called a debt liquidated; and in that way, under the amendment of the gentleman from Columbia, even with the seven per cent. restriction, the debt can

be kept up to ten or twelve per cent. This could not be done under the section reported from the committee of the whole. If the amendment be adopted, the officers of the municipality can keep up a large debt, in spite of the limitation.

I think that inasmuch as the section reported from the committee of the whole was well considered, and also for the reasons that I have urged against the amendment, the amendment should be voted down, and the Convention should adhere to the section in its present shape.

Mr. J. W. F. WHITE. I wish to add merely a word, Mr. President. If the delegate from Montgomery (Mr. Boyd) had listened to what I said, he would have discovered that I was not arguing for Pittsburgh or for Allegheny county.

Mr. President, I was not arguing for Pittsburgh. I merely advocated the right of other cities in the State, and other counties in the State having the advantages that Pittsburgh and Allegheny county have enjoyed. I advocated a higher rate for their advantage, even for Bucks county or Montgomery county. If they want to incur indebtedness for a great public improvement, why not let them have the advantages that Allegheny county has had or Pittsburgh or Philadelphia has had. My argument was entirely in favor of them and not in favor of Pittsburgh. You propose to do all that Pittsburgh wants. We do not ask for anything more. We have made our great improvements, we have expended our money in Pittsburgh and built it up to be a magnificent city. We have a large indebtedness and we are able to pay it, and so will Allegheny county. It never has repudiated and never will repudiate. If gentlemen knew what they were talking about they would know that neither Allegheny county nor the city of Pittsburgh ever did repudiate any debt.

Mr. BOYD. They tried very hard.

Mr. J. W. F. WHITE. They never did, never tried to repudiate anything. If they knew the history of that matter, they would know this: That there were certain railroad bonds which were fraudulently put in the market and sold in violation of the law under which they were issued; and in place of being sold as the law required, for very nearly par, they were parted with at less than one-half the face of the bonds; and we thought in Allegheny county when the bondholders had got those bonds in violation of the law, they ought to get merely what they

had paid on those bonds. That was our struggle. It was on the ground of equity and not to repudiate. All along, that was the proposition, to give to them what they had paid on their bonds, because they had become parties to the violation of the law, when they purchased the bonds in the very teeth of the act of Assembly. I did not think it necessary, and I presume the other members from Allegheny county did not think it necessary, to revert to this thing of repudiation. It has often been hurled in our face and become so common that we have got to think very little about it; but I hope if is any gratification to the delegate from Montgomery, he will repeat it from this time forward every day until we adjourn.

The *PRESIDENT pro tem.* The question is on the amendment.

Mr. BOYD. I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call, and they were taken with the following result:

Y E A S .

Messrs. Achenbach, Armstrong, Baer, Bailey, (Huntingdon,) Beebe, Biddle, Bigler, Black, Charles A., Bowman, Broomall, Brown, Buckalew, Calvin, Church, Corson, Cronmiller, Curry, Curtin, Cuyler, Darlington, Davis, Dunning, Elliott, Fulton, Guthrie, Hall, Hay, Hazard, Heverin, Lilly, M'Culloch, M'Murray, Mantor, Minor, Mott, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Runk, Russell, Smith, H. G., Stanton, Struthers, Temple, Turrell, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Wright—57.

N A Y S .

Messrs. Alricks, Andrews, Baily, (Perry,) Kannan, Barclay, Boyd, Campbell, Carter, Cochran, De France, Edwards, Ellis, Ewing, Funck, Gibson, Gilpin, Harvey, Hemphill, Horton, Howard, Hunsicker, Kaine, Lawrence, Long, MacConnell, M'Camant, M'Clean, Mann, Mitchell, Patterson, D. W., Purviance, John N., Purviance, Samuel A., Smith, Henry W., Van Reed, Walker and Wetherill, J. M.—36.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Black, J. S., Brodhead, Bullitt, Carey, Cassidy, Clark, Collins, Corbett, Craig, Dallas, Dodd, Fell,

Finney, Green, Hanna, Knight, Lamber-ton, Landis, Lear, Littleton, MacVeagh, Metzger, Newlin, Palmer, G. W., Porter, Read, John R., Ross, Sharpe, Simpson, Smith, Wm. H., Stewart, White, David N., Woodward, Worrell and Meredith, *President*—40.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

The section as amended was agreed to.

The *PRESIDENT pro tem.* The next section will be read.

The *CLERK* read as follows:

SECTION 9. Any county, township, school district or municipal corporation, incurring any indebtedness shall, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years.

Mr. Kaine. Mr. President: I should like to know from the chairman of the committee the operation of this section or why it should go into the Constitution. I look upon its working as being utterly impracticable that any officer or set of officers about to incur a debt should, at the same time or before that time, make any provision for a tax for the payment thereof within thirty years. I think such an enactment impracticable, and that it would be utterly nugatory. It is a matter of legislation, at any rate, and I think it ought not to go into the Constitution.

Mr. Minor. Mr. President: I see difficulties in this section. I will point out one or two of them. It says, for instance, that a school district shall not incur indebtedness, unless it shall, "at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principle thereof within thirty years." There are school districts in this State that have no power at all to provide a tax, annual or otherwise. In the city of my own residence, if you please, our school district is co-extensive with the city, and the power of taxation is taken away from it entirely. The city attends to that matter, and if this section be passed the school district could not incur a single dollar of indebtedness, because it would not have the power to levy a tax. So it is with regard to townships. We do not know what will be the future arrangement for taxes which may be made by the Legislature, whether it be by counties, by townships, by school districts, or how it will be. At

the present it certainly involves impossibilities, and it may in the future.

I cannot, therefore, of course, vote for it as it stands, because it must nullify the action of many parts of the State.

MR. BROOMALL. I do not see the matter in the way that the gentleman who last spoke does. Every municipality that is authorized to borrow at all is authorized to levy taxes, and all of them have some limit as to the tax. It is certainly a wholesome provision to require at the time a debt is being incurred the imposition of a tax that shall be sufficient to pay the interest and the principal within some given time. It is a wholesome guaranty, against too much debt to make the people begin to feel the tax that it is going to put upon them at once. I look upon that, in connection with the next preceding section, as necessary guards against the extravagant running into debt on the part of every municipality in the State that exists at this time. I trust the Convention will see the importance of passing this section as it is. If the term of thirty years is not long enough, let it be increased.

The PRESIDENT *pro tem*. The question is on the adoption of the ninth section.

MR. KAINE. I call for the yeas and nays on that section.

MR. HUNSICKER. I second the call.

The question being taken by yeas and nays resulted, yeas sixty-five, nays twenty-four, as follows:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bannan, Barclay, Biddle, Bowman, Broomall, Brown, Buckalew, Campbell, Carter, Church, Corson, Cronmiller, Curry, Curtin, Darlington, Davis, De France, Dunning, Edwards, Elliott, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hazzard, Heverin, Horton, Howard, Lawrence, Lilly, MacConnell, McCamant, McCulloch, McMurray, Mantor, Newlin, Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Runk, Russell, Smith, H. G., Stanton, Stewart, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, Harry, White, J. W. F. and Wright—65.

NAYS.

Messrs. Andrews, Bailly, (Perry,) Bailey, (Huntingdon,) Beebe, Bigler, Black,

Charles A., Boyd, Calvin, Ellis, Hall, Hunsicker, Kaine, Knight, Long, M'Clean, Mann, Minor, Mitchell, Patterson, D. W., Reed, Andrew, Reynolds, Smith, Henry W., Struthers and Wherry—24.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bardsley, Bartholomew, Black, J. S., Brodhead, Bullitt, Carey, Cassidy, Clark, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Dodd, Ewing, Fell, Finney, Hanna, Hay, Hemphill, Lamberton, Landis, Lear, Littleton, MacVeagh, Metzger, Mott, Niles, Palmer, G. W., Porter, Ross, Sharpe, Simpson, Smith, Wm. H., Temple, Turrell, White, David N., Woodward, Worrell and Meredith, *President*—44.

The CLERK read the next section as follows:

SECTION 10. To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt and annually to reduce the principal thereof by a sum not less than two hundred and fifty thousand dollars. The said sinking fund may be increased from time to time by assigning to it any part of the taxes or other revenues of the State not required for the ordinary and current expenses of government; and, unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in extinguishment of the public debt, until the amount of such debt is reduced below the sum of five million dollars.

MR. BROOMALL. That is simply the sinking fund of the present Constitution modified as was necessary to bring it up to the present time.

MR. HARRY WHITE. I understand of course the purpose of this provision. I hold in my hand the old section adopted in 1857, before the sale of the public works, but in anticipation thereof. I have no complaint whatever to make of this section, but I submit that the doubt ought not to exist which may exist if the section is adopted. I only call attention to lines five and six: "The said sinking fund may be increased from time to time." Now, I find in the old Constitution this provision: "Which sinking fund shall consist of the net annual income of the public works from time to time owned by the State, or the proceeds of the sale of the same, or any part there-

of, and of the income or proceeds of sale of stocks owned by the State, together with other funds or resources that may be designated by law." That is just what was desired, and the new section is in harmony with that; it does not absolutely require the proceeds of the sale of the public works to continue in the sinking fund. For that purpose I move to amend by adding after the word "fund," in the sixth line, the words, "shall consist of the proceeds of the sale of the public works and such other funds and resources as may be designated by law, and."

One word of explanation. The chairman of the committee desires to continue the sinking fund as it now exists; I desire to do so, too; and I am satisfied the Convention does. I agree to the language of the first portion of the section:

"To provide for the payment of the present State debt, and any additional debt contracted as aforesaid, the Legislature shall continue and maintain the sinking fund sufficient to pay the accruing interest on such debt, and annually to reduce the principal thereof by a sum not less than \$250,000."

The only difference between this and the old Constitution is, that the old Constitution provided that the sinking fund should consist of the proceeds of the sale of the public works, or any part thereof, and such other revenues as should be designated from time to time. Now, we have the proceeds of the sale of the public works, amounting to nine and a half millions, and they are in the sinking fund to-day by virtue of the constitutional enactment of 1857. I want them to remain there; but I submit that if you do not insert here the words of the old Constitution in this respect, there may be a doubt on that subject, and for the purpose of removing that doubt I merely propose to add these words, and then authorize the putting into the sinking fund of such funds, from time to time, as may be designated by law. The delegates are aware that by the act of 1858 a large class of revenue was designated and directed to be placed in the sinking fund, and has been there ever since. You do not want to interfere with that, nor does the amendment otherwise interfere with it.

Mr. BROOMALL. The committee supposed that the words "continue and maintain" covered that whole ground. If there is any doubt about it, let the amendment go in. We did not desire to put in

unnecessary words, and we supposed that with these words and with the prohibition to take any part of the fund out except for the extinguishment of the debt, we had really covered the whole ground; but if the Convention thinks there is any doubt about it, let the amendment go in.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Indiana, (Mr. Harry White.)

The amendment was agreed to.

Mr. DARLINGTON. I move to amend by striking out after the word "debt," in the tenth line, the words "until the amount of such debt is reduced below the sum of five million dollars."

This amendment merely strikes out the qualification that the public debt shall be reduced by the sinking fund until it is reduced below the sum of \$5,000,000. I see no necessity of having any limitation now. At the time it was first adopted the debt was much larger than it now is.

Mr. BROOMALL. I have no objection to that amendment.

The amendment was agreed to.

Mr. STRUTHERS. I move to amend the section in the sixth line by striking out the word "may" and inserting "shall," so that the clause will read: "The said sinking fund shall be increased," &c.

Mr. BROOMALL. I have no objection to that.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 11. The moneys of the State, over and above the necessary reserve, (which shall be as small as possible consistent with the public demands,) shall be used in the payment of the debt of the State, either directly or through the sinking fund; and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State.

Mr. DARLINGTON. I move to amend, by striking out all after the word "State," in the third line, to the end of the section. The reason I make this motion is that I do not wish the public money to be applied in any other way than in the payment of the debt, and I do not wish it to be implied even that it may be loaned in any way or invested in any bonds.

Mr. BROOMALL. I should be sorry to see that amendment adopted. We should then lose the benefit of this last clause, "and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State." If the sinking fund moneys have to be invested any more again, they shall never be invested in any other way than that. By this amendment we should lose the benefit of that, and I do not see that the words "either directly or through the sinking fund" do any harm, because one mode of paying the debt is to increase the sinking fund for the purpose of doing it. I should be sorry to see the amendment adopted.

Mr. DARLINGTON. My only reason, in a single word, is this: The purchase of the bonds of the State, and the extinguishment of them is the better way always.

Mr. NILES. Suppose the bonds are not due?

Mr. DARLINGTON. No matter; let them be purchased just as the government of the United States after the Mexican war purchased the government bonds and extinguished them.

Mr. BROOMALL. This does not hinder them doing that.

Mr. DARLINGTON. Yes, it does. It implies that you may lend this money by investing in bonds and holding them. My idea is to purchase them in the market if they are not due, and extinguish them—cancel them.

Mr. BROOMALL. Suppose you cannot get them?

Mr. DARLINGTON. You can always get them if you pay the market price for them.

Mr. HARRY WHITE. May I ask what the exact amendment is?

The PRESIDENT *pro tem*. The amendment is to strike out all of the section after the word "State," in the third line.

Mr. HARRY WHITE. I submit, Mr. President, that this is an exceedingly important question. It is no trifling matter. It involves the policy of the management of the State Treasury, against which so much complaint has been made from time to time, seriously affecting what has been charged against the State Treasurer, unjustly doubtless, from time to time, that he was making money by manipulating the public funds. The Convention will understand that you have provided for a sinking fund, which is sacredly devoted

to the payment of the public debt. Then you have a current expense fund. Now, let us discriminate. Is it the desire of this Convention to authorize that sinking fund to be invested upon loans for the benefit of the Commonwealth; or is it the desire to allow only what is called the reserve fund, or what we might properly call the current expense fund, to be loaned for the benefit of the State, and called upon from time to time? It is well enough for us to understand just what we are doing. Observe, the section reads: "The moneys of the State, over and above the necessary reserve (which shall be as small as possible consistent with the public demands) shall be used in the payment of the debt of the State." So far, it is all right. I am in favor of that.

Mr. PURMAN. I ask the gentleman, if he would end the section just as the amendment of the gentleman from Chester proposes, what he would do with the sinking fund? After you had used enough of the revenue of the Commonwealth to pay the ordinary expenses and used all the balance to buy up the debts of the Commonwealth, where would you get anything to put in the sinking fund?

Mr. HARRY WHITE. There is no difficulty about that. My distinguished friend from Greene (Mr. Purman) had the honor at one time to be chairman of the Finance Committee of the Senate, and a very excellent chairman he made too, and recalling his own experience will suggest the remedy in that respect. If I had it in my power, I would not allow the sinking fund to be touched for the current expenses of the government at all. I would have your current expense fund and your sinking fund which you have provided for—

Mr. PURMAN. The gentleman from Indiana does not understand me. What I mean is, that if this section be amended as proposed by the gentleman from Chester, then there can be no money sent into the sinking fund. The gentleman from Indiana and myself agree in keeping the sinking fund sacred, apart from all other matters; but if the section be amended as proposed, you cut out the sinking fund because you absorb all the sources from which it is derived except the proceeds of the sales of the public works.

Mr. HARRY WHITE. Very well; I would do so. If you are going to have any constitutional admonition on the subject, I would have an admonition of this kind. This is not at war with the

policy of a sinking fund. What is the object of a sinking fund? It is to have a fund sacred for a particular purpose. Very well. Now, if that sinking fund is not necessary, if the wisdom of the Legislature shall determine that it is not necessary for the current expenses of the government, use it under the management of the Commissioners of the sinking fund for the payment of the State debt immediately or as soon thereafter as possible. If you will have any admonition at all upon the State, just stop there and make a general declaration that: "The money of the State over and above the necessary reserve (which shall be as small as possible consistent with the public demands) shall be used for the payment of the State debt."

Then you have section twelve, in which it is provided that "All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, or in loans upon the security of the bonds of the United States, or of this State, and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security."

If the estimate, for instance, at the end of the fiscal year, or in the middle of the fiscal year, which is the first of June, shall show that the Commissioners of the Sinking Fund will require \$2,000,000 for the current expenses of the government, \$1,000,000 of which will be required on the first of August to pay the interest on the public debt, and another million in three months time, the Commissioners can so arrange as to invest this \$2,000,000 in some bank, requiring collateral security therefor in the shape of United States bonds or the bonds of the State. That is not inconsistent. I am in sympathy with the amendment offered by the gentleman from Chester, and I think it is in entire harmony with the rest of our work.

Mr. PURMAN. I am much obliged to the gentleman from Indiana for the compliment he has paid me as chairman of the Committee of Finance of the State Senate, which "does me honor over much." I beg his pardon for having interrupted him so unceremoniously. We find in the section that we have already adopted that "The said sinking fund may be increased from time to time, by assigning to it any part of the taxes or other revenues of the State, not required for the

ordinary and current expenses of government; and unless in case of war, invasion or insurrection, no part of the said sinking fund shall be used or applied otherwise than in extinguishment of the public debt, until the amount of such debt is reduced below the sum of five million dollars." If you amend section two as proposed by the gentleman from Chester you will lose the vital part of this section. Then you have in the next section a constitutional provision requiring that "The moneys of the State, over and above the necessary reserve, which shall be as small as possible consistent with the public demands, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State."

All the revenues of the Commonwealth that are raised over and above what is necessary to defray the expenses of the government will be used for the payment of the debt of the State, and therefore there will be nothing to put into the sinking fund. You break up by this section, if amended as proposed by the gentleman from Chester, all the sources of the sinking fund. I am in favor of preserving the sinking fund inviolate for the purposes specified in the Constitution. I have always been opposed to any infringement upon it. I am in favor of that now. I am in favor of continuing such sources of revenue as can be sent into that sinking fund. Either this section ought to remain as reported by the committee of the whole or else it should be voted down, and I do not see that the section itself is of much value.

The amendment was rejected.

MR. KAINE. I move to amend the section by striking out in the second line all after the word "reserve" down to and including the word "demands" in the third line. The words I desire to strike out are, "which shall be as small as possible consistent with the public demands."

The section, if so amended, would read: "The moneys of the State over and above the necessary reserve, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State."

My desire is to abbreviate the section as much as possible.

The amendment was agreed to.

Mr. H. W. SMITH. I propose to amend this section by striking out the last words, "or of this State." When I owe a debt I pay it, and I do not invest it in another debt that I owe. Why should we invest any surplus of the sinking fund in the debt of the State? Why not, if there is anything in the State Treasury, apply it to the payment of the State debt? I fear that something may happen with this sinking fund so that it may sink away all together. Pay the State debt! Cancel it! Extinguish all the evidences of indebtedness!

What is the meaning of this? It is a well settled principle of common law that when the same hand is to receive and pay, the debt is extinguished by operation of law. Here it is proposed to create debt in the same way.

I do not desire to say anything further in advocacy of my amendment, but simply to call for the yeas and nays.

Mr. NILES. Oh, no!

Mr. H. W. SMITH. Yes, sir. I insist upon it. I do not occupy much of the time of this Convention, and I am entitled to insist upon my call for the yeas and nays.

The PRESIDENT *pro tem.* Is the call for the yeas and nays sustained?

More than ten members rose.

The PRESIDENT *pro tem.* The call for the yeas and nays is sustained, and the Clerk will proceed with the call.

Mr. BROOMALL. Before the yeas and nays are taken, I desire to say one word on this subject. Although as a rule I would much prefer to strike out the words "or of this State," and would much prefer that the bonds should be bought so that the debt may be extinguished to the extent of any surplus money which may be in the possession of the State, there may still be times when an exorbitant price may be charged for the bonds of this Commonwealth, and it may not be prudent to buy them although we may with perfect safety loan upon them for a temporary period.

The PRESIDENT *pro tem.* The question is upon the amendment of the gentleman from Berks (Mr. H. W. Smith) to strike out the words "or of this State." Upon that question the yeas and nays have been ordered and the Clerk will proceed with the roll.

The yeas and nays were taken with the following result:

Y E A S.

Messrs. Alricks, Andrews, Bannan, Barclay, Bigler, Black, Charles A., Boyd, Campbell, Carter, Clark, Curtin, Darlington, De France, Finney, Fulton, Gibson, Hall, Horton, Hunsicker, Long, M'Clellan, Smith, Henry W., Van Reed and White, Harry—34.

N A Y S.

Messrs. Achenbach, Addicks, Armstrong, Baer, Baily, (Perry,) Biddle, Bowman, Broomall, Brown, Buckalew, Calvin, Cassidy, Church, Corbett, Cronmiller, Curry, Cuyler, Davis, Edwards, Elliott, Ellis, Ewing, Funck, Green, Guthrie, Harvey, Hazzard, Howard, Kaine, Knight, Lawrence, Lilly, MacConnell, M'Camant, M'Culloch, M'Murray, Mann, Mantor, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Stanton, Stewart, Struthers, Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, J. W. F., Woodward and Wright—64.

So the amendment was rejected.

ABSENT.—Messrs. Ainey, Bailey, (Huntingdon,) Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Bullitt, Carey, Cochran, Collins, Corson, Craig, Dallas, Dodd, Dunning, Fell, Gilpin, Hanna, Hay, Hemphill, Heverin, Lamber-ton, Landis, Lear, Littleton, MacVeagh, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Patton, Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Temple, White, David N., Worrell and Meredith, President—35.

The PRESIDENT *pro tem.* The question recurs upon the section as amended.

Mr. DE FRANCE. Let it be read.

The CLERK read as follows:

"The moneys of the State, over and above the necessary reserve, shall be used in the payment of the debt of the State, either directly or through the sinking fund, and the moneys of the sinking fund shall never be invested in or loaned upon the security of anything except the bonds of the United States or of this State."

The section as amended was agreed to.

The PRESIDENT *pro tem.* The twelfth section will be read.

The CLERK read as follows:

SECTION 12. All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, or in loans upon the security of the bonds of the United States, or of this State, and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security.

Mr. ALRICKS. I move to amend by striking out in the second line of the section the words, "in loans upon the security of the bonds of the United States or of this State," so that the section will read, "all moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, and the Legislature shall provide means for the publication, at least once in every three months, of a statement showing the amount of all such moneys, where the same are deposited or loaned, and on what security."

Mr. BROOMALL. I desire to state that there is a verbal inaccuracy in the printing of this section. The word "in" is left out before the word "or," which, when it is inserted, will so change the phraseology that I think the gentleman from Dauphin will be satisfied with it.

Mr. ALRICKS. I want to make it as brief as possible.

Mr. BROOMALL. The section ought to read, "all moneys of the State shall, as far as possible, be kept at interest for the benefit of the State in, or in loans upon, the security of the bonds of the United States or of this State."

I ask unanimous consent to have this correction made.

Unanimous consent was given, and the section was so modified.

Mr. BROOMALL. The object in putting it in the alternative was just this: That this section applies to moneys in the Treasury which are loaned now, as I now understand, to certain pet banks or individuals or firms all over the State, for purposes that are said not to be very upright. The object is to break up that business, and to compel everybody that gets public moneys, to give security of a definite kind, either the bonds of the United States or of the State of Pennsylvania.

Mr. ALRICKS. The object is perfectly right.

Mr. CURTIN. Will it leave to the State Treasurer, or any other authority,

the right to lend the money in the Treasury at interest?

Mr. BROOMALL. It is not a question of whether the State Treasurer shall loan the money. The object of the Committee on Revenue, Taxation and Finance was to see that the money was properly secured by making it only loanable upon the bonds of the State or of the United States, and that the interest shall go to the State, for the benefit of the State, and not for the benefit of the officials in charge of the money. The understanding now is that there are from one to seven or eight millions of money which instead of being in the vaults at Harrisburg, are scattered all over the State, upon little or no security, and upon interest payable to some one else beside the State. It is to break up this business that the Committee on Revenue, Taxation and Finance have reported this section, and they look upon it as the most valuable section in the whole article; because if the Legislature acts under it, and requires a publication of where the money is, to whom it is loaned, and on what security, I suppose there could be no further complaint of the misuse of the public moneys for the purpose of keeping special persons in office.

Mr. CURTIN. I have not the slightest objection to this section, provided it means that the State Treasurer or any of the authorities who shall have charge of the money, will invest that money in bonds of the United States or of the State. With that I shall be perfectly satisfied, but I do most seriously object to allowing the State Treasurer to lend the money of the State at interest on any other kind of security.

Mr. BROOMALL. Certainly, that is what the Committee on Revenue, Taxation and Finance desire.

Mr. CURTIN. You will make your State Treasurer a broker at once if you allow him to invest the moneys of the State at interest; and while it may be true, and no doubt is, as the gentleman states, that the money of the State is now loaned to pet institutions or individuals and the interest goes into the pockets of the official, directly in the face of penal enactments, I would not put in the fundamental law of the State an authority to the State Treasurer to loan the money at interest. I would not make him a broker to loan the money of the people of this State to any one, but to put it in the se-

curities of the United States or of this State.

Mr. BROOMALL. I entirely agree with the gentleman, if he will allow me to say so; but there are certain moneys that it would be imprudent to invest in the purchase of those bonds, and it is these moneys that should be loaned upon these securities, because these are the moneys that are to be loaned and will be loaned by the State Treasurer anyhow. They are moneys that it would not do to invest permanently. These are the moneys that are loaned for the use of private persons, or for worse purposes, and the object is not to make the State Treasurer a broker, but that the Legislature shall provide by law that in some way or other the money that is now misused shall be used for the benefit of the State, in nothing less than the security of the bonds of the United States or of the State.

Mr. CURTIN. I understand the gentleman perfectly, that there are certain moneys in the treasury which would not be invested in bonds of the United States or of the State.

Mr. BROOMALL. In actual purchase.

Mr. CURTIN. There are certain moneys which you leave to the State Treasurer.

Mr. BROOMALL. No, sir.

Mr. CURTIN. The bonds of the State can be always bought in the open market as well as the notes of individuals and banks, and they can be sold in one hour by telegraph in any banking market in the world. Now, while you prevent the State Treasurer from loaning the money of the State for his own benefit, and subject him to high penal enactments if he does do so, you put into your Constitution the power that the State Treasurer shall loan the money, and he loans the money upon such securities as he may consider good under the provision of acts of Assembly; and if the money is not paid at the time it is due, there is a contract which shields the State Treasurer and his bail from the payment of any sum of money. If there is any money left in the Treasury of the State, over and above that which is necessary for the payment of the public debt, I think it is simply right to invest it in the bonds of the State; but I would not allow the State Treasurer to loan it to any bank.

Mr. GIBSON. I understand the chairman of the Committee on Revenue, Taxation and Finance to propose by this section that as much money as possible be kept for the benefit of the State in bonds.

Mr. CURTIN. No, that is not it. That is the objection that I make. I know the common sense of the chairman of the committee will see that the State Treasurer ought not to be allowed to loan the money of the State at interest.

Mr. BROOMALL. We have provided in this section that he shall not loan except on certain security.

Mr. CURTIN. I would not put that in. I would not allow the State Treasurer to loan any money whatever. You might just as well invest it in any individual bank.

Mr. DARLINGTON. I beg this Convention to pause one moment before we put any such provision in the Constitution as is contained in the twelfth section. What have you done by the eleventh section? You have provided that the money of the State, over and above the necessary reserve, shall be used in payment of the debt of the State, through your sinking fund or otherwise. We want no money to be at interest. There should be no money in the Treasury except the proper reserve, necessary for the ordinary expenses of the government. There ought to be none put at interest. The idea of loaning out the money of the State under the authority of the Constitution, by any officer, is an anomaly in the organic law of any country.

Mr. WHEBBY. What would you do with the reserve?

Mr. DARLINGTON. I would use the reserve to pay the ordinary expenses of the government. I would not put it anywhere except in the treasury. I would not let it go to the brokers, or bankers, or anybody else.

There is something in this, and I beg gentlemen to think of it. This practically results in the question whether it is the true policy of the State of Pennsylvania to loan out her money at all. Why should we have any tax collected beyond what is necessary for the expenses of the government? Why should we provide for the collection of taxes of any kind, beyond the ordinary expenses of the government and the payment of the interest on the public debt, with perhaps a proper allowance for the extinguishment of the debt? Whenever we have what is necessary beyond the ordinary expenses of the government, of which the officers of the State must judge, it should be appropriated to the sinking fund. Now, under the operations of this section, it shall be either invested in the

securities of the United States or of the State. You will have no moneys in the treasury except the proper reserve, and you ought to have none. The true policy of the Convention should be to negative the twelfth section and let the article stand on the eleventh. I do not like the policy of loaning public money to anybody. The abuses of our present system have come from that practice. I know that thousands, and tens of thousands, and hundreds of thousands of dollars, have been loaned from the State Treasury every year, often to irresponsible persons. It is matter of public notoriety that the State Treasurer makes large sums of money by loaning out the public funds in unsafe places.

Does any man know or can any may tell me where the public money is? Calls have been made on the treasury and statements made that affect to tell; but the public know nothing of it. You go to the books and you cannot tell where the money is. It may be with this bank or with that bank, or with this broker or with that broker; but I beg to state what is perfectly well known in my own county, that two gentlemen residing there, of excellent character, obtained from the treasurer, the one ten or twenty thousand dollars and the other five thousand, and loaned it out where fortunately those gentlemen had it repaid, though it was afterwards lost. I object to all that. I object to anybody having money from the treasury. I object to putting such an idea in the Constitution at all, as that the money of the State shall be loaned. We ought to put our condemnation on it most emphatically by refusing to adopt the section or countenancing the idea that it is under any circumstances to be loaned; and then if the State Treasurer, unmindful of his duty, should be found to have speculated with the money in any way, provide that a bill in equity shall call him to account and that it shall be the duty of the Attorney General, the proper officer of the government, to compel the payment into the Treasury of every dollar which he may have unlawfully made out of the public funds.

It is for this reason that I object to this section altogether and sincerely hope that it may be negated.

Mr. C. A. BLACK. I move as an amendment to the amendment, to strike out in the second line "or in loans upon the security of" and insert "by investment in."

Mr. BROOMALL. I have no objection to that.

Mr. ALRICKS. I accept that modification of my amendment.

The PRESIDENT *pro tem*. The amendment to the amendment is accepted by the mover of the amendment, so as to make the section read:

"All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State by investment upon the bonds of the United States or of this State."

Mr. HOWARD. Mr. President: I am opposed to this amendment. The amendment binds the State Treasurer, as I understand, to invest absolutely in the bonds of the United States government or of the State. It forbids him loaning upon call upon the security of the bonds of the United States or of the State. The object of the amendment is to forbid him from making temporary loans on the collateral security of the federal government or of the State. This amendment ought not to prevail; and why not? We all know that it has been the practice of State Treasurers to loan the public money continually without any security at all, and put the profits thereof in their breeches-pockets; and we have no security at all for this money but the bond of the State Treasurer himself and his sureties. Now, the section as it stands proposes that if the State Treasurer loans this money as it has been generally loaned, to banks and savings funds institutions and his friends throughout the Commonwealth, at present without any security to the Commonwealth, he shall hereafter take such collaterals as the bonds of the United States government or the bonds of the State, and the interest, instead of going into the pockets of himself or his friends, will go into the State Treasury, where it belongs.

This is not the first time that the people have tried to make a fight on this question to compel the State Treasurer to make a deposit of this money for the interest of the State and not for himself. He does not make deposits at any place without getting more or less, according to the private contract that is made.

Why is it that the State Treasurer is to be limited to an absolute investment, that he should not be permitted to loan the funds of the State upon the highest possible security that can be given in temporary loans? Of course the Legislature would provide that when these loans are made they shall be call loans,

just as the funds are now loaned. There now is in the sinking fund about \$3,000,000 in money, and it does not get much, if any, below that amount. The use of this large fund is now and in the past has been for the benefit of the State Treasurer and his friends! It is a shame that the great Commonwealth of Pennsylvania should be compelled by law to keep a sinking fund at all. She ought to be able to pay her debts, and she is able to assess taxes annually to meet all her obligations, and she does not need a sinking fund for any honest purpose. This fund is as good as a dozen banks for the State Treasurer and his friends, who want their hands in the public funds up to the elbow and are not satisfied—they want to go clear up to the shoulders. Men who make sinking funds make them generally where there is no necessity for them, for the simple reason that heretofore an innocent and gullible public have allowed the funds in them to be used by the managers. That is the principle reason for keeping up the sinking fund of the Commonwealth. It would be better to sell the bonds given for the public works and clean it out, and never have another *sinking* fund. Just about the amount of \$3,000,000 annually has been kept there for the State Treasurer to bank upon, loan it about the Commonwealth without any security; and when, as by this section, the highest security is demanded for it, gentlemen say, "No, it shall not be loaned upon call under such restrictions as may be provided by law upon the best security. What will be the result? The State Treasurer will say, "I cannot invest; bonds are too high; it would not be prudent to buy in the market at present." The result would be that the money would still be deposited in banks throughout the Commonwealth, and he would still put the interest in his pocket as usual, or parcel it among his friends. If he was compelled by law to either invest it or to loan it on call upon good security, the Commonwealth would get the benefit of it.

Mr. C. A. BLACK. I find that my amendment will not answer the purpose, and I ask leave to withdraw it.

The PRESIDENT *pro tem*. The amendment to the amendment is withdrawn.

Mr. ALRICKS. I do not intend that a false impression shall go forth, that those who are in favor of this amendment wish the State Treasurer to make money off the Commonwealth's principal funds.

By no means, sir. I do not intend, however, that the State Treasurer should be the broker of the Commonwealth. The motion that is made here is simply that there shall be no trading in the funds of the Commonwealth.

Now, we all know that heretofore these funds have been used for electioneering purposes. It is proper that the money of the Commonwealth should be put out at interest, it is said. My own apprehension is that it should not be invested in the bonds of the United States, but that at once the Commonwealth, through her State Treasurer, should buy up the bonds of the State, and thus pay our own debt, and that would be accomplished if you would strike out the words, "in the bonds of the United States." But the motion that I made was this, to strike out the words, "loans upon the securities," and that this money should be invested in the bonds of the United States, and leave it be directly invested in the bonds of the United States. They always have a market value. If the State Treasurer plays false you have nothing to do but look at your prices current, and you can tell whether he was playing false or not. You can ascertain whether he was doing justice to the Commonwealth he represented or not.

We are all here, I believe, anxious to attain the same object, and my own opinion is that the better way to attain it would be to strike out the whole sentence and require him to make the investment in the bonds of the State of Pennsylvania, because then it would be paying our own debt; but as the section now stands, I apprehend that it is proper that we strike out the words "loans on the securities," and leave him to make the investments on bonds of the United States and this State; because by reference to the prices current the people would know whether he was dealing fairly or not.

Mr. HARRY WHITE. I wish to offer an amendment to the amendment now offered by the delegate from Greene.

SEVERAL DELEGATES. He withdrew it.

The PRESIDENT *pro tem*. It was accepted by the delegate from Dauphin, and is now the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. HARRY WHITE. I wish to modify that amendment, and I call the attention of delegates to it because there is very much force in what fell from the lips of the delegate from Centre. The delegate from Greene moved to strike out "or any

loans upon," and insert "by investment in." I understand that is the amendment. Now, I move to strike out the words "investment in" and add the words "secured by." Then it will read :

"All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State, secured by bonds of the United States or of this State."

Now, one word. I do not want to occupy time for the sake of occupying time. The delegate from Centre said with great force that the treasury of a great Commonwealth should not be turned into a broker's office. As this section would confine it with the words, "or in loans upon the security," you will find a merchant here and an enterprising man there with bonds going to the State Treasurer and trafficking with him for a loan and securing it upon United States or State bonds for the benefit of the State if you please. I submit that no business man of this Convention, desirous of knowing anything about the management of the State treasury, would desire to have that thing done. We want to administer some reform to the so-called abuses in the management of the Treasury. If we do, how is it to be done? It is certainly wanted. We must have some reserve on hand. There must be some fund which is not used in the current expenses of the government. What shall be done with it? We are not to keep it in the vaults of the treasury. Shall we keep it in some bank? No, certainly, but loan it all around. If it is to be kept in the bank, it ought to be kept there for the benefit of the State and not for the benefit of the State Treasurer.

That is what I propose, and I sympathise with a proposition of that kind. I submit that we ought to make our language here so specific that it cannot be misinterpreted hereafter. And if I am allowed to do so, and if this amendment is adopted, I will offer an amendment, as follows: "In such manner as shall be provided by law;" and that will require the Legislature to pass a statute which will probably authorize the reception of bids from responsible banking institutions and require the State Treasurer to deposit the money with that institution which will pay the highest rate of interest. That is another matter. That is the purpose that I have in view in striking out the words "or in loans upon," and requiring the section only to read. "All moneys of the State shall, as far as possi-

ble, be kept at interest for the benefit of the State, secured by the bonds of the United States or of the State." That is the purpose of my amendment.

Mr. BROOMALL. The amendment that the gentleman suggests does not change the idea at all; it changes simply the phraseology, and I think not for the better. His second idea of adding to the section, "and the Legislature shall provide by law for carrying out this section," I entirely approve, and I will offer it myself, if he does not; but I trust his present amendment will not be adopted.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Indiana to the amendment of the delegate from Dauphin.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Dauphin, (Mr. Alricks,) which will be read.

The CLERK. It is to strike out the words, "or in loans upon the security of" and insert the words "by investment in," so as to read: "All moneys of the State shall, as far as possible, be kept at interest for the benefit of the State by investment in the bonds of the United States or of this State."

Mr. BROOMALL. That will force the State government into the broker's market and allow the brokers to make a corner upon it both in buying and selling; and, besides that, it is better that we should allow them to make temporary loans on temporary bonds, even if we allow them to make permanent loans on permanent bonds in the manner spoken of by the gentleman. The section has reference to temporary loans.

The amendment was rejected, there being on a division ayes, twenty-nine, less than a majority of a quorum.

Mr. BROOMALL. Now I move to amend by adding at the end of it "and the Legislature shall provide by law for carrying out this section."

Mr. HARRY WHITE. Insert after the word "State" in the third line the words "in such manner as shall be provided by law."

Mr. BROOMALL. Very well, I accept that.

The amendment was agreed to.

Mr. BROOMALL. One other amendment. I move to insert after the word "the" and before "benefit" in the second line, at the instance of some delegates

here, who prefer it, the word "sole" so as to read "for the sole benefit of the State."

The amendment was agreed to.

Mr. M'MURRAY. I move to amend by inserting in the sixth line, after the word "loaned," the words "and at what rates of interest," so as to read, "a statement showing the amount of all such moneys, where the same are deposited or loaned, and at what rates of interest, and on what security," &c.

Mr. BROOMALL. That is right.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. DARLINGTON. I ask for the yeas and nays.

Mr. CURTIN. I second the call.

The question was taken by yeas and nays with the following result :

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Edwards, Elliott, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hazzard, Horton, Howard, Hunsicker, Kaine, Lawrence, Lilly, Long, MacConnell, M'Camant, M'Clean, M'Murray, Mann, Mantor, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith H. G., Smith, Henry W., Stanton, Stewart, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, J. W. F., Woodward and Wright—83.

N A Y S .

Messrs. Addicks, Andrews, Bannan, Clark, Curtin, Darlington, DeFrance, Ellis, Hall, Porter, Struthers and White, Harry—12.

So the section was agreed to.

ABSENT.—Messrs. Ainey, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Carey, Cassidy, Collins, Craig, Dallas, Hanna, Hay, Hemphill, Heverin, Knight, Lamberton, Landis, Lear, Littleton, MacVaugh, M'Culloch, Metzger, Minor, Mott, Newlin, Palmer, G. W., Read, John R., Ross, Runk, Sharpe, Simpson,

Smith, Wm. H., Temple, White, David N., Worrell and Meredith, *President*—38.

Mr. S. A. PURVIANCE. I offer the following, to come in after the twelfth section :

SECTION 13. The Legislature shall not pass any law authorizing the levying of a special tax upon one class of taxable property for the special purpose of benefiting another class.

I desire to say but a few words in explanation of this amendment. It is intended to meet a class of taxation which has grown into a very great abuse, which is exceedingly obnoxious to the people, and I may say oppressive. The Legislature has, from time to time, passed laws authorizing the levy of a special tax upon a class, the proceeds of which to be applied to the support of another class; as, for instance, the levy of a tax upon unseated lands in a county for the purpose of building a bridge over a certain designated stream; or a levy of a tax upon the lands of non-resident owners for the purpose of building a town hall; or, as in a case to which I refer, the levy of a tax on the saloon keepers of the town of Johnstown for the purpose of maintaining a police force; or, as in a case in Bradford county, the levy of a tax upon the people of Towanda of \$500, exceeding the amount of taxes anywhere else in the county. Opposition was made to the assessment of that tax on the ground that it was unequal, unjust and unconstitutional; and yet the Supreme Court decided that that tax was within the power of the Legislature to create, although it was special in its nature. In the case of the levy of a tax in Johnstown on the saloon keepers, for the purpose of maintaining a police force, it was ruled that that was right and proper, because the police force was to some extent a necessary consequence of the keeping of those saloons, which, to say the least, was rather far-fetched and rather illogical.

Now, sir, I can give you another case, a case where the Legislature have passed a law authorizing the levy of a tax upon marine, fire and life insurance companies, for the purpose of maintaining a fire department. While it may be seen that marine and fire insurance companies may have some relation to the maintenance of a fire department, I think it would be a difficult matter for any one to see that a life insurance company has any connection with any such department. So, sir, his Honor Judge Woodward refreshes

my recollection of a case involving an important principle that came up from Lehigh county, where the iron ore of a certain township was hauled over a certain road. Some one came to Harrisburg for the passage of a special law authorizing, not a tax, because "tax" it seems was not named in the bill at all, but authorizing the collection of twenty-five cents a ton on every ton of ore that was hauled over that road, to be collected as other debts were collected before a justice of the peace, and hence that community, although the sum was small, was singled out for the operation of that special law.

I think it is right and proper that we should prohibit the Legislature in future from passing any law of that kind; for when a law of that sort is passed, however oppressive it may be, it is not difficult to find in the argument of ingenious counsel some reason for connecting it with the benefit of the public. Therefore it seems to me that it demands at our hands an entire prohibition of the passage of any such law. In the article on legislation there is no prohibition that would cover this, and therefore a general law might be passed authorizing just such a thing as that, which we ought to prevent. After having the attention of this Convention and other gentlemen have addressed the House in opposition if they desire to do so, I shall call for the yeas and nays on this section, which I conceive to be of very great importance.

I am aware of the fact that special laws of this sort have been passed and made applicable to the county of Allegheny, and in some instances I believe have worked very well, such as a tax on saloon-keepers to assist in the support of the work-house in that county, but I appeal to the Convention whether there is any sense of justice in that class of special enactments which, if unrestrained, may lead to most ruinous oppression upon any class of our citizens which might be singled out for that purpose by the Legislature.

Mr. MACCONNELL. Mr. President: I do hope this Convention will not pass the amendment now offered.

The delegate offering it referred to an act of the Legislature in regard to Allegheny county, with respect to vagrants made by liquor sellers, at least principally so, and the Legislature authorized the laying of a tax upon the liquor sellers of the county to be applied to the building of the workhouse for those vagrants. The legislation was in this shape: It increased

largely the license fee and provided that three-fourths of it should be applied to the building of the work-house. It has been so applied for years, and the sum has almost paid the whole expenses of that house, if my information is correct.

The proposition, as I understand my colleague, is to strike at that law. Why do it? Why cut off the burdens upon the liquor sellers of Johnstown to support in part the police force which is made necessary by the carrying on of their nefarious business? Why throw upon the people of Allegheny county the burden of paying the balance that they have unpaid for building their work-house, a work-house made necessary by these very liquor sellers? Why throw that burden on the rest of the people instead of on the liquor sellers? It seems to me a most extraordinary proposition.

I do hope that the gentleman will not insist upon the amendment, but if he does I do hope the Convention will not agree to it.

Mr. WOODWARD. Mr. President: I concur with the gentleman from Allegheny (Mr. S. A. Purviance) in the spirit of the amendment which he has proposed. I did not attend particularly to the phraseology; I do not know that it is sufficiently guarded; but I do conceive that the purpose and object which the amendment has in view is very necessary and proper.

Mr. President, this business of legislating special taxes on persons and communities has come to be an intolerable disgrace to Pennsylvania; and the vacillation of the Supreme Court in sustaining some and condemning others is as remarkable as the fluctuations of the Legislature. The gentleman who moves this amendment has referred to many of the cases, some of which are very striking. There are others which he did not mention. There is Hemphill's appeal, for instance, where the Supreme Court held that it was unconstitutional to tax a citizen for a street improved for the benefit of the whole community. You may compel a man to pay for many things relative to gas pipes and water pipes about his premises, but when you impose a tax on him for making streets for the benefit of the public, the doctrine of the Supreme Court in Hemphill's appeal is that the law is unconstitutional.

Per contra came the Saucon township case, in Lehigh county, in which act of

Assembly the word "taxation" or "assessment" or any similar word does not occur from beginning to end. It does not appear to have been the exercise of the taxing power on the part of the Legislature at all. They do not appear to have suspected that it imposed a tax on anybody; but they created the relation of debtor and creditor between the contracting parties. A contract is made. A land owner, a farmer having iron ore on his farm, leases it for twenty years at so much per ton, a written lease which constitutes a contract between the parties. The Legislature then comes in and passes an act declaring that every load of ore that goes over the road in that township shall subject that farmer to an action before a justice of the peace for the recovery of the assessment of twenty-five cents a load, or whatever it is, in the form in which debts of like amount are recoverable.

Observe, it is not the assessment of a tax; it is the creation of a debt against that farmer; and the Legislature might have required him to pay the supervisor of the township more money than he had stipulated to receive from the lessee of his iron ore mine. It did not in point of fact amount to an utter confiscation of his rent; but it took a large part of it without his consent after the lease was made, and might, upon the same principle, have taken the whole. It was a legislative interference between contracting parties after their lease was made, the word "tax" not being in the law, as I said, but turning the judiciary of the Commonwealth into tax-gatherers, and making taxes collectable not by assessments in the ordinary mode, but before a justice of the peace, and going possibly from the justice of the peace to the common pleas, and from the common pleas to the Supreme Court, and from the Supreme Court of the State to the Supreme Court of the United States. This was the principle introduced by that act of Assembly. That case came before our Supreme Court some time after the argument of Hemphill's appeal to which I have alluded, and you may or you may not believe it, Mr. President, but the fact is so; the Supreme Court held that act of Assembly to be constitutional legislation! Judge Agnew delivered a dissenting opinion which does him infinite honor, for he declared from his place on the bench that the law violated principles of the Bill of Rights, and of the liberties of the citizens of Pennsylvania. There stands that monstrous decision sus-

taining that most monstrous law, subverting, in the words of Judge Agnew, the fundamental principles of the Bill of Rights.

I think I speak correctly when I say that the very week before this case from Lehigh county was argued in the Supreme Court, a case from Wilkesbarre came before them where the Legislature had authorized the city of Wilkesbarre to tax hotel landlords, opera-house keepers, restaurant keepers, lawyers, and other business men to support the city of Wilkesbarre. The constitutionality of that legislation was assailed before the Supreme Court of this State; and about a week after they had decided the Saucun township case they decided that that legislation was unconstitutional and they reversed the court in Luzerne county that had sustained it. See how the court goes on oscillating from one side to the other like a pendulum of a clock.

The PRESIDENT *pro tem*. I have seen them at that often. [Laughter.]

MR. WOODWARD. Formerly you did not see so much of it. [Laughter.]

MR. PRESIDENT, the Legislature no doubt intend to do everything that is right, and of course the Supreme Court intends to do everything that is right; but I have sometimes regretted that we had a written Constitution, and have thought it might be better if we were as they are in Great Britain, without a written Constitution, and let the Constitution be what the Parliament and the courts declare it to be; then we should not have these doubts. But we have undertaken to define and secure certain fundamental principles. Now, amongst them, I suppose there is none more valuable than that one which gives to the Legislature the exclusive power of taxation; and therefore I voted in this House against the proposition to abridge and cripple that power in behalf of manufacturing corporations. I am not willing to cripple the taxing power in the hands of the Legislature. I hold it to be absolute, and so long as they confine themselves to legislation that is of the nature of taxation, I hold that there is no constitutional limitation upon their power at all, and I am not willing to impose any. It is essential to the life of the government that this large power should exist somewhere, and in all free governments it does exist in the legislative department. There I want to leave it. Therefore I voted against a very captivating proposition

this morning in vindication of this principle.

I have no thought of disturbing it now; but when this sound principle is so capriciously and ridiculously applied, as it is, from time to time, in the legislation that my friend from Allegheny strikes at by this amendment, then I say we ought to stop; we ought to prevent this kind of legislation, compel the Legislature to exercise their unquestionable and unqualified power over taxation as legislation ought to be, general for the whole State, instead of picking out this case and that case and the other case, and assessing upon it enormous and intolerable burdens, confiscating a farmer's rights under a lease, as was done in Lehigh county under legislation for taxation purposes, when I tell you, (I speak advisedly,) that from the beginning to the end of that enactment the word "tax" or the word "assess" does not occur; there is no such thought in the act of the Legislature.

The PRESIDENT *pro tem*. The gentleman's time has expired.

SEVERAL MEMBERS. Go on.

Mr. WOODWARD. I do not care to go on. ("Proceed.") I rose simply to support the amendment. I did not attend carefully to the phraseology. I think perhaps the phraseology ought to be modified; but the object at which this amendment is aimed is a noble and a worthy object. It may be very well for us all to consider it carefully. I have no great respect for liquor sellers or for liquor selling; all the liquor I have ever had, I have given away. [Laughter.] I never sold any, and God forbid I ever should. I have no great respect for liquor sellers. I do not believe men who make a living by selling a dangerous element to their neighbors are the most deserving class; but then what am I to think of the argument of my friend from Allegheny, (Mr. MacConnell,) that we are to justify this vicious legislation for the sake of punishing liquor-sellers, that we should charge the liquor-sellers with a class of burdens that do not belong to them because they are outlaws! I suppose that is the idea. We are to impose upon them an unreasonable share of taxes for that reason! I say that is not a correct principle. The selling of liquor may be a great evil; but it is a very poor principle to legalize this thing and then come and complain that because of the evils this legalized traffic occasions, we will put the duty of supporting the police of Johnstown on it; we will

put the duty of supporting the city of Wilkesbarre on these liquor-sellers and these lawyers, for that was the legislation there. [Laughter.] That is very faulty. It is no apology for such legislation that liquor selling is a mean business.

This legislation is either according to the theory of our Constitution or it is a gross violation of it. I maintain that it is a gross violation of the first principles of our Constitution and of that unqualified power to legislate for taxation which our Constitution gives to the Legislature. I will never question the power of the Legislature so long as they exercise it in the spirit of the Constitution, as a power to be exercised over the whole community for the good of the whole community, for the oppression, if you please, of the whole community; let the whole community be burdened alike. As long as the Legislature exercise their authority in that way, I stand here to defend it; but in this fragmentary, casual, unfair, spiteful mode of legislating personally against this class and then that class, I do not know what my friend from Allegheny may think of such legislation as that, but I am opposed to all that as being violations instead of an exercise of the power of legislation which the Constitution confers upon the Legislature.

Now, I believe the amendment is intended to cut up by the roots and stop that kind of vicious legislation; and if it is I mean to vote and I hope the House will vote for it.

Mr. BROOMALL. I would ask the gentleman from Allegheny to withdraw his amendment for a moment while we offer a section of the old Constitution that was accidentally left out.

Mr. S. A. PURVIANCE. I withdraw my amendment for the present.

Mr. BROOMALL. The amendment will be offered by the gentleman from Allegheny (Mr. T. H. B. Patterson.)

Mr. T. H. B. PATTERSON. I offer the following amendment as a new section:

"SECTION —. The Commonwealth shall not assume the debt, or any part thereof, of any county, city, borough or township, unless such debt shall have been contracted to enable the State to repel invasion, suppress domestic insurrection, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness."

I will state to the Convention that this is the sixth section of the article on the public debt in the present Constitu-

tion. It is in the identical language of that section with the exception of leaving out the words "or of any corporation or association," which are provided for in the seventh section of the present article.

The amendment was agreed to.

Mr. BUCKALEW. Now I ask that that come in after section nine, so as to come in its regular order. ["Yes." "Yes."]

The PRESIDENT *pro tem.* No objection is made and it will be placed after section nine.

Mr. S. A. PURVIANCE. I now renew my amendment, which is to add as an additional section the following:

"The Legislature shall not pass any law authorizing the levy of a special tax upon one class of taxable property for the special purpose of benefiting another class."

The amendment was agreed to.

The PRESIDENT *pro tem.* The article is concluded.

Mr. BROOMALL. I move to refer it to the Committee on Revision and Adjustment.

The motion was agreed to.

FUTURE AMENDMENTS.

Mr. LILLY. I move that the Convention proceed to the consideration on second reading of the article on Future Amendments, being No. 16.

The motion was agreed to, and the Convention proceeded to the consideration on second reading of the article on Future Amendments, reported from the committee of the whole, which was read as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their Journals, with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next election in at least two newspapers in every county in which two newspapers shall be published; and if in the Legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be sub-

mitted to the people in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority of the electors of this State voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted to the people oftener than once in five years: *Provided*, that if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly.

Mr. FUNCK. In the eighteenth and nineteenth lines I move to strike out the words, "but no amendment or amendments shall be submitted to the people oftener than once in five years," so as to leave the section stand exactly as it stands in the Constitution now.

No inconvenience has been felt from the provision of the old Constitution. No amendments adopted by the Legislature have been prejudicial to the public interests, but, on the contrary, it is desirable that this power should be retained by the Legislature, and particularly so at this time, because we are about framing an amended Constitution to be submitted to the people for their ratification. I have no doubt before we have much practice under the new Constitution if adopted by the people some defects will be discovered which we supposed had been provided against. If the Legislature then has the power to submit additional amendments so as to cover those defects it will prove beneficial to the public. I therefore hope that no change will be made in this section, but that it will be suffered to remain exactly as it stands in the old Constitution.

Mr. J. M. BAILEY. I think the gentleman has inadvertently fallen into an error. This five years clause is now in the Constitution exactly as it is in this section and I, with him, hope that it will remain just as it is in the present constitution.

Mr. FUNCK. Yes, I had overlooked that clause in the Constitution. I would prefer to see it left out, so as to give the Legislature and the people complete control over the organic law of the State; then if amendments are hereafter found to be necessary they can from time to time be

promptly made and submitted to the people.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lebanon.

The amendment was rejected.

Mr. BUCKALEW. I move to insert the word "general" before "election," in the seventh line, so as to read, "before the next general election." After the amendments are agreed to by the Legislature, there may be a spring election, and it is obviously intended that the matter should go over until the next year, until the next general election.

The amendment was agreed to.

Mr. GUTHRIE. I propose to amend this section, by adding in the seventh line, after the word "newspapers," the words "one of each political party."

SEVERAL DELEGATES. No politics in the Constitution.

Mr. GUTHRIE. It is suggested to me to modify by saying "of different political parties," and I accept that modification.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny (Mr. Guthrie) as modified.

Mr. GUTHRIE. I am as much opposed to the introduction of partisan politics into the Constitution as any gentleman on this floor; but I think this is a necessary provision here. In my county, as I presume it is in a great many other counties in this State with newspapers of both sides published there, only one side can see what publications are made by authority of law. I think it is nothing but fair that both sides should have this publication, so that the people may all get to see what is proposed to them. I think it is fair to both parties and should be provided for.

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. GIBSON. I should like to suggest to the gentleman from Allegheny a modification of this kind: "In two newspapers to be selected by the board of commissioners, to be designated by a unanimous vote of the board of commissioners," because one commissioner would be of the minority party. ["No." "No."]

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. J. PRICE WETHERILL. I should like to ask the gentleman from Allegheny one question before the yeas and nays are taken. There may by three political

parties in the State, certainly within the next thirty years; and I should like to know how he is going to designate them.

Mr. EDWARDS. In some of the counties there may not be any newspaper at all.

Mr. J. M. BAILEY. I think this matter may be arranged. I am in entire sympathy with the object which the gentleman Allegheny (Mr. Guthrie) wishes to accomplish, and I therefore would suggest to him as better language, that instead of recognizing any political party, he use the words: "In two newspapers having the largest circulation in each county." That will meet the same object. ["No." "No."]

Mr. LILLY. I hope it will not be modified at all.

Mr. GUTHRIE. I should like to modify it by striking out, in the eighth line, the word "two" before "newspapers," and inserting "such."

The PRESIDENT *pro tem*. Does the delegate withdraw his prior amendment?

Mr. GUTHRIE. No, sir; I merely ask to add this to it.

Mr. CLARK. I ask that the section be read as it is proposed to be amended.

The PRESIDENT *pro tem*. The Clerk will read that part of the section.

The CLERK read as follows:

"And the Secretary of the Commonwealth shall cause the same to be published three months before the next election in at least two newspapers of different political parties in every county in which such newspapers shall be published."

Mr. STANTON. If the gentleman desires political parties to be represented, had he not better mention them? Here is the Temperance party, the Know Nothing party, the Democratic party, the Republican party, and the Liberal and Reform party. Let him designate what he wants.

Mr. DARLINGTON. I merely want to suggest that ever since this mode of amendment was adopted, thirty-five years ago, there have been several amendments to the Constitution, and so far as I have ever heard never the slightest difficulty about everybody getting to understand precisely what was before the people, having gone twice before the Legislature in two successive sessions and then published prior to a general election. Nobody can suggest that any one has been left in ignorance of what was to be done, and the publication has been a mere matter of

whether you would favor one political party or another in each particular county. I think we might leave that entirely to the section as it stand.

MR. CORSON. Mr. President: It looks to me very much as if this amendment was about to carry, and as I do not exactly like the wording of it, I would suggest to the gentleman from Allegheny that he couch it in this language:

"Published three months before the next election in two such newspapers in every county, where two are published, as will best inform the political divisions of the people."

That mentions no party whatever, and that will compel the powers that be to select those papers which are the exponents of the two greatest rivals for popular favor.

I move to amend the amendment by striking it out and inserting after the word "two," in the seventh line, the words "such newspapers as will best inform the political divisions of the people."

MR. GUTHRIE. I will accept that, if I understand it rightly.

The question being put, a division was called for and the ayes were forty-three.

MR. EDWARDS. I ask for the yeas and nays.

More than ten rising to second the call, the question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Bidle, Bigler, Black, Charles A., Boyd, Brown, Buckalew, Bullitt, Clark, Cochran, Corson, Cronmiller, Curry, Davis, De France, Dodd, Dunning, Elliott, Ellis, Ewing, Fell, Fulton, Gibson, Gilpin, Green, Guthrie, Hall, Hazzard, Horton, Lilly, Long, M'Camant, M'Murray, Mitchell, Niles, Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, Jno. N., Purviance, Samuel A., Reed, Andrew, Smith, H. G., Stanton, Stewart, Wetherill, John Price, and Woodward—53.

N A Y S .

Messrs. Addicks, Baily, (Perry,) Banan, Bowman, Calvin, Church, Curtin, Darlington, Edwards, Finney, Funck, Howard, Lawrence, MacConnell, M'Clean, Mann, Mantor, Palmer, H. W., Pughe, Reynolds, Rooke, Russell, Smith, Henry W., Turrell, Van Reed, Walker, Wethe-

rill, J. M., Wherry, White, Harry and White, J. W. F.—30.

So the amendment was agreed to.

ABSENT. — Messrs. Ainey, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Brodhead, Broomall, Campbell, Carey, Carter, Cassidy, Collins, Corbett Craig, Cuyler, Dallas, Hanna, Harvey, Hay, Hemphill, Heverin, Hunsicker, Kaine, Knight, Lamberton, Landis, Lear, Littleton, MacVeagh, M'Culloch, Metzger, Minor, Mott, Newlin, Palmer, G. W., Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Struthers, Temple, White, David N., Worrell, Wright and Meredith, *President*—50.

MR. STEWART. I move to amend, by striking out all after the word "the," in the thirteenth line, and inserting the following:

"Qualified electors of the State, in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe; and if such amendment or amendments shall be approved and ratified by a majority of those voting on such amendment or amendments, shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years: *Provided*, That when two or more amendments shall be submitted, they may be voted upon separately."

It will be observed that the amendment only proposes to change the phraseology of this section. I think as it stands it is objectionable because in one place we have the amendment submitted to "the people" and then again we have it submitted to "the qualified electors." This amendment, if adopted, will preserve the harmony of the whole section, and I think it ought to be done. It does not change a single idea embodied in the language, but does change, I think to advantage, the phraseology of the section.

MR. TURRELL. If I rightly understood the reading it does change the substance of this matter very materially. By this it is provided that "if the people shall approve such amendment or amendments by a majority of the electors of this State voting thereon." That part of it, if I understood the gentleman, is left out, and it is only a majority of those voting upon it by his amendment.

MR. STEWART. There will none vote upon it except qualified electors of the State.

Mr. TURRELL. But this requires that a majority of the voters of the State shall vote for it. Yours only requires a majority of those voting for it.

Mr. GREEN and others. Oh no, only a majority of those voting thereon.

Mr. STEWART. I ask that the Clerk read my amendment.

Mr. TURRELL. I think I am mistaken on reading the language a second time.

The CLERK read the amendment.

Mr. BUCKALEW. I think there is another material change in the word "may," which is substituted for the word "shall" by the amendment of the gentleman from Franklin.

Mr. STEWART. I will modify it, by striking out "may" and inserting "shall" in the proviso at the close.

Mr. MANN. The objection made by the gentleman from Susquehanna is certainly sustained. Under the proposed amendment, if but twenty thousand voters vote on an amendment and eleven thousand of them are for it, it will carry. Eleven thousand votes out of seven hundred thousand will carry an amendment under the proposition of the gentleman from Franklin!

SEVERAL DELEGATES. It is so under the section.

Mr. ARMSTRONG. In both these sections as drafted, the words are used "approved and ratified." In this connection the latter is mere tautology; the word "approved" covers the very idea. The words "and ratified," I therefore move to strike out.

Mr. STEWART. I agree with the gentleman; I accept the modification.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin as modified.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is on the section as amended.

The section as amended was agreed to.

Mr. FUNCK. I offer the following additional section, which was reported by the committee:

SECTION —. At the general election to be held in the year one thousand eight hundred and ninety-four, and at the general election held every twentieth year thereafter, the electors of this Commonwealth shall vote for or against a Convention to amend the Constitution; and whenever at any of such elections a majority of the votes cast shall be in favor of such Convention, then the same shall be held; and the Legislature shall provide

for carrying out the provisions of this section.

Mr. President, the purpose of the amendment is to secure to the people of the Commonwealth the control over their fundamental law. Under the old Constitution no amendments could be made to the Constitution unless first proposed by the Legislature, and the people of the State had no right to direct that a Convention should be called. This section now gives to the people the right to vote upon that question once every twenty years, and I think that in a republican form of government like ours, the people should have the control over this matter so that at least to that extent they may have an opportunity of expressing their judgment as to calling a Convention.

The question being put on the amendment, a division was called for.

Mr. FUNCK. I ask for the yeas and nays.

Ten members rose to second the call, and the yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Buckalew, Calvin, Church, Cochran, Ewing, Fulton, Funck, Gibson, Horton, Howard, Lilly, M'Camant, M'Murray, Mann, Mitchell, Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Pughe, Reed, Andrew, Russell, Struthers, Van Reed and Walker—26.

NAYS.

Messrs. Addicks, Alricks, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bannan, Bigler, Black, Charles A., Bowman, Boyd, Bullitt, Carter, Corson, Cronmiller, Curtin, Darlington, De France, Dodd, Edwards, Elliott, Ellis, Finney, Gilpin, Green, Guthrie, Hall, Harvey, Hazzard, Lawrence, Long, MacConnell, M'Clean, Mantor, Niles, Parsons, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reynolds, Rooke, Smith, H. G., Smith, Henry W., Stanton, Stewart, Turrell, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry and White, J. W. F.—52.

So the amendment was rejected.

ABSENT. — Messrs. Ainey, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Biddle, Black, J. S., Brodhead, Broomall, Brown, Campbell, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curry, Cuyler, Dallas, Davis, Dunning, Fell, Hanna, Hay,

Hemphill, Heverin, Hunsicker, Kaine, Knight, Lamberton, Landis, Lear, Littleton, MacVeagh, M'Culloch, Metzger, Minor, Mott, Newlin, Palmer, G. W. Read, John R., Ross, Runk, Sharpe, Simpson, Smith, Wm. H., Temple, White, David N., Woodward, Worrell, Wright and Meredith, *President*—55.

Mr. STANTON. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. CORSON. I hope not.

Mr. STANTON. Why not?

Mr. CORSON. I wish to move a reconsideration of the vote by which we adopted the first section. I voted in the affirmative, but it is too late to make the motion to-day.

SEVERAL DELEGATES. Seven o'clock has arrived.

The PRESIDENT *pro tem*. The hour of seven o'clock having arrived, the Convention stands adjourned until nine o'clock to-morrow morning.

ONE HUNDRED AND TWENTY-NINTH DAY.

FRIDAY, June 27, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday was read.

Mr. DARLINGTON. I find an omission in the Journal, in receiving the invitation of the citizens of Gettysburg. I moved that the thanks of the Convention be tendered to the citizens of Gettysburg, which motion was agreed to; and I move that the Journal be so amended.

The PRESIDENT *pro tem.* The Journal will be so amended.

LEAVES OF ABSENCE.

Mr. J. M. BAILEY asked and obtained leave of absence for Mr. McCulloch for a few days from to-day.

Mr. EDWARDS asked and obtained leave of absence for himself for a few days from to-day.

Mr. STANTON asked and obtained leave of absence for Mr. Mantor for a few days from to-day.

Mr. WHERRY asked and obtained leave of absence for Mr. Parsons for a few days from to-day.

Mr. CURRY asked and obtained leave of absence for Mr. Pughe for a few days from to-day.

Mr. COCHRAN asked and obtained leave of absence for himself for this afternoon, to-morrow and Monday.

Mr. BROOMALL asked and obtained leave of absence for himself for to-morrow.

Mr. BIGLER asked and obtained leave of absence for himself until Tuesday next.

Mr. H. W. PALMER asked and obtained leave of absence for Mr. Davis for a few days from to-day on account of ill-health.

Mr. J. N. PURVIANCE asked and obtained leave of absence for himself for a few days from to-day.

Mr. ELLIS asked and obtained leave of absence for Mr. Hunsicker for to-morrow.

Mr. MACCONNELL asked and obtained leave of absence for Mr. Porter for a few days from to-day.

Mr. STEWART asked and obtained leave of absence for himself from to-morrow until Tuesday.

Mr. BOYD. Would it be in order to ask for leave of absence for all hands? [Laughter.]

The PRESIDENT *pro tem.* Not at this time.

Mr. ALRICKS. I desire to state that a few days ago when Mr. Baker left the House sick, I told him I knew the House would excuse him. He asked me to inform the House of his sickness, in case he did not recover, and as he is still sick I mention that fact now.

The PRESIDENT *pro tem.* Does the gentleman from Dauphin ask leave of absence for the gentleman from Philadelphia?

Mr. ALRICKS. No, sir; I simply desire to mention the fact of his sickness.

Mr. DODD asked and obtained leave of absence for Mr. Corbett for part of to-day and to-morrow.

Mr. DUNNING asked and obtained leave of absence for Mr. Mott for a few days from to-day.

Mr. BUCKALEW asked and obtained leave of absence for himself for to-morrow and Monday.

Mr. CURTIN. Mr. President: We are granting leaves of absence to nearly all of the Convention for to-morrow. I move that when this Convention adjourns to-day, it adjourns to meet on Monday next at ten o'clock.

The PRESIDENT *pro tem.* That is not in order at this time.

Mr. BAER. I ask leave of absence for all the members of this Convention until Tuesday, the eighth day of July. [Laughter.]

Mr. J. W. F. WHITE asked and obtained leave of absence for himself for a few days from to-morrow.

Mr. HARRY WHITE. Mr. President: I desire to return home, and I am not able to get here on Monday without travelling on Sunday. I therefore ask leave of absence from to-day until Tuesday for that purpose.

MANY DELEGATES. No. No.

The PRESIDENT *pro tem.* A gentleman who has scruples about travelling on Sunday asks leave of absence until Tuesday. [Great laughter.]

MANY DELEGATES. No. No.

The PRESIDENT *pro tem.* Oh! let him go. [Renewed laughter.]

Leave was granted.

PROPOSED RECESS.

Mr. HEMPHILL. I offer the following resolution:

Resolved, That when this Convention adjourns to-day, it be to meet on Tuesday, September sixteenth, at eleven o'clock A. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted thirty-four in the affirmative, forty-five in the negative. So the Convention refused to order the resolution to be read a second time.

ADJOURNMENT TO MONDAY.

Mr. CURTIN. I move that when this Convention adjourns this afternoon, it adjourn to meet on Monday morning at the usual hour.

Mr. HALL. I move to amend the motion so as to extend the adjournment to Tuesday, July eighth, at ten o'clock A. M.

Mr. WOODWARD. This proposition to bring members of this Convention back here again on the eighth of July is all wrong. You had better keep them here while you have got them, if you can, and acclimate them to the heat of July. I do not know how to account for it, but this has been the coolest June known in modern times. I, in many respects, have rejoiced at it, because it has enabled us to get along with our work comfortably. If we had had such a June as we had last summer, we could not have lived here. But we have not had it. Then I take it we are to have our hot weather in July, and probably all the more hot because of the coolness of June.

Now, I tell you, Mr. President, and I tell gentlemen around me, that it is not safe to life and health to remain in this city during the month of July. It is true some people do it, and many people die; but what sort of an argument is that to keep us here at the peril of our lives? Is it right for you to imperil your families, your interests, your own lives, by an effort to do business in a high state of the mercury, which you cannot do. If you

were going to do this work right and well by remaining here in July, there would be some sense in it; but you cannot do it. You cannot keep a quorum here; you cannot keep your doors closed: you cannot keep the gentlemen at work who are in the House; you cannot keep this deliberative body engaged in its duties in hot weather.

What was the nervous sensibility which led the gentleman from Indiana (Mr. Harry White) to move to reconsider the resolution to adjourn the other day? It is these mischievous newspapers around us, all of which I observe are praising him and his friends for reconsidering that most sensible resolution. I hear continually from the interior, that the newspapers of Philadelphia give the people no idea of what this Convention is doing, and I defy any man who reads the daily papers of Philadelphia to get a tolerable idea of what is going on in this Convention. Here sit some gentlemen, very respectable reporters, who give slight sketches of what occurs here and what is said; and that is served up in the papers without any connection, without any explanation, without any full exhibition of the question, and it conveys no idea to the people. Now, why do not these papers that are so hurrying of this body through the months of July and August give to the people of Pennsylvania some intelligible account of our proceedings? They have not done it, and because they have not done it, I moved the other day after we had passed our resolution of adjournment, that the Secretary should prepare and publish in every newspaper of the several counties a list of the amendments we had agreed to: and a howl arose against me here from gentlemen behind me as if I had proposed to cut off somebody's head. It was voted down with that sort of vengeance with which many of my propositions are voted down in this House. [Laughter.]

Mr. LILLY. I desire to explain. I want to say to the gentleman that I was in front of him when he offered his ridiculous resolution.

Mr. WOODWARD. I am very sorry there are not two men in this body, so that all these duties should not devolve upon one man, although he be the greatest man who has appeared in modern times. It is unfortunate that there is but one man in this body, and that man hails from Carbon county. I wish there were somebody else. He is the man who knows when to

call the question. He is the man who knows when a proposition is ridiculous. Now, how ridiculous was it that I should propose that the amendments that we had agreed to should be printed in our local county papers so that the people would get some knowledge and idea of them? That was ridiculous in the judgment of the one man in this body. Well, sir, there is no disputing about tastes. I do not know that I shall renew that motion, but I shall vote for it if anybody else makes it. I think it would be a ridiculous thing not to do it and a very wise thing to do it.

Mr. President, do not bring us back here on the eighth day of July. You will not bring me back. I am not speaking for myself.

Mr. CORBETT. We are not going to come back on the eighth; we are going to stay.

Mr. WOODWARD. I have no objection that you should come back if you desire.

Mr. CORBETT. We are not going to come back; we are going to stay.

Mr. WOODWARD. Very well, you can stay, enjoy yourselves and stay; but I advise you, Mr. President, not to come back on the eighth of July. If we adjourn over let us adjourn over until cold weather, adjourn over until October, publish our amendments, with the leave of the gentleman from Carbon—not without—publish our amendments, give the people some idea of what we are doing, and come back here in October and finish our work, and my word for it the work will be better done than if hurried through during this heated term.

Mr. LAWRENCE. Mr. President: I do not know who made this motion, but I do think the gentleman who did it has assumed a responsibility before the people which he will probably regret. I am tired, as you are, of this attempt to adjourn from day to day and from time to time.

I have as high a regard for the gentleman from Philadelphia (Mr. Woodward) as any man in this Convention, but if he or any other man here at home cannot afford to come here from day to day and help us to perform our duties, we will give him leave of absence. The people have sent us here to perform a duty. We trifled away the time in winter when we should have worked. Some of us here have voted against every attempt to adjourn even for a day or for a week. I voted against the adjournment at Harrisburg. I voted against the adjournment

on the first of April, and I have voted steadily against all these adjournments. I think we could have been through our work by this time and before this time if we had all been as vigilant and careful of our time as we should have been. Now, when the weather here is remarkably cool for this season of the year, when we are progressing with our work to the satisfaction, I think, of all the members of this Convention, or nearly all, going along steadily to perform our work from day to day, we are to be met by some motion to adjourn for a brief time or for a longer time.

Now I have lived on a farm. I have driven four, and five, and six-horse teams, and I have always found that one baulky horse in the team pulling back would spoil the rest. Sometimes at the foot of a hill one horse would fall back and directly one or two others pull back and you fail to get up the hill. So it is in this Convention. We have found certain gentlemen here, without naming them, who have all along resisted every effort to go on with the business. They say you cannot finish the business; you must publish these reports in the papers and let the people know what we are doing. My friend from Philadelphia ought to have learned by this time that the people of this State understand what we are doing just about as well as he does.

Mr. WOODWARD. They do not know anything about it.

Mr. LAWRENCE. These reports are published in the papers. I see this from day to day. They know exactly the questions we are considering; they know what the state of affairs is, and they know who is responsible for this trifling with time, and they will hold them responsible for it.

I do not speak with ill temper. I only say this because I believe it to be a duty that we owe to the people to finish our work and submit it to them this fall. If you do not submit it this fall or soon, as was said the other day, you allow these "rings" all over the State who are opposed to it, and members on this floor who have been opposed to reform from the first, to go home among the people and array an opposition against it, which you cannot suppress when you do submit it, just as was done in New York. I say for the sake of the people, for the sake of this Constitution, for the sake of the amendments which we propose to make, and which are important, and admitted to be

important, we ought to go on with our work. If it gets too warm to stay here, if the typhoid fever or the cholera should break out in this city we can adjourn to another place, to Bethlehem, or better, probably, to Williamsport, or some other place. But I beg of gentlemen to let us go on from day to day, not even adjourning on the Fourth of July, or on Saturdays, and let us finish up our work like men, and go home like men to our families.

Mr. H. W. PALMER. I suggest to the mover of this resolution that the select committee on this subject is now ready to report, and their report will put this matter in such an intelligible shape that we can finally dispose of the whole subject.

Mr. CURTIN. I did not expect when I submitted the motion that it would provoke a discussion or take time. I therefore withdraw it.

The PRESIDENT *pro tem*. The motion is withdrawn. Original resolutions are yet in order. If there are none, reports of committees are in order.

RAILROADS AND CANALS.

Mr. COCHRAN. Before passing from the order of original resolutions, I move to make the report of the Committee on Railroads and Canals the special order for next Tuesday morning.

The motion was agreed to.

SUMMER PLACE OF MEETING.

Mr. BRODHEAD. I beg leave to present the report of the select committee appointed to select a place for meeting during the summer.

Mr. LILLY. The order for original resolutions has not been passed. If it has has not, then I insist on the orders of the day.

The PRESIDENT *pro tem*. Reports are in order. The report will be read.

The CLERK read as follows:

The undersigned, committee appointed to select a suitable place for the future sittings of the Convention, respectfully report that invitations have been received from

The borough of Gettysburg.
The borough of Bedford.
The borough of Bethlehem.
The borough of Shippensburg.
The city of Allentown.
The city of Wilkesbarre.

And that we have no doubt the Convention would be abundantly accommodated and entertained at either place. Admonished by the approach of the heat-

ed term and by the failing health of some of the members, the committee are of the opinion that removal to another locality is an absolute necessity if the labors of the Convention are to be completed during the present year; and we therefore recommend that one of the foregoing places be selected in manner following:

Let a vote be had upon the question, to what place shall the Convention adjourn, when each member may vote for one of the places above named, and after each vote the name of the place receiving the lowest number shall be dropped. The name of the place finally receiving a majority of the votes to be inserted in the following resolution:

Resolved, That when the Convention decides to leave Philadelphia it will meet at——.

And in order that the whole subject may be finally disposed of without further loss of time, we recommend that the Convention act upon the following resolution:

Resolved, That when the Convention adjourns on Wednesday, July second, it will be to meet at the place heretofore selected, on Tuesday the eighth of July, at ten A. M.

CHARLES BRODHEAD,
WM. MCLEAN,
H. W. PALMER,
S. L. RUSSELL.

Mr. STANTON. I move to add Philadelphia to the places named.

Mr. H. W. PALMER. This only contemplates removing from Philadelphia. It is a question whether we shall go away at all or not.

The PRESIDENT *pro tem*. The resolution reported by the committee is before the Convention. What action will the Convention take upon it?

Mr. TEMPLE. I move to postpone the consideration of the resolution for the present, and on that question I call for the yeas and nays.

The PRESIDENT *pro tem*. That motion cannot be received until the matter of the second reading of the resolution is disposed of. The question is on proceeding to the second reading and consideration of the resolution attached to the report.

Mr. DARLINGTON and Mr. TEMPLE called for the yeas and nays.

Mr. H. W. PALMER. I ask that the report be read again for information. I do not think the Convention fully comprehend the scope of it. We can settle this ques-

tion on this report understandingly and at once.

The PRESIDENT *pro tem.* The report and the resolution will be read again for information.

Mr. DARLINGTON. Mr. President: We understand it perfectly.

The PRESIDENT *pro tem.* Debate is not in order.

The CLERK again read the report.

The roll was then called.

Mr. HAY [after first voting in the negative.] I desire to change my vote. I vote "yea" for the reason that I think the Convention ought always to proceed to the second reading and consideration of any resolution reported by a committee of this body.

The result was announced, yeas forty-eight, nays fifty-one, as follow:

Y E A S .

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailey, (Huntingdon,) Beebe, Bowman, Brodhead, Buckalew, Cochran, Corbett, Cronmiller, Curtin, Davis, DeFrance, Dunning, Elliott, Ellis, Ewing, Funck, Gibson, Hall, Harvey, Hay, Hazzard, Lamberton, MacConnell, M'Clean, M'Murray, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Reed, Andrew, Runk, Russell, Smith, Henry W., Struthers, Van Reed, Wetherill, J. M., White, J. W. F., Woodward, Worrell and Wright—48.

N A Y S .

Messrs. Baily, (Perry,) Bannan, Bigler, Black, Charles A., Boyd, Broomall, Brown, Bullitt, Calvin, Carey, Carter, Cassidy, Church, Corson, Curry, Dallas, Darlington, Edwards, Fulton, Gilpin, Green, Guthrie, Hemphill, Heverin, Horton, Hunsicker, Kaine, Knight, Lawrence, Lilly, Littleton, Long, Mann, Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reynolds, Rooke, Simpson, Stanton, Stewart, Temple, Turrell, Walker, Wetherill, Jno. Price, Wherry and White, Harry—51.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Campbell, Clark, Collins, Craig, Cuyler, Dodd, Fell, Finney, Hanna, Howard, Landis, Lear, MacVeagh, M'Camant, M'Culloch, Mantor,

Metzger, Minor, Newlin, Palmer, G. W., Ross, Sharpe, Smith, H. G., Smith, Wm. H., White, David N. and Meredith, President—34.

ADJOURNMENT TO MONDAY.

Mr. LILLY. I offer the following resolution:

Resolved, That when this Convention adjourns to-day it will be until Monday next, at ten o'clock A. M.

Mr. LITTLETON. I rise to a point of order. Resolutions are not now in order, and I object to the reception of the resolution.

Mr. HEMPHILL. The time has gone by to present resolutions.

The PRESIDENT *pro tem.* The resolution has been received and read, and the question is on proceeding to its second reading and consideration.

Mr. BAER. I call for the yeas and nays.

Mr. NILES. I second the call.

Y E A S .

Messrs. Armstrong, Bannan, Bigler, Black, Charles A., Brodhead, Broomall, Buckalew, Calvin, Cassidy, Curry, Davis, Dunning, Edwards, Ellis, Ewing, Funck, Gilpin, Green, Guthrie, Hall, Harvey, Howard, Hunsicker, Kaine, Lamberton, Lilly, Long, M'Camant, Mott, Parsons, Patterson, T. H. B., Read, John R., Runk, Smith, Henry W., Stanton, Van Reed, Wetherill, J. M., White, Harry and White, J. W. F.—39.

N A Y S .

Messrs. Achenbach, Alricks, Andrews, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Beebe, Biddle, Bowman, Boyd, Brown, Bullitt, Carey, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curtin, Dallas, Darlington, De France, Elliott, Fulton, Hay, Hazzard, Hemphill, Heverin, Horton, Knight, Lawrence, Littleton, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mitchell, Niles, Palmer, H. W., Patterson, D. W., Patton, Porter, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Simpson, Smith, H. G., Stewart, Struthers, Temple, Turrell, Walker, Wetherill, John Price, Wherry, Woodward and Wright—63.

So the Convention refused to proceed to the second reading and consideration of the resolution.

ABSENT.—Messrs. Addicks, Ainey, Baker, Barclay, Bartholomew, Black, J. S.,

Campbell, Clark, Collins, Craig, Cuyler, Dodd, Fell, Finney, Gibson, Hanna, Landis, Lear, MacVeagh, Mantor, Metzger, Minor, Newlin, Palmer, G. W., Pughe, Ross, Sharpe, Smith, William H., White, David N., Worrell and Meredith, *President*—31.

ADJOURNMENT TO HARRISBURG.

Mr. LAMBERTON. I ask leave to offer a resolution.

On the question of agreeing to the request of Mr. Lamberton, a division was called for, which resulted sixty in the affirmative, and eighteen in the negative.

So the leave was granted and the resolution was read as follows:

Resolved, That when this Convention adjourns to-day it will be to meet at Harrisburg on Tuesday next, at two o'clock P. M.

On the question of proceeding to the second reading and consideration of this resolution the yeas and nays were required by Mr. Edwards and Mr. Hunsicker, and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bannan, Beebe, Bigler, Bowman, Brodhead, Buckalew, Church, Cochran, Corbett, Cronmiller, Curtin, Davis, De France, Elliott, Ellis, Ewing, Fulton, Funck, Gibson, Green, Hall, Harvey, Hazzard, Howard, Hunsicker, Lamberton, Long, M'Clean, M'Murray, Mitchell, Niles, Palmer, H. W., Parsons, Patterson, T. H. B., Purman, Reed, Andrew, Runk, Russell, Stewart, Struthers, Van Reed, Walker, Wetherill, J. M., Wherry, White, Harry, White, J. W. F. and Woodward—52.

NAYS.

Messrs. Bailly, (Perry,) Bailey, (Huntingdon,) Bardsley, Biddle, Black, Chas. A., Black, J. S., Boyd, Broomall, Brown, Bullitt, Calvin, Carey, Carter, Cassidy, Clark, Corson, Curry, Cuyler, Dallas, Darlington, Dunning, Edwards, Fell, Gilpin, Guthrie, Hanna, Hay, Hemphill, Heverin, Horton, Kaine, Knight, Landis, Lawrence, Lilly, Littleton, MacConnell, M'Camant, Mann, Mott, Newlin, Palmer, G. W., Patterson, D. W., Patton, Porter, Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Rooke, Simpson, Smith, H. G., Smith, Henry W., Stanton, Temple, Turrell, Wetherill, John Price and Wright—69.

So the Convention refused to order the resolution to a second reading.

ABSENT—Messrs. Addicks, Ainey, Baker, Barelay, Bartholomew, Campbell, Collins, Craig, Dodd, Finney, Lear, MacVeagh, M'Culloch, Mantor, Metzger, Minor, Ross, Sharpe, Smith, Wm. H., White, David N., Worrell and Meredith, *President*—32.

OATH OF OFFICE.

Mr. HUNSICKER. Before the regular order of business is commenced, I rise to make a privileged motion. I move to reconsider the vote by which the report of the Committee on Commissions, Offices, Oath of Office and Incompatibility of Office was voted down.

The *PRESIDENT pro tem*. How did the gentleman vote?

Mr. HUNSICKER. In the negative; with the majority.

The *PRESIDENT pro tem*. Is the motion seconded?

Mr. HEVERIN. I second it.

The *PRESIDENT pro tem*. Did the gentleman from Philadelphia vote with the majority?

Mr. HEVERIN. I did.

The motion to reconsider was agreed to.

The *PRESIDENT pro tem*. The article is again before the Convention and will be read.

The *CLERK* read as follows:

All judicial, State, and county officers shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except necessary and proper expenses authorized by law; nor have I knowingly violated any election law of this Commonwealth or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the salary or fees allowed by law."

The foregoing oath shall be administered.

ed by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken. Any person refusing to take said oath or affirmation, shall forfeit his office; and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury and be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth.

Mr. KAINE. I move now to reconsider the vote by which the words "members of the General Assembly and" were stricken out in the first part of this section.

Mr. JOSEPH BAILY. I second the motion.

Mr. HARRY WHITE. I rise to a point of order. I yesterday rose in my place and moved to strike out those words. That motion was lost. The delegate from Potter (Mr. Mann) voting against it then rose in his place and moved to reconsider, and the Convention reconsidered their action. Inasmuch as that was done, a second reconsideration cannot be had.

Mr. KAINE. The gentleman from Indiana knows infinitely better than that. It is before the body now like any other motion, and no man on this floor knows it better than the gentleman from Indiana.

Mr. HARRY WHITE. My nervous friend from Fayette—

Mr. KAINE. I am not nervous.

Mr. HARRY WHITE. Well, if he will recover his gravity for a moment and do justice to himself, he is much too good a parliamentarian to take such a ridiculous position. If my statement of fact is correct, there is no doubt about the parliamentary rule.

The PRESIDENT *pro tem*. The Chair will state that if the gentleman's facts as stated be the conceded facts of the case, his point of order is well taken.

Mr. ARMSTRONG. It seems to me that, perhaps, the Convention is falling into an error of fact. When the amendment was first rejected, a motion was made to reconsider the vote by which it was lost, and that motion was in order. When the amendment upon a subsequent vote was carried, that became a new vote, and a motion to reconsider that vote is in order.

Mr. MANN. If we vote differently now, can this be considered again? Can we keep on reconsidering every time a vote is different from a former one?

The PRESIDENT *pro tem*. The Chair is of opinion that one reconsideration is all that can be had. The question having been decided, the Chair is bound to sustain the point of order.

Mr. BUCKALEW. I think the gentleman from Fayette will attain his object by moving to insert different words. This is merely a matter of time and management. Hereafter we must make this article and the legislative article correspond in some way. As it is a mere matter of time, I suggest that the gentleman move to insert the words: "Senators and Representatives in the Legislature and." As a matter of course, this article on oaths of office ought to be agreed to. We must agree to some article, or else we shall not have any general oath of office prescribed in the Constitution.

The PRESIDENT *pro tem*. The question now before the House is on the reconsideration moved by the delegate from Fayette, and seconded by the delegate from Perry.

Mr. BUCKALEW. I understood the Chair to rule that motion out of order.

The PRESIDENT *pro tem*. I said if the facts stated by the gentleman from Indiana were conceded to be correct, I should sustain his point of order.

Mr. BUCKALEW. Then, to raise the question, I move to insert at the commencement of the article, the words: "The Senators and Representatives in the Legislature and;"

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia.

Mr. BUCKALEW. As a matter of course, the Committee on Revision, if we adopt this article in some form, will have before them this general oath of office and also the special oath of office provided for members of the Legislature in the legislative article; and my idea is that they shall take the best of the two forms or consolidate the two hereafter. For the time being, as we cannot go back to the legislative article on second reading, I suppose it would be best to retain language of this sort here, leaving the adjustment of it for future consideration.

We must adopt some general oath of office, because we do not retain the present constitutional provision prescribing a

general oath of office. That has dropped out of our work altogether; and unless we adopt some provision for a new general oath of office, we shall not have any provision in the Constitution on the subject.

MR. COCHRAN. I think it well enough for us to understand to some extent what the powers of the Committee on Revision and Adjustment are. I do not concur with the gentleman from Columbia, that that committee has any right to strike out any sentence or to make any substantial change in any article which is adopted by this Convention. If the Committee on Revision and Adjustment has a power of that kind, they have the whole of our work in their hands and can do with it as they please—a committee of five or seven members. I submit that that view of the case is one which ought not to be adopted. I believe the work of the Committee on Revision and Adjustment is simply a work of arrangement and a work of slight verbal emendation; but to put the whole work of this Convention into the hands of a committee, to strike out and insert as they please, is certainly to repose a power in them which I have never known to be reposed in the hands of any committee in any deliberative body.

Now, sir, we have got, it seems, into this position, that when the report of the Committee on the Legislature was under consideration, we agreed upon a certain obligation for the members of the Legislature to take. It is very unfortunate, indeed, that the gentlemen who had charge of this subject (and I certainly had not charge of it) should have allowed such a specific oath to be placed in that article. It ought to have come into this, and the same oath ought to be applicable to all the public officers of the State. My own view is that, having imposed a special oath upon members of the Legislature, we ought here simply to include in this article the old oath of office which is in the Constitution as it stands; and in order to meet that question when the time comes, I shall move, if there be a prospect of success, to strike out all after the sixth line of this section and leave the oath as it is.

MR. T. H. B. PATTERSON. When the article on the Legislature was under consideration I called the attention of the Convention to the fact that a specific oath was then being adopted for members of the Legislature alone, and called their attention to the fact that the adoption of such an oath would be in conflict with

the idea of having one general oath for all the officers. The chairman of that committee then stated that he only requested the Convention to adopt that section, and that oath, in order that the Committee on Revision and Adjustment might report as to whether that form of oath or the general form of oath in the article on oaths of office should be adopted.

I submit to the Convention that we ought here to adopt a form of general oath, whatever it may be, such as will apply to all the officers of the Commonwealth, including members of the Legislature. Then the Committee on Revision and Adjustment, when the articles come before them, finding conflicting sections, (although they will have no power to strike out either section, as I fully agree with the gentleman from York,) yet wherever there are conflicting sections in different reports and articles, they would have to call the attention of the Convention to that fact, and suggest that one or other form of section should be adopted; and upon their report the Convention would then, on third reading, be in full possession of all the information, and could then strike out the specific oath in the article on Legislature, and adopt the general form of oath, whatever it should be, that would cover the whole ground.

I submit that it is putting ourselves in a position approximating to absurdity to have two long forms of an oath in our Constitution applying to different classes of officers, and I also submit that it is rather invidious to adopt a long and strict iron-clad oath for members of the Legislature and have no general oath for other officers of the Commonwealth. So I hope the Convention will now adopt some suitable form of oath in the article on oaths of office, sufficiently full to cover the members of the Legislature and every officer, and then when it comes up on the report of the Committee on Revision and Adjustment, we can adjust the matter so as to have our work consistent. I hope the Convention will adopt this view.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia.

MR. HARRY WHITE. I should be glad if the Convention would just pause a moment to understand the exact situation of this question. When this article was up the other day it included all classes of officers. On my motion, I believe, the words "members of the General Assembly and" were stricken out.

That left the oath as reported by the committee and amended by the Convention to be applicable to all other officers than members of the General Assembly. I voted for that proposition and I shall do so again. I was in favor of striking out the words "members of the General Assembly" for this reason: The character of oath that is designed to be administered to members of the Legislature is different from that administered to other officers of the Commonwealth.

Mr. STEWART. Why?

Mr. HARRY WHITE. I will endeavor to explain. There are some specific matters in relation to votes, in regard to the action of the members of Assembly, which require a different form of oath from that of other officers. I will call your attention to some. I call the attention of delegates to the report of the Committee on the Legislature (No. 2) to be found on your files, which provides:

SECTION 9. Every member of the General Assembly, before he enters on his official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of this Commonwealth and will honestly and faithfully discharge the duties of Senator (or Representative) according to the best of my ability; and I do solemnly swear (or affirm) that I have not paid or contributed anything, or made any promise in the nature of a bribe, to corruptly influence, directly or indirectly, any vote at the election at which I was chosen to fill the said office; and I do further solemnly swear (or affirm) that I have not accepted or received, and I will not accept or receive, directly or indirectly, any money or other valuable thing from any corporation, company or person, for any vote or influence I may give or withhold on any bill, resolution or appropriation, or for any other official act."

That is a broad, specific and comprehensive oath, specially directed to the duty to be performed by a member of the Legislature, and it is proper that it should be in the legislative article.

Furthermore, it is provided that this oath shall be administered by a judge of the Supreme Court or the president judge of the court of common pleas. The difference is this, and it must be obvious: That you swear a county treasurer, you swear a judge or some other officer; he does not give any vote; he is not called upon to

vote for any appropriation; hence it is necessary if you want to be specific in the character of your oaths, to have different words and different language in the oath administered to members of the Legislature from that of other officers.

That is the reason for my desire to strike out the words "members of the General Assembly," and I think it must be obvious to every delegate here. I am not against a stringent oath for members of the General Assembly. On the contrary, I want the oath to be administered to the members of the General Assembly to meet every evil that is complained of, and I hope it will be corrected by that species of oath.

I am opposed for this reason to the amendment offered by the gentleman from Columbia, and I am in favor of retaining the oath as adopted by the committee of the whole on second reading in the article on the Legislature.

Mr. CALVIN. Mr. President: I desire to call the attention of the members to the difference between the oath as proposed by my friend from Columbia, (Mr. Buckalew,) and the oath adopted in the article on the Legislature, which the gentlemen from Indiana seems to prefer and advocates. In the first, the members of the Legislature, as well as all other officers of the Commonwealth, are required to swear that they have not used any money or other valuable thing to secure either their *nomination* or election; in the oath of the article adopted, and referred to by the gentleman from Indiana, the members of the Legislature are *not* required to swear that they have not used any money or other valuable thing to secure *their nomination*. Thus, whilst all other officers would be required to swear that they have not obtained their nominations by corrupt means, the members of the Legislature would not have to take such oath. Now, certainly this Convention do not desire to make such distinction in favor of the members of the Legislature; and I trust the amendment of the gentleman from Columbia will be adopted.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was agreed to, their being, on a division, ayes sixty-eight, noes eighteen.

The PRESIDENT *pro tem*. The section as amended is now before the Convention.

Mr. CORSON. I move that the Convention now resolve itself into committee of

the whole for the purpose of considering the amendments to this oath and consolidating the two or three oaths we have already adopted. ["No." "No."]

The motion was not agreed to.

Mr. BUCKALEW. There is a slight verbal correction necessary in the form of the oath as it now stands. If the Clerk will turn to about the middle of the oath, he will find the words "nomination, election, or appointment," as substantive parts of the oath. Now, that provision will have to be put in the alternative form so that a part of it will be taken by one class of officers, and in a different form by another. It ought to read "nomination or election," and then the words "or appointment" should be included in a parenthesis or brackets. I move to insert the word "or" between "nomination" and "election," and to include the words "or appointment" in brackets. In the case of an elective officer, the oath will be that he has not paid or contributed money improperly for his nomination or election; and in the case of an appointed officer, it will be that he has not paid money thus improperly for his appointment.

Mr. KATNE. That is all right.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia (Mr. Buckalew.)

The amendment was agreed to, ayes sixty-four, noes not counted.

The PRESIDENT *pro tem*. The question is now on the section as amended.

Mr. HARRY WHITE. I move to amend by inserting the following at the end of the article :

"The oath to members of the Senate and the House of Representatives shall be administered by one of the judges of the Supreme Court or court of common pleas learned in the law, in the hall of the House to which the member is elected.

Mr. KATNE. I have no objection to that.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is now on the section as amended.

Mr. D. W. PATTERSON. I call for the yeas and nays on that question. I want to record my vote against it.

Mr. KNIGHT. I second the call.

The PRESIDENT *pro tem*. The section as amended will be read for information.

The CLERK read as follows:

"Senators and Representatives, and all judicial, State and county officers shall, before entering upon the duties of their

respective offices, take and subscribe the following oath or affirmation :

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election, (or appointment,) except necessary and proper expenses expressly authorized by law, nor have I knowingly violated any election law of this Commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law."

"The foregoing oath shall be administered by some person authorized to administer oaths, and in the case of State officers and judges of the Supreme Court shall be filed in the office of the Secretary of the Commonwealth, and in the case of other judicial and county officers in the office of the prothonotary of the county in which the same is taken. Any person refusing to take said oath or affirmation shall forfeit his office, and any person who shall be convicted of having sworn or affirmed falsely or having violated said oath or affirmation, shall be guilty of perjury and be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth.

"The oath to members of the Senate and House of Representatives shall be administered by one of the judges of the Supreme Court, or Court of Common Pleas, learned in the law, in the hall of the House to which the member is elected."

The yeas and nays were required by Mr. D. W. Patterson and Mr. Knight, and were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bardsley, Beebe, Bigler, Black, Charles A., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Carey, Carter, Clark, Corbett, Cronmiller, Cuyler, Dallas, De France, Elliott, Ewing, Finney, Fulton, Funck, Gibson, Green, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Heverin, Horton, Hunsicker,

Kaine, Lamberton, Landis, Lawrence, Long, MacConnell, M'Camant, M'Clean, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Runk, Russell, Smith, H. G., Smith, Henry W., Stewart, Struthers, Temple, Van Reed, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F., Woodward, Worrell and Wright—77.

N A Y S.

Messrs. Biddle, Bowman, Broomall, Cochran, Corson, Darlington, Fell, Gilpin, Hanna, Knight, Lilly, Mann, Patterson, D. W., Porter, Reynolds, Simpson, Turrell and Walker—18.

So the section as amended was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baer, Baker, Barclay, Bartholomew, Black, J. S., Campbell, Cassidy, Church, Collins, Craig, Curry, Curtin, Davis, Dodd, Dunning, Edwards, Ellis, Howard, Lear, Littleton, MacVeagh, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Parsons, Pughe, Ross, Sharpe, Smith, Wm. H., Stanton, Wetherill, J. M., White, David N. and Meredith, *President*—38.

The *PRESIDENT pro tem.* The article is now gone through with.

Mr. LAMBERTON. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. WHERRY. I desire to offer an additional section on behalf of my friend from York (Mr. J. S. Black.)

Mr. HARRY WHITE. I rise to a point of order. The point of order is that the motion to reconsider was merely to reconsider the section which was voted down, and no further sections can be offered as amendments.

Mr. HUNSICKER. There was but one section to that article, and I moved to reconsider the vote by which the article was rejected.

The *PRESIDENT pro tem.* When an article is reconsidered the article is before the Convention and subject to amendment. The point of order the Chair thinks is not well taken. The section offered by the delegate from Cumberland (Mr. Wherry) will be read.

The *CLERK* read the amendment as follows:

"Members of the General Assembly, and all judicial, State and county officers,

shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and obey and defend the Constitution of this Commonwealth, and that I will discharge the duties of my office with fidelity; that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination, election or appointment, except necessary and proper expenses expressly authorized by law; nor have I knowingly violated any election law of this Commonwealth, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the salary or fees allowed by law."

"I believe myself legally elected without fraud or false return committed by me, or any other person with my consent; that I will not receive gifts or promises, or listen to private solicitation from any candidate or other party having a special interest in my official action or vote, or from the agent of such candidate or party. I will not speak or vote on any subject in which I am or expect to be personally interested, nor make any contract which might bring my private interests in conflict with my public duty."

Mr. NILES. Mr. President: I hope the delegate from Cumberland will explain this oath to us, so that we may understand it.

Mr. WORRELL. I should like to have it explained, too.

Mr. WHERRY. It explains itself.

The amendment was rejected.

Mr. J. M. BAILEY. I offer this amendment as a new section:

"Within twenty days after the adjournment of the General Assembly *sine die*, every member of the House of Representatives and every Senator whose term will expire at the next general election shall take and subscribe before some officer qualified to administer oaths the following oath or affirmation:

"I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability; I have not knowingly been influenced by private solicita-

tion from interested parties or their agents, nor have I received any gift from any such parties; I have not voted or spoken on any matter in which I had or expected to have a private interest; I have not done or willingly permitted to be done any act which would make me guilty of bribery; I have observed the order and forms of legislation as prescribed by the Constitution; and I have not knowingly voted or spoken for any law, bill or resolution which I knew or believed to be inconsistent therewith.'

"The foregoing oath or affirmation shall be filed in the office of the prothonotary of the county in which the Senator or Representative resides; and if any such Senator or Representative shall fail to take and file said oath or affirmation within the time prescribed (unless unavoidably prevented) he shall be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth, and if in taking such oath or affirmation it shall appear that he has knowingly sworn or affirmed falsely he shall be deemed guilty of perjury and also be disqualified as aforesaid."

Mr. J. S. BLACK. Mr. President: I will not make any argument in favor of this section. It has been thoroughly discussed already. Every member of the House has made up his mind long ago. I do not believe that the opinions or sentiments of any member can be changed now. I judge others by myself. I will not surrender my convictions, and I do not expect any other member to surrender his. This is a body which knows its own mind and cannot be blown about by every wind of doctrine. I therefore say to those who differ from me, live on in your faith, but I will die in mine.

The whole subject, indeed, is too simple for argument. The fact cannot be questioned that our Legislature is and has been utterly corrupt. For years the three Houses (counting the lobby as a House) have been weltering together in one disgusting mass of moral putrefaction. No man dares to deny this. The evidence of it is conclusive, irresistible and overwhelming. It is admitted by every man on this floor except three or four who have made feeble and futile attempts to deny it. One of the most distinguished gentlemen in this body—he who won his fame as chief magistrate of the Commonwealth, and added to its lustre by his high career as a diplomat—while he deprecates this measure of prevention, not

only admits our legislation to be corrupt, but adds his testimony that the great office of United States Senator is bought and sold, as well as corporate franchises and appropriation bills. Shame! shame forever to the man who is willing to perpetuate this infamy! The honest and respectable portion of our people will not endure it with patience. If we can help it we will not have the hoofs of these beasts on our necks any longer.

"Large-handed robbers your grave masters are,
And pill by law!"

If you would not have this degrading slavery fastened forever on your children, rise now; throw off your shackles; hew them link from link. But you won't do it; it is not in you.

I not only decline to argue the facts, but I mean to be silent upon the principle and policy of this amendment. If any man thinks it good to live under a government which habitually betrays and plunders him, let him enjoy in peace the huge satisfaction which Harrisburg will afford him. Besides, I cannot argue with a man who believes legislative corruption is a thing to be defended or tolerated in a civilized and christian community. If a gentleman wishes to debate the morality of murder or rape or robbery or horse-stealing or arson, I will endeavor to prove that all these are very hurtful crimes, and as gently as possible I will try to vindicate the laws which forbid them. But bribery and corruption in the making of our laws is not open to discussion; I will not hear and I will not answer any defence of it which can be made—no, not if an angel from heaven would make it.

But there is another question upon which we divide. Shall we swear the members of the Legislature to execute their trust? Will we make the oath iron clad? Will we compel them to take it when they go in and when they come out and make it so plain that if they commit any act of unfaithfulness they will see that it exposes them to all the penalties of perjury in this world and the next? Will we so shape it that it must speak to their consciences of penitentiary and disfranchisement as well as damnation to their eternal souls? The Convention will probably answer this in the negative. Among our leading men here there is a manifest opposition to any specific oath for legislators which might impede their intercourse with the base miscreants of the lobby. It is not oaths in general that are objected to.

We all admit that judges, jurors and witnesses ought to be sworn. We do not let an arbitrator or a road-viewer undertake his duty without putting him under oath. The smallest private trust is guarded by oaths of great solemnity. An executor, administrator or guardian must promise on oath beforehand that he will be faithful, and afterwards he must swear again to every transaction, item by item, that he has honestly executed his trust. All this is admitted to be necessary and proper. But when it comes to swearing a member of the Legislature that he has not betrayed, or will not betray, the high and sacred trust reposed in him, then this Convention raises its hands and turns up the whites of its eyes in holy horror. Whenever an oath is proposed that abridges the corrupting influence of the lobby, then the piety of some gentlemen gets awfully shocked, and they have tender religious scruples against the multiplication of oaths. It is impossible even to pacify them by assuring them that, in their case, we will only ask them to affirm.

It is especially necessary that this oath against receiving gifts shall be taken in view of the condition in which your Constitution is put by the thirtieth section of the article on legislation. There is a definition of bribery there, which makes any gift of money to a member of the Legislature perfectly innocent and legal unless you can connect it with words or acts which express or imply a contract between the giver and the receiver that the money is paid for the vote and the vote given for the money. You must affirmatively prove a corrupt bargain. The mere receipt of money from an interested party is not bribery. This is an entirely new rule and gives unlimited license to the most open and shameless corruption.

Sir Robert Walpole said that every man had his price, and he bought the House of Commons by putting a Bank of England bill for the proper amount into each member's vest pocket without saying a word. Under your new Constitution that would not be bribery.

The gifts bestowed on Lord Bacon were, not one of them, accompanied by a contract that he should decree in favor of the donor. They professed to be merely presents; and he declared to the end of his life that he never was in fact influenced by them. Yet he was found guilty on his own confession. "I do acknowledge," said he, "that I am guilty of corruption."

The great Yazoo fraud in 1796 was managed without a bargain. A body of adventurers applied to the Legislature of Georgia for a grant of the public domain; and got it by simply distributing among the members deeds for a portion of the land. The next Legislature repealed the law—tore it out of the statute book—burnt it ignominiously in the public square—ordered the courts to expunge from the records of every county all papers that recited it. "To the intent," says the repealing law, "that no remembrance of this infamous transaction may remain on the earth, except this, its solemn condemnation." But that was no crime if your definition of bribery be a good one.

Neither was the LaCrosse railroad company guilty of bribing the Wisconsin Legislature. The bonds of the company were laid upon the desks of the members, thrust into the hands of the Governor, and put upon the tables of the judges, but no promise, agreement or contract was made; no understanding, express or implied, was had that any vote should be given or withheld.

If it be true that money in large amounts was openly distributed at Harrisburg to the members at the taverns, on the streets and in the halls of the two Houses, at the time when the tonnage tax was repealed, it did not come within your definition of bribery. Caldwell, M'Donald, Patterson, (all disciples of the Harrisburg school,) never gave a bribe, or took one, before or after their election to the United States Senate. Ames and Alley and the whole Credit Mobilier set are guiltless because they made no bargains for the votes they bought with the stock which "they placed where it would do most good."

Why, Mr. President, if the new Constitution passes in its present shape anybody that pleases may set out a table, piled with greenbacks, in the rotunda of the State Capitol, and with perfect impunity hand them out to the members of both Houses as they pass through, provided he does not do or say anything which can be construed as a bargain for votes. I have no right to say that the section I allude to was designed by its framer to have this scandalous effect. It looks like a mere ignorant bungle. If it stands it will disgrace the intelligence, if not the integrity, of this Convention forever.

Let me be understood. I assert that the mere naked receipt of money, property or other valuable thing by any officer, judicial, executive or legislative, from a person who has an interest in his official action is *ipso facto* bribery, though it be not given for a vote or a judgment, but wholly without any understanding of that kind, or of any kind. Nay, if the officer declares that he will act against the interests of the donor, or even if he does actually vote or decide against him, it is still bribery, upon the principle settled three thousand years ago, that "a gift blindeth the eye and perverteth the judgment of the righteous."

I have referred to this part of the article on legislation, to show that unless you swear your legislators against taking gifts you have no protection at all against bribery. You must have something to counteract the corruption which that article invites, unless you desire to throw the reins loose on the neck of these scoundrels and let them carry you whithersoever they please.

If it be your will, and the will of the people you represent, to have no check upon the rampant corruption that reigns and riots at Harrisburg, you have given yourselves much unnecessary trouble about election laws and the apportionment of the districts. What matters it how the Legislature is chosen if the lobby is to govern us anyhow? They may as well be the spawn of a fraudulent ballot-box as not.

But I am not speaking with the remotest prospect that this measure can be carried. We are out on a forlorn hope. From the time it was first proposed until now, the foremost men of this body have given it every possible mark of their dislike. It would be received, I am sure, with almost rapturous approval by the honest people of the State, but it is not intended here that the people shall have a chance to express their opinion on it. The utmost I expect is a square vote against me. But the record will attest that I have done my duty faithfully, though feebly. The proposition will be voted down; corruption will be throned and sceptered and crowned; the lease of power will be indefinitely extended to the men who now rule us for their pleasure and plunder us for their profit. Let all the rings rejoice.

Mr. BROOMALL. I should like to ask the gentleman before he relinquishes the floor whether it would not be well to

modify that oath so as to make the members swear that they have staid at their posts during the time for which they were elected and attended to their duties steadily? [Laughter.]

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. COCHRAN. There is one clause in that oath which says something about "listening to solicitation," which I should like to hear read.

The PRESIDENT *pro tem*. The clause will be read.

SEVERAL DELEGATES. Read the whole oath.

The CLERK read as follows:

"I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability; I have not knowingly listened to private solicitation from interested parties or their agents, nor have I received any gift from any such parties; I have not voted or spoken on any matter in which I had or expected to have a private interest; I have not done, nor willingly permitted to be done, any act which would make me guilty of bribery; I have observed the order and forms of legislation as prescribed by the Constitution, and I have not knowingly voted or spoken for any law, bill or resolution which I knew or believed to be inconsistent therewith."

Mr. COCHRAN. I move to strike out the clause "I have not knowingly listened to private solicitation from interested parties or their agents."

If I understand that clause, it goes very far. Is a member of the Legislature to shut his ears to solicitations even from interested parties? Is he not to allow them to speak to him at all on a subject in which they are interested? If the language was "yielded to their solicitations," that would be another thing; but I cannot understand the harm of listening to solicitations from anybody; I do not see the wrong of that; and I presume it is the right of the people to go to the Legislature and solicit the support of members even for matters in which they have a private interest, provided they do not go with offers of corruption. "I have not knowingly listened to any private solicitation of parties having an interest in the matter in hand"—that I believe is the substance of the clause. Now, I do not see the harm of listening to that. I do not see why a man should be compelled to re-

fuse to do it even from an interested party. I think if that clause was removed from the oath, it would be far less objectionable and really do the substance of it no harm.

Mr. KNIGHT. Mr. President: We can obviate that difficulty by sending only deaf men there. [Laughter.]

Mr. J. S. BLACK. Such men seem to be here in this Convention.

Mr. KNIGHT. They come here occasionally.

Mr. GIBSON. Mr. President: I would say to my colleague (Mr. Cochran) that I think this clause is one of the most important in this oath. The object of it, as I understand, is to keep members of the Legislature, like yours, free from solicitation. If a man wishes to have a bill passed, instead of going and boring individual members for its passage, let him go regularly before the proper committee and be heard, and his reasons be heard. The object of this clause is to protect members, like jurors, like judges, from being acted upon by private solicitations to cast their votes in a particular way. Let them be free. It is for their protection as well as for the protection of the community, and I think we ought to retain the clause.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Cochran) to the amendment.

The amendment to the amendment was rejected, there being on a division: Ayes twenty-five; less than a majority of a quorum.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Huntingdon (Mr. J. M. Bailey.)

Mr. HUNSICKER and Mr. WORRELL called for the yeas and nays.

Mr. BUCKALEW. Before the vote is taken I desire to suggest an amendment of a single word. This oath is confined to members of the Legislature. I am willing to vote for it if the gentleman from York will insert the word "corrupt" before "solicitation." I am not prepared to say that no man honestly interested in matters of legislation shall talk to members by way of protest against something that is wrong, or by way of explaining what is right. I say I am willing to vote for this amendment with the insertion of the word "corrupt" before "solicitation."

A great many gentlemen seem perfectly willing to go into this new field. It is

something unknown in legislative history. We should not forbid discourse with a member of the Legislature unless it is a discourse of a corrupt tendency. Without that word being inserted I do not see how I or any others can vote for this amendment.

The PRESIDENT *pro tem*. Does the delegate from Columbia move to amend?

Mr. BUCKALEW. In order to raise the question, I move to insert the word "corrupt" before "private solicitation."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia to the amendment.

Mr. J. S. BLACK. Mr. President: One word of explanation. We know that private solicitation of persons who are charged with a public duty is, of itself, corrupting. It may influence unfairly the party to whom it is addressed, and he ought not to hear it. Judges and juries are protected by law against this kind of influence. If you would surround the courts with secret borers, the public would have no confidence in them. But a party is punished for contempt if he whispers his claim or his defence into the private ear of the judge; and a verdict is set aside if the jury has been so tampered with.

It may happen sometimes that a man should have private conversations with a judge about his cause. There are cases in which it might be very convenient and do no harm. But the privilege must be universal or else be denied altogether. If everybody had it, you can easily understand how grossly it would be abused. The whole business of the court, instead of being done in the face of the public, with the parties confronting one another, would be settled in private conferences with professional borers. The courts would soon be as corrupt as the Legislature.

Why should not members of the Legislature be as honest as judges? To make them so is a consummation most devoutly to be wished. Why expose one set of public servants to temptations from which you shield the others. The convenience of it as a means of getting good laws passed, is the only defence of the system which I have heard. But, it is also the fruitful source of a thousand frauds. Honest men who may happen to have business with the Legislature may well afford to give up a little convenience for the sake of protecting themselves

from the abuses of this privilege in the hands of unscrupulous persons.

I go for a total extirpation of the whole system of private boring. Let us lay the axe to the root of that rotten tree.

At the same time, I would allow the freest intercourse between the people and their representatives through every public channel of communication. Let every man be fairly heard by petition, remonstrance or open speech before a committee or, if need be, at the bar of the House. But let us emancipate ourselves from the damnation of the third House, which works in secret, and seeks darkness rather than light, because its deeds are evil.

Mr. COCHRAN. When I made the motion to strike out that clause, I made it in perfect good faith, for it was in that event my purpose to vote for the oath as provided in the amendment; but, sir, I cannot consent to vote for this oath with such a clause in it. I have always understood that there was a very great distinction between the nature of the business entrusted to a member of the Legislature and to a juror, and I do not understand now that the proposition here proposes to engraft the juror's oath into this oath, in terms. If you are to put the two on an equality, why not put the language of the jurors' oath, which is well known, into this particular section of the Constitution? Sir, I believe that the constituent has a right to go to his Representative, and not only to go to him in public, but to speak to him in private, and that he has a right to place his case before him and even to ask his vote for it in a proper manner.

Mr. J. S. BLACK. Because he is a judge?

Mr. COCHRAN. No, sir, not because he is a judge. A member of the Legislature is not a judge and exercises no judicial functions.

Mr. J. S. BLACK. Because he is his constituent?

Mr. COCHRAN. Because he is his constituent and the member of the Legislature is his representative, I think he has a right to go to him; and when a man is a member of the Legislature he is in some sort a representative of every citizen of the State. With great respect to both of my colleagues, I must draw that distinction between the two classes of persons, and I think it is a fair distinction, and one which has always been recognized. The character of the duties imposed upon a juror and a Representative is very distinct and very different. Why,

sir, we make by our Constitution the halls of legislation open to the public; we make the jury room sealed to all intrusion from outside. It is the duty of the Legislature to transact its business with the public eye fixed upon it and in the face of the community. It is the duty of the juror to seclude himself in his room, and he and his fellows are to determine the cause when it has been submitted to them under the charge of the court. I think these are plain distinctions, and that this attempt to shut up the representative from his constituent, to seclude him, to put him in the position of a juror, apart from all others but those who are with him entrusted to decide the particular cause submitted to him, is wrong in principle; and I cannot vote for any measure which proposes to carry it out.

Mr. J. S. BLACK. With the permission of the gentleman, I wish to ask him one question. Will he say whether he intends to vote for this measure provided his amendment is made?

Mr. COCHRAN. I did make that declaration distinctly. I made it in good faith.

Mr. PURMAN. Mr. President: The delegate from York (Mr. J. S. Black) has favored us this morning with a very elegant speech on the subject of crimes, and their injurious effect upon the Commonwealth when committed by the Legislature—

Mr. J. S. BLACK. I do not want to take the thunder of the gentleman from Greene, but he will allow me simply to say that at the request of divers gentlemen around me, though it is not exactly according to my own convictions of what ought to be done, I will accept the amendment offered by the gentleman from Columbia (Mr. Buckalew.)

Mr. BUCKALEW. I suppose the word "private" would be superfluous.

Mr. J. S. BLACK. Oh no, not at all. "Corrupt private solicitation" is right.

Mr. BUCKALEW. Very well.

Mr. PURMAN. Mr. President: With regard to the views entertained by the distinguished delegate from York as to the fatal consequences of such practices as he refers to of the third House at Harrisburg, I suppose the entire membership of this Convention are in accord with him. The proceedings of this Convention furnish clear and convincing proof that every delegate here desires to purify the Legislature, to improve it all in their power; and the practical question then is, how shall that be done? It is to the practical

aspect of the oath proposed by the gentleman from York that I propose to call the attention of the Convention for a moment.

The legislative body is not exactly like the court, to which the gentleman has likened it. In the courts, either the parties or their counsel present all the facts and the law of the case to the judge and the jury, and then they dispose of the cause upon the facts and the arguments as presented by either the parties or their advocates. In such a mode of procedure the parties are fully heard, and the merits and justice of the cause may be passed upon. How is it in the legislative body? Who carries there the grounds upon which a bill is proposed to be passed or the merits of a certain act of the Legislature? There are no counsel employed for that purpose. The legislative body is not a body for the purpose of receiving arguments made in open session by the parties interested in general or special laws. On the other hand, it is forbidden. I know of but very few instances in which persons were permitted to appear in the open Assembly either to present their petitions or the considerations upon which they based their right to have any particular law or any particular relief. How, then, do they present the grounds on which they base any particular act of the Legislature, or any grievance redressed? Through their member. This is one of the purposes for which a representative is elected. How do they (the people) communicate the facts to the member? Either by meeting him at his room, or at his home, or by written communication, or upon the streets, and handing or mailing him a bill, telling him, "here is a bill that I desire to have read in place and passed; the object of it is thus and so." Of course there is no harm in that. That is what the people send their representatives to the General Assembly for. When it comes to the point of corrupt solicitation, as the oath is now proposed to be amended by the gentleman from Columbia, (and it may not be out of place for me to state here that I have been calling the attention of my distinguished friend from York, during the whole sessions of this body, to the importance of having the word "corrupt" before the word "solicitation,") then I think the whole Convention will go with him; I certainly shall. Without the amendment the oath would be mis-

chievous. The Convention will see at once that there is no way of presenting these questions before the Legislature except by a member or before a committee. Those interested in a bill may appear before the committee to which it is referred and be heard; but it may happen, and doubtless often would, that there would be no member on that committee from that portion of the State in which the friends of the bill reside, and therefore they would have no person who had sufficient knowledge of the facts or regard for the measure to represent them on the floor of the body. Then they may come into the legislative body again by petition; but if all the considerations upon which a bill is to be passed are to be presented by petition, the legislative sessions would be protracted far beyond their present extent.

I suggest to my distinguished friend from York to strike out the word "private" before "solicitation." If you allow it to stand "corrupt private solicitation," it would seem to imply that you could corrupt the Legislature publicly as much as you pleased; but omitting the word "private," all corrupt solicitation, private as well as public, will be excluded.

Mr. D. W. PATTERSON. Mr. President: I shall not occupy more than four or five minutes of the time of the Convention. I am opposed to this amendment offered by the gentleman from York, (Judge Black,) and even to that which we have already passed upon, and I really am not able to account for his proposition or the language of the gentleman in presenting it, except upon the ground that he does not believe in a republican form of government. If I believed that we were about changing the form of our government from a representative democracy to an aristocracy, or monarchy, or something of that kind, I could imagine that the remarks which we have just heard presented by the distinguished delegate from York were in place and ought to be listened to silently. If I believed that members of the Legislature were elected by the people to go there and carry out their own individual wishes and individual sentiments independent of the people and without regard to their views, their wants, or their desires, then I could sit silently by and not denounce as monstrous the proposition that a member of the Legislature shall swear that he shall "not knowingly listen to any solicitation." If I believed that the people of all parties were utterly demoralized and cor-

rupt beyond reformation or redemption, as the distinguished member from York does, I probably would sit silent and listen to such remarks; but, sir, I think it is a slander either to make that allegation or to make assertions which will lead to such conclusions. I believe that the great *masses* of all parties in this Commonwealth and in all the Commonwealths of this Union are honest and above and beyond corruption. If I believed that this government was doomed and beyond redemption and going down to perish in our day, as the gentleman from York does and has asserted, I might take a view of this subject similar to that which he takes. I entertain no such sentiments; but, sir, I believe that members of the Legislature are elected to go there and listen to the wishes of the people, to communicate with them, to ascertain their wants and to meet their wants by wise and judicious legislation. They, the members of the legislative branch of the government, are a part of the people, and go there to carry out their wishes and their will. I believe it to be their duty to do that and to communicate with them personally and otherwise to learn their wants, and if we impose upon them an obligation that will prevent them from doing that, we are striking at the very root of republican government—of representative democracy.

I cannot account for such a proposition as this and for the language of the gentleman from York in any other way than by believing that the gentleman is sincere when he alleges that this government is past redemption. I do not believe so. I believe the masses of all parties are honest; the people are honest; and they will soon reform their representation in the legislative branches of the State government. Nor do I believe that the Legislatures that have met for the last ten, or twelve, or twenty years were corrupt. I think that very few corrupt men have been in those Legislatures. A few, and only a few, of any party have been in any way demoralized or corrupted. I do not believe as the gentleman from York, that this government is doomed. I repudiate such anti-republican sentiments. I do not believe we are going to establish an aristocracy. I believe that the representative in the Legislature *must* listen to his constituents and must obey their will. This government is founded on the will of the people, and it would be monstrous to intimate

here, much less to enact an oath that will prevent the utmost intimacy between the representative and his constituency. Taking an oath will not make a dishonest man honest, and the oath proposed assumes that every man elected to the Legislature, or any other office, is a rascal. This is an unjust reflection on the intelligence and integrity of the people themselves. Sir, I cannot sit silent and listen to imputations and arguments of this kind, based upon the presumption that the people are corrupt and not worthy to be heard by their representatives in the Legislature. It is monstrous, and I denounce it as a libel upon the intelligence and patriotism and honesty of all parties of the people of this Commonwealth.

MR. CORBETT. I desire simply to say a word or two in explanation of the vote that I shall give. Certainly I am in favor of purging the Legislature and all other bodies, whether executive, judicial or otherwise; but I cannot vote for the proposition. I voted for a tolerably stringent oath, although I have little confidence in oaths. I have little confidence that any oath we may adopt will make men honest. Honest men do not need oaths; they are necessary only for persons who are dishonest. But, sir, I never will give my assent to a proposition that after a man has committed a crime, he shall purge himself on oath. I may vote, where it is necessary to the ends of public justice, that a party may be required to disclose something that may tend to criminate him, provided it is for the public advantage, but then I shall protect him against what he discloses. But here is a proposition asking a legislator, after his term of office has expired, to purge himself on oath; and for what purpose under heaven, I know not, unless it be to add upon his soul perjury to the crime he has already committed. Now, why do this with respect to a body of men elected by the people in the different sections of the Commonwealth to represent them in the Legislature of the State; men who go there with the endorsement of the people? What good purpose will be subserved by it? The man who will disobey the first promissory oath that he took, will not regard the second that he is to take. You do not need any restraining power on honest men, and dishonest men will disregard it. Why, I repeat, ask the dishonest man, after he has been guilty of crime, to add to that crime the crime of perjury? Why ask him to commit a crime for the mere

purpose of punishing it? I cannot give my assent to such a proposition.

It appears to me, Mr. President, that we sit here daily for the mere purpose of passing judgment upon the Legislature and the legislators of our State and pronouncing them corrupt. That corrupt men go there, I have no doubt; but they are few. They may in some instances hold the balance of power; but you are not going to reach those few men who go there and who are actually dishonest, by this oath. I doubt very much if you do not deter all honest men from going to the Legislature. I doubt very much whether any honest man will go to the Legislature if you place such clauses as this in your organic law. You place before him in your organic law a provision that tells him he is a suspected person; that he must first take an oath when he goes into office, and afterwards, being under suspicion, must purge himself by another oath. I shall vote for nothing of the kind.

Besides, the section as it now stands is ridiculous on the face of it. It provides that corrupt private solicitation is not to be used. Inferentially, therefore, you may corrupt the Legislature by any public means whatever. But, sir, the whole section is wrong. I shall neither vote for the amendment, nor for the section as offered; and I should not have opened my mouth on the subject were it not that I desired to place the reasons for my vote on the record.

MR. H. W. PALMER. MR. President: The gentleman from Greene (Mr. Furman) seems to apprehend that to adopt this oath would in some way change the form of our representative government. I cannot share his apprehensions. The members of the Legislature represent the people, and they are to act for the people in their representative capacity. This is only a question as to how they shall obtain the information upon which they shall act. Now they receive their information through private sources and from private individuals, and are moved by private solicitation to do this or that in their legislative capacity, all of which is inconsistent with the disinterested exercise of judgment and purity of official action. One purpose of the oath is to require that this information shall come to the members of the Legislature through public sources and that their official acts shall be based upon information received in a public manner.

The only objection which has been or can be urged to this section is that the practical workings might in some cases be inconvenient. In place of taking a member of the Legislature aside and speaking to him privately and representing your views with respect to this or that law, it would become necessary to reduce them to writing and transmit them to the Legislature in that form, and have them laid before that body and referred to the appropriate committee. That, I agree, would be inconvenient but not impossible. On the contrary, it would be quite possible. Now, if we can shut off in any measure this awful tide of corruption that rolls through the legislative halls year after year, had we not better submit to a little inconvenience? That seems to me to be all there is in this case. That we have oaths and that we shall have oaths, is very certain. Ever since the days when Abraham required his servant to put his hand under his thigh and swear by the God of heaven and earth to go to another land and take a wife for his son, down to this day, men have reposed singular confidence in declarations made under the solemnity of an oath. The Jews swore by the God of Israel, by Him who is gracious and merciful. The Grecian man swore by the Olympian god, and the Grecian women by the chaste bed of his royal spouse; the Indian by a stream that flowed from a sacred fountain; the Scandinavian by a bloody ring held by a priest; the Germans by their swords and beards. Later every nation swore by its tutelary divinity. The Theban by Mercury; the Cornithians by Hercules; the Athenians by Jupiter and Neptune. All down through the ages in great public emergencies specific and particular oaths have been required. The oaths of homage and fealty are familiar to us all. The oath of supremacy was prescribed after the terrible wars of the Roses. It is known to every student of English history. The oath of allegiance after the British union and the accession of James Ist of Scotland, the oath of abjuration and the various other specific oaths that are mentioned in history have been prescribed at times of great public necessity and danger. Such an epoch is that upon which we have fallen, and hence the necessity for remedy like this.

It is merely a question of judgment. That we shall have an oath is certain. What kind of oath we shall have is the only question in dispute.

Some of us seem to believe that there is no efficacy in an oath at all, and that bad men will take any sort of an oath with impunity. Others think there is great efficacy in oaths; no sure standard can be found whereby the views of one or the other can be tested, and as this is a mere question of judgment, and at the same time an effort in the direction of reform, as it can not do hurt and may do good, I appeal to those gentlemen who do not believe in a specific oath to yield their judgment and go for it. Let us do what we can while we have time. If there was no other reason than that the delegate from York, (Mr. J. S. Black,) whose great ability, long term of valuable public service and unspotted integrity entitles his views to unusual consideration, believes in it, that it receives the sanction of his judgment, it would be reason enough for me; but there are many other reasons, and as it is an honest step in the right direction, do not let us hesitate to take it.

Mr. LILLY. I do not know anything about this subject; but I desire to show the Convention that I am one man in this body. I do not wish to say anything that is ridiculous, or anything that will lead the House to do what is ridiculous; but I wish to say that I have listened to the gentleman from Luzerne about the different forms of oath, and no doubt they were given by him very correctly, as they certainly were in very eloquent language, in which I was very much interested. Now, however, I would ask him and the other members of this body to come down to a straight-forward American oath, and that is, that we swear men to do their duty with fidelity, nothing more, nothing less. We want no iron-clad double-ender oaths that will not amount to anything, but that will, in the language of the delegate from York, be a hissing and a scorn in the eyes of the people.

Mr. CURRY. Mr. President: I am in favor of this section, and will vote for it, because I believe it to be right. "Abraham said unto his eldest servant, 'put, I pray thee, thy hand under my thigh, and I will make thee swear by the Lord, the God of Heaven, and the God of the earth.'" Sir, as far back as the days of Abraham an oath was administered and recognized. Down along the line of ages, through every period of the history of our world, the solemn sanction of an oath has been respected and kept by men of honor and integrity. This oath will be

easy to take by men who propose to do right while members of the Legislature, and will serve to stimulate them while in the performance of their official duty.

If, however, on the other hand, it is found out that the party taking the oath does it for the purpose of deceiving and thereby perjuring himself, his own conscience should be enough to condemn him, but if there is no conscience left, I claim that the fear of detection, the fear of public opinion, the fear of public investigation, the fear of disgrace, dishonor, degradation and ruin staring him in the face will be of great effect. If a man has no respect for truth, no respect for justice, no respect for his fellow-men, it seems to me the fear of being dishonored forever will stimulate him to tell the truth, or forbid him to take the oath at all.

Mr. KATINE. Mr. President: It has been and is objected to this subsequent oath that it is unusual and extraordinary, that it is an anomaly to require a man after he has occupied an office and performed its duties, whether faithfully or unfaithfully, and ceased to be an officer, ceased to be a member of the General Assembly, to take an oath that he has discharged his duties faithfully. Mr. President, it is not new. The greatest judge of Israel did this thing; he went before the people and declared to them, "Behold here I am; witness against me before the Lord and before his anointed. Whose ox have I taken; whose ass have I taken; or whom have I defrauded? whom have I oppressed? or of whose hand have I received any bribe to blind my eyes where-with? and I will restore it to you." So, sir, I say we should require our officers to swear that they have taken no man's ox or his ass, or defrauded or oppressed any one, or received a bribe from any man.

The gentleman from Carbon thinks that an oath of this kind is not only unusual, but that to require it would be degrading, that nothing more is necessary than to require men to take the old-fashioned oath to support the Constitution of the Commonwealth and discharge their duties with fidelity. Why, Mr. President, each of the judges of the Supreme Court of the United States, before they enter upon the discharge of their high functions, takes an oath which I will read, and I desire the members of this Convention to listen to it and see whether they are degraded by taking an oath prescribing how they shall discharge their important duties:

"I do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the *poor* and to the *rich*, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as judge according to the best of my ability and understanding, agreeably to the Constitution and laws of the United States, so help me God."

A judge of the Supreme Court of the United States, before he takes his seat on that bench, takes an oath that he will do equal justice to the poor and to the rich. That may seem a strange kind of an oath in these days; but nevertheless it is so. No reason in the world can be given why a member of the Legislature should not after his term of office has expired take the oath required by the proposition now before us. If he is an honest man, he can do it without any compunction of conscience; and if he is a dishonest man, if he has acted corruptly, he will not take it. The man who has been corrupt in the Legislature will not go before the judicial officer and subscribe to this oath required of him; he will refrain from it, and thus the people will get rid of officials of that kind.

Mr. MANN. Mr. President: Frequent reference has been made during the discussion of this subject, both to-day and at other times when this question has been before the Convention, to the Bible and to what was said of old on this subject of swearing. I propose to make a reference to an authority which I suppose will be accepted by every one on this subject, and I think it very pertinent and a complete answer to very much that has been said this morning:

"Again, ye have heard that it hath been said by them of old time, thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths:

"But I say to you, Swear not at all: neither by heaven, for it is God's throne:

"Nor by the earth, for it is his footstool: neither by Jerusalem, for it is the city of the great King.

"Neither shalt thou swear by thy head, because thou canst not make one hair white or black.

"But let your communication be yea, yea; nay, nay: for whatsoever is more than these cometh of evil."

That I accept as the very highest authority upon this subject, and I affirm here, as I have before, that I thoroughly believe that no oaths ever yet taken made a dishonest man an honest one.

Mr. CURRY. May I ask the gentleman one question?

Mr. MANN. I have but a few minutes and I prefer to occupy them myself. I deny that it is a popular belief in this country that when a man takes an oath that he will tell the truth or perform a certain thing, that oath carries into the mind of the American people the assurance that it will be done. I assert that that assurance depends upon the fact whether it is an honest man or a dishonest man who makes the statement. That is my conviction on the subject, and all this repetition of oaths, as is said by the Great Authority on this question, is of evil and nothing else, and it will merely result in evil.

The way to punish corruption in the Legislature, as everywhere else, is to make penal laws that will deter dishonesty and corruption, and enforce them; but the attempt to purge the Legislature of corruption and rascality by oaths will be always a complete failure, and the insertion of this proposed oath into the Constitution of Pennsylvania will bring this Convention into contempt on the part of the people. That is my conviction. Why, during the war, we had iron-clad oaths which we administered to all classes of people that the authorities did not seem to think were quite reliable. I heard a little anecdote during that time which illustrates the popular belief upon the value of oaths. It was this: A man and his sons working in the fields caught a large rattle snake. They thought at first it was a very fine thing, but pretty soon it began to be a little troublesome. They did not know what to do with it. At last the father said to the boy "what shall we do with this snake?" One standing by said "why, swear him and let him go." [Laughter.]

That is the belief of the value of oaths among intelligent men everywhere, and I say it would be just as sensible to swear a rattle snake as it would be to swear a corrupt legislator either before or after he has been in that body, and it would have just as much virtue in it. If one-half that has been urged against the Legislature of Pennsylvania is true, the proper remedy is to abolish it entirely, and it would be more manly, in my judgment, to bring in a section abolishing the Legislature and providing that this body from this time on will do all the legislation of the State. Our organization is complete; we have made arrangements by which we can fill all vacancies for all time to come and we

could do all the legislation, and I have no doubt we could do it honestly, and then there would be no further corruption, no further difficulty in the matter. It does seem to me that if half what has been said is true, that is the course which gentlemen ought to advise.

Mr. BROOMALL. I offer an amendment to the amendment, being a substitute for the section :

The CLERK read the amendment as follows :

"That, in lieu of all official oaths, every male citizen shall be sworn or affirmed at the time of his birth that he will never steal, kill, commit arson,"—

Mr. HOWARD. I object. That is ridiculous.

SEVERAL DELEGATES. Let us hear it.

OTHER DELEGATES. No. No.

Mr. HOWARD. It is not germane to the question.

Mr. H. W. PALMER. Read it and put the man on the record that offers it.

The PRESIDENT *pro tem*. I cannot tell whether it is germane or not. It must be read.

Mr. CORSON. I object to it.

Mr. TEMPLE. I object to its reading.

The PRESIDENT *pro tem*. The reading cannot be stopped. The reading will be completed.

Mr. McCLEAN. I suggest that the Chair examine the amendment.

Mr. CHURCH. I suggest not. It ought to be read, Mr. President.

Mr. NILES. There is nothing obscene in it so far.

Mr. CHURCH. It ought to be read.

The PRESIDENT *pro tem*. The Chair certainly cannot prevent its being read. The amendment proposed will be read.

The CLERK read as follows :

"That, in lieu of all official oaths, every male citizen shall be sworn or affirmed at the time of his birth, that he will never steal, kill, commit arson, or rape, or do any other unlawful act"—

Mr. HOWARD. Is it in order to read such ridiculous stuff to a body of sensible men? I object to it.

SEVERAL DELEGATES. Let it be read.

Mr. HOWARD. No, sir, not unless I am forced to permit it to be read. I say it is out of order and it is ridiculous and absurd.

Mr. HAY and others. I call the gentleman to order.

Mr. HOWARD. It should not be permitted here.

The PRESIDENT *pro tem*. The sense of the Convention is against it, but the Chair

thinks it ought to be read, but he will take the sense of the Convention. ["No." "No."]

Mr. CHURCH. The gentleman who offers the amendment has the right to have it read.

Mr. HOWARD. I call for the yeas and nays on the question.

Mr. CHURCH. That is an unheard of proceeding.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK continued the reading of the amendment as follows :

"And that the executors or administrators of every such male citizen, upon his death, shall take and subscribe an oath or affirmation that the decedent never did steal, kill, commit arson or rape, or do any other unlawful act; and in case of the violation of either of the said oaths, the estate of the decedent shall be confiscated for the benefit of the State." [Laughter.]

The PRESIDENT *pro tem*. The Chair is compelled to rule it out of order as not an amendment to the amendment.

Mr. TEMPLE. I move that that paper or the substance of it be expunged from the records of the Convention.

The PRESIDENT *pro tem*. The question now is on the amendment of the delegate from Huntingdon (Mr. J. M. Bailey.)

Mr. HOWARD. I call for the yeas and nays on the substitute offered by the delegate from Delaware (Mr. Broomall.)

The PRESIDENT *pro tem*. That has been ruled out of order.

Mr. HOWARD. But it was read.

Mr. BROOMALL. I submit to the ruling of the Chair.

The PRESIDENT *pro tem*. The proposition has been ruled out and is not before the body.

Mr. BEEBE. Mr. President: I do not wish to take up the time of this Convention, nor do I expect to enlighten it by anything I shall say; but as an humble individual, having a duty to discharge, I wish briefly to give my views upon the question now pending. Many members of this Convention have heard me state that I agreed with the delegate from Potter, (Mr. Mann,) that I was opposed to oaths, and that I felt that the introduction of oaths to the extent that is now in use in our courts, and generally, amounts in my opinion to little less than blasphemy. But, sir, an oath we must have. The sense of the Commonwealth, and the

sense of this Convention is in favor of an oath, and while I am not permitted to allude to anything that transpired in committee, I believe I will simply state that if I could have prevented at the time the introduction of a report of this kind, I would have done so, and that is not saying what transpired in committee.

I believe, as a principle, that an honest man will tell the truth, whether he is sworn or not, and that a dishonest man will tell an untruth if he be sworn as readily as he would if he were not sworn, provided there is not a *legal penalty attached*, and the fear of the penalty only amounts to any prohibition. That is my belief, and I believe that it is the experience of the mass of men familiar with public life in this Convention. But inasmuch as we are to have an oath, inasmuch as we are to have a law, inasmuch as we are to have a test upon this question, I believe if there be any virtue in it that virtue will be found by making an extreme case, covering the whole ground, and with penalties provided, and with this view, and for the purpose of testing what so able and so learned a gentleman as the gentleman from York believes to be the correct rule, and so many others of this Convention, I shall vote as I have heretofore voted. I voted for the former oath, and I shall vote for this oath. I wish to have it extreme in order that we may test what the utility of it is.

One further consideration and I have done. I want to vote for this, furthermore, because it is an innovation, because no other State of the Union has ever asked for it or declared it. I want to see the grand old Commonwealth of Pennsylvania willing to come up to the work and subscribe to something that is an invention of her own, that is ahead of the times, that is progress, that is not imported from Illinois, Iowa, Minnesota, or Texas. I trust that this will prevail for that reason in connection with the other; first, that we may have a full test of the power of oaths; and second that we may show to the world that the Commonwealth of Pennsylvania is willing to do something that some other State has not done, and besides if right it will then have the fullest opportunity for vindication, and if wrong, will the sooner be struck from the organic law.

Mr. J. S. BLACK. A verbal amendment is required to be made in this proposition which was not made, but which was supposed to have been made at the time the

amendment was offered. Besides the introduction of the words suggested by the gentleman from Columbia, it is necessary in the thirty-fifth line to add immediately after the word "parties" the words "or from any candidate;" also in the same line the words "or promise" should be inserted after the word "gift."

I move to amend the amendment in these two particulars.

Mr. J. M. BAILEY. I accept both amendments.

Mr. TEMPLE. How will that make the clause read?

The CLERK read as follows:

I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth, to the best of my knowledge and ability; I have not knowingly listened to corrupt private solicitation from interested parties or their agents, nor have I received any gift or promise from such parties or from any candidate."

Mr. C. A. BLACK. I know that the Convention is tired of this debate, and I shall not occupy much of its time. The question is a very grave one, and should be treated with all proper decorum. I think the levity displayed upon this subject here is exceedingly unbecoming in a body like this. I have no doubt in the world, however, I may differ with my excellent namesake who was elected on the State ticket at large, that he is honest and entirely sincere in his convictions that this oath, if adopted, will go far to give greater purity in our legislation and correct the evils of which he complains.

I desire to state very briefly to the Convention the reasons why I must dissent from the conclusion arrived at by him. Let us see for a moment where we are in this matter of oaths. First, we have an oath in the legislative article, which passed to second reading some time since, which seems to embrace every possible kind of corrupt or improper influence which may operate upon the mind of the legislator. The severest penalties for the violation of the provisions are imposed by the subsequent sections, and for all of these I voted. I thought then as I still think, that it goes as far as we should go. In addition to that oath and the severe penalties imposed, we have yet another oath, adopted yesterday, going a step further than that; and providing for improper nominations, and corrupt means used by candidates in procuring and imposing equally severe

penalties. I voted for that also. Now, we are asked to adopt still another oath, providing that after a member of the Legislature has served out his term of office he must make and file within thirty days in the office of the prothonotary of his district, an oath that he has fulfilled all the requirements of the other oaths or be thereafter forever disqualified from holding office. I have always understood that the army in Flanders was the worst swearing body in the world, but if this additional oath be adopted and added to the two oaths which have already received our sanction, our Legislature will certainly be a well-sworn body, and in that respect, at least, well-nigh equal to the army in Flanders.

I cannot vote for this proposition; not because I think there are too many oaths already, but because I do not think it is founded upon a proper principle, being inconsistent, in my opinion, with that freedom of intercourse which should subsist between the people and their representatives. I was struck with the great force of the remarks of my excellent friend from York, who always speaks sensibly, that there should be the most uninterrupted intercourse between the representative and his constituents, and I would not even by implication trammel that intercourse or prevent the constituent from approaching the representative with proper intentions on any and all occasions. By the oaths already adopted in this body we have guarded against corrupt influences on the part of the constituent or on the part of the member, and I repeat that I would not throw any restriction, even by implication, in the way of an unrestrained intercourse between the representative and the people whom he represents. Why should we set up the representative as a Sir Oracle and allow no access to him by any of the people he represents. Every person, the humblest member of society, has an interest in legislation, and has a perfect right to approach his representative and use every proper argument to influence his action. Surely the mere talking to a member of the Legislature upon the subject of legislation, by anyone, whether constituent or not, should not be held to be corrupt *per se*, as this oath which is now under consideration originally contemplated before it was amended by the delegate from Columbia (Mr. Buckalew.)

The analogy as drawn by my friend, the junior delegate from York, (Mr. Gibson,)

between this case and that of a jury is certainly without force. The illustration, as he now calls it, would have been more apt if he had said that after a verdict is rendered the jury should be sworn that they have done all that they swore, when empaneled, they would do. No man ever dreams of such a thing. Before the jury take their seats in the jury box they are sworn to discharge their duties properly, and render a verdict according to the evidence; but no one ever dreamed of administering a subsequent oath to the effect they have so performed their duty. After a jury is sworn we assume that they will act properly, and so it should be with the legislators. My intelligent and zealous friend, the gentleman from Fayette, (Mr. Kaine,) who is chairman of the Committee upon Oaths, and who reported this oath, has referred to the oaths administered to judges of the Supreme Court of the United States, and he argues that because those judges take a certain form of oath, that therefore this amendment should be adopted. The argument is not very logical, most certainly. I would like to ask my friend from Fayette if he ever heard of a supreme judge, or any other judge, being called upon, after his term of office had expired, to swear that he had performed his duties with fidelity. He has never heard anything of the kind, sir. The whole thing is entirely anomalous in our theory and practice of government. I know of no public officer, from the highest to the lowest, from the President of the United States down to the lowest township official, who is sworn at the end of his term of office that he has not been corrupted in the discharge of his official duties. The position, to my mind, seems a very strange one. It is true that the judges are sworn, and so are jurors and everybody else, to do what is right. But when did we ever require a man to swear that he *has* done what is right, and if he refuse to take the oath, dishonor and forever disqualify him from holding any office? On principle, I appeal to this Convention to say that this is not right. Is there not something repulsive in this entire proposition? It is a kind of inquisition, a worse than Spanish Inquisition, which virtually puts a man upon the rack, and either perjure himself, or state how all his votes have been, and if he does not, by standing silent admit that he has done the things which disqualify him forever from holding any office in the Commonwealth.

For these reasons I must dissent from the conclusion arrived at by the very able delegate from York. I have no doubt of his entire sincerity; but I cannot see the efficacy that he claims will result from the adoption of this amendment. In adopting the oaths that we have already placed in the Constitution, I think we have gone as far as we need go, and to introduce this anomalous and strange oath would be in my judgment a step beyond what is proper and right, and I do not believe the people would sanction it. I have felt impelled to give these reasons why I cannot vote for this additional oath; I do not think it will accomplish anything that will not be attained by either of those we have adopted. Like the delegate from Columbia, I am a little sceptical as to the great value of these oaths and the severe penalties attached. The honest man, if not conscientious as to the great multiplication of official oaths, can take them without dread or risk, and the rascal can take them with equal if not greater facility, for he does not care how hard he swears. The field with us at least is unexplored, and I am very willing to try the experiment, with the oaths I have already voted for. Much good it is claimed will result from the imposition of these oaths, and it is said they have done good elsewhere, especially in Illinois, where the iron-clad oath, in its extreme rigidity, has been adopted in the Constitution of that State. But for the reasons I have given, I cannot with my present impressions go the length this section proposes. If it is adopted, I sincerely hope it may result in the great good its learned and eloquent advocate contends for.

Mr. KNIGHT. Mr. President: I have so far continued to vote against these stringent, iron-clad oaths, and I expect to continue to do so. We are of the people, and we have been sent here by the people in order to make a better Constitution for the people than the one under which we are at present living. When we assembled the question came up, what kind of an oath should be administered to us, and we ruled that the oath which we should take would be that we would perform our duties here with fidelity. We all took this oath, sir, each member of us, and each member knows whether he has acted with fidelity or not. But when the question comes up for us to prescribe an oath for the people who sent us here, then we put them upon a different

footing. I claim that we are just exactly of the people, no better nor worse than those who sent us here, and when we are unwilling to prescribe this oath for ourselves, we are not at liberty, in my judgment, to bind it upon others. We have already put into our Constitution two ridiculous oaths, binding actions of men before they enter the Legislature and while they are in, so that they shall not listen to anybody, and so that nobody can speak to them, which are some of the ridiculous clauses we have already inserted. And what then? Why after branding them as being corrupt and saying that it is necessary to do this to trammel them and to swear them at every point, we now propose to require them at the expiration of their labors to swear that they have done their duty in all of the many respects here specified. I am satisfied that when the question of accepting or rejecting our labors is submitted to the people, if they find all these ridiculous oaths in the Constitution, their action upon that instrument will disappoint some of us.

Mr. J. N. PURVIANCE. I move to amend by striking out all after the word "ability" in the thirty-third line, down to the word "agents" in the thirty-fifth line.

The words proposed to be stricken out were read as follows:

"I have not knowingly listened to corrupt private solicitation from interested parties or their agents, nor have I received any gift or promise from any such parties, or from any candidate."

Mr. J. N. PURVIANCE. Now I would ask that the proposition of the distinguished gentleman from York be read as it would stand if amended in the manner I propose.

The PRESIDENT *pro tem*. It will be read.

The CLERK. The oath would read, as proposed to be amended by the gentleman from Butler, as follows:

"I do solemnly swear (or affirm) that as a member of the General Assembly, I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability. I have not voted or spoken on any matter in which I had, or expected to have, a private interest. I have not done, or willingly permitted to be done, any act which would make me guilty of bribery. I have observed the order and forms of legislation as prescribed by the Constitution; and I have not knowingly voted or spoken for

any law, bill, or resolution which I knew or believed to be inconsistent therewith."

Mr. J. N. PURVIANCE. I will not occupy but a few minutes because I know the Convention is impatient and desirous of voting, but the amendment I have offered seems to take out of the oath of the distinguished gentleman from York the very objectionable feature in it, and that is, that a representative could hold no correspondence or communication of any character whatever with his constituents. I take it that that is going too far, and whilst I desire to support the proposition of the gentleman from York, yet with that in it I cannot, because I can conceive of many cases where a member would be exceedingly embarrassed in the proper discharge of his duties by not permitting honest and worthy constituents of informing him of the particular matters before the Legislature to which he wished to call his attention and ask his support or his opposition.

Now, let us make the thing reasonable and if we can get it in a reasonable shape then, like my friend from Venango, (Mr. Beebe,) I am willing to introduce this innovation in Pennsylvania. It is something novel, something new, and comes from one of the most distinguished gentlemen not only of the State of Pennsylvania but of the whole Union. If he has faith in it I am willing somewhat upon his arguments to act upon his views on this subject.

Now, I believe—and I wish the Convention to bear with me but a minute longer—I believe a great deal in oaths, and I believe more in the integrity of the human heart than many gentlemen here seem to. I have known of many cases where under the sanction of an oath and the pinch of that oath on the conscience, men of apparently careless and reckless lives would yet not knowingly and wilfully commit perjury. I recollect of a case where I drew up the application of a man for a bounty land warrant for services in the war of 1812, under the act of Congress. He knew he was entitled to forty acres. He was a plain-minded man, somewhat an uneducated man. I drew it up as he directed. I sent that on to Washington. It came back, and instead of it being for a forty acre warrant, he got a warrant for eighty acres. I was somewhat pleased at the result, sent him word to come in. He came in to town, came to my office, and I informed him that he got an eighty acre warrant instead of a forty. It seemed

to strike him; he fell back in the chair, as it were. Said he, "I am afraid I have sworn falsely, and I would not for all the land the government owns, that I had taken a false oath." "Now," said I, "Jimmy, I have taken your statement just as you made it to me, and if there is any wrong it is a mistake of you, not of me. but I tell you what I will do; I will send this warrant back to Washington, and I will say to the officer there that you know you are entitled to a forty acre warrant, but that you believe you are not entitled to an eighty acre warrant, and to cancel this warrant and send you one for forty acres." It seemed to gratify him exceedingly. I sent the warrant back to Washington. It was returned an eighty acre warrant still, and the officer wrote that upon examination of the returns made into the Department by John Hare Powell, of Philadelphia, who was his captain, or officer, he had served a few days over the three months, and that brought him into an eighty acre warrant. Then I sent for him again, and he came and was rejoiced and accepted his warrant.

This is an instance of a man, although not overly moral in his deportment, yet who would not accept that warrant because of that mistake, as he supposed, though it operated to his own benefit and was forty acres of land more than he expected he was entitled to or would get.

I have known many other cases of a similar character. I have known cases of trials where the party when called upon to give testimony would say, confessing judgment, "I cannot take that oath; I owe that man so and so."

Oaths do have their binding effect, and I am willing to vote for this if modified in the manner in which I have now proposed.

Mr. LITTLETON. I rise to call the previous question.

The PRESIDENT *pro tem*. Gentlemen seconding the call will rise.

Mr. TEMPLE. I ask the gentleman whether he is calling the previous question on the amendment or on the article.

Mr. LITTLETON. On the whole subject.

The PRESIDENT *pro tem*. It requires eighteen gentlemen to sustain the call. The Clerk will take down the names of those who second the call.

Messrs. Brodhead, Biddle, Newlin, J. Price Wetherill, J. S. Black, Corbett, Heverin, M'Clean, Broomall, J. W. F. White, Hanna, Bannan, Cronmiller, Ed-

wards, Van Reed, Funck, Reynolds, Lilly, MacConnell, Barclay, Wright, Church, and Stanton rose to second the call.

The *PRESIDENT pro tem.* The question is, "Shall the main question be now put?"

Mr. HARRY WHITE. On that I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Achenbach, Baer, Bailly, (Perry,) Bannan, Barclay, Beebe, Biddle, Black, J. S., Bowman, Boyd, Brodhead, Broomall, Brown, Calvin, Church, Corbett, Cronmiller, Dodd, Dunning, Edwards, Funck, Gilpin, Hanna, Harvey, Hazard, Heverin, Horton, Howard, Hunsicker, Kaine, Lilly, Littleton, Long, MacConnell, M'Camant, M'Clean, M'Murray, Mitchell, Palmer, H. W., Patterson, T. H. B., Patton, Porter, Pughe, Reynolds, Rooke, Russell, Simpson, Smith, Henry W., Stanton, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Woodward and Wright—54.

N A Y S .

Messrs. Alricks, Andrews, Bailey, (Huntingdon,) Bigler, Buckalew, Bullitt, Campbell, Cassidy, Cochran, Corson, Curry, Curtin, Cuyler, Dallas, Darlington, De France, Elliott, Ellis, Ewing, Finney, Fulton, Guthrie, Hall, Hay, Hemphill, Knight, Lamberton, Landis, Lawrence, Mann, Minor, Mott, Newlin, Niles, Patterson, D. W., Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Smith, H. G., Stewart, Struthers, Temple, Turrell, Walker, Wherry, White, Harry, White, J. W. F. and Worrell—51.

So the main question was ordered to be now put.

ABSENT.—Messrs. Addicks, Ainey, Armstrong, Baker, Bardaley, Bartholomew, Black, C. A., Carey, Carter, Clark, Collins, Craig, Davis, Fell, Gibson, Green, Lear, MacVeagh, M'Culloch, Mantor, Metzger, Palmer, G. W., Parsons, Ross, Sharpe, Smith, Wm. H., White, David N. and Meredith, *President*—28.

The *PRESIDENT pro tem.* The question now is on the amendment of the delegate from Butler (Mr. J. N. Purviance.)

Mr. J. S. BLACK. Is not that amendment cut off by the previous question?

The *PRESIDENT pro tem.* The previous question operates on all future amend-

ments. The question now is on the amendment of the delegate from Butler (Mr. J. N. Purviance.)

Mr. HARRY WHITE and Mr. J. N. Purviance called for the yeas and nays.

Ten members did not rise to second the call.

The amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the amendment of the gentleman from York (Mr. J. S. Black.)

Mr. CORBETT. On that I call for the yeas and nays.

Ten members rose to second the call.

Mr. H. W. SMITH and others. I ask that it be read.

Mr. BUCKALEW. I rise to an explanation. The amendment offered by me is in the section as offered. ["Yes."]

The *PRESIDENT pro tem.* The amendment will be read.

The *CLERK* read as follows:

"Within twenty days after the adjournment of the General Assembly *sine die*, every member of the House of Representatives and every Senator whose term will expire at the next general election shall take and subscribe before some officer qualified to administer oaths the following oath or affirmation:

'I do solemnly swear (or affirm) that as a member of the General Assembly I have supported and obeyed the Constitution of this Commonwealth to the best of my knowledge and ability. I have not knowingly listened to corrupt private solicitation from interested parties or their agents, nor have I received any gift or promise from any such parties, or from any candidates. I have not voted or spoken on any matter in which I had or expected to have a private interest. I have not done or willingly permitted to be done any act which would make me guilty of bribery. I have observed the order and forms of legislation as prescribed by the Constitution, and I have not knowingly voted or spoken for any law, bill or resolution which I knew or believed to be inconsistent therewith.'

"The foregoing oath or affirmation shall be filed in the office of the prothonotary of the county in which the Senator or Representative resides, and if any such Senator or Representative shall fail to take and file said oath or affirmation within the time prescribed, (unless unavoidably prevented,) he shall be forever afterwards disqualified from holding any office of trust or profit within this Commonwealth, and if, in taking

such oath or affirmation, it shall appear that he has knowingly sworn or affirmed falsely, he shall be deemed guilty of perjury and also be disqualified as aforesaid."

The *PRESIDENT pro tem.* The Clerk will call the roll.

The *CLERK* proceeded to call the roll.

Mr. DODD. (After having voted in the negative.) I voted inadvertently. I am paired with the delegate from Luzerne, (Mr. G. W. Palmer,) who would have voted "yea," and I would have voted "nay" if he had been present.

The *CLERK* resumed and concluded the call, with the following result :

YEAS.

Messrs. Achenbach, Alricks, Andrews, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Beebe, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Calvin, Campbell, Cochran, Curry, Cuyler, Dallas, Dunning, Elliott, Ellis, Ewing, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Harvey, Hay, Hazzard, Hemphill, Heverin, Howard, Hunsicker, Kaine, Lambertson, Landis, Lawrence, Long, M'Camant, M'CLean, M'Murray, Mitchell, Mott, Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Russell, Smith, H. G., Smith, Henry W., Temple, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry, White, J. W. F., Woodward, Worrell, and Wright—66.

NAYS.

Messrs. Bailly, (Perry,) Biddle, Bigler, Black, Charles A., Bowman, Broomall, Church, Corbett, Corson, Cronmiller, Darlington, De France, Edwards, Horton, Knight, Lilly, Littleton, MacConnell, Mann, Minor, Newlin, Niles, Patterson, D. W., Porter, Pughe, Purviance, John N., Reynolds, Rooke, Runk, Simpson, Stanton, Struthers, Turrell, Walker and White, Harry—35.

So the amendment was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Armstrong, Baker, Bardsley, Bartholomew, Bullitt, Carey, Carter, Cassidy, Clark, Collins, Craig, Curtin, Davis, Dodd, Fell, Green, Hanna, Lear, MacVeagh, M'Gulloch, Mantor, Metzger, Palmer, G. W., Parsons, Ross, Sharpe, Smith, Wm. H., Stewart, White, David N. and Meredith, *President*—32.

["Orders of the day."]

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SEVERAL DELEGATES addressed the Chair.

The *PRESIDENT pro tem.* The orders of the day are called, and the Chair cannot recognize gentlemen. The hour of one having arrived, the Convention takes a recess until half-past three o'clock.

Mr. HAY. I rise to a point of order. We cannot adjourn until a motion to that effect has been adopted.

The *PRESIDENT pro tem.* (At one o'clock and fifteen minutes P. M.) The House now takes a recess until half-past three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

OATHS OF OFFICE.

The *PRESIDENT pro tem.* At the time of the recess the Convention had voted upon all the sections of the article on the oaths of office, and the question is on transcribing the article for a third reading.

Mr. LILLY. I move that it be referred to the Committee on Revision and Adjustment.

Mr. KAINE. I second the motion.

Mr. DARLINGTON. Was the vote taken on the section as amended?

The *PRESIDENT pro tem.* It was. The question is on the motion of the gentleman from Carbon, (Mr. Lilly,) to refer the article to the Committee on Revision and Adjustment.

The motion was agreed to.

FUTURE AMENDMENTS.

Mr. C. A. BLACK. I move to reconsider the vote by which the amendment of the delegate from Allegheny, (Mr. Guthrie,) to the seventh line of the sixteenth article, "on future amendments," was adopted.

The *PRESIDENT pro tem.* How did the gentleman from Greene vote?

Mr. C. A. BLACK. I voted with the majority?

The *PRESIDENT pro tem.* Is the motion to reconsider seconded?

Mr. PURMAN. I second it.

The *PRESIDENT pro tem.* How did the gentleman vote?

Mr. PURMAN. I voted with the majority.

Mr. LILLY. I hope the motion to reconsider will not prevail. Let the article now remain as it is, and let it go to third reading.

The *PRESIDENT pro tem.* The motion is not debatable.

The motion to reconsider was agreed to.

The *PRESIDENT pro tem.* The section will be read.

The *CLERK* read as follows:

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments, shall be entered on their Journals, with the yeas and nays taken thereon; and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers of different political parties, in every county in which such newspapers shall be published, and if in the Legislature next afterwards chosen such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner and at such time, at least three months after being so agreed to by the two Houses, as the Legislature shall prescribe, and if such amendment or amendments shall be approved by a majority of those voting thereon, such amendment or amendments shall become a part of the Constitution; but no amendment or amendments shall be submitted oftener than once in five years: *Provided*, That when two or more amendments shall be submitted, they shall be voted upon separately.

The *PRESIDENT pro tem.* The Clerk will state the amendment of the gentleman from Alleghany (Mr. Guthrie.)

The *CLERK.* The amendment was to insert after the word "newspapers," in the seventh line, the words "of different political parties."

Mr. S. A. PURVIANCE. I will make a suggestion to the gentleman from Greene, whether it would not be better to insert "in all the weekly papers of the State."

Mr. C. A. BLACK. Oh no! That would be too many.

The *PRESIDENT pro tem.* The question is upon the amendment. (Putting the question.) The yeas appear to have it.

Mr. DALLAS. I call for the yeas and nays.

Mr. GUTHRIE. Mr. President; I hope that this amendment will not be voted down. I call for the yeas and nays, and I ask to be heard before the question is taken.

The *PRESIDENT pro tem.* Ten gentlemen must rise to second the call.

The yeas and nays were ordered, ten gentlemen rising to second the call.

Mr. LILLY. The question was fully debated yesterday in full Convention, and here we have just a quorum.

Mr. EWING. I trust that the Convention will hear my colleague from Allegheny (Mr. Guthrie.) He very seldom takes up time; it is something new for him, and he should be heard.

Mr. GUTHRIE. I do not desire to say anything; but I want to have a fair opportunity of having the question understood by the Convention. I desire to have gentlemen to vote understandingly on this question. I do not see why there should be any objection to authorizing and directing the publication in two papers in each county, one of each party. I do not see why gentlemen should be startled at the idea of mentioning a political party in the Constitution. We all know that parties exist, and we all know that where one party has the power—it may be one party to-day and another party to-morrow—the patronage is always given to that one side. The people on the other side never have a chance to see the legal advertisements, because you know very well that the Republicans do not take Democratic papers, and the Democrats do not take Republican papers. The Democrats do not believe what they see in Republican papers, and I know that the Republicans do not believe what they see in Democratic papers. I can see no just reason for refusing to give general publicity to any amendment that may be offered to the Constitution. I can see no good reason for it.

Mr. CLARK. Mr. President:—

The *PRESIDENT pro tem.* Debate is not in order. The yeas and nays have been ordered, and the Clerk will call the roll.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Barclay, Beebe, Boyd, Buckalew, Campbell, Carter, Cassidy, Clark, Curry, Dallas, Elliott, Ellis, Ewing, Fulton, Guthrie, Hall, Hemphill, Landis, Lilly, M'Murray, Mitchell, Niles,

Patterson, T. H. B., Patton, Porter, Purman, Purviance, Samuel A., Read, John R., Smith, H. G. and Woodward—34.

N A Y S.

Messrs. Andrews, Armstrong, Bailly, (Perry,) Bigler, Black, Charles A., Bowman, Broomall, Bullitt, Calvin, Corson, Cronmiller, Curtin, Darlington, De France, Edwards, Hanna, Horton, Hunsicker, Kaine, Knight, Lamberton, Lawrence, Long, MacConnell, M'CLean, Mann, Minor, Patterson, D. W., Purviance, John N., Reed, Andrew, Rooke, Russell, Simpson, Smith, Henry W., Stanton, Struthers, Turrell, Van Reed, Walker, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Wright—44.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Biddle, Black, J. S., Brodhead, Brown, Carey, Church, Cochran, Collins, Corbett, Craig, Cuyler, Davis, Dodd, Dunning, Fell, Finney, Funck, Gibson, Gilpin, Green, Harvey, Hay, Hazzard, Heverin, Howard, Lear, Littleton, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Reynolds, Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Wetherill, J. M., White, David N., Worrell and Meredith, *President*—55.

Mr. SIMPSON. I see that the form of this article as it appears now is the same as in our present Constitution, and I have long thought that it ought not to be exactly in the language in which it is. While I agree that an amendment upon the same subject-matter ought not to be proposed oftener than once in five years, by preventing all amendments for five years, the people of the State have their hands tied. I would therefore move to insert in the eighteenth line after the word "amendments" the words "upon the same subject-matter," so that no amendment upon the same subject-matter shall be proposed oftener than once in five years, so as to leave the door open in case it may be of emergency to put in something that may be necessary.

The PRESIDENT *pro tem*. That portion is stricken out. There is no eighteen line in the section as it stands. All after the words "submitted to" in the thirteenth line were stricken out and a manuscript amendment added.

Mr. SIMPSON. Then I withdraw my amendment.

The PRESIDENT *pro tem*. The question is on the section.

The section was agreed to.

Mr. LAWRENCE. I move that the article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

COUNTY OFFICERS.

Mr. S. A. PURVIANCE. I move now that article fourteen be considered.

The motion was agreed to, and the Convention proceeded to the consideration on second reading of the article on county, township and borough officers (No. 14) as reported from the committee of the whole.

The first section was read as follows:

"County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, county commissioners, county treasurers, county surveyors, county auditors, clerks of the courts, district attorneys, and such others as may from time to time be established by law: *Provided*, The Legislature may declare what offices shall be incompatible; and no sheriff or treasurer shall be re-eligible for the term next succeeding the one for which he may be elected."

Mr. DARLINGTON. I move to amend by striking out the word "county" where it occurs in four places in the second and third lines as unnecessary; so as to read: "county commissioners, recorders of deeds, surveyors, treasurers and auditors," leaving out the word "county" as part of the names of the officers.

Mr. S. A. PURVIANCE. I would say that there can be no great objection to that, inasmuch as the word "county" is triplicated there, and the amendment may as well prevail.

The amendment was agreed to.

Mr. KAINE. I move to amend by striking out of the fifth line from the word "law" down to the word "incompatible." The words are: "*Provided*, That the Legislature may declare what offices shall be compatible."

Then the section would read:

"County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, county commissioners, county treasurers, county surveyors, county auditors, clerks of the courts, district attorneys, and such others as may be from time to time established by law; and no sheriff or treasurer shall be re-eligible for the term next succeed-

ing the one for which he may be elected."

Mr. ANDREW REED. Before a vote is taken upon this amendment I desire to say that I hope the Convention will not strike out these words. It is very well known that in the smaller counties of the State several of these officers are combined in one. The report of the Committee on County, Township and Borough Officers, as originally made to this Convention, provided that one person might hold several of these offices. That was stricken out, and the words included in the motion to strike out, made by the gentleman from Fayette, were inserted. If we say that these shall be constitutional offices, then if we strike out the words which the gentleman from Fayette asks us to do, we must have a recorder of deeds and a register of wills for each county, which, in these smaller counties, will be entirely unnecessary. I think the Convention will see the propriety of keeping this language in the section, or else adopting the section as it was reported originally from the Committee on County, Township and Borough Officers; because, unless that is done, these offices will be multiplied beyond all necessity.

Mr. KAINE. There is no use in having these words in this section at all. Providing that the Legislature may do this does not amount to anything. They have the power to do so at any rate. The Legislature will have this power, whether this section be passed in its present shape or not. They can provide what offices are incompatible; and if so, what is the necessity of putting this language into the Constitution, saying that they may do a thing which they have the power to do? That is the reason why I desire to have these words stricken out; and the objection made by the gentleman from Mifflin amounts to nothing whatever. The Legislature will have the right to say that a man shall be recorder of deeds, register of wills, clerk of the orphans' court, and hold as many other offices as there may be offices in the county—county surveyor also, if you please. They do it now; they always have done it; and they may do it again.

Mr. ANDREW REED. But they are not constitutional offices.

Mr. KAINE. They are just as much constitutional officers under the old Constitution as they are under the present one we are framing. The old Constitution says:

"Prothonotaries of the Supreme Court shall be appointed by the said court for the term of three years, if they shall so long behave themselves well."

And again:

"The recorders of deeds, registers of wills, and sheriff shall keep their offices in the county in which they respectively shall be officers."

They are just as much provided for in the old Constitution as they are in this. There is no difference in the world. There is no change whatever, as far as that is concerned, between this section and the old Constitution except putting in county surveyors.

Mr. WHERRY. I trust the amendment will not prevail. There is a great difference between the provision of the old Constitution and the present section, and the phraseology cannot remain the same. This is an imperative section fixing these officers here in the Constitution, and I can easily conceive that if the amendment is adopted it might give the Legislature some trouble in declaring the incompatibility of some of these offices. I have reason to believe that this language was placed there for the purpose at some future time of removing the care of prisoners from the sheriff. The subject was brought to the notice of the Committee on County, Township and Borough Officers. They had this point under consideration; and wisely (as I think) left the matter open so that the Legislature might at some future time establish the office of wardens of prisons as distinct from the office of sheriff.

The amendment was rejected.

Mr. BEEBE. I move to amend by striking out the words "sheriff or" in the proviso.

I see no reason why the sheriff should not be re-elected any more than other county officers, with the single exception of the treasurer, save that the old Constitution says so.

Mr. S. A. PURVIANCE. I hope there will be no change in reference to the election of sheriff. A sheriff has been ineligible for re-election ever since the organization of our government, and I regard it as a very valuable part of our system that the sheriff and treasurer shall still be ineligible to re-election. They handle large sums of money, and therefore it is necessary that they should have their accounts settled before they again have any further claims upon the patronage of the public.

Mr. BOWMAN. I hope this amendment will not prevail. If it does and a sheriff is made eligible to re-election, everybody knows that with the power he has in his hands, he will travel all over the county and use that power for the purpose of securing his re-election. He will extend the writs that he has against certain parties, and he will enforce the writs that he has against others. He can favor one man and injure the next, and this will be a dangerous power with which to oppress the people confided to one man if this amendment should prevail.

Mr. BEEBE. Cannot the treasurer travel over the county and work for his re-election, too?

Mr. BOWMAN. No, sir. The treasurer cannot do so. The sheriff sees more men in one day than the treasurer does in a month. The sheriff is continually traveling, and if this amendment is adopted he will be on an electioneering tour all the time.

The amendment was rejected.

Mr. SIMPSON. I move to amend by striking out in the fifth and sixth lines the words "what offices shall be incompatible, and," and inserting the words, "which of said offices may be held by the same person, but."

The proviso will then read :

"Provided, The Legislature may declare which of said offices may be held by the same person, but no sheriff or treasurer shall be re-eligible for the term next succeeding the one for which he may be elected."

I notice that the present Constitution is very precise in regard to this. It says : "That the Legislature shall provide by law the number of persons in each county who shall hold such offices, and how many and which of said offices shall be held by one person."

That is the language of the present Constitution. This amendment is shorter and I think expresses exactly the same idea.

Mr. CORSON. Mr. President : If the gentleman will reflect a moment, he will find that the proviso in the section as reported by the committee, is much broader than that which he would insert, for he only permits the Legislature to say how many of these offices may be held by one officer whilst this section provides that the Legislature may declare what offices, whether they be named in this section or not, are incompatible. Therefore I hope

the section will be adopted in that respect.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from the city (Mr. Simpson.)

The amendment was rejected.

Mr. WRIGHT. I move to amend by inserting after the word "sheriff" in the sixth line the words "district attorney." I do that because in our county and in some of the larger counties the office of district attorney is about as valuable as any other that we have, and he makes a great many thousands of dollars. I do not know of any reason why they should be left out. In the smaller counties this office is mostly held by young men and they give their whole time to it. I therefore move to insert "district attorneys" in the proviso as to ineligibility to re-election.

The amendment was rejected.

Mr. DARLINGTON. I now move to amend in the fifth line by striking out the word "provided." It is perfect without that.

Mr. KAINE. That ought to come out.

The amendment was agreed to.

Mr. KAINE. I move to amend by striking out all after the word "Legislature," in the fifth line, to the word "incompatible," in the sixth line, and insert :

"Shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person."

That is precisely the old Constitution. The third section of the sixth article of the old Constitution is this :

"The Legislature shall provide by law the number of persons in each county who shall hold said offices, and how many and which of said offices shall be held by one person."

The question being put, a division was called for, and the ayes were twenty-six.

Mr. DARLINGTON. I ask for the yeas and nays on this question.

Mr. KAINE. I hope the yeas and nays will be taken.

The yeas and nays were ordered, ten gentlemen rising to second the call.

Mr. LILLY. These amendments were all proposed in the committee of the whole, and voted down, and it is not worth while to take up the time of the Convention by offering them here.

Mr. S. A. PURVIANCE. May I be permitted to ask the gentleman from Fayette

a question? Does his amendment propose to make any change from the substance of the section?

MR. KAINE. No, sir.

MR. S. A. PURVIANCE. Then I have to say that the language used in the section is not half as long as that used in the amendment.

MR. KAINE. I did not understand the gentleman's question. I do propose to make a change, because the matter before us says the Legislature "may." I want it that the Legislature "shall" do this thing when required, as it is in the old Constitution.

MR. WHERRY. If that be the only purpose of the gentleman from Fayette, he can accomplish it by changing the word "may" to "shall." But it is clear to my mind that the section as drawn is much broader in its intention as well as briefer in its statement than the proposition of the gentleman from Fayette. I shall go with him to change "may" to "shall" if he will retain the phraseology here.

The President *pro tem*. The yeas and nays have been ordered, and the Clerk will call the names of delegates on the amendment.

MR. KNIGHT and others. Let it be read.

The Clerk read the amendment.

MR. TURRELL. I am sorry to differ with the gentleman from Fayette, but it does seem to me that his language is not half as definite, precise and clear as the language of the section.

The President *pro tem*. The Clerk will call the names of delegates on the amendment of the gentleman from Fayette (Mr. Kaine.)

The question was taken by yeas and nays with the following result:

YEAS.

Messrs. Bigler, Black, Charles A., Curtin, Dallas, Darlington, Fell, Hanna, Hemphill, Howard, Hunsicker, Kaine, McClean, Mann, Patterson, D. W., Reynolds, Russell, Simpson, Smith, H. G. and Smith, Henry W—19.

NAYS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Barclay, Beebe, Biddle, Bowman, Buckalew, Calvin, Campbell, Carter, Cassidy, Clark, Corson, Cronmiller, De France, Dodd, Edwards, Elliott, Ellis, Ewing, Fulton, Guthrie, Hall, Hazard, Horton, Knight, Lamberton, Landis, Lawrence, Lilly, Long, MacConnell, M-

Murray, Minor, Mitchell, Niles, Palmer, G. W., Patterson, T. H. B., Patton, Porter, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Rooke, Stanton, Stewart, Struthers, Turrell, Walker, Wetherill, Jno. Price, Wherry, White, Harry, White, J. W. F. and Wright—61.

So the amendment was not agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Black, J. S., Boyd, Brodhead, Broomall, Brown, Bullitt, Carey, Church, Cochran, Collins, Corbett, Craig, Curry, Cuyler, Davis, Dunning, Finney, Funk, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Lear, Littleton, MacVeagh, McCamant, McCulloch, Mantor, Metzger, Mott, Newlin, Palmer, H. W., Parsons, Pughe, Ross, Runk, Sharpe, Smith, Wm. H., Temple, Van Reed, Wetherill, J. M., White, David N., Woodward, Worrell and Meredith, President—53.

MR. WHERRY. I now move to strike out the word "may" and insert the word "shall" before the word "Legislature," in the fifth line.

The amendment was agreed to.

MR. CORSON. The amendment just adopted renders it necessary to strike out the words "shall be," at the end of the fifth line, and insert the word "are," so that it will read: The Legislature shall declare what offices are incompatible," instead of "the Legislature shall declare what offices shall be incompatible." I therefore move to strike out the words "shall be," at the end of the fifth line, and insert the word "are."

The amendment was agreed to.

MR. J. W. F. WHITE. I move to strike out the word "auditors," in the third line. I believe the word "county" has already been stricken out.

A single word in explanation of this amendment. The language of this section is imperative. It will require every county in the State to have an auditor as well as the other officers mentioned here. The word "auditors" is not found in our present Constitution, and in the city of Philadelphia and in Allegheny county we have no auditors. We have in Allegheny county a different system, the comptroller being the main fiscal officer of our county. Several years ago county officers were abolished in our county, and I apprehend they were abolished in this city many years ago. Having an entirely different system, which with us has work-

ed much better than the old system, and at the instance of many of our old citizens, all that I conversed with, and especially of our comptroller, who understands the affairs of our county very well, we do not want the old system of county auditors to be restored in our county, and I do not suppose that any one wants it restored here in Philadelphia. There is no necessity therefore of having the word "auditors" here, making it imperative in every county of the State to have auditors. If they are needed in other counties, or wherever they are needed, the Legislature can furnish them as they are now furnished. Neither will it abolish auditors where they exist by leaving out the word here. The present laws will operate until they are changed. I hope this amendment will prevail.

Mr. S. A. PURVIANCE. I trust the word "auditors" will not be stricken out. That is an office common to all the counties of the Commonwealth, except perhaps Allegheny and the city of Philadelphia. I see no difficulty to result from retaining the word "auditors," and if the gentleman chooses we may insert the words, "or comptroller," the office which is substituted in Allegheny for that of auditor. But, sir, I know that there are a class of people who complain somewhat of the change that has taken place in Allegheny county because of the fact that the comptroller's accounts are not as well settled as those that are settled up by auditors. In all the other counties of the Commonwealth the people elect three auditors, and they settle the accounts of the county; but this comptroller of Allegheny seems to have absolute control of the funds of the county without any proper accountability. I will say this, however: If my colleagues from Allegheny county are all agreed on the subject that auditors should not be made applicable to the county of Allegheny, I have no objection to any suggestion or amendment that will carry that into effect; but inasmuch as auditors are common to all the other counties, it ought to be one of the offices named in this section.

Mr. MACCONNELL. Mr. President: I think it the correct practice to have different persons to settle public accounts from the parties who expend the money. That has been the usual practice. Auditors were abolished in Allegheny county some years ago and a comptroller appointed; that is to say, the office of auditor in Allegheny county was abolished

and a comptroller appointed. He and the commissioners sign the warrants for the money that is paid out. They are all together; they join in expending the money; and they together or perhaps the Comptroller, settles the accounts. They may be well settled, for anything that I know; but I follow my colleague (Mr. S. A. Purviance) in saying that I know there are complaints on that score. I think it will be safe to have the accounts audited by somebody else than the gentlemen who have the expenditure of the money. If they expend the money, they will be sure to pass the accounts, whereas a different set of officers would be very likely to inspect the matter and perhaps not pass accounts that the parties expending the money would pass.

Further, Mr. President, if those who have the expending of the money know that there is nobody to come after them to inspect the accounts, they will not be as circumspect, or at least they will not be as likely to be as circumspect, as they would be if they knew there were persons coming after them to inspect their accounts.

For these reasons, I shall vote against striking out the word "auditors."

Mr. EWING. Mr. President: As this seems to be an Allegheny county question, and gentlemen are giving their experience, I will state what I understand in regard to the position of affairs in our county.

About twelve years ago, as near as I can recollect, the system was changed in Allegheny county. Prior to that time we elected three auditors, as they do in other counties. Those auditors, as a general rule, were about on a par with the county commissioners, and usually were men who would not be trusted by private parties to settle an account of \$1,000 in items for debt. There was universal complaint by all, except what was known as the "court house ring" and the collectors of taxes. There was a very bitter fight to get that change made, and a very great outcry; but it was found in the end, when it was accomplished, that the only opponents of it were the tax collectors and the officers around the court house, who had their accounts to settle, and I do not think that there has been any change in the past fifteen years in Allegheny county that has met such a universal approval of the people of the county as that change from auditors to a county comptroller. Practically the change is this: Instead of

electing three indifferent men, we have elected one excellent, responsible man, and a competent accountant. We have now our second comptroller within that time, and serving his second term. One man has served three or four terms, and another has served one term and been re-elected.

I have heard complaints in regard to the comptroller, who has the power of the auditors. I heard them from clerks of the quarter sessions at certain times, soon after the comptroller was appointed. They had been in the habit of filing bills which were illegal and unjust, and the comptroller would not allow them. I have heard of complaints from various officers of that sort who wanted to extort from the county, and of men who wanted to get bills passed that they could not get passed when there was a strict accounting officer, as we have had under our present system; but, until I heard it a few days ago from my friend who has just taken taken his seat, I never heard of any complaints from any citizen of the county. I am well satisfied that a return to the old system of county auditors would cause very great dissatisfaction in the county among the best business men, and among almost all classes of our people.

Now, the comptroller, as I said, is one man instead of three, and he has somewhat greater powers than the auditors had; it is true. All the accounts have to go through his hands. He is a check on the commissioners; he is a check on all parties who want to pass extravagant bills, and he has to settle his accounts just as an auditor has. He does not get hold of any money whatever. He is a mere auditor, as it were, with very considerable powers in determining what taxation shall be levied, and examining into all accounts. He publishes the county's accounts each year. That is submitted to the court of common pleas and approved or objections made to it, as may be, and it is published in the papers item by item. There is precisely the same method of reaching his accounts that there is of reaching the transactions of auditors. For one, I hope that the section will be modified, so that it will not be essential to have an auditor in all the counties.

Mr. HANNA. Mr. President: Of course I cannot speak for the counties in the interior; but if it is held that this section

would apply to the city of Philadelphia. I think I can speak for my colleagues in saying that we do not need any such officials as county auditors. Section six in this same report provides that "three county commissioners and three county auditors shall be elected in each county and shall serve for three years." I take it that would apply to the county of Philadelphia. Twenty years ago the office of county auditor was abolished in the county of Philadelphia, and to the entire satisfaction of the community because we thereby abolished three officials who had manipulated the affairs of offices in numerous instances, to their benefit and profit. In their stead we were authorized to elect a city comptroller, under the provisions of the act of consolidation. This single individual is perhaps the most valuable officer in the whole county. Every voucher issued by every department of the city government must be approved by the city comptroller, and before he countersigns any voucher he ascertains first whether an appropriation has been made for that purpose, and secondly, whether the appropriation has been exhausted. That officer constitutes the best safeguard we can have upon the finances of the city. He has proved himself so, in hundreds of instances, and frequently that officer has prevented not only extravagant outlays of money, but unauthorized expenditures. Now, sir, we should have no check upon three county auditors, and that perhaps is the greatest reason which led the city of Philadelphia to ask for the change which was effected in 1854. Then the office of city comptroller was established, and ever since that time it has worked to the entire satisfaction of the community.

I do trust that although the gentlemen from the interior may think it necessary for them to have auditors as a part of the official machinery of their counties, the city of Philadelphia may be excepted, as I am sure we need no such official. I trust sir, that unless some such exception be made, the section will be voted down.

Mr. HUNSICKER. I only desire to say a word. If this amendment of the gentleman from Allegheny prevails the symmetry of the whole article will be destroyed. If there is any virtue in the principle of minority representation, I know of no better field for the trial of that principle than in the counties of Philadelphia and Allegheny.

Mr. HANNA. Will the gentleman allow me to interrupt him?

Mr. HUNSICKER. Yes, sir.

Mr. HANNA. I only want to remind him that we have no county auditors.

Mr. HUNSICKER. No; but you have three county commissioners. Now, section six of this article provides that three county commissioners and three county auditors are to be elected in every county, and in voting for these officers no voter shall vote for more than two. It is well known that if the county commissioners and county auditors are all of the same political party that the county commissioners spend the money and the county auditors vouch the accounts. But if there is a watchman in each place, a watchman in the board of county commissioners and a watchman in the board of county auditors, the majority control the policy and control the expenditures of these boards, and the minority man is there in each instance to warn the public against improper expenditures and against the allowance of improper accounts. I therefore trust that the Convention, if they are in earnest in trying the minority principle, will certainly vote down the amendment proposed by the gentleman from Philadelphia.

Mr. HARRY WHITE. I move to amend the amendment by inserting the words "or comptroller" after the word "auditor."

The PRESIDENT *pro tem*. That would not be an amendment to the amendment.

Mr. J. W. F. WHITE. I will withdraw my amendment in order to enable the delegate from Indiana to offer his.

Mr. HARRY WHITE. I now move to amend by adding the words "or comptroller" after the word "auditor."

I will just explain to the delegates who do not understand this question—

Mr. LAWRENCE. Every one of them understands it now. [Laughter.]

Mr. HARRY WHITE. This simply leaves the Legislature to regulate this matter for all counties, and where counties have controllers the provision will apply to them.

Mr. HUNSICKER. The objection that I have to this amendment is that there will be but one controller in the city of Philadelphia and but one controller in the county of Allegheny, and that would still destroy the symmetry of this article; because there will be three controllers in every other county of the State, and these three controllers will be elected in the same way in which the auditors are se-

lected. I do not care what you call them, whether they are called auditors or whether they are called controllers, the duties of the two officers are the same. They are to audit the accounts of the county commissioners.

Mr. J. PRICE WETHERILL. I hope the gentleman from Montgomery will certainly allow the delegates upon this floor, from the city of Philadelphia and from the county of Allegheny, to know and to say what is best suited for the government of their respective counties. In the city of Philadelphia it is well known that we have a variety of departments, and that the expenditures of our moneys is made through these departments. These departments are supervised by committees of councils, and the departments of councils by and with the consent of the committees examine, audit and correct every bill passed by the heads of the departments. The duty of the controller of the city of Philadelphia is simply to see that the appropriations made by these departments are not overdrawn and that the bills are correctly made out, the amounts drawn are kept within the limits of appropriations, and at the same time to exercise a supervision over the finances of the city in connection with the commissioners of the sinking fund, of which he is one by law. The whole duties of the controller in this city are entirely and essentially different from those of any county auditor in any other county of the State.

Therefore, I hope that inasmuch as the gentlemen upon this floor who represent these two cities know certainly what the wants of these cities are much better than the delegate from Montgomery can possibly do, this amendment will be agreed to and the words "or controller" will be inserted.

Mr. HOWARD. I hope the Convention will allow this amendment to prevail. The people of Allegheny have tried this plan of auditors for a great many years, and they found it was a very loose way of doing business. In fact there was very little system about it. We could hardly understand the state of our accounts, from time to time, but by a change from the auditing system to that of a controller, and by the selection of a competent officer the people in our county have been able to correct this condition of things. They have as county controller a good accountant, a man capable of taking charge of the books, and keeping the financial matters of the

county straight. So well has the system worked that I have never heard a word of complaint uttered by any single person in the county against the change. Before the change was made, year after year, complaints were made of the miserable and shiftless way in which business was conducted under the old county auditors' plan. The system of the county auditors may work very well in smaller counties, in less populous districts, but in a place like the city of Philadelphia or like the county of Allegheny, where an immense amount of money is to be expended, there is a necessity for an office where there is a regular and scientific mode of keeping the books, in order that everything may be kept straight and the people may know at any time by applying at the controller's office precisely the state of the affairs of the finances of the county. I cannot see any reason why this amendment should not prevail. The delegate from Montgomery thinks that we should not spoil the symmetry, as he calls, it of this section, for fear that this plan of cumulative voting in some way will not work right. We care nothing about the plan of cumulative voting. We want a good, responsible, competent officer to keep the books of our county, so that we may understand our financial matters. We have been enabled to do that since we have had a county controller, and that is all we want. We pay him a liberal salary, and in that way we secure and retain the services of a good man.

Mr. S. A. PURVIANCE. For the purpose of ending this controversy and allowing to be incorporated in this section what will probably settle all difficulties, at the suggestion of many of the members around me, I am willing to allow the words "or comptroller" to be added to my amendment.

Mr. HUNSICKER. I have no objection to it.

The PRESIDENT *pro tem*. The question is upon the amendment.

The amendment was agreed to.

Mr. KAINE. I offer the following amendment, to come in at the end of the section :

"All such officers shall keep their offices in the county town of the county in which they respectively shall be officers."

Looking over this article, I find there is no provision of that kind in it, and it is necessary that it go in. In the old

Constitution there is a separate section. The fourth section of the sixth article in the old Constitution provides that :

"Prethontaries, clerks of the peace and orphan's courts, recorders of deeds, registers of wills and sheriffs shall keep their offices in the county town of the county in which they respectively shall be officers, unless the Governor shall, for special reasons, dispense therewith for any term not exceeding five years after the county shall have been erected."

I have put "treasurer" in this amendment. This will make it shorter and it is just as appropriate as a part of this section, as it will be to put it in anywhere else as a separate section.

Mr. S. A. PURVIANCE. The Legislature has, as a general thing, made ample provision for all the officers covered by the amendment of the gentleman; but there are some offices, and one which I can refer the gentleman to, as to which it would be very onerous to require the officer to live in the county town; that is the county surveyor. He rarely ever lives in the county town, and he does not receive in many of the counties fees enough to authorize him to remove from his farm to the town.

Mr. NILES. Or the district attorney, either.

Mr. S. A. PURVIANCE. Or the district attorney either. Therefore it would be better to leave that matter to the Legislature to regulate.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. T. H. B. PATTERSON. I move to amend the section by inserting in the fifth line after the word "law" the words :

"Shall be elected at the general election, and shall hold their offices for the term of three years, beginning on the first Monday of December next, after their election or until their successors shall be duly qualified."

I wish to say to the Convention that this is not any amendment in substance. It is not really changing this section at all; it is consolidating the second and eighth sections into it, and in that way saves about six or eight lines and saves two sections of the article. I do not propose any change in the substance of the article at all. If the delegates will look at it, they will observe that this is in the exact language of the second and eighth sections, only omitting those words which are repeated. In that way we save two sec-

tions, and consolidate the substance of those two sections, the second and eighth, with the first. I think, if delegates will notice it, it will make the article much clearer and save six or eight lines.

Mr. S. A. PURVIANCE. I hope the amendment of my colleague will not prevail. The first section contains simply the announcement of the creation of the offices which are to exist in the several counties. The second section contains a separate and distinct principle, and that is as to how these offices shall be filled, whether by appointment or by election.

Therefore I object to intermingling this section with the second section and thus encumbering it more than it has been. I hope the amendment will be voted down.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was rejected.

Mr. EWING. I wish to call the attention especially of the chairman of this committee to one matter here that is essentially different from the Constitution of 1837, and also of 1790 and 1776. The section as reported does not make ineligible a sheriff who may have been appointed. Now, there will be no doubt cases, as there have been heretofore, where a sheriff will be appointed for an unexpired term, and I think that the old Constitution properly provides for that case as well as where he is elected for a full term. I would not permit a sheriff in any case to succeed himself, whether appointed or elected, and I should like to see the provision of the old Constitution retained. By the Constitution of 1776 sheriffs were not allowed to succeed for four years after they had been elected or appointed, and by the Constitutions of 1790 and 1837 they are not allowed to be twice chosen or appointed in any term of six years. The matter has been the subject of litigation on one or two occasions, and I should like to see the words "or appointed" added after "elected" in the last line. The same evils occur in the case of an appointed sheriff.

The PRESIDENT *pro tem*. Does the gentleman make a motion to amend?

Mr. EWING. I make a motion to amend. I move to add the words "or appointed," after the word "elected," in the last line.

The amendment was rejected, the ayes being thirty-one—less than a majority of a quorum.

The PRESIDENT *pro tem*. The question recurs on the motion as amended.

The section as amended was agreed to.

The CLERK read the next section as follows:

"SECTION 2. County officers shall be elected at the general elections, and shall hold their offices for the term of three years, if they shall so long behave themselves well, and until their successors shall be duly qualified. All vacancies shall be filled in such manner as the Legislature may direct."

Mr. DARLINGTON. I move to amend by striking out all after the word "filled" and inserting:

"By appointment to be made by the Governor, to continue until the next general election and until successors shall be chosen and qualified as aforesaid."

This is precisely the substance of the existing Constitution as to filling vacancies in these offices. There must be some mode. None has been found more convenient than appointment by the Governor for the unexpired term until the next election. I submit for the consideration of the Convention that it would be better to retain it.

Mr. BUCKALEW. There is a provision that the Governor shall appoint all officers whose election shall not be otherwise provided for by law. The Governor never appoints some county officers; he may appoint the prothonotary, register, or recorder, and this will only introduce confusion in the present law.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Chester.

The amendment was rejected.

Mr. HARRY WHITE. I move to strike out all after the word "qualified," in the fourth line, and insert:

"Vacancies in any of the said offices shall be filled by appointment, to be made by the Governor, to continue until the next general election, and until successors shall be elected and qualified as aforesaid."

I was handed this amendment by the distinguished delegate from Philadelphia, (Mr. J. Price Wetherill,) who is not here. He was going to offer it himself, and I offer it in his absence.

Mr. WORRELL. I rise to a point of order. It is the same amendment as the one we have just voted down.

Mr. HARRY WHITE. I did not hear the amendment offered by the delegate

from Chester, but I believe this is in different words.

The *PRESIDENT pro tem.* The delegate from Indiana moves to strike out all after the word "qualified," in the fourth line, and to insert what has been read.

Mr. WORRELL. I withdraw the point of order.

Mr. HARRY WHITE. Just one word as to the amendment. It preserves the policy which has obtained in government thus far. I think it is wise and proper it should be so. If you change the old policy in this regard you will authorize the Legislature to themselves elect, or repose possibly in the courts the filling of certain vacancies, which ought not to be done. I submit that the Chief Executive of a great Commonwealth like this should have some power. He has little enough power now. It has never been abused in the past and I submit that he is a proper repository of it in the future. Therefore I am in favor of retaining the old provision on this subject.

Mr. S. A. PURVIANCE. I hope this amendment will not prevail. This subject was well considered by the committee, and the language used, "that all vacancies shall be filled as may be provided by law," are the proper words to be used. It will be observed that we are here providing for a number of officers, not one. We are providing for officers some of whom are appointed by the courts, and some elected by the people, and therefore when a vacancy arises we provide for a general law, which will doubtless be passed in furtherance of this Constitution, in which provision will be made for all these vacancies. We think therefore that this clause as it is now in the report ought to remain.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Indiana.

The amendment was rejected.

Mr. BUCKALEW. I move to amend by inserting after the word "vacancies," in the fourth line, the words "not herein provided for." That amendment is necessary in order to harmonize with the sixth section. The appointment is fixed there in the court of common pleas.

Mr. S. A. PURVIANCE. I would suggest to the delegate from Columbia that he change the wording a little, and make it "not otherwise provided."

Mr. BUCKALEW. Certainly.

The *PRESIDENT pro tem.* The amendment will be so modified.

The amendment was agreed to.

Mr. ANDREW REED. I move to amend by inserting after the word "years," in the second line, the words, "except county treasurers, who shall hold their office for the term of two years." The effect of this amendment will be to preserve the law as it is now. The committee reported that the Legislature should fix the terms of these offices, but in committee of the whole that was struck out and the term made three years. Now, if the term of the county treasurer is made three years, in the case of unseated lands, one county treasurer may have two sales in his term and the next only one. I think it would be better to preserve the law as it is now.

Mr. TURRELL. We started out in this Convention with the idea of preserving or creating some sort of uniformity as far as it was possible to do, and I hope that we shall adhere to that idea as far as it is expedient. I can see no reason why there should be an exception made in this case. The suggestion in relation to unseated lands in connection with the county treasurer amounts to very little now, because that business is pretty much done with, and is "growing smaller by degrees and beautifully less," as suggested by the gentleman from Columbia (Mr. Buckalew.) I hope we shall adhere to the principle of uniformity.

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Mifflin (Mr. Andrew Reed.)

The amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the section.

The section was agreed to.

Mr. BOWMAN. I move to reconsider the vote by which the first section was adopted for the purpose of striking out the word "re-eligible." I doubt very much whether there is such a word to be found in the English language.

Mr. BUCKALEW. I suggest to the gentleman to withdraw his motion and allow that matter to be regulated by the Committee on Revision and Adjustment.

Mr. BOWMAN. Very well; I withdraw the motion.

The *PRESIDENT pro tem.* The next section will be read.

The CLERK read as follows:

SECTION 3. All county officers who receive compensation for their services shall be paid by salary to be prescribed by law, and all fees attached to any county office shall be received by the proper officer for and on account of the State or county, as may be directed by law: *Provided however,* That

the annual salary of any such officers shall not exceed the aggregate yearly amount of fees collected by him.

Mr. LAMBERTON. I move to amend by striking out the words "*Provided, however, That,*"

The amendment was agreed to.

Mr. EWING. I should like to ask the chairman of the committee whether that last clause would cover a case where an officer has clerks and those clerks have to be paid? Would the clerks be entitled to be paid by the county over and above the fees collected from the office and let the chief officer take all the fees for his salary? I think that would be so under the act of Assembly that we now have for Allegheny county. I think the chief officer might take the entire fees and the clerks be paid by the county.

Mr. KAINE. I suppose it is doomed that this section shall pass the Convention, but I desire to say a word in opposition to it. I do not think the people of Pennsylvania are prepared for so radical a change as this. Since the formation of the government all the officers in the several counties of the State have been paid by fees. Now, to change that entire system and make every office in every county of the State, prothonotary, sheriff, recorder of deeds, register of wills, clerk of the orphans' court, clerk of court of quarter session, and every other office a salaried one will make such a change as the people of this Commonwealth, I know, never contemplated when they voted for the calling of this Convention. The people of the State have been used to this fee system for a hundred years, and to change it now will require a system that I think we are not prepared to enter upon. After the adoption of the report to-day in regard to oaths, under which all officers will be sworn that they will take no fees except those authorized by law, I think there will be no trouble, or very little at least, from the complaint which has been made in Philadelphia, and perhaps some other counties in the Commonwealth, against officers for taking illegal fees. I do not intend to go into an extended argument on the subject, but merely to repeat that I think it is a change that ought not to be made. We have got along under the old system very well; the people are acquainted with it; they understand it; and we had better let it alone.

Mr. STRUTHERS. I move to amend the section, by striking out in the first and

second lines the words "who receive compensation for their services." Those words are of no use there. Of course the officers of the county are all to be paid.

Mr. S. A. PURVIANCE. I have no objection to that.

The amendment was agreed to.

Mr. S. A. PURVIANCE. In the latter part of this section there would seem to be an omission that ought to be supplied. The provision now reads: "That the annual salary of any such officer shall not exceed the aggregate yearly amount of fees collected by him." I desire to insert the words "and his clerks" after the word "officer" in the fifth line.

SEVERAL DELEGATES. No; no.

Mr. S. A. PURVIANCE. Oh, yes, that is right. Otherwise, the chief officer might be paid by the fees, and the clerks by the county.

Mr. J. W. F. WHITE. I should like to have this section divided.

The PRESIDENT *pro tem*. The question now is on the amendment proposed by the delegate from Allegheny (Mr. S. A. Purviance.)

Mr. J. W. F. WHITE. I will make the remark that I was going to make. I have very grave doubts about the propriety of this proviso being in the Constitution at all, and that is the reason why I should like to have the section divided. It is very difficult to fix up this proviso properly. Besides, I do not think it ought to be in the Constitution. Let the Legislature say what the compensation of these officers shall be. If in some new county, or some organization, they may want to fix the salary of an officer perhaps a little in advance of what the fees might be, why should we say in the Constitution that they shall not do so? I think the great thought of the section is that county officers shall receive a compensation to be paid by salaries and not by fees. That is all proper enough for a section of the Constitution; it establishes a great principle; but why shall we add to that, that no officer's salary shall exceed the amount of fees he may receive? While it might be very proper as a general rule for the Legislature, and perhaps they might adopt it as a law, I see no great necessity for inserting it in the Constitution, and I can imagine cases where it might be objectionable.

Mr. MACCONNELL. I suggest to the gentleman to move to strike out that part of the section.

The PRESIDENT *pro tem.* There is an amendment now pending.

Mr. HALL. I should like to inquire of the chairman of the committee what the salary of a county commissioner or a county auditor would be under the latter clause, inasmuch as they are not paid fees at all?

Mr. S. A. PURVIANCE. They are paid *a per diem*.

Mr. HALL. They receive no fees.

Mr. S. A. PURVIANCE. But they are paid *a per diem*,

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Allegheny to insert after the word "officer" in the fifth line the words "and his clerks."

Mr. HAZZARD. I should like to know in what manner we can adjust these fees. What year of their fees would you take to fix the salary by the fees? Take, for instance, justices of the peace. One justice in a township might be more popular, better qualified than another in the same township, and the people might bring more business to him, and in a year or two his fees would be considerably more than those of another justice in the same township, and from what year of his fees will the aggregate be made up? It seems to me it would be a very hard thing to adjust.

Mr. S. A. PURVIANCE. Allow me to state to the gentlemen that the clause we are now considering relates to county officers, not to township officers, not to justices of the peace.

Mr. HAZZARD. Very good; the same argument will apply to them. One year a sheriff might do immensely more business than in another. In a time of great commercial difficulties there would be more sheriffing to do and his fees might be considerably larger than in the first and last years of his office; and so of every one of these officers. There are some times when there is a great deal to do in a recorder's office, and at other times very little. That frequently takes place in those counties where a large tract of land contiguous to a town is laid out into town lots, and there are a great many more deeds than usual to record; it may be for a year or two. It will be very difficult to fix the salary according to those fees, for they will vary a great deal during the term of office. Adjoining the city of Pittsburg they are laying out suburban towns, and the recorder's office is overflowing with business just now. It is so

in our county. They are laying out contiguous land to our little town, and in that office the fees are very heavy just now. I do not know that the county commissioners would get very much. They are paid a *per diem*. I think the recorder and the prothonotary would be in the very same way. As I remarked a moment ago, in times of commercial difficulty when many judgments are entered and other business is pressing, the fees might be considerably larger in one of the years of the term than they would be in another, and the adjustment would be very difficult indeed.

The PRESIDENT *pro tem.* The question is on the amendment to insert, after the word "officer" in the fifth line, the words, "and his clerks."

The amendment was agreed to, ayes thirty-seven, noes not counted.

Mr. LITTLETON. I offer the following amendment, to come in at the end of the section as a proviso:

Provided, however, That the provisions of this section shall not apply to the persons now in such offices, during their present existing terms.

SEVERAL DELEGATES. That belongs to the schedule.

Mr. LITTLETON. I am informed by gentlemen that this is a proper clause to come in the schedule. I have no disposition to press it at this time, and if that is the general opinion of course I withdraw it.

The PRESIDENT *pro tem.* The amendment is withdrawn.

Mr. DARLINGTON. I move to amend in the fifth line by striking out the word "annual," and the word "any," in the same line, and in the sixth line, by striking out the words "aggregate yearly," between "the" and "amount of fees," and inserting the word "annually" after "fees." It is to improve the phraseology of the section merely, and make it read: "The salary of such officer and his clerk shall not exceed the amount of fees annually collected by him."

Mr. J. W. F. WHITE. I trust that before this concluding part of the section is adopted the Convention will look seriously where it will lead. Take the amendment offered by the delegate from Chester (Mr. Darlington.) The officer is to get no more than the fees received during the year. In some of these offices all the fees are not paid just at the time the work is done. Some years the fees received are a great deal more than other

years; in some years the salary of the officer would be less than it would be other years; and a good many fees are coming in after an officer goes out of office that were earned by him while he was in office.

Why should we put such a clause in the Constitution? The very trouble and difficulty we have here in trying to adjust this last part of the section shows the impropriety of trying to fix it in the Constitution. I think there can be no doubt that the Legislature would try to regulate the salaries of the various officers so as not to exceed the average amount of fees received in the office; but if we have this clause, there is uncertainty about the salary of every county officer, a jumbling up and a mixing up of fees and services by succeeding officers.

Besides that, I call the attention of the delegates to another feature of this section. That is the amendment proposed by the delegate from Chester. The salaries of all county officers and their clerks shall not exceed the fees annually received by them. Some county officers receive no fees at all; there are no fees attached to their offices. How will you make the salary of such an officer? Must the Legislature go to work and create a schedule of fees in order to pay such officers? County commissioners receive no fees. There are no fees attached properly to their office, or to the treasurers' office. Why not have just the principle enunciated that they shall receive salaries and that all fees that go to their offices shall be paid into the county or State treasury, and not try and fix up a fee bill or something that will cause trouble or difficulty to the Legislature or to the officers themselves.

I hope therefore that this amendment will be voted down and that when a division is called on the section or this concluding part of it, it will be voted down.

MR. S. A. PURVIANCE. As by the preceding part of the section, fees are to be received by the proper officers on account of the county; and then as the Legislature is to fix the salaries, I must confess that I do not see any strong necessity for retaining the proviso. Therefore I am willing that the amendment suggested by the gentleman should be carried, striking out the last line.

MR. ANDREW REED. I trust the Convention will not strike out the proviso.

The PRESIDENT *pro tem*. That is now the question before the Convention. The

question is on the amendment of the delegate from Chester (Mr. Darlington.)

MR. ANDREW REED. I am opposed to the amendment of the delegate from Chester. However, I do not see that it makes any very great difference whether it is adopted or not. The salary of an officer means the compensation which he receives for a fixed period of time, and that will apply to a *per diem* as well as to an annual salary. I think the word "annual" should be left in, and that means that the annual salary shall not exceed the amount of fees that he would receive during that particular year.

I do not see the difficulty which my friend from Allegheny (Mr. J. W. F. White) sees in this. He states that the fees may not be collected in the year. That is true now. They are not collected now. So the officer will be no worse off than he is under the present system. An officer that is paid by fees does not get them all now in the year, but gets them afterwards. It makes them no worse than now. Therefore there is nothing in that. But if we strike out this, there are certain offices in these small counties, say district attorneys, that perhaps do not get fifty dollars or more than one hundred dollars in a year, and if an annual salary is to be prescribed, the Legislature will fix it at an even sum for all, say five hundred dollars or six hundred dollars; and if we saddle upon the counties of the State this increased indebtedness which will take the county money to pay for it, we shall load down this Constitution until it will be rejected.

The object of this salary was, it is true, to provide for the large counties where it is reported that the large amount of fees that are received by the officers create corruption; but I say it does no injustice to the other counties; they get the fees that they would have got before and collected; and if we are to pay out of the county treasury a large amount of other fees besides those which are established by law, it will certainly be a very unpopular move and not a move in the right direction. A district attorney, if he does not get any business, has no trouble, and he should be paid no more than the fees that are attached to his office. For this reason, I trust this section will be left remain as it was reported by the committee of the whole.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Chester.

The amendment was rejected.

Mr. CORSON. I should like to have the section read as it stands amended.

The CLERK read as follows:

"All county officers shall be paid by salary to be prescribed by law; and all fees attached to any county office shall be received by the proper officer for and on account of the State or county, as may be directed by law. The annual salary of any such officer and his clerks shall not exceed the aggregate yearly amount of fees collected by him."

Mr. BUCKALEW. I move to strike out all after the word "law" in the fourth line.

Mr. CLARK. I cannot see my way clear to vote for striking out this proviso. The proposition which the section seems to establish is that all our county officers shall be paid by a salary, which is intended to avoid the many mischiefs we have suffered by reason of charging fees, and either the county or the State may pay the salaries, as may be provided by law. The effect of this will be that the officers receiving the fees will make no effort to collect them. Everybody knows that. They now collect their fees with great care, not only during the time of their services but after their terms expire, because the fees belong to them. But if you provide that they shall be paid by salary, all the inducement to collect their fees is gone, and the consequence will be that annually many thousands of dollars will stand uncollected upon the records of the courts, because there is nobody who will have any special incentive to collect them. The provision which we are now asked to strike out is our only protection against this difficulty. That proviso is, "*provided however*, That the annual salary of any such officer shall not exceed the aggregate yearly amount of fees collected by him." Hence the same inducement to collect these fees will exist under this as existed before. I think it all important that this proviso should be continued in this section, and that the officers will be interested upon their own account for the collection of these fees.

Mr. H. G. SMITH. Mr. President: This section is unquestionably designed to meet a want which is felt and acknowledged throughout this State. When the Legislature comes, under the provisions of this section if it be adopted, to provide the means of carrying it into effect, I apprehend they will be forced to adopt a

system of stamps by means of which any fee authorized to be paid into any office shall be paid. In no other way that I can conceive of, in no other way that I have ever heard suggested, can this reform, which is unquestionably shown to be needed in some portions of the State, be carried out. In that way I believe it can be carried out properly, and the fees be properly collected, so that there will be no impositions put upon persons who have business with the public offices, and so that the salaries meted out to these officers will be paid to them exactly in proportion ascertained and determined by the Legislature. I think the proviso ought to stand as it is.

The Legislature will have to provide for some general and equitable mode of arranging the details of this fee system and of providing for the salaries of the county officers. I think the proviso should be retained, because it fixes a limit upon these salaries. Even in the smaller counties of the Commonwealth officers are found ready and willing to accept office for the amount of the fees now received, and if the Legislature names a fixed salary in the place of fees, competent and reliable men will accept office just as readily for salary as they now do under the fee system. But some limit should be placed upon the Legislature which will prevent it from increasing the salaries of the officers of these small counties beyond what is right and proper. If we do not make some such provision, every Representative in the Legislature from every county in the Commonwealth, large or small, will have the whole gang of county officers urging him to vote for the largest salary. There ought to be some restriction in this respect upon the power of the Legislature. The proviso will operate as a restriction and, therefore, I hope it will remain.

The PRESIDENT *pro tem*. The question is upon the amendment of the gentleman from Columbia (Mr. Buckalew.)

On the question of agreeing to the amendment, a division was called for, which resulted thirteen in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs upon the section.

Mr. KAINE. Upon that I call for the yeas and nays.

Mr. REYNOLDS. I second that call.

Mr. BUCKALEW. I would appeal to my friend from Fayette not at this time

to call for the yeas and nays. He can accomplish all he desires by calling for a division, and I hope we shall not waste the closing hours of this day's session in calling the yeas and nays.

Mr. KAINE. I would be very glad to accommodate my friend from Columbia, but I desire to place myself on record against this section.

Mr. J. M. BAILEY. I ask for a division of this section, to end at the word "law."

Mr. ANDREW REED. I rise to a point of order. The same effect that would be produced by a division has already been had by voting down the amendment of the gentleman from Columbia, and therefore the division is not in order.

The PRESIDENT *pro tem*. The Chair will state that the section is not divisible, because if the first division were voted down, there would be nothing left of the section. The vote must be taken upon it as a whole, and upon that question the yeas and nays have been ordered. The section will be read for information, and then the Clerk will proceed with the call.

The CLERK read as follows:

"All county officers who receive compensation for their services shall be paid by salary to be prescribed by law; and all fees attached to any county office shall be received by the proper officer, for and an account of the State or county, as may be directed by law: *Provided however*, That the annual salary of any such officers shall not exceed the aggregate yearly amount of fees collected by him."

The yeas and nays which had been required by Mr. Kaine and Mr. Reynolds, were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Andrews, Armstrong, Bear, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Bowman, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Clark, Corson, Cronmiller, Curry, Darlington, De France, Dodd, Elliott, Ellis, Ewing, Fell, Finney, Fulton, Guthrie, Hall, Hanna, Hazzard, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Landis, Lilly, MacConnell, M'Clellan, M'Murray, Mann, Newlin, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Smith,

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Messrs. Black, Charles A., Kaine, Minor, Mott, Porter, Purman, Simpson, Walker, White, Harry, White, J. W. F. and Wright—11.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Boyd, Brodhead, Broomall, Carey, Cassidy, Cochran, Collins, Corbett, Craig, Curtin, Cuyler, Dallas, Davis, Dunning, Edwards, Funck, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Mitchell, Parsons, Pughe, Ross, Runk, Sharpe, Smith, Wm. H., Stanton, Stewart, Temple, Van Reed, Wetherill, J. M., White, David N. and Meredith, *President*.—53.

The PRESIDENT *pro tem*. The fourth section will be read.

The CLERK read as follows:

SECTION 4. The Legislature shall provide by law for the strict accountability of all county, township and borough officers, as well for the fees which may be collected by them, as for all public or municipal moneys which may be paid to them.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 5. Any person shall be eligible for election to any office of any county, township or borough, respectively, of which he is a qualified elector.

Mr. S. A. PURVIANCE. Upon fuller reflection I am of opinion that this section is unnecessary, and therefore ask that it be voted down.

The section was rejected.

The CLERK read the next section as follows:

SECTION 6. Three county commissioners and three county auditors shall be elected in each county, and shall serve for three years. In the election of said officers each qualified elector shall vote for only two persons, and the three persons having the highest number of votes shall be elected. Casual vacancies in the offices of county commissioner and county auditors shall be filled by the courts of common pleas of the respective counties in which such vacancies shall occur.

cur by the appointment of an elector of the proper county, who shall have voted for the commissioner or auditor whose place is to be filled.

Mr. J. N. PURVIANCE. I move to strike out all after the word "years," in the second line, and insert "one of whom shall be elected every year." This gets rid of the provision for the limited vote.

Mr. BUCKALEW. I desire simply to remark that I have several amendments to propose to the section, and of course I want this proposition voted down.

Mr. S. A. PURVIANCE. Before the vote is taken I wish to say one thing, that this section is no part of the report of the Committee on County, Township and Borough Officers; it was put in by the committee of the whole; and therefore it cannot be claimed to belong to our report. I am opposed to the section and shall record my vote against it.

Mr. DARLINGTON. I hope this amendment will prevail. It will make the section in harmony then with the rest of our system. We are all aware that the provision which now exists has existed for the last seventy years, by which each year a new officer comes in and one goes out, thus preserving the intelligence and information which are gained by two years service. It is a very valuable provision and has been found to work well, and I trust will not be changed. Especially ought we not to introduce this limited system of voting in regard to county officers, since it has been rejected here most emphatically as regards the Senate and the House of Representatives, and I trust not soon to be revived. I hope a square vote will be taken upon it.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Butler (Mr. J. N. Purviance.)

Mr. J. N. PURVIANCE. I call for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call.

The amendment was read.

Mr. LILLY. This is a test question on this restrictive mode of voting, and I hope members will understand it. ["We understand it."]

The question was taken by yeas and nays with the following result:

Y E A S.

Messrs. Andrews, Baily, (Perry,) Bowman, Calvin, Darlington, Ewing, Fell, Hanna, Hazzard, Horton, Knight, Lawrence, MacConnell, McClean, Minor, New-

lin, Niles, Patterson, D. W., Porter, Purviance, John N., Purviance, Samuel A., Reynolds, Russell, Simpson, Smith, H. W., Stanton, Struthers, Turrell, Walker, Wetherill, Jno. Price, White, Harry and White, J. W. F.—32.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Black, C. A., Brown, Buckalew, Bullitt, Campbell, Carter, Church, Clark, Corson, Cronmiller, Curry, Curtin, De France, Dodd, Elliott, Ellis, Finney, Fulton, Guthrie, Hall, Hemphill, Howard, Hunsicker, Kaine, Lamberton, Landis, Lilly, M'Murray, Mann Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Read, John R., Reed, Andrew, Smith, H. G., Wherry, Woodward, Worrell and Wright—51.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Baker, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Boyd, Brodhead, Broomall, Carey, Cassidy, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Davis, Dunning, Edwards, Funck, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, Mantor, Metzger, Parsons, Pughe, Rooke, Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., White, David N. and Meredith, *President*—50.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. BUCKALEW. I move a verbal amendment, to strike out the words "and shall serve for three years," in the second line. That is already provided for in section two. I desire to further amend in that line by inserting after the word "county" the words "where such officers are chosen, in the year 1875 and every third year thereafter."

Mr. EWING. Let the section be read as it would stand.

The CLERK. The section will then read: "Three county commissioners and three county auditors shall be elected in each county where such officers are chosen, in the year 1875 and every third year thereafter. In the election of said officers," &c.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia (Mr. Buckalew.)

The amendment was agreed to.

Mr. BUCKALEW. I move further to amend, by striking out the word "only," in the third line, and inserting "no more than."

The amendment was agreed to.

Mr. BUCKALEW. I move further to amend the sentence beginning with "casual vacancies," in the fifth line, so as to make it read: "Any casual vacancy in the office of county commissioner or county auditor shall be filled by the court of common pleas of the county in which such vacancy occurs." These are merely verbal alterations.

The amendment was agreed to.

Mr. NILES. I do not rise to make a speech, for I suppose we all have our minds made up on this subject. I simply desire to call for the yeas and nays on the adoption of the section.

Mr. STANTON. I second the call.

Mr. HANNA. Will the gentleman withdraw the call for a moment?

Mr. NILES. Certainly.

Mr. HANNA. I move further to amend by striking out the word "casual" in the fifth line.

Mr. BUCKALEW. That is a distinction from regular vacancies by expiration of term. It is used in several other articles of the Constitution.

Mr. HANNA. I withdraw the amendment.

Mr. NILES. I renew the call for the yeas and nays.

Mr. J. M. BAILEY. I move further to amend by adding after the word "auditors," in the first line, the words, "and three directors of the poor," and also by inserting after the word "auditors," in the sixth line, "and directors of the poor."

Mr. HUNSICKER. I hope that will not be done.

Mr. J. M. BAILEY. We have in our part of the State directors of the poor, and I insist on the amendment because there is not a bit more reason why this section should apply to county commissioners and auditors than that it should apply to directors of the poor, and I do not wish to have myself on the record as voting to apply it to these two offices and not to the other.

The PRESIDENT *pro tem*. The question is on the amendment offered by the delegate from Huntingdon.

Mr. NILES. There is no such office provided for in the first section of this article, and consequently if we adopt this amendment we shall be providing for the

election of an officer who is not provided for in the article.

Mr. J. M. BAILEY. One of the amendments moved by the gentleman from Columbia will include directors of the poor. Three county commissioners, three county auditors, and three directors of the poor in each county where such officers are chosen. That will include directors of the poor, I am sure.

Mr. J. PRICE WETHERILL. We have in the city of Philadelphia some thirteen guardians of the poor, and I should like to know how that will apply to the city of Philadelphia. I trust the amendment will be voted down.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. NILES. 'I renew the call for the yeas and nays.

Mr. STANTON and Mr. HUNSICKER. I second the call.

Mr. EWING. I desire to state that I am paired on this question with Governor Bigler. He would have voted "yea" and I should have voted "nay."

The question being taken by yeas and nays, resulted, yeas forty-eight, nays twenty-eight, as follows:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Biddle, Black, Charles A., Brown, Buckalew, Bullitt, Campbell, Carey, Carter, Church, Clark, Corson, Cronmiller, Curtin, De France, Dodd, Elliott, Ellis, Finney, Fulton, Guthrie, Hall, Hemphill, Hunsicker, Kaine, Lamberton, Landis, Lilly, Mann, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patton, Purman, Read, John R., Reed, Andrew, Smith, H. G., Turrell, Wherry, Woodward, Worrell and Wright—48.

NAYS.

Messrs. Baily, (Perry,) Bowman, Calvin, Curry, Darlington, Fell, Hanna, Hazzard, Horton, Knight, Lawrence, MacConnell, McClean, Minor, Niles, Patterson, D. W., Porter, Purviance, Samuel A., Reynolds, Rooke, Russell, Simpson, Smith, Henry W., Stanton, Struthers, Walker, Wetherill, Jno. Price, and White Harry—28.

So the section was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S. Boyd, Brodhead, Broomall, Cassidy

Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Davis, Dunning, Edwards, Ewing, Funk, Gibson, Gilpin, Green, Harvey, Hay, Heverin, Howard, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, T. H. B., Pughe, Purviance, John N., Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., White, David N., White, J. W. F. and Meredith, *President*—57.

The eighth section was read as follows:

SECTION 8. The terms of office of all county officers shall begin on the first Monday of December next after their election.

Mr. S. A. PURVIANCE. In view of the fact that we have changed the general election from October to November, I move that "December" be stricken out and "January" inserted.

The amendment was agreed to.

The section as amended was agreed to.

The *PRESIDENT pro tem.* The article is gone through with.

Mr. S. A. PURVIANCE. I move that it be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

LEAVES OF ABSENCE.

Mr. ALRICKS. Mr. President: I ask leave to make a motion at this time. ["No." "No." "Yes." "Yes."]

The *PRESIDENT pro tem.* Shall the delegate have leave to make a motion.

Mr. J. PRICE WETHERILL. I hope the delegate will state it for the information of the Convention before he has leave.

Mr. ALRICKS. Mr. J. M. Wetherill stated this morning that he was not well, and he asked to be excused for to-morrow. The Chair said he was too late. I hope gentlemen do not suspect me of desiring to make an improper motion.

Leave was granted to make the motion; and leave of absence was obtained for Mr. J. M. Wetherill.

Mr. H. W. PALMER. I ask for leave of absence for Mr. Dunning on account of sickness in his family, for a few days from to-day.

Leave was granted.

Mr. HUNSICKER. I move that the Convention do now adjourn to meet on Monday morning, at 10 o'clock.

Mr. ALRICKS. I move to amend that by saying "to meet at Harrisburg."

The amendment was not agreed to.

The *PRESIDENT pro tem.* It is moved that the house adjourn until Monday, at 10 o'clock.

Mr. RUSSELL. I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The *PRESIDENT pro tem.* The Clerk will call the names of members on the motion.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Armstrong, Black, Charles A., Buckalew, Bullitt, Calvin, Clark, Corson, Curry, Curtin, Ellis, Ewing, Guthrie, Hanna, Howard, Hunsicker, Kaine, Lamberton, Landis, Lilly, Mann, Read, John R., Simpson, Smith, Henry W., Stanton, Walker, White, Harry and Worrell—27.

NAYS.

Messrs. Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Bowman, Brown, Campbell, Carey, Carter, Church, Cronmiller, De France, Dodd, Elliott, Fell, Finney, Fulton, Hall, Hazzard, Horton, Knight, Lawrence, MacConnell, M'Clean, Mitchell, Mott, Niles, Palmer G. W., Palmer, H. W., Patterson, D. W., Porter, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Struthers, Turrell, Wetherill, J. Price, Wherry and Wright—44.

So the motion was not agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Cassidy, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Darlington, Davis, Dunning, Edwards, Funk, Gibson, Gilpin, Green, Harvey, Hay, Hemphill, Heverin, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Parsons, Patterson, T. H. B., Patton, Pughe, Purviance, John N., Ross, Runk, Sharpe, Smith, Wm. H., Stewart, Temple, Van Reed, Wetherill, J. M., White, David N., White, J. W. F., Woodward and Meredith, *President*—62.

Mr. WRIGHT. I move that we adjourn.

Mr. CORSON. Before that is put, I ask leave of absence for to-morrow.

Leave was granted.

The *PRESIDENT pro tem.* It is moved that the Convention do now adjourn.

SEVERAL DELEGATES addressed the a division, ayes, thirty-nine; noes, thirty-two.
Chair.

Mr. LAWRENCE. I insist upon the So the motion was agreed to, and (at six o'clock and forty minutes P. M.) the question being put. Convention adjourned until to-morrow

The question being put, there were on morning at nine o'clock.

ONE HUNDRED AND THIRTIETH DAY.

SATURDAY, June 28, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

The Journal of yesterday's proceedings was read and approved.

LEAVES OF ABSENCE.

Mr. ANDREWS asked and obtained leave of absence for Mr. M'Murray for a few days from to-day.

Mr. KAINE asked and obtained leave of absence for Mr. Clark for a few days, including to-day.

Mr. J. PRICE WETHERILL asked and obtained leave of absence for Mr. Cuyler for a few days from to-day.

Mr. J. M. BAILEY asked and obtained leave of absence for Mr. Gilpin for a few days from to-day.

Mr. LILLY asked and obtained leave of absence for Mr. Broomall for to-day.

Mr. ELLIS asked and obtained leave of absence for himself for Monday next.

Mr. SIMPSON. I ask leave of absence for my colleague (Mr. Baker) from Tuesday last, on account of severe sickness.

Leave was granted.

Mr. EWING asked and obtained leave of absence for Mr. T. H. B. Patterson for to-day.

Mr. KAINE. I ask leave of absence for the remainder of the Convention from one o'clock this afternoon until ten o'clock on Monday morning. [Laughter.]

The PRESIDENT *pro tem.* That motion is not in order.

TO-DAY'S ADJOURNMENT.

Mr. WRIGHT. I offer the following resolution:

Resolved, That at the hour of one o'clock the Convention adjourn until Monday next, at ten o'clock A. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted ayes forty-three, noes not counted.

The resolution was read the second time and considered.

Mr. LILLY. I ask the gentleman to alter that to half-past twelve o'clock, which will give delegates more time to get to the depots.

Mr. NEWLIN. Mr. President: I offer the following amendment: Strike out all after the word "resolved" and insert:

"That when the Convention adjourn to-day, it be to meet at twelve o'clock M. on the third Tuesday of October."

The amendment was rejected.

The PRESIDENT *pro tem.* The question is on the resolution.

The question being put, there were on a division ayes forty-three.

Mr. RUSSELL. I call for the yeas and nays.

Mr. NEWLIN. I second the call.

The PRESIDENT *pro tem.* The Clerk will call the names.

The yeas and nays having been required by Mr. Russell and Mr. Newlin weretaken and were as follow, viz:

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Black, J. S., Bowman, Boyd, Brown, Bullitt, Cassidy, Church, Curry, Curtin, Darlington, Dodd, Elliott, Ellis, Ewing, Fell, Hanna, Heverin, Kaine, Knight, Lilly, Littleton, M'Clellan, Minor, Mitchell, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Read, John R., Rooke, Simpson, Stanton, Struthers, Temple, Turrell, Walker, Wetherill, Jno. Price, Woodward and Wright—47.

N A Y S .

Messrs. Ainey, Andrews, Baer, Calvin, Campbell, Carey, Carter, Cronmiller, Dallas, De France, Fulton, Guthrie, Hall, Hazzard, Hemphill, Horton, Lawrence, MacConnell, Newlin, Purman, Purviance, Samuel A., Reynolds, Russell and Wherry—24.

So the resolution was agreed to.

ABSENT—Messrs. Addicks, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Brodhead, Broomall,

Buckalew, Clark, Cochran, Collins, Corbett, Corson, Craig, Cuyler, Davis, Dunning, Edwards, Finney, Funck, Gibson, Gilpin, Green, Harvey, Hay, Howard, Hunsicker, Lamberton, Landis, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mann, Mantor, Metzger, Parsons, Patterson, T. H. B., Patton, Porter, Pughe, Purviance, John N., Reed, Andrew, Ross, Runk, Sharpe, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Van Reed, Wetherill, J. M., White, David N., White, Harry White, J. W. F., Worrell and Meredith, *President*—62.

REVENUE AND TAXATION.

Mr. BULLITT. I ask for the reconsideration of the vote on sections eleven and twelve of the article on revenue, taxation and finance. I voted in the affirmative on that question.

The *PRESIDENT pro tem.* The article has been referred to the Committee on Revision and Adjustment. Before it can be brought back to the House, the vote by which it was referred to that committee must be reconsidered.

Mr. DARLINGTON. I move to reconsider that vote.

Mr. KATNE. I second the motion.

Mr. NILES. One word. The chairman of the Committee on Revenue, Taxation and Finance is not here to-day. He will be back on Monday.

Mr. CURTIN. It will lie over after the reconsideration.

Mr. NILES. Very Well.

The *PRESIDENT pro tem.* A motion to reconsider the reference is made and seconded.

The motion to reconsider was agreed to, there being on a division ayes thirty-four, noes eighteen.

The *PRESIDENT pro tem.* The delegate from Philadelphia (Mr. Bullitt) now moves to reconsider the vote on the eleventh and twelfth sections of this article.

Mr. SIMPSON. I move to postpone the further consideration of that motion.

The motion to postpone was agreed to.

CITIES AND CITY CHARTERS.

Mr. HANNA. I move to proceed to the consideration of the article on cities and city charters.

The motion was agreed to, and the Convention proceeded to the consideration on second reading of the article (number six) on cities and city charters.

The first section was read as follows:

"The Legislature shall pass general laws whereby a city may be established

whenever a majority of the electors of any town or borough voting at any general election shall vote in favor of the same being established."

Mr. KATNE. I should like to know whether this article has passed committee of the whole and is on file.

SEVERAL DELEGATES. It is not on our files.

Mr. STANTON. As reported from the committee of the whole this article is not on any of our files, and the Sergeant-at-Arms says he has none.

The CLERK. If the Convention will permit me to state, I will explain the matter to them. The article never passed committee of the whole, and it is on the files as originally reported.

Mr. WHERRY. I move, then, that the Convention go into committee of the whole on the article.

The CLERK. The committee of the whole was discharged in regular order and all amendments fell.

Mr. WHERRY. Very well.

The *PRESIDENT pro tem.* The first section of the article is before the Convention.

Mr. DODD. I am opposed to this section. Section nine of the article on legislation provides that no city shall be incorporated except by general law; so that part of the section is already provided for. That portion of this section which provides that a city shall be established whenever a majority of the electors of any town or borough shall vote in favor of the same is wrong. My reason is that, if this is adopted, there will be scarcely a borough or town of a few thousand inhabitants, but which will immediately obtain a city charter. I know something about this by experience. Nearly all the towns of four or five thousand inhabitants in the northeastern portion of the State have already obtained city charters. My town obtained one when it had a population of about four thousand. It was simply to obtain the dignity and title of a city that the charter was applied for. We find it cumbersome, useless and expensive. We were much better as a borough. If every town, no matter what its population may be, can obtain a city charter as will be the case if we adopt this section, every little town in the oil region, because they are all ambitious, will vote for a city charter. They are all called cities now. We have in our county Allamagoozlam city, Red-Hot city, Stand-Off city, Pithole city, Paradise Lost city,

Driftwood city, Shacknasty city, and many others which by any name would not smell sweet. They are cities in name, but they will soon become cities in reality if this passes. They all start up in a day and they fall in about a week. [Laughter.]

There is but one of the provisions of this article that would apply to them with any force, and that is the sixth section in relation to a sinking fund. They all have sinking funds, and sink them about twelve hundred feet in the ground, and then the city sinks, too. [Laughter.] It is unnecessary to pass this section. It is simply useless. There is no corruption in the Legislature in relation to the charter of cities. Towns that have the requisite population have no difficulty in obtaining a city charter. But if you pass this unnecessary article, the evil that I speak of will be inevitable. Hundreds of the unimportant towns of the State will obtain city charters, and will have an honorable mayor and an honorable council under salary.

MR. S. A. PURVIANCE. I move to amend, by inserting after the word "borough," in the third line, the words "having a population of ten thousand."

MR. LITTLETON. I would suggest to the gentleman to say "at least ten thousand."

MR. S. A. PURVIANCE. Very well.

The amendment was agreed to.

MR. DARLINGTON. I do not know that I have any business to say much about cities; I am willing to leave that subject to city gentlemen; but I will say that this article nowhere provides any mode of establishing cities at all, except that they may grow up into small towns and then become cities.

MR. LITTLETON. That is all provided for by general law.

MR. DARLINGTON. It may be so. It however, suppose that every city that desires to be erected into a city, in the first place must have a special law under which it can be incorporated.

MR. C. A. BLACK. Oh, no.

MR. DARLINGTON. How, then?

MR. C. A. BLACK. Why, the first section provides for that.

MR. DARLINGTON. I do not think so.

The first section says:

"The Legislature shall pass general laws whereby a city may be established, whenever a majority of the electors of any town or borough voting at any gen-

eral election shall vote in favor of the same being established."

Here is a town, for instance, without limits and without boundaries. If a vote is to there take place, who is to decide who shall vote on the question whether or not it is to become a city? How much of the surrounding country is to be included in the parts voting upon the question of establishing a city? You will necessarily have to allow the Legislature to incorporate cities when the people want them. There is no sort of corruption in this thing. The Legislature never incorporates cities unless the people want them and ask for them. Why not let the whole subject go to the Legislature, and give that body full scope to incorporate cities whenever the people desire it done. Let the Legislature judge of this subject. It is a question that is eminently proper for their determination.

The section as amended was agreed to, ayes thirty-four, noes not counted.

The PRESIDENT *pro tem*. The second section will be read.

The CLERK read as follows:

SECTION 2. Every city now existing or hereafter established shall be governed by a mayor and a select and common council, in whom the legislative power shall be vested.

MR. H. W. PALMER. There are two objections to this section in its present shape which are to me important. The first is that it will disturb the internal economy of the cities that are already in existence, because many cities have but one council and do not desire two. They get along very well with a single branch, and do not desire to have a select council; but if the section passes as it is, it will interfere with those cities, and will require a change in their city government. That is one objection.

The next objection is that it vests in the mayor and in the councils legislative power. I would like to know what that means. "Legislative power" is a pretty broad term, and until some one can define it and make me understand what legislative power is, I shall hesitate to vote to give the councils of any city any legislative power. The municipal governments in the cities are generally controlled by gangs of very corrupt scoundrels, and if they have legislative power they may take advantage of it to legislate my money out of my pocket into their own, and I do not like it.

Mr. LITTLETON. I suppose "legislative power, here, simply means the municipal legislative power, such power as may be given to municipalities. They certainly can only exercise that power and no other, because power can only be exercised where power is conferred.

Mr. ALRICKS. I do not desire to propose an amendment, but I would suggest that the word "select" be stricken out so as to leave it a single council.

Mr. BIDDLE. There is a great deal of force in the objection made to the section, as it stands, by the gentleman from Luzerne, (Mr. H. W. Palmer,) and the section I think should be amended. If you strike out the words "select and common" and add an "s" to council, I think it will cover that branch of the case, and leave it so that small cities who at present have but one branch and do not desire two can retain their government as it is.

In regard to legislative power, I do not think that is the best phrase to be used, although there is no difficulty in understanding it. Of course, the legislation in municipalities must relate only to those municipalities and must be subordinate to the State and Federal governments and to the laws of the Commonwealth. Still, I think these words can be placed in a shape which will obviate all objection, and instead of the words "legislative power shall be vested," I would suggest the use of the phrase, "in whom shall be vested the power of passing ordinances."

I would therefore move these two amendments: First, to strike out the words "a select and common," and to make the word "council" read "councils;" and to strike out the words "the legislative power" and add after the word "vested" the words "the power of passing ordinances."

The PRESIDENT *pro tem*. The Clerk will read the section as it would read if amended as proposed.

The CLERK read as follows:

"Every city now existing, or hereafter established, shall be governed by a mayor and councils, in whom shall be vested the power of passing ordinances."

Mr. LITTLETON. I think the last amendment is still more objectionable than the phrase as it stands in the report of the committee, and the section would be improved by striking out the words "in whom legislative power shall be vested" altogether, without adding any amendments. Certainly the municipality can exercise the power given to it, and the

body of the municipality, which is the governing power, must exercise that power, because nobody else can, and therefore my suggestion seems to be wiser than the amendment of my colleague. Councils do other acts besides passing ordinances; they pass resolutions and other matters of that sort, which will not be technically included in the term "ordinances." Then, if you make the correction suggested by my colleague, it should be so done as to effect the purpose desired by him, which his amendment will hardly do. He uses the word "councils," which, being plural, of course requires two bodies. He should have said, "which shall be governed by a mayor and council or councils."

Mr. MACCONNELL. I rise to suggest whether the phraseology as proposed to be adopted in the section would not vest legislative power in the mayor as well as city councils. It says:

"Every city now existing or hereafter established shall be governed by a mayor and councils, in whom the legislative power shall be vested."

Does not that put the mayor on an equality with the councils as part of the legislative power? I would suggest a change in that respect by changing the phraseology and saying "in which councils the legislative power shall be vested." I make that suggestion to the gentleman from Philadelphia (Mr. Biddle.)

Mr. BIDDLE. I do not think if my friend from Allegheny would read the next section that he would insist upon that objection, because we have likened throughout this section the mayor to the chief executive of the State and of the federal government by giving him a qualified veto. No ordinance, any more than any bill, will become a law unless signed by the mayor, with the qualification that if he returns it with objections, it may be passed over his head in the usual way. I think it better to leave it in that form.

What is desirable in these articles is to have brevity, and by saying "which shall be governed by a mayor and councils, in whom shall be vested the power of passing ordinances," we simply use the appropriate language by which, so far as I know, all the municipal laws of a city are passed. They are passed by councils, one or two branches, signed by the mayor, or if he does not approve he returns them and they are passed over his veto.

Mr. ARMSTRONG. It appears to me that the first, second, and third sections are all

useless, and this article would be much better without them. It is to be observed that in our article on legislation we have provided that "the Legislature shall not pass any local or special law incorporating cities, towns or villages, or changing their charters;" or "for erecting townships or boroughs, or changing township lines or borough lines;" "nor creating offices, nor prescribing the powers and duties of officers in counties, cities, boroughs, townships, election or school districts." Now, it seems to me that it is not well that we should fix in the hard lines of the Constitution, which cannot be changed, a series of enactments which may be in practice found to work very inconveniently.

The general laws which the Legislature must pass in respect to cities, counties and townships will require that they shall consider this question very maturely and deliberately, and we ought not to fasten them down to anything which touches the internal regulations of a city. I know that a city charter adds largely to the expenses of a corporation. Designing men very frequently for the pride of a city name ask the people of a borough to get themselves incorporated into a city, and in a very short time they are very tired and desire to get back into their former condition of a borough. Now, I do not think it is well that we should pass either of these sections. They are useless; they accomplish no wise purpose; and we shall do better to leave the subject to the general discretion of the Legislature, where these things can be moulded as exigencies may arise. That which may be well for this year or next year, may not be wise for ten years hence.

As it respects the select and common councils, I know that in the city of Williamsport when it was first organized it was provided that we should have a select and common council; but in that small city it was found to be so cumbersome and inconvenient to have two bodies that by the universal desire of the citizens the Legislature were requested to alter and did alter our city charter in that regard, and now we have but a single council; and in small cities that is better. I think it ought not to be provided as it is here that there shall necessarily be both a select and common council, and I submit to the Convention that it would be wise to vote all these three sections down and leave this matter open to the discretion of

the Legislature as the exigency may arise.

Mr. DALLAS. Mr. President: I desire to say but a few words, in concurrence with the gentleman from Lycoming. Heretofore our cities have been always incorporated by act of the Legislature, and the act of incorporation has been the charter to the city and the constitution to which its ordinances have been subordinate. There has been no complaint on that subject except such as will be remedied by the general provision we have made in restriction of legislative power in this regard. We have provided that the Legislature shall pass no special laws making or altering the charters of cities, and therefore I think with that restriction upon the Legislature it is safer to leave this whole subject in their hands. Should, however, the Convention think otherwise and deem it necessary to pass any section on this subject, then I think the suggestions made by the delegate from Philadelphia who sits behind me (Mr. Biddle) have not been sufficiently considered.

In the first place, he suggests that we strike out "select and common council" and insert in lieu of those words the word "councils"—in the plural. That may be liable to misconception in construction, because the Supreme Court have decided more than once in construing laws that where you use the plural you must have more than one to meet the expressed intention of the Legislature, as in a case where sureties are required upon official bonds, the courts have decided that there must be more than one to meet the plural expression. Now, if you strike out "select and common council" here, you do not have the intention of the gentleman from Philadelphia sufficiently expressed to avoid all difficulty, for he still substitutes the plural "councils," and the word "councils" refers not to the members who compose the body, but to the aggregate body itself, and to meet the requirement of the plural you would still have to have two councils, or, at all events, there would be a doubt on that subject, which in a constitutional provision we should avoid.

Therefore, in furtherance of what the able president of the Select Council of Philadelphia (Mr. Littleton) has said upon this floor, I suggest with him that we should have "a council or councils," so as to leave it to the citizens, if this section should be adopted, to determine

whether they will have one or two councils.

The objection to the suggestion of the gentleman from Philadelphia as to the latter part of the section is equally potent in my mind. He proposes to strike out the phrase, "in whom the legislative power shall be vested," as it refers to councils, and to substitute for that "in whom the power to pass ordinances shall be vested." I submit that the beneficial power of councils is not now restricted to the passing of ordinances, and legislative power in the city has not been restricted to the passage of ordinances. In this city the councils constantly pass resolutions and make recommendations. They, as was said the other day, audit accounts through their committees. They hear citizens upon different subjects, and investigate abuses. If you, by constitutional provision, restrict them to the passage of ordinances, you limit them and restrict them in their power far beyond any limitation or restriction that properly should be put upon them.

Therefore, my conclusion is, first, that this section is unnecessary, but that if it should be passed, then instead of saying that the city shall be governed by a mayor and councils it should be "by a mayor and council or councils," and that we should retain the words "in whom the legislative power shall be vested," or strike them out entirely; either will answer the purpose, because in saying that the city shall be governed by its mayor and councils, we include everything.

Mr. BOWMAN. Mr. President: When this report under consideration was originally presented, of course it could not be anticipated by the Committee on Cities and City Charters what action might be taken by the Committee on Legislation. The report of the Committee on Legislation seems to supersede the necessity of the passage of these two sections. For instance, your own city, Mr. President, the city of Erie, is governed at the present time, I believe, by a select and common council. Then the little city where I reside is governed by a common council alone. When it received its original charter in 1866, there was a select and common council provided for the government of the city. In 1870 that was repealed; and as the gentleman from Lycoming stated as to his city, a new charter was obtained, or an amended charter, providing simply for a common council.

Then, here would be the difficulty right in our own county, Mr. President. If this is passed, as it is, of course the change must necessarily change the organization of the city of Corry. If the gentleman's amendment prevails, it will change the present organization of the city of Erie. That we do not want done. The city of Erie is now governed by both a common and select council. We wish to leave it there. Let the people determine that question for themselves through the Legislature.

Hence, I must come to the conclusion that the suggestions of the gentleman from Lycoming are correct, for the reason that this whole matter has been provided for by another committee whose report has already passed the committee of the whole, and I believe also on second reading.

Mr. S. A. PURVIANCE. Mr. President: It occurs to me that the second and third sections may be very well dispensed with, but the first section ought not to be dispensed with. The first section declares that the Legislature may pass general laws whereby a city may be established. Now, is not that sufficient, because in the passage of that general law they will make provision for whatever power is necessary to be conferred upon the mayor and the councils. If, however, it is thought best to retain the second section, then I would make this suggestion as probably a better one than that made by the gentleman from Philadelphia, (Mr. Biddle,) because I do not like—

Mr. BIDDLE. The gentleman will allow me to say that I withdraw my amendment. I think it is better to vote both sections out entirely.

Mr. S. A. PURVIANCE. Very well.

The PRESIDENT *pro tem*. The question is on the second section.

Mr. ALRICKS. I would renew the amendment in this way: Strike out the words, "select and common," and insert "council or councils," and before the word "legislative," in the third line, insert the word "municipal," so as to read:

"Every city now existing or hereafter to be established shall be governed by a mayor and council or councils, in whom the municipal legislative power shall be vested."

I apprehend that all these sections are right in their place. We have a provision in the article on legislation restricting the power of the Legislature, it is true, but we have no provision for the creation of

a city. I know that a great many cities have been incorporated where the citizens have been injured by the incorporation; but still there must be a power somewhere to incorporate cities.

Mr. HANNA. Will the gentleman from Dauphin allow me to call his attention to the report of the Committee on Legislation?

Mr. ALRICKS. Certainly.

Mr. HANNA. It contains a provision that "the Legislature shall not pass any local or special law incorporating cities, towns or boroughs."

Mr. ALRICKS. Precisely; they shall pass no local law to incorporate cities; but they ought to pass a general law under which cities can be incorporated, and that is all that this section provides for. Now in some of the States, particularly in the east, there is a provision that the courts may incorporate cities; but in our State, our cities have generally been incorporated by special law. But why should there not be a general law under which cities may be incorporated and a provision in it, as we have now in some of our laws, that by a vote of the people that act of incorporation may be annulled and the people may return to their original condition as a borough? I think our work will be incomplete unless we give to the Legislature the power of making a general law to incorporate a city, and when they do so, we ought, and I believe do, agree in the opinion that the municipal legislative power of the city should be vested in the mayor and the councils. I presume that would be perfectly right. Therefore I trust these sections, which have been well matured by the Committee on Cities and City Charters, and have passed the committee of the whole, will be adopted. These three sections did pass the committee of the whole, I say.

Mr. DEFRANCE. Oh, no!

Mr. GUTHRIE. I hope the amendment of the gentleman from Dauphin will be accepted and will prevail. I think some organic act is necessary on this subject, and if the amendment prevails, I can see no objection to the section with that amendment, and I am, therefore, disposed to vote for the amendment and for the section.

Mr. AINEY. I do not agree with gentlemen that this section is wholly unnecessary. By general law the Legislature can vest in a board of aldermen or "metropolitan police commission," or some

other body, the government of a city. I think a section which will assert the principle that the municipality shall be governed by a mayor and councils, is correct, and it ought to be inserted in the organic law. I desire to offer an amendment to the amendment, which will cover all the points suggested by the gentleman from Dauphin. My amendment is to make the section read:

"All cities shall be governed by a mayor and council, or councils, who shall have power to enact municipal legislation by ordinance."

At the suggestion of the gentleman from Philadelphia in front of me, (Mr. Littleton,) I will add after ordinance the words "or resolution."

The PRESIDENT *pro tem*. It will be so modified. The amendment to the amendment is before the Convention.

Mr. AINEY. Mr. President: I have had some little experience in municipal legislation and local government; and while I agree with the remarks that fell from the gentleman from Luzerne (Mr. H. W. Palmer) that city councils are too frequently composed of bad men, yet I think as a rule it would be safer to vest the governing power and the local municipal legislative power in the hands of councils and the mayor, than in any other body. If that be the opinion of this Convention, it seems to me proper that we assert it in the fundamental law. A provision that cities shall be governed by, and that the municipal legislative power shall be vested in, the mayor and councils, does not seem to me out of place here.

Mr. HANNA. Mr. President: The difference of opinion upon this question satisfies my mind that the section should not be in the Constitution at all. It is no place for any such provision. We have none at present. The power is safely vested in the Legislature, and the article on legislation as reported and passed on second reading covers the whole subject.

Now, we propose in this article to say that the Legislature shall pass general laws incorporating cities. If they pass an act giving the people the power to incorporate themselves by a vote, that is sufficient. Then the Legislature will also pass a general law giving certain general powers to the different cities of the Commonwealth. I think that is sufficient. That very act of Assembly will provide how the city shall be governed, whether the mayor shall have a veto or not; but why should we descend into such details

in the Constitution? I do not see the necessity of it; and, as has been well remarked by the gentleman from Lycoming, (Mr. Armstrong,) the first four sections of this report have already been anticipated.

Mr. AINEY. Will the gentleman allow himself to be interrogated?

Mr. HANNA. Certainly.

Mr. AINEY. Suppose the Legislature should pass a general law vesting in a board of aldermen all the municipal legislative power in cities of a given population, how might that affect the city of Philadelphia? In other words, in a case where one political party had control in the Legislature, and another in the city government, might not the Legislature vest the legislative power of the city in the hands of a board of aldermen, and put the government substantially in the hands of a police commission, and thus change the political character of the local government? And has not this been attempted in Philadelphia and other cities?

Mr. HANNA. It might be possible; but still that is the principle we have retained in the Constitution, that the Legislature shall govern all the municipalities by general law. We have been seeking to avoid special legislation, to avoid the very thing about which so much complaint has been made, and say that they shall only pass general laws on the subject, giving the people of the cities the right to govern themselves. Now, if they pass an act of Assembly which is a general law, saying that cities shall be governed by one council, I am satisfied. If they will say that the people shall have one or two, as they see fit, I am satisfied with that, and so will the people of the different cities be satisfied with it. But why should we say here that every city shall have "a select and common council" or "councils?" There is no necessity whatever for it. That can all be provided for by the Legislature by general law.

So, in the third section, it is declared that a mayor shall have a qualified veto. Can that not be provided for by general law? What is the necessity for it in the Constitution? None whatever that I can see; and all these other matters of detail have been provided for in the report of the Committee on Legislation, where it is declared that "the Legislature shall not pass any local or special law"—that is, they must pass general laws—"regulating the affairs of counties, townships, wards, boroughs and school districts;" and again, they must pass general laws "in-

corporating cities, towns or villages," and all these different matters must hereafter be regulated by general laws.

I do submit that there is no necessity whatever, as I have just stated, for placing any such provision in the Constitution.

Mr. LANDIS. The proposition before the Convention, I believe, is to pass a section requiring that every city now existing or hereafter to be established shall be governed by a mayor and a select and common council. I find no objection to the section except so far as it requires that there shall be two branches of the city councils. To that I understand there is an amendment pending of the gentleman from Lehigh (Mr. Ainey) who proposes that they shall be governed by "a mayor and a council or councils, as may be prescribed by general law." I do hope that this amendment or something similar to it will prevail. I have in my district a small city which is governed by one council. It is not composed of two branches, as very many of the large cities are; but it is governed by a mayor and one council, and I presume the objection has heretofore been urged that if you require these small municipalities to be governed by two councils, you will impose upon them great expense and an additional burden and increased trouble, and it will only lead to embarrassment in the administration of their municipal affairs, because I conceive that they can be better governed by one council where the municipal wants are few and to some extent circumscribed, than they would be by having two branches of councils. I should be in favor, therefore, either of the amendment of the gentleman from Lehigh, or that we strike out of the article the section entirely. It is a matter that can be provided for by the Legislature, and I do not see that there is any very great and pressing want that any section on the subject should be embodied in the article, particularly when it gives rise to this trouble.

Mr. M'CLEAN. Though I have not the honor to represent a city, I hope it will not be considered presumptuous in me to venture an opinion as to the propriety of the section under consideration. It seems to me that it is the enunciation of a principle which is of value to cities and should be retained. In the article on the Legislature we have adopted the declaration of the Constitution of 1838, that the legislative power of this Common-

wealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives. I like the distinction to be made in the organic law that the legislative power of the people does not reside entirely in the General Assembly. It resides there for all general purposes, but for local affairs it resides in the municipal authorities. I think gentlemen representing cities on this floor should be anxious to retain the principle declared in this second section that the legislative power, so far as relates to cities, shall remain in the city authorities, the mayor and councils, as they may desire to have it expressed. I think it is an important principle and the committee have done well in expressing it in this second section and it should be retained.

Mr. BARDSLEY. If the object of the Convention is to make the new Constitution as concise as possible, we should vote this section down. It has no practical utility and simply consists of words without meaning. I am perfectly willing to leave the matter entirely with the Legislature. Cities will have to be governed; and I think that when the time comes to create a city, the then existing Legislature, familiar with the requirements of different localities and familiar with the necessities of the changing periods of our history, will be better able than we are today to regulate this subject. Let us remember that we are asked to pass a law—for this is not a constitutional article; it is legislation. It is directing how cities shall be governed, and it is in my opinion entirely unnecessary to insert any such provision.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Lehigh (Mr. Ainley) to the amendment of the gentleman from Dauphin (Mr. Alricks.)

On the question of agreeing to the amendment to the amendment, a division was called for, which resulted fifteen in the affirmative. This being less than a majority of a quorum, the amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment.

Mr. ALRICKS. I do not understand that we are legislating in this section; we are announcing a principle. It has been well said by the gentleman from Adams (Mr. M'Clean) that the legislative power of every city should be vested in a council

and mayor. We say more than that; we define the powers of the mayor, and we define in a measure the powers of the council; and in doing this, I apprehend that we are doing just what those who form an organic law ought to do. This subject has been already very fully considered in this Convention, and I apprehend that we are just restricting the Legislature to a proper extent. In times of high political excitement, the Legislature might try, even by a general law, to change all the officers of all the cities of the Commonwealth. They might find in a period of great excitement that it would suit the political views of a majority of the Legislature to make a thorough sweep of all the municipal officers. I apprehend that it is the duty of this Convention to keep things settled and permanent. It is our duty to avoid anything like oscillation. We should say here that the power of government, the power to make laws for each city, should be vested in the people of the city, that the mayor should have his certain limited power, and the councils should have their power, and then under these instructions the Legislature will pass all general laws for the construction of cities and for their government after they are constructed.

Mr. LITTLETON. When this section was first read, I had some doubts as to the propriety of its passage; but the discussion upon it has satisfied me that it ought to be adopted. It is simply an enunciation of a principle. It is not special legislation. It is not designating what power shall be given to cities which shall be created. It simply names the depository of municipal power and prevents the Legislature from making changes adverse to the interests of particular localities, as it might do under the guise of a general law unless this section be adopted. I think therefore that the objection made by my colleague (Mr. Bardsley) is not tenable. This section is not in any sense legislative; it is a general direction designating what body in a municipality shall exercise such municipal power as shall be conferred by the Legislature, and not naming any particular power to be exercised under this provision.

Mr. J. R. READ. I trust this section will be adopted for one reason if for no other, that we should specially designate what will be the legislative power of any city in the Commonwealth. I insist also that it is very important for this Convention to adopt this section in view of what

is contained in section ten of this article, which is of vital importance.

We all know that great wrongs have been suffered in this city because no means have existed for their proper investigation. This section specifies that the municipal power shall be vested in a council or councils, and then section ten provides that these councils, or either of them, shall have power to appoint a committee of their respective bodies or either of them, to investigate abuses, with the power to enforce the attendance of witnesses, with a means of punishing them if they fail to testify. Hitherto when local abuses have been called to the attention of the people and councils have appointed committees to investigate the frauds, subpoenas have been issued to interested witnesses who have flaunted them in the faces of the men who were honestly seeking the truth, and who have refused to testify because there was no power to punish them for refusing. The time has come when this should be remedied. The State is growing in wealth, importance and population; our cities are becoming powerful in wealth and increasing in population; and this subject of investigating local abuses should be left to the municipalities. They possess facilities for the investigation that the Legislature cannot have.

The Convention will therefore see the importance of establishing in this section the repository of municipal power, and then in the tenth section providing that these municipal authorities shall have the power to enforce the attendance of witnesses before investigating tribunals, with the proper power to punish for a refusal to testify.

Mr. ARMSTRONG. I hope the Convention will pause before it votes to adopt this section. It imposes on the Legislature additional restrictions in reference to cities; and we have already limited the law-making power of the State sufficiently in this regard. We have already provided that no law shall be passed concerning cities except a general law, and therefore there is no danger of special laws affecting injuriously particular localities. It is not wise for us to further restrict the power of the Legislature when we cannot foresee the exigency which may call forth the exercise of that power. It is much better to leave it to the Legislature without any trammels being placed in the Constitution that in the future may be found embarrassing and injurious.

On the question of agreeing to the amendment proposed by Mr. Alricks, a division was called for, which resulted thirty-four in the affirmative, and ten in the negative. So the amendment was agreed to.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

On the question the yeas and nays were required by Mr. Hanna and Mr. Alricks, and were as follow, viz:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baer, Black, J. S., Bowman, Brown, Campbell, Curry, De France, Feli, Finney, Fulton, Guthrie Hemphill, Heverin, Horton, Knight, Landis, Lilly, Littleton, M'Clean, Mitchell, Newlin, Patton, Read, John R., Reynolds, Smith, H. G., Stanton, Temple, Walker and Wherry—32.

NAYS.

Messrs. Andrews, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bardsley, Beebe, Biddle, Black, Charles A., Bullitt, Calvin, Carey, Carter, Church, Cronmiller, Curtin, Dallas, Darlington, Dodd, Elliott, Ewing, Hall, Hanna, Hazzard, Lawrence, MacConnell, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Simpson, Struthers, Turrell and Wright—38.

So the section as amended was rejected.

ABSENT.—Messrs. Addicks, Baker, Bannan, Barclay, Bartholomew, Bigler, Boyd, Brodhead, Broomall, Buckalew, Cassidy, Clark, Cochran, Collins, Corbett, Corson, Craig, Cuyler, Davis, Dunning, Edwards, Ellis, Funck, Gibson, Gilpin, Green, Harvey, Hay, Howard, Hunsicker, Kaine, Lamberton, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mann, Mantor, Metzger, Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Pughe, Purman, Purviance, John N., Ross, Runk, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Van Reed, Wetherill, J. M., Wetherill, John Price, White, David N., White, Harry, White, J. W. F., Woodward, Worrell and Meredith, *President*—63.

The PRESIDENT *pro tem.* The third section will be read.

The CLERK read as follows:

SECTION 3. The mayor shall have a qualified veto on all the acts and ordinances passed by the council, shall see that the duties of the several officers are faithfully performed, but shall exercise no judicial functions, civil or criminal.

Mr. BIDDLE. I trust now that, the preceding section having fallen, this will be voted down also.

The section was rejected.

The PRESIDENT *pro tem.* The fourth section will be read.

The CLERK read as follows :

SECTION 4. The Legislature shall pass no special law creating any municipality, or regulating its form of government or the management of its internal affairs, or altering the charter of any city now existing, or creating a public commission for any purpose, unless such law is specially asked for by a majority of each council, for a definite object. Nor shall such special law have any force or effect unless accepted by a majority of each council, and by a majority of the legal voters voting at the next municipal election after the acceptance by the councils. Every municipality shall have power to pass laws for its own regulation not repugnant to the Constitution of the United States, or of this Commonwealth.

Mr. NEWLIN. I offer the following amendment, to come in at the end of the section :

"No debt shall be contracted or liability incurred by any municipal commission except in pursuance of an appropriation therefore having been first made by the councils."

This amendment does not interfere with the power of the Legislature to create commissions.

Mr. LITTLETON. I rise to a point of order. The amendment is not germane to the section before the Convention. As I understand the amendment it restricts the power of councils.

Mr. NEWLIN. No, sir; it does not do anything of the kind.

Mr. LITTLETON. It imposes a restriction other than a legislative one, and as this section is a restriction upon the Legislature, no such amendment is germane.

The PRESIDENT *pro tem.* The Chair will state that he does not think the amendment pertinent to the section; he cannot see any possible applicability of it to the section; but he will not rule it out of order.

Mr. GUTHRIE. I think a section which we have adopted in the report on revenue, taxation and finance has provided for this subject by limiting the amount of municipal and borough debts.

Mr. NEWLIN. That does not reach the object which is designed by this amendment. The section adopted in that arti-

cle simply provides that the aggregate debt shall not exceed a certain percentage upon the assessed value of property; but the proposition here is that no debt whatever shall be created or liability incurred by any municipal commission without an appropriation first made by the council to meet the expenditure.

On this question, I appeal to gentlemen not only from cities but from the rural districts. I should like to know, for instance, how my friend from Chester (Mr. Darlington) would feel if the Legislature were to create a commission composed of A, B, C and D, give them power to fill their own vacancies, and confer on them power to spend as much money of the county of Chester or of the borough of West Chester as they might see fit without asking any permission from the local authorities. That is what it is intended to prevent by this amendment. It is not designed to prohibit the Legislature from creating a commission, but only to restrict municipal commissions in spending the public money. For instance, a commission is provided to build a court house; that is well enough, provided the money of the tax-payers which is to build that court house be appropriated by their representatives elected by them, and not by an irresponsible commission appointed by name by the Legislature, and having power to fill their own vacancies or, perhaps, appointed by a court.

The money of the tax-payers should be spent only by those elected by them. The details of spending that money, after it is appropriated, may be very properly left to a commission; but the raising of the money and the incurring of the indebtedness should be under the direct authority of the city councils; and when I state to gentlemen here that the debt of this city is now \$51,000,000, I think they will see some propriety in providing that future expenditures of millions and millions of money should be under the direction of the city councils and not of persons who are neither elected nor appointed by the people in any way, shape or form.

The PRESIDENT *pro tem.* The Chair will state after reading the section carefully and the amendment with as much care as he can, he cannot see how it is applicable. If the gentleman can point out wherein it is applicable, the Chair may rule differently.

Mr. NEWLIN. I will withdraw it and put it in somewhere else.

The PRESIDENT *pro tem.* The section is before the Convention.

Mr. DALLAS. I desire to call the attention of the Convention to some practical considerations connected with the section in order that we may act upon it intelligently. Section four, at the outset, provides that "the Legislature shall pass no special law creating any municipality or regulating its form of government." We have in the article upon legislation that provision already in almost precisely the same words :

"The Legislature shall not pass any local or special law incorporating cities, towns or villages or changing their charters."

That is already in the article on legislation, and it is not necessary to repeat it here.

"The Legislature shall pass no special law creating any municipality or regulating its form of government."

"Regulating its form of government" is also provided for in the article on legislation, to wit, in this section :

"The Legislature shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, boroughs or school districts."

Then all the rest of the section, except that which provides that no public commissions shall be created by special law, is provided for in the article upon legislation down to the word "every," in the eighth line. I propose, therefore, to amend the section so as to strike out such portions of it as I deem to be unnecessary, and only because I deem them to be unnecessary; I would strike out all the section down to and including "councils," in the eighth line, except so much as will make it read :

"The Legislature shall pass no special law creating a public commission."

Mr. EWING. Allow me to interrupt the gentleman. Section 22, of the article on legislation, already passed on second reading, absolutely prohibits any such thing. We do not need this, therefore.

Mr. DALLAS. Very well. One step further; I move to strike out all the section down to and including the word "councils;" there is none of it then necessary. That leaves of that portion of the section only what reads as follows :

"Every municipality shall have power to pass laws for its own regulation not repugnant to the Constitution of the United States or of this Commonwealth."

And that latter portion I propose to amend by inserting, after the word "have" in the ninth line, the words "the exclusive," and by striking out in the tenth line the words "of the United States or," and insert in lieu of the latter words stricken out the words "or laws," so that it would then read :

"Every municipality shall have the exclusive power to pass laws for its own regulation not repugnant to the Constitution or laws of this Commonwealth."

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Dallas.)

Mr. CAMPBELL. I ask for a division. Let the first question be on striking out down to the word "councils" in the eighth line.

Mr. LITTLETON. Before a division is had, I will state to the gentleman from Philadelphia (Mr. Dallas) that I desire to amend the last clause, and I ask him therefore to offer the first amendment first, so that we can amend the second division.

The PRESIDENT *pro tem.* The amendment is under consideration, and a division being asked the first division is to strike out all the section down to and including the word "councils" in the eighth line.

The first division of the amendment was agreed to.

The PRESIDENT *pro tem.* The second division of the amendment is to make the section read :

"Every municipality shall have the exclusive power to pass laws for its own regulation not repugnant to the Constitution or laws of this Commonwealth."

Mr. LITTLETON. I offer the following as a substitute for that :

"Every municipality shall have the exclusive power to pass laws for its own regulation, including the assessment, general or special, of the cost of such municipal improvements as it may from time to time direct to be made or renewed : *Provided*, That such laws shall not be repugnant to the Constitution of the United States or of this Commonwealth."

Mr. BIDDLE. I do not understand that proposition. I hope the gentleman will explain it.

Mr. LITTLETON. The amendment is intended to give to the city in the first place the right to pass exclusive rules and regulations for its municipal affairs, such for instance as the collection of its taxes. The city of Philadelphia, imposing a tax

rate of two dollars and fifteen cents on the hundred, and collecting from taxes about \$10,000,000 per annum, has not power at the present time to regulate the mode of the payment of those taxes, and it has a very loose system.

My proposed section, in all probability, vests in the city the right to regulate such a matter as that, very important to it, and very difficult sometimes to obtain from the Legislature. In addition to that is the power to impose assessments, either general or special—that is, upon the taxpayers generally or upon special property owners where specially benefited—for the cost of such improvements as the local authorities may direct to be made or renewed. It gives to the municipality that power which in my judgment it should possess for the proper management of a large city, having in view, of course, as I necessarily have, what I suppose to be the interests of the city of Philadelphia.

I think such a concession from the legislative power to the municipal power would be of great advantage, and I trust that the amendment as proposed by me, as I have added the words suggested by the gentleman from Philadelphia, will be adopted.

Mr. TEMPLE. I hope we shall have the amendment read.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK read the amendment.

Mr. TEMPLE. I should like to ask the mover of the amendment what he means by the assessment of the cost of public improvements.

Mr. LITTLETON. I mean the case of a street directed to be paved, or a pavement directed to be renewed entirely, or a culvert put down, or any other municipal improvement—their name is legion, but they are very easily and very readily understood.

Mr. ALRICKS. I am a little afraid that that amendment will not meet the approbation of the House, and I am very glad the mover has been called on for an explanation. It is but a few days since we had this very question before the House, and the House by a very decisive vote voted down a proposition like this. The idea of improving a man out of his house and home is one that certainly would not meet my approbation. I should be sorry to give the right to the councils or to any other body to assess a certain tax upon the property of a person

which they might suppose was benefited by an improvement.

The municipality should have power to make all improvements, and they have that general power, and they should have a power to assess general taxes; but this thing of giving them special power to tax a special property, supposing that it will be improved, when the owner of the property might think otherwise, and when the result might show that they were mistaken, is a power that I never would be willing for one moment to commit to the city councils or any other body of men. I hope, therefore, the amendment to the amendment will not be adopted.

Mr. BIDDLE. I concur with the gentleman from Dauphin in opposing this proposition and pretty much for the same reasons. We have refused to the Legislature the power that was attempted to be given to them to do this very thing, and I think it would be unwise to the last degree to give them the power of assessing against a property the cost of an improvement which, as we know, in the State of New York has more than once eaten up the whole value of the property.

Now, if we would not give to the Legislature at large such a power as this, why should we give it to any municipal body? The people do not want it; and, besides, as we have struck out the second and third sections, leaving the whole subject of municipal government to be provided for by laws hereafter, why retain this?

Again, in regard to the mere verbiage, it seems to me a perfect absurdity to tell us that municipal laws shall not be repugnant to the Constitutions of the Federal and State governments and to the laws of the State. What is the use of saying that? A small body cannot pass such laws. But, on the general question, I think it unwise to give any municipal body such a power as this. I would no more trust the councils of a city than I would trust the Legislature of a State with it. I hope it will be voted down.

Mr. SIMPSON. I trust the amendment of my colleague from the city (Mr. Littleton) will not be adopted, because it seems to me that it is designed to reach a particular case. Some time ago, a good many years ago, under the authority of the city of Philadelphia, Broad street was paved with a pavement. Subsequently the city of Philadelphia saw fit to put down a new and improved pavement and undertook to assess and collect the cost of the new pavement from the property owners; and

the Supreme Court said, "you cannot do that." It seems to me that this amendment is calculated to meet that case. That ought not to be permitted.

Mr. LITTLETON. I should like to say a word simply in reply to the gentleman who has just spoken.

Mr. BIDDLE. My friend has spoken once.

Mr. LITTLETON. If that objection is raised of course I must take my seat.

Mr. BIDDLE. I do raise it.

Mr. LITTLETON. It certainly comes with a very bad grace from a gentleman who has occupied as much time as the gentleman from Philadelphia (Mr. Biddle.)

Mr. TURRELL. I concur in the remarks made by the gentleman from Dauphin, (Mr. Alricks,) and the gentleman from the city who succeeded him (Mr. Biddle.) I would not give this power even to the Legislature without submitting the question to the people. I much prefer the section, because it has that provision in.

I have seen in this Commonwealth a board of school directors, I have seen a common council, without the knowledge of the people, go to the Legislature, and obtain the right to tax the municipality without limit and without any consultation with the people whatever.

Now, sir, in whatever section we pass here, I want to see something that will bring that matter before the people, before it shall be binding upon them. It is the easiest thing in the world sometimes where the people of a city are careless about the election of members of councils, to put a class of men in who pay scarcely a dollar of taxes, and they will victimize the tax-payers of the town to any extent whatever. I think we should protect municipalities against such action. We should not put them in the power of any such body of men, nor render them liable to be taxed without having the subject passed upon by the majority of those to be affected by it.

Mr. TEMPLE. When I asked the Clerk to read the amendment of the delegate from Philadelphia, (Mr. Littleton,) I thought I saw something in it that I did not approve of, and after the remarks made by the distinguished delegate from Philadelphia, (Mr. Biddle,) I certainly shall not vote for this amendment. I was disposed to vote for any general section that was applicable to this subject; but I believe it is admitted now by the mover of this

amendment that it is designed to meet a certain case and to over-rule a decision of the Supreme Court. No such thing should be put into the Constitution, as has been said by the gentleman from Philadelphia (Mr. Simpson.) The Supreme Court did decide that the city of Philadelphia could not make the people on a particular street pay for a pavement which had been laid down there.

Mr. LITTLETON. By a bare majority.

Mr. TEMPLE. No difference; it was a decision of the Supreme Court, and I certainly did not think that my colleague would have moved an amendment having in it only that one principle. I shall not vote for it.

Mr. GUTHRIE. I am in favor of the principle of giving to the mayor and to the councils full legislative power for the municipality; but as the Convention has seen proper to decide that there shall be no mayor and that he shall have no veto power, I am not willing to trust the councils beyond the restricted powers already granted to them here. Therefore I shall vote against the amendment.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment offered by the delegate from Philadelphia (Mr. Dallas) to insert the word "exclusive" before "power," and to strike out "of the United States," and insert "or laws."

Mr. DALLAS. I should like to state to the Convention that the purpose I had in view in proposing to insert the word "exclusive" was simply to give to the local authorities of a city the exclusive power to govern its own internal affairs, my view being that for every local community there should be local self-government in all those matters which affect only the locality, meaning thereby their interior regulations; and that the Legislature of Pennsylvania should not be able to say to the city of Philadelphia, or to the city of Pittsburg, that its streets should be opened in a particular manner, or that railway tracks should be laid down in its highways without giving to the direct representatives of that municipality the right to express for those they directly represent their real sentiments on the subject; and for this reason I believe, disagreeing with the gentleman from Susquehanna, (Mr. Turrell,) and the gentleman from the First district, (Mr.

Biddle,) that the councils of the city are better to be trusted with its internal management than the Legislature of the State; they are the direct representatives of the people of the city, and it is the people of the city who speak through them.

MR. S. A. PURVIANCE. Will the gentleman from Philadelphia allow me to ask him a question?

MR. DALLAS. With pleasure.

MR. S. A. PURVIANCE. In the absence of any general law prohibiting councils from passing laws regulating their own affairs, is there anything to interfere with their right to do so?

MR. DALLAS. The Legislature may at any time pass laws entirely inconsistent with the views of the citizens of any city, upon their own internal affairs, and they have no power to prevent it. Therefore it is that I desire that the exclusive power should be vested in the citizens of Philadelphia, the citizens of Pittsburg, of Reading or any other city of the Commonwealth to manage their own affairs in their own way; that there should not be taxation for local purposes except upon local representation assenting to it. That is the purpose of the amendment.

In addition to that, I have stricken out the phrase "contrary to the Constitution of the United States or," simply because it would be absurd for us to insert such a provision in the Constitution of the State of Pennsylvania. The Constitution of the State of Pennsylvania itself, if repugnant to the Constitution of the United States, cannot stand; and it is, therefore, absolutely ridiculous to provide by it that a municipal ordinance shall not stand against the Constitution of the United States! Therefore it is that I propose to strike that out.

MR. LITTLETON. I trust, Mr. President, that this amendment will be adopted, and I hope that the Convention will see that there is some propriety in giving the local authorities of large cities absolute control over matters purely local in their nature. Why should we have to go to the Legislature and ask acts of Assembly to be voted upon by men living two or three hundred miles away from a city like Philadelphia to regulate its local affairs? Of course, those members are not able to know the particular needs and wants of the city. Certainly, where there is such a large population as there is in the city of Philadelphia, such a large aggregation of property, having an assessed value larger in amount than a great many of

the States of the Union and a population larger than one-half of those States, why should we not have conferred upon us the right to control matters local in their nature? I regret exceedingly that the Convention has not seen fit to adopt the amendment proposed by myself, because I do think it of vast importance to the city of Philadelphia, but that having failed, I trust we shall get at least the measure of power proposed by the amendment now pending.

MR. ARMSTRONG. Mr. President: It is to be observed that we have already provided that all this regulation of municipalities shall be by general law. Of course, it follows that whatever law is made applicable to Philadelphia must be equally applicable to every other municipality in the State. If it were a question that affected Philadelphia alone, I should be much disposed to follow the judgment of the gentlemen here who so ably represent this city; but when it is proposed to extend this power all over the State, it becomes, in my judgment, exceedingly dangerous. I know that we should not be willing in our section of the State to entrust such enormous power to an irresponsible legislature, if you please so to call it, of a city. Its councils are not men of that character representing both property and intelligence, to whom such powers should be entrusted.

Again, the word "municipality" is by no means of fixed determination. It may or it may not include counties. There are able lawyers who think that the word "municipality" does not include a county, and there are others who believe it does. I think every reason which has controlled the judgment of this Convention in voting down the second and third sections, applies with great force to this; and it is a dangerous power which ought not to be vested, covering the whole State, and thus placing all the cities (even if the word municipality has no other extent) in a board of irresponsible men. I trust it will be voted down.

MR. EWING. Mr. President: There is perhaps no subject of modern government that is so doubtful a problem at the present day as that of the government of large cities. Almost every system that has been tried has at one time or another proved a failure in some respects, and experiment after experiment is being tried in this country in the cities of the various States. If there were nothing else than that fact, which every man who has paid

attention to the subject for the last few years knows, it would be enough to make us careful in regard to the provisions we shall insert in the Constitution in regard to the government of cities.

There are several provisions in this article now under consideration that commend themselves to my judgment and that I should like to see tried as an experiment; and yet I have voted against those sections that have been voted down, and I think they have been properly voted down, because we may well leave the government of the cities to be determined by the Legislature under the restrictions which we have already laid down for the Legislature. We have provided that they shall only pass general laws; we have hedged in their power and authority and their manner of passing laws, so that I think we can fairly trust them to delegate to the municipal governments the necessary power to regulate their own internal affairs, to lay restrictions on city councils or whatever form of legislative government may be given to cities so as to prevent the abuse of the authority delegated to them. I suppose if we finally pass the article on legislation, which has already passed on second reading, it will be utterly impossible for the Legislature to enforce the kind of acts that have been complained of by gentlemen here from this city and that are complained of in our region—local and special laws affecting particular localities in the different cities. I should be very glad to see in the Constitution in some place, if it is not in already, (and I am not certain about that,) a provision which would prohibit the Legislature from granting the right to any railroad to pass along the streets of a city without the consent of the local authorities. I think that should be done; but nevertheless, if it is to be left to the unrestricted power of one or the other body, I would very much prefer to trust the Legislature to determine what streets should be taken for railroads or anything of that sort than I would trust the city councils with the unrestricted power that would be given in this section.

Mr. NILES. Will the gentleman allow me to make a suggestion?

Mr. EWING. Yes, sir.

Mr. NEWLIN. A case occurred this winter in which the Legislature by the unanimous vote of the members from this city put two railway tracks on the principal business street of Philadelphia, which was already occupied by two other

railway tracks, and in some places did not leave room for a dray to be turned between the curbstones and the tracks. The city government was opposed to it; but the Governor when the bill was presented to him said, "the representatives of the city have unanimously voted for this bill, and I must sign it." The owners of every foot of land on both sides of the street sought to be occupied by the railroad, protested against the bill.

Mr. EWING. I have just said that I would limit the power of the Legislature so as to require the consent of the local authorities to the laying of railway tracks in the streets. I will say further in regard to the case just brought to my attention, that having looked at the street itself, having seen a little in regard to the laying of street railroads on streets much narrower than that, and having read also the statements of the Philadelphia people in their papers and in their meetings, I think that the Legislature was about right in that matter, and the city councils were wrong in wanting to prohibit those tracks being laid down. I would, however, have required the consent of both Legislature and councils.

I was going to say that as a matter of experience in our region of the State and in our city, the very worst legislation we have ever had in relation to the city has been that which was asked and demanded of the Legislature by the city council—I mean special local legislation—and frequently the Legislature has stood guard between the people and the city councils and has refused to pass legislation that was asked by the city councils, and which would have been very injurious to the people of the city.

I am entirely unwilling to vote for such a power as would be granted to city councils by this section, even as amended. I think that we can much more safely leave it to the Legislature to determine by general law how and in what manner this power of local legislation shall be vested and exercised. I am in favor of local legislation; but if we grant it, in order to grant it safely for the people of the cities we must restrict it; we must go into the same kind of general restrictions on the power of municipalities which we have gone into with regard to the Legislature.

Mr. KNIGHT. Allow me to call the gentleman's attention to the fact that in the eleventh section of the article on railroads and canals, already passed in committee

of the whole, it is provided that "no street passenger railway shall be constructed within the limits of any city, borough or township without the consent of the local authorities."

Mr. EWING. I had the impression that such a provision had been adopted; and that covers the objection of which I have spoken. I shall vote for a part of the amendment of the gentleman from Philadelphia, (Mr. Dallas,) because I think it improves the section. I would prefer, however, that he should strike out the word "exclusive." I do not think it means anything here, or else it means too much; but the rest of his amendment is very desirable, and I shall vote for it. I shall, however, vote against the entire section as it is, and I believe it will be to the advantage of the cities that this section, with the others which have been rejected, be voted down, and the whole matter left to be regulated by the Legislature, under general law, according to the restrictions we have already imposed.

Mr. BARDSLEY. Mr. President: When the Convention was in committee of the whole in the consideration of the article on legislation, and more especially when it was considering those sections giving to municipalities the power to govern themselves, members were very emphatic, and the whole burden of their arguments went to prove that they intended in good faith to give the cities the power of self-government. That purpose was then manifested, however, only in a general way by providing that there should be no special laws passed on such subjects. Now, we come this morning to the subject directly, and this Convention is about to vote on the question whether the cities shall have self-government or not. The word "exclusive" in the proposition of the gentleman (Mr. Dallas) is the pith of this section; and if the members mean what they said in committee of the whole, they will undoubtedly adopt his amendment and pass the section as thus amended.

The members of the city councils are the direct representatives of the people of the city. They come from their own neighborhoods; they come there elected by their immediate friends and constituents; and the power is held by the people once every year to turn out of office those who will not study the interests of the whole community. The experience of the cities with their members of the Legislature is such as to make the people

earnest and anxious in the desire that this Convention shall make a radical reform in the particular now under consideration. What we ask in this city, for example, is that we shall be allowed to pass such laws as will best conduce to the comfort and prosperity of our people. If the Convention mean to say that they will rather trust the members from Tioga and Mercer and the other counties of the State to legislate for Philadelphia, they will vote this proposition down. If they think the people of the large cities know best what is wanted in legislation for them, they will approve this amendment and the section as amended. Now, I ask in the name of the people of the large cities of this Commonwealth, but more especially for Philadelphia, where we have felt this evil to a greater extent than elsewhere, that we may be relieved from the onerous and obnoxious laws that are passed every year against the interests of the people of this city. We ask that we may be allowed to use our own judgment, that we may be allowed to be instructed by our own people as to what legislation is needed and required for the cities, and I hope that this Convention will approve and endorse the section now under consideration.

Mr. MINOR. Mr. President: I cannot see the force of the statement made by gentleman from Philadelphia (Mr. Newlin) as an argument, for I can point him to an instance of a city in this State where just about the time that the Legislature did the act complained of in this city, namely, authorizing an additional railroad track on a street, the council of that city did precisely the same act as to that city, and authorized the laying of railroad tracks along a street to the great injury to the business of the street. I do not think there is any argument in that either way. The Legislature sometimes abuses its powers, and the common councils sometimes abuse their powers, and in some of these cases there is room for difference of opinion whether the act really was an abuse of power. One instance will offset the other. There was supposed to be no remedy in one case but to go to the Legislature. In the other case it is claimed that there is no remedy except to take the power from the Legislature and give it to the city authorities.

Now, sir, look at this subject for a single moment. This entire demand to leave the exclusive power in municipal affairs to the city governments comes

from the city of Philadelphia, and it comes solely on account of the special acts which have been passed by the Legislature. The source of the evil is the special legislation made applicable to this city in particular cases and not to other cities. Now, sir, we have removed the cause of the evil; we have adopted provisions which are designed to prevent the Legislature from doing such things in the future. You have dried up the great cause, and as a general rule when you dry up the cause then you substantially cure the evils that have flowed from it. It cannot be repeated in the future. Shall we take away all authority from the State Legislature and vest it in the city legislatures, as numerous as the cities themselves? I lived in a city several years where I had occasion to carry on suit after suit under the general laws of the Legislature against the councils of the city where they have perpetrated grievous wrongs—not where I live now, but where I have lived formerly. In some instances the general oppression would be practiced, and our only relief was under the general laws of the State. I say it is wrong for us for all time to tie this up and say that there shall be vested in the councils exclusive, paramount power, perhaps even beyond the courts themselves. Councils, knowing that they have the power, will use it. Power possessed draws to itself power. There is always an inducement to abuse when you cannot appeal to any other authority to check it.

I hope, therefore, we shall leave it to the Legislature, made up of persons from all the cities of the State, from the counties, boroughs and townships of the State, to regulate this matter by general laws as their wisdom in the future shall direct, and not put this thing in our Constitution on account of evils arising from causes which we have already cured.

Mr. BIDDLE. If I thought the amendment offered by my colleague from Philadelphia (Mr. Dallas) would have the effect he attributes to it, and no other, I should vote for it, but I am satisfied that a very little reflection upon the amendment will show that it has not that effect which he attributes to it, and that it has a great deal that is very bad.

Now, in regard to the case put in argument as to the laying of an additional track of a passenger railway down one of the principal avenues of business in this city, which I concur with every delegate from the city in believing to be a great

wrong, it would not touch the case at all. Ever since the decision in the Philadelphia and Trenton railroad case, in 6th Wharton, every lawyer knows that the streets of a city stand precisely as the other highways of the Commonwealth, and they are not the exclusive property of the municipality or subject to its control. Therefore, no language that you can put in of the kind used by the gentlemen from Philadelphia (Mr. Dallas) would reach that case, because it cannot be a subject of exclusive municipal government. It would be absurd in the teeth of those decisions so to regard it. We should be saying, or trying to say, in effect, that the streets were not highways, that the public squares were not the property of the Commonwealth at large. Therefore, it would be futile to reach that outrage. I agree if we can by apt words put in somewhere, either in this article or elsewhere, that the streets of no municipality should be occupied for improvement purposes without the consent of the municipal government, it would be well. It is, I understand, in the railroad report. Therefore that is not necessary here. That is the case which is put.

So much for what it would not prevent. It certainly would not have that effect. The language suggested by the amendment would not have the effect attributed to it. I agree with the gentleman from Crawford who spoke last, (Mr. Minor,) that there might be a great many things under the generality of this language attempted by the municipal governments which would be wrong to the last degree. I am not willing to give to them by this section indirectly the power which was attempted to be conferred upon them by the amendment of the gentleman from Philadelphia, (Mr. Littleton,) which was voted down a little while ago. I do not know whether the effect of this language might not be just to reach that case. I am unwilling to authorize them to deal with all the property within their municipal limits, as they please, which this would seem to confer. I do not believe it is right, and I do believe that very often the good sense of the Legislature has prevented just such projects as that.

If, with the limitations affixed in the article on corporations, we prevent these manifest outrages of allowing the streets of the city to be occupied without the consent of the municipal bodies, I am content to

leave the legislation of the State just as it is now. If you turn to section eleven of the railroad article, as re-printed, you will find this language:

"No street passenger railway shall be constructed within the limits of any city, borough or township without the consent of the local authorities."

Thus we get rid of that whole subject, Mr. KAINE. Allow me to ask a question?

Mr. BIDDLE. Certainly.

Mr. KAINE. Is not that confined to street railroads alone?

Mr. BIDDLE. It is very easy in the appropriate article, if it is desirable to make the provision broader, to make it so. That is not the point. I merely want to show that the outrage very justly complained of, which I feel quite as much as any citizen of Philadelphia, cannot be perpetrated again under the eleventh section of the article on railroads; but there might be a great deal of municipal legislation under this word "exclusive," which would be bad to the last degree, and I, therefore, shall vote against the amendment and the section.

Mr. DE FRANCE. In the article on the Legislature, the first section provides as follows:

"The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives."

It seems to me that if this amendment of my friend from Philadelphia passes, we are making a very great exception. We are first vesting the legislative power in the Legislature and then we are making an exception of about all matters in regard to cities. It seems to me that that ought not to be the case. We might make it so that the cities would have power in the first place, to the extent mentioned by my friend, (Mr. Biddle,) but if you make the power exclusive, the Legislature could not annul any act of the city councils, nobody could do it except the courts. I suppose they could; but the legislative power could not do it; because the cities would have the exclusive power of governing themselves just as much as the State of Pennsylvania has the exclusive power of governing herself.

Although I want the cities to have some power in the first place, I believe the city councils would perhaps commit as great outrages as the Legislature and perhaps more if they had the exclusive power of determining how they would be govern-

ed in every case that they chose about their municipality.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from the city (Mr. Dallas.)

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

The section was rejected.

The next section was read as follows:

SECTION 5. No city shall have the power to create hereafter a debt exceeding two and one-half per centum upon the assessed valuation of the real and personal estate, within its corporate limits, except to suppress rebellion or repel invasion of the State.

Mr. EWING. That is already provided for.

The section was rejected.

Mr. NEWLIN. I offer an amendment to come in here, as a new section:

"No debt shall be contracted or liability incurred by any municipal commission except in pursuance of an appropriation therefore having been first made by the councils."

That is the amendment which I offered a short time ago, and which the Chair ruled out of order as not germane to the then pending section. I need not go over the argument which I then used. I simply desire the Convention to bear in mind that the greatest power of any people is the power of the purse; and if this Convention cannot give to the municipalities the power to spend their own money, and if it permits an outside body, like the Legislature, to create commissions and name the individuals, and authorize them to fill up their vacancies and to spend as much money as they see fit, without any let or hindrance whatever, it is a most monstrous proposition.

When any question affecting a township or a borough is up, this Hall resounds with eloquent speeches from every part of it on behalf of the counties and the townships; but gentlemen from the interior—

Mr. DEFRANCE. I should like to ask a question.

Mr. NEWLIN. Certainly.

Mr. DEFRANCE. Does not the Legislature of Pennsylvania govern the counties and townships as well as the cities?

Mr. NEWLIN. Certainly it does.

Mr. DEFRANCE. You want them not to govern the cities as they govern the rest of the State?

Mr. NEWLIN. Not at all. The gentleman has evidently not listened to the proposed section. It does not prohibit commissions. It only says that these commissions shall not spend the public money except by the authority of the local government; that is to say, that councils shall appropriate the money before the commissions shall spend it. The commissions may still exist and superintend the spending of the money; but the levying of the taxes should be by the local authorities—the councils of the city.

Mr. TEMPLE. I consider this proposed section to be very wise and judicious. I do not think there has been any other article placed in the Constitution which will better suit the people of Philadelphia than this will, and I desire gentlemen who reside outside of the city to give it their careful consideration before they vote it down.

It may be called legislation. Some gentlemen are very ready to say that it is only legislation and therefore should not go into the Constitution. I submit in view of what has taken place in the past that this Convention can pass this section without being liable to this objection. It will not do to say that this is a matter which can safely be left to the Legislature in the future as it has been in the past. The trouble is that the Legislature has had control of this subject. The case referred to by my colleague (Mr. Newlin) is true. The Legislature of this State did create a commission for this city, which I undertake to say is odious to its people, which the people would never have sanctioned, if the subject had been left to them for determination, and which even the councils of the city would never have created, with the power and the authority which this commission wields at this time.

This commission and its powers have been described by the author of this amendment. It not only has supervision of certain public works of this city, but it absolutely has the power to levy and assess a tax for the purpose of making those improvements. If the city councils—no matter for what reason, even the very best, were to refuse to give these commissioners the money they may demand, they have the authority to go into court and by *mandamus* compel the city treasurer to pay any and all bills which they contract. I am not here to say that these commissioners have done anything that is not right and proper. I have no doubt they

have conducted their business in the proper spirit and in the right direction. I submit, however, that the power lodged in their hands is one of which the people justly complain. We do not know who will compose that commission five years hence, or even a year hence. We do not know but that by death or resignation the entire commission may be changed and a different class of men control this mighty power for the destruction of the welfare of this city. At present the commissioners are honest, competent, respected citizens; but the worst feature of the law creating the commission is that the people of the city have no voice in selecting them. The commission itself supplies vacancies that occur by death, resignation, or otherwise, and it could easily happen that this commission could become composed of men who the people would desire to drive not only from the commission but from the city, and yet those men, entrenched behind the act creating their immense powers, could exercise their will unrestrained, and the people would be compelled to pay any bills they might incur.

As I said a moment since, this is not a question of whether this is legislation. The proposed section must not be resisted in this way. The Convention must not leave the subject to the Legislature, but must come to the help of the people against the Legislature. The subject has been referred to the Legislature for settlement and they have settled it on a basis which is in contradiction of every principle of right. They have not settled it as the people of the city or of the State want it settled, nor as the Legislatures that have assembled since that which created this commission would have settled it.

Therefore, I trust that the amendment offered by the gentleman from Philadelphia will be adopted and made a part of the Constitution, so that we shall not be compelled to submit to such iniquitous measures in the future.

Mr. CALVIN. I desire to say that I approve of the proposition submitted by my friend on my right (Mr. Newlin.) I have no doubt from all I have heard on the subject from gentlemen in this Convention, and from what I have read in the newspapers, that this city of Philadelphia has been victimized most outrageously by the Legislature; and for my part I feel very anxious to provide proper remedies against a repetition of these operations. I will also say for myself, and I think I can say for the whole country

delegation, that we shall be willing at any time to support any measure that is considered necessary to the interests of Philadelphia if the gentleman from Philadelphia will only agree upon what they want.

Mr. BIDDLE. We are all agreed in this.

Mr. J. R. READ. I concur heartily in the section as offered by my colleague, (Mr. Newlin,) but I desire to suggest a verbal alteration. Inasmuch as the Convention has seen fit not to recognize the term "councils" in this article, I move to strike out that word where it occurs in the new section and insert the words "municipal government."

Mr. C. A. BLACK. I would suggest "municipal authorities."

Mr. NEWLIN. I accept the amendment of my colleague from Philadelphia.

Mr. BIDDLE. I only desire to say that the whole delegation from Philadelphia is agreed upon this amendment.

Mr. EWING. And also the delegation from Pittsburg.

Mr. SIMPSON. I ask for the reading of the amendment.

The CLERK read as follows:

"No debt shall be contracted or liability incurred by any municipal commission, except in pursuance of an appropriation therefor having been first made by the municipal government."

The amendment was agreed to *nem con*.

The CLERK read the sixth section of the article as follows:

SECTION 6. Every city shall create a sinking fund, which shall be inviolably pledged for the payment of its permanent debt.

Mr. EWING. I suppose from the way this section reads that it would require every city to have a sinking fund, whether it has a debt or not. Those who think a public debt is a public blessing may think this section ought to be put into the Constitution. I do not. I can see no use for such a section, and in fact I have never been able to see any particular use in a sinking fund.

Mr. BOWMAN. I think that I can see some use in this section, whether it means that every city shall incur a debt or not. As a rule the cities all have debts, and the question raised by the gentleman from Allegheny is not a proper one to be introduced into this discussion. In looking over the State I do not find a city that is not in debt; and our little city that is not a year old has a debt hanging over it, the payment of which I do not believe will be seen by any child yet born. I want

something put into this Constitution that will compel the city councils to create a sinking fund that shall be a pledge and an irrevocable pledge for the payment of the municipal debt, whatever that may be.

Mr. LITTLETON. I trust that this section will not be voted down. Certainly it does not mean that a city that has no permanent debt shall provide a sinking fund. It simply means that where there is a permanent debt there shall be a sinking fund provided, and the necessity of such a thing cannot be questioned. We have a sinking fund in the city of Philadelphia that has over eleven millions of dollars invested, and we consider that a very desirable thing here.

Mr. SPRUTHERS. I wish to suggest a verbal amendment. In place of the word "permanent" I would insert the word "funded." "Permanent" might imply that the debt should remain a debt forever and never be cancelled. The term "funded debt" will answer all the purpose that is desired by the word "permanent" and will obviate the objection that I have suggested.

Mr. BOWMAN. That is a better term.

The amendment was agreed to.

On the question of agreeing to the section as amended a division was called for, which resulted thirty-six in the affirmative, and thirteen in the negative. So the section as amended was agreed to.

The CLERK read the next section as follows:

SECTION 7. No city shall, by a vote of its citizens or otherwise, become a stockholder in any company, association, or corporation, or obtain money for, or loan its credit to, any corporation, association or party.

Mr. NILES. This is provided for in another place.

The section was rejected.

Mr. GUTHRIE. I offer the following amendment to come in at this point as a new section.

"SECTION —. No territory shall be annexed to or consolidated with any city or borough, except at the request, expressed by a vote at a regular election, of a majority of the qualified electors residing in the territory proposed to be annexed."

The amendment was rejected, there being on a division ayes nineteen, not a majority of a quorum.

The CLERK read the next section as follows:

SECTION 8. A municipal officer who has not accounted for and paid over money

officially in his hands, shall be ineligible to any municipal office:

Mr. BARDSLEY. I desire to offer an amendment to come in on the second line after the word "hands." It is to insert the words "within the time prescribed by law."

The amendment was agreed to.

Mr. ARMSTRONG. I wish to suggest, as a verbal correction, whether it would not be better to strike out the words "money officially," which is an awkward expression, and say "all public moneys."

The amendment was agreed to.

Mr. HEVERIN. I offer this as a substitute for the section :

"No delinquent municipal officer shall be eligible to any municipal office."

Mr. CASSIDY. I desire to call the attention of the chairman of the committee, as well as the mover of the substitute, to whether it is the intention of this section to imply that a man is not to hold office again at all, and if so, then exactly what the word "delinquent" means, because a man might not be able upon the day the money is due, for a variety of reasons that would not be of themselves criminal, to pay over the money ; and yet the punishment attached to that would deprive him of the right to hold office forever hereafter! I suggest to members whether they mean to adopt a section having that in it, as broadly as it is there stated. It seems to me there ought to be some qualification to the word "delinquent."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Heverin.)

Mr. BIDDLE. I would say to my fellow delegate from the city, (Mr. Cassidy,) that the language is "accounted for." He might certainly account for it. He ought to do one or the other, either account or pay.

Mr. CASSIDY. But the substitute does not contain the term "accounted for."

Mr. BIDDLE. I agree with the gentleman if that is the case.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Heverin.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question is on the section.

Mr. DALLAS. It seems to me a little inconsistent that we should make provision in our Constitution that a man shall be ineligible to a municipal office who might still be elected to be Governor of the State of Pennsylvania. I move to

strike out the word "municipal" before the word "office," at the end of the second line.

Mr. MINOR. Many instances have occurred where a city officer has not accounted for or paid over money officially in his hands, without the slightest fault upon his part. It is often a matter of doubt, or purely a question of law whether he is accountable for certain funds, whether he is to pay over certain funds or not ; and no man can tell until the courts have decided. I know an instance pending in court at this time, where the parties are acting in good faith, where a very valuable officer, under a doubt of the law, is waiting until he can know by instructions from the court what his duty is. It seems to me, therefore, that we are going too far to prescribe a penalty in such cases.

I suggest that if the Legislature is to regulate municipal affairs by general laws, if it is to prescribe the criminal code of this State in all other particulars from petty larceny to murder, can we not leave this for it to regulate also? You cannot pass this section without endangering the position of faithful officers who desire to act according to law.

Mr. CALVIN. I concur entirely in the remarks of the gentleman who has just sat down. It seems to me this section ought to be voted down.

The section was rejected.

The Clerk read the next section as follows :

SECTION 9. The Legislature shall not exempt any property, real or personal, within any city, from municipal taxation, except such as is exempted throughout the State by general law.

Mr. NILES. That is provided for in another place. ["Vote it down."]

The section was rejected.

The CLERK read the next section as follows :

SECTION 10. The select and common councils, or either of them, shall have power to appoint a committee of their bodies, or body, to investigate official misconduct, with power to subpoena witnesses, compel their attendance, examine them under oath, and require the production of books, papers, documents and vouchers, and in case of the neglect or refusal of a witness to appear, the court of common pleas of the county in which the city is, upon proof of the service of the subpoena, shall issue an attachment and compel the appearance. In case a witness shall appear but refuse to testify,

upon the same being brought before the court, it shall commit the witness for contempt, and impose such fine as in its discretion shall seem meet. If the charge is established and the finding is approved by the councils or council appointing the committee, then the office shall be declared vacated and the officer shall be ineligible to any office of trust or profit under the municipality and may be prosecuted in the criminal courts. Wilful false swearing before such committee shall be deemed perjury.

Mr. TEMPLE. I move to strike out the word "municipality," in the fourteenth line, and insert "under the laws of this Commonwealth." I think this is manifestly right. It seems to me not to be right to prevent a man from being elected to a municipal office when he can be elected to a State office, as my colleague (Mr. Dallas) suggested a while ago.

Mr. NILES. It seems to me that this is the merest act of Assembly and very poor at that, and I think that any delegate who turns his attention to it squarely will see that it ought not to go into the Constitution. It is but an act of Assembly merely, and questionable as to its propriety.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Temple.)

Mr. TEMPLE. If the section is to be adopted, this amendment ought to be made.

The amendment was rejected.

The PRESIDENT *pro tem*. The question is on the section.

Mr. TEMPLE. Now I call for a division of the section, the first division to end at the eighth line with the word "appearance."

Mr. SIMPSON. I make the point of order that if the House votes down the first branch, the rest of the section has nothing to hang upon.

Mr. TEMPLE. Then let it all go together, but I submit that a portion of this section should be adopted. If the same result can be obtained by moving to strike out all after the word "appearance" in the eighth line, I will make that motion.

The PRESIDENT *pro tem*. That amendment is in order, to strike out all after the word "appearance" in the eighth line.

Mr. TEMPLE. I submit that the first part of this section should be adopted. I do not think this is legislation. Delegates say, go to the Legislature for re-

lief, but we have been there for relief for a number of years and have not got it, and it is a fact that in the city of Philadelphia, no matter what offence is committed, if it comes under the control of the city councils, they have no authority to subpoena and compel the attendance of witnesses. This has given rise to a great deal of complaint. I simply rose to call the attention of the Convention to it, and if they desire to vote it down after that, they can do so.

Mr. HEVERIN. I hardly think the section rises even to the dignity of legislation, and I hope it will be voted down, either divided or as a whole.

Mr. CASSIDY. I want to call attention to another defect that strikes me in this section. That is, it authorizes either of the bodies to appoint a committee to investigate any official misconduct, not at all the official misconduct connected with their bodies or connected even with the municipal government, but "any official misconduct." Certainly, the Convention, I think, does not mean to do what the words import.

The PRESIDENT *pro tem*. The question is on the first division of the section.

The division was rejected.

The PRESIDENT *pro tem*. The question is on the second division of the section.

The division was rejected.

Mr. WORRELL. I move that the article be referred to the Committee on Revision and Adjustment, as it is gone now through with.

Mr. H. W. PALMER. I move to reconsider the vote by which the first section was passed. Having voted down almost everything in the article, I hope we shall vote that down, too. It has no place here now. Therefore, I move to reconsider the vote by which it was passed.

Mr. TEMPLE. I second the motion. I voted in the affirmative.

Mr. H. W. PALMER. I would rather leave the whole subject of providing for the erection of cities to the Legislature. I move to reconsider the vote adopting the first section.

The PRESIDENT *pro tem*. It is moved and seconded to reconsider the vote by which the first section was agreed to.

The motion was not agreed to, less than a majority of a quorum voting therefor.

Mr. LITTLETON. I desire to call attention to an ambiguity of expression in the first section. ["Too late."]

The PRESIDENT *pro tem.* It is not before the Convention.

Mr. STANTON. I move that the article be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

Mr. STANTON. I move that we now adjourn.

LEAVE OF ABSENCE.

Mr. BAER. Before that motion is put,

I desire to ask leave of absence for myself for Monday.

Leave was granted.

Mr. STANTON. I move an adjournment.

The motion was agreed to, and (at twelve o'clock and seventeen minutes P. M.) the Convention adjourned until ten o'clock A. M. on Monday.

ONE HUNDRED AND THIRTY-FIRST DAY.

MONDAY, June 30, 1873.

The Convention met at ten o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. Jas. W. Curry.

The Journal of the proceedings of Saturday was read and approved.

LEAVES OF ABSENCE.

Mr. HAY asked and obtained further leave of absence for Mr. Wm. H. Smith for a few days from to-day.

Mr. H. W. PALMER asked and obtained leave of absence for Mr. Turrell for a few days from to-day.

Mr. LANDIS asked and obtained leave of absence for Mr. Baer for a few days from to-day.

INVITATION FROM LEHIGH UNIVERSITY.

Mr. BRODHEAD presented the following communication, which was read :

BETHLEHEM, June 26, 1873.

To the Hon. Jno. H. Walker, President *pro tem.* Constitutional Convention.

DEAR SIR:—By unanimous vote of the Board of Trustees of the Lehigh University, the free use of Packer hall was this day tendered for the use of the Pennsylvania Constitutional Convention should they determine to meet at Bethlehem. Packer hall has three rooms, each eighty by forty feet, any one of which would accommodate the Convention; besides a large number of smaller rooms which could be used for committee rooms.

By order of the Board of Trustees.

E. P. WILBUR,
Secretary.

Mr. ALRICKS. I move that the communication be laid upon the table, with the thanks of the convention.

The motion was agreed to.

PROPOSED MEETING AT HARRISBURG.

Mr. ALRICKS. I offer the following resolution, and I ask that it lie on the table for the present :

Resolved, That when the Convention adjourns on Thursday next it will be to meet in the hall of the House of Repre-

sentatives at Harrisburg on the eighth of July next, at eleven o'clock A. M.

The PRESIDENT *pro tem.* The resolution will lie on the table.

THE JUDICIAL SYSTEM.

Mr. ARMSTRONG. I move that the Convention do now proceed to the second reading and consideration of the article on the judiciary.

The motion was agreed to, and the Convention proceeded to consider on second reading the article on the judiciary, as reported from the committee of the whole.

The CLERK read the first section as follows :

SECTION 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, in courts of oyer and terminer and general jail delivery, in courts of quarter sessions of the peace, in orphans' courts, in justices of the peace, and in such other courts as the Legislature may, from time to time, establish.

Mr. TEMPLE. I move to strike out all after the word "peace," where it occurs the second time, in the fourth line, the words to be stricken out being : "And in such other courts as the Legislature may, from time to time, establish."

Mr. ARMSTRONG. Mr. President : As the article stands now, I think it would not be judicious to strike that provision out. When the article was reported from the Committee on the Judiciary the provision was not in; but we had then made some provision for the relief of the Supreme Court. I do not intend to renew that proposition. It has been fairly considered and voted upon by the Convention, and I do not think it wise to attempt to urge the matter on them again, when it has already received their full consideration. As we have thus far given no relief whatever to the Supreme Court, we ought not to deprive the Legislature of the power of doing it hereafter, should the future emergencies of the State require.

Mr. TEMPLE. I made this motion in the absence of another delegate who would have made it if he had been here.

He would then have given his reasons for making this motion. My reason for making it is simply this: It will be perceived that under the power conferred by these words the Legislature may hereafter paralyze the constitutional courts. It has been done in one of the counties of this Commonwealth where a district court has been established, as I was informed by a delegate from Schuylkill, absolutely taking away nearly all the jurisdiction of the court of oyer and terminer; in other words, leaving the criminal jurisdiction of the constitutional court in such a shape that it can only be exercised about one week in the year, giving to another Court created by the Legislature almost the entire jurisdiction of the court of oyer and terminer. That delegate is not here. I know he was interested in having this clause stricken out. For that reason I have made the motion, and I have no doubt if it is not agreed to he will move a reconsideration when he comes in.

Mr. CORBETT. My recollection is that in some other section we have adopted on second reading a provision that is directly in conflict with these words. I cannot turn now to the section, but that is my recollection; and one or other of the provisions ought to be stricken out. These words should be stricken out: "And in such other courts as the Legislature may from time to time prescribe," for my recollection is that on second reading we adopted a provision in conflict with the clause, but I cannot refer to it now.

Mr. ARMSTRONG. We prohibited the Legislature from creating any court to be presided over by any of the judges of the Supreme Court; that is all. I will remark that the section now pending is the same as the present Constitution, leaving out the register's court, which the Convention has determined to abolish.

The PRESIDENT *pro tem*. The question is on the amendment offered by the gentleman from Philadelphia (Mr. Temple.) The amendment was rejected.

Mr. WOODWARD. I move to amend the section by adding the following:

"And all the judges of said courts shall be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate."

Mr. President, I do not propose to say one word on the subject of this amendment, but merely to ask for the yeas and nays upon it. I wish to put myself on the record in this matter.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. BROOMALL. Before the yeas and nays are ordered, I simply desire to say that I would vote for this amendment with pleasure if the term of the judges was "during good behavior;" but it being for a limited term of years, I am opposed to the amendment, preferring that they should be dependent upon the people who elect them rather than upon the politicians at Harrisburg.

Mr. BIDDLE. I desire to say but a word, partly in the same direction. I am for an appointive judiciary and for a good behavior tenure. If I cannot get both, I will go for either, and therefore I shall go for the amendment.

Mr. TEMPLE. I desire to say that my reasons for voting against this amendment are similar to those offered by the gentleman from Delaware (Mr. Broomall.)

Mr. KAINE. I merely desire to say that I am opposed to the appointment of the judges under any circumstances, and opposed to a life tenure and in favor of a short term; and when we come to consider the next section I intend to move to strike out "twenty-one" and insert "fifteen," so as to make the term fifteen years.

Mr. LILLY. I am very glad that the gentleman from Philadelphia has offered this amendment to give us a chance to put our names on the record on this subject. I am heartily in favor of the appointive system. I do not believe that you can maintain the purity of the judiciary for the next twenty-five years in any other way. In my opinion, the judiciary, under the elective system, has been going down hill very rapidly, but I believe by now adopting the appointive system we may again bring it up to what it should be.

Mr. ALRICKS. I merely wish to say this: Where the judiciary are elected, the Convention will see very well that if there is a member of the bar who holds the judicial district in his hand politically, he will be very apt to hold the conscience of the judge in his other hand. But, sir, since I have come to this city, I am thoroughly persuaded that the influence of corporations would be so powerful that if the Governor had the appointment of the judges we might expect those appointments to be made by the corporations. I have therefore changed my views on the subject and shall vote

against this amendment and in favor of the election of the judges.

Mr. BEEBE. Mr. President: Judging of the future by the past, believing that experience has demonstrated that we have a better judiciary under the elective than under the appointive system, I shall vote against this amendment.

Mr. ARMSTRONG. As this amendment is offered confessedly for the purpose of enabling gentlemen to put themselves on the record, I desire to state that I should favor an amendment which made the judges of the Supreme Court appointive by and with the consent of two-thirds of the Senate; but as this amendment proposes to make the entire judiciary of the State appointive, I am compelled to vote against it.

Mr. HAY. I desire simply to say that under all the circumstances at the present time in our Commonwealth; I am in favor of an elective judiciary, with a tenure for good behavior or for life.

The PRESIDENT *pro tem*. The Clerk will call the roll on the amendment.

Mr. KNIGHT. Let it be read.

The CLERK. It is proposed to add: "And all the judges of said courts shall be appointed by the Governor, by and with the advice and consent of two-thirds of the Senate."

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Bailey, (Huntingdon,) Barclay, Biddle, Bullitt, Church, Curtin, Finney, Guthrie, Hall, Hemphill, Hunsicker, Lilly, Mann, Palmer, G. W., Russell, Temple, Wetherill, Jno. Price and Woodward—18.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Beebe, Black, Charles A., Bowman, Brodhead, Broomall, Brown, Calvin, Campbell, Carey, Cassidy, Corbett, Corson, Cronmiller, Curry, Dallas, Darlington, DeFrance, Dodd, Edwards, Elliott, Fulton, Hay, Hazzard, Horton, Kaine, Knight, Landis, Lawrence, Littleton, MacConnell, McClean, Minor, Mitchell, Mott, Niles, Palmer, H. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Sharpe, Simpson, Struthers, Walker, Wherry, Worrell and Wright—54.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Eaker, Bannan, Bardsley,

Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dunning, Ellis, Ewing, Fell, Funck, Gibson, Gilpin, Green, Hanna, Harvey, Heverin, Howard, Lamberton, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Patton, Porter, Pughe, Purviance, John N., Ross, Runk, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Meredith, *President*—61.

Mr. RUSSELL. I move to amend the section by transposing it so as to make it read just as the section in the old Constitution reads. I move to transpose the words "in courts of common pleas," and insert them after the word "delivery," in the third line, and to strike out in the fourth line the words "orphans' courts," and insert the same words after "common pleas" in the third line; and in the fourth line to insert the words "for each county," so as to make the section read:

"The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of oyer and terminer and general jail delivery; in a court of common pleas, an orphans' court, a court of quarter sessions of the peace for each county; in justices of the peace; and in such other courts as the Legislature may from time to time establish."

That makes the section read exactly as it is in the old Constitution, with the exception of leaving out what the Convention has decided should be left out, "in a register's court." I think it will be better to adopt the arrangement of the old Constitution, because everybody understands that. I do not propose to strike out anything that is now in the section, but merely to change its phraseology so as to conform to the old Constitution.

Mr. ARMSTRONG. There is no material difference between the proposition of the gentleman from Bedford and the proposition as it now stands reported from the Committee on the Judiciary. The committee changed the phraseology of the existing Constitution because they thought it would be an improvement in some respects. There is no necessity for authorizing a court of common pleas in each county. They are courts of the Commonwealth. The whole idea of the change of phraseology is that the Supreme Court and court of common pleas are brought

into closer juxtaposition as the report now stands. There is nothing material gained by the amendment, and I see no necessity for changing the phraseology already agreed upon.

Mr. RUSSELL. I do not think we ought to make any change in the language of the old Constitution unless there is a necessity for it. As the old Constitution stands, it provides that these courts shall be for each county, and we have decisions in regard to that matter. Therefore I think we had better, where we do not change the old Constitution except by striking out the register's court, retain the language of the Constitution.

The amendment was rejected.

Mr. KAINE. I understand now that the vote is upon the amendment of the gentleman from Bedford.

The PRESIDENT *pro tem.* That has just been voted down.

Mr. KAINE. Then what is the question before the Convention, sir?

The PRESIDENT *pro tem.* The section is before the Convention.

Mr. KAINE. I hope that the President has not decided that the amendment of the gentleman from Bedford was voted down.

Mr. BIDDLE. We have voted that down.

The PRESIDENT *pro tem.* I will withdraw the decision and allow the vote to be taken over again, or allow the gentleman from Fayette to discuss it.

MANY DELEGATES. No. No.

Mr. TEMPLE. Leave it to the Committee on Revision and Adjustment.

Mr. KAINE. I insist upon it that we are going to leave too much entirely to the Committee on Revision and Adjustment. There is certainly very great propriety in the amendment offered by the gentleman from Bedford.

Mr. H. W. PALMER. But that amendment has been voted down.

Mr. KAINE. We should keep in mind the old Constitution as nearly as we can.

The PRESIDENT *pro tem.* Does the gentleman from Fayette move to reconsider the vote by which the amendment was lost?

Mr. KAINE. I understood the President to withdraw his decision.

The PRESIDENT *pro tem.* I could not withdraw my decision under the objections that were made all over the House.

Mr. DALLAS. I move to amend by inserting after the words "orphans' court,"

in the fourth line, the words "district courts."

On the question of agreeing to the amendment, a division was called for, which resulted fifteen in the affirmative. This being less than a majority of a quorum, the amendment was rejected.

The PRESIDENT *pro tem.* The question recurs upon the first section.

The section was agreed to.

The PRESIDENT *pro tem.* The second section will be read.

The CLERK read as follows:

SECTION 2. The Supreme Court shall consist of seven judges who shall be elected by the qualified voters of the State at large. They shall hold their offices for the term of twenty-one years if they shall so long behave themselves well, but shall not be eligible to re-election. The judge whose commission will first expire shall be chief justice, and thereafter each judge whose commission shall first expire shall in turn be chief justice.

Mr. ARMSTRONG. I move to amend the section by striking out in the first and second lines the words "who shall be elected by the qualified voters of the State at large," and by adding at the end of the section the following:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years if they shall so long behave themselves well. All of whom shall be commissioned by the Governor; but for any reasonable cause which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature."

Mr. ARMSTRONG. The first and second lines I have moved to strike out, because the matter will be better provided for in the sixteenth section, which I shall also move to amend at the proper time, by inserting a part of what is now the second section of the judiciary article of the present Constitution. The amendment which I have here moved to insert at the end of the section, is a part of the second section of the judiciary article of the Constitution as it now is. It was provided for in another part of the report, but not so fully

nor I think as concisely as it is here; and I think this will be an improvement.

I will state here that the second section of the fifth article of the present Constitution being adopted by itself, necessarily embraces the entire subject and embraces subjects which the Committee of the Judiciary thought proper to divide for the purpose of giving it a better arrangement; but all that is in the second section is fully embodied in the report that is now under consideration. Every part of it except only from the twenty-fourth to the thirty-third line of the re-print of the present Constitution, which should be more properly referred, and which was by the committee of the whole referred to the Committee on Schedule. With that exception every part of the second section of the fifth article of the present Constitution is embodied in this report.

Mr. S. A. PURVIANCE. I would suggest to the chairman of the Committee on the Judiciary that in my judgment, he will facilitate the business of this Convention if he will allow us to take distinct votes upon the several distinct propositions embraced in the report as made by him, namely: In the first instance, upon the question of how many supreme judges we ought to have; secondly, as to what shall be the length of their tenure; and third, as to whether they shall be ineligible or not. If the committee was to vote directly upon these three propositions which are embraced in this second section, which relates to the Supreme Court, it will be much more in order and will facilitate our business greatly.

Mr. ARMSTRONG. The amendment which I have proposed does not in the least interfere with the suggestions of the gentleman from Allegheny. All the distinct propositions named by him can be voted upon after a vote has been had on my amendment. Those questions will come up in their regular order on another section. As has been intimated by the gentleman from Fayette, (Mr. Kaine,) he will propose to strike out the word "twenty-one," which will raise the question of tenure. The gentleman from Allegheny proposes to strike out the word "seven" to raise the question of the number of judges, and there is no reason therefore why the amendment which I have offered should not be voted upon at this time. The section will then come up for decision in the manner suggested by the gentleman from Allegheny, and I think in more proper order.

Mr. Kaine. I concur entirely with the gentleman from Allegheny in proposing that we follow up as nearly as we can the line of the report that is now before us. The amendment, as I understand it, offered by the gentleman from Lycoming, is putting the courts of common pleas into this section in place of leaving them in a section by themselves. I much prefer to have the Supreme Court in a section by itself, or in two sections; and then follow that up by the court of common pleas, also standing alone. I hope we shall follow as nearly as we can the line of the report.

Mr. MACCONNELL. If I heard the amendment offered by the gentleman from Lycoming correctly, it consists of two parts, one to strike out and the other to insert. I would call for a division, in order to take the vote separately, first upon the part striking out, and then on the part to insert.

Mr. ARMSTRONG. My amendment is not in any parliamentary sense a motion to strike out and insert. It is a motion to strike out one certain phrase in the section, and to add in another place the amendment which I have submitted. However, I have no objection to taking the vote separately on the first amendment.

The PRESIDENT *pro tem*. The amendment of the delegate from Lycoming will be read.

The CLERK. The first amendment is to strike out the words "who shall be elected by the qualified voters of the State at large."

Mr. ARMSTRONG. That, as I have stated, is only for the purpose of inserting it in a more appropriate place.

The CLERK. Then at the end of the section it is proposed to add:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well. All of whom shall be commissioned by the Governor; but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature.

Mr. ALRICKS. I call for a division of the question.

The PRESIDENT *pro tem*. A division is asked, the first division to end with the words proposed to be stricken out.

Mr. CORSON. Why are associate judges here?

Mr. ARMSTRONG. Associate judges are here because they are not stricken out.

Mr. CORSON. I understood that we had agreed to dispense with associate judges unlearned in the law.

Mr. ARMSTRONG. I was not in the Convention at the time that vote was taken, but I understood that the sense of the Convention was to retain the associate judges.

Mr. CORSON. On the contrary the sentiment of the Convention was very decidedly in favor of striking them out.

Mr. ARMSTRONG. That can be raised as a separate question.

The PRESIDENT *pro tem*. A division of the question is asked; the first division is the words to be stricken out, and the second the amendment proposed to be added at the end of the section. The question is on the first division of the amendment of the gentleman from Lycoming, being the motion to strike out.

The first division was rejected.

The PRESIDENT *pro tem*. The question now is on the second division of the amendment.

Mr. ARMSTRONG. I think there must be some misapprehension about the vote referred to.

The PRESIDENT *pro tem*. No; the proposition for associate judges was voted down distinctly.

Mr. ARMSTRONG. I wish to call the attention of the committee to this fact, that in the fourteenth section I shall move to insert a part of the second section:

"The judges of the Supreme Court and the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors of the Commonwealth in the manner following, to wit: Judges of the Supreme Court by the qualified electors of the Commonwealth at large; president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, by the qualified electors of the respective districts over which they are to preside or act as judges; and the associate judges of

the courts of common pleas by the qualified electors of the counties respectively."

It is the first clause of the second article of the present Constitution, which I will propose to offer as an amendment to the fourteenth section.

The PRESIDENT *pro tem*. The question now pending is on the second division of the amendment of the delegate from Lycoming to the second section, which will be read.

The CLERK. The second division is to add at the end of the section:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well. The associate judges of the court of common pleas shall hold their offices for the term of five years if they shall so long behave themselves well. All of whom shall be commissioned by the Governor; but for any reasonable cause which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each branch of the Legislature."

Mr. CORSON. I ask for a further division of the question, so as to take the vote on all of it down to where it commences with associate justices.

The PRESIDENT *pro tem*. It is susceptible of that division. The next division will be read.

The CLERK read as follows:

"The president judges of the several courts of common pleas and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years if they shall so long behave themselves well."

Mr. BEEBE. Before the vote is taken on that division, I wish to call the attention of the Convention, and of the chairman of the Committee on the Judiciary to section twenty-four, the last clause:

"The office of associate judge not learned in the law is abolished, excepting in counties not forming separate districts; but the several associate judges in office when this Constitution shall be adopted, shall serve for their unexpired terms."

Mr. CORBETT. I call the attention of the chairman of the Judiciary Committee to the fact that it is provided by this division that all judges learned in the law

are to hold their office for the term of ten years. We have provided for a minor judiciary in Philadelphia, if my recollection is correct, for the term of seven years. The division as drafted here certainly would apply to those judges, so that the two sections would conflict.

Mr. ARMSTRONG. I withdraw the amendment, inasmuch as the first division was voted down.

The PRESIDENT *pro tem*. The amendment is withdrawn.

Mr. DARLINGTON. I move to amend the section by inserting in the first line after the first word, "the," the words "judges of the," and to strike out the words "shall consist of seven judges who" in the same line. It will then read :

"The judges of the Supreme Court shall be elected by the qualified voters of the State at large."

My object in offering this amendment is to present to the Convention the question whether we ought or ought not in the Constitution to prescribe the number of judges of the Supreme Court for all time to come. I know the prevailing sentiment is that the present number of the Supreme Court judges is not sufficient. I know the prevailing sentiment is that there ought to be two others added. I know also that this sentiment is not shared in by the judges of the Supreme Court themselves, for I have heard more than one of them express it. Their labors will not be materially aided by an increase of numbers. But apart from that, my great objection is to fixing irrevocably in the Constitution a number for the judges of the Supreme Court which may not be satisfactory for a single year. It may be, before this Constitution is required to be changed, that more than seven judges will be needed, or less than seven judges will be all that will be needed.

Now, I think it unwise to fix in the Constitution the number. Leave that to the Legislature flexible, to be increased or diminished as the circumstances of the State shall seem to require. We never have heretofore increased or fixed the number in the Constitution. We have always left it to be provided by the Legislatures according to the necessities of the people, and I think it is wisest to leave it so still. It is therefore that I move the amendment to leave that open.

Mr. ARMSTRONG. I do not think it wise to leave this thing open to the exclusive discretion of the Legislature. Suppose they should make the number ten? The

section is as well as it is, and it is in accordance with the practice of other States in fixing the number of their judges. The number of seven was very fully discussed in committee of the whole, and the reasons for it I think are very strong. It does not give the Supreme Court additional time for hearing except to the extent that as the judges will be less engaged in writing, they will have more time. It will to some extent help them in hearing causes, and very greatly help them in writing opinions.

Mr. BROOMALL. There is one convenience in leaving this matter with the Legislature, and that is this: If the Supreme Court and the Legislature should be of opposite parties, and the Supreme Court should decide wrong in the estimation of the Legislature upon a political question, the Legislature could add a dozen judges, and so get rid of the obnoxious decision. [Laughter.] I do not think I shall vote for the amendment.

Mr. DARLINGTON. I do not look to any such contingency as that in the view I have. I suppose it possible that in our efforts to relieve the Supreme Court, we may find it necessary to follow out the line of some gentlemen and divide the court, have one Supreme Court sitting in Philadelphia and another in Pittsburg, and have them to come together in Harrisburg and compare notes, and if so, seven judges would not be enough; we might require more.

The PRESIDENT *pro tem*. The question is on the amendment proposed by the delegate from Chester (Mr. Darlington.)

The amendment was rejected.

Mr. LITTLETON. I move to amend in the second line by striking out the words "elected by the qualified voters of the State at large," and inserting "appointed by the Governor, by and with the advice and consent of the Senate."

SEVERAL DELEGATES. That question has just been voted upon.

Mr. LITTLETON. The amendment voted upon relates to all the judges, while the amendment that I now offer relates to the judges of the Supreme Court. I myself voted against the other amendment because it applied to all the judges.

Mr. ARMSTRONG. I suggest to the gentleman to say "two-thirds of the Senate."

Mr. LITTLETON. At the suggestion of the gentleman from Lycoming, and with the consent of the Convention, I will modify my amendment so as to make the words proposed to be inserted read: "Ap-

pointed by the Governor by and with the advice and consent of two-thirds of the Senate."

Mr. TEMPLE. I move further to amend by adding at the end of the section as it will then read, that the judges shall hold their office during good behavior.

Mr. BIDDLE. Do not complicate the question; that is a separate matter.

Mr. TEMPLE. Very well; I withdraw my amendment.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from the city (Mr. Littleton.)

Mr. TEMPLE. I ask for the yeas and nays.

Mr. CORSON. We have had the yeas and nays on this question, and I trust we shall not take up time by the unnecessary calling of the roll.

Mr. TEMPLE. I withdraw the call for the yeas and nays, and ask for a division.

The amendment was rejected, the ayes being twenty-one—less than a majority of a quorum.

Mr. KAINE. I now move to amend the section by striking out the words "twenty-one" in the third line and inserting the word "fifteen," so that it will read: "Shall hold their office for the term of fifteen years."

Mr. BROOMALL. I move to amend the amendment by inserting the words "for life," and striking out the words "so long as they shall behave themselves well, but shall not be eligible to re-election."

Mr. KAINE. I believe I have the floor.

Mr. BROOMALL. Well, I move to amend your amendment.

Mr. KAINE. But you have no right to move to amend while I am on the floor.

The PRESIDENT *pro tem*. The delegate from Fayette (Mr. Kaine) is entitled to the floor.

Mr. KAINE. I hope the gentleman will retain his amendment until we can get a vote upon this single solitary proposition.

Mr. BROOMALL. Go ahead then; let us have it.

Mr. KAINE. Mr. President: These are very important propositions, as I think every gentleman in this Convention must admit, and let us have a fair, square expression of opinion upon them. Do not complicate them by side-issues and frivolous amendments.

I am in favor of standing by the provisions of the old Constitution as nearly as we can, and I think, as has been said before in debate in committee of the

whole on this question, that the system adopted by the Convention of 1837-8, as amended by the amendments of 1850, was a wise one. The Convention of 1837-8 fixed the terms of the judges of the Supreme Court at fifteen years; of the law judges of the courts of common pleas at ten years; and the associate judges, if they are to be retained in this Constitution, for five years. I think that was a wise provision, and in 1850 I was opposed to any change; I was then opposed to the election of the judges. I thought the appointment by the Governor and the confirmation by the Senate was perhaps the best system that could be devised. But after an experience of twenty years in the election of judges, I think the system has worked very well, and I am satisfied that the people would not be willing to go back to the system of appointment. Therefore I am willing to stand by the amendment of 1850 and elect the judges of the Supreme Court and all others by the people, but for a limited term—and therefore I infinitely prefer fifteen years to twenty-one. Hence I have moved the amendment, and I hope it will be adopted by the Convention. I call for the yeas and nays upon it.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. ARMSTRONG. I do not desire to debate this question. It has been already fully debated, and we have had the deliberate action of the Convention upon it.

The question being taken by yeas and nays, resulted: Yeas thirty-five, nays forty-two, as follows:

Y E A S .

Messrs. Achenbach, Beebe, Black, Chas. A., Bowinan, Bullitt, Campbell, Corbett, Corson, Cronmiller, Curtin, Darlington, Edwards, Elliott, Fulton, Hall, Hanna, Hunsicker, Kaine, Knight, Lawrence, Lear, Littleton, MacConnell, McClean, Niles, Palmer, G. W., Palmer, H. W., Patton, Purman, Purviance, Samuel A., Rooke, Smith, H. G., Wherry, Woodward and Worrell—35.

N A Y S .

Messrs. Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Brodhead, Broomall, Brown, Calvin, Carey, Cassidy, Church, Curry, Dallas, De France, Ewing, Fell, Finney, Guthrie, Hay, Hemphill, Horton, Landis, Lilly, MacVeagh, Mann, Minor, Mitchell, Mott, Patterson, T. H. B., Read, John R., Reed, Andrew, Reynolds, Russell, Sharpe,

Simpson, Stanton, Struthers, Temple, Walker, Wetherill, John Price, and Wright—42.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dodd, Dunning, Ellis, Funck, Gibson, Gilpin, Green, Harvey, Hazzard, Heverin, Howard, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Porter, Pughe, Purviance, Jno. N., Ross, Runk, Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F., and Merodith, President—56

MR. HEMPHILL. I move to amend by striking out after the word "well" in the fourth line, the words "but shall not be eligible to re-election," and inserting: "And shall be ineligible for any other office of trust, honor, or profit during said term."

The amendment was rejected.

MR. DARLINGTON. I propose to amend by striking out the words "to re-election" and inserting "re" before "eligible;" so as to read "shall not be re-eligible."

MR. BROOMALL. I would suggest to my colleague that instead of the word "re-eligible," which is a little awkward, he put in the word "re-elected." That is good English.

MR. DARLINGTON. I accept the modification.

MR. ARMSTRONG. I think the section is in the best phraseology now.

THE PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Chester, (Mr. Darlington,) as modified.

The amendment was rejected.

THE PRESIDENT *pro tem*. The question recurs on the section.

MR. STRUTHERS. I propose to amend in the fourth line by inserting after the word "re-election" the words "after having arrived at the age of sixty-five years."

It appears to me that there is no great propriety in saying that a judge shall go off the bench when he arrives at fifty or sixty years of age, when he has perhaps become the most important and useful member of the bench. If he goes on at thirty years, a term of twenty-one years brings him to fifty-one, and I see no reason why he might not be re-elected; but if he has

been elected at a time of life that would bring him to sixty-five years, then I could see a propriety in saying that he should not be re-elected. If he should be elected at such a time that his term terminates before he is of the age of sixty-five, I see no good reason why he might not be re-elected, because many judges have lived to a green old age, up to eighty, and been of good service upon the bench.

MR. WOODWARD. I wish the gentleman had stated whether we have had an instance of a judge going on our Supreme bench before he was fifty years of age. I do not remember any. If the rule be that judges do not reach the Supreme bench before they are fifty years of age, and then the Convention insists on keeping them in office twenty-one years, which is the tenor of the last vote, you have got seventy-one years for all your Supreme judges at the end of their terms. What is the necessity of the gentleman's amendment in view of that state of facts? Instead of a judge going off that bench at fifty, I do not know of any judge who went on it before fifty, and now you are going to add twenty-one years to his life before he leaves the bench.

MR. STRUTHERS. I understand that one of our present supreme judges, Judge Williams, was only forty-five or forty-six years old when he went on the Supreme bench; and I know of no reason why gentlemen may not be elected to that office at thirty years of age. There is nothing in the Constitution to prohibit it that I know of.

* MR. ARMSTRONG. I call the gentleman's attention to the fact that in the eighteenth section of this article it is provided that men shall not be eligible to the bench of the Supreme Court unless they be at least forty years of age.

MR. HAY. I simply desire to state, after what the gentleman from Philadelphia (Mr. Woodward) has said, that I am not at all in sympathy with any proposition which would provide that persons otherwise competent should not go upon the bench of any court at any particular age. I do know the fact—the occurrence did not happen in this State but in another and neighboring State whose judiciary occupies a very high position—where a gentleman was placed upon the Supreme bench and served there very creditably, from the age of twenty-nine years.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Warren (Mr. Struthers.)

The amendment was rejected.

Mr. S. A. PURVIANCE. Mr. President: For the purpose of raising the question, inasmuch as I understand that some judges of the Supreme Court say they do not need any increase, I move to strike out of the first line the word "seven," and to insert "five."

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

The section was agreed to.

The third section was read as follows :

SECTION 3. The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall by virtue of their offices be justices of oyer and terminer and general jail delivery in the several counties. They shall have original jurisdiction in cases of *habeas corpus* and of *mandamus* to courts of inferior jurisdiction, and in cases of *quo warranto* as to all officers of the Commonwealth whose jurisdiction extends over the State; but shall not exercise any other original jurisdiction. They shall have appellate jurisdiction by appeal, *certiorari* or writ of error in all cases as is now or may hereafter be provided by law.

Mr. KANE. I move to amend the section in the fourth line by inserting after the word "of" where it first occurs, the words "injunction where a corporation is a party," and to strike out the second "of" in the same line, so as to read :

"They shall have original jurisdiction in cases of injunction where a corporation is a party, *habeas corpus* and *mandamus*."

I hold that the jurisdiction of the Supreme Court in cases of injunction where corporations are parties, is as important and more important than any other item in this section over which their jurisdiction is retained. Where we are having so many railroads and so many important and intricate questions arising, almost daily and monthly, where railroad companies are parties whose roads extend from one end of the State to the other, going through fifteen or twenty counties, I hold it to be of the greatest importance that the Supreme Court should have jurisdiction. I conversed with two of the judges of the Supreme Court on this subject, and they both concurred in the opinion that this power should be retained to them. Questions of right, questions of property, questions of damages where a corporation may be trespassing perhaps in two or

three different counties, are presented where the court of common pleas of the county in which it would be proper, unless this provision is inserted here, to commence a proceeding of that kind, may not be in session, and may not be in session for three months; all the injury may be done in the meantime; and there is no remedy and no redress. Judges of the Supreme Court at chambers in Philadelphia issue a preliminary injunction to any part of the State. It is a question that has been much considered and much discussed by the legal minds of this Commonwealth and by the court itself, and I think it will strike the mind of every gentleman upon this floor that a power of that kind, where a summary remedy is required, should be retained in the highest court of the Commonwealth. I hope the amendment will prevail.

Mr. MACVEAGH. I confess, Mr. President, that it seems to me this power ought to be preserved to the Supreme Court, and that questions of such gravity arise in connection with these corporations that it is very difficult to get them before the court of the proper county. Take the matter of holding a corporate election, or voting upon improper stock. That may be done in one place or in another in the State. Take the matter of one corporation endeavoring to seize the railroad of another that may extend over three or four counties. The judge of the county may be interested, or he may be absent. Many cases can occur in which you cannot have an order from him; and it might be very difficult sometimes to know in what county to bring the action. It seems to me the danger of destroying this jurisdiction is very much greater than the danger of allowing it to remain in the Supreme Court.

Mr. DAWLINGTON. There is a provision in the present Constitution which seems to me to meet the difficulty :

"The Supreme Court and the several courts of common pleas shall, besides the powers heretofore usually exercised by them, have the power of a court of chancery, so far as relates to the perpetuation of testimony," &c.

"The Legislature shall vest in the said courts such powers to grant relief in equity as shall be found necessary, and may from time to time engage or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice."

This paragraph seems to have been omitted by the committee in their report; I do not find it, at least.

Mr. ARMSTRONG. No sir, it is in. A part of the phraseology of that section was not applicable to our present provision, but it is in another form.

Mr. DARLINGTON. This would be a very proper power to retain, undoubtedly—chancery power in the Supreme Court to such an extent as the Legislature shall see fit to confer it—which would cover all matters to which reference has been made by the gentleman from Dauphin.

Mr. WOODWARD. It provides negatively that they shall have no other jurisdiction than is here specified.

Mr. DARLINGTON. It does not say so.

Mr. BIDDLE. At the end it does.

Mr. DARLINGTON. The provision of the old Constitution does not provide negatively. It is: "The Legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary, and may from time to time enlarge or diminish those powers, or vest them in such other courts as they shall judge proper."

Mr. WOODWARD. I want to call the attention of the gentleman from Chester to the words "but shall not exercise any other original jurisdiction" in the section before us. This section prohibits the exercise of any other jurisdiction than that which is enumerated. If it be important to put in the provision which the gentleman from Fayette has offered, and I think it is, it ought to be done expressly.

Mr. BIDDLE. I merely wish to give one additional reason in favor of this amendment. It is very often vital to the interests of a large portion of the community (to a county for instance) to have a question determined by the granting of an injunction. If the local judge refuses an injunction, they will be remediless for a long period of time, and driven to a long delay and an action at law, whereas if the question is heard in the first instance by a court in banc, as this amendment contemplates, the controversy can be determined in the first instance in a rapid and inexpensive mode.

Mr. ARMSTRONG. I am satisfied that this amendment is judicious, and I hope it will be adopted.

Mr. MACCONNELL. I rise to make a suggestion to the gentleman from Fayette, whether it would not be advisable to give the Supreme Court jurisdiction in cases of mortgages of corporations. For

example, railroad mortgages often extend from one end of the State to the other, and it has been found necessary to give the Supreme Court jurisdiction in such cases. I suggest whether it would not be better to retain it here.

Mr. S. A. PURVIANCE. I do not desire to see this amendment carried upon the mere assent of the chairman of the Judiciary Committee. I rise to enter my protest against any such original powers being conferred on the Supreme Court. We have heard complaints here from time to time that the Supreme Court is behind in its business, and allow me to say that in Allegheny county the *remanets* there, about forty or fifty every year, are mainly occasioned from the fact that the Supreme Court is listening to too many injunctions, to too many applications of that nature. Why cannot the courts of common pleas attend to this matter? Why cannot they have jurisdiction? Why cannot they dispose of these applications just as well as the Supreme Court? If you strip the Supreme Court of the jurisdiction which has hitherto been conferred upon them, my word for it five efficient judges upon that bench will be able to transact all the business that can be brought before them, in a satisfactory manner. I therefore hope this proposition of the gentleman from Fayette will not prevail.

Mr. CORBETT. I hope that this amendment will not prevail. I do not see any reason why we should give a remedy to a corporation that is not given to a private citizen. Besides this, I might say that I have no doubt that if all the suitors of the State could commence their suits in the Supreme Court, they would be advantaged where the amount is sufficient to justify them. But if we are going to relieve the Supreme Court of the great pressure of its business, which has been so seriously complained of upon this floor, we must wipe away the original jurisdiction. There is no reason whatever for giving that court jurisdiction in these cases. The Legislature can provide for cases where judges are interested, and the remedy now is full and plenary. You can file your bill, and it is not necessary that the court should be in session. You can by giving proper notice get your case to a judge in chambers for an interlocutory or preliminary injunction. Not only that, but there is, by an act of Assembly, now provided a plan for an appeal from a decision on an application for an interlocutory injunction in Pennsylvania. You

are allowed to take it up to test the correctness of the decision of the court below.

My friend from Allegheny has well appealed to this Convention not to load down the judges of the Supreme Court with the burden of these cases. I can say to this Convention that in western Pennsylvania a large portion of the term of the Supreme Court is taken up by cases referred to it, certified from and coming there from the eastern portion of the State, and ordered to be there re-argued. I have been in attendance upon that court several times when the attorneys of the western district were in the court ready to argue their writs of error, but were delayed for days and days in the transaction of the legitimate business of that district, by these cases which had been certified for re-argument from the eastern section of the State.

I hope this amendment will not prevail. There is no reason why these parties cannot seek relief in the court of common pleas, and take the regular channel to get justice.

Mr. CORSON. I move to strike out the words, "where a corporation is a party." That leaves the word "injunction" in the amendment, and the section, if so amended, will read, "So that the Supreme Court shall have original jurisdiction in case of injunction, *habens corpus*," &c.

I see no reason why corporations should be preferred in this matter. I understood the amendment was proposed to reach corporations as defendants, but it give them as advantage over the people generally, as complainants, and they have no right to that preference over the people of Pennsylvania. We are willing to vote for the word "injunction," and if we carry that we will vote the word "corporations" down.

Mr. ARMSTRONG. The Supreme Court have been relieved of their general equity jurisdiction, and the Legislature are forbidden from restoring it. The reason why it would be judicious to insert this amendment is that it applies only to corporations. These corporations have powers to be exercised in various counties, sometimes in many counties extending over the jurisdiction of a number of common pleas courts, and hence there may be conflicting opinions upon the same question if it be left for decision to the courts of common pleas. It might so happen at times that the power of injunction should be exercised promptly,

and if we require that the question shall first be determined in the common pleas of the several counties, the whole efficiency of the remedy might be lost. I believe therefore that the amendment is a judicious one.

Mr. MANN. I hope that the amendment to the amendment will not prevail. It is a wiping out of this section as it was passed and reported from the committee of the whole. It is to restore to the Supreme Court a very large amount of original jurisdiction which this Convention had deemed it wise to withhold from it. It is to establish a favoritism in the practice of law in Pennsylvania. It is to give certain favored localities advantages which should belong to the State alone, and I hope there will be no such favoritism endorsed by this Convention.

We have heard it constantly stated upon this floor, whenever the business of the Supreme Court has been under discussion, that that Court is overburdened and that we must furnish it some relief. Well, sir, the delegates preparing this section of the article on the judiciary did furnish this relief, and the section was allowed to pass as it is now printed on our desks, in order that the Supreme Court might be relieved of some of the burden that has hitherto been upon them. We know that there has been a great mass of business imposed upon them heretofore without any excuse or any necessity for its being done. Let them now sit as a court of revision to revise the decisions and proceedings of the courts below; and if that is done there will be no difficulty in their disposing promptly of all business which shall come before them. But now allow this section to be amended as it is here attempted to be, and we shall force upon the Supreme Court original jurisdiction which will create the same difficulty we have had heretofore in reference to the Supreme Court finding time to attend to its legitimate business. The great mass of business from the State at large, the revision of the decisions of the courts of common pleas, which are the proper and legitimate matters for the attention of the Supreme Court, will be delayed by thrusting upon them this original jurisdiction, for which there is no necessity whatever.

I hope, therefore, that this amendment to the amendment will not prevail, and then I hope that the amendment will be voted down.

The amendment to the amendment was rejected.

Mr. BROOMALL. I move to add to the amendment the word "defendant," so that it will read "where a corporation is a party defendant." I am not willing to let a corporation drag an individual into the Supreme Court, because there is no necessity for it. A corporation can get an injunction against an individual in his own county. The reason for allowing one corporation to bring another, or an individual to bring a corporation into the Supreme Court by this process, is because the corporations are so ramified in their interests that they virtually embrace the judges of the very courts that are called upon to grant an injunction. I think the President of this body remembers an instance in which a judge of a court of his own county refused to grant an injunction, and legislation had to be procured to get justice against a corporation, the judge being largely interested in the corporation.

The only reason for putting in the provision at all is because of the power of these corporations, and because of the likelihood there is that the judge of the court of common pleas will be interested as a stockholder or bondholder in some way in the railroads within his district. That is the only reason, and that does not extend to individuals. Hence I think this power should be limited to cases where a corporation is a party defendant.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Delaware to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment.

Mr. CORBETT and Mr. HUNSICKER called for the yeas and nays.

The PRESIDENT *pro tem*. Do ten gentlemen rise to second the call?

The yeas and nays were ordered, more than ten members rising to second the call.

SEVERAL DELEGATES. Let the amendment be read.

The CLERK. The amendment is to insert after the word "of" in the fourth line of the section, the words "injunction where a corporation is a party defendant."

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Armstrong, Bailly, (Perry,) Beebe, Biddle, Bowman, Brodhead, Broomall, Bullitt, Calvin, Campbell, Carey, Church, Corson, Curry, Dallas, Darlington, Edwards, Elliott, Finney, Fulton, Guthrie, Hanna, Hazzard, Hemphill, Kaine, Knight, Lilly, MacConnell, MacVeagh, Mitchell, Mott, Niles, Patton, Read, John R., Reed, Andrew, Reynolds, Russell, Sharpe, Smith, H. G., Wetherill, John Price, Wherry and Woodward—43.

NAYS.

Messrs. Bailey, (Huntingdon,) Black, Charles A., Brown, Cassidy, Corbett, Cronmiller, De France, Ewing, Hay, Heverin, Horton, Hunsicker, Landis, Lawrence, Littleton, M'Clean, Mann, Minor, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Simpson, Struthers, Temple, Walker, Worrell and Wright—29.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baer, Baker, Bannan, Barclay, Birdsley, Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Curtin, Cuyler, Davis, Dodd, Dunning, Ellis, Fell, Finck, Gibson, Gilpin, Green, Hall, Harvey, Howard, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Porter, Paghe, Purviance, John N., Rooke, Ross, Runk, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F. and Meredith, *President*—61.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

The section as amended was agreed to.

The CLERK read the next section as follows:

SECTION 4. Until otherwise directed by law, the courts of common pleas shall continue as at present established except as herein changed. Not more than four counties shall at any time be included in one judicial district organized for said courts.

Mr. KAINE. I move to strike out all after the words "section four" and insert what I send to the Chair.

Mr. ARMSTRONG. I would suggest to the gentleman, if he will permit me for one moment, that the section as it now stands is precisely the third section of the fifth article of the present Constitution,

with the exception that it provides that "not more than four counties shall at any time be included in one judicial district" instead of five, as in the old Constitution. Let this section pass, and if the gentleman has an additional section to offer, let it be as a new section hereafter.

MR. KATNE. The adoption of this section as it stands would entirely exclude the one that I have to offer, and it is to take the place of it if adopted.

The PRESIDENT *pro tem*. The amendment of the gentleman from Fayette will be read.

The CLERK. It is proposed to strike out all after the words "section four," and insert:

"The judges of the several courts of common pleas shall be learned in the law, and shall be elected by the qualified voters of the district over which they are to preside for the term of ten years, if they so long behave themselves well. The General Assembly shall at its first session after the adoption of the amendments to the Constitution, divide the State into suitable judicial districts, and provide for the election of three judges in each district, except when a single county shall require a greater number; but no county shall be divided in forming a district. The aforesaid judges, during their continuance in office, shall reside within the district for which they shall be respectively elected; and when more than one county shall compose a district, they shall so alternate in holding courts in the several counties composing the district, that the same judge shall not sit oftener than once in every third successive regular term of the courts to be holden in said county, unless from some unavoidable cause it shall be rendered impracticable. Courts in banc shall be held by the judges of every district, or a majority of them, in each county, at such times and for the transaction of such business as may be prescribed by law. When holding courts in banc, the judge oldest in commission, or the oldest in commission and senior in age, shall preside."

MR. KATNE. Mr. President: This amendment contains the principle in substance of an amendment which I offered in committee of the whole, but I have changed it very much in its details. This amendment leaves it entirely to the Legislature to form the districts, to fix the time of holding courts, and the manner in which the judges shall meet together to hold courts in banc. The great

objection made to the original proposition which I offered in committee of the whole was that I had districted the State, which I did more for the purpose of illustrating the plan and the principle than anything else; but I have concluded that it would be much better to merely establish the system in the Constitution, and leave the details of the organization of the courts, and the manner in which they shall take cognizance of the business that shall come before them as courts in banc, to the Legislature. A district may consist of two counties, it may consist of three, or it may consist of more, just as it may suit the circumstances of the district proposed to be established, and of that the Legislature can be and will be the proper judges, coming as they do directly from the people and from the various districts.

I think, Mr. President, after having given this subject considerable reflection, after having examined the systems of every State in the Union, that this will answer a better purpose for the organization of courts of common pleas than anything that I have been able to come across. I have received many letters and communications from different parts of the State from distinguished members of the bar who very freely approve of the plan. Three judges in a district will hold their regular courts, each one alternating; and at such times as the Legislature may provide, once, twice, three or four times a year, these judges will meet in banc under this system in each county in the district and there hear and determine important questions, motions for new trials, reserved points, and every thing of that kind, which will at once strike the minds of legal gentlemen upon this floor. When those matters are heard on full argument before this court in banc and determined by three judges or by a majority of them, the decisions will give satisfaction, in my opinion, to a large portion of the people, and without any additional expense will relieve in a great measure the troubles of the Supreme Court. A question decided by three judges living in three different counties will be entitled to greater weight and greater consideration than that decided by one in the hurry, perhaps of an argument and a trial.

This proposition will establish a system throughout the State that I think will work well. I hope it will commend itself to the members of this Convention and that it may be adopted. I do not desire

to weary the Convention with a long argument in its favor. It was the subject of argument here before and the principle of it fully debated, and I leave it now for the discussion and consideration of the Convention.

Mr. FULTON. I move to amend the amendment by striking out all after the word "election," in the ninth line, down to the word "courts," in the thirteenth line.

The PRESIDENT *pro tem*. The Clerk will read the words proposed to be stricken out.

The CLERK read as follows:

"And when more than one county shall compose a district, they shall so alternate in holding courts in the several counties composing the district that the same judge shall not sit oftener than once in every third successive regular term of the court to be holden in said county, unless from some unavoidable cause it shall be rendered impracticable."

Mr. FULTON. I simply desire to say that the change I wish to make in this amendment is to strike out the alternation of the judges traveling from county to county, so that each judge may remain in his own county and hold the court there unless some special circumstance requires a change in the judges. It is objected by a great many gentlemen to this section that the changing of the judges would not work well, and for one I should be glad to see that provision struck out, and then I should support the amendment.

Mr. LILLY. There is another objection that I have to the amendment as it stands. I should be glad to vote for it, as it is thought it would relieve the Supreme Court; but the objection that I have heard among my legal friends in this Convention struck me with a great deal of force, and that was, that where a judge who had tried a cause was allowed to sit in banc with the other judges, they would all go with him. My idea would be to prohibit the judge who decided a case from sitting in banc at all on that case. With that amendment I think I should vote for the proposition.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Westmoreland (Mr. Fulton) to the amendment of the delegate from Fayette (Mr. Kaine.)

The amendment to the amendment was rejected, the ayes being seven, less than a majority of a quorum.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Fayette.

Mr. WOODWARD. I rise merely to say that I consider this is the best proposition we are likely to get in the way of an intermediate court. It is not what I would wish it to be; it is not what I think the public interest requires; but it comes nearer to an intermediate court than any proposition I have seen. It provides that the Legislature shall divide the State into districts containing at least three judges. The probability is that they will contain more than that. Then it provides that these judges shall alternate. That, instead of being an objection, as was urged by a gentleman near me, is I think a recommendation of the amendment. That they shall sit in banc to review their own decisions on motions for a new trial, is certainly an improvement; and if this intermediate court could have been made, as I proposed to make it, a court of errors and appeals exclusively, with no original jurisdiction, the Supreme Court would have been greatly relieved. Under this arrangement, the Supreme Court will not be at all relieved. But my ideas were crucified in committee and afterwards on second reading before the House. They were wrong, of course. But when you cannot get what you believe to be right, the rule of common sense and of my life has been to take the nearest to the right that you can get. Now, this amendment of the gentleman from Fayette seems to me to be in the right direction. It provides for an intermediate court. It does not give that court final jurisdiction in any case, and therefore does not relieve the Supreme Court a particle; but supposing that the Convention will not go any further in this direction than this amendment, and it is doubtful whether they will adopt this amendment, I feel like voting for the amendment and hope it will be adopted as the best we can get. I think I could devise a better plan if gentlemen would consent to think of it favorably.

Mr. S. A. PURVIANCE. I move the twenty-fourth section of the article as passed by the committee of the whole, as an amendment to the amendment of the gentleman from Fayette.

Mr. ARMSTRONG. I rise to a point of order, and I do it with great reluctance.

The PRESIDENT *pro tem*. The gentleman will state his point of order.

Mr. ARMSTRONG. The gentleman from Allegheny proposes to move as an amendment to the pending amendment a section of the article which will come before the Convention in its order. Sections cannot be taken out of their order in that way. As this is now a report from the committee of the whole, it must be considered in its sequence and order as it arises. In making the point of order, I do not wish to antagonize with the gentleman, but I believe it will facilitate business.

The PRESIDENT *pro tem*. The Chair cannot sustain the point of order taken, but he is compelled to rule that the amendment offered by the delegate from Allegheny is not an amendment to the amendment as he views it.

Mr. BROOMALL. As I understand, the question now is upon the amendment offered by the delegate from Fayette.

The PRESIDENT *pro tem*. That is the pending question.

Mr. BROOMALL. Mr. President: It seems to me that this amendment is open to all the objections that the intermediate court is without having any of the advantages of that court. The gentleman from Philadelphia (Mr. Woodward) says, with a good deal of force, that it will not relieve the Supreme Court any. If it will not relieve the Supreme Court any, (and I believe he is right there, because I believe it will not stop a single case from going to that court,) then I submit that it will not be of any use in any other point of view.

Then it lacks all the virtues of the circuit court. It is liable to all the objections to that court, as any one will see who will consider it for a moment. It entails upon parties just the same delay that that does. It comes to the same thing after the end of a year that a single judge in his single district would come to probably within thirty days, and so denies justice by postponing justice. Every case that is tried will be hung up on a motion for a new trial, which cannot be heard as now, often in the course of thirty days, and be disposed of, and probably not before the end of a year, because these courts in banc will certainly not be held every thirty days, nor every ninety days. They will be held probably once in one or two years, so that every case will be hung up during all that time; and when at last the court in banc has the motion for a new trial before it, it will decide it precisely in the same way that the judge who decided the case decided it, in nine hundred and ninety-nine cases out of a thousand.

That is the experience here in the city of Philadelphia.

The gentleman from Carbon, (Mr. Lilly,) seeing this difficulty, proposes to exclude the judge who tried the cause; but that will not help it. You exclude all the immediate information upon the subject of the trial unless you let him stay, and if you let him stay and give advice and information, then the other judges will follow him; they will not reverse him. Experience shows us that they will not. I am therefore opposed to this measure on account of the delay. I am opposed to it on another ground, because it divides the responsibility and therefore lessens it. It does not add any more judicial skill to the bench and it divides the responsibility of the decision between three judges instead of fixing it upon one.

However, I do not suppose that there is any danger of this Convention going back upon itself and adopting an intermediate court in a worse form than that which has been so often voted down.

Mr. KAINE. Mr. President: I hope the Convention will not be alarmed by the bugbears that have been started just now by the Sir Oracle from Delaware county. That gentleman is opposed to everything of this kind; he is opposed to any reform whatever in the judiciary; and, therefore, he is willing to hatch up anything that his fertile imagination can produce for the purpose of defeating any measure which looks to a reform in the judiciary of this State.

Mr. ALRICKS. I call for a division of the question, so that the first division will end with the third line, "behave themselves well," and the second division end with "the division of the State into judicial districts."

Mr. ARMSTRONG. Mr. President: The first division of the question proposed by the gentleman from Dauphin will be found to be fully provided for in the fourteenth section as it stands. It is, therefore, unnecessary. As to the rest of it, I look upon it as an attempt to introduce a sort of intermediate court in its most inefficient and objectionable form. The whole question has been fully discussed before. I do not think it wise at present to prolong the discussion.

The PRESIDENT *pro tem*. The question is on the first division.

Mr. ALRICKS. I withdraw the request for a division and will take the question on the whole proposition.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Fayette (Mr. Kaine.)

MR. KAINE. I call for the yeas and nays.

More than ten members rising to second the call, the yeas and nays were ordered and taken with the following result :

YEAS.

Messrs. Bailey, (Huntingdon,) Beebe, Black, Charles A., Brodhead, Brown, Bullitt, Corson, Curtin, Elliott, Fulton, Guthrie, Hanna, Hemphill, Kaine, Mitchell, Read, John R., Sharpe, Smith, H. G. and Woodward—19.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Biddle, Bowman, Broomall, Calvin, Campbell, Carey, Cassidy, Church, Corbett, Cronmiller, Curry, Dallas, Darlington, De France, Edwards, Ewing, Fell, Finney, Hall, Hay, Hazzard, Heverin, Horton, Hunsicker, Knight, Landis, Lawrence, Lear, Lilly, MacConnell, M'CLean, Mann, Minor, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Simpson, Struthers, Temple, Walker, Wherry, Worrell and Wright—56.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Alney, Andrews, Baer, Baker, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Boyd, Buckalew, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dodd, Dunning, Ellis, Funck, Gibson, Gilpin, Green, Harvey, Howard, Lamberton, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Meredith, *President*—58.

The PRESIDENT *pro tem.* The question recurs on the fourth section.

MR. FULTON. I offer the following amendment, to come in after the word "otherwise," in the first line :

"Provided by law, the common pleas districts shall continue as they are. Each district shall be entitled to at least one judge for every fifty thousand of its population; the manner and times of election

to meet increase of population to be fixed by law. Unless there be more judges than counties in any district, no two judges thereof shall during their continuance in office reside in the same county. The judges shall have the right to select counties of residence in the order of the date of their commission. The right to preference between those holding commission of the same date shall be determined by lot."

MR. President, I offer this amendment to the fourth section for the purpose of meeting several difficulties that will arise as we progress in this report. The first and most important is a proposition to cut the State up into small and single districts. I take it that this is a subject where we cannot go into detail from the constant changes of the business in the different counties of the State. If we fix and crystallize a rule here in the Constitution to govern the judiciary of the State or regulate it for the next thirty or forty years, perhaps, we cannot meet the demands of the people. It is a subject to my mind that should be left to the Legislature, as it always has been; and as there have been some complaints in different parts of the State of an insufficient force in the judiciary, I make that provision to require the Legislature to give a judge for every fifty thousand population, and this I think will be ample to do the work of the bench; and it seems to me that by leaving the districts as they are, it will furnish a much better judiciary, of a much higher grade, than that which we should have by cutting the State up into small districts of thirty thousand people each, as is proposed, and it would also distribute the force in such a way that it would meet the work or labor to be done by the judiciary. Now, for example, take a small agricultural county in the interior of the State of thirty thousand people, and give it a judge; it certainly is well known to every member of the bar in this Convention that such a county will not afford work to keep a judge more than two months in the year at the outside. Just alongside, we may have a commercial or a manufacturing, or a mining county, or a county, traversed by railroads and public works, that has three or four times the amount of litigation for the same population, and by leaving the State in larger districts and throwing two or three judges in the same district you enlist each judge in bringing up the work of that district.

There are other difficulties which have been referred to in the discussion of this question, one of which I desire to briefly call to the attention of the Convention. It is known that our judges are selected from the members of the bar in the several counties. They are selected every ten years. Now, you take in a county, perhaps, one of the leading members of the bar, in full practice, and elect him to the bench. For five of these ten years the business of that court is interrupted by the constant appearance of cases in which that judge has been concerned as counsel. If we could have two or three judges in the district, a change could be made by the judges from one county to the other, so that each could try the other's cases, thus relieving us of this difficulty, which certainly is a very serious one.

But I do not wish to detain the Convention, and therefore suspend my remarks, hoping that the Convention will adopt the amendment now under consideration.

MR. MITCHELL. Mr. President: I do not know what may finally be determined upon by this Convention, but I wish to reply to the gentleman from Westmoreland (Mr. Fulton.) As I understand his proposition, it is that one judge is able to do the labor created in a population of fifty thousand. In point of fact the gentleman is mistaken. Butler county has a population of thirty-seven thousand, and Lawrence county has a population of twenty seven thousand. One judge is not able to do the work of those two counties.

Let the gentlemen of this Convention in their wisdom decide upon what they please; I say that the single district system is the best for the people of the State. I know as a matter of fact that Lawrence county has business sufficient for one judge. No amount of theory will overcome the facts of the case. I know that Butler county has enough business for one judge, enough to keep him occupied as great a portion of the year as one man ought to be allowed to work. I very much doubt if there is a county where the business would not justify the making of one judge—because I believe as far as my experience goes, every county has sufficient judicial business for one judge—there are a number of other matters beside the hearing of cases that a judge can very well attend to, which are not now included in his duties. For instance, in reference to orphans' court accounts which are called up before the judge, it is expected

that the judge will examine those accounts, but instead of doing so he simply calls them over, states the balance, and asks whether there are any objections to their confirmation. Now, unless the orphans or the widow or the family have money to employ counsel, that account may pass in almost any shape. If the judge, however, had time to examine the matter, if he lived in the county of the decedent and could examine the accounts, a vast amount of injustice that is now done in this way might then be averted.

Another thing; if the judge who may complain of not having enough work to do, instead of appointing an auditor, would examine the subject-matter, and adjust or decide it himself, a great amount of expense could be saved. So in other things. It is idle to tell me, coming as I do from a county where I know that there is sufficient work for any reasonable man during the whole year—and this is not so alone in my own county, but in all the adjoining counties—that there is not enough work for a judge to do in any county of the State. If the people of a judicial district find that a judge has not enough labor, they can easily remedy that. But I say that this Convention, in committee of the whole, decided that the great trouble was in the counties themselves, and I say that this Convention having once decided that a county having a population of thirty thousand should have a separate judge, I believe that they arrived at the wisdom and the sense of the matter. I believe they should and will adhere to that decision, unless indeed there is so little deliberation in the Convention that they will upset to-morrow what they may decide to-day.

MR. ARMSTRONG. Section four as it stands now is, I believe, in its best form, and is precisely as it is in the old Constitution, except preventing the making of districts exceeding four counties instead of five. I desire now simply to remark that the question which has been raised by the amendment of the gentleman from Westmoreland would more particularly apply to the twenty-fourth section. The whole question will come up for consideration under that section which begins, "Each county containing thirty thousand inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law."

I think it is better, therefore, to omit here the incidental discussion of a question which will come up upon a section

where we shall meet the issue fairly and squarely.

Mr. FULTON. At the suggestion of a number of delegates I withdraw my amendment for the present, for the purpose of introducing it at a future time.

The PRESIDENT *pro tem*. The amendment being withdrawn, the question recurs upon the section.

The section was agreed to.

The PRESIDENT *pro tem*. The fifth section will be read.

The CLERK read as follows:

SECTION 5. In the city of Philadelphia and in the county of Allegheny all the jurisdiction and powers now vested in the district courts and the courts of common pleas, or either of them, in said city and county, subject to such changes as may be made by this Constitution or by law, shall be in the city of Philadelphia vested in four and in the county of Allegheny in two distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each; and in such additional courts of the same number of judges and of like jurisdiction as may from time to time be by law added thereto. The said courts in the city of Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three, and number four, and in the county of Allegheny as the court of common pleas number one and number two; but the number of said courts may be by law increased from time to time, and shall be in like manner designated by successive numbers. And the Legislature is hereby prohibited from creating other courts to exercise the power vested by this Constitution in said courts of common pleas and orphans' courts. The number of judges in any of said courts or in any county where the establishment of an additional court may be authorized by law may be increased from time to time: *Provided*, That whenever such increase shall amount in the whole to three, such three such judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid.

Mr. ARMSTRONG. I desire to move a verbal amendment. In the twentieth line I propose to strike out the words, "*Provided, that,*" and insert the word "*and.*"

The amendment was agreed to.

Mr. DALLAS. I move to amend by striking out all after the word "*section,*" and inserting what will be found on page

431 on the Journal, comprising the minority report made by Mr. Cuyler and myself to the report of the Committee on the Judiciary, as follows:

The words proposed to be inserted were read as follows:

"In the city of Philadelphia, the district court, and the court of common pleas, and the jurisdiction, powers and duties of said courts, shall remain as at present, except that the district court shall not hereafter have any jurisdiction in equity, and all the jurisdiction of the court of common pleas for the trial of common law cases, and upon *certiorari* and appeal from any lower court or magistrate, is hereby transferred from said court of common pleas to and vested exclusively in the said district court. This provision shall not affect any proceeding which may be actually pending when this Constitution shall go into effect.

"The prothonotary of each of said courts shall be respectively selected by the judges thereof, and the numbers of his subordinates and the general regulation of the business of his office shall also be prescribed by them. The said prothonotaries and subordinates shall be compensated only by fixed salaries, the amount of which shall be fixed by the court, and all fees collected in said offices, except such as may be by law due to the State, shall be paid into the city treasury.

"The Legislature shall provide for the employment of phonographic reporters in the said courts."

Mr. DALLAS. In reply to those gentlemen who have asked me to pause at the end of the different paragraphs of the proposed amendments, I will state that the purpose of each and all of them can be accomplished when we come to vote by calling for a division of the amendment. If it does not pass as a whole, perhaps some parts of it may be adopted.

Mr. CAMPBELL. Question! Question!

Mr. DALLAS. I am willing to give way until the delegate from the city (Mr. Campbell) is tired of calling "question," and then I will resume my remarks.

The PRESIDENT *pro tem*. The gentleman from the city will proceed, and the Chair will protect him, in his discussion of his amendment, from interruption.

Mr. DALLAS. Mr. President: The amendment which I have offered is the report of a minority of the Committee on the Judiciary. It is the report of Mr. Cuyler and myself, who with Judge Woodward, were the only Philadelphians

on the Judiciary Committee, and that minority report is the entire amendment as I have offered it. It does not entirely meet my own views, but it provides that there shall be but two courts for the city and county of Philadelphia, whereas the majority report of the Committee on the Judiciary provides for four. If I could have my own way there should be but one, but I think that two courts certainly will not be as objectionable as four.

We have heretofore had in the city of Philadelphia for a very long number of years two local courts, the district court and the court of common pleas. The great body of common law trials have been disposed of in the district court. The district court has had and lost and had again bestowed upon it equity powers. The court of common pleas has had common law jurisdiction upon the trial of appeals from aldermen up to a certain small amount, so small as never practically to be invoked except upon appeals from aldermen. It has had equity jurisdiction continuously as courts of common pleas have it in the country, and its judges have also been the justices of oyer and terminer, quarter sessions and general jail delivery. Now, the report of the majority of the Committee on the Judiciary proposes to give us in the city of Philadelphia four separate and distinct courts, of three judges each, and provides for addition to the number of those courts, so that we may come to have five, or six, or seven such courts, with precisely the same jurisdiction and powers in every particular. So that the result will be that we may have conflicting, absolutely differing, decisions in those four courts upon various legal questions in the city of Philadelphia. I do not know of any respectable member of the bar of Philadelphia, no matter how else they may differ, who have asked for the change which the report of this committee would put upon us here; and it is no answer to our appeal to this Convention to say that the purpose is to make our courts precisely like the rest of the courts of the Commonwealth of Pennsylvania.

Mr. President, the minority report, instead of proposing four separate courts of exactly equal and co-ordinate jurisdiction, proposes that we shall have two, as we have been accustomed to have them; and that as to those two the jurisdiction shall be so divided that hereafter we need never fear this conflict of decisions between the courts, for it proposes to give

to the district court all the common law jurisdiction, and it proposes to give to the court of common pleas all the duties devolving upon them as equity judges and as judges of the criminal court; so that we have by the minority report, instead of four petty courts for this city, two important courts with their jurisdiction not identical, but so divided that they can run parallel without danger of crossing in the line of their decisions.

Mr. President, these are the main features of difference between these two propositions. The proposition from the majority of the Committee on the Judiciary giving us four courts with three judges each, with capacity to increase in number indefinitely is, as I have said, a change radical and entire in our system in Philadelphia, asked for by no respectable number of its citizens or members of its bar. They do not want it; they do not desire it; and there is no reason why it should be put upon them.

Now, Mr. President, look at the effect. You give us several little courts, all of them having jurisdiction over the same subject-matter, the same amounts, the same population, the same territory. They may differ in their decisions; they probably will. They will differ rightly—I mean from no improper motives in their decisions, but conscientiously. There will be no possible means of obtaining unification of our legal decisions. A man who desires an injunction will go into one court; a man who desires to succeed against a corporation will seek another court. And worse than that, corporations that want to succeed will come to go into some one court as their court, and the people will begin to think so, and it will have the direct effect of degrading the judiciary of this city.

In addition to that first section, the main feature of which I have merely intended to point out, the second section provides for a single prothonotary's office for each of those two courts, and that the prothonotary shall be appointed by the courts and shall be subject to removal by the judges. I suppose upon that subject there will be no objection whatever.

In addition to that, there is a third proposition proposed by this amendment, and one which the gentleman from Philadelphia, (Mr. Cuyler,) who joined me in this report, and who I greatly regret is not in the House to-day, had as warmly at heart as I have myself; that is, that for the city of Philadelphia the organization

of our courts should not be taken to be complete without a stenographic reporter. That is another matter in which our wants and necessities differ from the wants and necessities of the rest of the State. The only possible objection urged against it is that it is matter for legislation and not for constitutional provision. That it is a great good I have heard no man upon this floor deny, and I know no delegate in this Convention from the city of Philadelphia who will not affirm it. It would be a saving to the Commonwealth in the lesser judicial force that could transact our business when aided by reporters able to take down every word as uttered. We can proceed with the trials of our causes much more rapidly. Cases that are pressing upon us from day to day could be heard in one day with these reporters to assist the court and counsel; and in response to this single objection, that it should not be asked for as a constitutional provision, it seems to me that the answer is contained in a very few words; that is, that we have provided for judges, we have provided for prothonotaries and clerks, and all as officers to perfect the organization of the courts. Now, I affirm that the phonographic reporter to these courts when once appointed and established would become, after the judge the most important officer of the court, and why should he not be made a part of its organization, a necessary part of its creation by this instrument, creating this officer as much as any other officer of the judicial force?

Then the object of my amendment is first to do away with what is proposed by the committee, viz: four small courts of equal and co-ordinate jurisdiction, and to put in their place only two courts of separate and distinct jurisdiction; and second, to provide that the prothonotary of each of these courts shall be appointed by its judges respectively and be subject to removal by them; and thirdly, that those courts shall not be considered as fully organized without a stenographic reporter to assist them in their labors.

MR. CAMPBELL. Mr. President: The delegate's remark concerning myself was certainly very amiable and gratuitous. When he offered his amendment, I supposed that after having had the opportunity of speaking upon and advocating it in committee of the whole, of speaking *ad libitum* upon it if he so wished, his good sense would have prevented him from making a long speech over again at the

present time, and therefore, as I thought he had stopped talking after he offered the amendment, I called "question," so as to get to a vote; but the unfortunate habit of the delegate in repeating speeches on second reading that he makes in committee of the whole, led him to talk as usual, and I mistook a pause he made in his speech for the conclusion.

Now, Mr. President, I hope this amendment will not pass. We voted it down in committee of the whole and adhered to the report of the Judiciary Committee on this subject of the Philadelphia courts. The delegate from Philadelphia is certainly mistaken when he says that the bar and people do not want the system proposed by the Judiciary Committee. I say, on the other hand, we do want it. It is a better provision than any other that has been yet proposed. I do not think it is the most perfect system that could be devised, but it is the best that has been presented, and for that reason I would wish to see the report of the committee adhered to and these proposed courts given to us in Philadelphia.

I want if possible to have some system of this kind provided, so that we can break up in Philadelphia what the citizens greatly complain of, the abuses connected with our criminal court. By having courts of concurrent jurisdiction, composed of three judges only in each, suitors can choose whichever one they please, and take their business to the court which metes out justice in the fairest manner. By having more courts than at present and having the judges of all of them assigned in rotation to attend to criminal business instead of confining such business as at present, to a small number of judges—a system which is laborious upon the judges and not a favorite with the bar or the public—I should therefore like to see this section of the report of the committee adopted.

MR. J. R. READ. Mr. President: I trust that the amendment offered by my friend (Mr. Dallas) will be adopted. As the other delegate from the city (Mr. Campbell) alludes to its having been before the Convention before, I desire to call his attention to the fact that he is mistaken. At the time this subject was up before the Convention in committee of the whole, the gentleman (Mr. Dallas) was, if I recollect aright, detained from the Convention on account of the death of a member of his family. The minority report as signed by himself and Mr.

Cuyler was never offered to this Convention and was never before it; and if the gentleman will turn to the Debates, he will find what I say to be the fact. So much for that.

Now, Mr. President, I believe I state the fact when I say that it is almost the unanimous sentiment of the bar of this city and the unanimous sentiment of the judges of both the courts of this county that they desire "to be let alone," and any change such as is proposed by the article as reported from the Committee on the Judiciary will be exceedingly repulsive and will meet with the almost universal condemnation of the people of the city of Philadelphia.

This report proposes to make a change where a change is not desired. It proposes to make an experimental reform where there is no suffering, where there is no inconvenience, to administer a powerful remedy where there is no disease. It proposes to put judges into the courts of quarter sessions and oyer and terminer of this county—judges who are entirely unfamiliar by their education and by their experience for the discharge of the duties of those courts. It proposes to make four small courts with co-ordinate jurisdiction, such as they have in the city of New York, at least virtually the same.

Now, I say that the report of the committee simply makes a change. It merely gratifies the desire to knock down, to break up, to try something new. We do not want it here. The Convention have failed to make any change or to make any reform where it was most needed. No gentleman can turn to the article reported from this committee and say that its provisions, so far as the Supreme Court are concerned, are a relief to the suitors of this community. The addition to their number will not relieve their over-crowded lists. There is where the reform was needed, not here, and I do trust that the amendment, as offered by my friend, and which in effect takes from the court of common pleas that part of its business which, so far as I understand, it is not necessary that it should have, and to confer it upon one court who will thus have all the common law jurisdiction of the courts of this county, and before whom all jury cases shall be tried, and then to take from the district court its equity jurisdiction and confer that upon the courts of common pleas, we shall then have a very simple system; we shall have one court competent to try all jury cases, and one

court to hear all other questions. When I say that, I say that which I believe to be most desirable, and I do trust that this Convention will pause and will hesitate before they inflict upon our city a system which is merely experimental, which is not desired and which will certainly be repugnant to the people of this city.

The PRESIDENT *pro tem*. The hour of one having arrived, the Convention takes a recess until half past three o'clock.

AFTERNOON SESSION.

The Convention reassembled at half-past three o'clock P. M.

THE JUDICIAL SYSTEM.

The Convention resumed the consideration on second reading of the article on the judiciary.

The PRESIDENT *pro tem*. The pending question is on the amendment offered by the delegate from Philadelphia (Mr. Dallas) to strike out the fifth section and insert what will be read.

The CLERK read as follows:

"In the city of Philadelphia, the district court, and the court of common pleas, and the jurisdiction, powers and duties of said courts, shall remain as at present, except that the district court shall not hereafter have any jurisdiction in equity, and all the jurisdiction of the court of common pleas for the trial of common law cases, and upon *certiorari* and appeal from any lower court or magistrate, is hereby transferred from said court of common pleas to, and vested exclusively in the said district court. This provision shall not affect any proceeding which may be actually pending when this Constitution shall go into effect.

"The prothonotary of each of said courts shall be respectively selected by the judges thereof, and the numbers of his subordinates and the general regulation of the business of his office shall also be prescribed by them. The said prothonotaries and subordinates shall be compensated only by fixed salaries, the amount of which shall be fixed by the court, and all fees collected in said offices, except such as may be by law due to the State, shall be paid into the city treasury.

"The Legislature shall provide for the employment of phonographic reporters in the said courts."

Mr. WORRELL. Mr. President: This amendment affects Philadelphia only. Yet as the whole of the Convention must pass upon the question, I feel constrained to express what I understand to be the

judgment of my constituents as well as of the bench and bar of this city upon it. I think they would sincerely deplore any attempt to substitute a fragmentary judicial organization for our present respected and competent and powerful courts. The proposed change can produce nothing but uncertain and irregular procedure, unsatisfactory and conflicting decisions, and a weakened and unstable judiciary. They are therefore opposed to this scheme of the committee and desire that our judicial system may be preserved as it is at present, one court of common pleas and one district court; I think I can say that no section of the new Constitution would receive as general opposition as the one now before the Convention.

I have said heretofore that I favor the appointment of prothonotaries by the courts.

With regard to the last paragraph of the amendment, I trust that it will be voted down. It is nothing but experimental legislation.

Mr. BIDDLE. What is that?

Mr. WORRELL. The provision for employing stenographers in the courts; and I will state to the gentleman who proposed it that there is an act of Assembly passed this year which covers that entire ground.

Mr. BIDDLE. Mr. President: I cannot understand why, after the very full discussion upon this section heretofore, in which all the advantages and disadvantages were thoroughly weighed, this opposition to it should spring up now. I propose to answer as briefly as I can the objections which are made to the section.

In 1810, the court of common pleas then being unduly pressed by business, a branch court of the common pleas was established which certainly worked satisfactorily for a time. It was confined to the trial of civil issues.

After a while, some fifteen years ago, probably more, in order to bring it in harmony with the other court in which the equity practice was beginning to be considerable, it had equity powers conferred upon it to the very great advantage of the suitors. Some six years ago, the equity powers were taken from this branch court, and recently, within two or three months, they have been re-conferred upon it.

We are told here by a number of gentlemen professing to represent the entire legal interests of the city of Philadelphia, that any change by which this branch

court shall be compelled to discharge all the judicial duties of the parent court from which it springs, will be regarded as an infliction upon the community and something which the bar and the bench of Philadelphia are alike opposed to. So far as I know the sentiment of the people, I do not believe any such thing. I believe it will be regarded as no infliction, but on the contrary will be held an improvement in accordance with the original design of the court and with the desires of the people. The design of that branch court was to give it co-extensive jurisdiction with the common pleas. Now, if you take from the district court all criminal jurisdiction, all equity powers, you leave it a very limited and a very lame affair.

Why, Mr. President, just think of what the Convention is asked to do in regulating this district court to its original narrow jurisdiction. Abroad the sentiment of the whole profession is in favor of blending the equity powers of the courts of chancery with the powers of the courts of common law; and a bill elaborated with a great deal of care and suggested during the past winter by the Chancellor of Great Britain looks in that direction, while we should be stripping our district court of that which it already possesses; and for what? For what it is difficult to understand; either to gratify the mere private wishes of some of the judges in that court, or because it is supposed that it is unadvisable to disturb that which has heretofore performed its part tolerably well.

Now, I, for one, am emphatically for bringing the judicial power of the county of Philadelphia in accord with the judicial power of the rest of the State. No good reason can be pointed out, except that it has so happened during the last fifty years, for keeping these two courts distinct. The narrower the jurisdiction, the narrower the intellectual processes of the court—you really maim and put at a disadvantage a tribunal by depriving it of that which is possessed by other tribunals sitting alongside of it.

And in regard to the administration of criminal justice in the county of Philadelphia, I say unhesitatingly, as the result of a considerable examination into the subject, that it will be an enormous advantage—I use the word advisedly, I do not over-state it when I say an enormous advantage—both to citizen and court to have every judge of the county of

Philadelphia, for at least one month in the year, go into that court and discharge its duties, sitting there long enough to acquire competent knowledge of the business, but not too long to be affected, and I may say infected, by the atmosphere which always hangs over a criminal court, and which sooner or later becomes injurious both to him who practices constantly and to him who presides constantly in such a jurisdiction.

Do gentlemen recollect that the highest judge in the Kingdom of Great Britain considers it no derogation from his office to mingle in the administration of criminal justice, and to try criminal offenders? For my part I cannot imagine any spectacle more calculated to endear the judiciary to a people than to see its chief heads participating in the administration of that justice which goes home to the meanest individual in the community. The moment you put a man above and beyond that, you really declare, so far from affixing a dignity to his position, that he is unfitted for the business which he is selected to discharge. Why should six judges or five judges in the district court undertake to say that they are only to try the civil issues, when the highest judges abroad and the highest judges of the land in this country, from the Chief Justice of the United States and every associate of his court, mingle with advantage to himself and to the whole community in the administration of criminal justice? Let gentlemen reflect upon the result of their actions here. The principle of the amendment is not in accordance with the universal sentiment of the city of Philadelphia, in accordance with the universal sentiment of the delegates who are supposed to represent specially that community here—for I see before me and around me gentlemen who differ entirely with the views of the two gentlemen from Philadelphia who have spoken to day. Why should this question be discussed in the narrow view in which it seems to me to be presented, instead of being looked at in the shape in which it becomes important to gentlemen representing every section of this broad Commonwealth to regard it? Why should we be deprived of this enlarged experience, these broader views which the administration of equity and which the administration of criminal justice gives to a judge in the rest of the State, by being told that in Philadelphia you shall have one court to try all the civil issues, that is the com-

mon law part, and then by a most extraordinary perversion of terms, have the court of common pleas which, according to the amendment of the gentleman who spoke first to-day, is not to try a single common plea between man and man in the city of Philadelphia? I cannot imagine a greater anomaly. What is its advantage? It is that it is always to be supposed that because men are doing the same thing all the time they will do it a great deal better. There never was a greater mistake than that. They do acquire a little mechanical expertness in the business which they are doing every day; but they lose that breadth, they lose that larger experience, they lose the wider views which the administration of equity has given and is continuing to give judges who administer the common law exclusively.

What does this section propose? I am not at all tenacious about the form in which it is presented by the committee, although I believe after having looked at it with some care, and after having had more than one conference, much to my own advantage, with the members of the committee, that the plan proposed by them is the best one, of having four branches co-equal in jurisdiction, with three judges each, because I believe that three is a better number than six. I am not at all tenacious about this, however. What I am tenacious about is the great principle enunciated in this section, by which all the judges in the county of Philadelphia, are made to discharge precisely the same functions as they are in the rest of the State, because I believe in that way they will be better judges and the interests of the suitors will be better subserved. But I am authorized now and here to say that if this Convention adopts the principle of the section as reported from the Committee on the Judiciary, that is to say, the section conferring criminal and equity jurisdiction alike upon all the courts of Philadelphia county, the judges of the district court prefer it in the shape in which it comes from the committee to-day, rather than in any other shape. Why do I say this? There is no objection to repeating what occurred in the interval of the sessions of the Convention. One of the judges of the district court called upon me, and while he told me frankly that the judges of his court would prefer the district court remaining just as it is, (which I do not find fault with them at all for preferring, be-

cause change is distasteful to most people,) yet if there was to be a change, if it was the sense of this House that criminal jurisdiction should be conferred upon them, that the equity powers recently re-conferred upon them should remain, that they should become, as they ought to become, a constitutional court in the sense of the Constitution, and not a mere legislative court, deriving its power from the Legislature alone, and which might be extinguished in a moment, they prefer very much the section in the shape in which it is presented by the Committee on the Judiciary.

I do trust, therefore, Mr. President, that the Convention will not—and I address on this point rather the members outside of the county of Philadelphia than those in it—that the members from the country districts, from the other portions of the State, will not, in the belief that the amendment offered by my colleague who spoke first is in entire harmony with the wants and wishes of the city of Philadelphia, and that the section is not in harmony with those wishes, vote for the amendment rather than the section. If they do they will inflict, in my judgment, a very grievous wound, not only upon the symmetry, which perhaps is a small matter, but upon the efficiency of the administration of justice throughout the State.

No possible good reason, except the old reason of keeping things exactly as they are, can be urged in favor of the amendment, while every philosophic view, every reason taken from the broader ground which should be occupied by this question, every reason by which it is sought to elevate the judiciary by giving them that refreshing contact with all sorts of business, is strongly in favor of the report of the committee in the shape in which the section now stands.

I hope, therefore, very warmly, Mr. President, that the amendment will be voted down and that the report as presented will be adopted.

Mr. NEWLIN. Mr. President: I am opposed to the amendment offered by my colleague, (Mr. Dallas,) and I am also opposed to the section as reported from the committee of the whole. When this matter was before the House on a former occasion, I voted in favor of the section as it now appears on our files; but on reflection, I am convinced that the advantages which it is thought would be obtained by making this change are not sufficient to

overcome the difficulties that will arise from a radical change in the formation of these courts.

If any alteration whatever is to be made, I would favor giving to the district court all of the jury trials, giving them the whole *msi prius* business that is now divided between the two courts, and leave to the common pleas the criminal jurisdiction and equity and *mandamus* and, if you please, *quo warranto* in certain cases. There is another provision which has been adopted in a subsequent section, which provides for probate courts, and that of course will absorb the orphans' court jurisdiction and do away with the audit system.

With regard to the criminal law, there is this practical observation to make: Owing to the impossibility of having a review in the Supreme Court of the rulings upon a trial in a criminal case, the criminal law is to a great extent traditional; and there arises an objection, and a serious one, it seems to me, in bringing in all these new judges of a different court which has different traditions of its own. The court of common pleas, sitting as a criminal court and having almost without intermission, ever since the foundation of the government, carried on all the criminal business, and having its own traditions, is better fitted I think to carry on that branch of jurisprudence than this court, which will be composed of all the judges of the two different tribunals.

There is another objection which did not strike me at first as being so great as it is, namely: the difficulty of having four courts of co-ordinate jurisdiction, each court having its own lists, its own orders, and its own times for taking up, say, equity cases or jury trials, or whatever branch of its varied jurisdiction might be brought before it. We might have three or four different equity lists and we might have cases in number one, number two, number three and number four.

The section as reported is more objectionable perhaps than the amendment proposed by my colleague, because under the provision as reported from the committee, attorneys could select any one of the four courts in which to bring their actions. The consequence would be that those judges who were particularly obliging and courteous and civil would be overwhelmed with business, and the judges who did not want to be over-worked would only have to be a little severe and they would speedily become unpopular

and the other courts would be over-taxed in that manner. Then again the peculiar views of certain judges would become known and certain classes of cases would be brought in particular courts, number one, two, three or four, according to the ascertained views of their judges.

I do not profess to speak by authority for any one, whether for the courts or for the bar, but I am free to say that I think fully three-fourths, certainly more than a majority, of the bar are opposed to any change such as this, and that, all things considered, they would sooner be let alone than have the change now proposed made in the fundamental law.

MR. HANNA. Mr. President: I believe there is a great deal of truth in the old saying to "let well enough alone," and I think it will apply in this case. I have listened very attentively to the argument of my colleague, (Mr. Biddle,) but I must say it has not overturned my conservatism in this respect. I believe that the whole question of what may be termed the local judiciary belongs to the Legislature of the Commonwealth, that it does not belong to the Constitution which we are now about to form. We should not forget that we are laying down a foundation upon which we are to build hereafter. I do not propose to build a structure, but merely ordain a system of general principles. Therefore I am willing to say that the judiciary of the State shall be a Supreme Court, a court of common pleas, and such other courts as the Legislature may from time to time establish. I think that is the just principle, and we should leave the wants, the necessities, and the absolute requirements of the people of the different sections of the State to be supplied by their representatives in the Legislature.

Now, Mr. President, with due deference to the honorable gentlemen composing the Committee on the Judiciary, I say that this is but the introduction of an untried experiment. It is imposing upon the people of Philadelphia, and I may say upon those who are more interested than even the mass of people, I mean the bar of the city of Philadelphia, a system which they have not as yet tried, which they have not yet considered, and which they never for one moment imagined would ever be submitted in the Constitution of the Commonwealth. I believe that the present organization of the courts affords with entire satisfaction. Wherever defects have been found in

the system they have been remedied from time to time by the proper authority, namely, the Legislature.

Why, sir, my memory goes back over our judicial system in the city of Philadelphia for perhaps twenty years. What have we had during those twenty years? My first recollection is that we had a district court consisting of three judges, and before those three judges were tried nearly all, I may say all, the important jury trials brought in the city of Philadelphia. By-and-by it was found that they did not supply the wants of the people, and then an additional judge was added. Then it was found that another judge was needed, and an additional judge was added to the bench, making what we now have, five judges in the district court.

Again, the common pleas within that length of time consisted of three judges. The business of the county grew, and it was found necessary to increase their number, and so during the last ten years two additional judges have been added to that bench, making five, so that we have five judges in the district court and five in the common pleas, and these ten judges have their proper jurisdiction, well understood by the bar and well established according to proper rules and regulations.

I may say that the district court of the city and county of Philadelphia is the popular court. Why? Because the bar bring nearly all their original cases in that court. It may average during a year twelve thousand original cases in the district court, nearly three thousand in a term. They have jurisdiction from one hundred dollars to any amount. So that we may say that this is the most popular court and the one most sought by the bar of Philadelphia. The only complaint that can be made in regard to the business of that court is that perhaps it is overcrowded, that cases cannot be reached. What is the remedy? The Legislature can give us the remedy; but now it is proposed to have four courts sitting at *nisi prius* trying cases brought before them.

Now, take the common pleas; look at their extensive jurisdiction. Their *nisi prius* business, however, amounts to but very little. With the appeals from our aldermen, and those appeals entered upon the appearance docket, together with the small attachments that are brought, the small replevins, and everything of that kind also entered upon the appearance

docket, they will not average over two thousand in a single year; showing that the mass of the business is brought by the bar in the court which they most regard.

Now, what do we propose to do, not by the request of the bar of Philadelphia? I wish you, Mr. President, to notice that fact. No petition has been presented here, no request whatever asking for such a radical change; but the bar are content with their present system. Now, what do we propose to do? Abolish the district court and constitute four separate courts of common pleas. If it was proposed to establish one court of common pleas, I perhaps would not see so much objection; but here we propose to establish four courts of exclusive jurisdiction of all proceedings at law and in equity commenced therein.

We are told we must have uniformity. Is that uniformity? You propose to have one court of common pleas in the interior throughout every county or every district; but here you give us in one single county four separate courts of original and exclusive jurisdiction. I respectfully submit to my friend from the city (Mr. Biddle) as a plain, practical, business-like question, how are we going to get along with four courts of exclusive and original jurisdiction? Now we have a plain, simple system. We have our five judges of the common pleas, and they at certain times have their courts in banc. Where will be your court in banc with four separate courts of common pleas? How will you have it? Are the three judges to be called the court in banc or is each court or every two of them to constitute a court in banc? Why, sir, I look on this system as fraught with the most direful confusion and productive of nothing but dissatisfaction and trouble.

At present we have a plain simple system. Our business is so comprehensive and so easily understood that it works smoothly and nicely. We have our respective courts in banc sitting from time to time with five judges, or a majority of them, as it may happen to be. We know exactly what we have and what we are to expect; but give us four courts, one, two, three, and four in the county of Philadelphia, and how, I pray, will the bar manage to control and direct their practice? I do hope, Mr. President, that this change will not be forced upon the bar and community of Philadelphia.

Mr. BULLITT. It seems to me, Mr. President, that the section as proposed is

very objectionable, and one which in practice will be found exceedingly irksome to the citizen as well as to the bar. It is always, as it appears to me, unwise to interfere with that which has been established, unless you are sure that there is some serious evil which can be overcome by something which you are introducing as new. As a general rule, the community adopt that which is best adapted to their wants and their interests. It was found in the history of the business of the city of Philadelphia that a district court was a desirable institution to engraft upon the judicial system of the city. This was adopted. At one time the act establishing the district court was repealed. Within a very short time afterward it was re-established because the people of the city found that it was so serious a deprivation to do without it. Now, I doubt very much whether you can introduce any system of courts in the city of Philadelphia which will work better than the system we have now, a district court and a court of common pleas. But if we are to have a court of common pleas introduced in lieu of the district court and the court of common pleas as we have it now, then I think every man who will look at the subject must be persuaded that we ought to have but one court of common pleas, and if we are to have a court of common pleas, do not let us have four or five or any other number beyond one, introducing, as it seems to me, confusion; a system under which any man attempting to practice would find himself constantly embarrassed, by being dragged first into one court and then into the other. I see no reason for having four courts when one would answer the purpose.

I do not intend to say any more on this subject except that I have not met with any gentlemen except those who have expressed their sentiments on this floor as favorable to this section, as applicable to Philadelphia, who were in favor of it, but on the other hand I have met a large number who condemned it as being exceedingly disadvantageous and unwise.

Mr. WOODWARD. Mr. President: When this subject came before the Judiciary Committee, of which I had the honor to be a member, it was strongly represented to that committee that the bar of Philadelphia desired the district court to be dispensed with, and those representations made an impression on my mind. I supposed they were correct, but subsequent

intercourse with judges and lawyers led me to doubt the correctness of that statement. The committee had a meeting in this room at which all the judges of the district court attended, and also some of the members of the bar spent an evening with us on this subject, and in listening to those gentlemen, I understood them all to be opposed to the abolition of the district court, and I believe now, from my intercourse with Philadelphia lawyers, that Mr. Newlin stated it very moderately when he said three-fourths of the bar of this city are opposed to the plan proposed by the Committee on the Judiciary. I think it is a very moderate statement to say three-fourths and those the most practical men at the bar, the men doing the largest business at the bar, with some exceptions. No gentleman can be produced whose opinion is entitled to more respect than Mr. Biddle, who has addressed the Convention, but he is almost alone, so far as I know, among the principal leading practitioners at this bar, who held those opinions. The gentlemen around me, and particularly the last gentleman who addressed you, (Mr. Bullitt,) have expressed much more truly the current opinion of the bench and the bar of Philadelphia, as I understand it, than Mr. Biddle has.

This conclusion of fact (because this is matter of fact) has been reached after long and careful investigation, from the best evidence which could be brought before it, and in my opinion it ought to decide this question. If there are any men on the face of the earth who know what is good for this vast community, on the matter of courts, it is the judges and the lawyers who are familiar with the administration of justice in this State. I say that, in my opinion, their judgment ought to decide this question. It has been the rule with me, and it was the rule all through in the report which I made as a minority from the judiciary committee. I maintained and retained the district court, because, as a matter of fact, I had satisfied myself that such would be the desire of the bar and the bench of the city of Philadelphia. I to-day have no doubt on this question, and the Convention should understand that if this report of the chairman of the Judiciary Committee is adopted, it will establish four courts here in Philadelphia and it will disappoint and disoblige the great body of the practitioners at this bar. Let nobody vote for it under the impression that he is do-

ing what the judges and lawyers of Philadelphia desire him to do. That will be found out soon enough if this is adopted.

But while I know very positively that the opinion of the bench and the bar of Philadelphia is against this four-headed court that is proposed by the Committee on the Judiciary, I have a difficulty in supporting the amendment offered by the gentleman before me (Mr. Dallas) because in his amendment he denies to the district court all equity powers. The Legislature of Pennsylvania have conferred upon that court, forced upon them—

Mr. BIDDLE. Re-conferred upon them.

Mr. WOODWARD. Re-conferred equity jurisdiction. When once they had conferred it and a bill was reported to the Legislature destroying it, the public demand compelled the Legislature to re-confer it, and the equity jurisdiction in that court now exists. When we look to this vast population, to the interests that are at stake in our courts of justice and the vast increase in equity practice in our courts, no man ought to deny that the judges of the district court ought to be the chancellors of this city. Almost all great questions that come before our courts now take that form. I suppose that there are ten thousand dollars of value litigated in forms of equity for every one that is litigated in forms of common law.

Mr. BIDDLE. That is certainly true.

Mr. WOODWARD. And this is growing, sir, I am sorry to say, very rapidly. I do not believe in this extravagant equity jurisdiction; but it is the fact, and we have to deal with it. It is growing every day; and now to commit that vast jurisdiction for this vast population to the judges of the common pleas alone is neither wise nor just.

With the court of *nisi prius* abolished and the judges of our common pleas very much occupied with criminal cases, the latter are to become the only chancellors, for this vast community. I cannot vote for the amendment of the gentleman from this city, (Mr. Dallas,) while it contains such an unreasonable provision as that. I told him that if he would strike that out I would vote for his amendment, because I think it is preferable to the report of the Committee on the Judiciary; but with that clause in it, which takes away the equity jurisdiction the district court now possesses, I cannot vote for the amendment. If some gentleman will move to strike

that out, I will vote for the amendment with great pleasure.

Mr. HANNA. If the gentleman from Philadelphia will give way, I will move that amendment.

Mr. WOODWARD. I will give way for that purpose with pleasure.

Mr. DALLAS. Will the gentleman allow me to make an explanation?

Mr. WOODWARD. Certainly.

Mr. DALLAS. My explanation is that at the time it was spoken of to abolish the district court, the matter was canvassed by some members of the bar and by the judges of both the district court and the court of common pleas. It was supposed that the two courts could be kept standing as they are now if the district court had all the common law trials and the court of common pleas had all the equity jurisdiction, but if you divide the equity jurisdiction between them there will not be enough left for the common pleas to do.

Mr. BIDDLE. That is a total mistake as far as the *nisi prius*—

Mr. DALLAS. I say that on the authority of the judges of both courts.

Mr. BIDDLE. I say the contrary on the authority of my own experience. It is utterly preposterous to make the statement that now, since the *nisi prius* is to be abolished, the court of common pleas can attend to the whole equity business of Philadelphia county.

Mr. DALLAS. I put the experience of the gentleman from Philadelphia against the experience of the bar of Philadelphia and all the judges.

Mr. HANNA. I move to amend the amendment by striking out in the first paragraph all after the word "present."

Mr. CASSIDY. I should like to say a word or two on the subject now before the House. I am wholly opposed to the section of the report of the Committee on the Judiciary now before us and trust that the section will not be adopted. I am willing to take the proposition of my colleague from Philadelphia (Mr. Dallas) if I cannot get any better; but my earnest desire is to so arrange this amendment as to let the courts be as they now are, and for many reasons. Among others, I am in favor of giving equity jurisdiction to the district court the same as to the common pleas, because I look upon the local courts as the nurseries from which the Supreme Court is hereafter to be supplied, and unless judges are to be trained in the lower courts in equity practice and in equity

learning, they will be unable to pass intelligently upon the most important business that can be brought before the appellate court. I am in favor of giving such jurisdiction to these courts as they now have in order in some degree not only to fit them for the proper discharge of their local duties, but to make the places of the local judges such training schools as will enable them to add lustre to the judiciary and reflect credit on the State.

The proposition that is made here seems to be based on the general doctrine that there must be a change in everything. Change is not always reform, and I confess, in my place here, that I am one of the few (if they be a few) who approach to lay hands on the judicial system of Pennsylvania with a great deal of hesitation. The judiciary has grown with the history of the State, has been tested in every way; its purity has never been questioned, its integrity never doubted, its ability never disputed. I say that I look upon it as something very near sacred, and that I will not put my hands on it unless the overwhelming demand of the people in the way of reform requires it, and I have listened in vain for the utterance of such a demand.

Upon what earthly reason is it that we are to change these courts? Nothing has been said except the symmetry of the system, and my friend from this city (Mr. Biddle) thinks there is no force in that, as there undoubtedly is not. If there be anything in it I have only to say I care not what names you call these courts; I do not care whether the district court of Philadelphia, as it is now constituted, shall be called the common pleas or not. I want simply the organization of the courts, the practice of the courts, the arrangement of the business of these courts, to be maintained as they now are.

Now, what is proposed by the Committee on the Judiciary in the place of these respected and tried courts? Why, it is to make four courts of concurrent jurisdiction, composed each of three judges, so that it will be in the power of these judges at any one time in the city of Philadelphia to have twelve courts running—three criminal courts, three judges sitting in equity, at different places, three judges sitting at different places to try civil issues, and three other judges scattered over the city exercising the various branches of the original jurisdiction committed to them. How can suitors or law-

yers give their personal attention in each one of these courts held at the same time? It has been said twittingly to our profession many and many a time that it is within the power of a lawyer to divide his client's estate, but I never could understand how he could divide himself sufficiently to practice in all these courts at one time; and yet that is exactly what this comes to.

And it involves another proposition which it seems to me will not bear the test of reason; and that is, it involves the creation of one office for its records, the prothonotary of one court, one chief officer. Think of it! In that office there are to be filed and regulated and docketed equity proceedings, common law forms, road-law matters, and the indictments, pleas and records of the criminal business of the county. What a conglomeration, and what a marvel must be the man who ever worthily fills this place; shall we ever look upon him?

But some of our friends have said there is a little merit in this proposition because it brings new blood or fresh judges into the criminal court. The terms of the criminal courts in this county are monthly; hence it brings one of these fresh judges there not quite thirty days in every year. I would like practitioners here to tell me how much criminal law a man in this time can acquire who never tried a criminal cause, and I doubt very much whether some of them ever read a book upon criminal law, and who never presided or sat in a criminal court. How much justice would such a man be able to administer according to law in an experience every year of thirty days—less than one year in his full term of ten years? It would work the most practical and rank injustice.

These are the thoughts that occur to me as I have hastily passed over this subject. But I desire to call the attention of this Convention to the fact that no one is asking for this. This is not a reform called for by the press or the people. It is not sought for by petition or asked for by bench or bar. On the contrary, all the papers that have been presented have been protests against it, and a large majority of the bar are prepared to-day to protest most earnestly against it. If the bench were to be considered at all in this thing, and I am very sorry they have been referred to at all, then my colleague (Mr. Simpson) has authorized me to say for this very district court, so of-

ten spoken of on this floor, that within an hour they were a unit for my proposition to allow our local courts to remain as they are now. It was told to this Convention in committee of the whole very decidedly by a gentleman whose absence from his seat at this time I very much regret that the judges want this. I say in addition to the authority of my colleague, for three of the judges of the district court whom I have had personal interviews with, that they are opposed to this present proposition, and I say for every judge of the common pleas that they are all opposed to it. Much more might be said, but I had the honor to submit some views on this subject when in committee of the whole, and in this heated period I forbear inflicting additional remarks. It only remains to say that the Philadelphia delegation in this Convention, in the proportion of eighteen out of twenty-two, earnestly protest against any interference with the courts of this city as now organized.

Will it be forced upon our people against their and our consent? If so what avails it that the representatives of the people present their views, and of what value all the talk that we are here in Convention to so organize the government that the real majority of the people shall be heard in the government?

Mr. ARMSTRONG. Mr. President: The gentleman who has just addressed the Convention regards the judicial system of Pennsylvania as so sacred that he would lay no hand upon it; and yet he is the author of the most monstrous proposition which has been made in any State of the Union, which is to allow an appeal on writ of error, as in civil cases, in every criminal proceeding, however trifling, tried before the courts. He proposes by the section he offered in committee of the whole by a single stroke to impose upon the judges this most onerous, oppressive and useless duty in violation of every precedent and the uniform practice of all the States and of England, from the institution of the judicial system till now.

Mr. HUNSICKER. Will the gentleman allow me to explain? The gentleman from Philadelphia (Mr. Cassidy) is not the author of that proposition. It belongs to me. [Laughter.]

Mr. ARMSTRONG. The gentlemen may divide it between them if they have any rivalries as to the honor of introducing it. [Laughter.] It is sufficient that it lies at the door of one of them.

Now, sir, let us look at the necessities for this change. The gentleman says that change is not reform. Admit it; no one has ever claimed that it is. He asserts there is no necessity. Let us see if he is correct. When the courts were organized in Philadelphia a single judge was quite sufficient—but as business increased the court grew from a single judge to three, and as population and business increased the courts began to expand, just as the necessities of business required additional judicial force. By such necessities the number of judges from time to time increased, till at last it was deemed expedient to supplement the common pleas of Philadelphia by establishing the district court. What is their condition now? The business of the city has so increased that there is an admitted necessity for additional judges. The business evidently requires more judicial force. The question is just now and here upon this Convention: How shall the judicial force be kept commensurate with the continued increase of business in this great city, without so increasing the number of judges as to render the courts cumbersome and inconvenient? If you divide them into two courts, common pleas and district court, and give them six judges each, you make an unwieldy court in both jurisdictions; you make the court too large for convenience in the transaction of business, too large for convenient consultation and too apt to be discordant in opinion. Then, again, there is danger in subjecting the courts to unreasonable legislative changes. The district court now is merely a legislative court and liable to whatever changes dissatisfied clients or counsel may induce the Legislature to make; and experience has shown that applications have come from Philadelphia repeatedly to the Legislature to change their courts, now conferring, and now taking away equity powers, as the dominant influence may chance to be.

Now, sir, by the system proposed in the present article a mode is introduced by which the increase of judicial force can be kept always on an equal footing with the increase of business. Three judges are enough for one court. The Supreme Court of Pennsylvania was once constituted with only three judges, first four, then three, and then five. When these organizations are complete the several courts of the city of Philadelphia will have each their separate jurisdiction complete in itself, and when the jurisdiction

of either of such courts has once attached it cannot be diverted except by change of venue as may be provided by law. These courts have been called by the gentleman from Philadelphia (Mr. Dallas) small courts by way of detracting from their importance; but how can a court composed of three judges and transacting the one-fourth of the business of Philadelphia be in any reasonable sense called a small court? It seems to me like an abuse of terms. The business of either of such courts will be quite sufficient to engage the attention of any three judges who may compose it.

But one gentleman from Philadelphia suggests that it ought to be a single court. If so, it would now consist of ten judges, to be increased to eleven or twelve or fifteen, or more, concurrent judges, and all constituting a single court! I can hardly imagine that such an organization could commend itself to any man as the best mode of organizing the courts of a great city. It will be a sort of convention operating by subordinate committees; I care not by what name it may be called, it would be in fact a sort of judicial mob. There is no proper organization of a court that can embrace so large a number where they are compelled to divide in the exercise of their common jurisdiction. Under such an organization we could not fail to find one judge undoing what another had done, or doing what another had refused.

There is then a necessity of organizing these courts upon a basis which shall make them constitutional courts to prevent unreasonable legislative changes and which will also organize them so that the courts themselves shall be capable of expansion with the increase of business, without disturbing the harmony of the system. I know no other mode of doing it than that which the article proposed embodies. The gentleman from Philadelphia again suggests that the whole number of judges be divided into two courts. But this would obviate no difficulty and be open to many serious objections; if you make them two courts of six judges each, the same difficulties would attach to it which the gentleman (Mr. Dallas) deprecates.

But, says another gentleman, how are members of the profession to practice the law where there are four courts? Why, sir, they practice now in three district courts, in one court of common pleas, and many of them in the criminal courts and in the United States court, circuit and

district, and in the court of *nisi prius*. These things are incident to the practice in any large city; it is a consequence of their large and condensed population. In all large cities lawyers do practice in half a dozen or a dozen courts, and do it without any serious inconvenience. Of course it subjects them to some personal inconvenience at times; but it never subjects the business of the courts to inconvenience, and we are here to consult the best interests of those courts in their relations to the business of the people and not what may, perchance, best promote the personal convenience of lawyers.

This system then is a necessity cast upon us by reason of the increase of business, and of the manifest propriety of so organizing these courts that no further increase of business necessitating an increased number of judges shall distort and disturb the judicial system of the State. We propose to harmonize the judiciary of the State in all its parts, in Allegheny and in Philadelphia, and elsewhere, that we may all be under the same judicial system, all the lawyers understanding its practice and the people understanding distinctly the course of judicial procedure which is to determine their rights. And, sir, this is not a local question. The increase of business in the State and the increased facility of intercourse by railroads and telegraphs that has so bound together the general business of the State, make this a State question and not a local question. Gentlemen from the country have much business to try in these courts, and a very large proportion of the business in them arises directly or indirectly out of their business relations and intercourse with the country. The people of the entire State are interested, and I repeat, sir, it is not a local question. We from the country have a right to say that your courts shall be organized upon a basis which shall harmonize with the judiciary of the State at large.

Then, again, it proposes a system by which the judgments of record shall all be in one place. I was told to-day that it requires seven distinct searches now in the city of Philadelphia before a title can be certified against incumbrances.

Mr. HANNA. There are only three of those court offices.

Mr. ARMSTRONG. If there are, as the gentleman says, only two or three, the argument still remains that it is better

that there should be but one, because it is easily practicable.

But it is said that these courts of co-ordinate jurisdiction may interfere with each other. The second section distinctly prohibits any such interference, and requires that when the jurisdiction once attaches it shall remain fixed and permanent in that court and cannot be taken away, except, as I have said, by a change of venue.

As to the position of the judges on this question, to which reference has been made, I may say that I have conferred with several of them, some of whom have called upon me on the question. I have letters now in my desk from lawyers of distinction in this city in favor of this plan. This very day I had occasion to go to the office of a lawyer of prominence in this city; I met three lawyers there; they were discussing this question, and two of them were decidedly in favor of this plan. But, sir, this mode of counting by suppositions and guesses of what other people do or do not think is not the way to settle a question of this importance. The district court judges, I believe, take the position that they would rather be let alone as district judges; in other words, that their courts shall not be changed. I understand them so to say; but I understand with equal distinctness that this Convention is determined that there shall not be a separate district court anywhere in the State, but that all shall come within the same rule and be within the powers and jurisdiction conferred upon the courts of common pleas. This being so, three of the judges of the district court have distinctly informed me, and two of them have written to me on the question, and I have their letters in which they say that if the district court is to be changed at all, they want the change to be made upon the basis of the report of the committee. They regard it as the most efficient, the most simple, and the best plan that has been suggested. I do not wish to misrepresent them, and I repeat they desire that the district court shall not be abolished, but if abolished they want the plan of the committee to stand.

There are other reasons for it. The administration of the criminal law in this city as the committee have reason to believe, has not been entirely satisfactory. It is not worth while to say why, nor do I fully know, but it was repeatedly represented to the committee that the admin-

istration of criminal law in this city required some change. The district judges do not object to participate in the criminal administration. So some of them have said to me. They do not object on that ground. The common pleas judges are now exercising every jurisdiction known to the law, whether criminal, in equity, or at law, and the judges of the district court, when required to exercise the same jurisdiction, can do it with equal facility and administer it with equal success and justice. Let those judges take the same range of judicial administration and judicial thought that the judges of the courts of common pleas take, and they will be found, all of them, exercising these functions of every kind with larger advantage to the State and with a better, more prompt and ready administration of justice for this city.

I believe that I have thus gone over, briefly, many of the points, which in my judgment ought to be conclusive on this question.

The amendment to the amendment which is now pending, if it were successful, would leave the amendment of the gentleman from Philadelphia (Mr. Dallas) to read simply thus: "In the city of Philadelphia the district court and the court of common pleas and the jurisdiction, powers and duties of said courts shall remain as at present;" that is to say, it would make them constitutional courts without power in the Legislature to change them even in their jurisdiction and powers. Certainly it cannot be the intention of this Convention to constitute a court which the Legislature has no means of controlling, either as to its jurisdiction or powers; and yet if the amendment proposed were adopted it would leave the courts cramped within the jurisdiction which they now exercise, and without power anywhere to modify its organization, either by adding to or taking from its jurisdiction.

Then the third paragraph of the proposed amendment requires that we should put it into the Constitution that the Legislature shall provide for the employment of phonographic reporters. I am opposed to putting that into the Constitution, even assuming it to be of any general necessity. It should be a legislative and not a constitutional requirement. There are many courts where it ought to be done and done promptly, and the courts of Philadelphia among them. The Legislature should do it; but we should not encumber the Con-

stitution with provisions of that kind which are so appropriately within the province of the Legislature.

This question was so fully debated when it was before the committee of the whole that I believe it is not necessary to discuss it further now. I regret exceedingly the absence of the gentleman from Philadelphia (Mr. Cuyler.) I understand his views on this question to be that he accepts the proposition as it stands reported from the committee, but prefers that the district court and the *nisi prius* (and he coupled them together) should both remain as they are, but both those courts are anomalies in our judicial administration and ought to be abolished. They both have been attached to the judiciary as temporary expedients, and now the gentleman would have us perpetuate them under the sanction of the Constitution. I believe the time has come to so establish the judiciary of Pennsylvania that it shall be a unit in its organization, and that we shall not allow any section of the State to engraft upon it anything which will disturb the harmony of its organization. I am not complaining of the administration of the courts under the district judges of Philadelphia, for I believe them to be wise and good judges and the law well administered; but it will be equally well administered and with much greater facility and in much greater harmony with the whole judicial system of the State when we have made them common pleas judges, exercising all the powers which appertain to the jurisdiction of all the other judges of the Commonwealth, and when we have so divided their jurisdiction that it may be by each court conveniently exercised with such distinct and separate jurisdiction as will make each court solely responsible for its own administration.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. HUNSICKER. I call for a division of the amendment.

The PRESIDENT *pro tem*. The pending question is on the amendment of the gentleman from Philadelphia (Mr. Hanna) to the amendment, which is not susceptible of division.

Mr. HUNSICKER. I referred to the other amendment.

Mr. HEVERIN. As a representative of the locality whose necessities are so tenderly recognized and specially contemplated by the provisions of the pending section, I desire to express not only my

own convictions but what I believe to be the unanimous wishes of the judiciary and the dominant sentiment of the legal profession of Philadelphia. And I do so without the hope of adding anything of virtue or effect to the remarks submitted by my colleague, (Mr. Cassidy,) indicating the objection of those directly interested to any interference with a system sanctioned by experience, endorsed by practice and endeared by beneficial results. I fully accord with the distinguished delegate from Philadelphia who has just taken his seat, (Mr. Biddle,) in the general abstractions which constituted the basis of his argument. I agree with him in his advocacy of the philosophy which discerns virtue and worth in a broader comprehension of all the questions which enter into the consideration of this subject. I am confident that the application of the principles elaborated by him would be in harmony with a perfect dispensation of justice, and would no doubt render the administration of criminal jurisprudence more secure against the evils anticipated.

But, Mr. President, his argument, though logical and convincing, is purely theoretical, and is directed at no existing evils requiring correction. It rather comprehends remote probabilities that may be fruitful of harm, and although ingenious, it is proffered simply in support of a questionable and dangerous experiment conceived for circumventing abuses not suffered but only apprehended. We cannot afford to introduce radical changes merely because we are apprehensive of wrong. We should not lay ruthless hands on any institution that has passed through the tests of protracted existence simply because we think, under anomalous circumstances, it may possibly become prostituted and demoralized.

My colleague (Mr. Cassidy) has well said that no one has ever complained of the *system* under which justice is administered in Philadelphia. What gentleman who defends the report of the committee can utter a complaint against our judicial system? What member in the wildest flights of a zealous advocacy can truthfully arraign the present organization of our courts? What single delegate among those who have expended their logic and rhetoric in opposition to this amendment can justify his position by the citation of a single reliable complaint or suspicion against the administration of justice under the present system? If

there ever were complaints they were not against the construction of courts, but such as would arise under any circumstances.

The chairman (Mr. Armstrong) of the committee who presented this report to the Convention informs us that there is very great complaint against the administration of justice in the criminal courts of our city. But I would like to ask that gentleman if the prevalence of those complaints were ever chargeable to the character or official demeanor of our judges? I challenge him or any other delegate to cite a circumstance or recall an incident responsible for such rumors or information that reflects upon the honesty or integrity of our common pleas judges. If the atmosphere surrounding the court of quarter sessions in this city is foul and obnoxious, neither the conduct of our judges or the construction of our courts have contributed to the contamination. But even if they *were* responsible for the information and suspicions that have reached the ears and captured the convictions of the chairman of the committee, how will this section afford the remedy? It does not remove the judges. It does not change the form of procedure. It does not restrict or reform the judicial mind. It simply provides that they shall preside over the criminal court but once instead of twice during the twelve months of the year, a deprivation that the common pleas judges would welcome rather than deprecate.

Mr. RUSSELL. I should like to ask the gentleman a question. I ask him whether he did not submit this proposition to the Judiciary Committee or to the Convention:

“Resolved, That the Committee on the Judiciary”——

Mr. HEVERIN. I will relieve the gentleman of the trouble of propounding any interrogatories in reference to that——

Mr. RUSSELL. “That the Committee on the Judiciary be instructed”——

Mr. HEVERIN. I anticipate the object which prompts the gentleman's interruption, and I will spare him the effort of further interrogation or arraignment, either by a perusal of or reference to the resolution that I introduced during the early sessions of the Convention. I admit that I am the author and mover of a resolution providing for the consolidation of the district court and the court of common pleas of this county, and as far as that is concerned, I am still a warm advocate of the principle which inspired and the ob-

ject which dictated the proposition, and this same principle and this same object underlie the argument of the gentleman from Philadelphia, (Mr. Biddle,) and the realization of this not only commends his remarks to me, but it testifies to the judiciousness that induced my original amendment. While the committee in their report have entertained the literal clause of my resolution, without providing for the preservation of the principle involved, or for the attainment of the benefits contemplated, they have also presented to us something far more objectionable than that which they sought to change. My project was intended to reduce the number of courts and to simplify legal proceeding by substituting one court for the two that now exist. But the report of the Judiciary Committee, while it abolishes the district court, gives us four separate and distinct courts in lieu thereof; and therefore, as the committee refused to regard the purpose of my resolution in diminishing the number of courts, I prefer the next best arrangement and the one most similar to my own proposition. As I preferred one court to two, so I now prefer two courts to four, and in doing so I am consistent with my original purpose as indicated in the records of the Convention.

Now, Mr. President, I do not think the trivial changes that will be accomplished by this innovation will justify the risk of an experiment so radical and hazardous. The unnecessary multiplication of courts of concurrent jurisdiction will inevitably inflict upon the profession an embarrassment and confusion in the prosecution of their business that cannot be atoned for by a realization of all the blessings which the votaries of this section anticipate and have predicted.

Instead of simplifying matters, instead of giving us one great court in which would be present all the elements so eloquently pleaded for by the gentleman from Philadelphia, (Mr. Biddle,) we have presented to us for adoption a provision contemplating a quartette of courts, attuned to monotonous legal harmony, without the desirable variations in construction and jurisdiction that enable the office to be administered with economy in time, convenience to the profession, and under other and valuable facilities that can only exist under a wise classification of jurisdiction and a discriminating division of labor. And I hope the section proposing

such useless complications will be voted down.

Now, Mr. President, these are my reasons for endorsing the amendment offered by my friend from Philadelphia (Mr. Dallas.) First, that there is no complaint and no objection to the courts as they now exist, and that our judges do not want this change, and I think every member from the city of Philadelphia, with the exception, probably, of two or three, will corroborate me in saying that it will not be popular to the bar, and I do hope that this Convention, as this report, or rather as this provision of it, concerns the city of Philadelphia alone, will vote down the section. The chairman of this committee says this is not a local question, but one which applies to the whole Commonwealth; but I beg to differ with him there, for, although the country members may have an interest in the transaction of business in our courts, they can come here and be accommodated at any time, whether we have a dozen courts or one court, but it does specially concern the members of the bar and the judges of the city of Philadelphia, as it comprehends their time and their convenience, and it can only interest country members so far as they may have business in the city courts, and I say that can be transacted as well under one court as four courts or two courts, and I hope this Convention will reject the report and will adopt the amendment offered by my colleague, (Mr. Dallas,) and thus show to our constituents that although we may favor the most radical changes in other institutions of our government, we will not without much reluctance, careful consideration and the most positive assurance of salutary results, assail those which a cherished tradition and venerable age have consecrated to the ardent appreciation of grateful devotees.

Mr. TEMPLE. Mr. President: After the very long debate which has taken place upon this amendment, I feel loth to say anything upon this subject; but I cannot agree with some of the delegates who have supported the amendment of the delegate from Philadelphia (Mr. Dallas.) The principal argument in favor of this section seems to be that it is an innovation upon the old Constitution; that to abolish the district court or to do away with it in the city of Philadelphia is an entirely new experiment, and that we are branching out into a mode of judicial procedure and establishing courts which have been

heretofore unknown in Pennsylvania. I submit that in the Constitution of 1838, as also in the Constitution prior to that, there was nothing said about district courts. Up to 1849 there was no such thing known in the city and county of Philadelphia as a district court. Therefore it seems to me that the objection on that ground is altogether valueless and not worth considering. The old Constitution provides that the judiciary in this Commonwealth shall consist of the Supreme Court, the courts of oyer and terminer and quarter sessions, and the courts of common pleas.

Why are gentlemen fastidious now on account of the district court? Did they see proper to say anything about it when the district court for the city and county of Allegheny was wiped out? Were there gentlemen on this floor from the city of Pittsburgh who came here and said that the people of Allegheny county wanted their district court to remain as it is and as it has been? There was no such argument here in regard to the district court of Allegheny county. Where is the delegate on this floor who is to justify the legislative court for the county of Schuylkill? By the remaining provisions of this article, these district courts all over the Commonwealth have been abolished, and the report of the Committee on the Judiciary furnished us with a judicial system for the State of Pennsylvania which is uniform all over the State.

But it is argued that the judiciary of Philadelphia and the members of the bar of Philadelphia desire a continuance of this court. I am not here authorized to speak for the judiciary of Philadelphia, but I am willing to say to the delegates upon this floor that I am as well authorized to speak for some of the judges, both of the court of common pleas and of the district court of the city and county of Philadelphia, as other delegates are, some of whom have said to me personally that they believed it would be an improvement in the judiciary of the State, if the courts of Philadelphia were to be appointed in such a manner as has been referred to by the resolution offered by the delegate from Philadelphia (Mr. Heverin.) They have declared to me that they are in favor of such a combination of the courts.

Mr. CASSIDY. If I may interrupt the gentleman, I should like to ask the names of those judges?

Mr. TEMPLE. I did not interrupt you when you were speaking.

Mr. CASSIDY. I ask you for your names.

Mr. TEMPLE. I do not desire to be interrupted.

I say that prior to the introduction of the resolution which was referred to a few moments ago, there was a resolution prepared at the suggestion of one of the judges of our courts, embodying the same principle which is suggested and sought to be incorporated in this Constitution. And suppose the judges do desire that these courts shall remain as they are, is that any reason why we should establish a constitutional court heretofore unknown to the people of Pennsylvania? The people of Philadelphia are interested in the judicial system of our county. It has been argued, and very elaborately and eloquently argued, by one delegate, Mr. Cassidy, that the judges of the local courts should be so trained and educated that when they are elevated to the highest court of our State they should be fitted for this position, and in the very next breath he told us that he is desirous of maintaining the district court, a court which knows nothing at all about the criminal practice of our State. Yet he undertakes to argue to this Convention that a judge who is only educated and trained in the judicial practice of the district court of Philadelphia is a proper judge to place on the Supreme Court bench. Are there not grave questions of criminal law now submitted to the Supreme Court? Are not the highest interests of the citizens of the State of Pennsylvania, of a criminal character, brought before the Supreme Court of Pennsylvania, interests with which no experience in the district court has made the judges of that tribunal familiar? Look at the great questions that arise in the settlement of decedents' estates, in the contests upon elections, and other matters unknown to the district court. These are all questions of which the district judges are presumed, and repeatedly presumed by the argument of some gentlemen on this floor, to know nothing at all; and yet these are the judges who are to be educated and fostered above all others to make them judges of the Supreme Court! I believe that such an argument as that ought to have no weight with this Convention, and I trust that it will have none.

Again, it is argued that by the adoption of the report of the committee we shall have four judges to a court and we shall have a dozen courts sitting in the city of

Philadelphia at the same time. Let us see how that is. We have all heard the argument of the gentleman from Philadelphia (Mr. Hanna) in reference to this. We have at the same time been told by him that there are now three district courts sitting in this city, besides the court in banc. We have often two criminal courts sitting besides the court of common pleas; and so we have more courts sitting in Philadelphia now than we shall have under the new system of courts of common pleas if that system be adopted. Will that make the system more complicated? Will any gentleman stand up, as did the distinguished gentleman from Philadelphia, (Mr. Bullitt,) and say that he would not know in what court to proceed with a case, nor before what judge to bring it? The plan proposed by this section places the gentleman at home in any court he chooses to go to. So much for that argument.

I will not speak of that which has been so eloquently and so truthfully referred to by the gentleman from Philadelphia (Mr. Biddle) and also by the chairman of the Committee on the Judiciary (Mr. Armstrong.) I simply rose to say that there is truth in every word uttered by both of those delegates. I merely want to bring these judges together, to bring the judges of the district court into the court of common pleas and give them co-ordinate jurisdiction with the courts of common pleas and allow them to be learned in the holding of the criminal courts; and if you do that you at once purify and dignify the practice of that court.

Mr. MACCONNELL. I hope if the delegates from Philadelphia have any more arguments to offer upon the subject that they will consult the convenience of the members of the Convention by referring to the debates containing their speeches on this same subject before the committee of the whole. It is hardly worth while to repeat them.

I am opposed to this amendment, because it just exactly says to Allegheny county that it may go to thunder. The section as adopted by the committee of the whole does not apply, as the gentlemen from Philadelphia seem to think, exclusively to Philadelphia. It applies equally to Allegheny county; and our friend from Philadelphia (Mr. Dallas) offers an amendment that ignores Allegheny county altogether, that leaves it out in the cold, and we are asked that the Convention shall follow him in that. It

just says to Allegheny county, you are so miserable, insignificant and worthless a thing that we will pay no attention to you; we will take care of Philadelphia.

Mr. HAY. Is it not that Allegheny county can take care of itself?

Mr. MACCONNELL. I agree that she can, unless you tie her hands by a constitutional provision.

But, Mr. President, we have reported here, not from the Committee on the Judiciary, as gentlemen talk, but from the committee of the whole, after mature deliberation, after full and ample discussion, a judicial system that is symmetrical, full and complete. It cannot, in my opinion, be improved; and now it is asked that we shall break in upon it in every section, that we shall destroy its symmetry, that we shall strike it down and build up something else in its place; that we shall ignore it; scout everything that we have done and begin anew. Now, I appeal to members, can we afford to do that? After having spent the time that we have, and after having got into this warm term as we have, can we afford to do it? Would it not be better for us to go on and preserve the symmetry that we have managed, and managed with a great deal of skill, to put together in this report of the committee of the whole, go on and preserve it by just adopting it section by section? That is all I have got to say.

Mr. HANNA. In order that a vote may be taken on the amendment of my colleague, (Mr. Dallas,) I withdraw the amendment I offered.

The PRESIDENT *pro tem*. The amendment to the amendment is withdrawn. The question recurs on the amendment of the delegate from the city (Mr. Dallas.)

Mr. HAY. I have but one word to say, and that is called forth by the remark made by my colleague from Allegheny, (Mr. MacConnell,) with regard to the amendment offered by the delegate from Philadelphia, (Mr. Dallas,) not containing any reference to Allegheny county. Of course, I suppose that omission was made because the delegate from Philadelphia supposed that the county of Allegheny could take care of her own interests, and I have no doubt as long as she is represented by such lawyers as he who was last on the floor she will be abundantly able to do that.

I desire also to say that I have an amendment prepared to make the proposition of the gentleman from Philadel-

phia applicable to the county of Allegheny because of his omission. I do not see any necessity for opposing the amendment merely because it fails to include the county which that delegate does not particularly represent.

Mr. HUNSICKER. I call for a division of the question on the amendment so as to take it by paragraphs.

Mr. LITTLETON. How can there be a division?

Mr. BIDDLE. I do not see how it can be divided.

Mr. MACVEAGH. Let the first division end with the words "as at present."

The PRESIDENT *pro tem*. At the words "as at present" a division can occur. The first division will be read.

The CLERK. It is proposed to vote first on these words:

"In the city of Philadelphia the district court and the court of common pleas, and the jurisdiction, powers and duties of said courts, shall remain as at present."

The first division was rejected, there being, on a division, ayes twenty-two, not a majority of a quorum.

The PRESIDENT *pro tem*. The second division will be read.

Mr. DALLAS. I withdraw the second division, if I am permitted to do so.

The PRESIDENT *pro tem*. The third division will be read.

Mr. DALLAS. I withdraw all for the present if it is understood that I may reoffer the item relating to phonographic reporters hereafter.

The PRESIDENT *pro tem*. The amendment is withdrawn.

Mr. DALLAS. I now move to strike out all after the word "section" and insert:

"In the city of Philadelphia all the jurisdiction and powers now vested in the district court and in the court of common pleas in said city shall hereafter be vested in one court of common pleas, composed of twelve judges, and divided into four divisions of three judges each; which said divisions shall, so far as is consistent with the following provisions, be each a distinct and separate court for all purposes other than those for which it is hereinafter provided that the said court shall act collectively:

"1st. The said several divisions shall have equal and co-ordinate jurisdiction, and shall be respectively distinguished as court of common pleas number one, number two, number three and number

four; and the number of said divisions may be from time to time increased, and the election of judges for such additional divisions be provided for by law, and such new divisions shall be part of the same court and be distinguished by successive numbers.

"2nd. Each of said divisions shall have exclusive jurisdiction of all proceedings at law and in equity to which the jurisdiction of such division shall have once attached, subject to removal from any one to any other of said divisions for such causes and in such manner as may be prescribed by law; but all proceedings at law and in equity shall be commenced in said court of common pleas as one court, and without regard to the divisions thereof; and the assignment and distribution of the proceedings so commenced to and amongst the said several divisions shall be made in accordance with such general rules upon the subject as the said court may from time to time adopt; and upon assignment of any proceedings at law or in equity to any of said divisions in accordance with said general rules, the jurisdiction of such division shall immediately attach thereto. Said court sitting collectively shall, from time to time, make such rules and orders for regulating its practice and business and that of its several divisions as to said court may seem proper, said rules and orders to have the same force as rules of court in other cases; and the said court sitting collectively shall, from time to time, detail one or more of its judges, in turn, to hold the criminal courts of said district, and shall also, from time to time, detail one judge from each division of said court to sit in banc, who, while so sitting, shall exclusively exercise all the powers and jurisdiction of said court for further examination on review of all proceedings, civil and criminal, which shall have been previously brought before said court or any division thereof, and shall perform such other duties and jurisdiction of said courts (not including trial by jury) as said courts may by general rules prescribe. The judgment of said judges, or a majority of them, when so sitting in banc, shall have the force and effect of judgments of the entire court, but no judge shall have a voice in determining any judgment in review of his own decision.

"There shall be but one prothonotary's office and one prothonotary for said court, who, with such assistants as the court may deem necessary, shall be appointed by

the judges thereof, and subject to removal by them.

Mr. BEEBE. Before the gentleman from Philadelphia proceeds I should like to inquire whether this is in print.

Mr. DALLAS. No, sir, it is not.

I do not ask, Mr. President, to be heard for the city of Philadelphia. I ask a Convention of delegates elected by the Commonwealth of Pennsylvania to hear me upon a subject that especially interests nearly one million of its population.

The amendment which I offered before, and which was the report of two out of three of the delegates from the city of Philadelphia, who had the honor to be members of the Committee on the Judiciary, has been voted down. That amendment referred only to the city of Philadelphia. The amendment which I have now the honor to offer refers also only to the city of Philadelphia. I offer it because in my humble judgment, as a citizen of Philadelphia and as a member of its bar, I believe sincerely that the report of the Judiciary Committee is the worst possible system of courts that you could give us for the city of Philadelphia. I offered the first as the agreed sentiment, as I supposed and still believe, of the entire bench of Philadelphia and of twenty out of the twenty-four of its delegates upon this floor. But the Convention here preferred not to give us that amendment. Now, I have tried to draft one which, in my judgment, will be free from the objections to the report as it applies to Philadelphia and which, if adopted, will give us a reasonable judicial system for this city.

The report of the Judiciary Committee provides for four separate courts of common pleas in this county. The amendment that has been voted down provided for the retention, with some change in their respective jurisdictions, of the district court and the court of common pleas, and I offered and advocated it because I prefer two courts with entirely distinct jurisdictions to four courts of precisely identical jurisdictions. The principal and the strongest objection offered to that amendment was that it proposed to make for the city of Philadelphia a system somewhat different from that which prevails throughout the Commonwealth of Pennsylvania.

Now, sir, I have tried to meet and overcome that objection in the amendment now before us. I have tried, while cor-

recting what I supposed to be the errors in the report of the Committee on the Judiciary, to make the amendment that I have now offered not open to the objection that it differs from the system throughout the State, certainly no more so than does the report of the majority of that committee itself. The report of the majority provides for four courts of common pleas. Let any delegate upon this floor, Mr. President, show me any other county or district in this Commonwealth that will have four courts of common pleas. The amendment that I offer proposes one court of common pleas for the county of Philadelphia, the difference being this: That while the report of the majority of the committee recognizes the necessity in Philadelphia for twelve judges, more than is required in any other county or district, it gives her four separate courts of three judges each, while the amendment which I have offered proposes to give her one court of twelve judges, distributed into four divisions; and this necessary division of the court for transaction of business is the only difference which I propose between the Philadelphia system and that of the rest of the State.

Mr. President, the report of the committee would give us four separate courts, and more, as needed, and is open, in consequence, to all the objections which I formerly stated. Under the report of the committee we would have four courts capable of indefinite increase, covering the same territory, population, and jurisdiction, making different decisions upon different subjects. I propose to bring them all within one court, so that when a decision is made in any division the court in banc, sitting as one court, may, under the judgment of the whole court, establish one known local law as to Philadelphia for all its citizens and within all its jurisdiction. This is what you have in every other county and every district in the State, and it is what we have a right to ask for here.

It does not do to reply that the same number of population throughout the State have different courts, and therefore may encounter conflicting decisions, because you will observe that we are here one compact community. Every merchant, every business man, must bring his suit within the city of Philadelphia if his business and residence is here, and he has a right to expect that whether he brings his suit in one court or another within

this county, the decision will be the same and governed by the same rules.

I would take the twelve judges which the majority report accords to us, and put them into a single court. I do not think it is right that every man who brings his suit should select his court. I think that so far from that being a blessing, it is an unmixed and a gross evil. I think that it is of the first importance that counsel should advise their clients upon the law and not upon what they suppose to be the idiosyncracies of judges; and, therefore, that they should not know what judge was going to try their case, but that they should bring their cause with the certainty that it would be decided in accordance with the decisions they had before known to be rendered; hence I would have but one court and not four courts, from which suitors could select.

My amendment provides that every suit in equity or at common law shall be brought here as in the rest of the Commonwealth, simply in the court of common pleas, and not in any particular court of common pleas, as the committee's report would require. Why, sir, the report of the Committee on the Judiciary, so far from avoiding the objection which its chairman stated to my prior amendment, is much more subject to it. So far from enabling counsel anywhere in the State to bring suit within the city of Philadelphia just as it might be brought in any other county, he requires that it shall be brought either in court No. 1, court No. 2, court No. 3, court No. 4, and so on indefinitely; whereas, the amendment that I propose says to all the citizens of this Commonwealth, "bring your suit in Philadelphia as you do elsewhere, in the court of common pleas;" the provision being that "each of said divisions shall have exclusive jurisdiction of all proceedings at law and in equity to which the jurisdiction of such division shall at once attach"—meaning by that that one division shall not make a decision which another division may afterwards reverse—"subject to removal from any one to any other of said divisions for such causes and in such manner as may be prescribed by law; but all proceedings at law and in equity shall be commenced in said court of common pleas as one court and without regard to the divisions thereof; and the assignment and distribution of the proceedings so commenced to and amongst the said several divisions shall be made in accordance with such general

rules upon the subject as the said court may from time to time adopt; and upon the assignment of any proceeding at law or in equity to any of said divisions in accordance with such general rules, the jurisdiction of such division shall immediately attach thereto."

Now, then, you would bring your suit simply in the court of common pleas, and not in one of several courts, and a rule of court would prescribe in which division that case should be in the first instance disposed of. We have that system existing in the county of Philadelphia now. We bring our suits in the district court of Philadelphia, and no practitioner is permitted to know, and so far as I know, no practitioner ever does know in which of four divisions of the court his case is to be tried, or before which of five judges his cause is to be heard. I propose simply to extend that principle, so that hereafter instead of two courts organized upon that principle, we shall have but one, so that our cases shall be brought and our bills in equity be filed simply in the court of common pleas.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. LILLY. I can hardly suppose that the gentleman who has just taken his seat intends to press this amendment upon the Convention with any expectation of carrying it. It may be sensible and may be right and proper; but at this late day of the session, when we are about to take a vote on the section, when the gentleman rises and offers an amendment in manuscript that covers almost as much paper as the whole report of the Judiciary Committee, and that manuscript held by himself, I can hardly think he really expects to have a serious vote upon it.

Mr. DALLAS. Will the gentleman allow me to explain?

Mr. LILLY. Certainly.

Mr. DALLAS. I will state that I had this proposition in print, and would have presented it in committee of the whole but for the fact, notwithstanding the statement of the gentleman from Philadelphia (Mr. Campbell) that I was not here when this matter was considered in committee of the whole, and when I had my only printed copy on my desk this morning it was carried away. I hope, if the difficulty is the want of printed copies, I shall be allowed time to print; for I desire to say to this Convention that I believe I represent what the bar and people of Philadelphia

want, and they are making a mistake against 150,000 voters in refusing to hear this proposition.

Mr. ARMSTRONG. I only desire to make a single remark. This proposition was in print and was considered by the Judiciary Committee. If it was not submitted in committee of the whole, which I cannot now state, it was unfortunate. But it is a plan which proposes to make one court with subordinate committees. That is about the smallest interpretation of it. I do not propose to enter into any discussion upon it.

Mr. BIDDLE. I have only a single remark to make in regard to this subject. It can hardly be supposed that this Convention will believe that the amendment offered in the morning session by the gentleman from Philadelphia, who has just taken his seat, had the almost unanimous recommendation of the bench and of the bar of this city, and that the present project has the same recommendation, for they are as wide asunder as the poles. The present project gives criminal jurisdiction, gives equity jurisdiction, gives road jurisdiction, gives every jurisdiction known to our joint systems of law and equity, to all the courts; and if the unanimous desire of the bench and the bar is to keep the courts separate, how my distinguished friend can get up and say, in behalf of the citizens of Philadelphia, that this present project meets their views exactly, I cannot understand.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Dallas.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the fifth section.

Mr. T. H. B. PATTERSON. One word. Some of the members who have spoken with regard to the city of Philadelphia have said that Allegheny county did not object to this section. Now I say that Allegheny county does not ask for the adoption of this section. On the contrary, all that Allegheny county wants with regard to the judiciary is to be let alone as she is now. As far as I know the sentiment of the leading members of the bar and the general sentiment of the bench in our county, it is that it is best to leave that alone which is not doing any serious damage, and as there is no great reason for any change in our judicial system, that it is best to leave it as it is now constituted. I merely give that as my opinion of the

wishes of the leading members of the bench and the bar of our county, and according to that I shall vote against this section and hope it will be voted down.

Mr. HUNSICKER. I simply desire to say one word against this section—

Mr. MACCONNELL. I will inquire whether the gentleman has not spoken already on this subject?

The PRESIDENT *pro tem*. Not on this question.

Mr. HUNSICKER. If the gentleman from Allegheny desires to make a speech I will yield to him.

The PRESIDENT *pro tem*. The delegate from Montgomery will proceed.

Mr. HUNSICKER. I only desire to say that, as I understand this section, it fixes irrevocably by the Constitution a judicial system for Philadelphia, for in the fifteenth line these words occur: "And the Legislature is hereby prohibited from creating other courts to exercise the power vested by this Constitution in said courts of common pleas and orphans' courts." I do not believe that there has been any demand by the public for the abolition of the present judicial system prevailing in the counties of Philadelphia and Allegheny, and for that reason I shall vote against this section.

Mr. CORSON. I supposed this to be a Philadelphia difficulty to be settled by the delegates from this city; but if it be a free fight I desire to say that gentlemen will do well to adopt the report of the committee, for the distinguished lawyers who directly represent Philadelphia here are divided and cannot agree. I submit, therefore, to my country colleagues that it is the part of wisdom in us to take the verdict of the distinguished juror-jurists who compose the Judiciary Committee, and adopt it as the law on this question, especially as it comports more nearly than the amendment with the judicial system throughout the Commonwealth.

The PRESIDENT *pro tem*. The question is on the adoption of the fifth section.

Mr. HANNA. On that question I ask for the yeas and nays.

Mr. WORRELL. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Barclay, Beebe, Biddle, Bowman, Boyd, Broomall, Brown, Calvin, Campbell, Corbett, Corson, Cronmiller, Curry, De France, Elliott, Fulton,

Guthrie, Hall, Hay, Hazzard, Hemphill, Landis, Lilly, MacConnell, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Purman, Purviance, Sam'l A., Reed, Andrew, Reynolds, Russell, Sharpe, Struthers, Temple and Wright—44.

N A Y S .

Messrs. Bailey, (Huntingdon,) Bardsley, Black, Charles A., Black, J. S., Bullitt, Cassidy, Church, Curtin, Dallas, Darlington, Edwards, Gibson, Hanna, Heverin, Horton, Hunsicker, Kaine, Knight, Lawrence, Lear, Littleton, M'CLean, Mann, Newlin, Niles, Patterson, T. H. B., Read, John R., Rooke, Ross, Stanton, Walker, Wetherill, Jno. Price, Wherry and Worrell—34.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bannan, Bartholomew, Bigler, Brodhead, Buckalew, Carey, Carter, Clark, Cochran, Collins, Craig, Cuyler, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Finney, Funck, Gilpin, Green, Harvey, Howard, Lambertson, Long, MacVeagh, M'Camant, M'Culloch, M' Murray, Mantor, Metzger, Parsons, Porter, Pughe, Purviance, John N., Runk, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—55.

The next section was read as follows:

SECTION 6. Each court shall have exclusive jurisdiction of all proceedings at law and in equity commenced therein, subject to change of venue as hereinafter provided.

Mr. ARMSTRONG. I move to amend, in the third line, by striking out the words "hereinafter provided" and inserting "may be provided by law."

The amendment was agreed to.

The section as amended was agreed to.

The next section was read as follows:

SECTION 7. For the city of Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts, to be appointed by the judges of said courts, to hold office for three years, subject to removal by a majority of the said judges. The said prothonotary shall appoint such assistants as may be necessary and authorized by said courts, and he and his assistants shall receive fixed salaries, to be determined by law and paid by said city, and all fees collected in said office, except such as may be by law due

to the Commonwealth, shall be paid by such prothonotary into the city treasury. Each court shall have its separate dockets except the judgment dockets, which shall contain the judgments and liens of all the said courts as are or may be directed by law.

Mr. S. A. PURVIANCE. I move to amend, by striking out in the second and third lines "to be appointed by the judges of said courts and to," and in lieu thereof to insert the words "who shall," so as to make it read:

"For the city of Philadelphia there shall be one prothonotary's office and one prothonotary for all said courts, who shall hold office for three years."

Mr. LITTLETON. Mr. President: I trust that that amendment will not be adopted. I think this matter was discussed most thoroughly at the proper time; and for the reasons then given, which were satisfactory at that time, I trust that the section at least in this respect as reported will be adopted. It is hardly worth while for me to detain the Convention by giving reasons why this should be done; but I do think that the courts of justice, having the power and jurisdiction which we have conferred upon these, should at least have the poor privilege of selecting the chief officer to enter their decrees.

Mr. S. A. PURVIANCE. I am induced to offer this amendment for several reasons. One is that the report of the Committee on County, Township and Borough Officers, which report has passed second reading in this Convention, makes a general provision for the election of all county officers, including prothonotaries. Now what is the reason why we shall make this exception in reference to the city of Philadelphia? Why shall we confer upon the judges of Philadelphia a duty excessively unpleasant and one which every man must admit drags them into the slough of politics, for, as a matter of course, amongst numerous aspirants, as there will be in the city of Philadelphia, containing a population of nearly seven hundred thousand, the judges will be courted; these twelve judges will be subject to innumerable bantering (?) from time to time until they make the selection. I do think it is the exercise of the most dangerous power that could be vested in the judiciary of the Commonwealth.

Mr. ARMSTRONG. This question was very carefully considered, and Philadelphia was made an exception by what seemed to be almost the unanimous de-

sire of the representatives of Philadelphia on this floor. The same concession would have been made to Pittsburgh if her delegates so desired, which was for them to elect. This is the only exception in the State; and there seems to be good reason for it, and it was the judgment of the committee of the whole upon full argument of the case.

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. S. A. PURVIANCE. On that I call for the yeas and nays.

The PRESIDENT *pro tem*. Is the call sustained?

More than ten members rose.

The PRESIDENT *pro tem*. The call is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Alricks, Beebe, Campbell, Corson, Edwards, Ewing, Fulton, Guthrie, Hay, Knight, Lawrence, Lear, MacConnell, Mann, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Ross, Stanton, Struthers and Walker—22.

N A Y S .

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bardsley, Biddle, Black, Charles A., Black, J. S., Bowman, Boyd, Broomall, Brown, Bullitt, Calvin, Cassidy, Church, Cronmiller, Curry, Curtin, Darlington, De France, Elliott, Gibson, Hall, Hanna, Hazard, Hemphill, Heverin, Horton, Hunsicker, Kaine, Landis, Lilly, Littleton, M'Clean, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Patton, Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Temple, Wetherill, Jno. Price, Wherry, Worrell and Wright—53.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bannan, Bartholomew, Brodhead, Bigler, Buckalew, Carey, Carter, Clark, Cochran, Collins, Corbett, Craig, Cuyler, Dallas, Davis, Dodd, Dunning, Ellis, Fell, Finney, Funck, Gilpin, Green, Harvey, Howard, Lamberton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Mott, Newlin, Parsons, Porter, Pughe, Purviance, John N., Runk, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Van Reed, Wetherill, J. M., White, David N.,

White, Harry, White, J. W. F., Woodward and Meredith, *President*—58.

The PRESIDENT *pro tem*. The question is on the section.

The section was agreed to.

The PRESIDENT *pro tem*. The eighth section will be read.

The CLERK read as follows:

SECTION 8. The said courts in the city of Philadelphia and county of Allegheny, respectively, shall from time to time, in turn, detail one or more of its judges to hold the criminal courts of said district in such manner as may be directed by law.

Mr. EWING. I would like to call the attention of the chairman of the Committee on the Judiciary to a question connected with this section. We have already provided that there shall be courts of common pleas in Philadelphia and Allegheny, in Philadelphia four, in Allegheny two. Now, in this section it is proposed to provide that these courts shall, in some manner to be provided by law, attain the power to hold the criminal courts of the county. What is to become of the quarter sessions business, a large amount of which is not criminal—roads, election cases and the large amount of business known in our county, and I presume in Philadelphia county, as the miscellaneous business of the quarter sessions court? Which branch of the common pleas is to have the jurisdiction of that business? I do not think it is provided for, and it is likely to give rise to trouble. I call the attention of the chairman of the Committee on the Judiciary to that.

Mr. ARMSTRONG. I think there is no difficulty about it. It is certainly under the power of the law. If the gentleman has any amendment to suggest that will improve the section, the Convention will doubtless be very glad to hear it. I do not think of any amendment which will meet it, and I do not think there is any necessity for it.

Mr. EWING. I am satisfied there will be trouble about it.

The section was agreed to.

The PRESIDENT *pro tem*. The ninth section will be read.

The CLERK read as follows:

SECTION 9. Every judge of the court of common pleas shall, by virtue of his office, and within his district, be a justice of oyer and terminer and general jail delivery for the trial of capital and other of-

fenders therein, and shall be a justice of the peace therein as far as relates to criminal matters, and shall be competent to hold the court of quarter sessions of the peace and the orphans' court thereof.

The section was agreed to.

The PRESIDENT *pro tem.* The tenth section will be read.

The CLERK read as follows:

SECTION 10. In every criminal case the accused, as well as the Commonwealth, may remove the indictment, record and all proceedings to the Supreme Court for review in the same manner as civil cases are now removed and reviewed; but such removal shall not, except in capital cases, be a *supersedeas* unless the judge before whom the case was tried shall certify that the same was a proper one for review.

Mr. ARMSTRONG. I move to amend, by striking out the words "criminal case," in the first line, and inserting "capital case," and adding "in such other criminal cases as may be authorized by law." The clause as amended will read: "In every capital case and in such criminal cases as may be authorized by law."

Mr. HUNSICKER. Mr. President: We had fair notice from the chairman of the Judiciary Committee that this section was a monstrous innovation, and we expected him to oppose it in every possible shape; but I had no idea that he would make a covert attack upon this section. This amendment is a flank movement against it. He proposes to incorporate into the Constitution that which now exists as the law, because now by an act of Assembly every capital case can be reviewed as a matter of right. The section as it stands means to go a step further in the same direction and to make every criminal case reviewable as a matter of right, not as a matter of grace.

Let me here apply to the gentleman from Lycoming (Mr. Armstrong) the same argument that he has been applying to us, viz: That when the section was under consideration before, it was fully discussed and fairly decided.

The committee of the whole, by the largest vote, incorporated this section into this article, and what does it propose to do? It simply proposes that a man who is tried for a crime shall have it in his power to require the judge who tries him to take down his offer of testimony, and if he rules it out to give him an exception to that ruling; or if he receives testimony he can be required to take down the offer

of testimony, and if he receives it illegally or receives it after the exception on the part of the defendant, and the case is determined by the reception of that testimony—when all that is done and the judgment of the law is pronounced, the accused shall have the privilege, nay the right, of carrying his case to the court of last resort to see whether he has been tried according to law. In other words, it proposes to secure the liberty and the reputation of the citizen, instead of his miserable contemptible dollars.

When King Lear, stung to insanity by the ingratitude of his daughters, imagined himself a judge, he in a breath declared what is as true to-day as it was then. He said:

"Through tattered clothes small vices do appear;
Robes and furred gowns hide all. Plate sin with gold,
And the strong lance of justice hurtless breaks;
Arm it in rags, a pigmy's straw doth pierce it"

And that is the condition to-day.

These gentlemen who have never commenced from the foundation of the profession, who have been wafted into practice in higher courts, have no sympathy with those of us who have commenced at the bottom of the professional ladder and have been climbing our way up by our own exertions. We know wh it is to go before a single judge, who can lay down the law just as he pleases, restrained by no power. He can exclude your testimony, or he can admit it. He can send a man to the penitentiary with his reputation blackened. He can destroy that which is dearer to him than his life; he can destroy his reputation, and disgrace his family forever, and there is no power in the law as it stands to-day that will allow this man to have his reputation restored by the court of last resort.

Is not that true? What man will deny the proposition? It is astonishing to me, when everybody else is advancing, when everybody else is progressing, when we are improving the conditions of our penal code, when we are throwing the shield of protection around the innocent, that this section should not be unanimously agreed upon. In England, we are told, and I state this as I have been credibly informed, (not of my own knowledge,) that to-day every man can carry his case up to the highest court, even to the House of Lords. He takes it, it is true, by a legal fiction, by the relation of the Attorney General, but the Chief Justice

of England has declared that where the Attorney General refuses to issue the writ the court will compel him to do it, and I read with the greatest pleasure from Clarke and Finnelli's House of Lords cases of a case in which a poor criminal came before the House of Lords without counsel, without money, and without any person to defend him, and they assigned him one of the ablest counsel in the kingdom to re-argue his case, and after argument they reversed the proceedings, and sent him back for a new trial.

But it is said "you are loading down the Supreme Court." Yet the same gentlemen who make that argument were eloquent when the judiciary report was before the committee of the whole in protesting that you should not cut down the poor man's rights; that in a case involving \$5 34 he should have a right to be heard by the court of last resort.

For the sake of the miserable dollars which any man can earn in two days, he is to have the constitutional right of noting exceptions to testimony, of taking down the exceptions, of noting them carefully, and have the case proceeded with according to all the forms and limitations of the law, with a bill of exceptions to the charge of the judge. But on the other hand, when the distinguished gentleman who is chairman of the Committee on the Judiciary is tried for larceny, it may be, or for arson, or for theft, or for any other crime which would blacken his reputation and send him to a dishonored grave, he is to come before a single judge of his district and there submit his all to the judgment of the one judge.

I made an illustration of this question when it was before this House upon a former occasion, and it is an illustration that will bear repetition. It was the case of a judge who put a witness on the stand and compelled her to testify in violation of the Constitution of the United States and of this State, and by means of that judicial outlawry produced a conviction that sent to jail the victim of his malice, a man who never could have been convicted if he had been tried according to law. And now we are to be scared from our propriety, and this section is to be voted down by a covert attack in the rear. Fight it like men; call the yeas and nays upon the section, and let us see who in this Convention value dollars beyond liberty and reputation.

MR. H. W. PALMER. There are several objections to this section. Under it every

assault and battery, every breach of the peace, every fornication and bastardy case can get to the Supreme Court. Of course, there would be no good in taking an indictment either on a *certiorari* or by a writ of error. In order to make the section operative, there must be a bill of exceptions to the testimony, and it must become imperative to take down the testimony in every criminal case. There would not be days enough in the year in many counties of this Commonwealth to try the criminal cases if the testimony is required to be written down and if exceptions can be taken thereto. There would not be days enough in the year for the Supreme Court to pass upon these cases if they are to go there, and therefore if that be the case the enforcement of the section will be quite impracticable.

Another objection is that the added costs to the people of this Commonwealth of disposing of their criminals would be simply enormous. Where our courts now sit a day to dispose of criminals, they would be obliged to sit weeks and months.

Another objection is that there is not any necessity for this section whatever; there is no demand for it; there is no use of it; there is no sense in it; because the complaint never has been in this Commonwealth that criminals have been punished too much, but on the contrary the very prevalent and common complaint is that they have been punished too little, and we have heard over and over again that through the delays and technicalities of the law criminals go unwhipped of justice. And here we propose to open wide a door through which all the rest of the criminals that do get punished now will be able to escape.

I, for one, am against it. I am quite willing to go for the amendment of the gentleman from Lycoming, (Mr. Armstrong,) because that seems to me to have reason in it; it is practically the law now, because we have writs of error in capital cases; but if it be so extended that a writ of error may be taken and a bill of exceptions sealed, in every criminal case, then the costs of litigation will be increased ten-fold; then the judicial force of the supreme bench must be quadrupled to do the business; and inasmuch as nobody except the gentleman from Montgomery, (Mr. Hunsicker,) who may have been pinched in some case in which he was defending a scalawag, is asking for this pro-

vision, I for one see my way clear to vote against it.

Mr. SHARPE. I move further to amend by striking out the words "as well as the Commonwealth," after the word "accused." I can see no propriety in giving the Commonwealth a writ of error because when a man has once been acquitted the Bill of Rights says he shall not be tried again.

The PRESIDENT *pro tem*. It is moved to amend the amendment by striking out the words "as well as the Commonwealth."

Mr. ROSS. I am in favor of the amendment which has just been proposed by the gentleman from Franklin, (Mr. Sharpe,) and I am earnestly opposed to the amendment to this section which has been offered by the chairman of the Judiciary Committee, (Mr. Armstrong,) and I am equally earnestly in favor of the section as reported from the committee of the whole.

We are told that there are three great inalienable rights: The right of personal liberty, of private property and of personal security. Around the right of private property are thrown all the guards, all the protections, that the ingenuity of man can conceive; and when a wrong is inflicted upon personal property the owner is enabled to go step by step to the court of last resort to ascertain whether that alleged wrong is a wrong or whether it is not. But when his right of personal liberty is invaded, when his right of freedom of action, when his right of personal security is invaded by an indictment, then, Mr. President, the law says to him: "You can only inquire as to that within one court, before one jury and before one judge."

Now, sir, I say that it is unjust, that it is wrong, that it is contrary to every principle of equity; that when but \$5 34 are involved in a case, the suitor may go from the court of common pleas to the Supreme Court of the State, but that when his liberty, perhaps for years, is affected by an indictment, trial and conviction, he has not the right to inquire whether the judge has erred in a ruling which he may have made upon the trial of that case. I say that this section, which simply gives to the defendant, in a criminal indictment, the right to investigate the rulings of the court, does no more than simple equity and simple justice.

Mr. President, it has just been said by the gentleman from Luzerne, and it is the

only argument I heard him make use of, that it will involve the Supreme Court of this State in endless labor to determine and to investigate the cases coming up from the criminal courts. What if it does? It is the business of the Supreme Court of this State to hear and determine the cases that come before it, whether they come from the civil or criminal side of the court room, and I am astonished that a gentleman of the intelligence of my friend from Luzerne should have had no stronger reason to urge against the propriety of this section than that it would impose upon the Supreme Court of this State additional labor in the performance of its duty.

One more remark and I have done. We have had a lengthy and an extended discussion in this body on the subject of the law of libel. We have had the press throughout the State calling upon us to amend the law of libel, in order to give them more freedom of criticism. I was opposed to any change in our Constitution in that respect, but I do believe and I do think that a newspaper editor or any other defendant who is arraigned upon an indictment for libel should have a right in a higher court to try the rulings of the judge who hears and determines the case in that prosecution, and should have the right to have them investigated by the Supreme Court of the State, for the very good reason that libels frequently are the subjects of a great deal of excitement and are the result of a great deal of local feeling—and courts *may* be affected by feelings of that character, and the rulings of courts *may* be affected by local feeling, and it is but fair that in that case there should be opportunity given to investigate the decision of the court below.

I do hope, Mr. President, that this section will be adopted, letter for letter and word for word, as it stands in the report of the committee.

Mr. ARMSTRONG. Mr. President: I think there is no greater illustration than this of the propriety and value of that parliamentary rule which subjects articles to first, second and third readings. This is not the first time in the history of this Convention that we have been moved from our propriety and persuaded to accept arguments of gentlemen who earnestly avowed and eloquently advocated certain false doctrines and principles of business or of jurisprudence, which we have been compelled to recon-

sider and repeal. It would be very unwise in the Convention not to learn something from such experience. The pending measure strikes me as a most extraordinary proposition, looking at the criminal law in its actual and practical administration. A marked distinction characterizes the administration of criminal law as distinguished from civil. The reasons ought to be paramount and conclusive which would move as to encumber the courts by a novel experiment, and to a degree which would so embarrass the administration of the law as practically to be a denial of justice in both civil and criminal cases. There is not, I believe, in the whole United States any Constitution which extends the right of criminal appeal as broadly as is proposed in this section. The administration of the law in civil and criminal cases is by no means similar.

In the first place it is to be noted that the defendant always stands before the court under the presumption of innocence. The jury are judges both of the law and fact, and when a man charged with crime is acquitted he cannot be retried, although the acquitted may have defied the instructions of the court. Examine the question in the light of experience and see if there is any necessity for such a sweeping and onerous and most oppressive burden to be laid alike upon courts of original jurisdiction and upon the Supreme Court. When has any man in this Commonwealth been unjustly condemned? In the experience of the hundred lawyers in this Convention can they point to a single instance—one single instance, and I emphasize it—in which an innocent man has been unjustly condemned? I have been concerned somewhat in the administration of criminal law, and I have not only watched its administration, but have been a part of it in my profession and position as a lawyer, and I cannot recall an instance in which an innocent man has been convicted. I have occasionally known cases where, had I been upon the jury, I would have given greater weight to doubts, and I have been concerned for defendants where I have sometimes thought they ought not to have been convicted, and where I have had reasonable doubt in my own mind as to their guilt; but I observed on reflecting upon it that that was always in cases in which I happened to be for the defendants. [Laughter.] But taking a broad view of our actual circumstances, and

looking at the administration of criminal jurisprudence in the State, where is the man who has been unjustly convicted? The courts constantly instruct the jury that if they have a reasonable doubt of the guilt of the prisoner it is their duty to acquit; and in a case where the doubts were strong the court would grant a new trial in case of a conviction. The truth is that we are in danger of throwing such protection over the guilty that we greatly endanger the safety of the innocent. We have gone too far in this direction.

I am entirely willing and would approve of a provision as just and proper which would provide that when a man is tried for his life, there shall be a review of his case, and the writ a *supersedeas* because the judgment executed would be beyond all recall; but to burden the courts with the necessity of taking down offers of evidence and objections to the rulings of the court, as in civil cases, in the trial of every little petit larceny, is to encumber the business of the courts without any sufficient reason. There is no justification for it. It seems to me we are in danger of going too far. If we adopt the amendment which I have had the honor to suggest, it will make the writ a constitutional right, to which I have no objection; it is the law of the State already by act of Assembly; but I would be willing to make it a constitutional right and thereby place it beyond legislative repeal, but I am not willing to extend it to every little petty crime where a Constitution may be had. Such defendants stand in no danger and therefore need no defence in that respect. There is no danger of the people of this Commonwealth endangering the liberty and personal security and personal rights of individuals. We, the people, have these things in our own keeping, and whenever dangers arise to a degree that may threaten the liberties of the people, they will be instantly corrected. But in the absence of any experience which points to the necessity of such a constitutional provision, I hope this Convention will not be guilty of such an innovation upon the established judicial experience of the country and the established practice in all Constitutional Conventions, as to place in this Constitution a provision which has never yet demonstrated itself to be a necessity.

I will say one word further as to the amendment proposed by the gentleman from Franklin (Mr. Sharpe.) It may be that that amendment is correct, because

in all ordinary criminal cases the Commonwealth has no occasion for the right of review, but there are cases in the quarter sessions which come within the definition of criminal law, in which the Commonwealth ought to have the right, as in many quarter sessions cases involving a trespass or nuisance. In cases of that kind the Commonwealth ought always to have the right as she has now at common law. I see no necessity for so providing in the Constitution, but it can do no harm. I hope the gentleman will so modify his amendment as to save the rights of the Commonwealth in cases of that kind. As applied to ordinary criminal cases, his amendment is eminently appropriate.

Mr. SHARPE. At common law the Commonwealth would have the right in such cases as the gentleman from Lycoming proposes to apply it to.

Mr. KAINÉ. The amendment of the gentleman from Franklin is not in order. It is not an amendment to the amendment. It will come in appropriately as a separate amendment hereafter, but it is no amendment to the amendment of the gentleman from Lycoming, the chairman of the committee. I suggest to him that he had better withdraw it for the present.

Mr. SHARPE. I will withdraw it for the present and renew it hereafter.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Lycoming (Mr. Armstrong.)

Mr. CORSON. Mr. President: I give my support to section ten without any of the amendments. Whilst I do not agree with my colleague in characterizing the amendment of the distinguished chairman of the committee as a covert attack to destroy the section, I know that this reform meets with strenuous opposition. I know that it is hard to convince the senior lawyers in Pennsylvania of the importance of such a section as this; but they will all agree with me that there is no certain rule of interpretation of criminal law throughout the State of Pennsylvania; for whilst the late distinguished judge in our district held that election officers were bound to receive the votes of deserters who were disfranchised by the law of Pennsylvania, Judge Butler, of Chester county, and Judge Brewster, of the city of Philadelphia, held the very opposite view. They discharged the election officers without trial, whilst our judge, if he had had the power, would have sent them to jail without trial. I repeat that

he charged the grand jury distinctly and directly that every election officer who refused to receive those votes was guilty of a crime under the law—whilst Judge Brewster, of the city of Philadelphia, discharged the election officers upon *habeas corpus* and refused to send them to trial. Now, all that we ask by this section is that we shall have the right to take such questions to the Supreme Court, and that they shall be determined there.

I will tell the gentleman from Lycoming, in answer to his question, that in my view, and I think in his view, at least in the view of Judge Ludlow of the city of Philadelphia, Marcer and Yerkes were unlawfully convicted in this city; and I hear the lawyers around me say "that is true."

Mr. BIDDLE. Two judges said so.

Mr. CORSON. Two judges of the city of Philadelphia said they were unlawfully convicted, and yet they were sent to the penitentiary, and might have remained there for years had it not been for the exercise of Executive clemency. Therefore I am in favor of this section as reported from the committee of the whole.

Mr. MANN. Mr. President: I cannot understand the opposition to this section. I listened very attentively when it was discussed before, and I have listened very attentively to the discussion to-day, and I confess my utter inability to comprehend the objections made to it or to understand why a single man in Pennsylvania should object to having men convicted according to law, not according to the decision of a single judge.

The gentleman from Luzerne says that it is a very serious thing to interfere with the conviction of criminals in this Commonwealth, as will be the case if this section is adopted. I take it, it is time to interfere with the conviction, if they are not convicted according to law of the Commonwealth; and how do we know that they are convicted according to law if there has been no supervision and no criticism upon the courts below by the court of last resort? I cannot understand why if a man is sued for the value of five dollars and thirty-four cents, it is important that he should have the right of taking his case up to the Supreme Court, and yet if he is indicted for a crime that will send him to the penitentiary, he is not to have any such right. I do not comprehend any such reasoning as that.

Why, sir, it seems to me that the best business the Supreme Court of the State

could be employed in would be in protecting the liberties of the citizens of the State against improper convictions. It is far better, a thousand times better, that some guilty men should go unconvicted than that an innocent man should be convicted improperly by a single district judge.

It is no answer to say that the jury are the judges of the law and the fact. There is no lawyer in this Convention who does not know that in point of fact the law as laid down by the judge rules the case. Take as an illustration a case of aggravated assault and battery. It depends entirely upon the decision of the judge in every such case whether the defendant goes to the penitentiary or is merely fined for having committed an assault and battery. The law, as the judge lays it down to the jury in that case, will send the man to the penitentiary or will convict him of mere assault and battery. I have known several cases tried under that act of Assembly, and I know where a jury took a statement of what constituted an aggravated assault and battery entirely from the mouth of the court, and I believe that in that case which I heard tried the men were sent to the penitentiary improperly.

When the gentleman from Lycoming asks are any men convicted in Pennsylvania improperly, I reply to him that the pardons of the Governor are generally asked for on the ground that there was an improper conviction. In nine cases out of ten the application for pardon is pressed upon the Governor because there was an improper conviction—not that guilty men properly convicted shall be pardoned, but that men improperly convicted shall be pardoned. That is the ground of the application filed in the office of the Governor of the Commonwealth in nine cases out of ten, or I am not correctly informed as to applications for pardons in Pennsylvania. I know, so far as they have gone from our district, that is the ground upon which they have been placed, and I know that the judge of that district has himself signed applications to the Governor for pardons on the ground that men were improperly convicted and improperly sent to the penitentiary.

What harm can this section do? It is said it will increase the expenses of the judiciary. If that is a reason, then decrease all trials. If there is any trial necessary, it is where a man is tried for his life or his liberty, which is equal to the former and more important in some cases.

As was well said by the gentleman in front of me, one of the great inalienable rights of the American citizen is the right of liberty, and if he cannot defend his right to liberty according to law it is valueless, for it can be taken from him upon the mere whim of a judge who has received some prejudice against him. Uniformity in the law is important, and I appeal to delegates how is that question to be settled properly in Pennsylvania without some such section as this? How is it possible to prevent confusion in the practice of criminal law in Pennsylvania without adopting the principle embodied in this section.

The *PRESIDENT pro tem.* The gentleman's time has expired.

Mr. LEAR. I do not propose to repeat the arguments that have been so well presented in favor of this section; but there is another view of it which has not been stated that I desire to present to delegates for their consideration. The difficulty is not always that the judge who tries a case does not know how to rule the law, but it is a very wholesome thing in the administration of the law, whether civil or criminal, that the judge trying the case knows that he has some earthly power to answer to as well as the power hereafter, and all judges have a wholesome reverence for the Supreme Court when the Supreme Court has power over them. I have seen cases tried and I have seen evidence ruled in and ruled out, in the very face of the law, in criminal cases by judges who either failed to give the matter due consideration or were anxious for a conviction, and who never would have so ruled if there had been any idea that they were to be reviewed in the Supreme Court of the State.

One of the things which the bar very much regret in this State is the uncertainty of the administration of the criminal law; that upon certain matters in this department of justice there are different rules of law in different parts of the State. On the very law of libel, which has been referred to, in the county of Allegheny and in the county of Philadelphia the law is ruled differently, according to the views of the respective judges. There are also different views of law on questions of the admission and rejection of evidence; and it is well known to the bar of Philadelphia, who have several judges of their criminal court, that the lawyers wait and watch, and try every expedient to get a particular class of cases

tried before a particular judge, because they know that he has certain views of the law upon that subject different from the other judges of the same court, and more favorable to their clients in particular cases.

Now I say we should have this thing stable, that there should be a stability about the administration of the criminal law as well as the civil law in Pennsylvania; but we never can have that stability until we have some final jurisdiction to determine it according to the rules of law and according to that which ought to be well understood by the legal profession of the State.

There has been some talk here to-day in the discussion of another section in this report that if you take certain judges in this city and put them to preside over the criminal courts, they will not understand how to administer the criminal law. There is no reason why every lawyer should not know how to administer the criminal law. If I had a boy as a student who could not read and understand the criminal law of Pennsylvania in three months, I would advise him to abandon the study of the profession as hopelessly stupid and unable to comprehend its mysteries. There is no difficulty about the criminal law. I have heard gentlemen of the profession represented as being great criminal lawyers. They may be adroit, they may be skillful in the management of a criminal case, they may be able men before a jury; but why there should be degrees in the profession upon the subject of the criminal law I never have been able to understand. We have in this State different rules for administering the criminal law before different courts. This section will establish one rule, make a uniform system in the State, and not encumber the judges of the Supreme Court to an undue degree, because the inferior courts will take care that their cases shall not so often need review as they do now.

Mr. TEMPLE. I rise for the purpose of making a motion to adjourn.

The PRESIDENT *pro tem*. It is moved that the Convention do now adjourn. ["No." "No."]

Mr. TEMPLE. My object in making the motion to adjourn is simply this—

SEVERAL DELEGATES. The motion is not debatable.

Mr. TEMPLE. I am not going to debate it; I am going to discuss this subject. ["Go on."] I submit that this is not a

matter that should be passed over lightly by this Convention. When it was before the committee of the whole it was taken up late in the afternoon and was not properly and freely discussed by the delegates. There were not as many gentlemen upon this floor on that occasion to endorse the action of the delegate from Montgomery who introduced the proposition, and I submit that—

Mr. CASSIDY. I rise to a point of order. First, it is not in order to disclose or say anything about what occurred in committee of the whole; and next, a motion to adjourn is not a subject of debate.

Mr. TEMPLE. I stand corrected. I have only followed in the wake of my friend from Philadelphia and others.

Mr. CASSIDY. I beg your pardon. I made no statement about the committee of the whole at any time.

The PRESIDENT *pro tem*. I believe the delegate from Philadelphia has spoken once on this question.

Mr. TEMPLE. I have not, sir. I beg your pardon. I submit, Mr. President, that I have the right to express my opinions on this subject.

The PRESIDENT *pro tem*. The gentleman will proceed. The motion to adjourn is withdrawn.

Mr. TEMPLE. Gentlemen can stand here by the hour and discuss subjects to be placed in our Constitution in regard to the rights of property. We were entertained here for hours and hours by one delegate on this floor upon the question of libel. And yet when we are here to discuss an article of this Constitution which refers to the interests of the people in their personal rights, gentlemen do not desire to hear it. I submit, Mr. President, that this is an important question, and it is no proper time at this late hour in the afternoon to take a vote upon it; but if it is to be voted upon at all, I desire to give my reasons for supporting it.

The PRESIDENT *pro tem*. The delegate will proceed.

Mr. TEMPLE. It has been stated, Mr. President, by the delegate from Montgomery (and I am very glad that this refreshing intercourse with this Convention has taken place) that he knew of a case in the State of Pennsylvania where a judge who was trying a cause extorted a confession from a witness in order to arrive at the result which suited that judge; and yet gentlemen upon this floor, when other subjects have been under consideration, would have you to believe that such

a judge in the State of Pennsylvania could not be found!

It has been referred to by the other delegate from Montgomery, as also by the chairman of the committee, that two gentlemen in the city of Philadelphia were convicted and sent to the penitentiary—

Mr. ARMSTRONG. I beg your pardon; I made no such reference.

Mr. TEMPLE. At any rate my friend (Mr. Biddle) says it is true that Judge Ludlow and Judge Finletter in this city decided that there had been no offence committed at all in the case alluded to; and yet there was a judge found in Pennsylvania who sentenced the defendant for what two judges of that court said was not an offence, to an imprisonment, I think, of five years in the penitentiary and \$300,000 fine. Still, we are told that cases of misdemeanor should not go to the Supreme Court, because it will load down the business of that court! Why, Mr. President, I take it that if a man is convicted for highway robbery, or convicted for murder in the second degree, an offence which subjects him to imprisonment of from five to twelve years, he has as much right to take his case to a tribunal which can pass upon it with impartiality and with that proper judgement that should characterize a court as I have to take my case to the Supreme Court where the amount involved is only \$4 25. I heard one of the judges of the Supreme Court say not long ago that a case involving but \$4 25 was tried twice in the court of common pleas in one of the counties of this State, and then occupied an entire session of the Supreme Court when they were sitting in the city and county of Philadelphia, involving no principle of law at all.

I submit that though this question is a new one, the principle is a proper one to be placed in the Constitution. I believe that the amendment of the delegate from Franklin (Mr. Sharpe) should be adopted, because I believe with him—

SEVERAL DELEGATES. That was withdrawn.

Mr. TEMPLE. Very well.

Mr. HAZZARD. I do not know that the Convention is very anxious to hear a speech upon this question; but I have a word or two to say. I do not like the section, and I will tell you the reason very briefly.

In the first place, the law as it is administered now in the criminal courts, it

seems to me, is only how best we can get rid of punishing criminals. Proceedings are commenced, often, before a magistrate and advantage is taken of any flaw in the commitment. I have known men to be discharged from our jail because the commitment was not just exactly right in every word. If a man is not discharged on that, the case goes before the grand jury, and if they by any possible chance find a true bill, the matter comes into court and then the lawyers pitch into the indictment and do all they can to quash the proceedings. If this fails and the matter comes to trial, if a man appears as a jurymen who has common sense, if he has ever read the newspapers, if he is fit for a juror at all, they challenge him off. If he has ever had sense enough to make up an opinion, away he goes. Then during the trial every exception possible is taken to the admission of testimony, and all such questions seem to be ruled almost uniformly in favor of the prisoner. If, after all this, a man is convicted, then a motion is made in arrest of judgment and for a new trial. Now you propose, after all this, after the court and the lawyers have tried in every possible way to get a man out of a scrape and not to punish him in a case where he ought to be hung—and they used to hang them in California a few years ago without much ceremony, and I do not know but that a little of that kind of law would be good occasionally [laughter]—now you propose to let him go to the Supreme Court. I say there are hindrances enough to the administration of justice in this country. Why look at the case of the fellow in New York who went from one court to another and then to Governor Dix, and the Governor said the man was convicted properly and there was no reason why he should be pardoned; and then he went to the court of last appeal, and now he has got a new trial, and before he comes to trial again half the witnesses will be dead and the rest will be spirited away, so that when he comes to have another trial he will not be punished at all.

I believe, if we adopt this section, we are just putting another additional obstruction in the way of the proper administration of justice and the enforcement of the law. It seems to me monstrous.

More than that, we have been told here by the lawyers all winter that the Supreme Court was overloaded and that we must devise ways and means to relieve it; and yet here is a proposition to send to

that court every little petty case of assault and battery because the judge in the court below did not charge right, perhaps, or let in some evidence that was not exactly according to the idea of the opposing attorney. All bastardy cases and all things of that kind are to go to the Supreme Court, and we propose to employ the time of our highest judges in reviewing matters of that kind because a lawyer who is defending a criminal knows every time that he is right and that every time the judge is wrong. [Laughter.]

Mr. ARMSTRONG. I desire to supplement my remarks by stating what I omitted before that this matter is entirely and completely within the power and province of the Legislature. They have the complete jurisdiction over the question, and it is safe to leave it there. I will not enter into an argument.

Mr. HUNSICKER. The Legislature have power to do everything that they are not prohibited from doing; and therefore we had better pass no Constitution at all on that argument.

Mr. KAINE. Mr. President. This is a very important question, and as there is evidently not a quorum of members present now, I move an adjournment. ["No! No!"] Then I demand a call of the House. In my opinion there are not fifty members here.

The PRESIDENT *pro tem*. The roll will be called if the member requires.

Mr. KAINE. I withdraw the call at the request of gentlemen around me, and move that the Convention adjourn.

The motion was agreed to, and (at six o'clock and forty-two minutes P. M.) the Convention adjourned.

ONE HUNDRED AND THIRTY-SECOND DAY.

TUESDAY, July 1, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday was read and approved.

LEAVES OF ABSENCE.

Mr. EDWARDS asked and obtained leave of absence for Mr. Andrews for a few days from to-day, on account of sickness in his family.

Mr. FULTON asked and obtained leave of absence for Mr. Hall for a few days from to-day.

HOURS OF DAILY SESSION.

Mr. KAINE. I offer the following resolution:

Resolved, That hereafter the Convention will meet at nine and one-half A. M. and adjourn at one o'clock P. M., meet at three o'clock and adjourn at six o'clock P. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted ayes thirty-four, noes twenty-three.

The resolution was read a second time.

Mr. KAINE. Mr. President: It is evident that in the evening after six o'clock the Convention is entirely worn out, and I think for all purposes we had better adjourn at six. As to meeting at nine or half-past nine I care nothing about that. We should save half an hour by meeting at three in place of half-past three, so that there would be only a difference of half an hour between this and the rule we have adopted.

Mr. LILLY. I move to strike out half-past nine and make it nine, and strike out six and make it half-past six. We may meet at nine in the morning as well as not.

Mr. KAINE. I will meet that half way. I will modify the resolution to make it nine o'clock.

Mr. LILLY. Very well.

Mr. NILES. Very many of the delegates go out in the country and they have to leave here at six o'clock, in order to

reach their homes. They did so last evening; and when we stay here until seven o'clock we are without a quorum.

Mr. LAWRENCE. That is not our fault.

Mr. T. H. B. PATTERSON. I move to amend, by making the hour of adjournment half-past six.

Mr. KAINE. That is the very thing we do not want.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was rejected.

Mr. MACCONNELL. Let the resolution be read as it now stands, so that we may know exactly what it is.

The CLERK read as follows:

Resolved, That hereafter the Convention will meet at nine o'clock A. M., adjourn at one o'clock P. M., meet at three o'clock and adjourn at six o'clock P. M.

The resolution was adopted.

Mr. LILLY. May I inquire of the Chair whether that takes effect to-day or not?

Mr. KAINE. No, sir; it will not. It is from and after to-day.

Mr. LILLY. I ask for a decision of the Chair on that point.

The PRESIDENT *pro tem.* The Chair decides that the resolution does not go into effect until to-morrow.

ACCOUNTS AND EXPENDITURES.

Mr. HAY submitted the following report, which was read:

The Committee on Accounts and Expenditures of the Convention respectfully reports:

That it has carefully examined an account of William W. Harding, dated June twenty-fifth, 1873, for three hundred reams of paper furnished to the printer under his contract with the Convention, amounting to two thousand two hundred and fifty dollars; that said account is certified by the Committee on Printing and Binding, and that the printer acknowledges the receipt of the paper therein mentioned, and that it is in accordance with the quality required by contract.

Also, the account of the Philadelphia gas works for gas supplied from May

twenty-second to June twenty-fourth, amounting to thirty dollars and fifty-nine cents.

These accounts are reported to be correct and proper to be paid.

The committee further reports that on the sixteenth day of December, 1872, a warrant was drawn in favor of Edward C. Knight, a member of this Convention, for seventy-one dollars and forty cents, for his allowance for postage, stationery and contingencies and mileage to and from the session of the Convention at Harrisburg, which warrant Mr. Knight states that he has not received. The warrants of the Convention are payable only to the person in whose favor they are drawn, and not to bearer, so that no loss can occur to the State from this fact; and for the payment to Mr. Knight of the amount due him as above mentioned, it is necessary that a duplicate warrant therefor should be drawn by order of the Convention.

The following resolutions are accordingly submitted:

Resolved, That the accounts mentioned in the foregoing report are hereby approved; that a warrant be drawn in favor of William W. Harding for the sum of \$2,250, in payment of his said account, and that the account of the Philadelphia gas works be paid by the Chief Clerk.

Resolved, That in lieu of warrant No. 65, dated December 16, 1872, for the sum of \$71 40, issued to Edward C. Knight for his allowance for postage, stationery and contingencies and mileage, which has not been received by him, a warrant be drawn in his favor for the same sum and marked "duplicate;" and that a copy of this resolution be furnished to the State Treasurer, by the Chief Clerk, with notice not to pay the original warrant, No. 65.

The resolutions were severally ordered to a second reading, read the second time, and adopted.

THE JUDICIAL SYSTEM.

The *PRESIDENT pro tem.* The business regularly in order is the consideration of the article on the judiciary. When the House adjourned yesterday it had under consideration the tenth section. That section will be read.

The *CLERK* read as follows:

SECTION 10. In every criminal case the accused as well as the Commonwealth may remove the indictment, record and all proceedings to the Supreme Court for review in the same manner as civil cases

are now removed and reviewed; but such removal shall not, except in capital cases, be a *supersedeas*, unless the judge before whom the case was tried shall certify that the same is proper for review.

The *PRESIDENT pro tem.* The question is on the amendment offered by the delegate from Lycoming, (Mr. Armstrong,) to strike out the word "criminal" and insert the word "capital," and by inserting after the word "case" the words "and in such other criminal cases as may be authorized by law."

Mr. PURMAN. Mr. President: Our criminal law and procedure is the outgrowth of morality and civilization. Its present degree of perfection and wisdom is the result of experience and the fruit of a severe conflict between the sovereign or the State on the one side and the people on the other. The State retains the right to dispense justice between the people and its sovereign authority and therefore should allow the accused the benefit of the labors and services of its first law officers. The civilization, and the high appreciation of liberty by the people of Pennsylvania, require that we shall perfect the criminal procedure of the State. On principle, no one would pretend that a party accused of murder, perjury, forgery, rape, robbery, arson, or even an aggravated assault and battery which might carry his person into the penitentiary, should not have the right to be tried by the law of the land and that that law should not be pronounced by the highest judicial tribunal. I say on principle no one pretends to deny to the accused the right to be heard on an appeal on writ of error to the Supreme Court. In all civilized countries where a judicial trial in a high criminal case has been anything above a farce or a mob, the liberty and the life of the citizen have always been regarded with greater favor than the right of property. The argument that the jury are judges of the law and the facts, and therefore there is no occasion for allowing writs of error in criminal cases, is not well founded, because practically the jury always takes the law as laid by the court. The argument that the judges of the Supreme Court are not acquainted with the criminal law of the land, and therefore to allow writs of error in criminal cases would bring the law into conflict, is not founded in faith, and calculated to mislead the Convention. It is said that so great is the sympathy of the people and of juries and of judicial tri-

bunals in favor of life and of liberty that all the errors are committed in favor of the accused and none against the State, and therefore there is no occasion for a writ of error in criminal cases. That argument seems to me not well founded. The liability of the judge to error in criminal cases and in civil cases are the same. The same imperfections, the same passions, and the same prejudices inhere in a judge when he comes to try a criminal cause that would inhere in him when he comes to try a civil cause, and hence the accused ought have the right to a writ of error in the one as well as the other. Not only so, Mr. President, but if the argument of some of the gentlemen on this floor is correct, that no irrelevant evidence is ever received or incompetent witness permitted to testify, nor nobody erroneously convicted, the allowance of a writ of error in such cases would not increase the business of the Supreme Court because, according to the argument, no writs of error would ever find their way into the Supreme Court. But that is not true, and the argument is begging the question.

Then it is argued further that there are so many trifling criminal causes that there ought not to be a writ of error because it would overburden and overwork the Supreme Court. I have no way of weighing or measuring that kind of an argument. Talk about the triflingness of a cause when the effect of a conviction is to consign a man to the penitentiary and render him infamous for life! I cannot understand how any one can speak of such a cause being trifling, or urge, as an argument against the right of appeal, that it will overwork the Supreme Court.

This is not the first time that the friends of reform and improvement have been resisted by great names and cultivated minds. When trial by jury and by witnesses began to be used, the enemies of the reform opposed them, saying it would delay justice and tend to the acquittal of the guilty, but the friends of the reform persisted in their efforts, and we have as the result our present system of trial by jury and by witnesses.

It seems to me that the experience of many of the gentlemen who complain of the character of the causes proposed to be reviewed in the Supreme Court ought to have taught them that questions of life, liberty and the enjoyment of property cannot in any proper sense be called small or trifling.

Sir, some of the most important principles in the law have been pronounced by the highest courts in cases in which the sum in controversy was of an insignificant character. Take the case of *Cutter vs. Powell*, one of the leading cases in England and in America, and the sum in controversy there did not exceed \$60. Take the case of *Higham vs. Ridgway*, another leading case, and the sum in controversy was a very small sum, about £5. Take the case of *Price vs. the Earl of Tarrington*, and the same is true. Take the case of *Bent vs. Baker*, another celebrated case, one of the most celebrated cases on the admission or rejection of evidence, and the sum in controversy was trifling. When we come to look at the question in its true light, no argument can be made against the proposition because of the sum in controversy or the triflingness of the cause.

I am in favor, therefore, of retaining in the Constitution the right of a writ of error in capital or homicide cases, and I am in favor of a declaration in the Constitution that a writ of error shall be secured to a party in such other criminal causes as may be authorized by law and in such manner as shall be regulated by law. I am not in favor of every trifling assault and battery finding its way into the Supreme Court, for I do not suppose the profession would carry it there. To talk about the profession carrying every trifling matter to the Supreme Court is to belittle the members of the bar.

I am in favor of the amendment of the chairman of the committee that in all other cases except homicide cases the right shall be regulated by law; that is, the Legislature shall throw about it such wholesome restraints as will prevent its exercise in idle and frivolous cases. In cases of perjury, forgery, arson, rape, robbery, and such like, I would throw such regulations around the exercise of the writ as to bills of exceptions and mode of procedure as would prevent the right from being abused. If the writ is to be allowed in any case, I suppose it ought to be allowed in every case where, upon conviction, the punishment would be confinement in the penitentiary, because it makes very little difference to the accused whether he is sent to the penitentiary for five years on a charge of robbery, or on a charge of manslaughter, or on a charge of aggravated assault and battery. He is as infamous if he be sent to the penitentiary on the charge of aggravated assault

and battery as if he went there on a charge of manslaughter, so far as the punishment is concerned.

But while I favor the *right* to have a writ of error I am in favor of such wholesome restraints being thrown around the exercise of the right as will prevent it from being mischievous and being used in idle and frivolous causes. Therefore I shall vote for the amendment of the chairman of the committee, to give the writ of error in all capital cases where it is asked. I am heartily in sympathy with the gentleman from Montgomery, (Mr. Hunsicker,) that the right to a writ of error ought to be secured in criminal cases; but I do not desire to see it exercised in all trifling cases, such as breaches of the peace, complaints of a wife against her husband for maintenance, little trifling assaults and batteries, and even in the ordinary common cases of fornication and bastardy. It is true there are some of the cases of fornication and bastardy which perhaps ought to be reviewed in the Supreme Court, or the right to have the rulings of the court below in admitting or rejecting evidence upon the trial as well as the charge of the court reviewed, would be very proper. It is as hard for a man to pay five hundred dollars in obedience to a sentence in a case of fornication and bastardy as it would be for him to pay a judgment of five hundred dollars obtained on a promissory note that he had never executed, but where he was mulcted by the erroneous ruling of the court below. In both cases it is a question whether he shall pay five hundred dollars; but in a case of fornication and bastardy it is not only a question of the payment of five hundred dollars, but it is a question of character. Here is a married man accused of fornication and bastardy; his reputation and that of his family, which is dearer to him than all he has, is at stake. Shall that man undergo a sentence secured against him without having a fair trial, a full trial, and a judgment pronounced against him according to law? It seems to me it ought not to be so. It seems to me when this Convention undertakes to put down the right of the writ of error in criminal cases on the ground that there are many small criminal cases, they are treating the liberties of the people and the rights of the citizen with less than their full measure of respect.

I stand by this amendment of the gentleman from Lycoming (Mr. Armstrong.) I am in favor of this writ of error, because

it is in favor of life, in favor of liberty, and the enjoyment of all that is worth having in this country or any other.

It is not so easy always to get these cases regulated in the Legislature as may be at first supposed. I remember the Schoeppe case well, and it caused a fierce conflict in the Legislature before the bill was passed authorizing a writ of error. I was not in favor of it for that particular case, but I was in favor of it as matter of principle. I did not favor it as applied to that one case, but the principle involved in the legislative action was correct, and it seems to me that those who agree with that principle, who properly respect the rights of the people and the liberties of the people, must vote in favor of this amendment and for the section as amended.

Mr. BOYD. I trust the gentleman from Franklin will withdraw his amendment to the amendment.

Mr. SHARPE. It is withdrawn for the present.

Mr. BOYD. Then for the future I trust it will not be renewed, because wherever one party is given the right of appeal, surely the other party ought to have the same right.

Mr. SHARPE. What would be the use of a writ of error on the part of the Commonwealth in a homicide case where the defendant was acquitted? He could not of course be tried again.

Mr. BOYD. None at all. I do not consider that the Commonwealth would ever take a writ of error in a homicide case or in any case of felony where there has been an acquittal. But it would be valuable to the Commonwealth in cases of nuisance, forcible entry and detainer, and the like, because while these cases are always Commonwealth cases we all know that there is generally a private prosecutor interested in them, and if the court should rule the law against him so as to deprive him of the possession of the property or should rule, as a question of law, that it is no nuisance the prosecutor, the party immediately affected, although the suit be in the name of the Commonwealth, would have no redress whatever by an appeal to the Supreme Court on a writ of error, and therefore I would give the right of appeal to the Supreme Court to the Commonwealth as well as to the defendant.

Now, I appeal to the chairman of the Judiciary Committee to withdraw his amendment, because as it stands it is of

no value whatever, for the reason that in homicide cases there already exists the right to a writ of error. I am unable to conceive how a writ of error in criminal cases can work an injury apart from the abstract right of the party to a writ of error in a criminal case as well as any other.

It has been said that the Supreme Court would be loaded with these small criminal cases. We all know that in assault and battery cases, and in the minor misdemeanors, where a conviction takes place, the sentence does not range in such cases more than from thirty days to two months or three months, and in extreme cases even, it is only six months or nine months. A writ of error therefore in cases of that description would be of no advantage because a party convicted could not have his case reviewed in the Supreme Court under a year; and therefore a defendant suing out a writ of error in a case of that kind, after his term as a criminal had expired, would not be benefited in any respect. This class of cases which it has been supposed would take advantage of this writ of error would seldom if ever go into the Supreme Court for the reason I have stated. Where a man is convicted of a higher grade of felony, however, and he is sentenced for a long term of years, and goes to the penitentiary and sues out his writ of error, he will have to lie there one year before his writ is heard and decided, and surely if an error has been committed on his trial which has so consigned him to the penitentiary, and the Supreme Court decides that there is error in the record, he has suffered imprisonment for a term of one year anyhow, and he should be relieved. Even in such cases where he is sent back for another trial the man would only be released from the penitentiary to be removed to the county from which he came and placed in confinement in the jail there until he has his new trial, so that it would be impossible for him to escape without a second trial. Still this privilege would be invaluable to him, and no abuse can result in such cases as far as I am aware to the Commonwealth.

I am aware that it has been argued here with great force that the Supreme Court would be overburdened with this class of cases. We have had it stated on this floor by high authority that the Supreme Court are not overworked, that it has an abundance of time to perform all official duties, and indeed some go so far as to say that they can do a great deal more

than they do; and by a very decided vote this Convention has said that no additional aid or assistance is necessary for the Supreme Court. But if it should be found necessary to augment that court to enable them to discharge these extra duties which this section will impose the Legislature, under the report of the Committee on the Judiciary, can provide for this increase of their force, or the Legislature can create such other court or such other additional judges as may be necessary to meet the demand in such cases as these.

The cases that would go to the Supreme Court on a writ of error in the ordinary run of criminal cases must be, as everybody familiar with the criminal courts knows, very limited. But there are cases in which they ought to be reviewed in this court. I shall, therefore, vote against any amendment to this section, but shall vote for its adoption as it came from the committee of the whole for the reasons I have stated.

Mr. J. S. BLACK. I am supposed to know something about the administration of criminal justice, because I was once prosecuting attorney of Somerset county. I endeavored to discharge the duties of a public accuser with fidelity. I felt no inclination in the world ever to allow any rascal to escape, and I certainly never tried to convict an innocent man. I am willing to bear my testimony to the truth on this subject. I believe the condition of our criminal law in this respect has been better than it is likely to be made by any alteration in it. There is no necessity for the purposes of justice that an appeal or writ of error shall be taken from the court of original jurisdiction; at least we do not need that to a greater extent than it is allowed now.

Every error of mere law that can be committed is liable to revision in the Supreme Court as the law now stands. Where the indictment does not change any offence, where the verdict is not in accordance with the indictment, or where the sentence is not in accordance with the verdict, or where the trial is in any respect a violation of law, the error can be made to appear on the record and the judgment may be reversed.

Mr. HUNSICKER. Will the gentleman allow me to ask him a question?

Mr. J. S. BLACK. Certainly.

Mr. HUNSICKER. I want to know if an offer of testimony is made, and the judge

excludes it, whether that can be reviewed?

Mr. J. S. BLACK. No; it cannot be now reviewed.

Mr. HUNSICKER. Nor if rejected, either?

Mr. J. S. BLACK. No; and it ought not to be. I was going to add that a perfectly legal trial can be had as the law now stands, and for any violation of the law which appears upon the record you can have the judgment reversed. But those questions which relate to the merits of the case, such as the legal sufficiency of the proof, that is left to the court of original jurisdiction and to the jury. Such a question is safe there, safer than it would be if taken up and heard over again in the Supreme Court.

What does a judge of the Supreme Court know about the criminal law of this country that is not known to the courts of common pleas and the juries? It is too simple for anybody to make a mistake about if he will but try to understand it. You have a question whether a man is guilty or not guilty of a particular offence, whether the proof comes up to the allegation in the indictment, and who is there that does not comprehend that in an ordinary criminal case? You forget the interest of the public in the punishment of crime. We must punish rascals speedily. We cannot afford to postpone justice while they are playing with us in the Supreme Court. When a criminal case goes there, no matter how it may be determined, the probabilities are that the accused party goes unwhipped. The manner in which this privilege has been used and abused in the State of New York is a sin, and a shame, and a scandal. It has been carried out in such a manner as to make the law an encouragement and not a terror to evil-doers.

This a fruitful subject, upon which much might be said, but I content with very little. My sentiments as a lawyer are already spoken by the gentleman from Lycoming, (Mr. Armstrong,) and what I think is the sterling good sense of the matter has been expressed by my friend from Washington, (Mr. Hazzard,) and therefore I do not mean to say more. To repeat what they have said would be a loss of your valuable time.

Mr. CUTLER. Mr. President: I am in favor of the amendment of the gentleman from Lycoming just as it is written. I do not know who is responsible for the

statement repeated by the gentleman from Montgomery, (Mr. Boyd,) this morning, that the Supreme Court is not overburdened. That gentleman's experience must have been very different from mine. If he has any knowledge of this district or any knowledge of the western district, for which the court sits at Pittsburgh, and has come to such a conclusion as was embodied in that remark, I am very much astonished.

Now, this Convention has set its face as a flint against any relief to the Supreme Court. The addition of two judges to that bench amounts to nothing in the way of increased discharge of business. Yet we are proposing, by giving the right to a writ of error in all criminal cases, to add to the burdens of that court what I presume would amount to more than twice the quantity of business now pressed upon them. It will be simply impossible for the Supreme Court to discharge any such duty; it will be simply impossible for any court of final resort to discharge any such duty. Unless we have two or more Supreme Courts, or unless we have an intermediate court at which these cases shall finally be stopped, the court will be overwhelmed by business and it will be impossible for it to discharge itself.

But that is a small consideration. It is argued here that the right to writ of error should exist in all criminal cases. There are two sides to that question. The Commonwealth has her interests as well as the prisoner. It is the interest of the Commonwealth, it is the interest of the people of the Commonwealth, that the administration of criminal justice shall be speedy and efficient. To interpose between the prisoner and the final penalty for his offense a series of courts through which he may carry his cause by appeal, as he is accustomed to do in civil causes, would be practically to paralyze the administration of criminal justice. The impunity it would give to crime would amount to an evil so great as to become absolutely unbearable.

The distinguished gentleman from York, (Mr. J. S. Black), who has just spoken, has alluded to the condition of things in the State of New York. Even a worse condition of things would arise in our State if so broad and unlimited a right of appeal was given.

Moreover, there is far less danger that injustice will be done by juries in criminal causes than there is in civil causes. There are a few striking instances occur-

ring at long intervals of time where unjust convictions seem to have taken place, and they dwell in the minds of men, and they are cited and referred to as if they were illustrations of that which occurred frequently; whereas, in point of fact, so instinctive is the hesitation of juries to convict men of offenses, except the evidence be such that it is impossible to resist the conviction that results from it, that there are ten chances of the escape of a guilty man; nay, a hundred chances of the escape of a guilty man in a criminal cause to one instance of the conviction of an innocent man contrary to law, or contrary to the evidence in the case. I think, therefore, that so long as in capital cases (where if injustice has been done and the sentence has been executed it will be without remedy) the right of appeal is secure, and so long as an opportunity of appeal is given where injustice seems to have been done, where some *prima facie* case of injustice is exhibited to the mind of the court, so that a special allowance of a writ of error may be made, we have done all that is consistent either with the amount of business that must be transacted by our Supreme Court, or with the certainty and the speed with which criminal justice should be administered for the sake of the Commonwealth and her citizens.

For these reasons, I am in favor of the amendment of the gentleman from Lymcoming just as it is written.

MR. BUCKALEW. Mr. President: If this question were presented now for the first time as an original proposition in the Convention, I should refrain from making any remarks; but I am admonished by the fact that we have this proposition before us on second reading as adopted in committee of the whole, that debate is necessary. It would seem that the majority of the Convention are predisposed to adopt this very remarkable and in my judgment pernicious change in the criminal laws of the State.

At present a defendant in a criminal prosecution can have the record of his conviction in certain cases reviewed in the Supreme Court, as has been explained by the member from York.

A special allowance of a writ is provided for by statute upon a hearing by any one of the judges of the Supreme Court; and then, again, by recent regulation it is provided that in all cases of felonious homicide, whether murder or involuntary manslaughter, the whole case may

be taken to the Supreme Court for review, and that court is required to look through the evidence to ascertain whether it seems probable that any injustice has been done. These are the remedies, by way of appeal, which the law provides at present in criminal cases, and I think they are proper,

I did not rise to speak, however, as to that, but to the argument so strongly and impressively put by the gentleman from Montgomery (Mr. Hunsicker) on a former occasion, that there was now an invidious distinction in our law between civil and criminal cases; that whereas in a civil case upon a controversy of ten dollars a party could take his case to the Supreme Court, in a very grave criminal accusation against him he had not this right, or at least he had not this right to the same extent. That argument seems plausible and it captivated the mind of the member from Montgomery, doubtless, because it appealed to his keen sense of justice and equality of right under the law. But the argument is a fallacy for the reason that there is no strict analogy, no complete resemblance between the administration of civil and criminal justice in our inferior courts. In a civil case the judge who presides controls. The jury pass only upon such matters as the judge pleases, under the rules of law, to submit to them. If they give a verdict that is against his opinion, he grants a new trial. He has, so to speak, absolute power over the whole case, over the decision of the law and the decision of the facts. The jury is only an assistant to him to pass upon such matters of fact as he submits to them; he controls. Now, it is not to be tolerated by our people that a single man in civil cases shall decide once for all and finally upon the rights of the citizens. They would not be satisfied with that principle placed in the Constitution if any one should propose it. Therefore, in all cases from the judgment of this single man you permit an appeal to the Supreme Court of the State.

But in criminal cases how different it is! There by fundamental law the jury in any case are the judges of the law and the facts; and from their deliverance of the accused, there can be no appeal. The judge cannot control them. If they acquit a defendant, he cannot order a new trial. Consider also the particulars that enter into a criminal trial. Unlike the fact in a civil case, the defendant is presumed by law to be innocent. The whole

burden of proof is put upon one of the parties, to wit, the Commonwealth; and if there be a reasonable doubt, the defendant goes free. No such principle obtains in civil cases. And then, observe, a verdict in favor of one party, to wit, the defendant in a criminal case, is an end of the controversy. The Commonwealth cannot renew that dispute; the Commonwealth is concluded, whereas the defendant has various remedies afterwards: a motion in arrest of judgment, or for a new trial, or a review of the record in the Supreme Court.

There is another and most important distinction between civil and criminal cases. If a defendant by any accident is unjustly convicted and the court will not redress the injury done him, (and the court has full power to do it by a new trial always,) or if by after-discovered testimony he is able to show that it is likely that he was innocent, what does your Constitution provide? A pardoning power, unlimited, to be exercised for any cause and at any time by the chief magistrate of the Commonwealth, the choice of all the people of the State.

Now, pass in review—I have not time to elaborate this because time will not permit—consider with what tenderness your Constitution and laws deal with an accused party. Commencing with a presumption of his innocence, they treat him kindly through all the stages of the investigation of his case in the criminal court and afterwards allow the Governor to interpose in his behalf on cause shown.

Is there then any close similarity between the administration of civil and criminal justice in this State, so that because you permit a party to take a civil action by writ of error to the Supreme Court, therefore you ought to allow a defendant to take a prosecution against him to the same court? I submit that the whole argument and all this impassioned appeal to us, based upon it, falls to the ground, and that it does not follow that you ought to extend this remedy to criminal cases.

Mr. BROOMALL addressed the Chair.

The PRESIDENT *pro tem.* Did the delegate speak on this point yesterday?

Mr. BROOMALL. I have not spoken upon this point at all, either on the present occasion or any former occasion. I yield, however, to the gentleman from Lycoming.

Mr. ARMSTRONG. I desire to make a merely verbal, modification of my

proposed amendment. Instead of saying “capital cases,” which is a word of somewhat indefinite signification, I prefer to take the words now used in the act of Assembly, namely, “in every indictment for murder or voluntary manslaughter, and in such other criminal cases as may be authorized by law.” It does not change the idea at all, but it is better phraseology.

The PRESIDENT *pro tem.* The amendment will be so modified.

Mr. ARMSTRONG. I will state, sir, that in offering this amendment it is for the purpose of perfecting the section under the possibility of its passage; but I see no necessity for the section at all, and I trust the whole thing will be voted down.

Mr. BROOMALL. Mr. President: If I could agree with the chairman of the Committee on the Judiciary that there is no necessity for the section, I should certainly not trouble the Convention with any remarks of mine. I have refrained from saying anything on this question hitherto, because I desired to make up my mind fully upon the necessity of what is undoubtedly a considerable change in the law. Having done so, I desire to say a few words in addition to what has been said. I shall not pretend to argue the question in favor of the abstract right of an individual to the highest criminal law as well as the highest civil law, pronounced on his case by the highest authority in the land, after the very able remarks of the gentleman from Greene (Mr. Purman) upon that question. If anybody could have had any doubt how he ought to vote upon the amendment, as well as upon the section, he ought to be satisfied by the argument of the gentleman from Greene. I was only surprised that the argument of that gentleman failed to satisfy himself. After giving us the strongest possible reason for voting against the amendment and for the section, he deliberately comes to the conclusion that he will vote just exactly the other way. He reminds me of what was said of a very prominent statesman, now deceased, that he was in the habit of talking the best and voting the worst of any man in the body of which he was a distinguished ornament. [Laughter.] There is no reason why a man should not have the highest law of the land when his life, his liberty and his reputation are at stake; there is no reason, I say, why he should not have the best law of the land, pronounced by the highest authority in the

land, in that case as well as where his money is involved. It is idle to talk about there being such a distinction between our rights under the civil law and our rights under the criminal law, by which the one would be distinguished from the other, much more that the latter shall be less regarded than the former. I will not insult this body by attempting to prove, because it is an axiom, that a man's liberty and his reputation are of more importance to him than his money, and that if there should be a distinction between them, liberty and reputation should be regarded and money interests should be left to take care of themselves. Hence, convinced, if I needed any conviction at all, by the arguments of the gentleman from Greene, I shall vote for the section and against the amendment.

But the gentleman from Columbia (Mr. Buckalew) says that there is a radical difference in administration of these two branches of the law by which one can be distinguished from the other. There is some truth in the assertion; but the inference he draws from it is not to my mind so clear. There is a difference. In criminal cases the jury are the judges of the law and the facts. In civil cases the jury are the judges of only the facts. What then? Are the jury so much better judges of the law than the judge who presides that we can afford to make them the tribunal of last resort? Are they so much better acquainted with the law that it is safe to trust our dearer interests to them, and yet not trust our interests less dear to the president judge? Why, sir, if that is the case, let us turn our courts of original jurisdiction just the other side up and put the jury in place of the judge and the judge in place of the jury, and we can do without the Supreme Court altogether. If we do not need an appeal from the jury in criminal cases, of course we do not need an appeal from the jury in civil cases which are of so much less importance, and by letting the jury be the judges of the law and of the fact in all cases we get rid of all this overburdening of the Supreme Court, because we get rid of the necessity for a Supreme Court altogether. I submit that the inference which the gentleman from Columbia draws from his facts is not warranted by the facts themselves. It is said that this will overburden the Supreme Court. Possibly so! But if the Supreme Court is overburdened, do not take from it that which is most important to the people, the care of the liberties and

the lives and the reputation of our citizens, and leave to it that which is of the least importance, the care of their money. Some little time ago I started the idea here that the Supreme Court might be relieved of a great deal of its labor by limiting the causes which go there in point of value, so that no cause which involved less than one hundred dollars should go up. And gentlemen raised their hands in holy horror at the idea of not allowing a man, in a case where five dollars and thirty-three cents of his dear money is at stake, the right of appeal to the highest tribunal in the land when he desired it! Is not the remedy for this overburdening of the Supreme Court the easiest possible? Let the cases which go there be cut off by a horizontal line, if you choose, civil and criminal, and let the cases which come below that line be decided finally in the court below. But if you must make a distinction, let those cases which are of the most importance go up to the Supreme Court, and those which are of the least, to wit, those which concern our money, be decided by the court below.

The gentleman from York (Mr. J. S. Black) says that there is now a review in all cases where a man may run the risk of being unlawfully convicted. That is true to some extent. The gentleman from York has, however, doubtless another reason against this innovation of the law, and that is that since the adoption of his oath, which is almost as long as the book of Deuteronomy, original sin and all its consequences have been absolutely done away with, and we shall need no criminal law and no Supreme Court, and the whole community will be free from vice from this day out to the end of the human race. But there is no remedy in a large class of cases for an illegal conviction. Suppose the court below is asked to decide the question of the age at which a female must refuse consent so that the defendant shall be guilty of rape, what is the earliest period at which her want of consent must be proved and what would the court say? Until recently it would have to guess the answer. Suppose it should decide that question wrongfully against the defendant, as in a case in which I unhappily missed acquitting a defendant, suppose an error made in a case of that sort, or in excluding or admitting testimony, where is the remedy? There is none. The gentleman says that everybody understands the criminal law. He cannot tell me whether the age of

consent in a female was ten or twelve years at common law, because up to the recent Pennsylvania enactment there was no Pennsylvania law on the subject. It was to the disgrace of our State that this feature of the criminal law had never been passed upon in Pennsylvania, and had been ruled differently in different places elsewhere, so as to leave the law unsettled, simply because cases of this kind could not go up to the Supreme Court.

The PRESIDENT *pro tem.* The gentleman's time has expired.

MR. HUNSICKER. Mr. President: I do not often trouble the Convention, and I promise not to trouble it again on this article after this section has been disposed of; but I simply wish now to be heard on this proposition, because I have given to it a great deal of thought. And let me premise my speech by saying to the gentleman from Lycoming, the chairman of the Committee on the Judiciary, that this morning he has displayed more frankness than characterized him last night. He now declares that his purpose and object is to defeat the section altogether. Last night we had the argument with us; and this morning the enemies of justice were compelled to bring upon the floor of this House the intellectual Goliath from York, who has made his speech upon this subject. And, as of old, when that warrior made his appearance he struck the hosts of Israel with terror. But armed and panoplied as we are for the right, we can slay him and all his adversaries with a simple shepherd's pouch. To undertake to tell us, to tell an intelligent Convention, as the gentleman from York (Mr. J. S. Black) has, and as the gentleman from Columbia (Mr. Buckalew) has, that to-day you have a right to a writ of error in a criminal case, is forever to declare their own ignorance. It is not a writ of right. You must go upon your knees before the judges of the Supreme Court, or one of them, and beg and specially implore them, or him, to grant you a special *allocatur*; and if they grant your request, they remove nothing but the indictment, the record and the sentence. Does the gentleman from York deny that? Does the gentleman from Columbia deny that?

When I put the question to the delegate from York, "can you take an exception to the rulings of the court in the admission of testimony," he was compelled to answer, "no, you cannot do that." Can

you take exceptions to the refusal of testimony? No, you cannot do that! The Commonwealth may put a man on the stand who may be incompetent to testify because he has been convicted of perjury, and that will not appear on the record, although because of that man's testimony an honest man's reputation may be forever destroyed. Yet these men who are standing here holding up their hands in holy horror at increasing the business of the Supreme Court, say in the next breath "leave this section applicable to cases of murder!" Where is the man who would not rather be hung for a crime than drag out a weary, miserable existence, dishonored himself and his family disgraced if he has been convicted improperly, either through the malice or stupidity of a judge? For my part, hold out no such boon as that! Prate not to me the great character of your rights under the present Constitution! Prate not of your constitutional provisions! They are glittering generalities. They disappear as mists before the morning sun when you come before a judge of the quarter sessions put in office under the system of an elective judiciary—a man who may know nothing about law, either civil or criminal. You can make him take down all the testimony, and you can review everything that he does in a case where there is at issue the paltry pittance of \$5 34; and that being so, what equity is there in a system according to which, if you are tried for arson, or for robbery, or for statutory burglary, or for the thousand offences existing at common law and by our penal code, you are bound absolutely hand and foot?

We beg no favors. All that we ask is to be tried according to law. Is not that reasonable? Is it not true that under the present system a man charged with a crime cannot be tried according to law? Where is the man able to deny it? It will not do, as an answer to this question, for gentlemen to come in here with their special pleadings and say that we have these rights now. Gentlemen know better. The objection to this section comes from a prejudice against what is called an innovation.

The delegate from Centre, formerly Governor of the Commonwealth, (Mr. Curtin,) sits in my front; and when he was Governor of this State, and he will bear witness to the truth of what I say, many of the applications that were brought to him for pardon were based

upon the fact that the man for whom the pardon was asked had been improperly convicted. He submitted such cases to the Attorney General, and the Attorney General examined the testimony as submitted to him by the counsel, and upon the strength of the Attorney General's report upon that testimony the Governor granted a pardon.

But what is a pardon to a man who is not guilty? What does pardon mean? A pardon means that the person pardoned has committed a crime, and that because he has committed a crime the only way in which he can escape from the prison to which he has been unjustly, illegally consigned, and restore his reputation, is by the Executive clemency. I want no pardon! If I am charged with crime, try me according to law; let me have my testimony offered according to law, and if the judge rules it out, let me have a bill of exceptions taken. If he refuse my testimony, let me have my bill of exceptions taken to that, and let me carry my case to the court of last resort. Then if I am guilty, let me suffer proper punishment; but do not expose me to the malice or to the stupidity of a single judge whose action blasts my life and consigns me to the penitentiary.

You talk of your libel law and you have wasted hours and days upon that. The gentleman from Philadelphia (Mr. Dallas) talks of the necessity of amending your libel law, and why? Because malice is the important ingredient of libel, and because just as many judges as there are in your Commonwealth, just so many interpretations will there be as to the meaning of malice. You have it in your hands now to require the judge who is trying a question of libel to take down the offers of testimony, and the exceptions, and then to have the case carried before the court of last resort. I venture to say that if that were done you would see no more such spectacles, no more such anomalies, as was presented in the court of quarter sessions when the same judge laid down the same law differently in two similar cases. No such decision as was made by Judge Paxson in the *Bulletin* case, directly contradicted by the decision of Judge Paxson in the Cathcart Taylor case, could occur if reviewable in the Supreme Court, the court of last resort. The court having the last action of this kind would settle the law finally and forever.

I would remind the gentleman from York, also, who says that he does not know

anything of criminal law and the Supreme Court knows nothing about it, that it is high time that they and he should be educated to it. If the gentleman from York has not learned it, it is high time that he *should* learn. But when a case is carried to the Supreme Court, that court will lay down the rule, and that rule will be a guide in all cases of the kind.

Why should an editor of a paper who comments upon the conduct of an official, or of a private man, not be tried according to law? Why should his paper be ruined, and why should he be consigned to the walls of the penitentiary if he is unjustly tried and illegally convicted? And why should we hold out to him only the poor boon that he may go to the Governor upon his bended knees with tears in his eyes, and with his sorrowing family behind him, to beg for a pardon? Great God, talk to me about grace! What I demand is of right! I want no grace, no favors. How are we answered here? The gentleman from Luzerne, (Mr. H. W. Palmer,) with lofty disdain, declares that this section is nonsense. "It is nonsense," says he, and with this stately and convincing argument he slips into his seat. This idea of "nonsense" is not argument. Let that gentleman or any other give us an intelligent reason—

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. BEEBE. I do not rise to speak upon this question with any expectation of enlightening this Convention, but as the lowest citizen of this Commonwealth and of every true and free government has rights which should be protected by law as well as the highest, any government which fails to give that protection is a failure of itself, and contains the seeds of its own destruction and dissolution. So I have the right, and I intend to give my views in a few words on this subject in relation to some of the arguments made by gentlemen upon this floor against the proposition.

There is a common sense in this question as in all others that addresses itself to every delegate; and when the question now pending came up yesterday, not having been present when it was before discussed, I was open to conviction, having no settled opinions, but the arguments presented here have led me to look at the question in a different light and to take a different side from that to which I had previously inclined on this subject. And, sir, when I see the leanness and

paucity of the arguments advanced by gentlemen here upon the negative who pretend to be able and competent to discuss this question, I am led to believe that the principle is right; and where a principle is at the bottom, the mere question of expediency is nothing to me.

Let us look at a few of the arguments. The first gun was from the gentleman from Luzerne, (Mr. H. W. Palmer,) and what did the argument amount to? As the gentleman last upon the floor remarked, it was, first, nonsense; second, cost, it will cost more; third, the old cry made here of ignoring the rights, ignoring the principles that underlie our government, and the stale argument that our judges of the Supreme Court must continue to be wine-d, and dine-d, and humored, and permitted to have their leisure, take a longer lease of life and not be over-worked!

Why, sir, this argument is so absurd and is so degrading that I have not, nor can I find, words to express my contempt of it. That the right of any citizen of this Commonwealth should be prejudiced for the comfort and convenience of the judges of our Supreme Court is an absurdity; it is a degradation. Why, sir, when I hear gentlemen, renowned for their learning and intelligence, get upon this floor and put forth their paltry arguments for the convenience and comfort of the Supreme Court, I am reminded of the great Vishnu, god of the Hindoos. Take any ordinary man and put him upon the Supreme bench, and from that moment he becomes sacred and consecrated, "crowned, sceptred and enthroned," and every man must be expected to bow down and worship at his shrine and sacrifice rights and principles of government for the great god so enshrined by the tenor of the gentleman's argument. I come now to the argument of the gentleman from Lycoming, (Mr. Armstrong,) and it sums up just like this: He does not deny the principle; he does not deny that the wrong may be, that it is open to, but he says he does not know of cases where a principle that is right and not established by virtue of the law of this Commonwealth has been innovated upon.

Then, again, this morning we have from the learned gentleman from York (Mr. J. S. Black) a statement that it is absolutely unnecessary, as derived from his personal experience. Mr. President, I accord him fully the conviction, on account of his own integrity and justice of charac-

ter; but as he remarked in a parallel case here the other day, I do not consider him a competent witness for the very reasons which he gave why our friend Judge Woodward, of Philadelphia, was not a competent witness in a parallel case. He cannot speak from experience, or from which he has a practical knowledge or upon which he was concerned, whereby the rights of any person were infringed. But, let him be an attorney of the Commonwealth of Pennsylvania, paid to convict the wrong man, and securing his punishment, and I apprehend that he at least would have felt the force of the argument of my friend from Montgomery county (Mr. Hunsicker;) and that we have had such cases in the Commonwealth of Pennsylvania is not to be denied.

I am aware that at this present time in cases of this kind, cases that affect the rights, liberties, and privileges of the citizen of this Commonwealth which are endangered from the fact that there is a popular sentiment that crime is rampant, stalking abroad throughout the land, and the popular sentiment cries for blood; and I am only astonished that it should affect the grave dignitaries of this Convention, who have been judges upon the supreme bench and judges of the court of common pleas and lawyers, who understand that it should be their duty to ignore any such state of public feeling in judging of this question at this time.

The gentleman from York remarked that criminals were constantly escaping, and referred to the State of New York as proof. Now, there are two classes in every community; there are the wealthy, the distinguished, those who have money, who commit crime, and they are the persons who are represented by the public press, and they are the persons who through their money and the corruptions of the times are escaping; but while they are, the same corrupt principle may consign to the penitentiary, may consign to the prison the humble individual whose rights are thereby disregarded. Besides, sir, the adoption of this section will prevent largely the use and *excuse* for the abuse of the pardoning power, as has been asserted over and over again upon this floor. Again, as we are about to dispense with associate judges, it leaves the lives and liberties of individuals often almost entirely at the mercy of a one-man power; and however honest judges may be, I know at least one instance, years ago,

where I bowed my head in shame at the ruling of a judge, a ruling actuated by an excited popular frenzy in a case pending; and yet, sir, I believe that judge to have been a well-intentioned and honest man, but he had the weaknesses that many men have under similar circumstances.

Mr. BARTHOLOMEW. **Mr. President:** I desire to give a view which I have taken of this matter, for the benefit of my brother delegates, with the faint hope that it may have some effect, that it may convince them that this section, as it now stands, is wholly wrong and that the amendment proposed by the chairman of the committee is right.

We have had very much eloquence expended upon what have been denominated "glittering generalities," and such like, but if we come to examine this question, as I think we should examine it, we shall obtain the fact that the administration of criminal jurisprudence is but a branch of the government. It is a part of the governing or ruling of society, the same as the enforcement of laws for civil rights, the civil administration of justice. They stand upon entirely different foundations; upon bases that are wholly unlike, the one simply as the ascertainment of rights between citizens; the other as an ascertainment of rights between the Commonwealth, or the State, and one charged with an offence. The object of criminal law is the protection of the whole body politic. To ensure that protection, the administration of criminal jurisprudence should be speedy and should be certain.

What is the policy of our Commonwealth in relation to jurisprudence? Let us look first upon the progress of times that have gone by. We remember well when every felony was punishable with death. A few were excepted; a few perhaps had the benefit of clergy. In such a day as that we had refinement of criminal pleading. Bills of indictment were filed with particularities, and particularities that were bound to be complied with, for the purpose of the protection of the life and the liberty of the citizen.

When capital punishment for felonies less than the grade of homicide had been abolished the administration of the technicalities was to a certain extent relaxed, until at our day, in 1860, in the Commonwealth of Pennsylvania, we adopted what is known as our penal code. In that penal code we have adopted the

merciful policy of fixing the maximum of punishment, allowing a judge to impose a punishment limited in its extreme, unlimited as to its minimum. We have relaxed the rule of criminal pleading simply because of the fact that the punishment itself is within the discretion of the court.

We have loosened and relaxed all of those strict technicalities in pleading, and for what reason? What reason can any gentleman assign to his own mind why this was done? For the purpose of facilitating the speedy conviction of criminals, for the purpose of rendering it more certain that punishment would follow crime. That was the object and intent of the adoption of the criminal procedure in the penal code of 1860, that there should be some degree of certainty in the conviction of criminals.

If it be true that the good order and the peace of society rest upon the speedy and certain conviction of criminals—and I take it that it is true and that no man can question it—if you once incorporate in your system of laws such a thing as a doubt or a hope that conviction shall fail by reason either of delay or multiplicity of tribunals, that moment you loosen the bands that hold the criminal in fear and you let him loose upon your society to commit ravages and to despoil property and life, without fear and without punishment.

Therefore, I take it that it is for this object and this object alone that the whole policy of our criminal law has been built from its foundation upward. We have seen it grow, not only in our experience, but in the experience of other men; because no nation makes law for itself, but it gathers from all nations. It is a temple that has grown from the days of Adam, and it has gathered from all people, in all climes, rearing itself aloft for the benefit of mankind. We are to impart and plant our handiwork upon it, not tear away and deface, but to do that which is proper for the advancement and improvement of the administration of justice to all men.

Therefore I say that the great harm that you can do, the great destruction that you can impose upon this temple, is to tear away that certainty in the commission of crime of its speedy punishment, which is all that the criminal fears. Let us have tribunals that shall follow the commission of crime with trial and punishment; let the punishment be executed immediately; and then you will

have that which all peoples and all societies should have—order and peace.

I take it that you cannot point to an example in any State of this Union where they have adopted this principle, where there can be such a thing as cheating justice by technicality, by going hither and you appealing to this tribunal and to that one, that crime does not run rampant and stalks abroad by night and by day. Therefore I take it that as it stands upon an entirely different principle from that which regulates the affairs between man and man; it is a question of the State. Now, the State has established tribunals which it has said shall be final in certain determinations. In this administration of justice we have a mansion high, with many chambers; and we have erected there a chamber and we have given that to the administration of criminal justice. We have said the great object of criminal law is to make it speedy and certain. We have established that as a tribunal, giving it ample powers and giving it a final jurisdiction, that we may accomplish the great end of all criminal jurisdiction, to wit, speedy and certain punishment.

Therefore I say that if you adopt this principle, if you assimilate it to the question of individual rights, upon its face, it stands precisely upon the footing that it has been placed upon by its advocates; there is no difference. If in the one case there should be a writ of error, so there should be in the other. But I say it stands upon an entirely different basis, upon a different proposition. One, as I have said before, is the adjustment of right between individuals; the other is for the peace and order of society between the Commonwealth and the individual, where the only way to enforce peace and order in the community is to follow the commission of crime with certain and speedy punishment.

Mr. ARMSTRONG. Mr. President: I do not desire or intend at all to enter into the discussion of this question, but I rise to explain what I think is a misapprehension of the gentleman from Montgomery (Mr. Hunsicker.) I do not understand at all why there should be so much feeling upon this amendment, or why it should be manifested upon this floor.

Mr. HUNSICKER. I have no feeling at all.

Mr. ARMSTRONG. I offered the amendment because I believed it would very materially improve the section, and that in its general and sweeping condition as

it stands now in the article, the section would be extremely dangerous. I remarked, in modifying my amendment, that I hoped the amendment would pass, as it would render this section unobjectionable. I also added that I did not see any very great importance in the adoption of the section at all; and yet I can see that there is some advantage, not of great consequence, in putting it into the Constitution, as I said yesterday, that it may be a constitutional right. I will not enter upon the discussion now. I trust that we shall not be hurried by the force or vigor of declamation and argument into acting under excitement. Let us act upon this with cautions deliberation, as men who must look at their work years after the excitement of the occasion has passed away. I think, with the amendment proposed, that in all indictments for manslaughter and in such other criminal cases as may be authorized by law, the section is not objectionable.

Perhaps I may be indulged in making just one other remark. If we put this section into the Constitution in its general form, it is without limitation, without control; and it is a subject which essentially needs limitation and control, and therefore it ought to be left to the Legislature. If there is any one subject that we may safely trust the people in, it is in the preservation of their own personal rights and liberty, and I believe that this section, as it is somewhat of an experiment in constitutional law, ought to be so left that the Legislature may modify by any enactment upon the subject as the exigencies of years may demonstrate to be necessary.

I will not prolong the discussion. The question has been already greatly discussed, and I presume it is best, if gentlemen here are prepared, to vote upon it.

Mr. SHARPE. Mr. President: I do not propose to discuss this question. I am in favor of the amendment of the gentleman from Lycoming. I think it is an improvement upon the present system of Pennsylvania, because it gives a writ of error in a homicide case as a matter of right. As it now stands under the statute, in order to have a writ of error the defendant must procure a special *allocatur*. In that respect, therefore, I think that the amendment of the gentleman from Lycoming is an improvement upon the present statutory law of the State. But I desire to call the attention of the gentleman from Montgomery to a reason which I consider

insuperable against the passage of the original section. By an examination of the section it will be discovered that, except in capital cases, the writ of error is not to be a *supersedeas*. Suppose a man is tried for burglary and is convicted and sentenced to the penitentiary, and the judge refuses to certify that it is a case proper for review, then the writ of error is not a *supersedeas*.

MR. HUNSICKER. It is provided by act of Assembly that it shall be now. I only say in this section that it shall not be except in capital cases.

MR. SHARPE. The language is this: "But such removal shall not, except in capital cases, be a *supersedeas*, unless the judge before whom the case was tried shall certify that the same is a proper one for review."

MR. HUNSICKER. In capital cases it shall be a *supersedeas*, the section says.

MR. SHARPE. But I am commenting upon the section itself. It says it shall not be a *supersedeas*. Therefore, the man may be convicted and sentenced. Now, suppose the judge refuses to certify that there is a proper case for review; you go to the Supreme Court; you procure a reversal of the sentence; the man is in the penitentiary. Then he must be brought out of the penitentiary for a second trial. Suppose he is convicted again; then he is taken back to the penitentiary. Can we tolerate such a condition of affairs as that in this State?

MR. BIDDLE. Mr. President—

The PRESIDENT *pro tem*. Did the delegate from the city speak on this subject yesterday?

MR. BIDDLE. I have not spoken at all upon it. I spoke a good deal on another subject yesterday.

MR. President, no blow can be successfully struck at the rights of the meanest individual in a free government without inflicting a grievous wound upon the whole body politic; and if we do, as we assuredly ought to do, place life and the enjoyment of liberty above the enjoyment of mere transitory possessions which come and go without greatly affecting either the social position or the happiness of the individual, I cannot conceive, after listening attentively to all the arguments, why a man whose character and whose liberty are involved in a judicial trial has not the same natural right to have the law applied to him as correctly in that case as in a case involving a mere

paltry sum, the gaining or the losing of which cannot seriously affect him.

I desire gentlemen to bear in mind that every advance in criminal law has been made in the face of precisely the arguments that have been urged against this change to-day. They have been extorted as it were from an overruling sense of justice. The arguments *ab inconvenienti* drawn from supposed experience have always been urged the other way. Thus, when it was proposed to swear the witnesses of a man on trial for his life, or for any other criminal offence, precisely the same argument was used. It was said, "the court will be burdened; it is unnecessary; it takes up time; offenders should be punished; criminal justice should be speedy." So when it was proposed, having allowed it in treason cases, to permit a prisoner to be heard by counsel, it was said, "what a farce! what a folly! How much time will be consumed! An advocate will get up and skillfully array the facts so as to bewilder the jury, and criminals who deserve punishment will go unwhipped of justice." These have been the arguments always; and yet what man living in a civilized country would go back to that barbarous state in which while the crown, the Commonwealth's witnesses are sworn and go before a jury endued with a factitious superiority, the poor, shivering criminal is only half heard!

Now I do not know, I cannot say so far as my personal experience goes, for it is very small, whether men have been unjustly convicted or not. I have my own opinions. I believe the Constitution in one vital point, that which in the city of Philadelphia required the presence of the president judge in every capital case, has been stabbed again and again, even under judicial authority. But I know this: If there be reason for a change there is much greater reason for it in this Commonwealth than there is in the Kingdom of Great Britain. Do not gentlemen know that the first judges of the land there compose a central criminal court, and that no matter how small the offence is, no matter how trifling the doubt upon the reception of a point of evidence, the judges there faithfully reserve the points and have them reviewed by the whole court, which really is a hearing upon a writ of error, or substantially the same thing? No man can pick up a volume of Carrington and Payne's Reports without being struck with that fact. I say this from having

gone over every volume of English common law reports in the way of business; and while amazed, I have been most agreeably excited to find the care which the law there in the mother country throws around the rights, the possible rights of the meanest man. He must not only be morally wrong, but he must be legally guilty before he can be convicted. He must have the law expounded correctly, or else in the apprehension of that tribunal he stands precisely on the same platform as the innocent. He may be a bad man; very few men are perfectly good; but unless he has committed a crime as defined by law, he goes, as he ought to go, scot free.

I do not believe, and I appeal to the gentlemen who sit around me, that any such results as the arguments *ab inconvenienti* seem to suppose would follow from the extension of this writ of right, which is now a mere writ of grace depending upon the *allocatur* of the judge. I do not believe the Supreme Court would be overburdened with cases. I have authority to say that so far as the well-founded belief of gentlemen of large experience on this subject goes, a very small percentage of cases would be taken up, possibly not five per cent.; possibly a much smaller proportion. But I do not care for that. I cannot meet the argument of the gentleman from Montgomery by that sort of reason. If the judicial force is not strong enough to see that complete justice be done to every man in the community, then make it greater. That is an argument not to be addressed to a free people; and when you have twenty, thirty, perhaps forty, different tribunals in this State, there is an eminent propriety in having them all, as well concerning the criminal law as the civil law, subjected to one tribunal which may lay down a correct standard by which every one may be judged.

I put myself, as I think every gentleman ought to in discussing this case, just in the position of one of those men standing up for trial for everything that is dear to him. I naturally say to myself, "if a hundred dollars is so valuable a sum, is so great an interest as to be reviewed from court to court with all the eagerness of contention which advocacy will bring to bear upon it, then whether a man shall be consigned to the penitentiary or not deserves at least an equal hearing," and I have no answer to those arguments. I therefore shall vote for

this section. I have thought much upon it. I was greatly impressed with the proposition when it was started before, and without anything but a desire to bring into harmony what I believe should be the great principles of jurisprudence everywhere, on this particular subject, I shall cast my vote in favor of the section as reported.

Mr. ELLIS. Mr. President—

The PRESIDENT *pro tem*. Has the delegate spoken on this subject before?

Mr. ELLIS. I have been a listener from the beginning until now, and I do not rise to prolong the discussion or to weary the Convention with any extended remarks; and were it not that I desire to state one single point which perhaps may not have presented itself to the minds of other delegates upon this floor, I would not detain the Convention one moment.

Yesterday the Convention reserved in the first section of this article a power in the Legislature to create such other courts from time to time as they may deem desirable for the business of the State. Had I been here I certainly should have earnestly desired to have that clause stricken out of the Constitution of the State of Pennsylvania; but, not being here, it stands now as the adopted sense of this Convention, that the existing Constitution upon that subject shall remain. What is the effect of it? In the district which I do not represent, but in which I reside, that of Schuylkill, we have a court of extraordinary criminal powers; a court created in a political excitement, created for a political purpose, an anomaly in the criminal jurisprudence of the State; a court in which one judge sits to try a man not only for larceny, or assault and battery, but for the highest crimes known to the law, and upon his ruling alone and upon his judgment and sentence, of course a jury always concurring, a man may be hung. By the vote of Dauphin and Lebanon a judge is placed upon the bench in Schuylkill, one single judge, having jurisdiction over all crimes committed in the county of Schuylkill, and his rulings, singly and alone, determine all questions of law relating to those crimes. Mark it, gentlemen, what exists in Schuylkill may at any period of time in the history of Pennsylvania, now to come, exist in any county of the State of Pennsylvania.

Now, in order that some balance-wheel may exist, in order that some sheet-an-

chor may be provided, in order that there may be some uniformity in the decisions upon the lives and liberties of the people of Pennsylvania, some stability, something on which they may rely, I hope and trust that the section as amended in committee of the whole, on the motion of the gentleman from Montgomery, may be maintained in the Convention. We ought to have a right to have the liberties of the people clearly and firmly established by the court of last resort; and while we leave in the first section of this article a means by which the Legislature may establish extraordinary, unheard of, and exceptional courts in every portion of the State, I trust we may retain a power somewhere that the rulings of these courts may be uniform and liberty may be secured according to law.

An effort has been chivalrously made in this Convention to establish the right of newspapers in libel cases, and they have been given a provision worse than that of the old Constitution, but if you retain this section by which the Supreme Court can define what shall be the testimony in libel cases, and what shall be the rulings of the judges below, you retain a principle in the law more valuable than if the first amendment offered by the gentleman from Philadelphia (Mr. Dallas) had been adopted. I regard the uniformity of the rulings, that sense which is accumulated by the experience of all the districts and concentrated in the judgment and wisdom of the Supreme Court, as better than any law laid down, even in the Constitution, which is to be administered by the different judges in the different districts of the State. While you retain this great weakness in the Constitution, the power in the Legislature to establish exceptional courts all over the Commonwealth, I trust you will place in the Constitution some power to supervise and lay down one uniform rule that the people of the State may rely upon for the protection of their lives and liberties.

The argument made by the gentleman from Montgomery, (Mr. Hunsicker,) in relation to the question of right is totally unanswerable. Gentlemen meet it by saying, "the Supreme Court is overburdened and this will add to their business." Such a miserable argument ought to find no countenance on this floor. We are dealing with principles and should deal with nothing else; and if the Supreme Court has not the power to dispense justice as justice ought to be dis-

pensed by that high court, it is our duty, and we are miserable recreants if we do not provide the means of meeting these exigencies. It is a question of right, and if the Supreme Court have not the power to administer that right, it is our duty to give them that power. Can it be said in a State of three and a half millions of people, an empire in itself, a State with as much brains as any other State in the wide world of the same population, cannot provide the means for a Supreme Court that will lay down those principles that ought to govern so great a State as this? Such an argument I think ought not to weigh the weight of a feather in a Convention of this character.

Now, sir, I repeat, inasmuch as the power exists in the Legislature to create all sorts of courts for the trial of all crimes, we ought to retain somewhere, as this section does, the means of regulating and establishing uniform rules in relation to the trial of crimes.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Lycoming (Mr. Armstrong.)

Mr. KAINE. I call for the yeas and nays.

Ten delegates rising to second the call, the yeas and nays were ordered.

Mr. EWING. Let the amendment be read.

The CLERK. The amendment as modified proposes to make the section read as follows:

"In every indictment for homicide, and in such other criminal cases as may be authorized by law, the accused, as well as the Commonwealth, may remove the indictment, record and all proceedings to the Supreme Court," &c.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bartholomew, Black, Charles A., Black, J. S., Brown, Buckalew, Calvin, Carey, Carter, Church, Corbett, Cronmiller, Darlington, De France, Dodd, Finney, Fulton, Gibson, Guthrie, Hanna, Hay, Hazzard, Horton, Kaine, Landis, Lawrence, Lilly, MacConnell, Minor, Mott, Palmer G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purinan, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Struthers, Wetherill, J. M., Woodward and Wright—48.

N A Y S.

Messrs. Ainey, Alricks, Baker, Beebe, Biddle, Bowman, Boyd, Broomall, Bullitt, Campbell, Cassidy, Cochran, Corson, Dallas, Edwards, Elliott, Ellis, Ewing, Fell, Funck, Gilpin, Harvey, Hemphill, Heverin, Hunsicker, Knight, Lear, Littleton, MacVeagh, M'Clean, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Porter, Read, John R., Ross, Simpson, Smith, Henry W., Stanton, Temple, Walker, Wetherill, J. Price, Wherry and Worrell—46.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardsley, Bigler, Brodhead, Clark, Collins, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Green, Hall, Howard, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Van Reed, White, David N., White, Harry, White, J. W. F. and Meredith, *President*—39.

MR. HUNSICKER. I now move to further amend the section by adding after the word "homicide" the words "and felony."

I do not now intend to discuss this amendment, but it will remove the objections that were offered to taking every case of assault and battery and of fornication before the Supreme court, and this objection was the principal one that seemed to exist in the minds of the delegates. Therefore, without intending to discuss it, I call for the yeas and nays.

MR. HEMPHILL. I second the call.

THE PRESIDENT *pro tem*. Is the call sustained?

More than ten gentlemen rose.

THE PRESIDENT *pro tem*. The call is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken and were as follow, viz:

Y E A S

Messrs. Ainey, Alricks, Baker, Beebe, Biddle, Bowman, Boyd, Broomall, Bullitt, Campbell, Cassidy, Cochran, Corson, Dallas, Dodd, Edwards, Elliott, Ellis, Ewing, Fell, Funck, Gilpin, Hanna, Harvey, Hemphill, Heverin, Hunsicker, Knight, Lear, Littleton, MacVeagh, M'Clean, Mann, Mitchell, Newlin, Niles, Patterson, D. W., Porter, Read, John R., Rooke, Ross, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Walker, Wether-

ill, John Price, Woodward, Worrell and Wright—51.

N A Y S.

Messrs.—Achenbach, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Bartholomew, Black, Chas. A., Black, J. S., Brown, Buckalew, Calvin, Carey, Carter, Church, Corbett, Cronmiller, Darlington, De France, Finney, Fulton, Gibson, Guthrie, Hay, Hazzard, Horton, Kaine, Landis, Lawrence, Lilly, MacConnell, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Russell, Sharpe and Wetherill, J. M.—42.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardsley, Bigler, Brodhead, Clark, Collins, Craig, Curry, Curtin, Cuyler, Davis, Dunning, Green, Hall, Howard, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F., and Meredith, *President*—40.

THE PRESIDENT *pro tem*. The question recurs on the section as amended.

MR. ALRICKS. I move to further amend by adding after the word "felony" the words "prosecutions for libel."

MR. ARMSTRONG. I trust that we shall not have any further attempts to reverse the decision of the Convention by piecemeal. The Convention has already placed this section into a form which sufficiently protects every right that ought to be protected. Let us now leave the rest to the Legislature, where all rights not cared for here may be properly protected and regulated.

The amendment was rejected.

MR. BUCKALEW. I now desire to have the section as amended read.

THE CLERK read as follows:

"In every indictment for homicide and felony, and in such other criminal cases as may be authorized by law, the accused as well as the Commonwealth may remove the indictment, record, and all proceedings to the Supreme Court for review in the same manner as civil cases are now removed and reviewed; but such removal shall not, except in capital cases, be a *supersedeas*, unless the judge before whom the case was tried shall certify that the same is a proper one for review."

Mr. BUCKALEW. I would suggest that the section read "such homicide and all such other felonies."

Mr. CASSIDY. That is right.

Mr. BIDDLE. Yes, homicide is a felony.

Mr. MACVEAGH. Make it read "that all cases of felonies."

Mr. HUNSICKER. I agree to that.

Mr. BUCKALEW. Very well; I am satisfied.

The amendment was agreed to.

Mr. BUCKALEW. It will now be seen that according to this section the Commonwealth and the defendant are put exactly upon the footing of parties in a civil case. If we are to have this apply to all cases of felony, I should like to know where we are to stand. In the case of the acquittal of a defendant on a charge of felony, the Commonwealth is authorized to take the record into the Supreme Court and have it reviewed. During the trial the district attorney can make offers of testimony in writing or can object to offers made upon the other side, and can spread all that matter upon the record of the case and take bills of exceptions; and in all other respects the trial will be substantially as civil causes are now tried.

Now, let us understand where we are and where we are drifting. As a matter of course, the duration of criminal trials in the State may, upon the average, be doubled. We know how it is now. The counsel upon each side in a civil case are continually raising questions for the decision of the court and taking bills of exceptions to evidence for review; and on motions for a new trial or for arrest of judgment exceptions may again be taken. They draw long and elaborate points and submit them, on which the jury is to be charged, and then exceptions are taken to the rulings of the court.

Now, sir, I undertake to say that if you are to accept this system you must increase your judicial force. You would be obliged to increase your judges for the city of Philadelphia, and I take it for granted you will require as many judges as you now have in Philadelphia to hold your criminal courts alone. How is it with counsel in a criminal case? According to the rule laid down by Lord Brougham in the Queen's case the lawyer is to know no human being upon the face of the earth except his client. He is to fight for him at the expense of everybody else. He is to disregard the public interest that may be involved in the speed and expedition with which cases are to be tried.

Every possibility of catching the judge is to be embraced, every opportunity of advantage to his client to be seized upon and worked to the utmost, from the beginning of the case to the end.

Now, you will have to change altogether the character of criminal trials in these cases. At present they are a sort of popular proceeding. The jury is the tribunal designated by your Constitution mainly for the trial of these cases. The judge sits by to see that proper evidence is produced and give instruction from time to time on general principles. Instead of fighting the case as a civil case is fought, upon offers and objections and bills of exceptions and other minute proceedings, the counsel takes his case to the jury as the popular tribunal, and it is argued, and when the jury have decided in nine cases out of ten, in nineteen cases out twenty, that is the end of controversy.

Mr. President, I intended to speak to one or two other points, but I am appealed to by a gentleman near me to allow the vote to be taken.

Mr. MACCONNELL. Allow me to ask the gentleman a question before he sits down. As the law stands now, it is a limit to the Commonwealth entirely. Under this provision will the Commonwealth be allowed to take a writ of error when the defendant has been acquitted, and have a chance to have it reversed?

Mr. BUCKALEW. What then?

Mr. MACCONNELL. What will be the effect of that? Will that subject the defendant to a new trial?

Mr. BUCKALEW. You will have two inconsistent provisions in the Constitution—one that a man shall not be put in jeopardy twice and another provision that the court may reverse the conviction or the first acquittal. What is the Supreme Court to do? Is it to order a new trial or is it stopped there? Suppose it sends a case down for a new trial, and the man is tried over again and acquitted, what are you going to do then? Let him sue the Commonwealth for the damages he has sustained by the former conviction? Will you authorize him to sue the Commonwealth? I beg gentlemen to look at consequences. Now the Legislature has complete control over this whole subject. We do not need any provision to authorize action, and I am disposed to leave the matter with the Legislature.

Mr. HUNSICKER. I desire to offer an amendment—

Mr. RUSSELL. I move to strike out the entire section and insert the following:

"In criminal cases the party accused, as well as the Commonwealth may, under such regulations as may be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the Supreme Court."

Mr. HUNSICKER. I object to that; that cannot be done.

Mr. RUSSELL. Why not?

Mr. HUNSICKER. We have just voted on that.

Mr. RUSSELL. Mr. President: I would only remark that that is a provision in the present Constitution, and it is all that we need upon this subject. It will leave the whole matter, as the gentleman from Columbia remarks, with the Legislature.

Mr. MACVEAGH. Mr. President: I trust the Convention will not be driven from its support of this section by the wholly imaginary difficulties that have been suggested concerning it. There is no difficulty at all in striking out the provision giving the writ of error to the Commonwealth, and it ought to be stricken out, and I suppose it would have been if the amendment for that purpose, primarily offered, had not been withdrawn. That being done, you get rid of the difficulty.

The argument of the gentleman from Columbia goes the entire length that the trial of a man for a grave felony, arson or burglary, is of less comparative importance to the community than the trial of a trifling trespass. It is not so, and it is one of the evil signs of the times in which we live that character and personal liberty and the right of redress for injuries to your person and your character are of no consequence whatever as long as you do not touch a man's pocket. Give him his money, you cry, and if you do not pay it to him every court in the Commonwealth shall investigate his reward. Do not talk about the accumulation of judicial business. This Convention declares, and the Legislature has long declared, the five learned judges of the Supreme Court shall decide the rights of property, however trivial. Take the history of a civil cause, however trifling.

First, a justice shall hear and decide it, and then arbitrators shall hear and decide it, and then a court and jury shall hear and decide it, and then the Supreme Court shall hear and decide it; but if a man is charged with a grave crime, a crime which makes all the rest of his life

a burden to him and his children, he shall be simply remitted to the uncontrolled discretion of a county court judge, elected, too, by the people. An elected judge of the county court shall pass upon everything except the breaking of his neck! In that case you allow him to go to the Supreme Court. Right there, in the county in which the crime was committed, where the popular mind is excited, he is to be tried and no redress given him! You say your courts are clogged. Clogged! Have the courage to put a pecuniary limit on your civil cases that go to the Supreme Court, as the nation has done in the cases that go to the Supreme Court of the United States. Draw a line upon the rights of personal liberty and of private character and of private property alike. Say that arson is worth as much attention as \$500; say that burglary is worth as much attention as \$500, and that neither of such cases nor a case involving less than \$500 shall be taken to the Supreme Court, and then you will have plenty of time.

It is not true that every man has a right to have his case reviewed in the Supreme Court. It is the duty of a civilized society to furnish a court of appeal where legal principles may be decided and where individual cases of sufficient importance shall be reviewed in order to furnish precedents for inferior tribunals, and at least to draw a horizontal line between these classes of cases. Put the trifling little petty squabble about a civil trespass on the footing of a small misdemeanor, but do not put such a trespass and the trial of a man for a felony on the same footing. There is no difficulty in doing it, and the Supreme Court will then have ample time. Finally, I submit again that this theory that the rights of property are the only sacred rights, and that personal liberty and private character are of no importance, is a grave mistake.

I trust, therefore, the Convention will adhere to the vote it has now given; and while I was in favor of the amendment now offered, I was opposed to allowing a misdemeanor to go there without a special *allocatur*; and I am opposed to allowing trifling civil suits to go there without a special *allocatur*. In that way, it seems to me, you can do justice to both classes of causes and to both classes of suitors, and I trust the Convention will adhere to it.

Mr. ARMSTRONG. Mr. President: I only wish to submit a single remark. It is very evident that the friends of this

section have the speaking side of the question. We have to meet in this discussion that kind of magnificent declamation which sometimes urges a deliberative body beyond its line of common sense. Now, sir, where is the evil so much declaimed about to be remedied? Whose right has suffered, whose personal liberty has been abridged? Gentlemen talk about these things by way of turning oratorical sentences, but are such arguments to control the solid judgment of this Convention? Whose liberty has been shortened? Who has suffered, being innocent? Sir, it is easy to indulge in fanciful imaginings, and to build theories upon imagined wrongs, but under the enlightened and cautious administration of criminal law, which characterizes the actions of our courts and juries, we are far more likely to let the guilty escape than to measure out even-handed justice to the guilty. Every circumstance which attends upon the trial of the accused surrounds him with the strongest assurances of his protection against injustice. He stands before the court under cover of a presumption of innocence. The burden of proof is cast upon the Commonwealth, and should the evidence adduced fall short of complete certainty he will be acquitted upon the ground of reasonable doubts. The jury is the judge of both the law and the facts. They stand above and beyond the reach of the courts. It is true the court will expound the law, and should the jury disregard the instructions of the court in returning a verdict of guilty the court has the power, and will exercise it, to set aside the verdict and direct a new trial; but if they disregard such instruction in returning a verdict of not guilty, the court is powerless and the accused must be discharged. The jury may defy the court and the law alike in a verdict of acquittal, and no power on earth dare lay its hand upon the prisoner thus discharged. In the presence of the fact which no one will deny, that substantial justice is attained in the criminal courts, and that in the experience of years no case of innocence convicted can be adduced, of what avail is it to run a parallel between civil and criminal administration? It is the old, thrice told, familiar argument, that for the trespass of a chicken or a turkey, as the gentleman from Dauphin (Mr. MacVeagh) with so much eloquence delights to put it, there may be an action at law to drag its slow length from a justice's

court through the common pleas to the court of highest resort, whilst for an action involving liberty, and jails and penitentiary, and all the rest of the eloquent catalogue of wrongs so pressed upon the Convention, the accused cannot at his mere discretion reach the Supreme Court. Why, the gentlemen in their zeal would not even allow the matter to be subjected to the ordinary precaution of an affidavit that the writ of error is not intended for delay. This exaggeration upon the one side and battling on the other is for effect. The gentlemen must know that they press the argument out of its true relations. If the section had been allowed to stand upon my amendment as adopted, giving a constitutional right of review in indictments for homicide and in all other cases as the law might direct, I could cheerfully have voted for the section, but by adding all cases of felony the section is not only disturbed but is manifestly and grossly unjust. Even petit larceny was a felony, clipping the coin was a felony, and a long list of comparatively trifling crimes are as much included within such description as felonious homicide—whilst misdemeanors of the highest grade, such as perjury, forgery, adultery, seduction and such like, are wholly excluded. Can any man say that this is either just or wise? To follow the lead of the able gentlemen who have discussed the question on the other side, they would give a constitutional right of review in an indictment for stealing a chicken, and ban the perjurer, the forger, the adulterer and the seducer to the unlimited discretion of the Legislature. This is the leading of their argument, and to this conclusion it must come at last. Slight consideration of the question must show that we cannot deal wisely with this question here. It involves intricate and delicate and most important questions of detail.

The whole subject presents itself in a light which strongly urges upon the Convention the necessity of referring the entire question to the Legislature, where it can be considered piece by piece, where crimes can be distinguished according to their enormity, and the necessity of their punishment with promptness can be sufficiently secured. Let perjury, let stealing, let every other crime, great or small, fall within the line of the legislative discretion without constitutional embarrassment. Let our action be such as will allow the Legislature to mete out its justice

not only promptly but with a sound discrimination as to the varying kinds and degrees and punishment of crime.

If this section had stood as amended, allowing a writ of error in cases of homicide, I should have voted for it; but now that its operation has been extended by a line which takes in a vast multitude of little and insignificant cases, which the gentleman from Dauphin himself admits ought not to go to the Supreme Court, and leaves out others which are of great magnitude and importance because they are misdemeanors and not felonies, I cannot but regard the section as an unwise and inconsiderate provision for the Constitution. I repeat that it includes all felonies, however trifling, and leaves out misdemeanors of very great magnitude. Let us then leave this question to the Legislature, where it appropriately belongs. If we cannot trust the people to protect their own liberties, what in the name of all that is sacred in government can they be trusted to do? If rights so plain as these cannot safely be entrusted to the Legislature, which, coming from the people year by year, is in strongest sympathy with its rights and interests, then might we well despair of the Republic. Let this section be voted down, as tending rather to embarrass than advance the administration of criminal law, trusting with confidence to our representatives to neglect no precaution that will cast additional security around the sacred liberties of the people.

MR. HUNSICKER. I would ask the gentleman how the people protect themselves in the enjoyment of their liberty except by their representatives? It is the law-making power that passes the laws that regulate the enjoyment and the mode in which you are to enjoy your life, liberty and property; and where, let me ask the gentlemen, should the people place the safeguards around their liberty but in the fundamental law? And when the gentleman declares that in the case of perjury, forgery, &c., they can not be heard under the section as amended, I say:

"Thou canst not say, I did it; never shake
Thy gory locks at me."

You did it. You and those on your side emasculated this section, and you voted against it. Will you vote for it now? If you will we will put it back; we will restore it where it ought to be and make the remedy as broad as the mischief.

The gentleman asks with eloquence and with a sneer, who has been illegally tried? I have tried to tell him that the great bulk of the pardons that are granted at Harrisburg are upon the ground that the party has been improperly convicted.

I had proposed, Mr. President, if I could have obtained your attention, to move to strike out these things which gentlemen peck at. They try to destroy this section piecemeal and by indirection. I was willing to accommodate the gentleman from Franklin (Mr. Sharpe) and the gentleman from Lycoming by striking out, after the word "accused," the words "as well as the Commonwealth," and inserting "after conviction and sentence." After we shall have disposed of this last covert attack by the gentleman from Bedford, (Mr. Russell,) in disregard of the sense of this Convention as declared on my second amendment, I purpose proposing it again, so that it shall be amended as I have indicated.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Bedford.

The amendment was rejected.

MR. HUNSICKER. I now move to strike out, in the first line, after the word "accused," the words "as well as the Commonwealth," and insert in lieu thereof, "after conviction and sentence," so as to make the sentence read:

"In every case of felony the accused, after conviction and sentence, may remove the indictment, record, &c., the same as in criminal cases."

The amendment was agreed to.

THE PRESIDENT *pro tem*. The question now recurs on the section.

MR. COCHRAN. I move to amend, by inserting after the word "felony" the following words: "Forgery, perjury, embezzlement, false pretense and conspiracy." I wish simply to say with regard to this amendment that I consider this class of misdemeanors to involve as many nice questions of common law in their trial as cases of felony.

MR. MACVEAGH. If the gentleman will allow me to interrupt him, I think that he should bring within the scope of his amendment prosecutions for libel.

MR. COCHRAN. I will modify my amendment by inserting the word "libel" before the words "and conspiracy."

THE PRESIDENT *pro tem*. The amendment will be so modified.

MR. COCHRAN. I think this particular class of misdemeanors are in their nature

of such a character that they should properly be included in this section. I do not offer the amendment for the purpose of embarrassing the passage of the section. I shall vote for the section, whether this amendment is agreed to or not; but to me it seems proper that this peculiar class of misdemeanors should be included in this section. We all know that in the trial of cases of perjury, forgery, embezzlement, false pretenses, libel and conspiracy there are very difficult questions of law often arising; and unfortunately there are one or two of this particular number of misdemeanors here specified that are often perverted from the intent of punishing a criminal offence merely to enable parties under the cover of a criminal prosecution to squeeze their debtors into payment through apprehension. Such particularly is the case of false pretenses. It is very important to guard that particular class of offences from perversion. I think, therefore, that this amendment is proper in itself and ought to be adopted; but if it should be rejected I shall, nevertheless, vote for the section.

Mr. CORBETT. Mr. President: We are in the difficulty in which we now find ourselves, wholly because of our attempt at legislation. In civil causes bills of exception are allowed by statute, and the Legislature controls this whole matter. Until a very late day bills of exception were not allowed even in homicide cases; but lately they have been by act of Assembly; and I have no doubt the Legislature will continue to extend the right of raising questions of error and apply it to other cases.

Now, the very moment we attempt to allow the right of writs of error in criminal cases, it is necessary for us to select the cases. We have had amendment after amendment offered, the last by the gentleman from York, (Mr. Cochran,) and yet he leaves out seduction, one of the most aggravated misdemeanors that can be; and if you examine our criminal code you will find aggravated assaults that are punished as severely and with greater severity than many felonies. It is impossible for us to regulate this matter, and we ought to leave it to the Legislature. The Legislature has full control of the whole subject. A singular feature that is presented here is that we are undertaking to regulate this matter in criminal cases when the whole law with reference to error depends upon statutes, and you say in this section that the re-

moval and review are to be in the same manner as in civil cases.

I submit, Mr. President, that this is not the place to do this thing. We were not sent here for this purpose. We were sent here to make an organic act. We were not sent here to legislate. No great complaints have been made on this subject that we are now attempting to remedy. No great injury has been done. There have been no convictions that I know of that have shocked the sense of the people of the State or of the several counties of the State. Judges are not likely to sentence men who are convicted of crime, unless the proof is full and plenary; they do not do it; and we can trust them. If persons are likely to be convicted on errors committed in the trial of men for crime, it is within the full control of the Legislature, and let us trust the Legislature to provide the remedy. If we attempt to provide remedies in this way, it will run us into endless difficulty.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Cochran.)

The amendment was rejected, there being on a division, ayes thirty-seven, noes forty-one.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. CORBETT. On that I ask for the yeas and nays.

Mr. HUNSICKER. I second the call.

Mr. ARMSTRONG. Before the vote is taken, I desire to call the attention of the Convention to the fact that we have already provided in the third section, speaking of the Supreme Court: "They shall have appellate jurisdiction by appeal, *certiorari* or writ of error in all cases as is now or may hereafter be provided by law." Criminal and civil cases are on the same footing.

Mr. HUNSICKER. This section then will do the business.

The question being taken by yeas and nays, resulted, yeas forty-five, nays forty-seven, as follows:

Y E A S .

Messrs. Ainey, Alricks, Baker, Beebe, Biddle, Bowman, Boyd, Broomall, Bullitt, Campbell, Carter, Cassidy, Cochran, Corson, Dallas, Edwards, Elliott, Ellis, Ewing, Fell, Funck, Gilpin, Hanna, Harvey, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, McClean, Mann, Mitchell, Nowlin, Niles, Patterson, D. W., Porter, Purman, Read, John

R., Ross, Smith, Henry W., Temple, Walker, Wetherill, Jno. Price and Worrell—45.

N A Y S.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Bartholomew, Black, Charles A., Black, J. S., Brown, Buckalew, Calvin, Carey, Church, Corbett, Cronmiller, Curry, Darlington, De France, Dodd, Finney, Fulton, Gibson, Guthrie, Hay, Hazzard, Horton, Kaine, Landis, Lawrence, Lilly, MacConnell, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Sharpe, Struthers, Wetherill, J. M., Woodward and Wright—47.

So the section was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Bardsley, Bigler, Brodhead, Clark, Collins, Craig, Curtin, Cuyler, Davis, Dunning, Green, Hall, Howard, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Parsons, Pughe, Purviance, John N., Runk, Simpson, Smith, H. G., Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F. and Meredith, President—41.

The CLERK read the next section as follows:

SECTION 11. The judges of the Supreme Court and the judges of the court of common pleas within their respective counties shall have power to issue writs of *certiorari* to the justices of the peace and other inferior courts, not of record, and to cause their proceedings to be brought before them and right and justice be done.

MR. KAINE. Mr. President: I do not think we want this section at all. We had better leave the provision upon this subject as it is in the old Constitution. The eighth section of the fifth article of the Constitution provides that:

"The judges of the courts of common pleas shall, within their respective counties, have the like powers with the judges of the Supreme Court, to issue writs of *certiorari* to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done."

I think that is better and more comprehensive than the proposed amendment. I suppose, Mr. President, that what we do not alter in the old Constitution will remain, and that if we fail to adopt a sub-

stitute for a section or an article, the Committee on Revision and Adjustment will arrange it accordingly. That was done by the Convention of 1837-8, and it will, I suppose, have to be done now. We are not making a new Constitution; it is impossible for us to make a new Constitution. We are merely changing, altering, and amending the old one; and therefore what we do not alter or change will remain as it was before. Now, the very provision which I have read from the Constitution of 1837-8 was in the first Constitution ever provided for the Commonwealth of Pennsylvania. In the Constitution of 1776 is contained this provision:

"The judges of the courts of common pleas shall, within their respective counties, have the like powers with the judges of the Supreme Court, to issue writs of *certiorari* to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done."

At that day the judges of the Supreme Court did issue *certioraris* to justices of the peace without going through the inferior courts; and they continued to do so for, perhaps, thirty or forty years after the adoption of the Constitution of 1776. They did it after the Constitution of 1790; but the same provision has been retained in the three several Constitutions, the Constitutions of 1776, 1790 and 1837-8. Therefore I think there is no necessity for changing the phraseology of this provision.

The amendment now proposed reads thus:

"The judges of the Supreme Court and the judges of the court of common pleas within their respective counties"—

Now, you may read that to mean that the judges of the Supreme Court and the judges of the court of common pleas in their respective counties, or you may read it so as to confine it to the judges of the court of common pleas in their respective counties, but a literal reading of it will apply to the judges of the Supreme Court in the counties in which they reside. It is a changing of the phraseology; it is a changing of the meaning, and I see no necessity for it, and I hope it will not be adopted. If it is understood that we are to adopt everything *de novo*, if we are to adopt every provision of the old Constitution, re-enact it by this Convention, then I offer the provision of the old

Constitution as a substitute for this section.

Mr. ARMSTRONG. If the gentleman will allow me to make a suggestion at this point, by a reference to the third section, which the Convention has already adopted, in the closing paragraph it will be found that in defining the jurisdiction of the Supreme Court we say "they shall have appellate jurisdiction by appeal, *certiorari* or writ of error in all cases as is now or may hereafter be provided by law." I think that is broad enough to cover it.

Mr. KAINE. Then strike out "judges of the Supreme Court" in the section.

Mr. ARMSTRONG. Yes; those words should be stricken out, and then let the section stand.

Mr. KAINE. I agree to that. I withdraw my amendment.

Mr. ARMSTRONG. I will move it unless the gentleman from Fayette does.

Mr. KAINE. I have made that alteration in my copy. I move to amend the section, in the first line, by striking out the words "of the Supreme Court and the judges," so that it will read:

"The judges of the court of common pleas within their respective counties shall have power," &c.

The amendment was agreed to.

Mr. GILPIN. I move to amend, in the second line, by striking out the word "counties" and substituting "districts." The reason is that if it is hereafter determined that the common pleas courts shall be organized in districts instead of counties, then it will save going back to alter this section, and if it is afterwards determined that they shall be in counties, then "districts" will still cover it, for I notice that the twenty-fourth section says that each county shall compose a judicial district, and therefore the word "district" will have the same sense with "counties" if they are to be counties.

Mr. ARMSTRONG. There is a court of common pleas for every county, although there may be more than one county in a district. I think, therefore, the phraseology is better as it stands. It must be a county court, although it may be included in a district.

Mr. GILPIN. Would not this look as if the judges in a district composed of three counties would have jurisdiction only in a particular county?

Mr. ARMSTRONG. The purport of it, I will remark is that a writ of *certiorari* in a district shall not remove the case

from the county in which it was taken, so that the suitor in cases of appeals from justices of the peace may not be taken to an adjoining county.

Mr. GILPIN. That covers the objection, and I therefore withdraw the amendment.

The PRESIDENT *pro tem*. The amendment is withdrawn. The question is on the section.

The section was agreed to.

The twelfth section was read as follows:

SECTION 12. Justices of the peace or aldermen shall be elected in the several wards, districts, boroughs and townships at the time of the election of constables by the qualified voters thereof in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of five years. But no township, ward, district or borough shall elect more than one justice of the peace or alderman without the consent of a majority of the qualified electors within such township, ward or borough. No person shall be elected to such office unless he shall have resided within the township, borough, ward or district for one year next preceding his election, nor if he has been convicted of any infamous crime or been removed by the judgment of a court from any office of trust or profit.

In the city of Philadelphia there shall be established in lieu of the office of alderman and justice of the peace, as the same now exists, one court (not of record) of police and civil causes not exceeding \$100 for each thirty thousand inhabitants. Such court shall be held by judges learned in the law, who shall have been admitted to and shall have had at least five years' practice in the court of common pleas in the judicial district in which said city is located. Their term of office shall be seven years, and they shall be elected on general ticket by all the qualified voters of such city; and in the election of the said judges no voter shall vote for more than two-thirds of the number of persons to be chosen. They shall be compensated only by fixed salaries, to be paid by said city, and shall exercise such jurisdiction, civil and criminal, except as herein modified, as is now exercised by aldermen and justices of the peace.

All costs in criminal cases and taxes on the business of such courts, and all fines and penalties, shall be discharged

only by a direct payment into the city treasury.

The PRESIDENT *pro tem*. The question is on the section.

Mr. MACVEAGH. I call for a division of the section into three parts.

Mr. DALLAS. I move to amend—

Mr. MACVEAGH. The gentleman from Philadelphia is certainly desirous to amend the latter part. I desire to move to amend the first part, and if he will give way—

Mr. DALLAS. Certainly; I give way for that purpose.

Mr. BROOMALL. I ask for a division of the section, the first division to end at the words "three years."

Mr. MACVEAGH. So do I, to come in at the end of the word "years," in the fifth line.

Mr. D. W. PATTERSON. I move also to amend the section in the sixth line.

Mr. MACVEAGH. That would not be in the first division. Let us vote on the first division first.

Mr. HAY. What is the first division?

Mr. MACVEAGH. It ends with "years," in the fifth line.

Mr. HAY. Let it be read.

The CLERK read the first division as follows:

"Justices of the peace or aldermen shall be elected in the several wards, districts, boroughs and townships at the time of the election of constables by the qualified voters thereof, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of five years."

The division was agreed to.

The PRESIDENT *pro tem*. The second division will be read.

The CLERK read as follows:

"But no township, ward, district or borough shall elect more than one justice of the peace or alderman without the consent of a majority of the qualified voters within such township, ward or borough."

Mr. DARLINGTON. I move to amend, by striking out the word "but," because it has no business there.

The amendment was agreed to.

Mr. D. W. PATTERSON. I move to further amend, by striking out the word "one," in the sixth line, and inserting "two," and making "justice" read "justices," making it read: "No township, ward, district or borough shall elect more than two justices of the peace," &c.

This, I simply wish to state, is the provision of the present Constitution, and I think that we ought, at least in this particular, to observe the existing Constitution as nearly as we can. I never heard of any complaint of electing two justices of the peace in any borough or township. In fact in our county, in some five or six townships, they vote under the existing provision of the Constitution for three, because that number seems to be demanded by the public convenience, if not by their necessities. I hope, therefore, that we shall adopt this amendment and at least make the number of justices two.

Mr. CORBETT. I hope the amendment will not prevail. I know many townships in which it is difficult to get even one competent person to act as justice of the peace.

Mr. D. W. PATTERSON. That is in Clarion county.

Mr. CORBETT. I have not mentioned any county, and I am not on the witness stand; but under this section every township is entitled to one justice of the peace; all that is necessary, if a second or a third is desired, is for the citizens to say so at a public election, and they can have the increase. There are many townships in the State where one justice will do the business better than two, and I hope the amendment will not prevail. It would require an unnecessary number of justices of the peace in many townships. On the other hand, there are undoubtedly townships where two justices are necessary, and this provision arranges for their election. The argument that applies to the amendment applies equally to the section, and therefore the amendment should not be adopted. As the section stands, it allows the townships in every county to have as many justices of the peace as they require.

Mr. BOWMAN. I rise for the purpose of favoring the amendment of the gentleman from Lancaster. Coming as I do from a rural district, I am aware of many townships, and have some in my mind's eye now, in our own county, containing from one hundred to one hundred and twenty-five square miles, where there is a great deal of business done through this useful branch of the judiciary of our Commonwealth—and when I speak of the term "useful" I do so advisedly, as it has been used by the judges of the Supreme Court—and where two justices in opposite ends of the township are a necessity. There should be

provision made in the Constitution for the election of at least two justices of the peace to a township. It may be said that by expressing their will at a public election the people can elect two; but the calling of an election to present the question of the number of justices to the people for their determination is just what I want to obviate.

Let us leave this matter just as we find it in the present Constitution. The men who framed the Constitution of 1837 and 1838 provided that there should be two justices of the peace elected in each township. Nobody has found any fault with this provision. If, as the gentleman from Clarion (Mr. Corbett) says, there are townships where only one is necessary, if two are elected all that one has to do is to refuse to qualify. This entails no additional expense upon anybody, and where the public necessities require a larger number elected, I want them to have the privilege and the right to elect two.

Mr. ROSS. I had proposed to offer the amendment which has been submitted by the gentleman from Lancaster, and I desire now to say that I cordially endorse it. It is simply restoring in the section we are now considering the section of the old Constitution. I was unfortunately absent when this matter was before the committee of the whole, and therefore I have not heard the arguments on the question; but I cannot imagine any good reason for this change, and I cannot vote to make it unless I have some substantial, essential reason for it. In my own county I know that two justices of the peace are essential. They transact a large portion of the business of the county. They are the business agents of the majority of our people. Our people require them, and I think we should still stand where we have heretofore stood in regard to this matter. I sincerely hope that the amendment of the gentleman from Lancaster will prevail.

Mr. DE FRANCE. I only desire to say that the opinions of gentlemen here are very different about this matter. It seems to me that in Mercer county, which has a population of fifty thousand inhabitants, I do not know a single township in which they need two justices of the peace. I suppose in one-third of the townships one of the justices never took out his commission at all, and I cannot see how these officers can be a necessity in small counties, although there must be a necessity for the office or

the delegates here would not speak as they do. But in any event the amendment is not necessary. I hope the report of the Committee on the Judiciary will be sustained, because it will meet any case. If the townships want one, the section as reported will give them one. If they want two, they have simply to vote for that number and they will receive them. I do not see why we ought to retain in the Constitution a provision useless in many counties, in order to satisfy a few who have anyhow a legitimate remedy.

Mr. BEEBE. I trust this amendment will prevail. It is a practical question as between the people and the officers elected. On the side of the officer elected, it is a very nice arrangement. He can by having all the business, make a good living and save money out of his position. But the people may be necessitated to decree the election of an additional officer, and there is no use in compelling them to go to the trouble of holding an election to know whether they will or will not. All familiar with the practice in this respect, under the old Constitution, know that there are many townships of six miles square that are greatly inconvenienced by having justices in the opposite extremes. I trust that we shall not make any innovation for the simple purpose of curtailing the convenience of the people; and that we do when we deprive them of the additional justice of the peace which they absolutely need.

Mr. HAZZARD. I believe that I am the only delegate upon this floor who has the honor to be a justice of the peace. [Laughter.] Those holding that office have been dignified and eulogized by the Supreme Court of the State and by the delegates here as public useful officers, so useful that the Convention is now asked to increase and multiply their offices indefinitely. I am opposed to the amendment. There are some small counties divided into wards, and they will under this amendment have two magistrates in each ward, which is an entirely necessary number. The fact is that in the country it is often difficult to get people to serve in this place, especially in the most rural districts.

A magistrate able to properly administer the duties of his office must necessarily buy some books, costing probably one hundred dollars or one hundred and fifty dollars. He must pay for blanks. He must qualify himself in some

way for this great office, and if you multiply them to the extent that is contemplated in this amendment, the office will not justify any man to accept it, and the position must go begging.

This office is necessary. We must have a committing magistrate in every township, in every borough, and in every little town. We must have these officers before whom we can acknowledge our deeds, and they are useful in many other ways. But if you make too many of them, it will not be worth while for any man to accept the office, because the receipts of his official term will not compensate him for the outlay necessary to open his office. I heard here when this question was discussed before that there were persons who would be glad to serve in these positions for nothing. I was glad to learn that there were disinterested persons of that sort in the north and the west. They are few in the southwest. They desire at least to receive enough fees to pay for the recording of their commissions, and for the purchase of their blanks and books which are necessary in order that they may well understand the forms and the first principles of law. If you increase their number, you will not be able to find men who will administer the duties of the office with dignity, and in our part of the country it will be very hard to get them at all.

But if you allow this section to stand, it provides for an increase of these officers where it is necessary, and the people will soon find out if they need more of this sort of officers. The people can vote upon that question and they like the exercise of that privilege. The oftener they vote, the better they like it; and I understand that in this city they like it so well that some of them go around all day and do it in all the different wards. [Laughter.]

MR. LILLY. I do not believe this question is sufficiently important to waste any more words over it. The amendment is unnecessary, because if the people want more than one justice of the peace in a township, they can have more, and the section gives them one. I think we should vote on the question. It is not important—

MR. NILES. It is important.

MR. LILLY. I do not believe that it is important enough to occupy all this time. I am in favor of giving each township one or two justices or even more, and I believe that the section gives them this.

Therefore I shall vote for the section and against the amendment.

MR. NILES. I desire simply to call the attention of the Convention to the fact that in very many of the rural districts of this State, as has been mentioned by the delegate from Erie, a large rural township may comprise a hundred square miles. There are four or five such townships in the county in which I live. They poll from four to five hundred votes at every election. In these large townships we have no notaries public. It is true, perhaps, that as far as the trial of causes is concerned that it is not an important reason why we should have additional justices, but we use justices of the peace for all the purposes for which in other parts of the State and in the great cities notaries public are employed. Therefore, if you do not adopt the amendment of the gentleman from Lancaster, you will impose an unnecessary, and, I venture to say, an uncalled for restriction upon the people of the rural districts. I undertake to say that even the gentleman from Washington on my right (Mr. Hazzard) has heard no call from the people of the State for the abolition of the office of justice of the peace. It seemed to me that he was speaking like a paid advocate, and that his argument ought not to be allowed to influence our action because of that reason. I can understand very well why he desires that there shall be no more justices of the peace, because he has held that position for twenty years in the little town in which he resides, and he desires to monopolize it for all time to come. He seems to be an interested witness, and any evidence he gives here should have very little force with the Convention.

MR. BROOMALL. The necessity for the last three lines of the first paragraph of this section has been superseded by the eighth section of the article on the Legislature, which covers the whole ground. I therefore move to strike out all of the paragraph after the word "election," in the tenth line. The words I move to strike out are: "nor if he has been convicted of any infamous crime, or been removed by the judgment of a court from any office of trust or profit." I will read the section of the article on the Legislature that renders this provision unnecessary: "No person hereafter convicted of embezzlement of the public moneys, bribery, perjury or other infamous crime shall be eligible to the General Assembly

or to any office of trust or profit in this State," covering the whole ground.

Mr. HAY. I desire to inquire of the delegate from Delaware whether the section that he read covers the eleventh and twelfth lines of this section: "Or been removed by the judgment of a court from any office of trust or profit." I do not think it does.

Mr. BROOMALL. In effect it covers it, because if he was removed it would be the result of being convicted of some such offence as is embraced within this language.

Mr. HAY. I think it is a great deal better to have that clearly stated as it is here.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Delaware.

Mr. BOWMAN. When we had this section under consideration in the committee of the whole the Convention will remember that this clause was voted out in the forenoon, and then, at the suggestion of the gentleman from Delaware, (Mr. Broomall,) in the afternoon it was voted in; but that was before we had reached on second reading the report of the Committee on the Legislature. Then the eighth section of the article on the Legislature was voted in, as the gentleman from Delaware says, which was all right.

Let me ask right here, what other office is there in this Commonwealth that you propose to exclude except this office of justice of the peace? None whatever. The eighth section, as the gentleman from Delaware says, provides that if a person shall hereafter be convicted of an infamous crime he shall be disqualified from holding any place of honor, trust or profit under the laws of this Commonwealth. Now why apply this to the office of a justice of the peace when you do not do it to any other in the Commonwealth?

Then the gentleman from Allegheny finds fault and objects that there is no provision if this part of the section is struck out for a case where one of these officers has been removed by the judgment of a court from any office of trust or profit. The Legislature can settle that question. They have done it over and over again. They may say that if the magistrate is impeached or removed from office he shall not be eligible to that or any other office. I do not see what good it can do to retain this provision here and apply it to justices of the peace and none others. If one of these officers is removed

from office, the Legislature can say that he shall not be eligible to another office. If he is impeached upon grounds of misconduct while in office, the whole thing is in the hands of the Legislature. Why make this invidious distinction right here?

I second the motion of the gentleman from Delaware. No gentleman on this floor advocated this clause at the time stronger than he did, and it was through his argument and his eloquence that the provision was carried in the afternoon, which had been voted down in the forenoon. I think the amendment offered by the gentleman from Delaware (Mr. Broomall) should be adopted.

Mr. DARLINGTON. It seems to me that it would be better to take this section as it is, and if this penalty is provided in another part of the Constitution the Committee on Revision and Adjustment can make it right.

SEVERAL DELEGATES. No; no. Strike it out.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Delaware (Mr. Broomall.)

The amendment was agreed to.

Mr. MACVEAGH. I trust I shall not be out of order in saying that it seems to me that Justice Hazzard answers delegate Hazzard. [Laughter.] If the old Constitution produces such justices of the peace as he is, I shall vote to keep it as it is, and therefore I shall vote for the amendment.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lancaster (Mr. D. W. Patterson.)

The amendment was agreed to.

Mr. DALLAS. I now rise to offer the amendment which I proposed to offer a few moments ago. I move to amend by striking out the word "learned" in the seventeenth line, and all that follows that word down to and including the word "their," in the nineteenth line, and inserting the word "whose," so that it will read: "Such court shall be held by judges whose term of office shall," &c.

Mr. EWING. That is not in order now.

Mr. DALLAS. It is to a portion of the section. It is all one section and has all been read.

The PRESIDENT *pro tem*. The question is on the second division.

Mr. MACVEAGH. I ask the Convention to hear the gentleman from Philadelphia now. He will not be here this afternoon, and wants to say what he

has to say on this amendment now. I trust he will be allowed to go on.

Mr. DALLAS. I am anxious to get this matter in before we adjourn for dinner.

The PRESIDENT *pro tem*. What is the amendment?

Mr. DALLAS. I propose to strike out all after "judges," in the seventeenth line, down to and including the word "their," in the nineteenth line, and insert the word "whose" after "judges."

Mr. LITTLETON. I thought we were voting on the division beginning in line eight: "No person shall be elected to such office," &c.

The PRESIDENT *pro tem*. A division of the section was called for, and the regular course would be to dispose of the divisions in their order. The question now is on the second division, ending with the word "borough" in the eighth line.

The division was agreed to.

The CLERK read the next division, as follows:

"No person shall be elected to such office unless he shall have resided within the township, borough, ward or district for one year next preceding his election."

The division was agreed to.

The PRESIDENT *pro tem*. The remainder of the section is now before the Convention.

Mr. DALLAS. I trust I am now in order. I yielded to the gentleman from Dauphin (Mr. MacVeagh) or I would have had my amendment in before a division of the section was called for. I have already stated the amendment, and if the Clerk has it I need not repeat it.

The CLERK. The amendment is in the seventeenth, eighteenth and nineteenth lines, to strike out the words "learned in the law, who shall have been admitted to and shall have had at least five years, practice in the judicial district in which said city is located. Their," and insert the word "whose;" so that the clause will read: "Such court shall be held by judges whose term of office shall be seven years," &c.

Mr. DALLAS. I need only state the purpose of the amendment. I do not propose to detain the Convention with any argument in regard to it. The purpose is simply to provide that the upwards of twenty magistrates for the city of Philadelphia, which this section provides for, shall not be required to be learned in the law. The result of requiring so many magistrates for this city to be learned in

the law, in my judgment, would be simply this: That we should get some lawyers unfit for that position, and unfit for any position whatever to occupy these magisterial offices. They would be made up either of extremely young men, who had no ambition or hopes for the future, or of elderly gentlemen who had utterly failed in the practice of the law in their past career. You would not get any man, young or old, who was fit for his profession, to take one of these twenty or more small magisterial offices upon the compensation and for the exercise of the jurisdiction that you propose to give them; but you would exclude from those offices a number of gentlemen in the city of Philadelphia, retired merchants and men of that character, who would be quite as well able to act in this capacity as any members of the bar whatever.

Mr. TEMPLE. I trust this section will be voted upon before the recess, and therefore I shall be very brief. I regret that the delegate who offered the amendment was not present when this subject was under discussion before. If we had then had his services I do not think this section would ever have been adopted as it was. I certainly concur in all that he has now said; and without undertaking to protract the discussion, because I think we are ready to vote now, I leave the matter, trusting that the Convention will at least strike out that portion of the section which requires this minor judiciary to be composed of men learned in the law. If they should then feel disposed to dispense with the section by voting it down altogether, I think the people of Philadelphia would be just as well satisfied. But if we are to adopt this section at all, I beseech gentlemen not to place in this Constitution the provision which the gentleman from Philadelphia has asked to have stricken out, because if you do you will have established in Philadelphia what I had occasion to say once before would, in my judgment, be the very worst sinks of iniquity ever established in any city in the world.

Mr. KNIGHT. I trust this amendment will prevail. We shall have in this city about twenty-five of these officers, and if we require that they shall be learned in the law and have five years' practice in the court of common pleas, it may put us to very great inconvenience. The crop of lawyers might be shortened. [Laughter.] I mentioned this subject to our worthy President, (Mr. Meredith,) and

he replied: "The poor you always have with you." [Laughter.] But I do not know whether he alluded to the poor lawyers or the lawyers who are poor. [Laughter.] He did not explain that. But, sir, I think it would be very unjust to rule out men of sound judgment and experience from this position, and to require that it should be entirely filled by the class of gentlemen indicated in the original section. I am very much in favor of having a better class of men to fill these positions, and if we could adopt some provision here providing that the parties elected to this office should undergo an examination in the courts, or something of that kind, to ascertain if they were qualified. I do not say that this is the place to do this, but it would be well to act upon it somewhere. I trust the amendment will prevail.

Mr. SIMPSON. I hope this amendment will be adopted, and that the Convention will strike out these words, for two reasons. One of the arguments made yesterday in support of the proposition to abolish the district court of this city was that we should have a uniform system of the judiciary. Now, why should we have a different system in regard to our aldermen and justices of the peace if we are to have uniformity in our courts? Why should not men of respectability be allowed to be elected as aldermen, justices of the peace, police justices, or whatever you call them, in the city of Philadelphia, just as well as they are in the country districts of the State? I think one of the arguments made against the minor judiciary when this matter was discussed before is cured by the mode of election. Instead of being elected in small localities, these officers are to be elected by the entire city, every voter casting his vote for a proportionate number of them, by which means I think we shall secure far better men as nominees and better men in the election. I trust this amendment will prevail and these words be stricken out.

Mr. LITTLETON. I trust the amendment will not be agreed to. This matter was very carefully considered and discussed in the committee of the whole, and the committee reported it as it now stands.

Mr. TEMPLE. I rise to a question of order. My point of order is that the delegate has no right to refer to what took place in committee of the whole. The President reminded me yesterday that I

had no right to do it, and I desire the same rule to be applied to all.

Mr. LITTLETON. I am simply stating a self-evident fact. The provision is here, and therefore it comes from the committee. I am surprised that a gentleman with the experience and knowledge of my friend from the city, (Mr. Dallas,) one who knows as much about the aldermanic system in Philadelphia as he does, should wish to perpetuate it, for his amendment seeks to do that, and that alone. I venture to say that of all the provisions in this Constitution intended for the improvement of affairs in the city of Philadelphia, there are very few that have greater merit than the section before the Convention at the present time. I cannot see why we should not have, if it is possible to get them, judges of these courts who are learned in the law. I do not understand why a man who has never had any experience upon questions of property and the various matters that will come up in such courts if we establish them should be allowed to preside over them. I cannot understand why he should not be educated to the profession just as much as the judge who sits upon the bench. I do hope, therefore, that the amendment will not be agreed to.

Mr. J. R. READ. Mr. President: I trust the amendment of my friend from Philadelphia (Mr. Dallas) will not be adopted. I am entirely in favor of this section as it is reported to us from the committee of the whole, and for this reason: The present aldermanic system of the city of Philadelphia, (and among the body of aldermen are some highly respectable men, for whom I have the highest respect and esteem,) has proven a deplorable failure. Not one of the gentlemen who pretend to be friends of the amendment offered by the gentleman from Philadelphia can stand up in his place and deny what I say. Why, Mr. President and gentlemen of the Convention, since this section has been reported from the committee of the whole two of the aldermen of this city have been and are to-day convicted felons. I think it is well for the Convention to consider the fact that the city of Philadelphia has other and different interests from other portions of the Commonwealth.

Mr. TEMPLE. Will the gentleman allow me to ask him a question?

Mr. J. R. READ. Certainly.

Mr. TEMPLE. I should like to ask the gentleman if he does not know that there

is a number of the city councils also in the penitentiary, and if that is any reason for abolishing that office?

MR. J. R. READ. I have no objection to the gentleman asking me questions when they are pertinent to the issue, but I do not think that the one he asks me now is. He simply interrupted my argument without doing any particular good.

Now, sir, I say that the interests of Philadelphia are entirely different from those of any other portion of the Commonwealth.

MR. EWING. What interests?

MR. J. R. READ. Its commercial interests are entirely different. I should like to go on without interruption if it is possible.

THE PRESIDENT *pro tem*. The gentleman on the floor must not be interrupted.

MR. J. R. READ. I say it requires a peculiar education and a peculiar training to pass upon the subjects that may come before this minor judiciary. Some gentlemen may not agree with me on that point. Then I propose to call their attention to another point, and it is my main reason for advocating the adoption of this section. It is well known that every person who is charged with a crime is brought before these judges. I believe it is the right—if not, it should be—of every citizen of the Commonwealth, and necessarily the right of every citizen of the city, when he is charged with the commission of a crime that his case shall be heard primarily by a person who understands the ordinary rules of evidence, and who knows enough to say when a man is charged with an offence, and evidence is offered of the commission of a crime entirely outside of the borders of this Commonwealth, that he has no jurisdiction over it, and certainly no power to bind the prisoner over to appear at the bar of the courts of this county or of this State, and yet it is a notorious fact that persons are frequently charged before this minor judiciary as it now exists with the commission of crime all over the United States, on the high seas, in England, and on the continent, and the persons charged are as generally as the cases are brought before them always committed to answer at the next term of the court of quarter sessions of this country; and when you call their attention to the fact that they have no jurisdiction over such cases, they treat your objections with contemptuous sneers. Now, sir, I think that personal liberty is

as valuable as the right of possession of the property we own. That the reputation of a lifetime should not be blasted by a charge of criminality, made before officers whose general practice is to hear but to commit, and who seek not to make the discrimination which should always be made by a judicial officer when the character of a citizen is at issue. Such charges should be made only after thorough investigation, and sustained only after a patient hearing of testimony which should establish beyond peradventure the *prima facie* case which is required. The proper weight can be given to evidence in support of these charges much better by those who are familiar with its rules than by those who are not. This, I think, is a self-evident proposition.

Now, Mr. President, I do not believe that if we strike out this portion of the section we shall accomplish the desired result. It will be almost as easy for a large majority of the men who now occupy these positions to get a nomination upon a general ticket as it is for them to obtain them now, because we all know how easy it is for six or seven men whose interests are similar and whose ambitions are the same, who are candidates before a large convention, to combine and to say to each other, "if you will influence your delegates in my favor I will influence mine in yours," and the result will be that a class of men whose education and training will be but little better if any than those who are now inflicted upon us will be likely nominated in the future. Let me say, Mr. President, that when gentlemen get up and advocate the amendment of the distinguished delegate from the city they close their ears to the appeals of every association in the city which has for its object and purpose *reform*. They ignore with contempt the appeals of the Municipal Reform Association which have been laid upon our desks day after day calling attention to these facts. I beg gentlemen not to strike out what was in committee of the whole considered a very beneficial portion of the section.

MR. ARMSTRONG. This is a question which involves the interests of Philadelphia peculiarly, and as the section was drawn by Mr. Cuyler, who is not now present, and we shall lose but two minutes of our morning session by postponing it, I think it but an act of courtesy that he should be allowed to be heard in advo-

cacy of his section. I desire to say that I do not concur with him in this provision which requires these judges to be learned in the law; but in view of the manifest propriety of allowing the mover of the section to be heard upon it, I move that we now take our recess.

Mr. TEMPLE. I should like to know whether we are to be detained here hours and hours in waiting for Mr. Cuyler. I do not feel like doing it.

LEAVES OF ABSENCE.

Mr. REYNOLDS. Before the motion for a recess is put, I ask leave of absence for Mr. Henry G. Smith for to-day.

Leave was granted.

Mr. HANNA asked and obtained leave of absence for Mr. Wherry for a few days from to-day.

Mr. STANTON asked and obtained leave of absence for Mr. Addicks on account of sickness.

The PRESIDENT *pro tem.* The hour of one o'clock having arrived, the Convention will take a recess until half-past three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at half-past three o'clock P. M.

THE JUDICIAL SYSTEM.

The PRESIDENT *pro tem.* The Convention resumes the consideration of the twelfth section of the article on the judiciary. When the Convention took its recess the pending question was on the amendment of the gentleman from the city, (Mr. Dallas,) which was to strike out all after the word "judges" in the seventeenth line, to and including the word "their" in the nineteenth line, and insert the word "whose," so as to make the clause read:

"Such court shall be held by judges whose term of office shall be seven years," &c.

Mr. HANNA. Mr. President: In my judgment this section is improperly proposed to be inserted in the Constitution of the Commonwealth. It has no place there whatever, in my judgment. We are called upon to form a Constitution for the Commonwealth of Pennsylvania, but if we adopt this and other like suggestions it may be termed a Constitution of the Commonwealth of Pennsylvania and for the city of Philadelphia. That is what it will amount to.

Now, I do not propose to cure the evils which exist at present by any such dose

of physic as this. I submit that if there are evils in the present aldermanic system in the city of Philadelphia, the proper remedy lies within the power and control of the people of Philadelphia. That is where it belongs, and we are not by experimenting with the body politic to cure this so-called disease and remove these evils.

I am willing to admit that many of the causes of complaint against the present system are true; that they ought to be remedied; that they ought to be prevented; but I submit that we have a remedy. The people have a law which they can invoke, and from time to time such officials as these who have acted contrary to law, who are guilty of extortion, who are guilty of misdemeanor in office in any way or shape, can be punished and they have been punished. As one of my colleagues said this morning, two of the so-called magistrates have recently been convicted for misdemeanor in office and punished. That is the proper way to do.

We have heard much about uniformity and symmetry in our Constitution. Now, if we engraft upon it these excrescences, where is your symmetry and where is your uniformity? I contend that this is no place whatever for anything of this kind; but if the Convention think it proper that the city of Philadelphia should be governed in its internal affairs, in the details of the administration of its justice, differently from other counties in the State, of course I shall submit with all the grace I can and try to mould the plan which the Convention may have in view to such as will suit our wants and necessities.

As far as regards the amendment offered by my colleague, (Mr. Dallas,) I agree with that. If we are to have a system of courts not of record, then we do not want judges learned in the law. If they were to be minor courts, if they were to be courts of record with proper jurisdiction, then I would say let us have judges learned in the law; but if not, if they are to be merely aldermen with the present jurisdiction, amounting only to one hundred dollars, with the right to issue warrants and hearing all the petty cases that may be brought before them, let us have our present system, but modified to suit our wants and meet the complaints made against it.

My friend from the city, (Mr. Knight,) from his experience in the affairs of our

city, I am sure, will agree with me that we have plenty of gentlemen in our city, retired merchants, those we had in former years, who occupied the position of alderman with honor to themselves and with entire satisfaction to the community. Such men as these we have now, and such men as these we can get; but we do not want to institute a sort of trivial court to be presided over by some member of the bar.

According to this section, with one of these courts for thirty thousand of our population, taking our population of 700,000, it would give us twenty-three of these minor courts. The judges are to receive fixed salaries; and if we are to pay good salaries for good men, we shall impose quite a serious burden upon the tax-payers of the city of Philadelphia. Now, in regard to the number, I would much rather see the present number of the magistrates of the city reduced. Reduce the number and give them fixed salaries, but do not impose on us a series of petty courts to be presided over by members of the bar.

As my friend (Mr. Knight) well reminded us, the "poor we have always with us" in this respect, and they will be the ones who will have charge of these courts. No, sir, let us have the present system, but remove its evils, and that we can do and answer all complaints made against it by paying the magistrates fixed salaries, and providing that all the fees and costs shall be paid into the city treasury.

What is the complaint now? The complaint is that the present aldermen, with their officials, provoke litigation. I think that perhaps, to some extent, is true; but if we give them fixed salaries, such as they can live upon and be satisfied with, then they can afford to be independent men; instead of provoking litigation they would discourage it; and instead of having hundreds and thousands of petty returns made to our quarter sessions from year to year, I believe that if we adopt the simple plan of reducing the number and giving them fixed salaries the cases returned will be reduced perhaps fifty per cent. It will be a saving to the city, diminish the business of our quarter sessions, and work to the entire satisfaction of the community.

That is a simple plan, a practical plan; but if we are to have courts presided over by gentlemen of the bar we must have all the incidents of a court. Each court

must have its clerk; each must have its officers, so-called, tipstaves; each must have its court room fitted up at the expense of the city, and their officers, and all other incidental expenses, paid by the city; and as a taxpayer of the city I am not willing to give my vote or any influence I may possess towards any system which will add a burden upon the tax-payers and vastly increase the expenses of the city.

Now, I do submit, Mr. President, that without seeking to make too great a change in our present system, we should be satisfied with what we have got and can readily secure. We need justices of the peace in the city just as much as you need justices of the peace throughout the interior. We need men known to their neighbors, known to the people of the localities in which they have their offices, and in their wards and their districts, and let us have that class of men paid by the city, and I am sure that the administration of justice in this respect will meet with the entire satisfaction of the community.

I do trust, sir, that the amendment of my colleague (Mr. Dallas) will be adopted.

MR. CUYLER. Even if the proposed change involved all that the gentleman from the city (Mr. Hanna) has just said, it would be a wise economy in the city of Philadelphia. Even if it involved the necessity of providing court rooms and all the machinery of courts, in the dollar and cents point of view it would be a large saving to the city; by which I mean simply to say that no effort upon the part of the authorities of this city has ever been able to compel an honest return from the magistracy of this city to the treasury of the city. I mean to say that the money that is withheld from the treasury of the city by the petty magistracy of the city would more than cover all the expenses to which the gentleman alludes, even if he were correct in supposing that it was necessary to incur such expenses; but it is not necessary to incur them. There is no more need that the city should provide court rooms for the magistrates contemplated by this section than there was that it should have provided them in times past for the aldermen, or that it might find it necessary in the future to provide them for the aldermen, supposing the old system to be continued.

But, Mr. President, the honest truth is that the very name of aldermen has come to be in Philadelphia almost a disgrace. There are a few men of character—a very few—among them; men of integrity and well-deserved and well-earned reputation; but that remark is not true of the mass of the aldermen; and since the Legislature has placed upon those aldermen political duties and given them the control of the registry, the frauds that have been practiced in the exercise of that power has made the whole body so odious that they are a stench in the nostrils of the citizens of Philadelphia to-day.

Now, this section provides for no material change from that which has existed before, save that, first, those who are to exercise the office will receive fixed salaries instead of being paid by fees and by a control over the penalties that are paid in for violations of city ordinances or of acts of Assembly; and, second, in that a class of men learned in the law will discharge the duties that have been heretofore discharged by the aldermen. Why should not this be the case? Their duties are judicial. They ascertain and decide questions which involve the legal rights of the parties brought before them. Can it be an objection that they are to be learned in the law? Can there be an argument made that men who are to decide legal questions, and oftentimes to decide them finally, shall be men who are accomplished in the art that they practice? I cannot conceive of any well-founded objection that could be urged under such circumstances.

As it is now, the decision of an alderman upon a question in civil practice that is brought before him amounts to nothing except simply to increase costs. Who ever heard of a case of late years before an alderman in the city of Philadelphia that was not appealed from him to the court of common pleas? Where, then, was the advantage in the action of the alderman? What benefit has been derived either to the suitor or to the public by reason of the existing system? The expense of the hearing before the alderman is incurred, and uniformly the case is appealed, and then comes up saddled with these additional expenses to be paid by the suitors at last. Why is this? Simply because our aldermen are not competent for the duty they discharge. If our aldermen were men of weight, of character and of learning in the law, the people would abide by their decisions; appeals

would become rare; they would more often, far, than they do now, finally dispose of questions that come before them. It is therefore to get rid of that difficulty; it is to discourage appeals by providing honest and competent men to decide the cases in the court below, thus relieving the humble suitor who seeks the court of the alderman from the oppression which the costs and expenses of that court constantly involve—it is for that, largely, that this section is devised.

That is my reason for thinking it would not be well to strike from it the words "learned in the law." I think they ought to be lawyers; that there is just the same argument in favor of requiring the petty magistracy to be learned in the law that there is in requiring the superior magistracy to be learned in the law, and in some respects even more important, because the suitors in their courts are in a very large degree people of humble means, to whom costs are a serious consideration; and the fact that they can secure an honest and competent judgment upon the questions that they bring before these magistrates, and thus put an end to the controversy raised, will save them from the costs that constantly roll up if the case is appealed, and save them from the delay which that appeal necessarily involves.

I scarcely supposed, sir, that it was necessary in the city of Philadelphia to urge a reason why the existing petty magistracy of our city should be abolished, and I am most of all astonished that a gentleman like my friend who last addressed this Convention, who must know, from the necessities of his position as a member of the councils of this city, how necessary this change is, should be found upon this floor advocating the continuance of the old system. Its ills have been so severe that they have demanded the constant attention of the press of our city and of our citizens at large, calling for this very reform which this section proposes. I might refer to the action of the press upon this very section. There is hardly a journal in the city of Philadelphia that has not taken occasion to commend the wisdom of it and to advocate its final adoption by this Convention. So far as I am aware there is not a single newspaper in the city of Philadelphia that has urged the continuance of the old system or advocated any such view as that which my colleague from Philadelphia has just now expressed.

I hope, therefore, that the Convention will not recede from the action which was taken in committee of the whole, and that the section just as written will be adopted.

Mr. HANNA. I should like to ask my colleague one question before he closes, whether nearly all the complaints made against the aldermen of the city of Philadelphia do not originate from the fact that under the registry law they have the right to appoint the election officers?

Mr. CUYLER. No, sir; that has been an aggravation of the ills of our people, but offences quite as serious and quite as numerous were perpetrated on the part of that body before the registry law was passed. The outcry has been persistent and continued for years in our city.

Mr. BIDDLE. Mr. President: There is undoubtedly in this section a great deal that must commend itself to the intelligent action and, I hope, adoption of this Convention. The change by which these officers are salaried, instead of being, as now, the recipients of fees and thereby incited to foment petty litigation, is a most admirable one. So the mode of their selection, by which a choice is given to the people of the city at large to take out from among their midst officers qualified to act in this department, is, in my judgment, a good one. So, perhaps, although I have more doubt in regard to this point, their longer tenure of office. So far I am in entire accord with the section as it now stands, and, were there nothing else in it, I should waive any difference of opinion on minor points and vote for it. But there is one part of it which cannot receive my assent. Undoubtedly it is very desirable to have these men learned in the law, as this section somewhat ostentatiously announces; but would they be learned in the law by being selected exclusively from the ranks of the bar? I was reminded when I read these words in the section of what Lord Brougham once said on the floor of the House of Lords. He was referring to two dukes, one a royal duke and the other the Duke of Wellington, and he characterized them somewhat thus: "One noble duke illustrious by his great actions, and another noble duke illustrious by the courtesy of this House!" I think these magistrates would be learned in the law by the courtesy of this House, or of this section as it stands. It would be either a hospital and house of refuge for broken down men who could find no rest for the soles of their feet else-

where, or be a school for unfledged lawyers. I prefer infinitely to take from the body of the people to settle petty disputes which have no intricacy, which require nothing for their solution but a sound, clear head and an honest heart, men who are commonly called business men. I am satisfied that they would be the class from which these aldermen or justices of the peace should be drawn. I would not exclude a man who had been educated in the profession of the law, because that would be unwise. He might undoubtedly be ranked in the category I have endeavored to describe; but to tell the body of the petty suitors of the city, which this section does in effect tell them, that a man must have at least turned over for four or five years the pages of Blackstone, I never can endorse. I do not believe that in that way you would get the class of men who ought to be the arbitrators and mediators between the suitors who would come into these courts. I believe a little knowledge would rather induce the men so selected to take pleasure rather in the quilllets and the quillips of the law than in the real merits of the case. I believe substance would be sacrificed to form. I know, and every Philadelphian knows, that we have had in our midst heretofore a class of men who discharged those functions, who were not technically learned in the law but who yet administered the law as applicable to the disputes in their forms with great advantage to the suitors and with credit to themselves. The names of many of them were enumerated here when the debate occurred a couple of months ago, and it is not worth while to go over them now. Some of them I believe yet remain to-day to do honor to their positions.

I am for allowing just such men as we had thirty or forty years ago to continue to settle these disputes. My colleague from Philadelphia who spoke last has detailed, undoubtedly with a great deal of truth, the defects of the present system. But they have been defects engendered by other influences than the want of acquaintance with the technical rudiments of the law. They have been engendered by the system of fees. They have been engendered by casting upon the shoulders of these men political duties. They have been engendered, to a very great extent, by the operation of the registry law which has turned into a red hot politician every magistrate in this county. They have not, in my opinion, been engendered by

the want of the title of attorney-at-law after the name of these men.

Why, sir, what is the kind of disputes which come before these magistrates? They are generally questions of *meum and tuum*. Nine of the cases out of every ten that come under the jurisdiction of these magistrates are whether a petty debt is owed or not, whether a debt is owed upon a book account, or whether a debt is owed upon a due-bill, or something of that kind; I say it with all respect to my colleague, (Mr. Cuyler,) who I know is earnest in this matter, and whose earnestness has great weight in my eyes, that it would not be wise to introduce the technical rules of actions to apply to this class of cases. Of course it is said that it is not proposed to do that, but what is the use of having a man before whom to commence an action on a promissory note who knows that the action is to be commenced by a writ in an action in the case sounding in tort, when all that it is necessary to know is—"did the man make the note? Is this his signature? Did he order the bill of goods? Was the service rendered to him? Is his identity established?" These are the usual questions which these magistrates are called upon to decide, and I submit that it would be a great deal wiser to allow them to be settled by the dictates of plain common sense than to run into anything like a technical system. These men styled "learned in the law" would think it necessary to earn the title which this Convention confers upon them. You would have the most technical refinement introduced where really nothing is necessary but the common judgment of a common ordinary man.

While, therefore, I am willing to retain in the section that which is valuable, I am not willing to give a place in it to that which I am satisfied not only entirely disfigures it, but which would be most unacceptable to the people. I believe, and it certainly is an argument entitled to some consideration, although it is not an argument which should be an over-ruling one in the consideration of any one of these questions, that by introducing such a section as this you would array a very large body of the people against the adoption of the Constitution. You would certainly array every man who has aspirations to this office who has not the qualifications which the section now requires. You would array a very large class of people who think it unnecessary to have these disputes settled by men who are

technical lawyers. It would be considered an attempt on the part of this Convention, the composition of which is, to the extent of four to five, made up of lawyers, to create for themselves a class of petty offices, and while this would undoubtedly be an unjust charge, still it would have its weight in the community.

I hope for these reasons, which all have more or less value in this question, that the amendment of the gentleman from the city (Mr. Dallas) will be adopted.

MR. BOYD. Will the gentleman answer me one question?

MR. BIDDLE. If I am able.

MR. BOYD. Suppose these men should receive a salary, say of \$5,000, would that not secure a different class of men from what he supposes, and would not this salary be economy on the part of the city if paid to introduce a different system?

MR. BIDDLE. I think it would be a most extravagant salary, and so far from being economy would be a waste of public money. I should divide it by ten.

MR. TEMPLE. MR. PRESIDENT: I should not undertake to detain the Convention but for the fact that when this question was brought up this morning it was generally understood that we would take a vote upon this section before the hour of recess; but inasmuch as the author of this section was not within the Hall, it was agreed that the matter should go over until the afternoon. Just prior to the adjournment of the morning session the delegate from Philadelphia who sits on my left (Mr. J. R. Read) undertook to defend this section, and I desire to call the attention of this Convention very briefly to a few reasons urged by that delegate in support of this section and in opposition to the amendment.

The learned delegate undertook to say that the present aldermanic system of Philadelphia had become infamous, and he quoted the Reform Association of this city to show that the aldermanic system in the city and county of Philadelphia was a nuisance and an abomination.

Now, Mr. President, I am not here for the purpose of justifying the aldermanic system as it has heretofore existed. I believe with the delegate who spoke last that there are certain reforms needed in that branch of our judiciary, but I believe, more than that, if the amendment as offered by Mr. Dallas, accompanied with the amendment just offered by myself, should be adopted by this Convention, that all these evils can be cured.

Now, if the argument of the gentleman from Philadelphia (Mr. J. R. Read) be true, that because the Reform Association of Philadelphia has condemned the aldermanic system, that that is a reason for this Convention abolishing altogether the office of alderman, I beg leave to call the attention of this Convention to the fact that if we are to heed such admonitions as this, we would abolish almost every department of the city government. The Reform Association, I care not whether truthfully or not, has framed almost the same bill of indictment against the Legislature of Pennsylvania, against the criminal court of Philadelphia and against a portion of the judiciary of the city of Philadelphia, and also particularly against the grand jury system of the city and county of Philadelphia. I beg leave to call the attention of the delegates upon this floor that such an argument as this, if applicable to the office of alderman in the city of Philadelphia, should apply and would apply with equal force to every branch of the city government.

But, Mr. President, how does the distinguished delegate undertake to improve on this? Because I will leave that branch of the subject, believing that this Convention is not going to strike down this branch of our judiciary, simply because it has become, as the gentleman says, a nuisance and a thing desirable to get rid of. Why, sir, what were the assertions of the delegate from Philadelphia when the question of the construction of the Legislature was before this House? Look, if you please, at gentlemen who represent us in the Legislature. The delegate who took his seat and last spoke upon the opposite side of this question knows very well that if the Legislature of Pennsylvania was pruned of the sores that now exist in it from the city and county of Philadelphia there would be left but very few to tell the tale of legislation. It is no more a proverbial fact, as stated by my friend from Philadelphia, (Mr. Read,) that the aldermanic system in the city and county of Philadelphia is an abomination and a nuisance, than that the legislators from the city of Philadelphia stand in the same category. Why, the delegate told us this morning that two aldermen of the city and county of Philadelphia had been convicted for misdemeanors in office. I could have told him that another profession in the city and county of Philadelphia who are

equally officers of a higher court than this, have now in the county prison of this county more in number than the number referred to by the delegate. Does he forget that there have been more than two lawyers in Moyamensing prison convicted for higher offences than these. Aye, and more than that, does he not know that when these lawyers have been convicted for felonies, and when they have served their terms out, they come back honored and respected in every court in the city and county of Philadelphia? Is not that a truth? I call upon the delegate to state candidly and fairly to the delegates from the interior of this State whether or not certain members of the bar of the city of Philadelphia who are officers of the court and a higher court have not been convicted and in jail, and when they have served their time out have come back honored and respected as members of the bar; but we did not urge that as a reason why the profession of the law should be abolished. But following this thing further up—

Mr. HANNA. Will my friend allow me to correct him? They are not honored and respected.

Mr. TEMPLE. They are not interrupted in the enjoyment of their practice as lawyers.

Mr. HANNA. They are permitted to practice. That is what he means.

Mr. TEMPLE. I do not desire to be interrupted.

Again, Mr. President, is this a reason to abolish the office of alderman in the city and county of Philadelphia? If so, why not strike out that branch of our city government known as the common council, some of whose members we have upon this floor, the most honored and respected, but because some of their number have fallen from grace, one of them now serving out a term in the penitentiary, is that any reason to abolish the position of common councilman?

I beg leave to call upon the delegates on this floor to pause before they abolish this office for any such reason.

I submit, as I have stated before on this floor, that to make it incumbent upon a man who enjoys this office to be a lawyer will be the merest figment in the world in the imagination and a positive error. Talk to me about any honorable lawyer, any man who has the honor and the respect of his profession at heart, accepting the office of alderman under this section, which gives him jurisdiction to the extent

of one hundred dollars without any of the ordinary equipments of a court. His court is not one of record, and therefore it can never have jurisdiction except to a limited amount. Why it seems to me that that prejudice which has existed against the aldermanic system growing out of things which have been spoken of by other delegates ought not to lead us astray in this matter.

I conclude by saying, first, that the argument of the distinguished delegate from Philadelphia (Mr. J. R. Read) has no weight at all with the delegates in this Convention, because of the invidious comparison that he made between these men and other branches of government. The argument of the other distinguished delegate who has spoken on the opposite side of this question should have no weight with the delegates here, because he does not offer us anything that is better. I submit that although I am in favor of this section if it be amended as suggested, I would sooner a thousand, aye, ten thousand times, have the old system than I would have certain courts which have been already christened and named by the distinguished delegate from Washington as pea-nut courts, established in the city and county of Philadelphia, which would be worse than the Tombs courts in New York, a thousand times over.

I trust that the delegates upon this floor will put their seal of condemnation upon such action as this by supporting and adopting this amendment.

Mr. ARMSTRONG. I am in very strong sympathy with the purpose to be attained by this section. It is unnecessary to review the question in detail; but I will venture to remind the Convention that not only the Reform Association, but the Prison Association and the papers of the city, and in fact all who have given unbiased and unprejudiced consideration to this question, are of opinion that there is great necessity for a change in the aldermanic system in this city. I do not think it wise to limit the selection of these officers to persons who are learned in the law, and I shall therefore vote to strike out that part of the section. I think "a little learning is a dangerous thing," especially at the bar, and that lawyers who would take positions of this kind are not the persons to give dignity to the position or to give a wise administration to the law within it. The purpose of this kind of magistracy is more analogous to voluntary arbitration, in which the arbitrators

are sworn justly and equitably to try the case. Questions of law do not arise before this kind of magistracy. They are questions to be determined upon a fair consideration of facts. To leave the section as it now stands would ensure hostility from sources which the Constitution ought not to encounter. With the section amended so as to leave the choice of magistracy to the citizens at large, I regard it as one of exceeding great value. I hope, therefore, that the amendment will be adopted, and that thus amended the section will be agreed to.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia, (Mr. Temple,) to strike out the word "judges," in the seventeenth and twenty-first lines, and insert the word "magistrates."

Mr. ARMSTRONG. That is not of so much consequence. I understood it to be on the amendment to strike out from the sixteenth to the nineteenth line.

Mr. TEMPLE. I will withdraw the amendment for the present.

Mr. KNIGHT. I agree quite fully with the gentleman from Lycoming, that under the section as it stands we shall be likely to have a very inferior class of magistrates. Philadelphia lawyers have been held in very high estimation for the past century. In my judgment the bar of no city or State has had a reputation equal to that of the bar of Philadelphia. Now, I think it is rather degrading that they should come down to exclusively occupy this position.

Further than that, I think the adoption of this section as it stands would have a very bad influence upon the adoption of the Constitution. We have a population of over 700,000 persons in the city of Philadelphia to-day, and probably not over 7,000 lawyers. That being the case, there would be just one per cent. of the population lawyers. We have now a great many aldermen of experience and of good judgment, and who are well thought of, and they would all be ruled out in the selection of these magistrates; and if we determine that the selection of these officers shall be made from one per cent. of the community alone, I think it will produce a prejudice against the actions of the Convention that will tell very materially when we want the votes of the people to confirm our work.

There is another fact which has been alluded to by my colleague from Philadelphia, (Mr. Biddle,) that in this Con-

vention there are over one hundred lawyers. Now, it would be said, and to my mind it looks very much like it, that they were simply desiring to perpetuate their own profession when they, constituting a majority of over three-fourths of the members of the Convention, say that in the selection of twenty-five of these officers no man shall be competent to fill the position unless he be one of their profession.

The PRESIDENT *pro tem*. The gentleman does not mean to say that there are one hundred lawyers here to-day. [Laughter.]

Mr. KNIGHT. No, sir. I mean to say that there should be one hundred lawyers here to-day.

For these and other reasons I hope the amendment will be carried.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Dallas.)

The amendment was agreed to.

Mr. TEMPLE. In order to ascertain the sense of the Convention upon the amendment which I offered a few moments ago I now renew it; that is, to strike out the word "judges," in the seventeenth and twenty-first lines, and insert "magistrates," so as to read: "Such courts shall be held by magistrates whose term of office shall be seven years," &c.

The amendment was agreed to.

Mr. HANNA. I move an amendment in the nineteenth line, to strike out the word "seven" and insert "five," so as to make the term five years instead of seven.

Mr. MACVEAGH. That agrees with the preceding section.

The amendment was agreed to.

Mr. ARMSTRONG. I move to amend by striking out in the sixteenth line the words "for each 30,000 inhabitants" and inserting the same words after "Philadelphia," in the thirteenth line. It is not grammatically expressed as it is now.

Mr. BIDDLE. That is a mere transposition.

Mr. ARMSTRONG. Yes, sir.

The amendment was agreed to.

Mr. DARLINGTON. I move to amend in the twenty-first and twenty-second lines by striking out all after the word "city" down to and including the word "chosen."

Mr. BIDDLE. Will the gentleman be kind enough to give us the import of the amendment?

The PRESIDENT *pro tem*. It is moved to amend by striking out in the twenty-first and twenty-second lines these words: "And in the election of the said judges, no voter shall vote for more than two-thirds of the number of persons to be chosen."

Mr. DARLINGTON. Mr. President: Like the gentleman from York (Mr. J. S. Black) upon another occasion, I want upon every occasion, when this question is presented, to record my vote against this "clumsy and rude contrivance" of the minority system. I desire the yeas and nays upon this question if gentlemen will oblige me; otherwise I shall address myself to the Convention for about ten minutes.

The PRESIDENT *pro tem*. The delegate from Chester asks for the yeas and nays on his amendment.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. BROOMALL. I do not intend to occupy the time of the House on this question, but I desire to call the attention of the Convention to the fact that under this section it will very frequently happen that but a single one of these magistrates is to be elected, and I should like to know how you would put in force, then, the clause that requires each voter not to vote for more than two-thirds of the number to be elected?

Mr. MACVEAGH. My objection to this clause is that, instead of being, as it seems to me, in the direction of any reform in this matter, it is virtually remitting these quasi judicial appointments exclusively to nominating conventions of the different political parties. It may be that the same thing is done now, as gentlemen remind me; but now certainly in a district the good men of the district might combine and hope to defeat anybody who was running and elect his opponent. The moment you put this limited vote in operation in this matter you give over the entire control of every alderman's office in this city to the political parties. We have heard a good deal of talk about "rings" in this Convention and combinations for corrupt purposes. I venture to prophesy now that after this is adopted, and you have offered to the political managers of this city an absolute control of these aldermanic positions, there will be a combination made—perhaps there exists one now but there will be certainly one then—that will utterly paralyze any effort of the Reform Association

or of any reform body to interfere with the nominations made by the political conventions.

Mr. LITTLETON. I desire to call attention to the fact that if these words are stricken out the probability will be that if the section should be adopted and the Constitution adopted, one party will be able to elect all the aldermen. I say, therefore—

Mr. MACVEAGH. Not at all. That could be remedied by making them live in districts.

Mr. LITTLETON. That is just exactly the point to which I am coming. Therefore if these words are stricken out you must do away with the election by general ticket. No one would contend here that it would be right or proper that all these minor magistrates in a large city like this should belong at any one time to any one political party; and this provision was inserted so that the minority party as at present existing would get about its fair share, taking into consideration the present number of the members of the two parties.

Mr. MACVEAGH. If they are not made to live in districts there will be portions of the city that will not have any aldermen at all. Are not the aldermen to be distributed? Is not that the object?

Mr. LITTLETON. If the gentleman will permit me, the system of electing them by general ticket was advocated here and deliberately adopted, because it was thought that better men would thereby be secured. A man can control a petty district who never could possibly be elected by the city at large.

Mr. MACVEAGH. Then they are all to live around the court house row!

Mr. LITTLETON. That is a matter for the Legislature, I suppose.

Mr. MACVEAGH. If elected on general ticket, how can they be regulated by the Legislature?

Mr. LITTLETON. I trust these words will not be stricken out if the other portion is retained as at present.

Mr. CORBETT. I call the attention of the friends of this section to its phraseology. It appears to me, if printed correctly, as reported by the committee of the whole, that it only creates one court to be held by all these magistrates or judges. It says "one court not of record," and that "such court shall be held by judges learned in the law." Why use the plural? It may have been altered. There may be a different print

from what I have. I call for the reading of it from the desk.

The PRESIDENT *pro tem*. It will be read from the thirteenth line down.

The CLERK read as follows:

"In the city of Philadelphia, for each thirty thousand inhabitants, there shall be established, in lieu of the office of alderman and justice of the peace as the same now exists, one court, (not of record,) of police and civil causes not exceeding one hundred dollars. Such court shall be held by magistrates whose term of office shall be five years, and they shall be elected on general ticket by the qualified voters of such city; and in the election of said magistrates no voter shall vote for more than two-thirds of the number of persons to be chosen. They shall be compensated only by fixed salaries, to be paid by said city, and shall exercise such jurisdiction, civil and criminal, except as herein modified, as is now exercised by aldermen and justices of the peace."

Mr. ARMSTRONG. Strike out the word "one" and make the word "court," in line fifteen, plural, and it obviates the difficulty.

Mr. LITTLETON. There is no difficulty in the construction of this. It means that for each thirty thousand inhabitants there shall be a court. Of course, the Legislature will have to arrange the districts, and the rest of the section simply means that these different judges or magistrates shall be elected by the community at large. Of course, the judge will have to reside in his district. That will be matter of legislation. Or his district may be fixed by law, and his office will have to be in his district. There is no sort of difficulty about it.

Mr. BUCKALEW. I understood that these details were agreed to by the members from the city. Of course, in making so radical a change in regard to the local magistracy it is necessary, in order to make the amendment acceptable, that something of this kind should be inserted. Otherwise we have twenty-two magistrates, all elected on one ticket by one party. As to the remark which was made by the gentleman from Dauphin (Mr. MacVeagh) on the subject, I think we have heard that objection before. At present the majority would elect fourteen of these magistrates and the minority eight. The result would be that there would be a competition between the two tickets as to six members of this board,

the difference between eight and fourteen; and if either party were unfortunate in nominating a few bad men, there would be an opportunity to cut them freely, just as much as at any other election, to the extent of six of those to be chosen.

As to the other point, the gentleman from the city over the way (Mr. Littleton) has explained that by legislation provision will be made for assigning these magistrates to different localities in the city. I suppose the most convenient mode would be to have them meet and consult together, if they could agree, as to the assignment of their respective districts to suit their convenience, and in case of their disagreement the assignment should be made by the court of common pleas of the city, or some provision of that sort, but it is not well here to go into details on that subject.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on the amendment offered by the delegate from Chester (Mr. Darlington.)

The yeas and nays being taken, were as follow, viz:

Y E A S .

Messrs. Bowman, Broomall, Calvin, Curry, Darlington, Edwards, Ewing, Gilpin, Hanna, Hay, Knight, Lawrence, MacConnell, MacVeagh, Minor, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Samuel A., Reynolds, Rooke, Ross, Smith, Henry W., Stanton, Struthers, Walker and Wetherill, J. M. —28.

N A Y S .

Messrs. Achenbach, Ainey, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Black, Charles A., Black, J. S., Boyd, Brodhead, Brown, Buckalew, Bullitt, Campbell, Carter, Church, Cochran, Corson, Cronmiller, DeFrance, Elliott, Fulton, Funck, Gibson, Green, Guthrie, Hunsicker, Kaine, Landis, Lilly, Littleton, M'Clellan, Mann, Mitchell, Mott, Palmer, G. W., Patton, Purman, Read, John R., Reed, Andrew, Sharpe, Simpson, Temple, Van Reed, Wetherill, Jno. Price, Worrell and Wright—49.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Barclay, Bardesley, Bartholomew, Beebe, Bigler, Carey, Cassidy, Clark, Collins, Corbett, Craig, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning,

Ellis, Fell, Finney, Hall, Harvey, Hazard, Hemphill, Haverin, Horton, Howard, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Russell, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—56.

Mr. HANNA. I move further to amend, in the twenty-sixth line, by inserting after the preposition "in," the word "civil," so as to read:

"All costs in civil and criminal cases."

The motion was agreed to.

Mr. HANNA. I also move to further amend by striking out, in the twenty-sixth line, the words, "and taxes on the business of such courts;" also to strike out the word "discharged" and insert the word "paid;" and also to strike out the words "only by a direct payment." I think the section would be in a much better shape if it were amended in the way that I have indicated. It would then read: "All costs in civil and criminal cases and all fines and penalties shall be paid into the city treasury."

Mr. ARMSTRONG. It would not do to pay costs on civil cases into the city treasury. They do not belong to the city.

Mr. HANNA. Why not?

Mr. ARMSTRONG. It would be cumbersome and useless; and the city treasurer is not obliged to account for such matters. When such moneys are once paid into the city treasury they cannot come out except by an appropriation.

Mr. MACVEAGH. He means fees.

Mr. CORBETT. I suggest to the gentleman from Philadelphia that he had better strike out "costs" and insert "fees."

Mr. HANNA. I will do that.

Mr. COCHRAN. I do not like a part of this amendment, and for this reason: I do not think it is advisable to strike out the words "such courts." It is to be remembered that this section refers not merely to the city of Philadelphia but to the whole State.

Mr. ARMSTRONG. If the gentleman from York will allow me to interrupt him I will suggest that it is easy to provide for that objection. It was only by an inadvertency that this was made one section. It was intended originally to divide it at the thirteenth line and have two sections. I propose, after the section is finally acted upon in this Convention, to have that division made.

Mr. COCHRAN. If that is to be done I have no objection to the section, because the difficulty I have suggested would not then exist. I, however, think the section would be better if the words "such courts" were not stricken out, and I suggest to the gentleman from Philadelphia that he leave them in.

Mr. EWING. I think it would be better if the section were not amended in the manner indicated, and I should prefer that these words should not be stricken out. As the section stands it will much better prevent the evils intended to be remedied. Costs in both civil and criminal cases will include witnesses fees, fees to parties, and a great many items that are now paid into the magistrate's hands; and one source of corruption has consisted in the fact that the magistrate has taken these fees and costs and appropriated them to his own use. If you still leave him to retain and collect them, you leave open a door to corruption in giving the magistrate a chance of taking fees that he should not take and taking costs that he should not take. Let the magistrate certify the amount of fees and costs, and if there is anything to be paid let it be paid down town, and the city treasurer can take care of it.

Mr. ARMSTRONG. I think it is better to leave the section as it is. One reason why these fines and penalties should only be discharged by payment into the city treasury is to insure the payment there, instead of to the magistrate in whose hands they might remain and never reach the city treasury at all. If the expenses of these magistrates are to be paid by the city, if the magistrates are to receive a fixed salary, there ought to be some means provided which will secure the city the fees that will accrue under the magistrates' system.

Mr. HANNA. To adopt the views of my friend from Lycoming, that the fines and penalties are only to be discharged by payment into the city treasury, would be wholly impracticable. Suppose a man was taken before a magistrate in the north-eastern part of the city and fined for a breach of ordinance, is that man required to be placed in charge of an officer and taken down town to the city treasurer to there pay that fine? Certainly not. He must pay the fine to the magistrate, and under an act of Assembly the magistrate must return, under oath, all his fines and penalties to the city. If he fails to do so, he commits a misdemeanor in

office. This is too simple and plain to need any further argument, and this is what I intended to reach by moving to amend the latter clause of this section.

Mr. J. R. READ. I should like to offer a substitute for the section which I think would obviate all the difficulties which have been urged against it, and at the same time meet the views of my friend from Philadelphia. I will read it for the information of the Convention, and if I am in order I will move it as a substitute for this division of the section:

"All costs in criminal and civil cases and all fines and penalties received by such magistrates shall be paid by them into the city treasury."

That simply applies to this section, and I understand from the chairman of the Committee on the Judiciary that this concluding portion of the section was intended to constitute a separate section, and that he proposes to divide the section into two. Then the substitute that I have read will apply only to the latter part of the section.

The PRESIDENT *pro tem*. The Chair will entertain the substitute of the gentleman from Philadelphia.

Mr. TEMPLE. I moved to amend the amendment, by striking out the word "judges" and inserting the word "magistrates."

Mr. J. R. READ. I rise to a point of order. That is not an amendment to the amendment.

The PRESIDENT *pro tem*. The amendment to the amendment will be received.

The CLERK read the amendment to the amendment, as follows:

"All costs in criminal and civil cases and all fines and penalties received by said magistrates shall be paid by them directly into the city treasury."

Mr. CORBETT. Is it the intention that the costs coming to the witnesses shall be paid into the city treasury?

A DELEGATE. In civil cases.

Mr. CORBETT. Or in criminal either. The word "costs" will cover the compensation to be received by the witnesses. Then you will have to make provision that the city treasury shall pay the costs coming to the witnesses. If you use the word "fees" the result will be different. "Fees" covers the compensation coming to the officer, taxed for his services.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

Mr. ARMSTRONG. I have not been able to get the run of this thing sufficiently to know what we are voting upon.

The PRESIDENT *pro tem*. The amendment to the amendment pending is to substitute for the division before the House:

"All costs in criminal and civil cases and all fines and penalties," &c.

Mr. ARMSTRONG. That I think is impracticable. The purpose of this section, as I take it, and that which it ought to accomplish, is simply this—

The PRESIDENT *pro tem*. The Chair will state that he understood the three amendments preceding this were moved by the same delegate, and the three constituted one amendment, and therefore under that understanding he received this substitute as in order as an amendment to the amendment. It is within the rules. Whether the Convention will adopt it or not is for them to say.

Mr. ARMSTRONG. What I desire to say is this: The purpose of the section and all that it intended to accomplish is, first, to take out of the hands of the magistrates the temptation to profit illegally by appropriating fees to which they have no right.

The PRESIDENT *pro tem*. That does not mean costs.

Mr. ARMSTRONG. That does not mean costs. It is not practical, in my judgment, to make the city treasurer a receiver and disbursor of costs which would be due to a very large number of citizens, entailing an amount of book-keeping which it is frightful to contemplate; what we do want is that the fees of the office and fines and penalties shall be paid into the city treasury. Now, whether it be wise to require that they shall only be discharged by direct payment into the city treasury is open to question. There is no objection to providing simply that they shall be paid into the city treasury; and if in the judgment of the Convention that is thought to be sufficient, I will frame an amendment to meet the purpose.

Mr. MACVEAGH. I suggest whether we had better not frame a fee-bill at once for aldermen, and put it in the Constitution and direct what shall be done with the different fees as they are received from time to time. It seems to me that that would be just as much in consonance with the duty of this Convention as it is to prescribe how the fees of this affidavit and the other summons and the entry of the

next action should or should not be paid, in the city of Philadelphia. I cannot believe that it has anything whatever to do with the work of this Convention or that it is anything but the most ordinary species of legislation.

Mr. BUCKALEW. I desire to make a suggestion: That we leave this whole matter of costs and fees alone, and that we have a simple provision, something like the close of the section, that all fines and penalties imposed by these magistrates shall be paid directly into the city treasury, so that they shall not handle them. The city treasurer cannot settle the fees of the thousands and thousands of witnesses.

Mr. MACVEAGH. Will the gentleman allow me to suggest that that cannot possibly work, because take the case of a man who is arrested for fast riding up in the Northern Liberties. The city treasury is not open after three o'clock, as I understand. We might fix in the Constitution the words, "the city treasury shall be kept open;" but you would have to send an officer all the way down, and his costs would be double those of the alderman.

Mr. ARMSTRONG. Now, Mr. President —

The PRESIDENT *pro tem*. There is an amendment to the amendment pending.

Mr. J. R. READ. I withdraw the amendment to the amendment.

Mr. ARMSTRONG. Then I suggest that we put it in this shape: Let the twenty-sixth, twenty-seventh and twenty-eighth lines read as follows:

"All fees and taxes on the business of such courts, and all fines and penalties, shall be paid into the city treasury."

The purpose of that is—

Mr. SIMPSON. We all agree upon that.

Mr. ARMSTRONG. Very well, then, I do not wish to consume time.

Mr. MACVEAGH. Will the delegate make that a little more explicit; "paid by the alderman," does he mean, "or paid by the parties?"

Mr. ARMSTRONG. Paid by the parties.

Mr. MACVEAGH. Then it means nothing whatever.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lycoming to the amendment of the delegate from the city of Philadelphia.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the amendment as amended.

The amendment as amended was agreed to.

The PRESIDENT *pro tem.* The question recurs on this division of the section as amended.

Mr. ARMSTRONG. I inquire of the Chair whether or not we are now to vote on the paragraph commencing at the thirteenth line.

The PRESIDENT *pro tem.* That is the question.

Mr. WORRELL. Before the vote is taken on this question, I should like to call attention to the words in the twenty-third, twenty-fourth and twenty-fifth lines, that "the magistrates in the city of Philadelphia shall exercise such jurisdiction, civil and criminal, except as herein modified, as is now exercised by aldermen and justices of the peace." I should like to ask the chairman of the committee whether, in his opinion, if it is desired at any time to change the jurisdiction of these magistrates, it would be necessary to pass an amendment to the Constitution?

Mr. ARMSTRONG. I should think not. I should think at any time the Legislature could modify and change their powers.

Mr. MANN. I call for a division, the first division to end with the word "fees," in the twenty-fifth line.

The PRESIDENT *pro tem.* The gentleman from Potter asks for a division. The first division ends with the word "fees," in the twenty-fifth line.

Mr. J. PRICE WETHERILL. Although this section has been amended to a considerable extent, and although good to the city of Philadelphia may not be derived from it to that extent that the committee proposed, yet I hope, notwithstanding, the vote will be taken and that this section will prevail. There has been an apprehension, I am satisfied, on the part of a great many who perhaps do not fully understand the bearings of the section, that it is so loaded down with amendments that therefore it ought to be killed, and that hence a majority of the members of this Convention are to vote against it. I hope not. I think I speak for Philadelphia and a majority of her citizens when I say that in this section we prefer half a loaf to no bread; and I do urge, therefore, upon the members of the Convention that if they will not give all the city of Philadelphia may require in the premises, they will give at least the little that is asked for by the section in its present condition.

I appeal, sir, for justice to the poor, the poorer classes that suffer, the poorer classes who must have justice meted to them by the aldermen of the city of Philadelphia; and when I allude to the class of aldermen at present existing, and when I recollect that this section will certainly, to say the least of it, reduce that number one-half, and that thereby perhaps to that extent the poor of the city of Philadelphia will have justice, which they have not had for years. Any one who knows anything about the aldermanic system of the city of Philadelphia will say they have not had justice meted to them. I do hope, sir, that what little good there is in this section will be given to that class seeking justice at the hands of the aldermen. I do hope therefore that the Convention will vote "aye" on this section and give us what little there is left of it.

Mr. ARMSTRONG. There is more in the suggestion of the gentleman from Philadelphia (Mr. Worrell) than struck me at first, and in pursuance of his suggestion I will move to add, at the end of the twenty-fifth line, the words "subject to such changes as may be made by law." This removes any possibility of obscurity on that point.

Mr. EWING. Now I should like to ask the chairman another question that would remove one of the very serious objections in my mind to this section; but suppose, as I believe will inevitably occur from the manner in which these aldermen or magistrates or judges, whatever you see fit to call them, are to be chosen, that they will be selected absolutely by a ring of corrupt politicians composed of two parties in the city, before five years they will be worse than the present aldermen.

Mr. J. PRICE WETHERILL. That cannot be; it is impossible. [Laughter.]

Mr. EWING. Cannot the Legislature or any power then come to the aid of Philadelphia and save it from its friends by taking away the police jurisdiction from these magistrates and putting it in some other power?

Mr. ARMSTRONG. Well, sir, I am neither a prophet nor the son of a prophet, and I cannot decide what will happen five years from this time.

Mr. EWING. I am not asking you to decide what will happen five years hence. I am asking you, will the Legislature have that power under this section?

Mr. ARMSTRONG. No.

Mr. MACCONNELL. I believe some gentlemen have spoken half a dozen

times on this subject, and I desire to call attention to the fact that the rule prohibits them from speaking more than once.

MR. J. R. READ. I trust the amendments offered by the gentleman from Lycoming (Mr. Armstrong) or the gentleman from Philadelphia (Mr. Worrell) will not be adopted. That is the very thing we have been complaining of for the last five years. It is by the extension of the jurisdiction of the aldermen that the evil, if it be an evil, as it is admitted to be by Mr. Temple, has been caused. It is the very thing we do not want. It is the very thing we implore this Convention not to do, to enlarge their jurisdiction or to give the Legislature the power to do it. Fix it as you will; fix it at one hundred dollars or two hundred and fifty dollars; but above all I beg of you not to let them go to the halls of the Legislature year after year, as they have in the past, begging and beseeching the Legislature, by their committees and deputations, to enlarge their jurisdiction. I trust the amendment will not be adopted, and I am quite sure the gentleman from Lycoming, when he reflects upon the evil effects of it, will withdraw it.

MR. WORRELL. The gentleman who has last spoken does not understand this section or the import of it at all. If he will read the section he will see that this is to be a court in the city of Philadelphia for civil causes not exceeding one hundred dollars, and that amount is fixed by the Constitution. The purpose of the amendment offered by the gentleman from Lycoming is to leave the section in such a condition that at some future time the jurisdiction which is at present vested in the aldermen may be withdrawn if the best interests of the people should require it. Now, under this section, if it is adopted, limiting the aldermen to a jurisdiction of one hundred dollars, they cannot make this appeal to the Legislature, and yet that is in the body of the section; but any jurisdiction which they at present exercise can never be taken away by an act of Assembly, because that jurisdiction is vested in them by the Constitution; and to say that during the time this Constitution is to be in operation no change in jurisdiction will be required is to say that which I do not think any one will say after mature reflection. I think the amendment ought to be adopted, and that these aldermen should not exercise a constitutional juris-

diction which would require an amendment of the fundamental law to change.

MR. TEMPLE. I should like to have the amendment read.

THE CLERK. If amended as proposed, the paragraph will read:

"They shall be compensated only by fixed salaries, to be paid by said city, and shall exercise such jurisdiction, civil and criminal, except as herein modified, as is now exercised by aldermen and justices of the peace, subject to such changes as may be made by law."

MR. TEMPLE. I hope delegates will consider well before they vote on this amendment. Certainly it is not intended to clothe the very aldermen or magistrates, as we now call them, which are so much desired by the delegate from Philadelphia, (Mr. J. Price Wetherill,) with political duties. I beg gentlemen who are in favor of reform in this direction to consider before they adopt this amendment. Why, sir, it would not be three years after the adoption of this Constitution, with this provision in it, before this board of aldermen would be clothed with such political powers as would render them more obnoxious than they are under the present system. I desire to vote for this section or some section that will give us a reform; but I shall never cast my vote for the section if this amendment is appended to it. I will vote for any section or any amendment which allows the Legislature to give these aldermen or these magistrates any jurisdiction or any extended jurisdiction other than of a political character. But gentlemen must remember that they cannot tell how the politics of the city of Philadelphia will be ten or fifteen years from now. Things may take a change, and those who are anxious to have this amendment adopted, if it be upon political grounds, and I trust it is not so, may find that it will come home to annoy them. But I am not in favor of the amendment, because I am totally opposed to giving judges, from the highest to the lowest, political power. The very moment you do that you degrade the highest courts in the land, and you put in the hands of such courts as these the means to execute and carry out the most frightful wrongs upon the people of Philadelphia. I cannot believe that the members of this Convention will adopt any such amendment.

MR. ARMSTRONG. I desire to say but a word. The danger to be apprehended in this section is that we consolidate into the

Constitution whatever powers are now exercised by aldermen or justices of the peace in Philadelphia. If so, we render it impossible for the Legislature to deprive them of certain political powers which they now exercise greatly to the disadvantage of the city, and I think, under such legislative restrictions as we have enacted, we may safely invest in them the discretionary power to regulate the jurisdiction and powers of these subordinate magistrates.

The *PRESIDENT pro tem.* The question is on the amendment.

The amendment was agreed to, there being on a division, ayes thirty-seven, noes twenty-one.

The *PRESIDENT pro tem.* The question recurs on the division of the section.

Mr. BUCKALEW. I desire to add an additional word or two. After the word "changes," in the amendment just adopted, I move to insert, "not involving an increase of civil jurisdiction."

I offer this amendment in order to keep this whole question out of the Legislature of whether these magistrates shall have jurisdiction to one hundred dollars, two hundred dollars, three hundred dollars, or five hundred dollars. Let us fix it in the Constitution. If one hundred dollars is not enough, let us make it something else; but with the amendment of the gentleman from Lycoming added, as a matter of course these magistrates will appeal to the Legislature from year to year. I want to end that one way or the other.

Mr. SHARPE. I move to amend the amendment by adding the words "or conferring any political duties."

The amendment to the amendment was agreed to, there being on a division, ayes fifty-one, noes eight.

The *PRESIDENT pro tem.* The question now recurs on the amendment of the delegate from Columbia (Mr. Buckalew) as amended.

The amendment as amended was agreed to.

Mr. DARLINGTON. I move to amend the section in the twenty-third line by inserting after the word "salaries" the words "not exceeding the amount of fees received."

Mr. CUYLER. I hope the gentleman will not press that amendment.

Mr. DARLINGTON. This is precisely in harmony with the provision which we have inserted in the Constitution in relation to county officers, and I suppose is

equally applicable to the aldermen or magistrates of the city, many of whose offices I am told are very valuable, and some perhaps not so very valuable. I presume it is not the desire of anybody to compel the payment by the city treasury of fees to the amount of from \$2,000 to \$5,000, or whatever sum they shall fix, to a magistrate in a rural district who may not be able to receive five dollars in the course of a year. If they prefer to do so, however, very well.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Chester (Mr. Darlington.)

The amendment was rejected.

Mr. ARMSTRONG. I have a further amendment to offer. In the twenty-first line the word "such" before "city" should be "said," and I move that amendment.

The amendment was agreed to.

Mr. CUYLER. I was necessarily absent when the vote was taken on striking out the clause relating to these judges being learned in the law. I respectfully ask leave to record my vote against that amendment.

Mr. BIDDLE. I hope the gentleman will be permitted to so record his vote.

SEVERAL DELEGATES. The yeas and nays were not called.

Mr. CUYLER. If the yeas and nays were not called I have nothing to say.

Mr. MACVEAGH. The statement answers the purpose.

Mr. CUYLER. Of course the statement answers if the yeas and nays were not called.

The *PRESIDENT pro tem.* The question now is on the adoption of this division of the section.

Mr. MACVEAGH AND Mr. D. W. PATTERSON called for the yeas and nays, and they were ordered.

Mr. T. H. B. PATTERSON. I ask to have the division read as it stands.

The CLERK read as follows:

"In the city of Philadelphia for each 30,000 inhabitants there shall be established, in lieu of the office of alderman and justice of the peace as the same now exists, one court (not of record) of police and civil causes not exceeding one hundred dollars. Such court shall be held by magistrates whose term of office shall be five years, and they shall be elected on general ticket by all the qualified voters of said city; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number to be chosen. They shall be compensated only

by fixed salaries to be paid by said city, and shall exercise such jurisdiction, except as herein modified, as is now exercised by aldermen and justices of the peace, subject to such changes, not involving an increase of civil jurisdiction or conferring any political duties, as may be made by law."

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Baker, Beebe, Biddle, Black, Charles A., Black, J. S., Bowman, Boyd, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Elliott, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Heverin, Kalne, Knight, Landis, Lilly, Littleton, M'CLean, Mann, Mitchell, Mott, Palmer, G. W., Patton, Purman, Read, John R., Reed, Andrew, Rooke, Ross, Russell, Sharpe, Simpson, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—58.

NAYS.

Messrs. Broomall, Darlington, Edwards, Ewing, Hanna, Lawrence, MacConnell, MacVeagh, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Samuel A., Reynolds, Smith, Henry W., Stanton, Struthers and Walker—17.

So the division was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bailey, (Huntingdon,) Banan, Barclay, Bardsley, Bartholomew, Bigler, Brodhead, Carey, Cassidy, Clark, Collins, Craig, Curtin, Dallas, Davis, Dodd, Dunning, Ellis, Fell, Finney, Hall, Harvey, Hay, Hazzard, Hemphill, Horton, Howard, Hunsicker, Lamberton, Lear, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Niles, Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—58.

Mr. CUYLER. I ask leave to suggest two amendments which seem to be necessary, and which are merely formal, for which I ask the unanimous consent of the House. They are to insert in the fifteenth line, after the word "causes," the words "with jurisdiction." It reads "and civil causes not exceeding one hundred dollars." It would read better if it was "and civil causes, with jurisdiction not exceeding one hundred dollars." I

ask leave to insert the words "with jurisdiction" after the word "causes."

The *PRESIDENT pro tem.* Will the House give unanimous leave to make the amendment? ["Yes." "Yes."] The Chair hears no objection, and the amendment will be made.

Mr. CUYLER. I have one similar amendment to suggest. In the twenty-second line it will be observed the language is, "shall not vote for more than two-thirds of the number of persons to be chosen." It may very well occur that only one may have to be elected to fill a vacancy or something of that kind, and it would be rather difficult to vote for two-thirds of a man. The amendment I propose to make is to strike out the word "chosen," and insert "elected where more than one are to be chosen." It will then read:

"No voter shall vote for more than two-thirds of the number of persons to be elected where more than one are to be chosen."

I ask unanimous consent to make this amendment.

The *PRESIDENT pro tem.* Unanimous consent is asked to make this amendment. Is consent granted? ["Yes." "Yes."] The Chair hears no objection, and the amendment is made.

The *PRESIDENT pro tem.* The last division of the section is now before the Convention.

Mr. MANN. I hope this division will be omitted. Certainly it is no necessary part of the Constitution. The two divisions of this section which we have adopted are properly portions of the Constitution and indeed necessary for this Convention to act upon; but it seems to me that this question of disposing of the costs of aldermen and justices of the peace does not properly belong to the Constitution, and it is very doubtful whether the meaning of this language will be acceptable if it should be adopted, and it is much wiser, it seems to me, to leave it in such shape that it can be amended if it should prove to work improperly.

It was stated this forenoon in objection to the tenth section of this article, very forcibly as I thought—in fact I think it was the only real objection made to it—that it was something that properly belonged to the Legislature. I ask if the question of regulating appeals where personal liberty is concerned should be left to the Legislature, why should we not

leave this question of costs and fees there also?

The PRESIDENT *pro tem.* The question recurs upon the last division as amended.

Mr. CUYLER. I desire to say that I like the language of the section better than that of the amendment. The section reads:

"All costs in criminal cases and taxes on the business of such courts, and all fines and penalties, shall be discharged only by a direct payment into the city treasury."

Why amend it at all?

The last division of the section as amended was agreed to.

The PRESIDENT *pro tem.* The question is upon the section as amended.

Mr. DARLINGTON. The section has already been adopted by divisions.

The PRESIDENT *pro tem.* Where we have taken a vote on a section by divisions, we have always afterward taken a vote upon it as an entire section.

The section as amended was agreed to.

Mr. ARMSTRONG. I now hope that the Clerk will note what was said about dividing this into two sections, and make the required divisions.

Mr. LILLY. The Committee on Revision and Adjustment can attend to that.

The PRESIDENT *pro tem.* The division will be made in the section before it is reprinted.

Mr. ARMSTRONG. That is satisfactory.

The PRESIDENT *pro tem.* The thirteenth section will be read.

The CLERK read as follows:

SECTION 13. In all cases of summary conviction or of judgment in suit for a penalty, before a magistrate or court, not of record, either party shall have the right to appeal to such court of record as may be prescribed by law.

The section was agreed to.

The PRESIDENT *pro tem.* The fourteenth section will be read.

The CLERK read as follows:

SECTION 14. All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature.

Mr. KATNE. I move to amend this section by striking out the word "all," in the beginning of the section; then to strike out all after the word "law" in the second line, down to and including the word "court," in the third line; and also to insert after the word "judges" the words, "of the court of common pleas."

This will make the section read: "Judges of the court of common pleas required to be learned in the law shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each branch of the Legislature." We have already provided for the election of the judges of the Supreme Court, and I do not desire to have that provided for twice.

Mr. CORBETT. In the first section of this article we have reserved to the Legislature the right to create additional courts. As long as that provision stands I am opposed to any amendment of this kind, because it allows the Legislature to provide for them to be appointed.

Mr. KATNE. That does not affect the amendment I propose. I simply propose to strike out here that we shall not elect the judges of the Supreme Court, in order that we may not provide for their election twice.

On the question of agreeing to the amendment proposed by Mr. Katne a division was called for, which resulted twenty-three in the affirmative. This not being a majority of a quorum, the amendment was rejected.

The section was agreed to.

The PRESIDENT *pro tem.* The fifteenth section will be read.

The CLERK read as follows:

SECTION 15. Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen he shall vote for no more than two; and candidates highest in vote shall be declared elected.

Mr. BROOMALL. I do not desire to occupy the time of the Convention; I only wish to call for the yeas and nays on this section. I cannot vote for a provision that vests the appointment of judges in the hands of the leaders of the political parties. I would rather have them ap-

pointed by the Governor if they cannot be elected by the people.

Mr. LILLY. It is all humbug to say that judges cannot be elected by the people under this section as well as under the present system of nominations. The gentleman from Allegheny (Mr. Ewing) has just been nominated for judge by a ring of politicians, and that was not done by the operations of this section!

The PRESIDENT *pro tem.* Is the call for the yeas and nays seconded?

Mr. HANNA. I second the call.

The yeas and nays, which had been required by Mr. Broomall and Mr. Hanna, were as follow, viz:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Black, J. S., Boyd, Brown, Buckalew, Campbell, Carter, Church, Cochran, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Elliott, Fulton, Gibson, Gilpin, Green, Guthrie, Heverin, Kaine, Landis, Lilly, McClean, Mann, Mitchell, Patton, Purman, Read, John R., Sharpe, Van Reed, Wetherill, John Price and Worrel—40.

NAYS.

Messrs. Baker, Beebe, Biddle, Bowman, Broomall, Calvin, Darlington, Edwards, Ewing, Fell, Funck, Hanna, Lear, Littleton, MacConnell, MacVeagh, Minor, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Simpson, Smith, Henry W., Stanton, Struthers, Walker, Wetherill, J. M. and Wright—34.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Brodhead, Bullitt, Carey, Cassidy, Clark, Collins, Craig, Curtin, Dallas, Davis, Dodd, Dunning, Ellis, Finney, Hall, Harvey, Hay, Hazard, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Lawrence, Long, McCamant, McCulloch, McMurray, Mantor, Metzger, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Temple, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—59.

The PRESIDENT *pro tem.* The sixteenth section will be read.

The CLERK read as follows:

SECTION 16. Should any two or more judges of the Supreme Court or any two or more judges of the court of common pleas for the same district be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission and certify the result to the Governor, who shall issue their commissions in accordance therewith.

The section was agreed to.

The PRESIDENT *pro tem.* The seventeenth section will be read.

The CLERK read as follows:

SECTION 17. The judges of the Supreme Court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall, at stated times, receive for their services an adequate compensation to be fixed by law, and wholly paid by the State, (except the judges of courts not of record,) which shall not be diminished during their continuance in office; but they shall receive no other compensation for their services from any other source, nor any fees or perquisites of office, nor hold any other office of profit under this Commonwealth nor under the United States or any other States.

Mr. ARMSTRONG. I move to amend the section, by striking out the words "except the judges of courts not of record," which are now unnecessary, owing to the manner in which the twelfth section has passed; and before the word "which" inserting the word "and;" also to strike out the word "wholly" before "paid;" and to insert after "shall," where it occurs the second time, the word "not;" and in the same sentence to change "no" into "any" and to strike out "other."

These are mere verbal changes and I think greatly improve the section. The section as I now have proposed to amend it reads as follows:

"The judges of the Supreme Court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall, at stated times, receive for their services an adequate compensation to be fixed by law and paid by the State, which shall not be diminished during their continuance in office. They shall not receive any compensation for their services from any other source, nor any fees or perquisites of office, nor hold any other office of profit under this Commonwealth nor under the United States or any other State."

The amendment was agreed to.

Mr. BAKER. I offer the following amendment: Strike out the words "wholly paid by the State," and also the words "from any other source."

Mr. President, I propose to strike out these words because they are an interpolation, not found in our present Constitution and not called for by any exigency whatever. The retention of these words in the section can have but one result; and that is to cut down the salaries of the judges in Philadelphia, which are already too small in view of their position and the present expenses of living. No other judges in the Commonwealth will be at all affected by such an uncalled for constitutional provision. Why should we place in the organic law a permanent denial of adequate compensation to a portion of the judiciary of Pennsylvania, and that the hardest-worked in the State? I can see no reason for it. If the citizens of Philadelphia are willing and desire to supplement the salaries paid by the State to its judiciary residing in this city, what right has any one not interested to complain or interfere? No one, sir, but a member of the bar of Philadelphia can have any adequate conception of the immense and continuous labors devolved upon the judges of Philadelphia. The city of Philadelphia, justly proud of her judiciary, distinguished as it is for learning, ability and integrity, would like to be left at liberty to compensate it according to her own sound judgment of its great merit and valuable services.

The PRESIDENT *pro tem*. The Chair will inform the delegate from Philadelphia that the word "wholly" has already been stricken out.

Mr. BAKER. I was not aware of that; I found the word in the printed article before me.

Mr. LITTLETON. I did not understand the word "wholly" to be stricken out.

The PRESIDENT *pro tem*. It was stricken out.

Mr. LITTLETON. Not upon the amendment of the gentleman from Lycoming.

The PRESIDENT *pro tem*. It was stricken out upon the amendment of the gentleman from Lycoming.

Mr. LITTLETON. Then I trust that action will be reconsidered. The vote was certainly taken without a proper knowledge of the question. I listened attentively when the gentleman from Lycoming stated his amendment from the floor, and he certainly did not then mention

that he intended to strike out the word "wholly."

Mr. ARMSTRONG. I beg to remind the gentleman that I clearly and distinctly stated that part of the amendment from my seat in this Convention.

Mr. LITTLETON. I beg the gentleman's pardon. I listened with close attention to the gentleman's amendments when he stated them from the floor, and if he had alluded to the word "wholly" I should have objected to that portion of the amendments. It certainly was made at the Clerk's desk, where the amendment was read so hastily that it was not understood.

Mr. CUYLER. I suggest to my colleague that the section is sufficiently efficacious with the word "wholly" stricken out, because, of course, if the judges are paid by the State they are wholly paid by the State.

The PRESIDENT *pro tem*. The Chair must remind gentlemen that that question has been settled, and the pending question is the amendment of the gentleman from Philadelphia (Mr. Baker.)

Mr. SIMPSON. I hope the amendment offered by my colleague will be adopted by the Convention. The object for which the words intended to be voted upon were put in this section, for they are not in the Constitution of 1837-38, was to meet a single case and to prevent its recurrence in the future. That case was this: In the city of Philadelphia the judges were paid by the State a compensation similar to that paid other judges throughout the State; but as there was a very large amount of business accruing from the wants of the city of Philadelphia itself coming before these judges, the Legislature in their wisdom several years ago provided for the payment of \$2,000 per annum from the city treasury to each of the judges of our courts learned in the law. That has been paid to them for several years. It was not put upon the State Treasury, because it was feared that if the Legislature were to give a compensation of \$7,000 per annum to the judges of this city, other judges through the State would require the same amount from the State Treasury; and inasmuch as a large amount of the business of the courts was derived from the city itself, it was thought to be no more than right that a part of the compensation of the judges in Philadelphia should be borne by the city treasury.

Now, the object of the words of this amendment introduced by the Committee on the Judiciary—for it is an amendment to the old Constitution—is to prevent this payment to these judges out of the city treasury, and I hope that the Convention will adopt the amendment of my colleague and strike these words out. If the Legislature in their wisdom see fit to continue this provision, why should we interfere with them? I have never heard a word of complaint in the city of Philadelphia against this payment. It has been paid for years, and nobody has said anything about it, and I hope we shall still be enabled to pay the judges in our city a reasonable compensation for their services.

Mr. CUYLER. Three or four years ago, for the first time, the Legislature provided that the judges of the county of Philadelphia should be paid a compensation of, I think, \$2,000 per annum out of the city treasury. I think the city generally was considerably shocked at the suggestion. I know the city councils hesitated for a year or two before they made any appropriation which would recognize the propriety of any such action, and to me it has always seemed very unreasonable and very unfair. The city or the county of Philadelphia has of course no judicial functions or powers. The distribution into legislative, executive and judicial powers is predicated of the State and not of a county or of a municipality. The judges are not judges of a county, and not judges of a municipality; they are judges under the general law of the whole Commonwealth, judges of the whole State. They are judicial officers of the State and not of the county, and therefore I never could see any reason for paying them out of the county treasury at all. They should stand entirely removed from local influences; they should be dependent upon no municipality, and upon no county, but upon the State at large for their compensation.

This was put upon the specious ground at the time the Legislature thus provided that there were many functions put upon the judges of our local courts that were peculiar to this county, appointments to office, inquiries into the character and suitability of individuals for appointments upon commissions of various sorts, such as boards of guardians of the poor, boards of health, and so on. This new instrument strips them, very properly, of all such power. All those functions, if

this Constitution is adopted, will disappear and will have gone entirely; and the only reason I ever heard assigned for such a provision of law will have passed away.

I trust, therefore, that the amendment will not prevail, and that the section will continue just as it was written, that is to say that the judges shall be paid out of the public treasury of the State, and in no particular out of the treasury of any county or municipality.

Mr. LITTLETON. Mr. President: I had supposed it would hardly be necessary to say anything on this subject, that it had been so thoroughly settled by the Convention that it was proper that these words should be here that no amendment of the sort proposed by the gentleman from Philadelphia (Mr. Baker) would be offered. It does seem to me that in the light of what has taken place these words are very important and should remain just as they are. There is no earthly reason why the city of Philadelphia or the county of Philadelphia should be compelled to support the judicial establishment of the State any more than any other county of the State. Our courts are open to the citizens not only of the Commonwealth but of every other State in the Union; and why should we be asked to assist in supporting the judiciary of the State, a part of the State government itself? I can see no reason why this amendment should be adopted, and every reason why it should be voted down.

Mr. LILLY. Mr. President: It appears to me that this thing should be viewed on common sense principles. It costs a great deal more to live in Philadelphia than it does in the country, and I think the State should not be called upon to pay that difference to enable the city of Philadelphia to get the best talent on her bench. If she finds it in the city or in the State she should be allowed to pay that difference of living between the country and the city. That is the whole question. I hope there is nobody to be punished for putting this other thing in. It has been intimated that somebody has been treading on somebody's toes. Now, if that is the case—I hope it is not true

Mr. LITTLETON. I should like to ask the gentleman where he heard that intimation. I say that it is not true.

Mr. LILLY. I am not on the witness stand at all; but I have heard this intimation from respectable men.

Mr. BIDDLE. I am compelled, Mr. President, to say a word or two about this matter.

I regret exceedingly that the gentleman from Carbon should have imputed such a motive to the gentleman from Philadelphia to my left who introduced originally this modification. He is utterly mistaken in supposing that it is meant to punish any one. It falls on all precisely alike, and I believe the very purest and in my judgment the most correct motives have induced the gentleman from Philadelphia to the left to frame the section as it now stands.

I think it is impossible to answer the arguments put by the gentleman to my right (Mr. Cuyler) in favor of retaining the section as it is. The judiciary of Philadelphia are part of the judiciary of the State, and it is to belittle them to say that they shall be paid out of the private fiscus of this county. I regret as much as any one that the State salary is inadequate for their compensation; I believe it to be so, but I hope it will not continue so; and while I am sorry as I can be that the effect of keeping the section as it is, properly placing them on the same platform with the other judges of the State, will be to cut them down, I shall certainly vote for the section as it is.

Mr. LITTLETON. I desire, before this question is disposed of, to say one more word on the subject. The gentleman from Carbon has made a remark here which seems to be directed towards me. I desire to brand the statement as utterly without foundation, so far as I am concerned.

Mr. LILLY. I desire to explain. I did not direct my remarks toward the gentleman at all. I only said that I hoped there was no such thing. I care little for this matter, but I want it understood that the gentlemen of Philadelphia are responsible for a reduction of the salaries of these judges, if this works a reduction.

Mr. LITTLETON. Then if it is intended by his remarks to make any reference to me, I desire to deny its truth entirely. I have no motive whatever, except what I think to be honest, fair and upright upon this question. I do believe it wrong that the tax-payers of Philadelphia should be compelled to pay an unjust burden, whether it be \$5 or \$50,000; and I am reminded of the fact, as the question is discussed here, that it is not only \$2,000 a year to-day, but it may be \$5,000 next year, as at the last session of the Legisla-

ture an effort was made to increase this compensation out of the funds of the city treasury to the rate of \$5,000 per annum for each judge; so that while it may not be a very large amount now, (amounting to only \$20,000 per annum,) yet next year it may be \$50,000; and if it is not right we should not be compelled to pay it, if it were only fifty cents. I regret as much as anybody to do anything to affect the income or salary of any person now occupying judicial position in Philadelphia. I know all of the judges and respect them, and I am glad to feel that I have their friendship.

Mr. CUYLER. I wish to say a word also, in justice to myself.

The PRESIDENT *pro tem*. The gentleman has spoken.

Mr. CUYLER. But a word of explanation—it will take but a moment—and that is simply on my own behalf, to disclaim any such motive as the gentleman from Carbon imputed. I have never heard any such suggestion. I have warm personal regard and friendship, I believe, to every judge in this county, and would be the last man to vote to reduce, but would gladly vote to increase their salaries, that I know are inadequate; but on this question I stand upon principle, and I think the amendment is wrong in principle.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. H. W. SMITH. I move to amend the section in this way: In the third line strike out the words "at stated times," and in the fifth line strike out the words "not be" and insert "neither be increased nor." It will then read in this way as to fixing the compensation of the judges:

"The judges required to be learned in the law, shall receive for their services an adequate compensation, which shall be fixed by law and paid by the State, which shall neither be increased nor diminished during their continuance in office."

Mr. President, I will not detain the Convention. I have heretofore spoken upon the subject, but I desire to add a few words now.

By reference to the legislation which has been had on the subject of compensating judges, it will be found that prior to 1861 an act of the Legislature was

passed, fixing the compensation of the judges of the Supreme Court and of the other courts; and it was an act passed fixing their compensation agreeably to what was enjoined on the Legislature by the Constitution. It was an adequate compensation at that time. That continued until 1864. Then commenced what I wish now to provide against. In the appropriation bill of 1864 the judges' compensation was increased not a great deal I admit, but a sum was appropriated and it was worded in this way: "Each judge," describing the judges, the supreme judges and the judges of the courts of common pleas and the judges of the district courts, should receive such a compensation in addition to the regular one fixed by law prior to 1864, "for the present year and no longer," according to the phraseology of the law.

The Legislature resort to these words that they shall "at stated times" receive a compensation. That word "times" got a great signification. If the phraseology had been in the old Constitution "shall at stated times receive so much," there might have been a difference. In 1865, when the general appropriation bill was again passed, there was another increase made. Then they said "for the present year." First they said "for the present year and no longer." That did not make the terms quite as strong, thus altering it every year. In one of the appropriation bills they say, during the present year, and they then go on, and in that way they continued the appropriations up to 1872, sometimes making them in the same way for two years and changing them in that way almost every year, with one or two exceptions, until the compensation of some of the judges is doubled and more than doubled, and the others largely increased.

Now, I am in favor of giving the judges a full and ample compensation. But under the present Constitution, with the words "at stated times" reading "at stated times receive an adequate compensation to be fixed by law, which shall not be diminished during their continuance in office," I do not believe, and I never did believe—and I say this as a lawyer—that the framers of the Constitution ever intended that the Legislature should have authority to fix the compensation of the judges and then unfix it annually, or from time to time as they are going on. Whether the Legislature of 1873 have done the same thing I do not know. I

have not had possession of their appropriation bill, and have not read it.

Give the judges an ample compensation, but do not increase it continually, running on, never stopping, for it has not stopped since 1864. Give them an ample compensation. If the salary fixed prior to 1864 was inadequate, let the compensation be made adequate; but do not add year after year and go on increasing compensation, and thus establish a system of plunder which may become intolerable and produce revolution.

Now, strike out those words. Frame it that they shall receive an adequate compensation to be fixed by law, which shall neither be increased nor diminished during their continuance in office. That will avoid this difficulty. Judges should be well paid, I admit, but they must not be over-paid; they must submit like others.

I desire to record my vote upon this, and I ask for the yeas and nays.

The PRESIDENT *pro tem.* Is the call seconded by ten members?

MR. EWING. Perhaps the gentleman will not call the yeas and nays when he hears my suggestion. I wish to call the attention of the gentleman from Berks to section fifteen of the article on legislation, which provides for these and all other officers:

"No law shall extend the term of any public officer or increase or diminish his salary or emoluments after his election or appointment."

That covers the case of all officers.

MR. H. W. SMITH. I am aware of that; but why pass this section as it is? I call for the yeas and nays.

The PRESIDENT *pro tem.* Do ten gentlemen rise to second the call?

The yeas and nays were ordered, ten members rising to second the call.

MR. ARMSTRONG. The whole question was very thoroughly discussed before, and I do not know that it is worth while to enter again into the discussion. The judgment of the Convention was that it would not be wise to deprive the Legislature of the right to increase the salary of judges whose term is twenty-one years when we cannot foresee the exigencies which might make such an increase a necessity. As to the other salaries for judges having shorter terms, it is within the power of the Legislature to change them more frequently, and it is appropriately left there, and with that view I voted for the legislative provision. But

as applied to the judges with such long terms as those of the Supreme Court, I think it is better not to deprive the Legislature of the opportunity to increase the salaries, if they should deem it wise to do so.

I do not desire to repeat the arguments which we have had before.

MR. KAINE. Mr. President: I am in favor of the amendment, and shall vote for it. I do not care whether the terms of the judges are long or short. When a man takes an office with a salary fixed, I would hold him to it to the end. The fact that the terms of the judges of the Supreme Court have been fixed by this Convention at twenty-one years is no fault of mine. I have done all I could thus far to bring it back to the old term of fifteen years.

But, sir, this is one of the causes of corruption, and has been for the last ten years. Some member of the Legislature who desires to be in particular favor with the judge in his district gets up when the appropriation bill is under consideration and moves that the salary of the president judge of the Fourteenth district, if you please, be increased to \$3,500. A member then from another district gets up and says, "I move to include the Sixteenth district," and so on, until there is a majority of the judicial districts of the State put in, and in that way the salaries are raised—a perfect system of log-rolling which has crept into the Legislature, and is one of the sources of the corruption in that body.

I hope we shall not have another war for another half century, and then there will not be so much change in the value of the currency so that prices will rise and fall so much that it will be necessary to make it proper for the Legislature to increase the salaries of the judges. Let them live upon the salary fixed in the beginning; let it be fixed at a proper rate. I want to pay them well; I want the Legislature to fix the salary at a fair and just compensation, so as to command the best talent of the State in the judiciary; and when once fixed, and a man has taken his place under it, I want it to remain so during his continuance in office. Therefore I shall vote for the amendment of the gentleman from Berks.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on the amendment.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Baker, Black, Charles A., Boyd, Buckalew, Bullitt, Darlington, Fulton, Gilpin, Kaine, Lawrence, MacConnell, Mitchell, Purman, Rooke, Russell, Smith, Henry W., Struthers, Van Reed, and Walker—21.

N A Y S .

Messrs. Armstrong, Beebe, Biddle, Bowman, Broomall, Brown, Calvin, Campbell, Carter, Church, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Edwards, Elliott, Fell, Funck, Gibson, Green, Guthrie, Hanna, Landis, Lear, Lilly, Littleton, MacVeagh, M'CLean, Mann, Minor, Mott, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Porter, Purviance, Sam'l A., Read, John R., Reed, Andrew, Reynolds, Ross, Sharpe, Simpson, Stanton, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—51.

So the amendment was rejected.

ABSENT.—Messrs Achenbach, Addicks, Ainey, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Bigler, Black, J. S., Brodhead, Carey, Cassidy, Clark, Cochran, Collins, Craig, Curtin, Dallas, Davis, Dodd, Dunning, Ellis, Ewing, Finney, Hall, Harvey, Hay, Hazzard, Hemphill, Heverin, Horton, Howard, Hunsicker, Knight, Lamberton, Long, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer, H. W., Parsons, Pughe, Purviance, John N., Runk, Smith, H. G., Smith, Wm. H., Stewart, Temple, Turrell, Wherry, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, President—61.

The PRESIDENT *pro tem*. The question recurs on the section:

MR. EWING. I move to amend by striking out the words "and which shall not be diminished during their continuance in office."

I make this motion because I think the whole subject is covered by the fifteenth section of the article on legislation, which forbids the increasing or diminishing of the fees, emoluments or salary of any officer after his election or appointment.

The amendment was rejected.

The section was agreed to.

The eighteenth section was read as follows:

SECTION 18. The judges of the Supreme Court during their continuance in office shall reside within this Commonwealth, and the other judges during their contin-

uance in office shall reside within the district or county for which they shall be respectively elected.

"No person shall be eligible to the office of judge of the Supreme Court unless he be at least forty years of age nor to the office of judge of the court of common pleas unless he be at least thirty years of age, nor shall any person be a judge of either of said courts unless he be a citizen of the United States and have resided in this State five years next preceding his appointment or election, and shall have had at least five years practice in some court of record in the State immediately preceding his appointment or election."

Mr. KAINE. I call for a division of that section, the first division to end with the word "elected," in the fourth line.

The PRESIDENT *pro tem*. The question is on the first division of the section, ending with the word "elected," in the fourth line.

Mr. HANNA. Before that is voted upon I desire to ask the chairman of the committee the necessity for the repetition of the words "during their continuance in office?" "The judges of the Supreme Court during their continuance in office shall reside within the Commonwealth," and the other judges "during their continuance in office," &c.

Mr. BIDDLE and Mr. KAINE. That is in the old Constitution.

The PRESIDENT *pro tem*. The question is on the first division.

The first division was agreed to.

The PRESIDENT *pro tem*. The question now is on the second division, beginning with the words "no person shall be eligible," &c., to the end of the section.

Mr. KAINE. I trust that the second division will be voted down. I do not see any necessity for putting a provision of this kind in the Constitution. We have never had anything of that kind, and I do not think we need it now. There are some men that are much better qualified to go on to the supreme bench at twenty-five years of age than others are at forty. A great many men at forty years of age, or any other age, are not fit to go upon the supreme bench or any other bench. Therefore I think we had better not trammel the Constitution with anything of this kind.

I do not know what the age of the gentleman who presided for a few years in my district was, but I think he was about thirty, and he was unquestionably the best judge, far superior to any other that

has been there since I practiced at the bar, with the exception of one. He would have made an excellent judge at twenty-five, and many other lawyers in the State would do the same. I am opposed to putting any limitation of this kind into the Constitution. Therefore I hope this division of the section will be voted down.

Mr. GIBSON. Mr. President: I move to amend this division of the section in the sixth line by inserting "shall be at least forty-one years of age," and in the seventh line "be at least thirty-one years of age," and at the conclusion of the section "and shall have at least twenty years practice in some court of record immediately preceding his appointment or election to the supreme bench, and ten years preceding his election to the common pleas."

The reason is this: A young man admitted at twenty-one years of age has to undergo a probation of twenty years before he is eligible to the supreme bench, but a man may study law and be admitted at thirty-five years and in five years he is eligible for the position. I think that all should have an equal chance, and that the term of probation should be the same. If a man is thirty-five years of age he ought to have twenty years' practice. That will test the sense of the section. I therefore move to amend in the manner I have indicated.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Gibson.)

The amendment was rejected.

Mr. BEEBE. I move to strike out, in the sixth line, the word "forty" and insert "thirty" as the age of a judge of the supreme bench, and in the seventh line to strike out "thirty" and insert "twenty-five" as the age for a judge of the court of common pleas.

Mr. MACVEAGH. I trust the gentleman will move those amendments separately.

Mr. BEEBE. The question can be taken separately.

Mr. MACVEAGH. I confess I do not think the supreme bench suffers now from having excessive youthfulness upon it. If the lawyers of this body will consider, I think they will agree in that opinion, and it certainly has been an opinion expressed very freely throughout the State, that even a younger man upon it than anybody now upon it would not do serious damage to it. There may

be a mistake in this opinion, but certainly there is no general belief that we need to nominate any older men than we have been nominating. There is no general conviction that the people have been running riot on the subject of youth and taking men too young. The story is often told of the enthusiastic Boston delegate who went home from the convention that nominated Bell and Everett, and meeting a gentleman in Boston congratulated him and expected to be congratulated in return. He said: "We have done a glorious thing; we have nominated Bell and Everett; don't you like the ticket?" "Well," said he, "I should have very much preferred to have had my old friend Choate nominated for Vice President." [Laughter.] Said the man, "Choate! why, didn't you know Choate was dead?" "Well," he replied, "he has not been dead a great while, [laughter,] and it seems to me that there is a danger of going into the grave-yards for candidates as well as into the nurseries." You cannot draw any hard and fast line on this subject. Thiers was governing France only the other day at a green old age. Palmerston continued to rule England until a very advanced age. But on the other hand, Pitt ruled England at twenty-three. Napoleon conquered Italy at twenty-seven. Grotius was very learned at thirty. Story was a great jurist long before he was forty, and in every department of human effort the most difficult achievements have been the work of young men. Look at those who have studied science (gentlemen say that law is a science.) Why, the men whose scientific discoveries are a blazon of glory to-day are almost every one under forty. The brilliant men now living, in almost every department of learning, are under forty; and it seems to me in the vast increase in these days in the rapidity of our movements it is evident that men now mature earlier than they used to do, rather than later. There is a danger, of course, of getting rotten before you are ripe; but then there is a danger of rottenness from over-ripeness also.

I do not see that there is any very great danger that we are going to put too much youth on the bench of the Supreme Court. If there is any actual peril to be guarded against let us guard against it, but I do not think the present bench is an illustration of any serious danger, and I do not think there is any necessity of putting up a barrier against the common sense of the

people of this State in this regard. If you have a man who has developed great capacity in the law why not put him on the bench, whenever he is fit to be put there? Let us remember that while it may be desirable to have *viginti annorum lucubraciones*, yet if some man develops a capacity for a judgeship earlier in life, we should not have a constitutional provision forbidding the people from calling him to the seat of judgment.

MR. CORSON. Mr. President: I am in favor of the amendment proposed by the gentleman from Venango, but this section can be abbreviated just one-half and express that idea. If we should strike out all after the word "judge," in the first line, down to the words "common pleas," in the seventh line, and then strike out all after the word "or," in the eighth line, down to "he," in the ninth line, we should have a sentence one-half as long which would express the whole idea. It would read in this way, if thus amended:

"No person shall be eligible to the office of judge unless he be at least thirty years of age, be a citizen of the United States, and have resided in the State five years."

There is the whole of the section. I am afraid that if we strike out forty and insert thirty above I cannot make that motion afterwards, so I move it now.

THE PRESIDENT *pro tem*. The amendment now is to strike out forty and insert thirty.

MR. CORSON. Is an amendment to the amendment now in order?

THE PRESIDENT *pro tem*. It is.

MR. CORSON. I move to strike out all after the word "judge," in the fifth line, down to and including "common pleas," in the seventh line, and then all after the word "age," in the eighth line, down to and including "he," in the ninth line. That requires all the judges to be thirty years of age.

THE PRESIDENT *pro tem*. The question is on the amendment.

The amendment was agreed to.

THE PRESIDENT *pro tem*. The question now is on the section as amended, which will be read.

THE CLERK read as follows:

"No person shall be eligible to the office of judge unless he be at least thirty years of age, be a citizen of the United States, and have resided in this State five years next proceeding his appointment or election."

Mr. BUCKALEW. My idea in regard to this section was this, and I beg pardon of the Convention for detaining them to change the numbers "forty" to "thirty-five" for judges of the Supreme Court, and "thirty" to "twenty-five" as to judges of the common pleas, though I confess my reflections on this subject, as provided for in our State and our federal Constitutions, has led me to the opinion that these limitations on the people with reference to the selection of public officers on the ground of their having attained or not having attained particular ages are of very little account. I would authorize the people certainly to elect a judge of the Supreme Court when he should be thirty-five years of age. We have increased the term of service in that court to a period of twenty-one years, and if the people find a very competent man thirty-five years of age and desire to nominate him, why should the fundamental law forbid them to do so? And so if a gentleman who has been thoroughly educated and who, having entered upon the practice of the law at the age of twenty-one years, during the period of four or five years, has shown high ability in the practice of his profession, why should not the people be permitted to select him for the common pleas? This matter of capacity and fitness for office does not depend so much upon age as upon mental constitution and opportunities, and to put into the Constitution arbitrary limitations carried to any extreme limits seems to me to be against the public interest. Therefore I am prepared to alter these numbers from "forty" to "thirty-five" and from "thirty-five" to "twenty-five"

Mr. MACVEAGH. The gentleman will allow me to say that has been done, and now we had better vote down the entire section. I agree with the gentleman.

Mr. BUCKALEW. I do not propose to vote down the section, but I was not present when the amendment was adopted. I do not like this limitation of thirty years for judges of the common pleas courts. Many judges have been put upon the bench at twenty-six and twenty-eight years of age who were found to be among the ablest judges of the State; John B. Gibson, for instance.

The PRESIDENT *pro tem*. The remarks of the gentleman might have applied before the vote on the amendment; certainly they are not applicable to anything now in the section.

Mr. MACVEAGH. The gentleman is not satisfied with our action.

The PRESIDENT *pro tem*. Then a motion to reconsider can be made.

Mr. BUCKALEW. My remarks are applicable to the section. If the Emperor Napoleon at the age of twenty-eight was able to conquer all Italy, I should suppose our judges would be able to conquer the difficulties of the law at a similar age.

Mr. ARMSTRONG. I do not attach any great degree of importance to this section, and I think the good sense of the people may be safely entrusted with the power to select their judges in their sound discretion. I think it would be just as well to vote the section down.

The PRESIDENT *pro tem*. The question is on the section as amended.

The section was rejected.

The CLERK read the next section as follows:

SECTION 19. The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts such powers of a court of chancery as are now vested by law in the several courts of common pleas of this Commonwealth, or as may hereafter be conferred upon them by law.

Mr. MACVEAGH. What is that? I submit to the Convention that there is no necessity for this section. I trust we shall vote it down. It is simply a recognition of the statutes.

Mr. ARMSTRONG. It is necessary. It is a modification of the fifth and sixth sections of the fifth article of the existing Constitution, adapting it to the present condition of the chancery law of the State. I think it is important, and it ought to go in.

The PRESIDENT *pro tem*. The question is upon the section.

The section was agreed to.

Mr. ARMSTRONG. I offer now a new section to come in at this place. I invite the attention of the Convention to it, as it is a new section on a matter of law of exceeding great importance; and I will take occasion to say, if it meet the approval of the Convention, I should like the Convention to adjourn after it is read, so that it may be printed and be placed to-morrow in the hands of delegates.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK read as follows:

"Whenever, within one year after the official publication of any act of Assembly in the pamphlet laws, and not thereafter,

it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that any fraud, bribery or undue means were employed to procure the passage or approval of such law, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding which shall be ordered of course, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct, shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be tried upon proper pleadings by one of the judges of the Supreme Court in whatever county the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that bribery, fraud or false pretenses have been used to procure the passage or

approval of the same, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within six months and not thereafter to a writ of error as in other cases.

No officer of the Commonwealth, nor any officer or member of the Legislature, shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution.

Mr. ARMSTRONG. Now, I have no objection, if it be the pleasure of the Convention to go on and consider this section but I have had this offered at this time with a view of having it printed.

Mr. BOYD. I move that we adjourn. I am perfectly exhausted.

The PRESIDENT *pro tem*. It is moved that the Convention do now adjourn, and that the amendment just offered be printed.

The motion was agreed to, and (at six o'clock and forty-three minutes P. M.) the Convention adjourned.

ONE HUNDRED AND THIRTY-THIRD DAY.

WEDNESDAY, July 2, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tempore*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday's proceedings was read and approved.

RESIGNATION OF MR. WOODWARD.

The PRESIDENT *pro tem.* A communication has been received, which will be read.

The CLERK read as follows :

PHILADELPHIA, July 2, 1873.

Hon. JOHN H. WALKER,
President pro tem. Constitutional Convention :

DEAR SIR :—In pursuance of a purpose announced some ten days since in the Convention, I hereby respectfully resign my seat as a delegate at large in that body.

I am, with great respect, your obedient servant,

GEO. W. WOODWARD.

Mr. ALRICKS. I move that the resignation be not accepted, but that leave of absence be granted, hoping that Judge Woodward will return to take his seat in the Convention before our final adjournment.

Mr. BROOMALL. I hope the resignation will not be accepted.

Mr. COCHRAN. I do not see why any member has not a right to resign his seat in this Convention. If he chooses to resign his seat, what control have we over him? I am opposed to the proposition in the form in which it is submitted.

Mr. DARLINGTON. There seems to be no propriety in filling the office with another member now. Therefore I prefer leaving it just as it is, without accepting his resignation.

Mr. ALRICKS. Will the Clerk please read the motion?

The CLERK. Mr. Alricks submits the following resolution :

Resolved, That the resignation be not accepted, but that leave of absence be granted, hoping that Judge Woodward will return to his seat before final ad-

journment, and again take part in the deliberations of the Convention.

The resolution was ordered to a second reading and was read the second time.

Mr. CORBETT. Judge Woodward announced distinctly some week ago or more, that if the Convention continued to sit he would resign and would not return, and I do not see why we should not accept his resignation. Certainly we cannot expect him back here to take part in the final deliberations of this body, and his seat ought to be filled.

Mr. COCHRAN. I apprehend that any member of this Convention has a right to resign, and I do not see what control we have over that matter. In addition to that, this resignation is presented here in pursuance of a notice previously given that it would be made, and I really regret that the resolution has been presented in the form in which it is, because it puts several of us who I know share my feelings and entertain the high respect for Judge Woodward that I entertain for him, in something like a false position.

I move to amend by striking out all after the word "resolved," and inserting "that the resignation be accepted and that the matter be referred to the delegates at large last named in the proclamation of the Governor."

Mr. KAINE. A resignation was sent in here by the distinguished delegate from Schuylkill, (Mr. Bartholomew,) and the Convention refused to accept it. It was laid on the table, and that delegate thought better of the subject and returned in the course of a few days and again took his seat. I hope that the amendment offered by the gentleman from York will not be agreed to and that the original resolution will be passed. Judge Woodward may think better of this and return in the course of a week or two and assist us with his counsels in the deliberations of this body.

Mr. HEMPHILL. If in order, I move to postpone the whole subject for the present.

Mr. HARRY WHITE. I move to amend that motion so as to make it indefinitely.

Of course it is understood that I move this for the purpose of enabling me to make an observation, and then unless some other gentleman desires to speak upon the subject I will withdraw the motion. I merely wish to say that I hope the good taste of this Convention will be exhibited in this matter by passing upon it without discussing it. I recollect very well when the resignation of the late distinguished delegate Mr. F. B. Gowen was received it was laid on the table without discussing it. I am satisfied that Judge Woodward, on "sober second thought," will reconsider this matter and continue to remain with us until the Convention adjourns. I hope, therefore, that the motion to postpone for the present will be withdrawn and that we shall pass the resolution moved by the delegate from Dauphin. I now withdraw the motion to postpone indefinitely.

Mr. LILLY. I hope this matter will not be postponed; but I hope the resolution will be further amended by striking out the name of Judge Woodward and saying that no resignation shall be hereafter accepted; and that will settle the whole matter, not only as far as Judge Woodward is concerned, but as to other members. Now, I think we are so near the conclusion of our labors that we need the best talent in this Convention; and as to bringing new men in, they do not know what we have done and they can be of very little service to us; and so I think we had better allow the resolution to come up and strike out the name of Judge Woodward and say that no resignation shall be hereafter accepted.

Mr. BOYD. Will the gentleman allow me to ask him a question? If the gentleman on the floor were to tender his resignation—

Mr. KAINE. I understand the motion to postpone indefinitely is withdrawn.

Mr. HARRY WHITE. I have withdrawn it.

The PRESIDENT *pro tem*. The question is on the motion to postpone for the present.

Mr. KAINE. That is not debatable.

The motion was not agreed to.

Mr. LILLY. Now I move to strike out the name of Judge Woodward and insert that no resignation will be hereafter accepted.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Carbon (Mr. Lilly.)

Mr. ALRICKS. Mr. President: I trust that the amendment will not be adopted. This Convention is not certainly prepared so to stultify itself. It is undoubtedly the right of any delegate when he thinks proper to resign the position that he holds here; and we cannot compel him by any action upon our part to remain with us. I trust that this amendment will not prevail. I must confess that I have been surprised at what I supposed was the indecent haste on the part of some persons in desiring to accept this resignation. We all know that we refused to receive the resignation of the gentleman from Schuylkill (Mr. Bartholomew,) We all know that in the law there is a *locus poenitentiae*; and I was willing to extend to Judge Woodward the same courtesy we extended to the distinguished delegate from Schuylkill. There is no member of this Convention who can conjecture what change a few days may work in his mind. I apprehend that we ought to receive any resignation with great care, and I would always give to a gentleman who wanted to resign his seat an opportunity for reflection. I hope the House will not adopt the motion of the gentleman from Carbon, but that they will pass the resolution as it was originally offered, both in justice to the House and the delegate.

Mr. CARTER. Mr. President: I cannot conceive that there is any indecent haste about the matter, nor can I conceive that the case is at all parallel with that of the gentleman who sits on my right (Mr. Bartholomew.) His resignation was apparently submitted somewhat without full consideration, whereas this case is utterly unlike it, because Judge Woodward announced more than a week ago his deliberate intention to resign.

Now, what I want to get at is to keep up this body as full as possible to a working capacity, and I think a resignation thus deliberately made and deliberately announced does not come under the category of the other, and that there is no indecent haste manifested in regard to the matter by simply accepting it. It is treating a man like a child when, after he has deliberately announced a certain intention and then carried it out, you say to that man in a word that he does not know his own mind. I think it is much better, and that, with as little delay as possible, the amendment of the gentleman from York should be adopted and his place be filled, and thus we shall have

another working member to go on right through this work.

Mr. HAY. I desire simply to say one word. It is that I think those gentlemen who have been alluding to Judge Woodward as a person likely to withdraw his resignation very much mistake his character. Judge Woodward would never have presented this resignation had it not been his intention to adhere to it. It is very well known to every member of the Convention what remarks were made by that gentleman in the discussion upon the occasion of the presentation of the resignation of Mr. Gowen. He stated substantially that that gentleman would not have presented his resignation unless he intended it to be accepted, for he was a man who knew his own mind. As a matter of course, Judge Woodward is a man of like character and would not act in an uncertain or trifling manner towards this body. Certainly after having announced his intention to resign and then presenting his resignation, it is not at all likely that he will withdraw it now. I do not think the Convention would be acting in a manner which is in accordance with its own dignity or with due respect toward the gentleman who has presented his resignation, in hesitating in the matter at all. No man would regret more heartily, more sincerely than myself, the absence of Judge Woodward from the sessions of this body. His great presence is of infinite advantage to us here. His wisdom, his long experience and his high character render his aid invaluable. But so far as I am concerned, I will not vote as if I did not believe that he means exactly what he says, on this occasion or on any other.

Mr. TEMPLE. I think, Mr. President, one word more might be added to what has already been said. That is this: If the Convention expects to go on and finish its labors, there is no necessity whatever for delaying the acceptance of this resignation. There is no occasion for any delegate upon this floor denying the fact that Judge Woodward has resigned in consequence of an engagement made many weeks ago; and if we are to conclude our labors this summer it is utterly impossible for him to be here. He has said that to more than one delegate.

I submit, Mr. President, that in view of what Judge Woodward stated at the time Mr. Gowen's resignation was handed in, it is not wise for the Convention now to delay the acceptance of his resignation.

He then said that Mr. Gowen being a gentleman who never did any act unless he fully considered it, he was in favor of accepting his resignation, and Judge Woodward has certainly deliberated upon this question.

The PRESIDENT *pro tem*. The question is on the motion of the gentleman from Carbon (Mr. Lilly.)

The motion was not agreed to.

The PRESIDENT *pro tem*. The question recurs on the motion to postpone the matter for the present.

Mr. CURRY. I shall vote against the acceptance of the resignation of Judge Woodward. We are almost through our work, and I think that the resignation of Judge Woodward should not be accepted, nor that of any other member of this Convention at this period of our labors. In conversation with the President of this Convention, Mr. Meredith, he expressed the hope when Mr. Gowen offered his resignation that this Convention would refuse to accept it; and now here, really at the end of our work, if we accept this resignation, perhaps to-morrow morning one or two others may offer their resignations, and so on until the responsibility of the work, either for good or for bad, will rest upon a few members who have endured the toil from the beginning. For one, I shall vote against it.

Mr. SHARPE. Mr. President: I hope this resignation will not be accepted at present. It is well known that a short time ago this Convention passed a resolution to adjourn over the heated term. Unfortunately that resolution was rescinded. I have no doubt that Judge Woodward's resignation is the result of the rescinding of that resolution. He feels himself physically incompetent to attend the meetings of this Convention during this excessively hot weather. Now, sir, the probability of this Convention remaining in this city for a very much longer period is, to say the least, exceedingly uncertain. We may adjourn at any time over the heated term, and if we do so I have no doubt that Judge Woodward will gladly return and participate in the deliberations of this body. Therefore, I think it would be improper to act upon this resignation at the present time. If it were a fixed fact, which by no means it is, that this Convention would remain in session without adjournment until its labors be ended, then I would see no reason for refusing to accept Judge Woodward's resignation; but because of the

occasion of his resignation, and because that occasion may at any moment be removed, I shall vote consistently to the end against the acceptance of this resignation.

Mr. PURMAN. Mr. President: The Convention will recollect that Judge Woodward announced to the Convention that unless the resolution to take a recess until the third Tuesday in October prevailed, he would be compelled to resign his seat in the Convention. The grounds upon which Judge Woodward based his determination to resign his seat in the Convention were that his health would not permit him to remain in the city of Philadelphia and attend the sessions here during the months of July and August, and that he was convinced that if we proceeded to finish the labors of the Convention at the present session, it would run to the first or middle of August. Judge Woodward made no other objection to remaining in this Convention. He had not become dissatisfied with the proceedings of the Convention, or with the work of the Convention, and he was not unwilling to continue in session and in labor with the members of this House to complete the good work they had begun. Judge Woodward, supposing that the Convention about the first of July would take a recess, had other arrangements, I may be permitted to say, such as he could not well disregard. Being disappointed in his expectations that the Convention would take a recess, and being unable to meet his other engagements and remain in session with the Convention, he felt it to be his duty to his prior engagements and to his health to say that he would resign his seat in the Convention.

I am very sorry, as a member of this Convention, to part with Judge Woodward, and I should be much pleased if the judge would reconsider his action, reverse his decision, and return as soon as convenient to his seat in this Convention. But from our knowledge of Judge Woodward it is hardly to be expected that he will reconsider his action, that he will reverse his determination; and yet I prefer that the Convention should not act this morning upon Judge Woodward's resignation. I prefer that we should deliberate upon it for a few days. The judge himself should have the benefit of a few days to consider his action. We cannot tell how much weight the manifestations here this morning may have

upon Judge Woodward when he comes to reconsider this question. When he learns the anxiety of the whole Convention that he should remain here and assist us to the completion of our labors, when he takes into consideration the importance of his remaining here for the success of our work, when he reviews the whole ground, it is *possible* that Judge Woodward may reverse his decision. I admit that it is not very probable; but it is right and proper that the Convention should do itself justice, should do Judge Woodward justice, by giving a sufficient time for further reflection and future action. Give us the benefit of the possibility of Judge Woodward reconsidering this question and reversing his action. Let the matter stand where it does now for a days. Or what is the same thing in effect, let his resignation be referred to the fourteen delegates at large last named in the Governor's proclamation, and until they act upon it by electing a successor the judge still remains a member of the Convention. The reference of the resignation to the fourteen delegates at large does not amount to an acceptance by the Convention of the resignation. The Convention, before action by the fourteen delegates in the matter, might discharge the said delegates from the consideration of the subject, and allow Judge Woodward to recall his resignation, and therefore I can secure my end either by postponing the further consideration of the question, or by a reference under the resolution of the gentleman from York (Mr. Cochran.) It is very clear to my mind that Judge Woodward is still a member of this body, with all the rights and privileges of the same until his successor is duly elected.

But the Convention will not misapprehend me. I am not authorized to speak for Judge Woodward, and all I have said has been upon my own authority. I know that when a gentleman of the high character of Judge Woodward, of his culture and decision of character, determines upon a course of conduct he seldom, if ever, retraces his steps.

Mr. COCHRAN. I wish to modify my amendment. I will strike out all about the resignation being accepted, so as simply to have it read that the resignation be referred to the committee of fourteen delegates at large last named in the proclamation of the Governor.

The PRESIDENT *pro tem*. The question is on the amendment as modified to refer

the resignation to the fourteen delegates at large last named.

Mr. COCHRAN. One word. I hold that this Convention has no control over the action of a member who has tendered his resignation, and that this resignation having come in here, there is nothing left for us to do but to refer it to that committee under the statute. Further, so far as precedents in other cases have been pleaded, I hold that those precedents were wrong, and that we should not have adopted the course that we did in regard to them, and that the sooner we depart from a wrong precedent the sooner we shall relieve ourselves from a course of action that is alike embarrassing and unusual, to say the least of it, in a body of this kind. I think we have nothing to do when a resignation is submitted but to refer it to the proper committee.

Mr. TEMPLE. I call for the yeas and nays on the amendment.

Mr. CORBETT. I second the call.

Mr. S. A. PURVIANCE. It strikes me, Mr. President, that the course indicated by the resolution of the gentleman from Dauphin is the course which this Convention ought to pursue. Whilst I admit that Judge Woodward has the undoubted right and power of resigning his position in this body, that resolution only looks to a reconsideration on his part of the step which he has taken. It was not until last evening that I learned that Judge Woodward had any intention of resigning. There are considerations which may be addressed to Judge Woodward himself which may induce him to reconsider his resignation. For instance, Judge Woodward's name to this Constitution would be of very great importance.

Mr. MACVEAGH. I appeal to gentlemen in the Convention to listen to our colleague from Allegheny. It was impossible for him to be heard. Nearly everybody in the Convention was talking while he was endeavoring to address the body, and I am very sure we all desire to listen to him, and I trust he will go on and say what he has to say.

Mr. S. A. PURVIANCE. All I have to say is but brief. I was just about saying that Judge Woodward may be addressed with such considerations as will induce him to change his intention of resignation. For instance, it is all-important that the name of Judge Woodward should be signed to the new Constitution. Perhaps he has not thought of that himself. That name will give influence in the

passage of the Constitution before the people of the State. Now, sir, Judge Woodward possibly has done this without very great reflection. Judge Woodward has probably done this because he conceived the idea that we would not give him leave of absence for three or four weeks; but I am sure there is not a member of this body, after having observed the course of Judge Woodward here and his attention to his labors in this Convention, who would refuse him that boon.

Now, sir, the resolution of the gentleman from Dauphin contemplates the meeting with Judge Woodward, addressing him the considerations such as we have mentioned, to see whether he may not be induced to change his determination to resign. I trust, therefore, that the resolution may be adopted; but if, on the other hand, Judge Woodward persists in it, then, as a matter of course, the course indicated by the gentleman from York (Mr. Cochran) would be the correct one, that is to receive his resignation.

The PRESIDENT *pro tem*. The question is on referring the resignation to the committee of fourteen.

Mr. DALLAS. I trust that without saying anything, as I understand this resolution does not say anything as to whether the resignation of Judge Woodward is to be accepted or not, this motion of the gentleman from York (Mr. Cochran) will prevail. Judge Woodward was chairman of the fourteen delegates to whom it is now proposed to refer his resignation, and I think that those gentlemen who were associated with him in those fourteen can be trusted to approach him and to endeavor to induce him to retain his seat here if possible. It is, I believe, important, as the gentleman from Allegheny has said, that Judge Woodward should be induced to remain if it can be done; but if it cannot be done after an effort in that behalf honestly and sincerely made, then his seat should be filled by some person else, for I do not think that a single seat in this body should remain vacant even towards the close of its labors.

Mr. BIDDLE. I wish to hear the resolution read.

The PRESIDENT *pro tem*. The motion is to refer to the committee of fourteen. The amendment of Mr. Cochran makes it read:

Resolved, That the resignation be referred to the fourteen delegates at large last named in the proclamation of the Governor.

Mr. CORBETT. On that I ask for the yeas and nays.

Mr. TEMPLE. I second the call.

Mr. LAWRENCE. Several gentlemen call for the reading of the original resolution, which is important.

The PRESIDENT *pro tem*. The original resolution will be read for information.

The CLERK read as follows:

Resolved, That the resignation will not be accepted; but that leave of absence be granted, hoping that Judge Woodward will return to his seat before the final adjournment and again take part in the deliberations of the Convention.

Mr. STANTON. Is that before us now?

The PRESIDENT *pro tem*. That is not before the Convention now. The question now is on the amendment of the gentleman from York (Mr. Cochran) to refer the resignation to the committee of fourteen delegates at large last named in the proclamation of the Governor, on which the yeas and nays are called for. The Clerk will call the roll.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Achenbach, Beebe, Bullitt, Carter, Cochran, Corbett, Cuyler, Dallas, De France, Ellis, Gilpin, Hazzard, Knight, MacConnell, M'CLean, Mann, Porter, Purman, Rooke and Walker—20.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bardsley, Biddle, Bigler, Black, C. A., Bowman, Boyd, Broomall, Brown, Calvin, Church, Curry, Darlington, Edwards, Ewing, Fulton, Funck, Gibson, Green, Guthrie, Harvey, Hemphill, Hunsicker, Kaine, Landis, Lawrence, Lilly, Littleton, Metzger, Minor, Mitchell, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Purviance, Samuel A., Reed, Andrew, Reynolds, Ross, Russell, Sharpe, Simpson, Smith, H. W., Stanton, Struthers, Temple, Van Reed, Wetherill, J. M., Wetherill, Jno. Price, White, Harry and Wright—60.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Bartholomew, Black, J. S., Brodhead, Buckalew, Campbell, Carey, Cassidy, Clark, Collins, Corson, Craig, Cronmiller, Curtin, Davis, Dodd, Dunning, Elliott, Fell, Finney, Hall, Hanna,

Hay, Heverin, Horton, Howard, Lambertson, Lear, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Mott, Newlin, Pughe, Purviance, John N., Read, John R., Runk, Smith, H. G., Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, *President*—53.

The PRESIDENT *pro tem*. The question recurs on the resolution of the gentleman from Dauphin (Mr. Alricks.)

The resolution was agreed to.

INVITATION FROM WILLIAMSPORT.

Mr. PARSONS. I desire to offer a communication from the mayor of Williamsport, transmitting resolutions passed by the council of that city inviting the Convention to Williamsport.

The communication was read as follows:

MAYOR'S OFFICE,
WILLIAMSPORT, PA.,
July 1, 1873. }

Hon. JOHN H. WALKER,
President pro tempore of the Constitutional Convention:

SIR:—At a meeting of the council of the city of Williamsport, the following resolutions were unanimously adopted:

Resolved, That the council of the city of Williamsport do hereby cordially invite the Constitutional Convention of Pennsylvania to hold its summer session in the city of Williamsport.

Resolved, That the mayor of the city be requested to transmit this invitation to the Convention, and tender therewith the hospitalities of our citizens.

I cheerfully comply with the request contained in the second resolution, and, in common with all of our citizens, I trust that the invitation will be accepted. Our large and commodious court house will be placed at the disposal of the Convention, and every endeavor will be made by the citizens of Williamsport to render the stay of the delegates agreeable and pleasant.

Respectfully yours,

G. W. SHARKWEATHER,
Mayor of Williamsport.

Mr. STANTON. I move that the invitation be received, and the thanks of the Convention tendered to the mayor and council of Williamsport.

The motion was agreed to.

Mr. STANTON. I now move that it be laid on the table.

The motion was agreed to.

LEAVES OF ABSENCE.

Mr. BEEBE. By request I ask leave of absence for Mr. Horton on account of sickness in his family. Leave was granted.

Mr. S. A. PURVIANCE asked and obtained leave of absence for himself from to-day till Wednesday next.

Mr. WRIGHT asked and obtained leave of absence for Mr. Cronmiller for a few days from to-day.

Mr. HAZZARD asked and obtained leave of absence for a few days from to-day for Mr. Russell.

ADJOURNMENT OVER JULY FOURTH.

Mr. WRIGHT. I offer the following resolution:

Resolved, That this Convention adjourn to-morrow at one o'clock, to meet on Tuesday the eighth inst., at three o'clock P. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted forty-two in the affirmative, twenty-six in the negative. So the resolution was ordered to a second reading, and was read the second time.

Mr. WRIGHT. I ask leave to modify my resolution so as to have the Convention meet on Monday the seventh, at three P. M.

The PRESIDENT *pro tem*. The resolution will be so modified.

Mr. AINEY. I move to amend by striking out all after the word "resolved" and inserting:

"That this Convention will take a recess until the second Tuesday of September next as soon as the article on the judiciary shall have passed second reading."

Mr. BEEBE. I move to postpone the whole subject indefinitely.

Mr. CARTER. I have not troubled this Convention with one word on the matter of adjournment. I am the fourth oldest man in this body, and I am willing to remain in my seat, although, like the hart, I pant for the cooling water brooks and the shade of the country. I have no doubt that if we work on in the spirit and in the manner that we have worked for the last eight or ten days, we shall complete our labors and have the satisfaction of submitting our work to the people. We who read the papers cannot disguise the fact that when we agreed on Friday week—a day which I call our black Friday—to adjourn over the summer, we brought discredit and disgrace on the work of this Convention. It is

true that then I voted for an amendment somewhat similar to this in character, offered by the delegate from Delaware, (Mr. Broomall,) that we would adjourn on the twenty-seventh of last month; but I voted for that believing that if we postponed the subject of adjournment for one week and went to work vigorously and earnestly during that period, we should make such progress toward the completion of our labors that we would cease this eternal agitation of the subject of adjournment. We did go to work and we have made such progress that we have not heard anything on this subject of adjournment since, and I now believe that we should put the question of adjournment out of sight, at least for the present, and work on until we complete our labors. We are making most excellent progress, and I am willing to remain here and suffer inconvenience, if it will enable us to get through. There is no man here who possibly can suffer from heat more than I do, but when I accepted the position of delegate in this body I expected to dispense with some of the comforts of home, and I am now willing to do so.

Mr. BEEBE. Mr. President: I am averse to taking up the time of this Convention when I see it is repugnant to the feelings of so many gentlemen here; but the adjournment of this Convention over to Tuesday may be all well for the members about Philadelphia and those near enough to go home, keeping us week in and week out, and day in and day out, and month after month for their own pleasure and at our expense. This proposed adjournment means nothing to me but a waste of so much additional time to members from distant parts of the State. It puts us forward in the cholera season, fit subjects for the "carnival of death" prophesied by the city papers, and liable to all the sickness which hot weather is likely to bring in the city of Philadelphia, and just postpones the work of this Convention that much.

Now, sir, if we see that we cannot stay here any longer, I shall be willing at any time to adjourn to the third Tuesday in October instead of occupying the time of these gentlemen. But what do we gain by adjourning for five days? We read in the history of the old Convention that they worked right along through the summer and sat on the fourth of July in order to accomplish their own work and to meet the wishes of the people. It is a degradation to this Convention, and it is

a dishonor to waste precious time and carry the work into the hot weather, for the pleasure of those locally situated.

Mr. AINEY. I hope the motion to postpone indefinitely will prevail. I hope then the Convention will take up the question of recess and dispose of it in such manner as will reflect credit upon it, and that will represent the true judgment of the House, independent of any clamor that has been made by the newspapers.

It must be apparent to every member that this Convention cannot possibly complete its labors satisfactorily within the period of the next two months. ["No." "No."] Gentlemen may say "no," but there is very important work yet for this Convention to do before we shall be prepared to submit our work to the people, and we must either do it or neglect to do that duty with the deliberation which is expected of us.

Now, sir, I hope that this Convention will complete the present or second reading of the article on the judiciary, and that it will then take a recess until September. I believe that the only interest the people have in our continuing to sit during the hot weather, or the period within which we shall complete our work, relates wholly to its submission at the October election. Now, shall we be prepared to submit this new Constitution at the October election? I, for one, am not in favor of its submission then. Even if it were not apparent to me, as it must be to members, that we cannot submit it then, if we so desired, what possible interest can the people have in our sitting here in this sweltering weather, within a square or two of the most unhealthy locality that can perhaps be found in these United States.

Mr. SIMPSON. I deny that it is unhealthy.

Mr. AINEY. The gentleman denies it. All I ask the gentleman to do is to walk a few squares south of this hall, and if he does not find it as I have stated, I will then admit I am wrong.

Mr. SIMPSON. There is no healthier spot on the face of the globe.

Mr. AINEY. Now, sir, I hope this Convention will look at this question as it stands. The law under which we were elected provides that we shall advertise our work in the newspapers of this Commonwealth for the period of three months before the election.

Mr. LILLY. Three weeks.

Mr. AINEY. No, sir, for the period of three months.

Mr. LILLY. Thirty days.

Mr. AINEY. The gentleman is mistaken; I think I am informed it is three months. I have not referred to the act.

Now, in order to advertise it the required time before the October election, we must complete the new Constitution and have it in the newspapers by the 15th of July. That is a physical impossibility unless we pass it as a whole; and in view of the action that we had yesterday, I say that we might perhaps as well pass the thing as a whole if members are determined to continue the sessions during the hot weather. I say in the light of what we did yesterday in an important article which had passed in committee of the whole after full discussion and consideration, important amendments were adopted by the Convention yesterday indicating one judgment, and before twenty minutes had passed around the Convention reversed its own judgment and voted down the whole section. Is that creditable action? Is that the kind of work we should do here if we expect the people to ratify it? We are framing a fundamental law which may stand untouched for half a century. Let us be careful and not spoil it by unnecessary haste now.

I trust gentlemen will meet this question independent of the clamor of newspapers. We know that the people can have no interest in our sitting here. They certainly would not ask us to remain in session during this hot sweltering weather if they understood it to be our purpose not to submit our work at the October election. If we are not to submit it then, let us take a recess. If gentlemen desire to go home and save their health why shall they be kept here? I hope this motion to postpone indefinitely will prevail, and that then the question may be taken on a recess and disposed of uninfluenced by any outside pressure.

Mr. NILES. Mr. President: I believe that this is the question of temporary adjournment we have already had before us, and I hope that the delegates here will see manifest injustice as it now stands towards the delegates who live in distant parts of the State. There are many delegates on this floor who have not been at home more than once since the last of February, and I am among that number. Now, you propose to adjourn to-morrow afternoon. What good is that to me or those similarly situated, to my friend on

my left, (Mr. Bowman,) to the delegate from Clarion, (Mr. Corbett,) or to the delegate from Washington in my front (Mr. Lawrence?) It may be convenient to those gentlemen living in the immediate vicinity of Philadelphia to stay here until to-morrow afternoon, then take an afternoon train and spend the anniversary of American independence with their families, and leave us who are not so favorably situated, who are three hundred miles from our families, here to swelter in the heat of the city.

There is one thing that I hope this Convention will settle this morning, and that is either not to adjourn but stay in our seats during the fourth day of July, as to which I am agreed, having no temporary adjournment at all, or else adjourn over this evening at six o'clock until Tuesday morning next. It seems to me that common fairness toward the delegates who live in the extreme parts of the State should induce this Convention to do one or the other, and I do not care ten cents which. If it is the judgment of the Convention to stay here and do our work, to have no adjournment, to leave the holiday to itself, I am entirely agreed and willing to stay; but I say it is unfair to the distant delegates to stay here until to-morrow, then adjourn for a day, and leave us here. I am opposed to the resolution as it now stands.

Mr. LILLY. I am entirely in accord with the sentiments expressed by the gentleman who has just taken his seat. I can leave the city of Philadelphia and get home in four hours, but I am for staying here and sitting on the Fourth of July, doing our work and getting through.

The argument of the gentleman from Lehigh (Mr. Ainey) is far-fetched and without any foundation as far as he is concerned. He goes home every night and comes back when he pleases, and leaves the rest of us to stay here and do the work of the Convention; he comes here when his business allows him to do so. As for this being the hottest place in the world, it is the purest nonsense in the world to talk that way. Not a man in this Convention is sick; we have been here all the time. He talks about death stalking around. Why, sir, that is the biggest humbug that ever was! I am surprised the gentleman should talk of such things here on this floor to men of sense. If he was talking to children who did not know anything, it might amount

to something, but it is perfectly ridiculous here.

I am surprised that my friend from Luzerne (Mr. Wright) offered the resolution at all. If he wants to go home, we will give him a leave of absence to go to Luzerne county and spend the Fourth of July, if he desires, but let us stay here. I believe we can keep a quorum, and go on with the work, get through the judiciary report, then take up the railroad report and get done. Then after we get these articles through second reading, I am willing to have an adjournment of two or three weeks. I would not agree to it longer than three or four weeks anyhow. Let us do this and have that recess, and then come back and pass through third reading and submit our work to the people. The gentleman shows how much he knows about it when he talks about three months' advertisement, when the law itself says four weeks, and that is all it ought to say that the amendments shall be advertised. We can submit this Constitution at the October election, and the people of the Commonwealth expect it to be submitted then. Every man in favor of reform in this city and in the State expects that it will be submitted to the people in October. We can do it. There is no use in our dilly-dallying and wasting time about an adjournment. I hope this resolution will be voted down.

Mr. AINEY. I rise to explain—

The PRESIDENT *pro tem*. The delegate can explain, but not make a speech.

Mr. AINEY. I did not say that I saw death stalking around the streets or that Philadelphia was the unhealthiest city in the United States, for I believe the reverse. I said that within a square or two of this place the filth and degradation of the population were such, and any member can see, who will take the risk to go there, that in view of the known and certain approach of pestilential disease, we shall be in very great danger if we continue in session here. That was what I said or intended to say.

I desire to say one word more. The gentleman from Carbon (Mr. Lilly) is very difficult to please. On Saturday last he gave me a scolding in private for not voting with him for an adjournment. He did not want to continue in session and work on then. He wanted to go home, but he is very anxious to go on now—

Mr. TEMPLE. I object. This is not a personal explanation.

MR. CUYLER. I know the House is impatient, but I have not before said a word on this question of adjournment, and only want to say one word now.

I, for one, do not at all agree with the gentleman from Carbon that it is desirable to submit this Constitution to the people in October. On the contrary, I think it the most undesirable of all things. We must have a separate election and a separate vote, and it is simply preposterous to talk about submitting it to the people at our ordinary October election.

Now, sir, I think the impatience of the House, the irritability of its temper, and the disorder which constantly prevails here ought to be a demonstrative proof to gentlemen's minds that the time has come when we should adjourn. And I am not one of those who are to be moved from my firm convictions on that subject by some little newspaper clamor which is founded upon no proper consideration. The public are far more interested in our doing our work thoroughly, properly and efficiently than they are in doing it speedily. The people do not expect us to sit here at the sacrifice of health and comfort and in a condition of mind which is wholly incompatible with the proper discharge of our duties. Therefore if the House refuses to agree to the motion to postpone, I shall move to strike out of this resolution "the eighth of July" and insert "the second Tuesday of September."

MR. SHARPE. I have not said a word on any former occasion on the subject of adjournment, and up to the present moment I have been opposed to taking a recess by this Convention; but, sir, I am well satisfied that the time has now come when it is the duty of this Convention to adjourn over the heated term. It is, above all things, important that our work should be carefully and well done, and we have just reached that period in our deliberations when the utmost care and consideration are required. It must be manifest, from the temper of this Convention during the last ten days, that we are not giving that deliberate consideration to the subjects that have passed in review before us which their importance demands.

Now, sir, I do not believe that it is at all possible to submit our work to a vote of the people at the regular election in October. That seems to be granted all around. If that be conceded, what is the importance of finishing our work now? The question of two or three months' time is

of very little importance; and I am well satisfied that when the people come to understand the reasons for our adjournment they will sanction it and consider it well founded. I believe that by continuing in session now we cannot get through our work well before the first of August, and perhaps not that soon. There are many questions that will arise upon third reading. There are many questions which delegates will want to reconsider, will want to go over the ground again, and see whether they ought to be finally passed or not. It is true that we expect to get through second reading very rapidly; but, sir, I say the third reading of the articles is of the utmost importance, because we may discover among the articles we have already passed some that require discussion, and whose merits ought to be well sifted, and which we may finally determine to reject altogether. We are not in that frame of mind, this is not the condition of weather, which will enable us to do this work in the manner in which it ought to be done.

MR. DE FRANCE. Mr. President: I suspect and believe that I am the only member of this Convention who has attended every session since it commenced. I have been home but once.

Let us take a little review of the history of this Convention. What has been the fact? How was it in cold weather? Had we a quorum hardly ever in the mornings? Is it not true that for one half of the time during the cold weather we had no quorum present to do business? We have had as large meetings since the weather has become warm as we had in the cold weather.

MR. BIDDLE and others. Larger.

MR. DE FRANCE. And larger. One day recently we had one hundred and sixteen votes cast in this Convention. Now, sir, what is the fact as to adjournment? Is it not true that if we do adjourn the members, with the exception of some of the rich men of this Convention, will go home and do nothing, or will they go into their offices and work, and will they not sweat just as much as they do here? Some of the members who have cottages at the watering places will go to them; but the fact is that the majority of the members of this Convention will go home and go to work and make money.

What is the farther fact? That the majority of the members of this Convention have made money all the time during its

sessions by attending to their private business, whilst the minority have not made any, but have spent nearly all they have earned by way of salary in their board. These are the facts about this thing; and now I am in favor of sitting here and working right on until we get through. Sir, why are we here to-day? Because the press of this State "came down upon us like a thousand of brick" when we proposed to adjourn. That is the reason. Now let us stay like men; let us act like men; let us work like men. How is it in the country to-day? The men are reaping; they are sweating; they are working. They are not going to Long Branch; they are not going to their cottages at the sea-side; but many of the men in Pennsylvania are working hard this very day, harder than we are, and harder than we shall work; a great many of them intellectually and a very great number with their bodies, working more than we shall. For that reason I hope that we shall continue in session.

Mr. TEMPLE. Mr. President: It has been complained here by some of the delegates who reside in the western part of the State that the Philadelphia delegates voted to remove this Convention from Harrisburg to Philadelphia, and have kept them here until now. Then it is complained that the Philadelphia delegation on this floor now desire to adjourn it over until the fall. I desire to say that a majority of the Philadelphia delegation, as I believe, are not in favor of any such proposition, and that they are not in favor of bringing the delegates back here in the fall from the western part of the State; and, further than that, I desire to say that I believe the majority of the Philadelphia delegation upon this floor have no special interest to be derived from another session of the Pennsylvania Legislature which may assemble next winter under the old Constitution. If there are delegates who desire this adjournment over for that purpose, they represent themselves; but, for one, I say they do not speak for me. We are willing, as I am reminded by my colleague from Philadelphia, (Mr. Biddle,) to stay here and perform our duties, as we shall attend to our private business if we leave this Chamber and go back to our respective avocations.

Mr. H. W. SMITH. Mr. President: I have not said a word on this question of adjournment. I shall not say anything now. I only ask that the Convention

take a vote on all these questions of adjournment and then get to work and do business.

The PRESIDENT *pro tem*. The question is on the motion to postpone indefinitely, upon which the yeas and nays have been ordered.

The yeas and nays were required by Mr. Beebe and Mr. Temple, and were as follow:

Y E A S.

Messrs. Achenbach, Ainey, Armstrong, Bailey, (Huntingdon,) Barclay, Bartholomew, Beebe, Biddle, Bigler, Black, Chas. A., Bowman, Boyd, Broomall, Campbell, Carter, Church, Cochran, Corbett, Corson, Cuyler, Dallas, Darlington, De France, Dodd, Edwards, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hay, Hazzard, Hemphill, Howard, Knight, Lawrence, Lear, Lilly, Littleton, MacConnell, MacVeagh, Mann, Metzger, Minor, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Porter, Furman, Reed, Andrew, Rooke, Russell, Sharpe, Simpson, Smith, H. G., Struthers, Temple, Van Reed, Walker, Wetherill, J. M., and Wetherill Jno. Price—66.

N A Y S.

Messrs. Alricks, Baily, (Perry,) Baker, Brown, Buckalew, Calvin, Ellis, Ewing, Hanna, Harvey, Hunsicker, Kaine, Landis, Patton, Purviance, Samuel A., Read, John R., Reynolds, Ross, Smith, Henry W., Stanton, White, Harry and Wright—22.

So the resolution was postponed indefinitely.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bannan, Bardsley, Black, J. S. Brodhead, Bullitt, Carey, Cassidy, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dunning, Elliott, Fell, Finney, Hall, Heverin, Horton, Lamberton, Long, M'Camant, M'CLean, M'Culloch, M'Murray, Mantor, Newlin, Palmer, G. W., Pughe, Purviance, John N., Runk, Smith, Wm. H., Stewart, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, President—45.

SUMMER RECESS.

Mr. SHARPE. I offer the following resolution:

Resolved, That when this Convention adjourns to-day it will be to meet on the second Tuesday of September in the city of Philadelphia.

On the question of proceeding to the second reading and consideration of the

resolution, the yeas and nays were required by Mr. Sharpe and Mr. Carter and were as follow, viz :

Y E A S .

Messrs. Ainey, Armstrong, Baker, Ban-
nan, Barclay, Bartholomew, Bowman,
Boyd, Broomall, Brown, Buckalew, Bul-
litt, Calvin, Curry, Cuyler, Ellis, Green,
Hanna, Harvey, Hazzard, Hemphill, Hun-
sicker, Knight, Lear, MacVeagh, Metzger,
Mitchell, Mott, Parsons, Patton, Read,
John R., Reynolds, Ross, Sharpe, Smith,
H. G., Smith, Henry W., Stanton, Van
Reed, Wetherill, J. M., and Wright—40.

N A Y S .

Messrs. Achenbach, Alricks, Bailly,
(Perry,) Bailey, (Huntingdon,) Beebe,
Biddle, Bigler, Black, C. A., Campbell,
Carey, Carter, Church, Cochran, Corbett,
Corson, Dallas, Darlington, DeFrance,
Dodd, Edwards, Ewing, Finney, Fulton,
Funck, Gibson, Gilpin, Guthrie, Hay,
Howard, Kaine, Landis, Lawrence, Lilly,
Littleton, MacConnell, M'CLean, Mann,
Niles, Palmer, G. W., Palmer, H. W.,
Patterson, D. W., Patterson, T. H. B.,
Porter, Purman, Purviance, Samuel A.,
Reed, Andrew, Rooke, Russell, Simpson,
Struthers, Temple, Walker, Wetherill,
Jno. Price, White, Harry and Worrell—55.

So the question was determined in the
negative.

ABSENT.—Messrs. Addicks. Andrews,
Baer, Bardsley, Black, J. S., Brodhead,
Cassidy, Clark, Collins, Craig, Cronmil-
ler, Curtin, Davis, Dunning, Elliott, Fell,
Hall, Heverin, Horton, Lamberton, Long,
M'Camant, M'Culloch, M'Murray, Man-
tor, Minor, Newlin, Pughe, Purviance,
John N., Runk, Smith, Wm. H., Stewart,
Turrell, Wherry, White, David N., White,
J. W. F., Woodward and Meredith, *Pres-
ident*—38.

PLACES OF SUMMER SITTINGS.

Mr. H. W. PALMER submitted the fol-
lowing resolution :

Resolved, That after this week the ses-
sions of this Convention will be held in
some other place than Philadelphia.

The Convention refused to order the
resolution to a second reading.

THE JUDICIAL SYSTEM.

Mr. LITTLETON. I move that the Con-
vention proceed with the consideration of
the article on the judiciary.

The motion was agreed to.

The *PRESIDENT pro tem*. When the
Convention adjourned yesterday it had

under consideration an amendment pro-
posed by the delegate from Lycoming,
(Mr. Armstrong,) to be inserted as a new
section after section nineteen. It will be
read.

The *CLERK* read as follows :

SECTION 20. Whenever within six
months after the official publication of
any act of Assembly in the pamphlet
laws, and not thereafter, it shall be al-
leged before the Attorney General by
affidavit, showing probable cause to be-
lieve that the passage or approval of such
law was procured by bribery, fraud or
other corrupt means it shall be the duty
of the Attorney General forthwith to ap-
ply to the Supreme Court or one of the
judges thereof for process in an appropri-
ate proceeding, which shall be ordered
if there appear to the said court or to the
said judge to be such probable cause, and
in which the Commonwealth, upon re-
lationship of the Attorney General, shall be
plaintiff, and such party as the Supreme
Court or the judge who shall grant such
issue shall direct shall be defendant, to
try the validity of such act of Assembly,
whereupon the court shall direct publi-
cations of the same, and any party in in-
terest may appear and upon petition be
made a party plaintiff or defendant there-
to.

The said issue shall be framed and
tried before a jury by one of the judges
of the Supreme Court in whatever form
and in such county as the Supreme Court
may direct, and if it shall appear to the
court and jury upon such trial that the
passage or approval of the same was pro-
cured by bribery, fraud or other corrupt
means, such act of Assembly shall be ad-
judged null and void, and such judg-
ment shall be conclusive. And the Gov-
ernor shall thereupon issue his proclama-
tion declaring such judgment. Either
party shall be entitled within three
months, and not thereafter, to a writ of
error as in other cases.

No officer of the Commonwealth nor
any officer or member of the Legislature
shall be exempt from testifying when re-
quired in such case, but the testimony
of any such witness shall not be used
against him in any criminal prosecution,
except for perjury therein.

Mr. ARMSTRONG. Mr. President : I de-
sire as briefly as possible to present this
question. I am admonished by the man-
ifest impatience of debate which general-
ly prevails that it would not be wise to

detain the Convention by anything like an elaborate discussion.

This subject has been more or less in the minds of members of the Convention. It has been printed and laid on the desks of members, and some of them have doubtless examined it.

The proposition as a constitutional provision is novel, and chiefly so from the difficulty of devising a plan which shall not too greatly interfere with legislative freedom. The necessity for some such provision has long been felt and acknowledged. It has heretofore been held by the courts with great unanimity that whatever may be the fraud which has been perpetrated by or upon the Legislature, or by whatever means of corruption or otherwise an act of Assembly has been procured, when it has once passed the forms of legislation, it is, as held by the courts, to be sacred and cannot be declared to be void by reason of any fraud, bribery or corruption which may have entered into its passage, however outrageous and clear.

The leading case upon this point is *Fletcher vs. Peck*, 6 Cranch, which was decided in the Supreme Court of the United States in 1810. I do not mean to discuss this subject elaborately, but I desire that the true bearings of this celebrated case shall be understood. In 1795 the Legislature of Georgia passed an act by which, in consideration of \$500,000, they transferred five hundred thousand acres of extremely valuable land, lying upon the Mississippi and then belonging to the State, to a company of adventurers. By the terms of this law \$50,000 was to be paid in cash to the treasurer and a mortgage for \$450,000 was to be taken for the balance. It was admitted as clear beyond all dispute that the parties interested in the procurement of the law had executed deeds for portions of the land and laid them upon the desks of the various members of the Legislature willing to take them until, by the most open, flagrant, unblushing fraud they procured the passage of the act referred to. I need not trace its history. The Legislature subsequently repealed the act, with every possible effort on their part to put their seal of condemnation upon it and so far as lay within their power prevent its operation. The question came before the judges of the Supreme Court in the case already cited, and was exhaustively discussed. It was held in substance that the validity of a law cannot be questioned because undue

influence may have been used in obtaining it. However improper it may be, and however severely the offenders may be punished, if guilty of bribery, yet the grossest corruption will not authorize a judicial tribunal to disregard the law."

This decision, whether based upon sound principles or not, and I have often doubted its soundness, has become the rule of decision, and the courts of the various States and of the United States have uniformly accepted this doctrine. It has been so held in Pennsylvania and in the State of New York, and in other States. In short, wherever the question has arisen under the effect of the holding of the court which thus cuts off all possible inquiry into the corrupt modes of legislation it has happened that Legislatures have felt themselves to be wholly beyond the power of the courts or of any power to intercept the operation of fraudulent legislation. Under the impunity guaranteed by the decision to which I have referred, corruption has grown in every State of the Union until it has become the commonest of all things for legislation to be procured by means conspicuously and admittedly corrupt. To such an extent has this pernicious practice grown that the people are fast coming to regard it as inseparable from republican institutions. It is bringing discredit upon our institutions and threatens their perpetuity. The impunity which attends corrupt legislation derives nearly all its strength from the conviction that there are no means by which the guilty perpetrator of the fraud can be deprived of the profits of his corruption. The want of judicial power to investigate and set aside such legislation is a lamentable deficiency in our system. The want of it has promoted the growth of this enormous wrong until our institutions are strained to their utmost extent, for it must be borne in mind that a republican government rests essentially upon the integrity of its law-making power.

Acts of Assembly, public or private, depend upon the judgment and will of the Legislature. If we perpetuate this disastrous impunity to corrupt legislation we unsettle the foundations of our government—we tolerate corruption at its very fountain, and we can have no assurance that our legislation will be wise or such as the public interests require. It will inevitably in the future, as in the past, be largely influenced and in many instances controlled by the particular and corrupt motives brought

to bear upon members of the Legislature. The evil has become enormous, and it is attracting attention in all the States. In Ohio their Convention now in session are considering the subject. What has been their precise action I do not know.

The gentleman from York (Judge Black) told me yesterday that he had a letter from Mr. Charles O'Connor, of New York, calling attention to the subject and stating his conviction that the purity of republican institutions depends largely upon the power of arresting corruption in the Legislature. In our own State we have had numerous instances of it. I will refer to only one. The act approved the nineteenth of June, 1871, entitled "an act relative to legal proceedings by or against corporations" was approved by the Governor and stands to-day as a valid law in the statute books of the State. I do not know whether the bill was passed or not, but I do know that it was alleged that the act was not passed through either house of the Legislature, and I have now before me a letter from a gentleman of high standing and reputation in the State, urging the necessity of a provision like this now proposed, in which he states to me that he has the letters of twenty-two members of the Senate of 1871, who state over their own hands that they did not vote for the act and that it never passed the Senate of the State. The question was submitted to a committee of the Senate of which the gentleman from Indiana (Mr. Harry White) was chairman. That committee, through pressure of other duties, were not able to make an exhaustive examination into the facts, as I am informed; but they did make a report to the Senate, in which they stated that the bill, although approved by the Governor, never passed the Senate. It was openly stated by Senators on the floor that the bill had never passed the Senate, and it was also stated that it had never passed the House, and so far as I know this was not contradicted. Mr. Buckalew and Mr. Purman were both in the Senate at the time. Mr. Buckalew states now, and Mr. Purman also, that it never did pass the Senate.

What was the consequence? An act of Assembly of exceeding great importance is thus foisted upon the statute books, and becomes a law of the State of Pennsylvania, without the vote of either the Senate or the House! Now trace its further history. When this act of Assembly in a litigation which subsequently ensued at

nisi prius in this city was cited by the learned counsel of one of the parties, the opposite party alleged before the court that the act had never been passed. The court, following the lead of Fletcher vs. Peck, and the line of decisions which had shut them up to this inevitable course, held that it was not competent for the court to inquire into the mode of its passage or into the fact whether it had been passed at all. The villainous fraud was under the cover of the broad seal of the Commonwealth, and no power on earth could withdraw it from this protection.

My friend (Mr. Cuyler) suggests that the judge added that it was so salutary that it ought to have passed. Perhaps it was, but the other party to the suit would hold a very different opinion. But you will observe that we are not inquiring into the value of the act itself, but into the mode of its passage; and no matter whether it were or were not a good law, it was a law which should not have been upon the statute books until it had been clearly and honestly passed through the forms of law and with the concurrence of both the Senate and the House.

Mr. FUNCK. Will the gentleman state what the character of that legislation was?

Mr. ARMSTRONG. I have it before me. The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. J. M. WETHERILL. I move that it be continued. ("Go on.")

The PRESIDENT *pro tem*. Is there unanimous consent? There seems to be no objection, and the delegate from Lycoming will proceed.

Mr. ARMSTRONG. I am greatly obliged to the Convention, and will endeavor not to abuse the courtesy they have extended to me. I shall be as brief as possible.

The act of Assembly referred to is entitled "an act relating to legal proceedings by or against corporations" and will be found on page 1360 of the laws of Pennsylvania for the year 1871. I do not think it important now to read the act; but I will send it to the desk and have it read if the gentleman from Lebanon desires; but I presume it is not necessary. It is composed of two sections, and vitally affected important litigations pending between two great railroad corporations of the State. The parties adversely interested in the legislation referred to were the Pennsylvania railroad company, and the Catawissa railroad company, the latter of which desired to establish

the fraud by which the act became a law and by which they alleged their rights were fraudulently and most injuriously affected.

Notwithstanding the earnest and persistent efforts of counsel, the court steadily refused to enter into any inquiry upon the subject. Thus bound by established precedents the court, in the existing state of the law, could afford no relief, and with irresistible conviction forced upon them that the rights of legislation, the rights of private property, and the sovereignty of the people were flagrantly outraged and trampled under foot they proceed to complete the fraud by solemn adjudication upon a law which they knew was an unholy fraud upon every right which courts of justice are established to protect. Shall these things be? Shall we continue to grasp at the shadow and let the substance go? Shall we be told that the sovereignty of the legislative department must not be invaded by judicial inquiry, when it stands to-day debased by frauds like these? Shall the punctilio of respect stand in the way of substantial justice? I have no indiscriminate invective to launch against members of the Legislature. The lack of personal integrity in the members has no doubt been greatly exaggerated, but we are not blind, and we dare not close our eyes to the corrupting influences which every intelligent man knows so largely controls our legislation. Every man on this floor and throughout the Commonwealth, who has closely observed the course of legislation, knows there are now upon our statute books laws, and their name is legion, which never could have been there if the right of investigation had existed even to the limited and cautious extent which this section proposes. The progress of events has brought our State in common with others face to face with this enormous wrong. Could the Supreme Court in 1810 have foreseen the consequences which have grown from the rule they established, I cannot doubt they would have paused long before they would have handed over legislation to stand conspicuous and alone as the only fraud which judicial inquiry cannot reach. By a rule of law as universal as it is necessary and salutary, fraud vitiates everything into which it enters, but legislation. Corrupt decisions are reversed. Corrupt judges are impeached or removed by the Legislature. A corrupt Executive would be impeached or removed. Corrupt elections

are set aside. The sovereignty of the people in its original exercise by election has always been open to judicial inquiry, and elections are reversed without hesitation when it is manifest that fraud has affected its results. Yet, with an inconsistency which is without parallel, we accord to the act of the agent an impunity we deny to the people in the exercise of the highest sovereignty they can exercise. Corrupt legislation and the rights it confers even upon the *particeps criminis* are protected and enforced by every department of the government. This inconsistency is monstrous; this injustice is too grievous to be borne.

Standing then in the presence of a corrupt influence and a corrupt power so enormous as I have indicated, what shall we do? To look to the Legislature for any remedy, even if they have the constitutional power to confer it, which some doubt, is delusive and wholly inadequate. The extraneous influences which procure corrupt legislation would be quite sufficient to prevent the passage of any law which would be efficient to prevent such legislation, or to enquire into it when accomplished. And if by any chance such law were passed it could not long remain. For I do verily believe that nothing we have done or can do will be so great a terror to evil doers as the consciousness that for all these things they shall come to the bar of a court where judgment will be without fear and without favor.

There is necessity that this remedy shall be embodied in the fundamental law. It may well be doubted whether the Legislature under the influences which have heretofore controlled them, and which we cannot wholly exclude, would give any efficient remedy if they could. And certainly it would be always subject to repeal. Without a constitutional provision the line of decisions will follow on, *ad infinitum*, in the direction which it now tends, and these corruptions will be wholly without remedy.

In view of these facts, and I might extend these illustrations indefinitely, some remedial provision is imperatively needed. Besides the procurement of laws which have never passed either branch of the Legislature, it is known that bills which have passed have been surreptitiously abstracted from the file and have not been permitted to go before the Governor at all, put particularly in the last days of the session have been mysteriously lost, mislaid; and thus legislation has been

thwarted in that direction. So, also, bills have been passed and when engrossed for executive approval important words, lines and whole sentences and paragraphs have been omitted. In such cases, if discovery ensues, it is always laid to the mischance of unintentional error, or to omission or mistake. In other instances words and sentences have been substituted or added, by which the purpose and effect of the act have been totally changed. In other instances bills fraudulently procured to be engrossed have been in the hurry incident to final adjournment, fraudulently slipped into the bundle of bills prepared for signature by the speakers of the Senate and the House. I am saying that which men on this floor know to be true. These are but a few of the many devices known to the ingenious manipulators of fraud, by which the will of the people is thwarted under the confident belief, I may say the confident knowledge, that if the law has once assumed authentic form it has passed beyond the power of investigation. Now, in view of these facts, what is the proper remedy?

It is manifest that a law which is upon its face regular is to be taken *prima facie* to be valid. It is also manifest that any unwarrantable suspension of its operation might be, and in some cases would be, injurious to some extent. There should, therefore, be a limit of time beyond which no inquiry into its invalidity by reason of any fraud in its procurement should be permitted.

So also it is clear that an enquiry of this kind ought not to be in the power of parties in merely private litigation. It concerns the credit of a department of the government, and ought not to be brought in question except under such fixed and solemn forms of judicial investigation as will at once clothe the proceedings with the highest dignity, and give assurance that the investigation shall be not only thorough but impartial. An inquiry so important ought not to be collateral but direct, and should be the immediate and only subject under consideration. Again, if it were open to question in merely private litigation it might be under investigation at different times in different courts, and subject to diverse decision. Nor could such objection be obviated, for if the decision were to be final where the jurisdiction first attached, it would be open to collusive action by interested

parties, and tried with intent to establish its validity, and with no power to permit other parties to interplead, who, whatever their interest in the question, might have no interest in the subject matter of the suit. And if such decision were not conclusive, inconsistency of decision would necessarily sometimes occur.

It would follow that the act of Assembly which would be controverted in one county to-day and decided to be void, might in the next decision and in another jurisdiction be held to be valid, and if perchance in the first litigation it were held to be valid, rights might become vested under it and a second decision which would declare it to be void must either unsettle the first with the rights vested under it or be wholly nugatory. The latter I would presume to be the correct holding, for I suppose that under a void law no rights could vest. It would not, therefore, be well to frame the section in a way which would allow the validity of the law upon the grounds designated to be the subject of merely private controversy.

In view of these difficulties it was important in framing the amendment to consider in what manner they could be surmounted to preserve its efficiency without impairing any rights of the citizen.

With this purpose in view, allow me to call the attention of the Convention to the provisions of the section in detail.

The first clause provides that "when-ever within one year after the official publication of any act of Assembly in the pamphlet laws," &c. I have said one year because there must be a time when an act of Assembly, whatever it may be, must have the force and effect of positive law; and if the time be too greatly extended the operation of the law would be too long suspended; six months in my judgment might be sufficient, but of this the Convention will judge. I have said the official publication in the pamphlet laws, because the year might expire before the public would have notice that the act had passed at all. It is therefore made one year after public notice that the act has passed, and this is the more necessary—as under our laws private acts are not published in the pamphlet laws until the enrollment tax is paid.

"It shall be alleged before the Attorney General by affidavit, showing probable cause to believe that any fraud, bribery, or undue means were employed to procure the passage or approval of such law."

The Attorney General is the recognized official head of the law in the State. It is appropriate that the application should be made to him. But it would not do to allow to the Attorney General an unlimited discretion, for if by chance he should himself be interested in any of these widely extended and profitable speculations which in a thousand forms, are so frequently the subject of fraudulent legislation, he would be reluctant to institute the proceeding. Therefore it is provided that when probable cause is shown in the affidavit:

"It shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding."

It was not proper to limit the discretion of the Supreme Court as to the mode of proceeding.

In the first place, I had drawn it "by *scire facias*." Afterwards it occurred to me it would be better to try the case in a feigned issue; but then after all it might happen that a bill in equity would be the very best process. So it resulted that I thought it best to leave it open for the Supreme Court and Attorney General to devise the most efficient mode. It is therefore simply provided that an "appropriate proceeding" shall be had which may be by bill in equity, or by feigned issue, or by *scire facias*, or by whatever mode might under the exigencies of the particular case be deemed most appropriate and efficient.

But then it is provided that the process "shall be ordered of course." But perhaps it would be as well or better that the Supreme Court or the judge applied to should have the right to pass upon the question of probable cause, leaving it in their discretion to withhold process if the grounds alleged appeared to be either frivolous or unfounded.

The party plaintiff shall be the "Commonwealth at the relation of the Attorney General." This is eminently proper. It is a well-known mode of procedure, and benefits the dignity and importance of the case to be tried.

There was more difficulty in designating the defendant. It would not always be easy or possible to designate the party in interest, but it is not of paramount importance under the safeguard provided. The court might raise a party—*pendente lite*—might make a nominal party—or name some officer of the government or Legislature. It is therefore declared that

the defendant shall be "such party as the Supreme Court or the judge who shall grant such issue shall direct." If it were imposed upon the Attorney General to designate the defendant, he might not be able to do so because the whole of the facts might not be sufficiently developed to enable him to determine who ought to be the defendant.

But to afford the fullest opportunity to all persons having any interest in the question to protect their interests, it is further provided that when the process is thus ordered, "the court shall direct publication of the same, and any party in interest may appear and upon petition be made a party plaintiff or defendant thereto." The purpose of this is manifest. If the action is instituted by the Commonwealth at the relation of the Attorney General, he would have no especial and particular interest in ordinary cases to press this investigation with sufficient ardor; but when it is permitted to any party having an interest under the act of Assembly to be made co-plaintiff with him and thus introduce the vigor and force of personal interest, efficient investigation will be insured, at the same time that the power and the process is kept wholly under the control of the Commonwealth as represented by the Attorney General.

But, again, parties in interest have the right to appear as defendants, because, perchance, the charges might be unfounded. It might be that upon proper showing it would appear that the act of Assembly was sufficiently and properly passed, and therefore it is that the parties in interest claiming under an act of Assembly ought to have the right as parties defendant to show, upon proper pleading, that the act of Assembly was properly passed without bribery, fraud or other corrupt means.

Thus providing for the parties who shall first make up the record and the mode of giving notice and bringing other parties in interest before the court, the question next occurs as to the trial. "The said issue shall be tried upon proper pleadings;" that is, pleadings properly adapted to the particular proceeding which may be instituted. It is to be tried "by one of the judges of the Supreme Court." The question is one of extreme importance, involving not only the dignity but the reputation of the Legislature, involving also the validity of the act, and possibly the reputation and the fidel-

ity of the Executive of the State. In such an event the dignity and importance of the question demand that the highest tribunal of the State should supervise the trial. It may be tried "in whatever county the Supreme Court may direct." If the act were such that it affected, advantageously or adversely, the interests of a particular section of the State, there would be a manifest impropriety in trying the cause before a jury of such a county. Local and private interests and prejudices shall be excluded as far as possible. It is therefore left to the discretion of the Supreme Court to say in what county the action shall be tried, trusting to the high tribunal before which the parties must appear for the assurance that the question at issue will be justly, fairly and impartially adjudicated.

Having thus provided for the institution of the proceeding and for the mode of trial, it is next provided that if the court and jury, that is, the jury under the direction of the court, guiding them in their deliberations, as they do in other cases, and under the established forms and principles of law, shall declare that the act of Assembly is void, or if they shall declare that it is a valid law, in either event, the litigation upon that question having been once impartially had and a thorough investigation made, shall be conclusive. The law thus investigated shall stand upon the footing of every other right of the Commonwealth that once adjudicated, the judgment of the court shall be final and conclusive. The question thus raised is important in the highest degree, but it rises no higher than other questions which engage the attention of the court from time to time. The tribunal which passes upon life and liberty and every right of person and of property is surely competent to guard with impartiality, and to decide with justice to all parties in interest any question which such investigation could possibly involve. It seems wholly inconsistent with every principle of sound morality that whilst every other fraud which men can perpetrate shall be brought to the light of truth and justice, this crime against the State, against liberty, against the dearest rights involved in the exercise of government, shall be protected by a sort of high sounding sentimentalism which professes to regard the legislative department of the government as too sacred to be touched even where it reeks with corruption—I confess, sir, I have no

sympathy with such grasping at shadows—such disregard of substance.

But, sir, as we are dealing with an act of Assembly appearing in the pamphlet laws of the State, and liable to mislead those who depend upon the act of Assembly as published, it is further provided that "the Governor shall thereupon issue his proclamation declaring such judgment," so that if the law be found valid the litigation that has ensued respecting it shall be ended by a public proclamation which shall restore confidence to the law. If it be declared null and void, the public proclamation puts all the Commonwealth upon notice that that act is inoperative and void. The proclamation is therefore a proper part of the process to give notice to the people of the judgment of the court.

But the finding of the jury might be wrong in law; there might be error; and hence it is eminently proper that there should be a provision for revision in the Supreme Court. Hence it is provided that "either party shall be entitled within six months, and not thereafter, to a writ of error as in other cases." The writ of error is made a writ of right, because it is eminently just that a question of this magnitude should be passed upon by the highest judicatory of the State. But if the right to a writ of error were unduly extended, it would suspend the operation of this law to a very indefinite period. Six months I thought was quite sufficient. The gentleman from Columbia (Mr. Buckalew) suggests to me that three months would be quite sufficient. I would prefer myself three months, and I had so written it, and struck it out, and put in six in deference to what I supposed might be the view of the Convention; but three months, in my judgment, is ample time for the parties to take a writ of error in such a proceeding if either party feels aggrieved by the decision.

There is another provision of the section to which I call the attention of the Convention. The concluding paragraph of the section provides that—

"No officer of the Commonwealth"—

Which includes of course the Executive and all inferior officers—

—"nor any officer or member of the Legislature shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution unless for perjury therein."

It is desirable that every means of information shall be in the possession of the Commonwealth in this investigation. Not even the Executive himself should be exempt from testifying, nor any member of the Legislature, nor the clerks and officers of the Legislature, by whom it is possible, if not probable, that a very large amount of the corrupt manipulation of the Legislature is conducted. It ought, therefore, to be placed in the Constitution that they shall not be exempt from testifying. Otherwise, we would have an act of Assembly passed, probably the first year, exempting members of the Legislature and officers of the government from giving testimony in such cases. They are sufficiently protected when it is provided that the testimony of any such witness shall not be used against him in any criminal prosecution except for perjury in such case. The effect of this will be that every officer of the Commonwealth, from the Executive down, and every member and officer of either House of the Legislature, will be admonished that there is a power above him to investigate his infidelity to public trust and to open the way to the infliction of the penalties incurred by the breach of his oath of office and of corruption under the Constitution which we have framed. I do not believe that under the operation of this section we would be often called upon to investigate the questions which fall within it. I have an abiding confidence that the very existence of the power would so admonish the Legislature and the Executive that it would be among the surest of the methods by which pure and honest legislation would be secured.

One other thing I desire to notice. It occurred to my mind, as doubtless it will to the minds of many here, that there ought to be some saving of vested rights under an act of Assembly which should subsequently be declared void for the reasons defined. I will state the objections which occurred to me, and I gave it very full consideration. Of course the Convention will not understand me as undertaking to say that the result of my deliberations is necessarily right or as expressing any dogmatic opinions on the question. I am only endeavoring to give the Convention as fairly as I can the result of my investigations and deliberations, and the reasons for the conclusions I have reached. I inserted such a provision originally, but struck it out for this reason: If a saving

clause is inserted saving the vested rights in an individual which may have accrued under the law, you afford the readiest mode of evasion, and instantly when the law is passed it will become the interest of the parties who expect to be benefited by it to so manipulate its operation as to bring in third parties in interest. By this easy and common expedient the whole purpose of the investigation might be defeated. But it would even reach further. The law would be so constructed that it could be thus manipulated, thus putting it in the power of the parties who corruptly procure this act to manipulate it in a way which would create vested rights, and secure indirectly the very thing which this measure is intended to prevent.

But no hardship can come from the omission of such a saving clause. It would seem to be certain that no right could become vested under a *void law*. But be this as it may, the section requires that application for process in the proceeding contemplated shall be made within one year, and I should have no objection to making it six months, and then the provision of the Constitution would stand as public notice to every citizen of the Commonwealth that he can take no right under an act of Assembly which shall become a vested right in less than six months. I believe it is sufficiently guarded, and I know of no vested right which would occur under it which it would be important to protect. The utmost inconvenience that could arise would be the suspension of the operation of a law for six months, and this could be, unless in very exceptional cases, of very little moment, especially as compared with the importance of providing any guarantee which will aid in securing honest legislation. So little is such inconvenience to be regarded that in some of the States no statute is allowed to take effect until six months after its passage. It could not of course apply to any act of Assembly which has already become a law; but as to all future laws such provision in the Constitution would be notice of record to all parties that within six months there is a power to inquire into the validity of the law upon the grounds which are here asserted. In all ordinary cases no such question could arise and parties would take their rights under the act of Assembly without hesitation, knowing that the six months would soon pass away, and that there being no suspicion of unfairness in the act their rights vested would remain intact

and every interest be protected. But where we are attempting to deal with fraudulent and corrupt legislation, grown expert by the experience of years and strong in its confidence of impunity, and to wholly prevent it if possible, it is not going too far to say that for six months such an act thus tainted with suspicion shall stand under notice to the people of the Commonwealth and to all others that within that time investigation may be instituted under which the law may be pronounced to be invalid for the reasons which are set forth.

Sir, the instincts of the people point unerringly to the acts which fall under suspicion of fraudulent procurement. The great body of the law will be received and acted upon with undiminished confidence, but those acts which in the past have so discredited the State, or others like them in the future, could not, under a section like this, pass successfully the ordeal of judicial inquiry before an impartial court and jury. The evils to be remedied are frightful in their enormity, the inconveniences to be incurred, taken in their largest aspect, are inconsiderable and trifling as compared with the results which I believe would flow from this provision.

Entertaining these views, Mr. President, and having given this subject as thoughtful attention as I am capable of bestowing upon it, I have come to the deliberate conviction that this section is right. It may be amended. Far be it from me to suppose that it is not capable of amendment; but, in my judgment, it is a step in the right direction. It protects all interests which ought to be protected. It is an admonition to the Legislature and to the Executive, that any corrupt practice which touches the foundation of the honesty of our legislation shall be open to judicial investigation; and under such a constitutional provision, and with the other safeguards which have been placed around legislation by this Constitution, I believe we shall have done a vast deal towards stemming the tide of corruption which now threatens to destroy the liberties of the people.

MR. CARTER. Mr. President: I shall not attempt to answer in detail the learned and eloquent gentleman from Lycoming (Mr. Armstrong.) I should regard it as the height of presumption for me to attempt to do so in a question appertaining to the judiciary, but the whole amendment strikes me, as a layman, making

only the humblest professions, as being wrong *in toto*; the idea on which it is based is wrong, and incapable of fulfilling the intended end. The object aimed at of course we concede to be good. And I wish merely to present as a layman the objections that strike me to the whole matter.

We have heard much of the glorious uncertainty of the law in the past. It seems to me that this measure would quadruple that uncertainty. A period of a year and a half must elapse before we can tell what is the law and what is not with these contingencies that lie over all legislation. I am opposed to it because I believe that it is impracticable, that it will not be carried out. The gentleman says that it will be resorted to but seldom. Well, sir, I think that is the case, that it will be seldom resorted to or found to be practicable. It does not seem to me that there is any intelligent basis of action for these men to predicate that action upon. The Supreme Court having the organic law to guide them, and the animus, the intent or spirit where the letter might be dubious, have the guide to declare a law unconstitutional, but you set a jury to work at hap-hazard to define motives and other conditions exhibiting fraud. Why, sir, nothing in the world is harder to settle than the motives that actuate men. We all act from mixed motives; we are hardly aware ourselves what is the predominant and chief motive that impels our action in any one case. It looks to me as if there was a perfect sea of uncertainty appertaining to this whole matter in this investigation to determine whether it was fraudulent really or not.

But another fault. Does the gentleman make of no account all the labor of this Convention looking to pure legislation? Does he not believe that with this increased body of men from one hundred to one hundred and fifty or more, that we shall not have purer and better legislation? I do not consider that this provision is really needed. I think that increase was a wise provision. Does the gentleman make no account of our biennial sessions and a Legislature thus elected, which it was claimed would give a higher and abler body of men? Does he make no account of that?

In addition, does the gentleman make no account of that iron-clad oath which was passed here by a majority that really surprised me, of something like thirty, in which legislators are to be sworn when

they leave the office that they have done nothing which was corrupt and fraudulent, and to which penalties are attached? Does the gentleman attach no weight whatever to that? If he does not he differs with the majority of the Convention. I think there is something, if not a full panacea, and that it will be some guard, and that it is something efficient, something practical. The gentleman's sword is not so sharp to divide between the bone and the marrow as that provision. These fraudulent fellows have the reward safe in their pocket, and what do they care for subsequent action without penalty? They do not care a straw whether the law eighteen months afterwards be declared unconstitutional or not. You do not reach any remedy or punish any scoundrelism in that way; so it seems to me, although the law may be declared unconstitutional.

But to revert back to the idea with which I started, I heard a distinguished lawyer, who sits near me, say that he would advise a client very cautiously to beware of any action under a law for the period of eighteen months or a year, there is that uncertainty that hangs over the matter.

But, sir, and more especially to the point, I beg leave to draw attention to what we have done in addition to the iron-clad oath, in addition to the increased period and superior character of our Legislature—in addition to those let me refer to that which directly covers the case. The gentleman spent so much time in showing the case of a law passed without the cognizance of the legislators. This cannot occur under what we have done already. Let me refer to the seventh section of the article on legislation:

"Every bill shall be read at length on three different days in each House. All amendments thereto shall be printed before the final vote is taken, and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, and the names of the persons voting for and against be entered on the Journal, and a majority of members elected to each House be recorded on the Journal thereof as voting in its favor."

Then is section eight: "No amendment to bills by one House returned to the other for concurrence shall be concurred in except by the vote of a majority of the members elected to the House to which the amendment so returned, taken by yeas and nays, and the names of those voting for and against recorded upon the

Journal thereof, and reports of committees of conference shall be adopted in either House only by the vote of a majority of the members elected to each House, taken by yeas and nays, and the names of those voting for and against recorded upon the Journals."

Now, I submit that there is a guard to prevent the occurrence of that thing to which the gentleman referred. Further, in section eleven we read:

"No local or special bill shall be passed unless public notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall be at least ninety days prior to the introduction into the Legislature of such bill and in the manner to be provided by law."

Here we also have struck a fatal blow at special legislation, the great cause of all our woe, and although in legislation termed general there may be some special features introduced which may be of an objectionable character, yet I think by the provisions I have read they are guarded against.

I am exceedingly unwilling to occupy the most precious time of this Convention much longer. The gentleman has argued the subject at great length if not convincingly. I shall not attempt to answer him *seriatim*: but these thoughts occur to me as fatal objections to the whole thing. The plan is new. In no Constitution of any State in the United States is any similar provision found. Ohio, I understand, has a law embracing the same idea. If such a law would work well, if it be a good thing, the Legislature can enact and continue it. For that I have the opinion of a legal gentleman sitting not far from me, and why not leave them to do it if it be found necessary, if the other checks we have introduced be found insufficient. I submit that this matter should be disposed of as soon as possible, for I cannot believe it will pass; nor do I believe, inasmuch as it is radically wrong, wrong in its inception, wrong all through, because impracticable and unnecessary, that it may be disposed of as soon as possible and we go through with that part of the work yet remaining in this article.

Mr. HARRY WHITE. I offer the following amendment to the amendment, to take its place:

"Any bill passed in disregard of the provisions and directions prescribed in the

article on legislation for the passage of bills shall be void and of no effect; and when the validity of any law passed by the Legislature is questioned in any court of record it shall be competent for such court to inspect the journal of either House, and if it does not appear thereon that all the forms of legislation in both Houses, as hereinbefore prescribed, have been observed in the passage of such law, the same shall be adjudged by such court to be void."

Mr. President, the chairman of the Committee on the Judiciary has not overstated the importance of this question. If delegates will pause a moment and reflect, they will see that this amendment seeks to clothe the judicial power of this Commonwealth with a supervising authority not only as to the constitutionality of acts, but as to the means used in the passage of our statutory laws.

Mr. SHARPE. Will the gentleman allow me to ask him a question?

Mr. HARRY WHITE. Certainly.

Mr. SHARPE. Will his substitute cover the case of an act of Assembly passed by fraud or bribery?

Mr. HARRY WHITE. It will not, and I do not wish to place a feature in our Constitution which will allow a jury to investigate that matter. I will explain myself in a word. We all admit that there has been corrupt legislation. That is not the question which is practically before us. The question is, how shall we require the forms of legislation, as carefully prescribed in our amended Constitution, to be regarded by future Legislatures, and what penalty shall we impose for the disregard of those salutary and specific provisions?

Mr. President, since the able opinion of Chief Justice Marshall, in the case of *Fletcher vs. Peck*, no lawyer has doubted that when the Chief Executive of a State certified to the passage of a bill in his approval, that was thereafter the law, and it could only be questioned by the judicial power when in conflict with some provision, either the letter or spirit of the Constitution. We are all familiar with that, and I will not pause to discuss it.

How does the law stand now, however, in our modern experience? In the State of Ohio the Supreme Court has indicated an exceedingly safe rule, and I have their decision on that question in my hands, and I have drawn this amendment predicated on the philosophy of that deci-

sion. I find this provision in the Ohio Constitution:

"Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and on the passage of every bill, in either House, the vote shall be taken by the yeas and nays, and entered upon the journal; and no law shall be passed, in either House, without the concurrence of a majority of all the members elected thereto."

A variety of questions have arisen under that, and the Supreme Court have decided as follows—I read an extract from the opinion of the Supreme Court of Ohio:

"No bill can become a law without receiving the number of votes required by the Constitution; and if it were found by an inspection of the legislative journals, that what purports to be a law upon the statute book was not passed by the requisite number of votes, it might possibly be the duty of the courts to treat it as a nullity. But it does not follow that an act that was passed by a constitutional majority is invalid because, in its consideration, the Assembly did not strictly observe the mode of procedure prescribed by the Constitution. There are provisions in that instrument that are directory in their character, the observance of which by the Assembly is secured by their sense of duty and official oaths, and not by any supervisory power of the courts".—*Fordyce vs. Godman*, 20 Ohio St., 1-17; *Miller vs. State*, 3 Ohio St., 475.

Then again:

"The legislative journals furnish the appropriate evidence on the question whether a bill has been passed by the requisite number of votes. Were it otherwise a bill might become a law without receiving the number of votes required by the Constitution. A single presiding officer might by his signature give the force of law to a bill which the journal of the body over which he presides, and which is kept under the supervision of the whole body, shows not to have been voted for by the constitutional number of members. The plain provisions of the Constitution are not to be thus nullified, and the evidence which it requires to be kept under the supervision of the collective body must control when a question arises as to the due passage of a bill."—*Fordyce vs. Godman*, 20 Ohio St., 1-17, *Scott, J.*:

and see *State vs. Moffatt*, 5 Ohio, 358; 3 Ohio St., 475.

This is the law as declared by the Supreme Court of the State of Ohio. I think we have a provision in our new Constitution which provides, as read by the delegate from Lancaster, (Mr. Carter,) that no bill shall become a law unless it has been voted for by a majority of all the members elected to the Legislature, and no amendment shall be concurred in unless it has been voted for by a majority of all the members of the Legislature. These votes are to be recorded upon the journals kept by the body, and this will hereafter secure the Supreme Court or any other court desiring to investigate the question of whether the requisite number of votes has been recorded in favor of a law or not, an opportunity of going behind the mere formal certificate of the Governor and inspecting the journals of the respective bodies and ascertaining therefrom whether all these forms have been complied with. As correctly read by the delegate from Lancaster, it specially provides in the seventh section of the article on the Legislature:

"Every bill shall be read at length on three different days in each House; all amendments thereto shall be printed before the final vote is taken; and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against the bill be entered on the journal, and a majority of the members elected to each House be recorded on the journal thereof as voting in its favor."

Let us imagine that a year has transpired. The first Legislature assembling under our Constitution has passed a bill, and the certificate that it has passed is given by the Executive, and it is questioned whether a majority of the members elected to either House actually voted for that law. The question is raised in a court by an individual who sees fit to do so, as affecting his rights, if you please, or otherwise. Under these explicit provisions the court can go behind the formal certificate of the Executive and inspect the journals and see whether the requisite number of votes had been recorded in favor of the law.

But I now want to go a little further than that. Out of abundant caution we have provided that "no bill shall be passed containing more than one subject, which shall be clearly expressed in its title except

appropriation bills." And we have also provided that "every bill shall be read at length on three different days in each House," and "that all amendments thereto shall be printed before the final vote is taken." I apprehend that in the connection in which these clauses are, they are merely directory, and if the Legislature see fit to pass a bill without having it previously printed, the court before whom the question of the constitutionality of the law is raised, for want of formality in its passage, could not declare it unconstitutional by reason of the non-observance of these provisions. In the amendment which I have offered, I seek to go behind that and provide that any bill passed in disregard of any of the provisions and directions found in the article on legislation shall be void and of no effect, and authorizing the court in which the question is raised to inspect the journals, and if they discover therefrom that the formalities of legislation have not been observed, to declare that law unconstitutional. This is intended to render imperative these provisions. It is a penal section requiring the observance of the careful directions we have in the article on legislation.

The *PRESIDENT pro tem*. The delegate's time has expired.

MR. MAOVEAGH. Mr. President: I have listened to the gentleman from Indiana very carefully because my mind was not entirely decided upon the amendment offered by the gentleman from Lycoming in some of its provisions, and I have been utterly disappointed in that I did not hear any suggestion from the gentleman from Indiana of any manner of investigating this one great evil, the purchase of laws. Matters such as the gentleman from Lycoming has detailed will occur, I suppose, occasionally. At rare intervals there may be a law put upon the statute books which never was passed. A bill may be passed containing two subjects perhaps. A bill may be passed that has not been read at length or only read two days instead of three; a bill may be passed without the yeas and nays having been called upon it. The speaker may sign it at one desk or at another, but what chaff and nonsense it is to talk to us as if these were the things we wanted to prevent. What we want to do is to follow the bribe giver and the bribe taker into the court of justice and prove that the law that they parade there as a statute, is dead of its rottenness in the

hour of its birth, by the infamous corruption that secured its passage.

The people of this country are not going to ruin because the speaker does not sign the bills in presence of the House, or because a bill is not read three days. If the gentleman from Indiana could have enforced for the last ten years in every legislative body in this country the provisions of which he has this morning spoken, still he would have utterly failed to have arrested the decay of your public spirit and the demoralization of your public life. It is the corrupting use of money in your legislative halls, and not the disregard of directory provisions that is eating out everything that is worthy of preservation in America to-day, in your form of government, and is slowly rotting its way down to destroy your society as well as your politics. If I am arraigned at the bar of the Supreme Court of this State, and a judgment is rendered against me, and it is exhibited anywhere else, I have the right, if I can, to show that you paid the judges for their judgment. Is the casual legislator of the winter or the Senator of even three years, of whom nobody may have heard before he took his seat and never will desire to hear thereafter in some cases, however estimable and worthy may be the good man who sits at his right hand or his left and keeps his hands pure, to pass a law putting insufferable burdens upon me or taking my rights from me, without giving me the privilege to prove in a court of justice that the Legislature was bought to pass this very law? Certainly we ought to have that privilege. I do not suppose it would correct all the fraudulent practices, but I think that the existence of the privilege alone will be a wonderful check against corruption in legislation. I think the knowledge that every officer in your Commonwealth, high and low, may be brought by the imperative mandate of the court and compelled to perjure himself or to destroy his wickedness will be in itself a very great bulwark for pure legislation, and it is this that I seek to secure, some method of taking a corrupt and rotten statute, bought by money, and proving if I can that it was so bought. It will at least make speculation in statutes less profitable. It will at least notify gentlemen before they spend large sums of money in the purchase of a statute that the investment may turn out to be a very poor one in the end, and therefore while I have no objection to vote for

these directory provisions, I want something that will enable me to go to the heart of the evil and to strike at the purchase of legislative bodies.

Mr. S. A. PURVIANCE. As a member of the Judiciary Committee, and as one who gave his consent that the chairman should present some proposition of this kind to the body, and now not being able to coincide in the views of the chairman in reference to the section so presented, I ask the attention of the Convention for a very short time whilst I explain the reasons for my dissent.

I cannot assent to the passage of any such proposition, unless it should be accompanied by a saving of all rights which might accrue under an act up to the time that it might be set aside. But upon full reflection I am satisfied that this is not the proper place for any such provision. The article on legislation would have been the place, and if this section should find a place in any article that is the article in which it should be placed. But this whole subject can be reached by a section like this: "The Legislature shall provide a mode by which a law may be declared invalid on account of bribery and corruption." In these three or four or five sentences in our organic law this power can be conferred upon the Legislature, instead of making here what might be considered a law *in extenso*. Now, how can this proposition as it is, if placed in the organic law, be carried out? Look at it. It is to be by trial. A trial of what? Why, a trial as to whether bribery, or fraud, or corruption has taken place. Is not that alone proper for the Legislature to provide the formula of trial and all the incidents of trial?

I submit to the Convention whether in every case in which bribery has been practiced in the Legislature that is to be set aside. Suppose a case in which there has been a law passed by a majority of thirty or forty members. Suppose that one single man alone in that majority had been bribed. Would you set aside that law? Certainly not. On the other hand, if a law be passed by a majority of one, and that one man was a bribed man, then the law might be set aside. But do you not require a general law to provide all this machinery? Again, suppose a law is secured by the aid or by the solicitation of one person, and that person has obtained the passage of the law by bribery, but the law was passed by a large majority whilst it ought not to be set aside. Yet in refer-

ence to the corrupt man himself who has been guilty in bribery there should be a provision in the law that he should take no benefit under it.

This is not in this provision. It is not here. It would have to be set forth in a general law. I do not know whether there is any saving of rights in the article as drawn by the gentleman, for I have only examined it casually.

Mr. EWING. There is none.

Mr. S. A. PURVIANCE. I am told there is none. Then look at the anomaly that this presents to the consideration of the civilized world. Here is a law passed under the Constitution as we have provided, all requisites complied with, the bill read three several times, that on the final vote the yeas and nays are duly entered upon the Journal, the law carefully examined by the Secretary of the Commonwealth and certified by him to the Governor, and all the formula and all the requisites of the Constitution fully complied with before the Governor approves it. It goes out to the world. Is not that a law; is not that a constitutional law? And, sir, are you to assail that law for any reason whatever, especially if it affects these rights which have grown up under it? Why, sir, I may have purchased a tract of land under that law. It may have been a link in the chain of my title to the tract of land, upon which I have entered and upon which I have made valuable improvements, \$50,000 or \$100,000, and yet it is to be assailed and stricken down, and my property swept from me. Why, sir, I say it is a most dangerous power.

Now, sir, still further. The proceedings are to be set aside for bribery, fraud, and for false pretence. What is a false pretence? A man sits down alongside a member of the House and he is in favor of the passage of a certain measure, and he tells to that member certain things which may operate upon the mind of that member and the judgment of that member, in inducing him to vote for the passage of that law. That very representation might be a false one, but is the law to be set aside on that account? Why, that would be carrying the matter a little too far, a great deal too far. Again, for fraud. What sort of fraud? Should not that be left to the Legislature in a general law to define what the fraud shall be and what the false pretence shall be, what the character of each of these shall be before

they shall be regarded as sufficient to set aside the law?

I am therefore, sir, of the opinion that this section ought to be voted down, and if we have anything of the kind to insert in the Constitution that we should put it in the article on legislation in these brief words: "the Legislature shall provide a mode for rendering a law invalid which has been passed by bribery or corruption."

Mr. HUNSICKER. Mr. President: Yesterday when I made the rash promise that I would make no more speeches upon the article reported by the Committee on the Judiciary I had no idea that within an hour or two a child of such monstrous proportions as this would be produced; and I propose now to state the reasons very briefly why I shall vote against it.

Yesterday the gentleman from Lycoming, with his persuasive eloquence, convinced a majority of this body that the Legislature would always have more wisdom and could always be more safely trusted with all the laws regulating the mere liberty and reputation of the citizen than this Convention could. And he furthermore declared that it was a matter entirely within the control of the Legislature, and with their plastic hands they could mould the remedy to suit the particular exigencies that might arise. He furthermore declared that the Supreme Court would be so overburdened with business affecting the mere questions of character and reputation that there would be a practical denial of justice; and that, therefore, it was the part of wise statesmanship to commit these things to the Legislature; and this morning he comes in with a proposition that every act of Assembly is to remain in obedience for one year; that the whole legislation is to wait; and that the rights of the people of the Commonwealth are to hang trembling in the balance, and then when the case is finally brought by the relation of the Attorney General before a court in some county in the State, after it has dragged its weary length along for one, two, three, four, five, six or seven years in the county where it is tried, then it may be carried up by writ of error to the Supreme Court, because, said he, *it is one of the kind of rights which ought to be protected*—carried up to a court already so overburdened with business, according to the speeches so frequently made by the gentleman from Lycoming, that it is utterly impossible now to get justice according to law.

But he does more than that. He does not even stop there with his loading down and burdening to death these poor over-worked Supreme Court judges, who have so much work that they cannot give an hour to considering a question involving the liberty or reputation of a citizen of this Commonwealth, but he furthermore actually provides that one of these judges shall be detailed to hold the court and decide whether the act of Assembly was passed by fraud, by bribery, or undue means or false pretenses. Is that a saving of time? What becomes of the argument made yesterday against my section, that we would thereby over-burden the Supreme Court so much that it would be a practical denial of justice when you load this weight upon them? Suppose there are three hundred or five hundred acts of Assembly passed in one winter, those five hundred acts of Assembly remain dead-letters upon your statute book until the year has expired, because within the last minute of the last hour of the last day of that year the Attorney General may file an information against every one of those various acts of Assembly, and every one may be hung up for seven or ten years.

He goes further. He provides that every officer of the Legislature shall be compelled to criminate himself, and I would remind him here that there is a provision in the Constitution of this State which will save a man from criminating himself. It is true he tries to evade that by saying the testimony shall not be used against him, but what does all this mean? Why, it means just this: *That now a question of dollars has come up, and just as soon as it comes to a question of dollars the Legislature, which was yesterday so wise, so pure and so upright, into whose hands you could safely at all times and for all time commit the liberty and reputation of the citizens, has in the short revolution of one day become so corrupt that you cannot trust them at all, although you have bound them down in the beginning and at the end, tied them hand and foot by restrictions and restrictions and restrictions, until you need but one more to knock away that traditional grant altogether, and that is to abolish them.*

What is this? Is this legislation or is this organic law? Is this legislation? Will this execute itself? Who is to provide the means for this trial after all? It is to be done by the Legislature, and if they provide none it will be as dead as is your Bill of Rights to-day. I like a little

consistency once in a while. I am not at all an advocate of the maxim that consistency is a jewel, but at the same time I believe that it ought to last at least twenty-four hours, and that is all I ask from any gentleman in this Convention.

For these reasons I shall cheerfully and with savage joy vote against this proposition. [Laughter.]

MR. KAINE. Mr. President: I think this is a very important proposition, and it is entitled to a fair, full and deliberate consideration by the members of this Convention. And I do not think the personal animosity of the gentleman who has just taken his seat in regard to the chairman of this committee ought to be taken into consideration in considering so important a question.

MR. HUNSICKER. That I deny. I have no personal animosity against him or any other gentleman, not even the gentleman from Fayette. [Laughter.]

MR. KAINE. Then he desires to carry this upon the shoulders of that provision of his which was voted down yesterday.

I am very clearly of opinion that some provision of this kind ought to be placed in the Constitution. It has a place in the Constitutions of other States of this Union, and from what we know of the transactions in the Legislature that this is intended to prevent, I think it ought to go into ours.

And first, in regard to the amendment now pending of the gentleman from Indiana. That comes very far short of reaching the case. In truth it amounts to nothing whatever as a remedy against the evils complained of. A case was cited by the gentleman who offered this amendment this morning in regard to an act to be found in the pamphlet laws of 1871, entitled "An act in relation to railroads crossing each other at grade," that, I believe, it was established to the satisfaction of everyone, had never passed at all. I know another case, and I have every reason to believe that what I am about to state is correct, and that it can be proved by a number of witnesses, and it only occurred during the last session of the Legislature; and that was this: A bill was presented in the Senate and passed; it went over to the House for concurrence; it was a private bill; it was placed upon the private calendar of the House; it came up for consideration, and it was defeated, not on a call of the yeas and nays, but upon a *viva voce* vote. It was an exceedingly important bill, although a

private and small one, to a corporation; and notwithstanding that bill was voted down and defeated in the House of Representatives, yet it appeared in ten days after the Legislature had adjourned as an act of Assembly of this Commonwealth, and is now in the statute laws of this State.

How was that done, and how would the amendment of the gentleman from Indiana remedy a thing of that kind? The Journal of the House of Representatives appears all fair and regular; the bill was passed through first, second and third readings, compared and went to the Committee to Compare Bills, signed by the speakers and by the Governor, and yet it was defeated. Through the manipulations of some parties interested some clerk was induced to make the proper figures and the proper memoranda on that bill and on the Journal.

Now, how can a case of that kind be remedied unless we have some provision such as the one proposed by the gentleman from Lycoming? I decline to say anything in regard to the nature of that bill or the parties, because I intend that it shall be investigated hereafter in some shape or other. That is a similar case to the one cited by the gentleman from Lycoming. Everything is right and regular in the bill, the Journals are all right, the memoranda on the bill were all right, the figures were all right. Then it is proposed to send to a court to examine the Journals, and if they did not appear all right then to declare the law null and void. The difficulty is that it does appear all right, that it does appear all regular. In such a case you should be allowed to call upon a member or dozen members of the House of Representatives or the Senate and put them under oath and allow them to swear that such a bill never passed. You should be allowed to bring witnesses who can swear, "I voted against that bill, and I know it was defeated," and can show that it was by the manipulation of others, not members of the Legislature, that these things were procured. If you put a clause of this kind in the Constitution it will prevent at once attempts at things of this kind.

In the new Constitution of the State of West Virginia this provision is contained:

"Wherever the Legislature is expressly prohibited by this Constitution from doing any particular act, and the same shall be done in violation of such prohibition,

it shall be the duty of the courts, upon a proper case presented before them, to declare such act null and void."

That is different, I admit, from the proposition now before the Convention, but it is in the same direction. It is a provision in the Constitution that where an act of Assembly has been improperly passed there shall be a tribunal that will have jurisdiction to investigate the matter, to take testimony, to examine witnesses under oath before a jury, and decide whether that law was passed or not. Can that do any harm?

I understand the amendment of the gentleman from Indiana (Mr. Harry White) to be the twenty-fifth section of the report on legislation. I heard it from the desk and I so understood it. Now, sir, if we are to have anything in the Constitution on this subject let us have it efficient, let us have something that will give us a remedy when we desire it. You may make the time shorter, if you please, and require this proceeding to be in six months or three months, in place of a year. That will be notice, and that will remedy the alarm and the difficulty of the gentleman from Allegheny. Then a man acting under such a bill will not have bought a farm or a house and agreed to put valuable improvements on it and have vested rights that nothing can touch. It is not likely there will be any acts of Assembly passed that would affect the vested rights of the gentleman from Allegheny or anybody else in that way. It is these acts of Assembly that are got through for the benefit of special parties and special corporations, and I submit whether they who have been the cause of this infamy and this wrong should take anything by their motion.

I am opposed to the amendment of the gentleman from Indiana. I understand that the chairman of the committee who offers this section desires to make some alterations, which will relieve at least one objection of the gentleman from Allegheny, and that is, to strike out the words "false pretence" and insert "undue means," to make the second paragraph conform to the first. "Fraud, bribery or undue means" are the words used in the first paragraph, and "undue means" placed in the second paragraph in the place of "false pretence" will make it uniform and better than it is. I understand that the chairman of the committee who offered this section desires to make an amendment of that kind, to make the one pro-

vision conform to the other. I hope that this section, in some shape or other, efficient and perfected, will pass this Convention and become a part of the Constitution of the State.

Mr. ARMSTRONG. I do not wish to prolong the discussion of this question. I desire rather to mingle my sympathies with the gentleman from Montgomery, (Mr. Hunsicker,) who appears before the Convention in an entirely new role. He appears here as chief mourner for an offspring of his which seems to have died a very natural death yesterday.

Mr. HUNSICKER. No; it was strangled.

Mr. ARMSTRONG. It was strangled; I almost expected him to appear with white handkerchief and crape. [Laughter.] It seems a little strange that the gentleman is not willing to confine his private griefs within the bosom of his family, but must obtrude them upon this Convention at a time when we are discussing other and very grave questions. I confess I cannot see what particular relation there is between the defeat of an obnoxious measure yesterday and the argument addressed to the Convention to vote down this proposition because he was defeated yesterday. He may find a logic in it, but I am not able to follow the argument.

Now, Mr. President, this is, as has been frequently said in the debate, a very grave question. I propose to modify the section, by striking out the words "fraud, bribery or undue means," in the third line of the first paragraph, and inserting "bribery, fraud or other corrupt means," and I make the same modification where the same words occur in the second paragraph.

Mr. MANN. Can that amendment be offered now?

Mr. ARMSTRONG. It is a mere modification, which is purely verbal, to which I suppose there will be no objection.

The PRESIDENT *pro tem*. The gentleman from Lycoming is premature in offering the amendment. There is an amendment to an amendment pending, offered by the gentleman from Indiana (Mr. Harry White.)

Mr. ARMSTRONG. I was perfecting the section that I offered.

In regard to the pending amendment of the gentleman from Indiana, I understand him to be in favor of the general purpose of this section, if I correctly gathered his views. I would simply call his attention to the fact that the proposi-

tion he offers was voted down in committee of the whole, not because any person disputed the propriety of such an investigation, but because it was unnecessary. The amendment as offered now is not germane to the very particular matter which is embodied in this section; and I hope that whatever may be its success when offered as an independent measure, it will not be adopted as an amendment to this. I think it ought, for the present at least, to be voted down.

Mr. HARRY WHITE. For the purpose of hastening a vote on the section offered by the delegate from Lycoming, I withdraw my amendment.

The PRESIDENT *pro tem*. The amendment of the delegate from Indiana is withdrawn.

Mr. SHARPE. I move to amend the amendment of the gentleman from Lycoming, by inserting after the word "conclusive," in the second paragraph, the following proviso:

Provided, That rights *bona fide* vested shall not be affected by said judgment.

Mr. ARMSTRONG. I will not object to the amendment. As I stated, it had occurred to me as perhaps not being necessary; but as it will satisfy some gentlemen in whose judgment I have a great deal of confidence, I shall make no objection to it.

Mr. CORBETT. I shall not detain the Convention with any extended remarks on the section offered. I simply desire to say that I am well satisfied with the action of the gentleman from Indiana (Mr. Harry White) in withdrawing his amendment, because that will be the rule applied by the courts to the section on legislation without the aid of any such section as he proposed.

I wish to say, further, as to the proposition of the gentleman from Lycoming (Mr. Armstrong) that I shall vote against it. Legislative power is given to the Legislature of the State. We have provided further for an oath—which I voted against—after they are through, purging them completely of everything that they ought to be clear of. Now, I am asked to vote for a section in the organic law by which their acts, after they have solemnly passed them, are to be submitted to a jury of twelve men who are also simply acting under oath. If I cannot trust sixty or seventy or eighty men, acting in the Legislature under oath, I do not know how I am to trust to a jury to decide on their acts afterwards.

Mr. GIBSON. I should like to ask the gentleman from Clarion whether in the trial of cases of feigned issue the verdict of a jury is conclusive? Does not the judge sit as a chancellor, and must not his conscience be satisfied, so that the verdict of the jury may be reviewed the second time?

Mr. CORBETT. I suppose this to be like every other case; the judgment of the court is to be entered upon it; but what is that? The gentleman certainly knows, as I know, that courts do not always control the verdicts of juries when they differ with them, and if they did it would then be the final verdict of one man. You undertake to put the whole legislative power of the State under a jury, and a jury empanelled in an issue between whom? The parties to the issue. Will all parties interested in that issue appear? And I ask you what better is the verdict of that jury than the act of the Legislature? The Legislature is acting under oath, and under a double oath, according to the action of this Convention, one purging them after they have performed their duties, and you are going to turn this whole thing upon the verdict of a jury. Mr. President, you have practiced in court long enough, much longer than I, and you know that the verdict of a jury is a very uncertain thing. You know the verdict of a jury is not like Caesar's wife, beyond suspicion, in all cases.

I can give my assent to no such proposition as this. I never will consent to it. I shall not travel over all the objections that may be urged against it, but I ask the Convention to pause. What do you propose to do? You propose to allow this remedy to any person who will apply under certain formulas within a year. Then how long is it to be before this trial? It may run two, three, four years. I say to you, Mr. President, that there is a better remedy, a more speedy remedy. If an act is objectionable, if an act is wrong, it can be repealed sooner than it can be set aside by proceedings under this section, and I hope that this Convention will pause before they incorporate into this instrument that is to go to the people of the Commonwealth for their sanction a section like this.

Mr. BULLITT. Mr. President: I did not hear the proceedings, and, therefore, do not know whether it is at this time in order to offer an amendment to the proposed section or not?

The PRESIDENT *pro tem*. The section itself is an amendment. There is an amendment pending to that, and a further amendment is not now in order.

Mr. BULLITT. Mr. President: Then I will indicate the amendment which I will offer as soon as it is in order to do so. The section as proposed appears to me to have certain defects in it; but if remedied, in my judgment it will be very desirable that it should be adopted.

Mr. President, there is no more familiar principle of law than this: That fraud vitiates everything. You are able to go into your courts and set aside any contract, any advantage which may have been procured in any form, where you can show that it is tainted with fraud, or that undue means or false pretences had been used to obtain that advantage. Now, while this principle pervades your whole system of jurisprudence and can be invoked by every individual for the protection of his rights and his defence against wrong, you are practically remediless when you may have a fraud practiced upon the whole people of the Commonwealth by the Legislature. It is enough, sir, that a law stands upon your statute book and is certified under the great seal of the State, to break down every ground of opposition and attack which you may make upon it. Although it may have been conceived in fraud, passed by bribery, and signed by the Governor himself for a consideration paid to him for signing it, you are remediless if it stands upon the statute book and comes with the great seal of the State. It is not enough for gentlemen to say that in the attempt which they have made to throw around the Legislature the guards which they have done, they will protect the people against the passing of acts fraudulently or having acts upon your statute book which have never been passed, or inducing the passage or signing of acts by bribery. Mr. President, it is fair to suppose that just in proportion as this Convention shall be ingenious, shall be skillful, shall be able in throwing these guards around the rights of the people and endeavoring to protect them against the wrongs of the Legislature, just in that proportion you will sharpen the intellects and make more ingenious and more skillful the men who constitute that third house, who have figured so largely in the history of Pennsylvania legislation.

Only last year in a neighboring State a law was put upon the statute book with

every appearance of fairness. It had the seal stamped upon every page of the act; it had the signature of every officer who ought to sign it; it had the signature of the Governor; and yet it was believed by a large mass of the people that that act was never before either House and never was passed by either House; and yet the people who were interested in that subject, and the State itself, were powerless to resist the effect of that law for the reason which has been given by the chairman of this committee. There should be some mode provided by which you can test the validity of an act of the Legislature which has been passed by fraud or by bribery. Tell me what mode can you adopt so efficient as this for reaching the men who may use means to obtain the passage of such a law? When you adopt this feature in your Constitution, if an act is passed by bribery there will be the strongest inducement to the men who are interested and who are to be affected injuriously or prejudicially by the act to go into the courts and endeavor to establish the fraud and establish the fact that it has been passed by bribery. In my judgment it will be the most efficient means which you could adopt to put a stop to that which, if I mistake not, was the chief cause of calling this Convention together.

I believe, Mr. President, that the people of Pennsylvania were induced to bring this Convention together for the purpose, if possible, of putting a stop to that which has been felt to be an evil as wide spread as the confines of your Commonwealth—I mean fraudulent and corrupt legislation. And I trust that you will not separate without throwing around that Legislature so efficient a guard as it seems to me this would be for the purpose of preventing it.

But I have some objections to the section as proposed.

In the first place, it seems to me that it is too broad to say whenever it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that *any fraud, bribery or undue means were employed* to procure the passage or approval of such law, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered of course. Now I suggest to the chairman of the committee that that language is too broad; that it might be held

under such a provision that, although an act had been passed fairly and by a perfectly fair majority, still if some one person had used fraudulent means in connection with the passage of the act, then it would have to be pronounced invalid! I would suggest that these words be stricken out, viz: "any fraud, bribery, or undue means were employed to procure," and that we insert after the word "law" the words "was procured by bribery, fraud, or other corrupt means."

There is then another amendment which I shall offer at the proper time. It does appear to me that it is putting into the Attorney General's hands too much power to allow him to determine the question whether this proceeding should be instituted or not. The provision leaves no discretion or power in the hands of the court to determine whether such a proceeding should be instituted or not.

That is, wherever any private individual shall allege before the Attorney General, upon affidavit, showing probable cause, that an act has been procured by these means, he applies to the court, and it shall be the duty of the court "of course" to issue this process. Now it does seem to me that the citizens or persons interested in the act should have one further guard before this proceeding shall be instituted, and that is—

The PRESIDENT *pro tem.* The gentleman's time has expired. ["Go on."]

Mr. CALVIN. I move that his time be extended. ["Go on. Go on."]

The PRESIDENT *pro tem.* The gentleman will proceed unless objection be made.

Mr. BULLITT. I will read only the words I propose.

Mr. CARTER. I think we had better adhere to the rule. I object.

Mr. LEAR. Mr. President: It has been heretofore supposed that by dividing the government into three departments we had very ample checks upon the misconduct or failure of each. But it seems by the idea which has been presented to this Convention, in the form of this new section, that it is necessary, according to the view of many of the members, to protect these different departments of the government from undue influence, and from fraud and corruption. This Convention, it is very evident, will have to resolve itself into a perpetual session and be a fourth department of the government, to see to the morals and conduct of the people of this State, that they do not go astray

and bear down to the earth the liberties and the rights of the people. We assume to possess the morals, virtue and wisdom, of the State in a pre-eminent degree. Every day of our lives, since we have been an organized body, we have prayed to God, and thanked Him that we are not as other men are, and especially as members of the Legislature are. [Laughter.] Now we propose, here in this Constitutional Convention, to adopt a provision which shall put on trial not only the legislative but the executive department of of this government, for the purpose of ascertaining whether they have been guilty of bribery, fraud or other corruption in the procurement of the passage of an act of Assembly! Why this is a most extraordinary proposition of reform, and an unheard of proceeding, and I do not wonder that the gentleman who proposes it is sensitive on the subject, when the gentleman from Montgomery retorts with some of the arguments that were used against his amendment of the day before, that it was matter of legislation, and thought that these arguments grew out of a particular private grievance of the gentleman who thus opposed this section.

This section, I believe, is not an emanation of the Committee on the Judiciary, but, as suggested by some of the members and reported here by the chairman of that committee, as an independent amendment to come in at this particular place. It proposes a trial, and a trial by jury. A trial for what purpose? A trial of the House of Representatives, and of the Senate, and of the Executive of the State, because you have got to reach them all. What method or mode does the gentleman from Lycoming propose to try the court and the jury that may be called on to try the case which have tried the members of the Legislature and the Governor of the State, to see whether *they* were bribed or corrupted in the verdict of judgment which they shall have rendered? What method will he provide for trying the judiciary of the Commonwealth to see if it is always pure, and whether the judgments of the Supreme Court and the opinions of that bench have been procured by the use of money, by bribery, corruption, undue means or undue influence? We are to try the act of Assembly, and its validity is to depend upon the verdict of a jury. We are to try the validity of the law as to whether the members of the Legislature were "seen," and when a trial of that kind

comes up it will be one of the *causes celebres* of this country, and will equal in the comic papers, if in no other place, the great trial of Bardell against Pickwick, reported in First Pickwick Papers, and the great trial of Jarndyce against Jarndyce, reported in First Bleak House, and the great trial of the Constitutional Convention against Boyd, tried upon one of the islands of the sea a few weeks ago by the members of this Constitutional Convention, with your Honor presiding. [Laughter.] That is a manuscript case not yet reported. I say that this trial will be as comical, as absurd, as extrajudicial, as unheard of as some of the proceedings reported in those cases, and the Sergeant Buzzfuzz who manages the case upon the part of the Commonwealth, whether he comes from Lycoming county or from some one of the adjoining counties, when he argues the corruption of the Legislature before a court and jury, will indulge, I have no doubt, in some of his very highest flights of eloquence.

It is provided in this section that it shall be tried upon proper proceedings and pleadings, and the proper presentation would be, I suppose: "The Commonwealth of Pennsylvania, *ex relatione* Samuel E. Dimmick, Attorney General, *versus*"—against whom? The court shall name a proper defendant. I presume it had better be against the members of the Legislature, and I congratulate the gentleman from Indiana, who is standing before me, that he is no longer a member of the Legislature, though some of his acts may come up for trial within the year. "The Commonwealth of Pennsylvania, *ex relatione* Samuel E. Dimmick, Attorney General, *vs.* the members of the Senate and House of Representatives and the Governor of this State."

Then the proper pleading, I contend, would be upon a bill of indictment, in which, as drawn by the attorney prosecuting the case, it would be alleged that the grand inquest of the Constitutional Convention of the State of Pennsylvania, upon their oaths and affirmations, do present that the Governor and Legislature of Pennsylvania, not having the fear of God before their eyes, but being given

"To ways that are dark,
And to tricks that are vain."

and moved and seduced by the instigations of the devil, on the blank day of blank, at the capital of the State, and within the jurisdiction of this court, did wilfully, maliciously and corruptly ac-

cept, take and receive ten pieces of tissue paper signed with the name of "Spinner," commonly called "greenbacks," of the value of one hundred dollars each, and all of the value of one thousand dollars; ten pieces of gold of the value of ten dollars each, and all of the value of one hundred dollars; five baskets of champagne, of uncertain value, and ten gallons of whisky, of the value of ten votes, to influence them in voting for and passing and approving an act to prevent, &c.; and in consideration thereof they did then and there corruptly pass and approve said act, to the great damage of the people, to the evil example of all others in like case offending, and against the peace and dignity of this Convention, and especially the Judiciary Committee.

The defendants being called up and directed to hold up their right hands, and inquired of whether they are guilty or not guilty, by their attorney would plead the general issue, "*non culpabilis, et de hoc super ponit patriam.*" And if they have a shrewd and skillful attorney, one of the honorable gentlemen of this Convention, he would plead specially "kleptomania," which is a peculiar manifestation of insanity, the symptoms of which are: An "itching palm," communicating to the brain violent felonious impulses, under the influence of which the victim is irresponsible for his acts, and is irrepressibly impelled to seize and hold for his private use all articles of property. This is, or ought to be, a defence to all bribery or theft, as insane homicidal impulses relieve a prisoner from the consequences of the crime of murder.

The PRESIDENT *pro tem.* The gentleman's time has expired.

Mr. LEAR. Then the further recital of the events of the trial cannot be given, the case being now only at issue.

Mr. DARLINGTON. There are some objections which have not been presented to this Convention and which I desire to present to the consideration of its members. The amendment of the gentleman from Lycoming is too broad and embraces too much by far in my judgment to receive the sanction of this body. Under it every public law which may be passed by the Legislature may, at the instance of anybody who may allege that there was undue means used in its passage, be sent for trial to a court and jury. However much I might be willing to agree with those who favor this idea, who declare that no man should take advantage of

what is fraudulent or wrong in the passage or procuring of any legislation in which he was specially interested, I cannot consent to allow a public law which operates upon the whole Commonwealth, and in which every man may be interested and is interested, to be set aside because of the undue means used to procure its passage.

Nothing that I can imagine would be more unjust. Suppose I am interested if you please, to give you an example, in some change in the law of descent, or some change in the tax laws of the Commonwealth, or any other public matter in which every citizen of the Commonwealth is alike interested; and the Legislature should be by me induced, by private solicitation, which I believe has been fulminated against by us, or by the use of improper means if I were so corrupt as to use them; by bribery, if you please, of the number who might constitute a majority, to pass the law. Suppose I were by the use of any of these means to induce the Legislature to pass a law of a public nature, under which every man in the Commonwealth might have vested rights and in which all would be alike interested with myself. Does the Convention mean to say that that law, that public act, which all might approve, should be set aside and held for naught at any time after one year should elapse, by a jury selected at any point where the court trying this case should sit? I am not willing to go that far, and I do not suppose the members of this Convention mean to go that far. A public law must be held to be binding upon us all, and it will not do in the administration of any government to permit to be lightly set aside the seal which is attached to that law by the proper officers, and which assures the public that the Governor has signed it, and his signature assures the public that it has been signed by the speakers of the respective Houses, and which signatures of the speakers assures the public that it has been properly passed by a constitutional majority of both Houses. I say it will never do to allow any court, under any circumstances, to go behind this certificate of the Governor and inquire into the manner in which it was passed. I am speaking now of a public law in which all are interested.

The answer I know will be made, or may be made, or suggested, that legislation may take the shape of public laws although private individuals alone may

be interested. This may be so in the origin of the law, and generally speaking all public laws have their origin in some one's brain. Some man who thinks it would be better that a certain law should be passed convinces the Legislature that it would be better for the whole community that it should be passed.

Now you have prohibited special legislation; and all private legislation, all legislation for individuals or corporations in which they are specially interested becomes impossible. Public laws alone shall be passed by the Legislature, laws affecting all the people alike, laws affecting all classes alike. It will never do to permit them to be questioned when passed through all the constitutional forms, and certified by all the officers whose signatures are required. What assurance have we but this? What can we rely upon but this? Would it ever do then to permit a law that is passed affecting everybody in the Commonwealth to be set aside at the instance of any one Attorney General, any court or any jury? I submit that it would not.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Franklin (Mr. Sharpe.)

The amendment was rejected.

Mr. BULLITT. I propose now to offer the following amendments: To strike out in the third and fourth lines the words "any fraud, bribery or undue means were employed to procure," and to insert in the fourth line, after the word "law," the words "shall procure by bribery, fraud or other corrupt means."

Mr. ARMSTRONG. I hope that amendment will be adopted.

Mr. BULLITT. There is still another amendment which I desire to offer, to strike out the words "of course," in the sixth line, and insert "if there appear to the said court or to the said judge to be such probable cause."

Mr. ARMSTRONG. I think that amendment also should be adopted.

Mr. BULLITT. I now desire that the section as I have proposed to amend it be read.

The CLERK read the amendment as proposed to be amended, as follows:

"Whenever, within one year after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud,

or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to the said judge such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be tried upon proper pleadings by one of the judges of the Supreme Court in whatever county the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that bribery, fraud or false pretenses have been used to procure the passage or approval of the same, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within six months, and not thereafter, to a writ of error as in other cases.

"No officer of the Commonwealth, nor any officer or member of the Legislature, shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution."

The PRESIDENT *pro tem.* The hour of one o'clock having arrived, the Convention takes a recess till three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

The PRESIDENT *pro tem.* The Convention resumes the consideration of the article reported by the Committee on the Judiciary. When the House adjourned the pending question was on the amendment of the gentleman from Philadelphia (Mr. Bullitt) to the amendment of the gentleman from Lycoming (Mr. Armstrong.) The amendment to the amendment will be read.

The CLERK. In the third and fourth lines of the amendment it is proposed to strike out the words, "any fraud, bribery or undue means were employed to pro-

cure," and insert after the word "law," in the fourth line, the words, "was procured by bribery, fraud or other corrupt means;" and in the sixth line to strike out the words "of course" and insert in lieu thereof, "if there appear to the said court or to such judge to be such probable cause," so as to read:

"Whenever, within one year after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General, by affidavit showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause."

MR. CORSON. Mr. President: I believe that if a law be procured or signed by means of any unrighteous proposal, it should be abrogated by the *officio* of the first power that can be invoked; it should be expurgated, expurgated, and no record of it left in the statute book of the State.

I am perfectly willing, if the other members of the Convention will agree with me, that we shall proceed to the consideration of the remaining propositions before this Convention without any speeches. I proposed here one of the most important sections, and the one which contains the widest departure from old forms, and which was adopted in committee of the whole and also upon second reading, and I never made a speech in its favor; and that was the section allowing a limited vote in the election of the two judges of the Supreme Court; and I do firmly believe that there is nothing made by all this speech-making. But as others have discussed this question so fully, and my silence may be misinterpreted, I propose in the few moments allotted to me to say to the members who have argued so ardently against this section, and who are the delegates opposed to concluding our labors in this hot season, that if they would submit their amendments in writing and save their breath we would consummate our constitutional efforts inside of ten days; but the very men who say they are unable to sit out the working of this Convention through the warm weather are those who most expend their strength and energies in useless eloquence

and oratory in this Hall. We listened to the numerous speeches this morning, and what did we gain from them? Of course it was proper for the author of this most important reformatory measure to expound it at large, and I was glad that he did explain it, because I knew that it would be opposed; for every new and great reform meets formidable opposition. I was surprised that my colleague, (Mr. Hunsicker,) by whose side I stood in the great reform which he proposed, should oppose this section with so much warmth and unusual feeling, merely because we were defeated yesterday in our struggle to make the bounds of freedom wider yet by shaping a decree to strike the shackles from the poor man in the pursuit of justice.

MR. HUNSICKER. I rise to a personal explanation. The gentleman misrepresents me. He says that I opposed this proposition simply because I was defeated yesterday in the one I offered. I did not. I opposed it because I believed it to be utterly impracticable, and would produce more mischief than the evil it was intended to remedy.

THE PRESIDENT *pro tem*. The pending question is on the amendment to the amendment, proposed by the gentleman from the city (Mr. Bullitt.)

MR. CORSON. I support the amendment proposed by the gentleman from Philadelphia (Mr. Bullitt.) I say that although we were defeated in the proposition which we brought before this Convention which would enable the people of the Commonwealth of Pennsylvania to take their cases into the Supreme Court in every question which involved any one of the inalienable rights of the citizen, yet we are not dismayed, and I shall not cease to be the advocate of progress and reform though I should be voted down every time. This is a substantial reform, because wherever a law has been procured by fraud there should be some tribunal by which that fact can be ascertained, and if fraud can be established the law itself should be forever annulled; and I shall go on, as I have done during my short life, to advocate every measure which I believe to be in the interest of enlarged liberty and political purity, whether success crown my efforts or they end in invariable defeat. Whilst in 1856 I found myself in a political minority, in 1860 we carried the county by a transcendent majority. Every defeat does not destroy an army.

"They never fail who die in a good cause.
The block may soak their gore, their heads may sod-
den in the sun,
Their limbs be strung to city gates or castle walls,
Yet still their spirits walk abroad, and though years
elapse
And others share as dark a doom, they but augment
the deep
And sweeping thoughts which overspread all others,
And conduct the world at last to freedom."

I have listened to many speeches in this Convention from gentlemen who I know when they come to read their own remarks in future years will be ashamed of them. I was surprised at my distinguished friend from Bucks (Mr. Lear) this morning when he attempted, by ridicule, to drive us away from a faithful consideration of this question. Sir, I repeat it, the pending proposition provides not only for a substantial but a much needed reform; it is a step forward; and I trust that when the members of this Convention come to perfect this measure and consider it fully they will adopt it, not exactly in the terms in which it was originally couched, but in the form in which it shall appear when finally perfected and amended.

It has been said on this floor that for a long time after a statute shall have been enacted the people will not know, until some one shall test it, what is the law. Why, sir, of course the enactment will be the law of the land until abrogated by the decision of a court, just as to-day the infamous legislation of our State is the law of the land until repealed or adjudged to be unconstitutional.

But we have established biennial sessions of the Legislature, and we cannot expect that a law can be repealed at least until two years have expired; but when I have read to you the amendments that I propose, you will find that within three months, within one week, after a law shall have been passed by fraud, corruption or mistake, the people of Pennsylvania will have a remedy by which they can test its validity, and if it turns out to have been procured by fraud or false pretenses it can be annulled and wiped out, or restricted in its wicked purpose by the order of a court.

We are not here to adopt everything which is in the old Constitution merely because it is there. We are not here to be cried down by men who pay no attention to the business which is progressing before this Convention; but we are here for a wise and earnest purpose, and to inaugurate and achieve, if possible, certain

permanent reforms demanded by the times in which we live. We all do know that laws have been passed by false representations made to the legislators of the State—and I do not arraign our law-makers as corrupt; but the men who go to the capital to procure improper legislation are to be curbed and shorn of their functions by this section.

The lobby will be there, and they will make false representations as long as their occupation is profitable, and statutes will be forced through by means of these illegitimate influences about which the people can know nothing until after publication in the form of public law.

This is a good section; it ought to be adopted and made a part of our fundamental law; and when it shall have been amended as I have proposed to the chairman of the committee, and I suppose it will be so that it will be expressed as I have it in my hands and shall now read, I believe it a proper measure to be incorporated in the Constitution of our State, to remain there forever. Now I will read the proposition of the gentleman from Lycoming as I think it ought to be remodelled, and as it will be amended before we get through with this discussion.

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General, by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court in whatever form and in such county as the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that the passage

or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive: *Provided*, That rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment; and the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled, within three months and not thereafter, to a writ of error as in other cases.

"No person shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution, except for perjury therein."

Mr. HARRY WHITE. A word, sir, before the final vote is taken on this question. When I had the honor to have the floor this morning I simply explained the effect of the amendment which I then offered and which was the immediate question before the Convention. Subsequent consultation, however, with some of the friends of the amendment satisfied me that it could not prevail, and I was convinced that my duty would be performed by withdrawing the amendment and voting against the proposition offered by the delegate from Lycoming (Mr. Armstrong.)

The delegate who spoke first after me this morning, the gentleman from Dauphin, (Mr. MacVeagh,) found fault with my observations, because they failed to meet the practical evil of which the public complain, to wit, bribery and corruption in the passage of bills through the Legislature. If the amendment which I offered, and which I had the honor to report substantially with the assent of a majority of the Committee on Legislation originally, had any philosophy at all, it was this: There were certain great, prominent, patent evils in the manner and form of the legislation of our State; some of these were haste and recklessness with which bills were passed. From time to time we have read the flippant charge in the newspapers that bills are passed by the Legislature only by their titles; that no committee primarily gives them that deliberative consideration the Legislature of a free State should always require. Indeed, the great want of our legislative assemblies seems to be prudent deliberation. Deliberative consideration is not always wanting, however, in our legislation. I am surprised at the position of

the distinguished delegate from Lycoming since his moderation hitherto toward the Legislature. Heretofore he has refused to utter indiscriminate charges for bribery and corruption. And surprise is natural when he, as chairman of the Judiciary Committee, at this late day in the Convention, offers a proposition so flagrantly invading our representative system of government.

The delegate from Bucks (Mr. Lear) spoke well when he called the attention of the Convention to the fact that the pending proposition was at war with the principles of a republican government. Pass this section and the people in their sovereign capacity will no longer hold their immediate representatives responsible for their official actions. The representative, returning to his constituents, cannot point with confidence to his acts, saying: "Here are the fruits of my labor; these are the laws passed by the legislative body to which you sent me." Another department of the government must first inspect the proceedings before they have the efficacy of law. Sir, the careful provisions you have placed in the legislative article you would promise to be without value. Turn, sir, to the article we have carefully passed, regulating the manner of passing bills, you will find a panacea for that hasty and inconsiderate legislation which, in the language of some gentlemen, has hitherto disgraced the statute books. Let it never be placed in our organic charter that the existence of a law shall depend upon the paid evidence of some interested individual who is opposed to its passage. Stripped of all logic, stripped of all sophistry, that is the naked question now before this Convention. Pass this proposition, there will at once be an end to the independent action of the representatives of the people.

I take up this provision and I read:

"Whenever, within one year"—

I believe it is changed to three months

— "after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General, by affidavit, showing probable cause to believe that any fraud, bribery or undue means" were used to pass a statute, a feigned issue shall be had, a jury trial shall be organized, and if such jury decide that undue means, fraud or bribery have been used in the passage of this law, the action of a co-or-

dinate department of this government is swept from the statute book.

Sir, as a delegate in this Convention I will never give my assent to such a heterodox in our political system, a heterodox of the worst character; and I trust that this Convention will not submit to the sovereign people a proposition which so solemnly and presumptuously invades their prerogative. Undue means! Corruption! Bribery! Fraud! What is it? Who is to interpret it? Is the sanctity of a man's oath nothing? Is the responsibility which the representative immediately owes to his constituents to go for nothing? Is the oath which is registered in heaven to faithfully perform his duty to go for nothing, because of the whim or the caprice, possibly, of a prejudiced jury? I trust we will pause long before we place a provision of this kind in our organic law. Pass this feature, and you say that all our provisions, all the sacred guards which we have been throwing around the manner of passing bills, are for naught; that we have thus far experimented in vain; that we now, in the closing deliberations of this body, have discovered the corrective of all the ills of legislation; a jury of laymen—a jury selected, possibly, from a prejudiced community—will investigate whether fraud, or corruption, or bribery, has passed a bill; some interested lobbyist is to tell his story, and a wise statute may be erased by a partial jury.

Time and again, Mr. President, bills have been passed in the Legislature which should not have been passed, and I had the honor, if you will allow me to refer to it, since it has been alluded to in the debate, to investigate, as chairman of the Senate Judiciary Committee, not exhaustively indeed, the manner in which a certain bill to which reference has been made was passed. We did not make a thorough and exhaustive investigation because of the existence of a certain contested election case, which required the time and attention of that committee in 1872. It was impossible, because of the limited time allowed, to make a final report satisfactory to all parties. It was stated, however, upon the floor of the Senate, in advocacy of the passage of a bill to repeal what is known as the grade law, that twenty Senators in that body had never voted for the bill. The way in which it was passed was this: It was read in manuscript. The committee was discharged summarily, the bill was

placed immediately on its passage, without reading, in the shell of another bill, on which was marked all the forms of legislation. Thus placed, the bill went to the Executive, and without proper and exhaustive examination was signed. It was never considered or discussed in a legislative body.

That was an evil; a deplorable one—a shame upon the legislation of our State. Pass the amended Constitution, pass the features which we have suggested in the article on legislation, and an occurrence of that kind can never take place again. That is the result of passing a bill through three readings upon one day, of passing a bill without referring it to a committee, of passing a bill without requiring it first to be printed. All these things we have provided for, and a repetition of an offence of that kind can never occur in the future.

But, sir, I must hasten on. Acts of Assembly are to be declared void because of fraud and corruption. Who is to pass upon that? What is bribery and corruption? The paying of money or threatening individuals with political influence? Why, sir, I have seen in my brief legislative career representatives of different bodies, Workingmen's Benevolent Associations, if you please, coming from the mining regions and asking for particular legislation to be passed in their interest, and when members, in the exercise of their independent judgment, refused to vote for the bill I have seen representatives of that organization come and threaten them, saying, "we represent seventy-five thousand voters; vote against this bill, and your political future is doomed." I have seen that effectually used as an argument, and men who at one moment refused to vote for the measure surrendered to this denunciation. Is that corruption? Is that kind of influence to be regarded as pure or not? Pass this section, and I submit that influences of that kind will be used and taken into our courts and submitted to juries to affect the validity of statutes.

I submit then, sir, that in view of the uncertain character of this provision, in view of the uncertain kind of corruption, the uncertain kind of undue means referred to here, the uncertainty of what is meant by bribery and corruption, the Convention should refuse to adopt this section, for if you adopt it statutes solemnly passed hereafter cannot possibly have the sanction of law.

Mr. CALVIN. The gentleman who has just taken his seat told us that he withdrew his amendment because he supposed that this section could not pass; and he was therefore willing that a vote should be taken upon it directly. I hope the gentleman is deceived in his calculation with regard to the fate of this section. I am sincerely and earnestly in favor of it, and I do hope that it will pass. It proposes simply to declare that all fraudulent legislation shall be void, and provides a mode of ascertaining the fact whether it is fraudulent or not. Certainly no man on this floor will maintain for a moment that an act of Assembly which was procured by fraud or bribery or corrupt means ought to stand.

Sir, you know, and every lawyer knows, that fraud destroys whatever it touches. Contracts, bonds, mortgages, judgments and decrees of your courts, aye even the great seal of the Commonwealth, that has been alluded to, crumble into dust at the touch of fraud. Fraud, like the angel of death, annihilates everything it touches, and why should it not annihilate an act of the Legislature passed by fraud, bribery and corruption? Is the Legislature to be elevated above all other branches of the government? We are told that the three great branches of the government, the legislative, executive and judicial, are co-ordinate and co-equal. The truth is, however, that the legislative branch is the preponderating and over-mastering branch of the government. It can impeach and remove your Governor; it can impeach and remove your judges; and it claims, and its friends here claim for it, absolute impunity. We have been told by one gentleman here, the gentleman from Indiana, (Mr. Harry White,) that if we attempt to declare those acts which are procured by fraud and bribery null and void, we are overturning our representative system of government; and by another, the gentleman from Bucks, (Mr. Lear,) we are told that we are performing a farce here, and he undertakes to produce before us a farcical and ridiculous trial in which the Legislature is made a defendant. Pray, sir, where is there any thing ridiculous or farcical; or how can it be alleged that we are overturning our representative system by providing means of ascertaining by the Supreme Court and a jury whether what purports to be an act of Assembly was passed by fraud and bribery—or whether it was passed at all—whether it was passed by the

clerks without the assent of either House, as has occurred on more than one occasion. Must the people of this great State submit meekly and without inquiry to every thing wearing the forms of an act of Assembly, whether it be indeed an act of Assembly or not? But another gentleman says, let the next Legislature repeal it. But the fraudulent act may have the form and character of a contract, and then the Constitution of the United States and the decisions of her Supreme Court under it would prevent the repeal.

Now, Mr. President, it is true, as the gentleman from Indiana and the gentleman from Lancaster (Mr. Carter) and several other gentlemen have said, that we have provided many guards against fraudulent, hasty and corrupt legislation. But sir, suppose fraud and villainy should break through your guards, should scale your barriers, and procure the passage of a fraudulent act; pray tell me, shall it be enshrined? Shall it be made sacred, and crowned with impunity?

The Legislature may pass as many idle, silly and unconstitutional laws as they please: but we undertake to say by this provision, that if they pass by corrupt means an act of the Legislature, it shall stand no higher than the judgments and decrees of the courts, tainted by fraud; that it shall not be held as sacred, but shall be null and void.

It is very true that we have provided many guards, and those guards I have no doubt will prevent much legislation such as we have seen in the past. But the case of *Fletcher vs. Peck*—a case which originated in fraud and villainy; a case that was conceived in sin and brought forth in iniquity, and which was, according to the statement of Chief Justice Black, a fraud and a sham from the beginning to the end, (the lawyers on both sides being interested in procuring the same result)—has been a rule of law which has been followed ever since, and it has secured and rendered sacred all acts of the Legislature, however passed.

I submit to this Convention whether it is wise, whether it is statesmanlike, to submit longer to so absurd a decision of the courts? We have been doing all we can to prevent hasty and corrupt legislation; but shall we say by refusing to pass this section that if fraud and villainy shall only succeed—if they shall only break down the guards and mount the barriers we have erected, then they shall meet with impunity? That fraud and villainy,

if successful, shall reap the rewards of their own iniquity? Is it possible that this body will refuse to pass this section and thus proclaim impunity and protection to successful fraud and villainy? It appears to me, Mr. President, that we ought to inscribe in the Constitution the great principle that fraudulent legislation, like all other fraudulent transactions, shall be null and void; and that will do more to purify your legislation than all the guards and all the barriers that you have erected.

Mr. DALLAS. Mr. President: I feel, of course, embarrassed in rising to advocate a section which the gentleman from Indiana (Mr. Harry White) has pronounced heterodox, but I do not know precisely what he means by that. I do not suppose—and I presume the gentleman from Lycoming himself does not suppose—that this section is in every word, as written, perfect. I have had the honor to sit under that gentleman in the Committee on the Judiciary, and I know that if it were possible for any gentleman, by close application and care in preparation of a section upon any subject, to render it perfect in every particular, we might rely for that perfection upon the gentleman from Lycoming.

But, sir, in some of its particulars this section does not meet my approval, and it is evident that all its details are not satisfactory to other delegates. I concur with those gentlemen who deem it to be objectionable that an act of Assembly should be declared to be invalid because one member of the Legislature may have been bribed, when, in fact, it had passed by a considerable majority of honest votes; but that is no objection to the principle of the section. The section may be so amended as to make it mean and express simply that where a statute has been procured by fraud or corruption it shall be void, and not otherwise. In that shape, and in that shape only, I can cheerfully vote for it.

I think it also objectionable that we should make it possible that an act of Assembly may be nullified so as to affect rights vested between the date of its passage and the date at which it might be declared under this section to be invalid. Neither in that, however, is the section necessarily fatally defective. It can be, and I trust will be, amended so that between the day of the passage and the date of the declaration of the invalidity of a law, acts *bona fide* done and rights ac-

quired under the statute shall not be affected. That is but reasonable and fair, because no act of Assembly will ever be declared invalid by corruption unless, first, some party has had sufficient interest to corrupt; and second, some party has an interest to have it invalidated, and it is but fair that, as between such two parties, the same race of diligence should be had that the law commends in other cases, and that any party who desires that a law shall be declared invalid shall take the proper steps to that end so early that he shall not interfere with the vested rights of parties who in the *interim* have, in good faith, acted upon the validity of the statute.

But, sir, with these two amendments, and perhaps some minor ones, what possibly can be the objection to this section? It is said that there can be no necessity for such a section, because we have already surrounded the Legislature with such restrictions that there is but little danger that it will transgress against the people. Mr. President, I hope that this is true. I hope that there is but little necessity for this section; but if there be never so little, it should be passed, and if there be none, there can be no harm in it.

It is not only in its direct effect but in its indirect effect that this section will be peculiarly valuable. I believe it is true that there will probably be but few or no cases under it, and for this reason every legislator, with this section in our Constitution, would be admonished, during every day of his term of service, that every time his hand should open to a bribe he would incur the risk of being brought before a court of the Commonwealth, and there be subject to searching scrutiny into the secret of his corruption. I believe that that fear would greatly tend to purify the legislative bodies of this State; and if this section can effect no other good purpose, yet for that alone we should adopt it.

It is hoped that by an increase in number, and by the care we have taken in many other particulars, the Legislature will be more pure in the future than it has been in the past. But no man believes that an impure or corrupt man may not still creep in; and when he does so, when he has evaded every other precaution, this fear will still hang over him, and keep him to the faithful discharge of his duty, and he will assume a virtue if he has it not.

But the objection is made that this section confounds the different branches of the government. I would think that a serious objection if I believed it well founded. But, sir, the section would do nothing of the kind. Gentlemen cannot forget that there is no act of Legislature which is not subject to revision by the judiciary of the Commonwealth, and not one whose construction does not depend upon the judiciary of the State, and that judiciary has already gone so far as to insert words where necessary, in their view, to the proper construction of the act; and more than that, sir, acts themselves are every day set aside and declared null and void as contrary to the Constitution.

Does anybody, at this late day, need to have the long since exhausted argument reiterated against the position that in so doing the judiciary encroach upon the legislative function? That is an old subject of debate, and was long since disposed of. The acts of the Legislature of the State of Pennsylvania are not its laws if the judiciary of the State pronounce them to be unconstitutional. Now, this section provides simply that new grounds of unconstitutionality shall be created, and that hereafter no act shall be constitutional which is not in harmony with a section of the organic law which shall say that fraud or corruption vitiates even the acts of the Legislature. This is the entire answer to the argument of the gentleman from Bucks, and the latest argument of the gentleman from Indiana on the subject of the division of the powers of government. The judiciary have always had the power to review acts of Assembly on the grounds of constitutionality, and this is but adding one ground for consideration in such review.

It has been further said that it is unsafe to trust this question with a jury; but we will have under this section a new element introduced in determining the question of the constitutionality of an act of Assembly. It will be necessary to examine questions of fact, and parties upon both sides will be entitled to a jury trial, and by a jury can a question of fraud or corruption be best determined. Those are the very questions which, in all private causes, it has always been supposed are especially proper for trial by jury, and it is intended by this section simply to remit those questions to that tribunal.

But, says the gentleman from Indiana, are the oaths of members to go for nothing, and is the vote of the represen-

tative to be overturned by the verdict of a jury? Why, sir, the answer to that is that a vote that is bought—a vote that is corruptly cast—is no vote. He represents no constituency who votes upon a bribe. His constituency is practically disfranchised, and he represents no one but the corrupt gift-giver. He is his representative solely; and instead of voting for a constituency, he merely exercises an agency for a corrupt purpose, and a court and jury should be permitted to set aside his action as in a case where the duties of a private agency are disregarded by the agent, and the interests of his principal sacrificed to a corrupt or fraudulent purpose.

The PRESIDENT *pro tem*. The delegate's time has expired.

MR. BUCKALEW. This is a proposition offered by the gentleman from Lycoming (Mr. Armstrong) that an additional requirement shall be placed in the Constitution regarding acts of Assembly. He proposes that we shall provide that an act of Assembly shall be honestly passed, that it shall not be passed by bribery or by fraud or by any form of corruption; that if the passage of a law be tainted with fraud or corruption, the question may be judicially investigated, and the fact being ascertained, the law shall be pronounced unconstitutional and void. The courts now pronounce, as the gentleman from Philadelphia (Mr. Dallas) has so well argued, any act of Assembly void for unconstitutionality, but not because it has been passed by corrupt influence, for there is no constitutional requirement at present that laws shall be honestly passed.

The only difference that I discover in classifying this proposition with other propositions, covered by the power of the courts to pronounce acts void for want of conformity to the Constitution—the only difference that I can discover in making this classification is that in cases under this amendment the court will call to its assistance a jury in order to ascertain how the fact may be. Ordinarily the elements of judgment for a court appear upon the face of the statute itself as compared with the Constitution. In these cases, as a fact is to be ascertained, the intervention of a jury becomes necessary. Therefore a jury is to be empanelled, who, under the direction of the court, will determine the fact in controversy was or was not the statute passed honestly through the two Houses of the Legisla-

ture and honestly signed by the Governor of the Commonwealth?

I do not see anything very novel, extraordinary or alarming in this proposition. But the question remains, and it is a proper one for consideration: Is it expedient to place such a provision as this in the Constitution? I observe that there is a great difference of opinion among my colleagues on this floor, and for that reason I speak at this time.

These general charges of corruption upon the Legislature, or rather upon a small part of the members, for it is not intended ever to corrupt them all, but only so many as are necessary to constitute a majority to pass a bill—this general cry of legislative corruption is an evil in itself. It may be a necessary evil under some circumstances, but it is unquestionably a great evil; its effect upon the public life of the State and upon the morals of the people of the State is in the highest degree pernicious.

My idea in reference to an evil of this sort is that it shall not be talked about unless the discussion is accompanied with a blow, with something that tends to check or mitigate or destroy the evil. I grant you it is perfectly legitimate, here and now, to discuss this question because we have before us a practical proposition to abate this evil. Ordinarily indiscreet discussion of this subject is pernicious. Discourses of this sort go out over the State, and I have no doubt that they cause many men in different parts of the State to come forward as candidates for the Legislature who otherwise would never think of it. There are plenty of men seeking nominations for seats in the Legislature who are brought forward by these very denunciations of legislative corruption; men who think it would be a good thing to get there themselves and participate in the enjoyment of those favors which, according to the public rumor, the third house distributes to the first and second houses. I am entirely in favor of arming the courts, or a proper court, in this State with power to say that an act of Assembly shall be void, and be pronounced unconstitutional when it is fraudulent. I see no objection to that. As I said before, the only point for discussion is the question of expediency, as to the instrumentality by which to reach our object.

There is one thing material to observe, however, here, in connection with the remarks made by sundry gentlemen, particularly by the member from Indiana,

(Mr. Harry White;) that is, that these regulations which you have provided in the article on legislation do not reach this evil of corruption in the passage of laws. At all events the effect of any of these regulations as a check on corruption must be indirect and but of small account. Corrupt legislation almost invariably, though not always, goes through all the forms required by the Constitution. Corrupt legislation is carefully formed by its authors. They "make clean the outside of the cup and the platter." The corruption and the evil is within and hidden, and the simple question is whether you will arm the judicial power of this State with authority to penetrate beneath the fair outside and detect and repress one of the capital evils of our political system. Well, the Attorney General is to be called upon. Now, there is objection in a case of this kind to allowing anybody in the State who may desire to challenge an act of Assembly to go into a court and call in question the constitutionality of a statute for fraud. That is not to be thought of. Therefore, you have here provided a single hearing of such question, a hearing within a brief time after the act is passed—three or six months—a hearing only upon the information of the Attorney General—a hearing by the highest court of the State or by one of its selected judges—a hearing under all the forms and guarantees even of the common law—trial by jury under the instruction of a court. What additional guarantees can you have that an investigation of this kind will be fair, thorough, intelligent and effectual; yes, and as a gentleman before me reminds me, in case of error from any cause, a prompt hearing by the full bench of the Supreme Court promptly afterwards.

Now, sir, I say here in my place that no citizen of the State, no corporation of the State, no municipality of the State, interested in your laws, can object to this requirement that your laws shall be honestly passed, not merely through constitutional forms, but with the baptismal blessing upon them of that justice which, in the language of Hooker, "constitutes the very foundation of the Eternal Throne."

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. ARMSTRONG. Before the Convention proceeds to vote I desire to have read at the desk the modified form in which I have endeavored to embody the various

valuable suggestions which have been made.

The *PRESIDENT pro tem.* The question now is on the amendment to the amendment.

Mr. ARMSTRONG. I think I have a right to have the proposition read for information in the shape in which I desire to put it.

The *PRESIDENT pro tem.* The original amendment will be read for information in the shape in which the delegate offering it desires it to stand.

The CLERK read as follows:

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court, or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court, in whatever form and in such county as the Supreme Court may direct; and if it shall appear to the court and jury upon such trial that the passage or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive: *Provided*, That rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within three months, and not thereafter, to a writ of error as in other cases.

"No officer of the Commonwealth, nor any officer or member of the Legislature shall be exempt from testifying when re-

quired in such case, but the testimony of any such witness shall not be used against him in an criminal prosecution, except for perjury therein."

The *PRESIDENT pro tem.* The pending question is on the amendment of the gentleman from Philadelphia (Mr. Bullitt.)

Mr. ARMSTRONG. Allow me one word of explanation. I have now embodied in this proposal the amendment of the gentleman from Philadelphia (Mr. Bullitt) and also the amendment of the gentleman from Franklin (Mr. Sharpe) and others, and I think it now embodies the united judgment of the Convention, so far as suggestions have been made in amendment of it. If the amendments are voted down, so that we can get to the section, I will then offer this as a substitute.

The *PRESIDENT pro tem.* The question is on the amendment to the amendment.

Mr. ANDREW REED. I do not propose making a speech on this subject. I will not detain the Convention more than a moment, but I have my own views on this matter, and I desire to express them. I am in favor of the section, saving and excepting that I am opposed to that provision which saves vested rights. I do not think there is any necessity whatever for that, and we are only placing in there a means by which the good of the section will be frittered away.

Now, when we put in the Constitution that every act of Assembly within six months must be subject to this revision every person who gets any rights under it has full knowledge of it.

It was but a short time ago, against my conviction, that this body voted that they would have only biennial sessions. I think it was a great mistake; but if we can wait two years to have legislation passed it will not be long to wait for six months more, and then those who get rights under it will know certainly whether they will be affected by this or not. I think it is only weakening it, and I trust that the measure will not be adopted.

The *PRESIDENT pro tem.* The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The *PRESIDENT pro tem.* The question now is on the amendment of the gentleman from Lycoming.

Mr. ARMSTRONG. Now I move this as a substitute:

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud, or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court or one of the judges thereof, for process in an appropriate proceeding, which shall be ordered if there appear to the said court or to such judge to be such probable cause, and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct shall be defendant, to try the validity of such act of Assembly, whereupon the court shall direct publication of the same; and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto.

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court, in whatever form and in such county as the Supreme Court may direct; and if it shall appear to the court and jury upon such trial that the passage or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive: *Provided*, That rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within three months, and not thereafter, to a writ of error as in other cases.

"No officer of the Commonwealth nor any officer or member of the Legislature shall be exempt from testifying when required in such case; but the testimony of any such witness shall not be used against him in any criminal proceeding, except for perjury therein."

MR. ANDREW REED. I move to amend that by striking out the proviso about vested rights.

MR. HARRY WHITE. I rise to a question of order.

The PRESIDENT *pro tem*. What is the question of order?

MR. HARRY WHITE. The question of order is this: Of course this comes in the shape of an amendment to the original

proposition, and it embodies the amendment offered by the delegate from Franklin, (Mr. Sharpe,) which was voted down this morning. I raise the question of order that, having been voted down, it cannot now be put in in this way.

MR. ARMSTRONG. It is in a new connection.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

MR. ANDREW REED. Does the Chair rule my motion out of order?

The PRESIDENT *pro tem*. There is a motion to amend an amendment pending. Now the delegate proposes further to amend that amendment, which is not in order. The vote must first be taken on the amendment offered by the delegate from Lycoming.

MR. BUCKALEW. Before the vote is taken I desire to suggest to the gentleman from Lycoming, as the votes of some members may depend on this, that he offers his amendment omitting that clause and let that be moved afterwards separately, so that we can get a distinct vote on each.

MR. ARMSTRONG. I will withdraw that, then. There is a great diversity of opinion upon that particular clause.

SEVERAL DELEGATES. Let it be read.

The CLERK. The amendment is modified by leaving out the following clause: "*Provided*, That the rights *bona fide* vested before proceedings are ordered by the court shall not be affected by such judgment."

The PRESIDENT *pro tem*. With the omission of that clause, the amendment of the delegate from Lycoming is now before the Convention.

MR. HARRY WHITE. I thought I raised a question of order that that proviso has already been voted down by the Convention, and the Chair sustained the point of order.

The PRESIDENT *pro tem*. Certainly the Chair sustained the point of order. That portion of the amendment is now withdrawn.

MR. BIDDLE. I should like to know precisely what the Convention is called upon to vote on. I want to know whether interests that have been *bona fide* acquired under an act of Assembly are to be protected or not.

The PRESIDENT *pro tem*. They are not. That clause is left out.

MR. SHARPE. Will it be in order to renew that proviso afterwards?

The PRESIDENT *pro tem.* It will be in order.

Mr. SHARPE. I can never vote for this section unless that proviso is in, because we are now speaking of general laws. This section is directed against general laws, and third parties may *bona fide* acquire vested rights under a general law before this investigation has commenced; and is it to be said that they shall suffer for the rascality of others? I shall never vote for a proposition that would permit that.

Mr. DALLAS. I desire simply to suggest to the gentleman on my right (Mr. Sharpe) that we vote for this proposition, and if then the proviso is not replaced as he desires it, we can vote to reconsider it. I am with him upon that question.

Mr. DARLINGTON. I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. BEEBE. I should like to know what the yeas and nays are called on.

The PRESIDENT *pro tem.* On the amendment to the amendment.

Mr. PURMAN. Let the proposition as it now stands be read for the information of the House.

The CLERK read as follows:

"Whenever, within six months after the official publication of any act of Assembly in the pamphlet laws, and not thereafter, it shall be alleged before the Attorney General by affidavit, showing probable cause to believe that the passage or approval of such law was procured by bribery, fraud or other corrupt means, it shall be the duty of the Attorney General forthwith to apply to the Supreme Court or one of the judges thereof for process in an appropriate proceeding which shall be ordered if there appears to the said court, or to such judge, to be such probable cause and in which the Commonwealth, upon relation of the Attorney General, shall be plaintiff, and such party as the Supreme Court or the judge who shall grant such issue shall direct, shall be defendant, to try the validity of such act of Assembly, whereupon the Court shall direct publications of the same, and any party in interest may appear, and upon petition be made a party plaintiff or defendant thereto."

"The said issue shall be framed and tried before a jury by one of the judges of the Supreme Court in whatever form and in such county as the Supreme Court may direct, and if it shall appear to the court and jury upon such trial that the

passage or approval of the same was procured by bribery, fraud or other corrupt means, such act of Assembly shall be adjudged null and void, and such judgment shall be conclusive. And the Governor shall thereupon issue his proclamation declaring such judgment. Either party shall be entitled within three months and not thereafter to a writ or error as in other cases."

"No officer of the Commonwealth, nor any officer or member of the Legislature shall be exempt from testifying when required in such case, but the testimony of any such witness shall not be used against him in any criminal prosecution, except for perjury therein."

Mr. BUCKALEW. I wish to ask a question of the Chair, at the request of gentlemen near me. Gentlemen wish to have it understood that after this vote, it will be in order to move any additional amendment that does not strike this out.

The question being taken by yeas and nays, resulted yeas fifty-two, nays thirty-seven, as follow:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Beebe, Bigler, Black, Charles A., Brodhead, Buckalew, Bullitt, Calvin, Campbell, Church, Corson, Cuyler, Dallas, Ellis, Ewing, Fulton, Gibson, Gilpin, Green, Guthrie, Hay, Hazard, Kaine, MacConnell, MacVeagh, Metzger, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purman, Reed, Andrew, Russell, Sharpe, Smith, Henry W., Stewart, Struthers Temple, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—52.

NAYS.

Messrs. Ainey, Bailly, (Perry,) Bannan, Biddle, Bowman, Boyd, Broomall, Brown, Carter, Cochran, Corbett, Darlington, De France, Edwards, Fell, Funck, Hanna, Harvey, Hemphill, Heverin, Hunsicker, Landis, Lawrence, Lear, Lilly, Mann, Minor, Niles, Patterson, D. W., Purviance, Samuel A., Reynolds, Rooke, Simpson, Stanton, Van Reed, Walker and White, Harry—37.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Carey, Cassidy, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dodd, Dunning, Elliott, Finney, Hall, Horton, Howard,

Knight, Lamberton, Littleton, Long, M'Camant, M'Clean, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purviance, John N., Read, John R., Ross, Runk, Smith, H. G., Smith, Wm. H., Turrell, Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—44.

Mr. SHARPE. I now move to amend the section by inserting as a proviso:

Provided, That rights bona fide vested before proceedings are ordered by the courts shall not be affected by such judgment

Mr. HARRY WHITE. I renew my point of order. The point is that this amendment was voted down this morning.

Mr. BIGLER. That is not a sound point of order. This is offered as a new proposition entirely.

The *PRESIDENT pro tem*. It is offered to the same section.

Mr. BIGLER. But it is quite modified and changed.

The *PRESIDENT pro tem*. It is substantially the same.

Mr. ARMSTRONG. I hope the decision may be withdrawn because there seems to be some understanding that the friends of this proposition should have the right to a vote upon it.

Mr. BIGLER. Allow me one moment, Mr. President. I want to address myself to the delegate from Indiana. This is a great question, and he is aware of the solicitude that has manifested itself throughout the body on this point. It is due to the Convention that we should have an opportunity of voting for or against this proposition; and certainly no question of order ought to be interposed here, and I appeal to him. I do not choose to take an appeal from the decision of the Chair, because I am aware that the President would very gladly have the Convention vote upon this question if he could do so.

The *PRESIDENT pro tem*. Certainly I desire to do so.

Mr. TEMPLE. I move to reconsider the vote on the amendment just taken.

The *PRESIDENT pro tem*. Did the gentleman vote in the affirmative?

Mr. TEMPLE. Yes, sir.

Mr. SHARPE. I move to reconsider the vote just taken on the amendment of the gentleman from Lycoming. I voted in the affirmative.

Mr. BIGLER. I have not yielded the floor, and I do not how it now it passed away from me.

The *PRESIDENT pro tem*. The question is on reconsidering the vote just taken.

Mr. SHARPE. I said a moment ago that I would not vote for this proposition unless the proviso was put in. I did vote for it because I understood the Chair to say that if the proposition was passed the proviso might then be again offered.

Mr. MACVEAGH. I submit that this proposition can be heard now on its merits, and the vote taken, and I trust that will be allowed to be done.

The *PRESIDENT pro tem*. The question is on the motion to reconsider.

Mr. TEMPLE. I withdraw the motion to reconsider.

Mr. BARTHOLOMEW. Then I renew it. There was a distinct understanding that this proviso should be offered.

Mr. DALLAS. I second the motion to reconsider.

Mr. BIGLER. I claim the floor.

The *PRESIDENT pro tem*. The question is not debatable.

Mr. BUCKALEW. I desired to make a motion. Another gentleman after I was recognized by the Chair got up and made a motion.

Mr. BIGLER. I have held the floor all the while and never gave it up.

Mr. BUCKALEW. I want to submit a motion to save the time of the Convention, and that is to suggest that the simple solution of this is to reconsider the vote on the amendment of the gentleman from Franklin.

Mr. MACVEAGH. Yes, reconsider the vote by which the amendment of the gentleman from Franklin (Mr. Sharpe) was lost. That is what I had in my mind.

Mr. BARTHOLOMEW. I second that motion.

The *PRESIDENT pro tem*. That is in order. Who moves to reconsider the vote by which the proviso was lost?

Mr. KATNE. I do.

The *PRESIDENT pro tem*. Who seconds it?

Mr. MACVEAGH. I do.

The *PRESIDENT pro tem*. The question is on reconsidering the vote on the amendment of the gentleman from Franklin (Mr. Sharpe).

Mr. HARRY WHITE. I submit to the Chair that the proposition to which the proviso is now offered is different from the proposition which was before the Convention this morning.

Mr. KATNE. Then, if it is, the point of order falls, and it is in order now to consider this proposition.

The PRESIDENT *pro tem.* The question is on the motion to reconsider the vote on the amendment of the gentleman from Franklin.

The motion to reconsider was agreed to.

Mr. MACVEAGH. That amendment is now before the House.

The PRESIDENT *pro tem.* It is.

Mr. MACVEAGH. I should like to call for a moment's considerate attention of gentlemen to this amendment. I want it to be carefully examined by the House. I do not want the fate of the other proposition to depend upon the fate of this; and all that I desire is that gentlemen shall consider whether the amendment is necessary at all, and whether it does not utterly take the life out of the section.

This Convention has struck many blows at the first and second Houses of the Legislature, but this is the first time it has ever given a blow squarely in the face of the lobby. I do not mean to say that all my colleagues look at it as I do. I know they do not, but I consider this section now adopted the first thing you ever did towards the extirpation of the lobby which buys legislation. If these men are to pass their corrupt laws and simply to sell the interests to somebody else who is a *bona fide* purchaser of the rights conferred by them, it occurs to me that it will be to a very great extent destroying the usefulness of the section, whereas I cannot see the serious danger or detriment in waiting six months before a law goes into effect. Indeed there are advantages in having a law published a certain length of time before it does go into effect. We are in a certain extent in bondage to antiquated maxims. One is that everybody is presumed to know the law, and another is that the law ought to take effect from the moment it is signed by the Governor or passed by a two-thirds majority, before it is printed, before anybody has any idea of regulating his conduct according to it, and I see no serious danger whatever in waiting six months before a law about which any suspicion can arise shall take effect.

More than that, I do not understand at all that rights obtained under the law would be any more destroyed by this judgment at common law than they ought to be. So it is as to rights obtained under a corrupt judgment, or a corrupt decree, or a corrupt deed, and corruption in any other form. You have limited the time to a very short period; you have restricted

it to six months. Why allow these men to make bargain and sale of their corrupt laws in that time? I do not see the necessity of acting upon a law the moment it is passed, and have never seen it. I have always thought that it would be a great deal better to require a law to be published a specified time before it went into operation, for it is an utter fiction to suppose that everybody does know the law. This warns the people. What is there wrong about it? On the other hand, all that you need is that a man shall come in who is not a party to the corruption. Then, it does not seem to me that you get at the evil at all, because you simply change it from the principal to the agent, and that agency it will be impossible to trace.

Mr. S. A. PURVIANCE. Allow me to ask the gentleman a question. Why not then say that all laws passed shall not take effect for six months after their passage? Would not that meet the difficulty?

Mr. MACVEAGH. I think not in many cases. There are many laws which are perfectly proper which concern public matters, and have nothing whatever to do with private business and about which nobody has any doubt as to corruption, or as to the consequences; but this class of laws which the lobby passes for profit and by the purchase of the legislative department ought not to be made valid and binding upon everybody if an innocent purchaser chooses to step in and acquire rights under them. I do not care who holds the right, to tell me that a man may get a law to take my right from me by buying it and then by parting with his interest under it or by a third party coming in and taking it, he is to be protected, seems to me to a certain extent wrong.

Mr. BUCKALEW. Take the case of charters.

Mr. MACVEAGH. Yes, sir. So he would not be harmed there. He could recover back the consideration paid. He would therefore not be injured. I beg the men who voted for this section to stand by it in its strength. I was at first very much disposed to think this was an indispensable amendment; but on a little reflection I was satisfied that it was not so. Perhaps I am mistaken.

Mr. BOYD. Will the gentleman allow me to satisfy him in a moment?

Mr. MACVEAGH. I shall be very glad to do so.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. MACVEAGH. I am sorry not to have time to answer the question.

Mr. MACCONNELL. I only want to say a word on this question.

It seems to me that this is a very valuable provision. I should be willing to take it with the amendment of the gentleman from Franklin, but I think it better without it. When we pass it in the shape it is we put it precisely on the same footing that contracts in regard to the sale of land rest upon. I sell a piece of land to one of my neighbors, get the money for it. He may put his deed into his pocket and not record it for six months. In the mean time I may sell it to another neighbor, get the money for it, be buying in perfectly good faith; and yet if the neighbor that I sell to first on the last day of the six months records his deed he cuts out the second purchaser.

That is just the case here. You permit a man to take his risk for six months, just as you do the purchaser in the case I stated. Every purchaser of real estate has to take the chance that the man he buys of has not sold in the last six months, and the deed not recorded. Now, it does seem to me that that is not fair to propose to insert here. We all know that this matter of corruption in regard to the passage of acts of the Legislature is the greatest evil and the greatest injury that we are trying to arrest. The thing, above all others, that we were sent here for was to try to remedy, and it seems to me this is the only direct blow that we have struck in that direction.

I hope that the section will be passed as it stands now. Still I would be willing to take it with the amendment of the gentleman from Franklin.

Mr. BOYD. I shall not detain the Convention more than three or four minutes. If I comprehend this section no act of Assembly hereafter passed can be relied upon as a law until the expiration of six months after its approval by the Governor. Now, then, the State of Pennsylvania has in the recent past encountered exigencies that required her to borrow money and organize troops. When she authorizes a loan for such an exigency nobody will feel safe in taking that loan until the six months are up, because it may be that some bad men will make an oath and go before a proper tribunal to try the validity of the act, and the consequence may be in a case of that kind that our

State would be crippled in a negotiation of that kind for a period of six months. We have seen the time when men enough could be found in this State to do that. A crisis overtakes the country, a panic pervades throughout the Commonwealth. The Legislature is driven to the necessity of passing a stay law. Can any man have the benefit of that law if any one man will come forward and make an affidavit that it has been procured by corrupt means or undue influence? The very moment that that oath is made and the proceedings are inaugurated it paralyzes the utility and beneficial effects of such a law as that.

And so any other law of public importance can be thus impeached, and until it is tried in a court of justice, which we all know takes time; and then it is reviewable in the Supreme Court, which takes further time; and a year or two can be consumed before you can ascertain whether this law is valid or not.

Now, are you prepared to go that length? I apprehend not, notwithstanding the vote that has been taken. But if you adopt the provision suggested by my intelligent friend from Franklin, the machinery of such a law can be going on until it is impeached, and the money borrowed under it for the State or any other purpose for which the act has been passed; the *bona fide* persons taking bonds or acting under such law will be protected until the impeachment has been inaugurated, and until it has been established; but if you are going to leave it without this shield in it, it seems to me you may as well say that no law shall take effect until six months after its passage, and if you do that you only tie the hands of the Commonwealth in her appropriation bills and in other matters when she needs legislation or needs what I have pointed out, as well as the citizens interested throughout the State.

I cannot believe that the Convention has had through this hot weather such softening of the brain as to go the length that is proposed by the section as it stands. I am opposed to the section, but if we are to have it, let us have it with the amendment of the gentleman from Franklin in it, so that it shall be a living thing and can be lived under and acted under until it is actually impeached, and if it should be questioned afterwards, and should be impeached and set aside, all that has been done *bona fide* shall stand; and I trust that my friend will not be coaxed, or ca-

joled, or even scared or frightened out of pressing his amendment.

Mr. SHARPE. Mr. President: The remarks of the eloquent member from Dauphin would have been entirely appropriate if the Legislature in the future was to have the power to pass special laws. Then I agree with him exactly that so far as those special acts are concerned, every man ought to keep his hands off for six months, and that this section as it now stands would be perfectly good. But the gentleman seems to forget that we have struck down with paralysis all special legislation.

Mr. MACVEAGH. Will the gentleman allow a question? Is not the gentleman aware that for several years past the specially iniquitous, corrupt and rotten legislation has been in the form of general and not of special laws?

Mr. SHARPE. I do not think so, though there are some cases of that kind. But this section, if it have any value at all, is directed against the general legislation of the Commonwealth. That general legislation is not confined at all to the creation of corporations by general laws or to that sort of legislation; but I remember very well when I was in the Legislature that there was an effort made to repeal the rule in Shelley's case to meet a special emergency. Now suppose that the Legislature should be induced to pass a law of that kind to meet a particular case, through corrupt influence, and it was put upon the statute book as a general law, and rights became vested under that sort of legislation *bona fide*, are parties who are in ignorance of the iniquity by which that legislation has been secured to be deprived of their right?

I say that general legislation covers every branch of the public interests, and you cannot tell to what extent corruption may enter into the passage of general legislation. Who is to know among the citizens of Pennsylvania what corrupt influences are at work at Harrisburg; and and if they, under a general law perfectly fair and right on its face, invest their money and it turns out afterwards that that law, specious, and proper, and general, and appropriate apparently in the interest of people of the Commonwealth, has been passed by corruption or undue means, will the gentleman from Dauphin say that there should not be a saving clause put into this section whereby the rights of third parties shall be protected who have acquired those rights *bona fide*

for a valuable consideration and in ignorance of the corrupt proceedings by which the Legislature was influenced?

Why, sir, if this section goes forth and is sanctioned by the people as it now stands, it will virtually make every act of the Legislature take effect only after the lapse of six months, and therefore I say that it is wrong in principle, and it is only by putting in this saving clause which protects the *bona fide* rights of third parties that we can get rid of that difficulty.

No intelligent lawyer, no lawyer who understands the interests of his client, will undertake to advise him inside of six months that he can do any act under any general law of this Commonwealth, because he cannot tell, nobody but the parties interested in it and the Eye that searcheth all hearts can tell, what corrupt means have been used to procure that legislation.

For that reason I believe that this proviso is eminently proper, and that it ought to be introduced, in order to obviate the difficulty that has been suggested by the gentleman from Montgomery, (Mr. Boyd,) that if this section stands as it now is we shall have no statute operative until after the expiration of six months.

Mr. COCHRAN. I confess that I am very much embarrassed by the present condition of this question. I understood, in the first place, that the amendment now pending was offered to the original section that was presented by the gentleman from Lycoming (Mr. Armstrong.) The amendment was then voted down. After that the gentleman from Lycoming moved an amendment as a substitute for his original amendment and that was adopted, and now we have reconsidered the vote on the rejection of the amendment offered by the gentleman from Franklin, (Mr. Sharpe,) which was offered to the original section. Now, suppose it is passed where is it to go? It cannot go into this new section, because it was not offered as an amendment to that, but was offered as an amendment to the original section. The original section has been stricken out, has been superceded by this, and I do not know, for my part, exactly where this amendment is to go in when it is adopted under the present position of the question. Perhaps I am wrong, but that is the difficulty which I have.

I have voted against the section, and I presume I shall vote against it to the close, although I admit there are very strong considerations presented in favor of its passage.

But it seems to me that the operation and effect of the section are going to be very peculiar, and I think very dangerous. We have had every year passed in this Commonwealth a general appropriation bill. I admit that that bill is cut down under the article in regard to legislation to comparatively few particulars. But suppose it to be alleged by some person in regard to that bill as it remains, that a part of it was introduced by fraud or corrupt means, then you put the operation of that bill under this section, and you stop the wheels of the government, if that allegation is correct. The general appropriation bill itself would, under these circumstances, be suspended, and for six months the appropriations for the government would be unavailable for its support.

Mr. HAZZARD. I will not say at the outset that I am not going to speak on the subject, because I have risen for the purpose of speaking. I will not say that I am going to make a speech, but I do promise that it shall not be very long provided the delegates will give me their attention.

I am in favor of this section. There are three branches of our government, the Legislature, the Judiciary, and the Executive. Now the Constitution and laws ought to be so that they can work together harmoniously. Heretofore the Supreme Court could say to one department, "you are unconstitutional in the laws you pass." They can say so yet; they can expound what does not seem to be plain and tell us what was the meaning of the Legislature. But we have found that laws appear on our statute books where the functions of the Supreme Court are stopped and cannot be exercised, for here is a law that has not been passed by the Legislature. If it is unconstitutional it may be so decided; but the Supreme Court tell us that they cannot go back on the signature of the Governor.

Now, ought we not to provide for a contingency of that sort. It is not only unconstitutional because not passed by the law-making power, but it is fraudulent and infamous and wrong; and still the judiciary cannot exercise their functions by expounding it or declaring it void. Let us contrive some way by which alleg-

ed laws, when contrived by the clerks and filed in the departments and signed by the Governor and printed in the pamphlet laws that are void and unconstitutional because never passed, may be in some way reviewed. I think we ought to do that, and for that reason I shall vote for this section.

Mr. BROOMALL. I simply desire to say that I think this amendment is of little use, except to mislead. There can be no vested rights under a void law. If the law is void, it is void from the beginning, and there can be no rights of any kind under it. Suppose we were to declare that vested rights should not be disturbed by a judgment of a court where the law under which they were supposed to be vested was unconstitutional, would not such a declaration be a nullity? It is as much a nullity in this case as in that. I think the amendment is calculated only to mislead, and I shall therefore vote against it.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin (Mr. Sharpe) to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the gentleman from Lycoming as amended.

Mr. TEMPLE. I voted for the section. I move to reconsider the vote adopting it. I never should have voted for it without this.

The PRESIDENT *pro tem*. Who seconds the motion to reconsider? The motion to reconsider does not appear to be seconded.

Mr. TEMPLE. I withdraw it.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Lycoming as amended.

Mr. MANN. When this proposition was first read to the Convention, I felt very much inclined to support it; but the longer it has been discussed, the more its advocates have said in favor of it, the more I feel inclined to go against it, for there has been no case stated by the gentleman from Fayette or the gentleman from Lycoming, or any other, of improper legislation that would not be defeated by the article on legislation which we have already adopted, and I maintain that the safeguards which we have thrown around the Legislature by that article will protect the people of Pennsylvania from the im-

proper legislation that has been complained of.

In this connection I desire to say that I was astonished at the statement which the gentleman from Columbia (Mr. Buckalew) made, that the people who desire improper legislation are careful to go through all the forms of legislation. My experience is that objectionable bills seldom go through the forms required by the existing Constitution and the rules of the two Houses. The general history of every improper bill that is passed, so far as my judgment and knowledge go, is this: Some member who is not supposed to have any connection with the lobby, to whom there is no suspicion attached, rises in his place and moves a suspension of the rules for the purpose of introducing a bill, and nobody having any suspicion that anything is wrong, the rules are suspended and the bill is introduced before the majority know what is coming. It does not go to a committee, it is not printed; it does not go through the forms of legislation, and it is usually passed to third reading on the first day in which it is read; it is sprung upon the House without any suspicion of any improper influence about it. Send such bill to a committee so that it can be examined, and the honest men upon the committee can give warning to the honest men of the House, and it would never go through the Legislature. In my judgment, there never was an improper bill passed through the Legislature that could have gone through under the provisions we have adopted in the article on legislation. As a matter of fact, I know that men desiring improper legislation, so far as I have had connection with the Legislature, did not go through the forms of legislation. On the contrary they invariably avoided them. They would take a night session, when members were off their guard, and spring on the House an obnoxious bill and get it before the body before they knew what was coming. It was not printed; nobody could tell its provisions, and frequently it was rushed through without a majority knowing what it was. Now, no such transactions can possibly occur under the article on legislation as we have adopted it.

But I do not apprehend that the delegates are now in a state of mind to listen candidly to the discussion of this question, and I will therefore not attempt it any further than to express my dissent to the

statement of the gentleman from Columbia.

I wish also to express my dissent from the statement just made by the gentleman from Dauphin, (Mr. MacVeagh,) that lately corrupt influences have been used to pass *general* bills. Sir, I believe I understand the influences that have been brought to bear upon the passage of every general bill for the last eight years, and I challenge any man to point to more than one bill passed during that time of a general character that was passed by improper influences. I do not believe there has been more than one bill passed during that time, of a general character, by improper influences. I may be mistaken, but that is my conviction, and I desired to express it so that if this strange proposition is to go through it shall go through upon its merits, and not under a misapprehension of the history of legislation in Pennsylvania for the last eight years.

I say it is a somewhat singular proposition, and the more it is examined, I do believe the more the candid and reflecting minds of this Convention will be opposed to it. Why, sir, it sets one branch of the government to try the action of another, and it seems to me if it ought to pass there should be an amendment attached to it providing that the Legislature, if complaint is made to them that a decision of the Supreme Court has been obtained by corrupt influences, shall try the question whether there has been fraud in obtaining a decision of the Supreme Court. I cannot understand why the Legislature should not as properly try whether the Supreme Court has been bribed as that the Supreme Court shall try whether the Legislature has been bribed.

MR. NILES. Or the jury.

MR. MANN. Or the jury. Why shall we say that one branch of the government of Pennsylvania, or two of them, are to be subjected to the suspicion of fraud and tried by a third? I believe that this is a revolution of the principles on which this government is founded, and it will destroy the equality of the branches of government utterly and entirely if it is passed.

I content myself with simply presenting this opinion and entering my protest against its passage.

MR. BIDDLE. Mr. President: I do not intend to re-discuss the whole question; it would be entirely unfair to the House;

but I want to call attention to a single view on this subject. You have provided by the section as it stands, striking out everything in regard to vested rights, by voting down the amendment of the gentleman from Franklin, that a writ of error may be taken within three months. You do not provide that it shall be heard instantly; but I will take the more favorable view; I will suppose that the Supreme Court is compelled in some way to hear the case instantly. It is by no means impossible, it is extremely likely, from the way in which this section is framed, that they may rule the case, not on its merits but on a point of evidence, either on the reception or improper rejection of evidence. The case, of course, must then go down for another trial, and it may come up and go down a second time. Every lawyer on this floor knows that that is not an unusual thing.

Now, how long are you going to keep an act of Assembly in obedience? This may be one of the most important items of an appropriation bill; it may be, as was put with great force by the gentleman from Montgomery, (Mr. Boyd,) a stay law in which the interests of every man in the Commonwealth that has got anything to lose may be involved. Are you going to keep for eighteen months or two years an act of Assembly, passed to relieve the community, in a state of obedience? Just look at it. With the clause in regard to vested interests struck out, look at it. In the view that the gentleman from Delaware takes, perhaps they are struck out anyhow; but what sort of legislation are you going to have? It seems to me the more you turn this subject over, the more improper the passage of any section like this appears. I do hope, therefore, on the final vote gentlemen who have heretofore given it their support, will change their votes and vote against the section.

Mr. ALRICKS. Mr. President: I have not spoken on this subject, and I should not speak now if it were not for the remarks of the distinguished gentleman from Philadelphia (Mr. Biddle.) This Convention is to act according to the rules, I suppose, of common sense and of law, and we are never to suppose that *improbabilities* will occur; we are never to suppose for one moment that any act in relation to the public appropriations or any general law of any great importance will be procured by fraud. We have no right to presume such a thing.

It is totally improbable. The probabilities are entirely the other way. It is only a few statutes in which certain individuals are interested that are ever likely to be procured by fraud.

The section meets my unqualified approbation. I appeal to every lawyer on the floor of this House whether the records of a court do not import verity. I believe it to be a principle of law that the record of a court imports verity. But suppose a record of a court has been procured by fraud, have the parties no remedy? I appeal to every lawyer in this House that upon a writ of *coram nobis* or of *coram vobis* the court will examine that record, and if there is a fraud in it they will correct it, and they will correct it on parole evidence. I speak, sir, of what I do know to be the fact.

Now, I want to know if it is not perfectly right if an act of the Legislature has been procured by fraud that there should be some tribunal before which that question can be tried. The gentleman from Potter has told us that you might as well have a tribunal to examine the judge. You have one. We have provided for it. If a judge is guilty of fraud the Legislature may impeach him. The judicial, the legislative and the executive branches of the government all must have a place to be tried. The judicial and the executive are tried by the Legislature, but where are the legislators themselves to be tried? The gentlemen open their eyes in holy horror—

Mr. CORBETT. Would the impeachment set aside the judgment?

Mr. ALRICKS. No, the impeachment would not set aside the judgment; but if judgment is fraudulently entered, a writ of *coram vobis* will reach it and correct it. That is what I say. You present your petition to the court and say that one of the members of that court has been guilty of fraud, and you will find, if this be the fact as presented to the consideration of the court, they will correct it just as they would do if that fraud was committed by a member of the bar.

Now, I apprehend that after all we are establishing no new principle. We are merely saying that there shall be some tribunal before which this question may be tried. I know, we all know, that it may produce inconvenience. Let me state you a case. You suppose that a man who holds his farm or his house with a good title ought not to be disturbed. A gentleman told me that he had a tract of

land in this State for which he was offered \$80,000, and an action of ejectment was brought. It was all a sham. The plaintiff had no title. He (the defendant) said he went to the town in which the ejectment was brought with a view of settling it, and the first gentleman he met was the lawyer who brought the suit. The lawyer invited him to his house and he (the defendant) stayed over night. He would willingly have paid to have the matter settled, but he was afraid to mention it. Afterwards, when the case was reached on trial, a non-suit was taken. He then met the lawyer who said to him, "why did you not give me ten dollars and I would have settled that case?" He (the defendant) replied, "I went to your house to give you five hundred dollars, but I was afraid to make the proposition."

The same wrong may be repeated daily, but nobody would for that reason think of abolishing the action of ejectment; because inconveniences may occur that is no reason why a certain rule should not be adopted. I apprehend that we are just establishing what ought long since to have been established; that is, a tribunal which will test the question and if fraud has been perpetrated, that the act of Assembly shall be set aside. I should be sorry to have our pamphlet laws filled with *spurious* enactments. Why, sir, I am told that we have now in our pamphlet laws a statute that never received the signature of the Governor. The broad seal of the State covers everything. Are these wrongs to be perpetrated in open day without remedy? If such is the case we might as well dismiss this Convention and close our courts. I trust, therefore, that the Convention will stand by their action, and that this section will receive the same vote that it did when it was voted upon before. "Every wrong has a remedy," is a legal maxim; in this case it devolves on us to provide the remedy, and we have it in this new section.

Mr. ARMSTRONG. Mr. President—

The PRESIDENT *pro tem*. The delegate from Lycoming has certainly spoken on this subject before.

Mr. ARMSTRONG. I think not on this question.

The PRESIDENT *pro tem*. Unless the Convention unanimously agree to it, he cannot proceed.

Mr. LILLY and others. I object.

Mr. ARMSTRONG. I do not think I have spoken on this question.

Mr. KAINE and Mr. WORRELL. Not at all.

Mr. CORBETT. The same rule must be applied to others if the gentleman is allowed to proceed.

Mr. ARMSTRONG. I have not spoken, to my recollection, on this question.

The PRESIDENT *pro tem*. The gentleman says he has not spoken on the question, and he will therefore be allowed to proceed.

Mr. ARMSTRONG. Mr. President: I do not mean to weary the House with an argument, but I desire to call a few points to their attention by way of suggestion.

It is a maxim of the law that fraud vitiates everything. The exception we make, and which has been made under the rulings in the case of *Fletcher vs. Peck*, has been that the courts will not inquire into corruption of the Legislature. I cannot but believe that it was an evenly-balanced question at that time. The question in that case arose collaterally, and it was not therefore incumbent on the court to determine it. It was perhaps unfortunate that the decision extended so far as to deny the right of judicial inquiry into even the most flagrant instances of legislative corruption. The people have suffered in every State in this Union, and even under the United States government, from the rule established by that decision, and which exempts legislative proceedings from all judicial inquiry upon the ground of fraudulent or corrupt procurement.

As has been already stated, by the organization of the government, if the judges of the Supreme Court are corrupt, they can be impeached, and there is no department of the government that is exempted from trial and responsibility for their acts, except the Legislature. They are exempt under the unfortunate rule established in the case to which I have referred, and which has been perpetuated until it has become a sort of common law, that what the Legislature does, however corrupt, shall not be inquired into.

It is suggested that if a question of this sort goes to the Supreme Court, it may be subjected to delay; but gentlemen forget that if the law is such a one as ought to pass an honest Legislature, and it did pass, they will re-enact it, and there is no such protracted delay as the gentleman from Philadelphia (Mr. Biddle) suggests. The thing we are seeking to prevent is dishonest and fraudulent legislation. If there be a question, such as this section

contemplates, about a law, and it is held in long suspense in the Supreme Court, the Legislature can promptly re-enact the law if they please, and thus cut off the delay.

Then, again, this section will not go into operation unless probable cause be shown to the satisfaction of the Supreme Court. In the first instance, a *prima facie* case must be made out; and if the showing to that court does not make a *prima facie* case, then the six months soon expire and the act of Assembly takes its place, and is a recognized law without power of reversal. But there is a provision in the Constitution of many of our States already, that no law shall go into operation until six months after its passage, and there are many reasons why such a provision would be wise; but we have not adopted such a provision, nor any limitation upon the operation of an act fairly passed. The very instincts of men tell them what laws are passed to which suspicion justly attaches, and such laws, and such only, are those that would be brought in review before the court.

I see upon every hand, with the fullest consideration I have been able to give this subject, a vast amount of good to result from the adoption of this section. I can see nothing in objection to it that is, in my judgment, of any very great weight. It is easy to suggest imaginary cases in which it might in a certain conceivable condition of things be inconvenient. A stay law has been suggested as one such case. If it be a stay law, and if this section is to operate upon it, it operates of itself and is *ipso facto* a stay law, and the longer the delay, the longer the stay.

So again a possible embarrassment is suggested if the State in an emergency desires to borrow money. These reasons are more specious than sound. It is within the knowledge of all the gentlemen of the Convention that the banks of Philadelphia during the late war lent more than a million of dollars to the State of Pennsylvania and waited a year for an act which should legitimate the loan. They did it upon that general faith which rests in the Commonwealth everywhere, that Pennsylvania will be true to her trusts, true to her interests, and true to the good faith of the pledges of her executive officers when public necessities require extraordinary exercise of power.

But suppose there are inconveniences attending this measure; they are by no

means insuperable nor peculiar to this section; they appertain to all human contrivances of government. Are we to weigh the inconveniences, which I think are slight, and which the able men of this Convention have so zealously suggested, against the prevention of the enormous frauds which we know are perpetrated in the Legislature, would be extremely unwise? Since this argument commenced I have had placed in my hands an official paper showing the passage of an act at the very last session of the Legislature, and I have here also a certified copy of the act as approved by the Governor and in which five important lines are omitted.

I have no wholesale denunciation to launch against the members of the Legislature, and I have not indulged in it. I believe the personal corruption of members is largely exaggerated; but no man can shut his eyes to the fact that fraudulent legislation is enacted, and in very important cases, and in large amount. It is a fact which we cannot ignore, and which, as wise men, we ought not to attempt to overlook. Now, taken in connection with the provisions which have already been inserted in this Constitution, and adding this to them as being in the same line of prevention and seeking to accomplish the same purpose, I believe it will do more, taking them altogether, to give us wise, beneficent and honest legislation in Pennsylvania, than has been accomplished in any of the States.

To say that this is new is only repeating what was stated in the beginning. It is new because the people are slow to act, and they suffer until grievances become too heavy to be borne. That is the experience which has forced all the States of the Union to an earnest consideration of this question. So far as the newspapers have commented upon this provision, at least so far as it has come to my knowledge, it has all been in one direction and favorable. The public sentiment approves it. It stands approved in the good judgment of a majority of this Convention, and I hope that the very next vote we shall take will show that it has grown in favor rather than diminished. Let us cast all wise protection around our legislation. We seek to secure an honest Legislature. Let us cast every reasonable safeguard around the mode of their legislation. Let us combine all measures and all efforts which will best promote honesty of legislation, and we shall by this means best

promote the interests and the happiness of the people.

Mr. BOWMAN. Mr. President: I am unwilling—

The PRESIDENT *pro tem.* Has the delegate spoken on this question before?

Mr. BOWMAN. No, sir, I have been sitting here quietly all day and heard about thirty speeches on the pending question.

The PRESIDENT *pro tem.* Then the delegate will proceed,

Mr. BOWMAN. I say, sir, I am unwilling that the vote shall be taken on this proposition without entering my protest against its passage. When it was brought forward last evening, and read at the Clerk's desk, and ordered to be printed and laid upon the desks of the members. I supposed that there would not be much time occupied in its discussion. I really believed that the gentleman who offered it threw it out as a sort of feeler, that he was not really sincere in it, notwithstanding I have no particular reason to doubt his sincerity upon general questions.

Now, sir, what is proposed? It is proposed that one branch of the State government shall subvert, if not annihilate, the other two. It is proposed that the judicial branch of our State government shall call to its aid a jury selected promiscuously through the country, and that that court and that jury, as thus constituted, shall pass upon the question whether an act of Assembly shall be received as the law of the land or not. That is the straightforward proposition. With all the safeguards we have undertaken to throw around the Legislature to protect the people against the passage of laws procured by fraud, corruption or other undue means, it seems to me we have done all that the people expected us to do, all that they required at our hands. But now, after we have limited the powers of the Legislature and crippled that branch of the State government in every possible way in which it could be done, we are called upon to drive the last nail into the lid of the coffin of the legislative branch of our government.

Why, sir, I regard this proposition as simply monstrous. We have been taught that "law is a rule of action; prescribed by the supreme power in the State, commanding what is right and forbidding what is wrong." You propose to make a court and a jury the supreme power of the State, and allow them to annul the statutes bearing the broad seal of the

Commonwealth. I ask the gentlemen who are supporting this proposition if the tribunal to which they appeal is not human? Who made the judges, who made the jury that are to pass upon this vital question, one that is vital to the interests of the people of the Commonwealth? Have judges always been pure? Are they immaculate and incorruptible? I ask if the judiciary has always been pure and untainted? How is it in the State of New York to-day? It is a stench in the nostrils of every pure man in the whole nation.

Then, again, if there is one thing more uncertain than another, as the legal gentlemen on this floor will bear me witness, it is the verdict that may be rendered by a petit jury. You propose to submit this question to a jury, to let them ascertain whether bribery, corruption or undue means have been used in procuring the passage of a law.

Sir, let us preserve the three branches of our State government intact. Let us look to the executive branch of the government, as we have heretofore, with pride. Let us look to the legislative branch of the government as the law-making power, and let us limit and prevent that body as far as we can by fundamental enactment from doing evil. Let us preserve the judiciary as pure at least as we found it when we assembled together.

Mr. President, this whole thing puts me in mind of a case that our mutual friend—and I do not know that there is any impropriety in naming him here—Colonel Curtis, used to relate. He said he had a client away up in one of the backwoods counties who brought a suit before a magistrate and recovered. The defendant took an appeal and carried his case to the court of common pleas, and he defeated the plaintiff. The plaintiff was not satisfied, and he took his appeal to the Supreme Court, and he was there defeated again. Some one said to him: "Now, sir, I suppose you will let your case rest." "No," he replied, "I will do no such thing; I will appeal it back to the justice of the peace." [Laughter.]

Sir, we are trying to do that very thing. We say the Legislature is the law-making power; but after they enact their laws we propose to say that the validity of those laws shall be tried by twelve men, picked up promiscuously in the State; that they shall determine whether they are laws or not. Gentlemen are not

even willing to accept the amendment of the delegate from Franklin, (Mr. Sharpe,) which provides that vested rights, rights that have accrued after the passage of the law, shall remain irrevocable.

One word further and I am done. I borrow the idea from his Honor, Judge Black, and I am going to illustrate the subject under consideration by referring to what I read in his "Recollections," published in the *Galaxy* some two or three years ago. In speaking of the judiciary of New York, he said that a party could go into the Supreme Court of that State, at Rochester, and obtain an injunction to restrain a certain corporation from doing certain acts. The other party could go into the city of Buffalo and obtain a writ restraining him. Then the first party could go on to Albany and get another writ, and the other party could go to the city of New York and obtain another; and he said that what they ought to do was to go into the court and ask for a writ of injunction to enjoin all previous courts and parties to *refrain* from further *re-fraining*. [Laughter.]

These injunctions, says the learned judge, are not mere *brutum fulmen*; the judicial guns on either side are loaded to the muzzle with the heaviest metal they can ram down. And so it is here. We are asked to put into the fundamental law of our State a provision that hereafter no law passed by the Legislature shall be valid if somebody will say on oath that its passage was obtained through bribery or fraud. They say that fraud vitiates everything it touches, and so it does; but did it ever occur to gentlemen that it sometimes takes possession of the judicial bench? Does it corrupt their decisions when they declare the law? When rights become vested under judicial sanction, I ask the honorable gentlemen who support this section if there is any power on this side of God's throne which will change those rights so vested? It becomes the fixed law of the land and the people must submit.

The PRESIDENT *pro tem*. The gentleman's time has expired. The question is upon the section as amended.

Mr. STANTON. Upon this section I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The PRESIDENT *pro tem*. The yeas and nays have been demanded, and the Clerk will proceed with the call.

Mr. NILES. There is a misunderstanding here. Some of us think that the

amendment of the gentleman from Franklin (Mr. Sharpe) is contained in the section and others think it is out. We desire to understand the question correctly before we vote.

The PRESIDENT *pro tem*. The amendment of the gentleman from Franklin was not adopted, and is not a part of this amendment.

Mr. BARTHOLOMEW. That is the reason why I shall change my vote. I shall vote "nay," because the amendment of the gentleman from Franklin was stricken out.

The CLERK proceeded to call the roll.

Mr. BEEBE. (When his name was called.) I vote "nay," for the reason that the amendment of Mr. Sharpe was not inserted. I positively understood it was agreed that it should be so done when I voted for the proposition before.

Mr. BROWN. (When his name was called.) I am paired with the gentleman from Dauphin (Mr. MacVeagh) upon this question. He would vote in favor of this section and I should vote against it.

The call of the yeas and nays having been concluded, the result was announced, as follow :

Y E A S .

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Barclay, Bigler, Black, Chas. A., Brodhead, Buckalew, Bullitt, Calvin, Campbell, Church, Corson, Curry, Fulton, Gibson, Gilpin, Guthrie, Hay, Hazzard, Kaine, MacConnell, M'Clean, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Purman, Read, John R., Reed, Andrew, Russell, Smith, Henry W., Stewart, Struthers, Wetherill, J. M., Wetherill, Jno. Price, Worrell and Wright—43.

N A Y S .

Messrs. Bailly, (Perry,) Baker, Bannan, Bartholomew, Beebe, Biddle, Bowman, Boyd, Broomall, Carter, Cochran, Corbett, Darlington, De France, Edwards, Fell, Finney, Funck, Green, Hanna, Harvey, Hunsicker, Lamberton, Landis, Lawrence, Lear, Lilly, Mann, Minor, Niles, Patterson, D. W., Reynolds, Rooke, Sharpe, Simpson, Stanton, Van Reed, Walker and White, Harry—39.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Bardsley, Black, J. S., Brown, Carey, Cassidy, Clark, Collins,

Craig, Cronmiller, Curtin, Cuyler, Dallas, Davis, Dodd, Dunning, Elliott, Ellis, Ewing, Hall, Hemphill, Heverin, Horton, Howard, Knight, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Pughe, Purviance, John N., Purviance, Samuel A., Ross, Runk, Smith, H. G., Smith, Wm. H., Temple, Turrell, Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—51.

The *PRESIDENT pro tem.* The twentieth section of the article will be read.

The *CLERK* read as follows:

SECTION 20. No duties shall be imposed by law upon the Supreme Court or any of the judges thereof, except such as are judicial; nor shall any of the judges thereof exercise any power of appointment except as herein provided. The court of *visi pirus* is hereby abolished, and no court of original jurisdiction to be presided over by any one or more of the judges of the Supreme Court shall be established.

The section was agreed to.

The *PRESIDENT pro tem.* The twenty-first section will be read.

The *CLERK* read as follows:

SECTION 21. A register's office for the probate of wills and granting letters of administration, and an office for recording of deeds shall be kept in each county. The register's court is hereby abolished, and the jurisdiction and powers thereof are vested in the orphans' court.

In every city and county wherein the population shall exceed two hundred thousand the Legislature shall, and in any other city or county may, establish a separate orphans' court, to consist of one or more judges who shall be learned in the law, and which court shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such city or county in orphans' court proceedings shall cease and determine.

The register of wills shall be compensated by a salary, to be fixed by law, and shall be *ex officio* clerk of such separate orphans' court, and subject to the direction of said court in all matters pertaining to his office. Assistant clerks may be appointed by the register, but only with the consent and approval of the court.

All accounts filed in the register's office and such separate orphans' court shall be

audited by the court without expense to the parties, except where all parties in interest in a pending proceeding shall nominate an auditor, whom the court may in its discretion appoint.

Mr. ARMSTRONG. I move to amend in the following particular:

In the thirteenth line to insert before the word "salary" the word "fixed," and to strike out the word "fixed" where it afterward occurs.

The *PRESIDENT pro tem.* Has the gentleman many of his amendments?

Mr. ARMSTRONG. There are several of them, but they are all merely verbal changes.

The *PRESIDENT pro tem.* The gentleman from Lycoming had better forward his amendments to the Clerk's desk.

Mr. ARMSTRONG. I desire the section so amended that it will read:

"The register of wills shall be compensated by fixed salary, to be ascertained and paid as provided by law. He shall be *ex-officio* clerk of the orphans' court, and subject to the direction of said court in all matters pertaining to his office."

Then also, in the seventeenth line, I desire to strike out the words "such separate" to insert the words "in the."

These changes are only verbal, and while they do not in any sense change the meaning of the section they improve its phraseology.

The amendments were agreed to.

Mr. ALRICKS. I move to further amend in the sixteenth line, by striking out the words "but only with the consent and approval of the court." That is that the register shall not appoint his own clerk except with the consent and approval of the court.

Mr. LILLY. I hope that will not be stricken out.

On the question of agreeing to the amendment proposed by Mr. Alricks, a division was called for, which resulted thirteen in the affirmative. Not being a majority of a quorum, the amendment was rejected.

Mr. H. W. PALMER. I move to further amend, by striking out the words "two hundred thousand" and inserting "one hundred and fifty thousand."

This amendment will only affect one county, the county of Luzerne. The only other two counties that can possibly be affected by it in any short period of time are the counties of Schuylkill and Lancaster—the one with a population of 118,000 and the other with a population of 116,-

000. If this section is so amended as to include Luzerne county, it is not likely that our judicial force will have to be increased. Otherwise we shall have to have another judge. I hope the Convention will adopt this amendment.

The amendment was agreed to.

Mr. BANNAN. I move further to amend, by striking out, in the sixth line, the words "shall and in any other city or county," so that the section will read:

"In every city and county wherein the population shall exceed 150,000, the Legislature may establish a separate orphans' court."

If these words are left in the section, the Legislature will have the power to establish a separate orphans' court in any county, whether the citizens require it or not. I do not think the Legislature ought to have any such power as that. We already have too many orphans' courts throughout the whole State in counties where there is no necessity for having them.

Mr. KAINE. I suggest to the gentleman from Schuylkill that he leave in the word "shall" and strike out "may" at the end, so as to make the sentence read:

"In every city and county wherein the population shall exceed 150,000, the Legislature shall establish a separate orphans' court."

Under the amendment of the gentleman from Luzerne, reducing the population from 200,000 to 150,000, I think it will be very proper to make this modification.

Mr. BANNAN. I accept that.

Mr. ARMSTRONG. I inquire what the effect of that would be.

Mr. KAINE. Nothing. The Legislature can do it anyhow if they want to. [Laughter.]

Mr. ARMSTRONG. It is to be borne in mind that we have already inserted a section in this article that the Legislature may create other courts to do any business. Now, as we have already authorized the court of common pleas, I think this section is properly worded as it stands, and that it would be proper to retain this language.

Mr. J. M. BAILEY. I desire to remind the Convention that we have already provided in another section that every county in the State containing a population of 30,000 shall be a separate judicial district.

Mr. LILLY. We are going to change that.

Mr. J. M. BAILEY. I hope it will be stricken out; but we have it in now; and

to invite the Legislature, in addition to these separate judicial districts for every county of 30,000 population, to establish separate orphans' courts in those counties would be over-burdensome, and I hope the Convention will strike this part out.

Mr. HANNA. I move to amend the amendment, by striking out in the third line after the word "court" all down to the word "determine," in the twelfth line.

MANY DELEGATES. No! No!

The PRESIDENT *pro tem*. That is hardly an amendment to the amendment.

Mr. HANNA. Then I will withdraw it for the present and renew it when the pending amendment is disposed of.

Mr. BIDDLE. I ask for the reading of that amendment.

The CLERK. It is moved to strike out in the sixth line the words, "and in any other city or county may," so that the section will read: "In every city or county where the population shall exceed 150,000, the Legislature shall establish a separate orphans' court."

Mr. SIMPSON. I trust the amendment of the gentleman from Schuylkill will not be agreed to. I shall have no objection if he will so modify it that the Legislature may in certain cases, say in counties where the population is seventy-five thousand or upwards; and I think the population of counties smaller than that should have a separate orphans' court established, with the consent of the Legislature. If this amendment be adopted it will be impossible for the Legislature to establish an orphans' court, no matter how necessary it may be, or how much the people may demand it in any of these small counties; and certainly the Legislature ought to have that power.

Mr. HOWARD. I am perfectly satisfied that in our county we should be very glad indeed to have a separate orphans' court, and I believe that is the opinion of our people. I cannot see why it cannot be so arranged that the larger counties should have a separate orphans' court. It would relieve the court of common pleas and assist us in the performance of our duties.

Mr. COCHRAN. If I understand the object of the amendment now pending, it is to strike out the provision which gives the Legislature authority to establish probate courts in certain counties of small population. If it is intended to vest the power in the Legislature and make it imperative for the Legislature to provide these courts, I hope that will be strick-

en out and that it will be left optional with the Legislature to do so. My own desire would be to have a separate probate court, which should supercede the register of wills entirely in certain counties; but that was rejected in committee of the whole, and we were cut down to this provision, which is all that is left for us. I hope the Convention will not go to work now and deprive us of a provision which may be very material and useful to some counties of the State.

Mr. ARMSTRONG. I concur entirely with the remarks of the gentleman from York.

The amendment was rejected.

Mr. J. M. BAILEY. I have a couple of amendments to suggest, which I think will meet the unanimous consent of the Convention. They are to strike out in the twelfth and thirteenth lines the words, "to be compensated by a fixed salary to be ascertained by law, and shall." We have already provided that the register of wills shall be a county officer, and that all county officers shall be paid a fixed salary, to be ascertained by law. This is, therefore, entirely unnecessary in this section. I think we shall all agree that our Constitution will be quite long enough without having any of it repeated.

Mr. ARMSTRONG. We had better leave all that to the Committee on Revision and Adjustment, and if they find it unnecessary or incongruous they can strike it out.

On the question of agreeing to the amendment proposed by Mr. J. M. Bailey a division was called for, which resulted thirty-three in the affirmative. This not being a majority of a quorum, the amendment was rejected.

Mr. HANNA. I now move to amend by striking out all after the word "court," in the fourth line, down to and including the word "determine," in the twelfth line, and I will state my reasons for the amendment. It appears by this section that it becomes an imperative duty on the Legislature to impose upon every city and county having a population of over 150,000 a separate orphans' court. I submit that there is no necessity for including such a proposition as this in the Constitution. It gives us in the city of Philadelphia a separate orphans' court. For this there is no necessity whatever. At present the judges of the court of common pleas perform that duty. We have now five judges of the court of common

pleas, and under this amended Constitution it has been provided that the city of Philadelphia shall have twelve judges of the court of common pleas. Why cannot these judges perform that duty, and at the same time attend to the business of the orphans' court, that is now performed by five judges? I see no reason why they cannot. Why impose upon the city of Philadelphia the additional expense of a separate orphans' court? There is no reason for it whatever, in my judgment.

Again, if it becomes necessary hereafter, to meet the wants and necessities of the people of Philadelphia, to have a separate orphans' court provided, it can readily be done. The Legislature can afford any relief needed in that direction. By the very first section of this article it says that the Legislature from time to time shall establish such other courts as may be necessary, and certainly that confers all requisite power in the premises. On the contrary, by this section you make it the imperative duty of the Legislature to authorize a separate orphans' court in the city of Philadelphia.

If we pass the section, leaving it optional with the Legislature, by striking out "shall" and inserting "may," I would not object to it, because then if the bar and the community of Philadelphia need the establishment of a separate orphans' court, we can petition the Legislature to that effect and have the court established. But I do trust that this Convention will not adopt this section in its present shape and will not impose this unnecessary expense on the city of Philadelphia, unless such a separate orphans' court is demanded by the people.

As I have remarked, the Convention has thought fit and proper to impose upon the city of Philadelphia a court of common pleas of twelve judges. Certainly they can perform the same duty that the five judges do now. The five judges of the court of common pleas in Philadelphia now not only, to the entire satisfaction of the bar and the community, attend to all the business relating to the settlement of decedents' estates, but also to the miscellaneous business of the court of common pleas. And in addition to that these five judges attend to all the criminal business, hold the courts ofoyer and terminer and quarter sessions, each judge taking a month about for that purpose. If these five judges can do all this work, can perform all this labor, can

work up our jury lists, our trial lists, our quarter sessions business, our orphans' court business, our road cases, our equity business, our feigned issues and everything else, I take it that twelve judges, out of which you propose to form the court of common pleas, ought to be able to do as much. I submit, as a plain, practical business question, that you should leave this subject optional with the Legislature. Then if the bar of Philadelphia

deem it necessary they can ask the Legislature to establish a separate orphans' court for this city and have it granted to them.

Therefore I make this amendment, and I trust that the Convention will not place this section in the form proposed.

The PRESIDENT *pro tem.* The hour of six o'clock having arrived the Convention stands adjourned until to-morrow at nine o'clock A. M.

ONE HUNDRED AND THIRTY-FOURTH DAY.

THURSDAY, July 3, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday's proceedings was read and approved.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tem.* presented a communication from the Seventh Day Baptist Association, composed of Seventh Day Baptist churches of Western Pennsylvania and Northern New York, requesting the Convention to take no action in reference to the observance of the Sabbath, which was laid on the table.

LEAVES OF ABSENCE.

Mr. WRIGHT asked and obtained leave of absence for himself for a few days after this morning's session.

Mr. D. W. PATTERSON asked leave of absence for himself for a few days from to-morrow.

The PRESIDENT *pro tem.* Will the Convention grant the leave asked by the delegate from Lancaster? ["No." "No."] Leave of absence is not granted.

Mr. MACVEAGH. I shall be obliged to my colleagues if they will listen for one moment to a personal explanation. I am sorry to say that I am advised by competent authority that I ought not to remain here during the month of July. I have had such pleasant relations with everybody in this Convention and have enjoyed my associations here so much that I simply desire to do what my colleagues would wish me to do. If they think that under the circumstances I ought to resign my place I am perfectly willing to do that. ["No." "No."]

Mr. BIDDLE. I hope you will not do any such thing.

Mr. CARTER. I move that the gentleman have leave of absence as long as he wants it.

Mr. BIDDLE. I second that motion, and I say in seconding it that I do not believe there is a single voice in this Convention that will not be raised against the gentleman's resignation.

The motion was agreed to.

Mr. HAY. I am requested by Mr. Ewing to ask leave of absence for him for a few days from to-day.

Leave was granted

Mr. BOYD asked and obtained leave of absence for himself for a few days from next Monday.

Mr. BEEBE. I ask leave of absence for all the members of this Convention for two months from to-day. [Laughter.]

Mr. BARTHOLOMEW. I second that.

Mr. BEEBE. I think it is a reasonable request.

The PRESIDENT *pro tem.* The Chair declines to entertain the motion.

Mr. CURRY asked and obtained leave of absence for himself for a few days from to-day.

Mr. BARTHOLOMEW asked and obtained leave of absence for himself for a few days from to-day.

Mr. BOWMAN asked and obtained leave of absence for Mr. BROWN until next Tuesday.

Mr. H. W. SMITH asked and obtained leave of absence for himself for a few days from Monday next.

M'ALLISTER MEMORIAL.

Mr. CURTIN. Mr. President: I desire to make a statement. The memorial in honor of our late colleague, Mr. Hugh N. M'Allister, is now prepared for distribution, and I find on looking at it this morning that unfortunately the proceedings of the barand of the sessions of the church in Bellefonte, to which he belonged, are printed in the book. The family desired to have the proceedings of the Convention enlarged so as to cover the proceedings at their home, and a consideration was fixed with the printers at which they should publish two hundred and fifty copies for their use; but unfortunately I find that the proceedings of the town meeting in Bellefonte are put in the memorial of this Convention, through an inadvertence of the publisher. I regret it very much indeed, as it is certainly in very bad taste, but it is not the fault of the gentlemen of this Convention who had the control of this publication—I re-

fer to the gentleman from Mifflin, (Mr. Andrew Reed,) the gentlemen from Huntingdon, (Mr. J. M. Bailey,) and myself. With that explanation I report to the members that the memorial is now ready for distribution.

Mr. ALRICKS. Allow me to say a word. We called yesterday on the printer, and he said we were not charged with the extra work that was done.

Mr. CURTIN. I am not speaking of the cost, but of the fact.

PROPOSED RECESS.

Mr. TEMPLE. I offer the following resolution:

Resolved, That when this Convention adjourns to-day, it will be to meet on Monday next at ten o'clock A. M.

Mr. H. G. SMITH. I move to postpone for the present.

Mr. ARMSTRONG. I desire to appeal to the Convention for one moment.

The PRESIDENT *pro tem*. The question is, will the Convention proceed to the second reading and consideration of the resolution.

The motion was agreed to, there being on a division ayes thirty-four, noes thirty-two.

So the resolution was ordered to a second reading.

The resolution was read the second time and considered.

Mr. ARMSTRONG. I desire to make a suggestion to the Convention. We are losing a great deal of time by unnecessary debate and the calling of the yeas and nays on questions of adjournment. Now, I submit to the Convention whether it would not be better to proceed immediately to the consideration of the article on the judiciary, which we can probably finish in two or three hours, and then by unanimous consent take up this question of adjournment and consider it fairly and end the matter, that we may not be disturbed by any waste of time. I believe it would facilitate the business of the Convention and save a great deal of time.

Mr. STEWART. I move to amend by striking out "Monday next" and inserting "the second Tuesday in September next."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin.

Mr. LILLY. I move to postpone the resolution until after we get through with the judiciary article. ["No!" "No!"] I will withdraw that motion to allow the

delegate from Delaware (Mr. Broomall) to offer a substitute.

Mr. BROOMALL. I offer the following substitute for the resolution:

Resolved, That the Convention shall finish the article on the judiciary to-day and that the session be prolonged if necessary for that purpose.

Second. That the articles in their condition at the close of this day be published in pamphlet form, and fifty copies thereof be furnished to each delegate for distribution.

Third. That when the Convention adjourns to-day, it will be to meet on the third Tuesday in October next.

The PRESIDENT *pro tem*. The question is on the substitute of the gentleman from Delaware.

Mr. CARTER. I do hope that no such proposition as that will prevail. ("Question!" "Question!") I am not going to detain the Convention, but I claim the right to speak, and I will be heard.

We will excuse those that are weak in health and let them go; but, sir, if we work with the same persistent energy that we have displayed in the last ten days, in which we have gone over six or eight important articles, we can finish the two remaining articles in the next ten days. The delay yesterday was occasioned by the section under consideration not having been considered in committee of the whole. It had never been discussed. I am satisfied that if we work away as we have done lately, in ten days our work will be done. Now, let the weak and the lame and disorganized be given leave of absence. I am not one of them, and I am only in my seventieth year, and I am perfectly willing to sit here and work, and we are doing more work and more efficient work each day now than we did in the winter. We have a larger attendance. I am sure it is not unhealthy here. In truth, as to my own case, I went to the country on Saturday and Sunday and got sick, and I came back here to get well. We are in one of the coolest buildings in Philadelphia. Some of our members are actually growing obese with the fine living and fine air. [Laughter.] It is all a delusion that we must quit our work now and go home, when we are fairly under way; and I hold that we can finish in the next ten days.

Some gentlemen affect to sneer at the opinions of the press in regard to our staying here and completing our work, but in my experience I have seen that

those men who profess to care least for the opinions of the press really care the most. I consider the press as the exponent of public sentiment. They always reflect the wishes of the people. It is their business to do it. ["Question." "Question."]

I will speak a minute longer. You cannot cry me down. I say that the press does express the sentiments of the people, and its utterances are entitled to our consideration; and, sir, the sentiment of the people is for us to finish our work. I propose to place myself upon record, and we will have a call of the yeas and nays, and show at least those who are willing to shrink from their duty.

Mr. BROOMALL. I only desire to say that my object in offering this amendment is not so much because I want to get away from here during the hot weather as to give the people an opportunity of seeing what we are proposing to do. They are utterly ignorant of what is going on here, and I think the suggestions that would come from the country in the interval would be very valuable. I would be very sorry to see us do something here that we should regret before two or three months had passed by, in our haste to get rid of what is of course an unpleasant job to us. I was going to say that if it is the desire of the Convention I will withdraw the day of meeting named by me, the third Tuesday of October, and leave that blank, to be filled by the Convention if the amendment should be adopted.

Mr. BIGLER. I desire to appeal to the gentleman from Delaware to modify his proposition. I rose to object to it earnestly. If we adjourn to the third Tuesday in October, it will be impracticable to submit the amendments so that they may be ratified and applied to the coming Legislature. Now, sir, I think that is the great practical point before us, and no proposition to adjourn should be entertained which will defeat that object. I mean that if a recess is absolutely necessary, it should not go beyond the period at which we could complete our work and have it ratified in November or December, and I shall not, for one, vote for any proposition which puts that object out of the reach of the Convention. The gentleman from Delaware, I believe, has modified his amendment.

Mr. BROOMALL. No; I prefer letting it stand as it is.

Mr. BIGLER. Very well, sir; then I hope the Convention will vote it down.

I think it of the utmost importance, and it is entirely practicable, that this Convention complete its work and have it adopted or rejected by the people before the meeting of the next Legislature.

Mr. HAY. I ask for a division of the amendment, if it is in order, into three divisions.

Mr. LILLY. You cannot divide a substitute.

The PRESIDENT *pro tem.* As a substitute, it must be acted upon as a whole and cannot be divided.

Mr. BROOMALL. I desire to ask whether it can be voted upon with the blank day of meeting and the blank filled afterwards?

The PRESIDENT *pro tem.* It can.

Mr. BROOMALL. Then I withdraw the day of meeting, leaving that blank, to be filled afterwards, if it passes.

Mr. LAWRENCE. I move to lay the resolution, with the amendments, on the table.

Mr. CARTER. I second the motion.

Mr. LILLY and Mr. BOYD. I call for the yeas and nays.

Mr. ROSS. I second the call.

The CLERK proceeded to call the roll, and the call having been concluded—

Mr. ARMSTRONG. I rise to a parliamentary inquiry, and that is whether if this motion be carried it will be possible to resume the same question again to-day without a two-thirds vote?

The PRESIDENT *pro tem.* It will if the proposition offered fixes another day for re-assembling.

Mr. ARMSTRONG. The purpose of my inquiry is this: If, after the article on the judiciary is finished, we can resume the consideration of the question of adjournment, then my vote stands as I have cast it, "yea." If not, I shall vote "nay." I ask of the Chair what would be his decision on that question.

The PRESIDENT *pro tem.* The Chair thinks it would not be allowable to take up a resolution out of order without a two-thirds vote.

Mr. ARMSTRONG. Then I vote "nay" on this question.

Mr. FUNCK (having voted in the affirmative.) Under the ruling announced by the Chair, I change my vote from yea to nay.

Mr. T. H. B. PATTERSON. I submit the gentleman has no right to change his vote.

The PRESIDENT *pro tem.* If the gentleman voted under a misapprehension of

the question he has a right to change his vote.

Mr. T. H. B. PATTERSON. I did not understand him to say that.

Mr. LAWRENCE. I ask the gentleman whether he voted under a mistake of the question. If not, he has no right to change his vote.

Mr. GIBSON (having voted "yea.") I voted under a misapprehension, and change my vote to "nay."

The PRESIDENT *pro tem*. If the gentleman voted under a mistake of the question he has a right to change his vote. Did he?

Mr. GIBSON. I understood the direct question, but I did not understand the effect of the vote.

The PRESIDENT *pro tem*. The effect of the vote is one thing; the vote itself is another.

Mr. ARMSTRONG. I suppose if a man votes under a misapprehension of the practical effect of his vote that he has voted under a misapprehension. ["Certainly."]

The PRESIDENT *pro tem*. Is there objection to permitting the gentleman from York to change his vote? The Chair hears none.

Mr. GIBSON. I vote "nay."

Mr. FUNCK. I ask that my vote be changed from "yea" to "nay."

Mr. LAWRENCE. I hope the Chair will announce the decision.

The PRESIDENT *pro tem*. Gentlemen have a right to change their votes if they voted in error. The Chair hears no objection to permitting them to change, and the vote of the gentleman from Lebanon will be changed accordingly.

The result was announced as follows:

Y E A S .

Messrs. Achenbach, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Bowman, Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Fulton, Gilpin, Guthrie, Hay, Heverin, Lawrence, Lilly, Long, MacConnell, McClean, Mann, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Reed, Andrew, Rooke, Simpson, Struthers, Temple, Walker, White, Harry, Worrell and Wright—44.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baker, Bannan, Barclay, Bartholomew,

Beebe, Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Curry, Curtin, Elliott, Ellis, Fell, Funck, Gibson, Green, Hanna, Harvey, Hazzard, Hemphill, Howard, Hunsicker, Kaine, Knight, Lamberton, Lear, MacVeagh, Metzger, Minor, Mitchell, Parsons, Patton, Porter, Reynolds, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stanton, Stewart and Van Reed—48.

So the motion to lay on the table was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Cassidy, Church, Collins, Corson, Craig, Cronmiller, Cuyler, Davis, Dunning, Ewing, Finney, Hall, Horton, Landis, Littleton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Furman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

The PRESIDENT *pro tem*. The amendment is before the Convention.

Mr. STEWART. Mr. President: I do decidedly object to so much of the amendment of the gentleman from Delaware as provides for the publication of our work. I think it is extremely unwise. We have completed nothing so far; at least we have carried nothing to that point beyond which we can go no further. Whatever work we have done is subject to modification and change; and if published in that condition it simply invites criticism to which we ought not to be exposed. There is no reason, in my judgment, why the work of the Convention at this stage should be published and submitted to the people. It is not the final result of our labor. For that reason I shall vote against the amendment of the gentleman from Delaware.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Delaware (Mr. Broomall.)

Mr. SHARPE. I call for a division of the question.

The PRESIDENT *pro tem*. The Chair has decided that the substitute cannot be divided.

Mr. COCHRAN. I wish to make one suggestion, not to make a speech. The simple proposition that I have to submit is, that if we are going to vote on this amendment we must fill the blank before we pass the resolution; we must fix the day before we vote on it.

Mr. BARTHOLOMEW. I move to fill the blank with the "third Tuesday of October."

The PRESIDENT *pro tem.* The question is on the motion to fill the blank.

Mr. STEWART. There are already two amendments to the resolution.

The PRESIDENT *pro tem.* It is in order to fill the blank, the Chair supposes.

Mr. BARTHOLOMEW. I withdraw my motion, and move to fill the blank with "the third Tuesday of September," which seems to be more acceptable.

Mr. D. W. PATTERSON. It is in order to fill the blank.

The PRESIDENT *pro tem.* There is a motion to fill the blank pending.

Mr. D. W. PATTERSON. I move to amend, by inserting "the eighth of July."

The PRESIDENT *pro tem.* After the vote is had on the motion of the gentleman from Schuylkill, if that is rejected, a further motion will be in order.

Mr. HOWARD. Is it in order to name the time for this Convention to meet when they adjourn to-day?

The PRESIDENT *pro tem.* There is an amendment to an amendment now pending. When that is negatived, if it shall be, a further amendment will be in order. The question is on the motion of the gentleman from Schuylkill to fill the blank.

Mr. BARTHOLOMEW. At the request of several gentlemen, I withdraw my motion again, and move to fill the blank with "the second Tuesday of September."

The PRESIDENT *pro tem.* The Chair, on reflection, will rule out of order the motion of the delegate from Schuylkill, and state that when the amendment is adopted, if adopted, then a time may be inserted, but not before.

Mr. STEWART. I desire to state that my amendment to the original resolution provides that when the Convention adjourns to-day it be to meet on the second Tuesday of September. The amendment of the gentleman from Delaware is to my amendment, and if that is voted down then the question comes up squarely, shall we meet on the second Tuesday of September?

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Delaware (Mr. Broomall) to the amendment of the gentleman from Franklin (Mr. Stewart.)

The amendment to the amendment was rejected.

The PRESIDENT *pro tem.* The question is now on the amendment of the gentle-

man from Franklin, to strike out "Monday next" and insert "the second Tuesday of September."

Mr. CAMPBELL. I call for the yeas and nays.

Mr. CORBETT. I second the call.

Mr. HOWARD. I move to amend the amendment by inserting after the word "meet" the words "at Harrisburg."

The PRESIDENT *pro tem.* That would not now be in order.

Mr. HOWARD. Only one amendment is before the Convention.

The PRESIDENT *pro tem.* The gentleman is right. The Chair misunderstood the amendment. It will be received if the gentleman desires it.

MANY DELEGATES. Offer it afterwards.

Mr. HOWARD. I withdraw it for the present, and will offer it afterward.

The question being taken on Mr. Stewart's amendment by yeas and nays, resulted as follows, viz:

YEAS.

Messrs. Ainey, Armstrong, Baker, Bannan, Barclay, Bartholomew, Beebe, Bowman, Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Curry, Curtin, Elliott, Ellis, Fell, Green, Hanna, Harvey, Hazzard, Hemphill, Hunsicker, Knight, Lamberton, Lear, Long, MacVeagh, Metzger, Minor, Mitchell, Mott, Parsons, Patton, Reynolds, Ross, Sharpe, Smith, H. G., Stanton, Stewart, Struthers and Van Reed—45.

NAYS.

Messrs. Achenbach, Alricks, Baily, (Per ry.) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Kaine, Landis, Lawrence, Lilly, MacConnell, McClean, Mann, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Temple, Walker, White, Harry and Wright—46.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Cassidy, Church, Collins, Corson, Craig, Cronmiller, Cuyler, Davis, Dunning, Ewing, Finney, Hall, Heverin, Horton, Littleton, McCamant, McCulloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R.,

Runk, Russell, Smith, William H., Turrell, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, *President*—42.

Mr. TEMPLE. I ask if it now is in order to withdraw the original resolution?

The *PRESIDENT pro tem.* No, sir.

Mr. HOWARD. I now renew my amendment, to strike out all after the word "meet" and insert "at Harrisburg on the second Tuesday of September next," and on that amendment I call for the yeas and nays.

Mr. STEWART. I second the call.

Mr. BROOMALL. Is the amendment further amendable?

Mr. TEMPLE. This is an amendment to the original resolution, and therefore another amendment is in order.

The *PRESIDENT pro tem.* That is correct. The amendment can be amended.

Mr. BROOMALL. Then I move to strike out "Harrisburg" and insert "Philadelphia."

Mr. LILLY. I hope the House will not waste any more time on this subject. This amendment to the amendment is certainly not in order. We have just voted it down by a call of the yeas and nays. Let us now vote on this question in order and settle it in some way, and then we can get to work.

Mr. HANNA. Mr. President: I am sorry that my friend from Allegheny (Mr. Howard) has thought proper to introduce this amendment. I shall not trouble the House with a speech on the subject, but merely remind it that when the Convention met in Harrisburg the invitation of the authorities of the city of Philadelphia was received in the same cordial spirit in which it was extended. In pursuance of that action of the Convention, the city of Philadelphia, having purchased this property, went to large expense to fit it for the purposes of the Convention. They expended between \$25,000 and \$30,000 for the purpose of converting this ancient church into a hall for the meetings of the Constitutional Convention. From that time we have met here; and I may say that when posterity come to read the debates of this Convention they will find, as one of the *curiosities* of its proceedings, that whenever a motion has been made to adjourn, a motion has been made to meet at Harrisburg. Now, sir, I say that is one of the *curiosities* of the proceedings of this Convention. I submit to the calm, candid judgment and

reflection of the members of this Convention how it would have looked if the Convention had thought proper to decline the invitation of the city of Philadelphia and resolved to hold its sessions at Harrisburg if some delegate from the city had offered on every occasion a motion that we should meet at Philadelphia.

Mr. President, I think that a due sense of the proprieties of this occasion and the object of the Convention should lead us to continue to hold our sessions in the place we first selected at the invitation of the authorities of this city.

The *PRESIDENT pro tem.* The question is on the motion to strike out "Harrisburg" and insert "Philadelphia."

Mr. TEMPLE. I withdraw that.

The *PRESIDENT pro tem.* Then the question is on the amendment of the delegate from Allegheny (Mr. Howard.)

Mr. HOWARD. Mr. President: I have listened to what I consider the very extraordinary speech of the delegate from Philadelphia (Mr. Hanna). It is well understood we came to Philadelphia as a matter of necessity. The primary reason for adjourning from Harrisburg was that the Legislature was to meet there on the first of January. No sooner had they fixed the place at Philadelphia than the same Philadelphia members moved to adjourn the Convention, and they did do it, and we lost over five weeks. Just as soon as they got the place fixed, very well; they must away at once. We staid here until the Legislature adjourned and vacated the capital. Then it was that we moved to go back to Harrisburg.

Mr. President, I know that I would meet fifty of my constituents at Harrisburg and have communication with them where I would meet one here in Spruce street, here in the lower corner of Philadelphia. That is the reason why I was willing to go back to Harrisburg, and when we knew the cause of our removal has been taken away. When we came here we expected that we certainly would have concluded our labors by the first of May. Now, we have run into July, and yet the delegate from Philadelphia is not satisfied. He wants to bring this body back perhaps to continue them here in the hot months of July and August for the purpose of deliberating, I suppose he calls it. Why we do nothing but fight; we do not deliberate. We have not had reason here for days; it has been a jangle and a brawl, where the President could not keep order; and that is one of the reasons that

has brought my mind to vote for an adjournment to Harrisburg. We are not deliberating, and if we continue here we shall botch our work, and it will be far better for ourselves and the people, more reputable for us, to adjourn until September. Take the advice of our friends throughout the Commonwealth. Let us return to Harrisburg in the fall and there complete our labors.

Mr. STEWART. I move to amend the amendment by striking out "the second Tuesday of September at Harrisburg" and inserting "the first Tuesday of September next."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin (Mr. Stewart) to the amendment of the delegate from Allegheny (Mr. Howard.)

Mr. STEWART. That is without saying anything about the place.

Mr. DE FRANCE. Mr. President: I am opposed to this motion of the delegate from Allegheny, because it adjourns our meeting from now until September. I have no objection to going to Harrisburg or going to any place else where we can get in a cooler position than we seem to have here; but it seems to me if we do now adjourn, that our main work is lost; the enemies of the Constitution, in my judgment, have succeeded. If we do not submit this Constitution until away on in 1874, I do not believe the people will agree to it at all; I believe they will oppose it. We met at Harrisburg on the twelfth day of last November, and what is the reason we did not stay there when it was cool and comfortable? Gentlemen alleged that the committees ought to report, that there was something which ought to be done, and we were to meet in the great city of Philadelphia, where the Declaration of Independence had been announced, where the Constitution of the United States had been made, and we were to work there and finish our work in a short time! How did we do it? As I said yesterday, we met here and we never sat one solitary Saturday until the other day. Not one solitary Saturday did we sit. We adjourned almost universally every Friday until the following Monday. We have not worked as we should have worked; and it is no hotter weather now than thousands of people work in in their offices. I am in favor, if we do not go to Harrisburg, of staying here or some other place that is convenient until we finish up our work,

and making arrangements for submitting it to the people, as we are bound to do.

Mr. President, let the men who are in favor of disobeying the voice of the united press of Pennsylvania take the responsibility.

Mr. BRODHEAD. We will take it.

Mr. DE FRANCE. Put it down that I am opposed to this, unalterably opposed to it; that I feel we are going directly against the wishes of our constituents.

Gentlemen say that they are not healthy. Who is more unhealthy in this Convention than I am? Any person? If there are such, let them go to their seaside cottages, let them go to the springs, let them spend their money; I have not got any to spend in that way.

How will it be, Mr. President, if we come back here next year? We shall have the siege of Troy reviewed fully; we shall have the *Eneid* reviewed; we shall have the whole history of Greece and Rome examined in the most erudite manner, and there will be a hundred of the most eloquent speeches ready in the delegates' pockets to be delivered here next fall when we re-assemble again. I am opposed to it. We shall certainly sit until next year if we go home now and come back in the fall. We can finish our work now in three or four weeks. What is there to do that men of sense could not do if they would agree and not talk, not gas so much, and spend the time of the Convention that way? What is there to do? We have the railroad report to go over; we have to fix the Legislature; and I believe that we can agree upon that now. We can agree to fix the number of the members, and then leave it to the Legislature, which we shall have to do in the end—that is, to district the State. It seems to me that will be what we shall have to do in the end.

Now, Mr. President, it does seem to me folly for us to go home, but all I wish to say is, let the men who favor it take the responsibility. They do not belong to any one particular party. There is nothing of party in it at all; but I say, whether ignorantly or wilfully or howsoever it may have been done, the enemies of this Constitution have gained a victory this morning, if they can carry out their programme to adjourn till next September or October. I have had my say and will now leave the question to its fate.

Mr. BOYD. Mr. President: I shall vote for the resolution that when we adjourn here to-day we shall adjourn to meet in

the city of Harrisburg in September next, and I desire to give my reason for this vote. In doing so I am not unmindful of the kindness of the citizens of Philadelphia in furnishing us this hall, and I am not unmindful of their kindness in other respects and their hospitality. I love the place and I dislike Harrisburg, and doubt whether it is fit for anything human to go to. [Laughter.] But inasmuch as we could not obtain an adjournment in consequence of the votes of our Philadelphia friends, I shall now do the next best thing that can be done. As it is manifest we can have no adjournment until September unless we go to Harrisburg, I shall therefore vote for Harrisburg now and all the time.

Mr. STEWART. Mr. President: In order to remove this question of some of its complication, I withdraw the amendment I offered, so that a vote may be taken directly on the amendment of the gentleman from Allegheny.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Allegheny, (Mr. Howard,) that when we adjourn to-day it be to meet in Harrisburg the second Tuesday of September.

Mr. CAMPBELL and Mr. DALLAS called for the yeas and nays, and they were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Baker, Bannan, Barclay, Beebe, Bigler, Bowman, Boyd, Brodhead, Broomall, Calvin, Cassidy, Curry, Elliott, Ellis, Funck, Gilpin, Green, Harvey, Hazzard, Hemphill, Howard, Hunsicker, Lamberton, Long, MacVeagh, Minor, Mitchell, Parsons, Patton, Reynolds, Ross, Sharpe, Stewart, Struthers, Van Reed and Walker—38.

NAYS.

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bartholomew, Biddle, Black, Charles A., Brown, Buckalew, Bullitt, Campbell, Carey, Carter, Clark, Cochran, Corbett, Cuyler, Dallas, Darlington, De France, Dodd, Edwards, Fell, Finney, Fulton, Guthrie, Hanna, Hay, Kaine, Knight, Landis, Lawrence, Lear, Lilly, Littleton, MacConnell M'Clellan, Mann, Metzger, Mott, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, H. G., Smith, Henry W., Stanton, Tem-

ple, Wetherill, John Price, White, Harry, Worrel and Wright—56.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Church, Collins, Corson, Craig, Cronmiller, Curtin, Davis, Dunning, Ewing, Gibson, Hall, Heverin, Horton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Niles, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—39.

Mr. STEWART. I move to amend by striking out "Monday next," and inserting "the first Tuesday of September next."

Mr. LILLY. I hope gentlemen will not filibuster any more on this subject.

Mr. STEWART. I call for the yeas and nays on my amendment.

Mr. HUNSICKER. I second the call.

Mr. TEMPLE. I desire to make a motion to lay the whole subject on the table.

Mr. LILLY and Mr. BIDDLE called for the yeas and nays.

Mr. HUNSICKER. I call the previous question.

Mr. HANNA. I second the call.

The PRESIDENT *pro tem*. It requires eighteen gentlemen to rise in order to second the call for the previous question.

The call for the previous question was not seconded.

The PRESIDENT *pro tem*. The yeas and nays have been ordered on the amendment of the delegate from Franklin, (Mr. Stewart,) that when we adjourn, we adjourn to meet on the first Tuesday of September.

Mr. HARRY WHITE. I move to amend by inserting "Tuesday, the eighth day of July," and on that I call for the yeas and nays.

Mr. CARTER. I second the call.

Mr. CUYLER. I rise to a point of order. After the yeas and nays are ordered, it is not in order to offer a further amendment. The gentleman from Indiana is too late.

The PRESIDENT *pro tem*. The yeas and nays have been ordered on the amendment of the delegate from Franklin, and if the point of order is insisted upon, the Chair must rule the amendment of the delegate from Indiana out of order.

Mr. CUYLER. I do so insist.

The PRESIDENT *pro tem*. Then the Clerk will call the roll on the amendment of the delegate from Franklin.

The question being taken by yeas and nays, resulted, yeas forty-three, nays fifty-five, as follows :

Y E A S .

Messrs. Ainey, Armstrong, Baker, Bannan, Barclay, Bartholomew, Beebe, Bowman, Boyd, Brodhead, Broomall, Bullitt, Calvin, Cassidy, Corson, Curry, Curtin, Cuyler, Elliott, Ellis, Fell, Green, Hanna, Harvey, Hazzard, Hemphill, Hunsicker, Knight, Lamberton, Littleton, Long, MacVeagh, Minor, Mitchell, Parsons, Patton, Reynolds, Ross, Sharpe, Smith, H. G., Stanton, Stewart and Van Reed—43.

N A Y S .

Messrs. Achenbach, Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Brown, Buckalew, Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Kaine, Landis, Lawrence, Lear, Lilly, MacConnell, M'Clean, Mann, Metzger, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Struthers, Temple, Walker, Wetherill, Jno. Price, White, Harry, Worrell and Wright—55.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Church, Collins, Craig, Cronmiller, Davis, Dunning, Ewing, Hall, Heverin, Horton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—35.

Mr. BRODHEAD. I move to insert "on Tuesday, the eighth day of July, in the borough of Bethlehem."

Mr. HANNA. I suggest to make it "the Stockton House, Cape May." [Laughter.]

Mr. BRODHEAD. I call for the yeas and nays on my amendment.

Mr. STEWART. I second the call.

Mr. MACCONNELL. Let the amendment be read.

The CLERK. The resolution, if amended as proposed by the delegate from Northampton, (Mr. Brodhead,) would read :

"Resolved, That when this Convention adjourns to-day it will be to meet on the eighth day of July instant, in the borough of Bethlehem."

The yeas and nays were taken with the following result :

Y E A S .

Messrs. Ainey, Alricks, Bannan, Brodhead, Buckalew, Curtin, De France, Dodd, Ellis, Gibson, Green, Harvey, Hemphill, Howard, Hunsicker, Lamberton, Lear, MacConnell, Mitchell, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Reed, Andrew, Ross, Stanton, Stewart, Struthers, Van Reed and Walker—29.

N A Y S .

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Barclay, Bartholomew, Beebe, Biddle, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Brown, Calvin, Campbell, Carey, Carter, Clark, Corbett, Corson, Curry, Cuyler, Dallas, Darlington, Edwards, Elliott, Fell, Finney, Fulton, Funck, Gilpin, Guthrie, Hanna, Hay, Hazzard, Kaine, Knight, Landis, Lawrence, Lilly, Littleton, Long, M'Clean, Mann, Metzger, Minor, Mott, Niles, Parsons, Patterson, D. W., Patton, Porter, Reynolds, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Temple, Wetherill, Jno. Price, White, Harry, Worrell and Wright—64.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Black, J. S., Bullitt, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Davis, Dunning, Ewing, Hall, Heverin, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Rooke, Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—40.

The PRESIDENT *pro tem*. The question recurs on the resolution.

Mr. STANTON. I move now that the Convention proceed to consider the article on the judiciary. ["No." "No."]

Mr. TEMPLE. That motion is not in order. There is a resolution pending.

The PRESIDENT *pro tem*. The question is on the resolution before the House.

Mr. HOWARD. I move an amendment to the pending resolution, "that when this Convention adjourns to-day it will be to

meet at Bedford, on Thursday, the 10th day of July, instant, and proceed to finish the work of this Constitution." On that I call for the yeas and nays.

The *PRESIDENT pro tem.* The yeas and nays are called by the delegate from Allegheny.

Mr. BRODHEAD. I second the call.

Mr. BROOMALL. Before the yeas and nays are ordered, inasmuch as the previous question will probably be soon called, I desire to move to strike out the words "at Bedford," and then I have no objection to the previous question.

The *PRESIDENT pro tem.* It is moved to amend the amendment so as to strike out "at Bedford."

Mr. AINEY. I move to strike out "Bedford" and insert "Allentown."

Mr. HOWARD. That is not in order.

The *PRESIDENT pro tem.* The question is on the amendment, of the delegate from Delaware to the amendment of the delegate from Allegheny to strike out "at Bedford."

Mr. HOWARD. I call for the yeas and nays.

Mr. LILLY. I rise to call the previous question.

Mr. BRODHEAD. I second the call.

Mr. DARLINGTON. It requires ten, I think.

The *PRESIDENT pro tem.* It requires eighteen to second the call for the previous question. Is the call sustained?

Messrs. Corbett, Jos. Baily, J. M. Baily, Broomall, Knight, Carter, Brown, Porter, J. Price Wetherill, Mott, Patton, Biddle, MacConnell, Guthrie, Kaine, Hanna, Corson, Simpson, Funck, Fell, H. W. Smith and Darlington rose.

The *PRESIDENT pro tem.* The call for the previous question is sustained. The question is, shall the main question be now put.

Mr. AINEY. Now I desire to ask, the call for the previous question having been sustained, if the main question be directed to be put, will it then be in order to make any future motion in relation to adjournment?

Mr. HARRY WHITE. Certainly it will.

Mr. MACVEAGH. Of course it will. The previous question will only require that a vote be taken on the motions already made.

The *PRESIDENT pro tem.* The Chair is compelled to state very reluctantly that, as he must conform in his rulings to the decision of the President of this body, he can allow no other amendments on the

subject of adjournment to be moved. The question is, shall the main question be now put.

Mr. HOWARD. On that question I call for the yeas and nays.

Mr. CORBETT. I second the call.

The yeas and nays were taken, and were as follow, viz:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baily, (Perry,) Bannan, Bartholomew, Biddle, Black, Charles A., Bowman, Broomall, Brown, Carter, Clark, Cochran, Corbett, Curtin, Cuyler, Darlington, Dodd, Edwards, Fell, Finney, Funck, Gibson, Guthrie, Hanna, Harvey, Hazzard, Howard, Knight, Lambertson, Landis, Lawrence, Lear, Lilly, Long, MacVeagh, M'Clean, Mann, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Porter, Reed, Andrew, Reynolds, Rooke, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Van Reed, Walker, Wetherill, John Price and Worrell—62.

NAYS.

Messrs. Armstrong, Bailey, (Huntingdon,) Baker, Boyd, Brodhead, Buckalew, Bullitt, Calvin, Campbell, Carey, Cassidy, Corson, Dallas, De France, Elliott, Ellis, Fulton, Gilpin, Green, Hay, Hunsicker, Kaine, Littleton, MacConnell, Metzger, Niles, Patterson, D. W., Ross, Temple and White, Harry—30.

So the main question was ordered to be now put.

ABSENT.—Messrs. Addicks, Andrews, Baer, Barclay, Bardsley, Beebe, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Davis, Dunning, Ewing, Hall, Hemphill, Heverin, Horton, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, President—41.

The *PRESIDENT pro tem.* The question before the House is on the amendment of the gentleman from Delaware, to strike out "at Bedford," to the amendment of the gentleman from Allegheny on which the yeas and nays have been ordered.

The yeas and nays were taken.

Mr. BIGLER (when his name was called.) I am paired on all questions of

adjournment with the delegate from Chester (Mr. Hemphill.)

The call of the roll was concluded, with the following result :

Y E A S .

Messrs. Achenbach, Ainey, Armstrong, Bailly, (Perry,) Bannan, Barclay, Bartholomew, Biddle, Black, Charles A., Boyd, Broomall, Brown, Buckalew, Bullitt, Calvin, Cassidy, Clark, Corbett, Corson, Cuyler, Dallas, Edwards, Elliott, Fell, Hanna, Harvey, Hay, Hunsicker, Kaine, Knight, Lamberton, Lear, Lilly, Littleton, Long, Mann, Metzger, Mott, Niles, Parsons, Patterson, D. W., Patton, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Stanton, Stewart, Struthers, Temple, Van Reed, Walker, Wetherill, Jno. Price, White, Harry, Worrell and Wright—59.

N A Y S .

Messrs. Alricks, Bailey, (Huntingdon,) Baker, Beebe, Bowman, Brodhead, Campbell, Carey, Cochran, Curtin, Darlington, De France, Dodd, Ellis, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hazzard, Howard, Landis, Lawrence, MacConnell, MacVeagh, Minor, Mitchell, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Porter and Reed, Andrew—33.

So the amendment to the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Carter, Church, Collins, Craig, Cronmiller, Curry, Davis, Dunning, Ewing, Finney, Hall, Hemphill, Heverin, Horton, M'Camant, M'CLean, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

The *PRESIDENT pro tem.* The question now recurs on the amendment as amended, which will be read.

The *CLERK.* The resolution, if amended as proposed, will read :

Resolved, That when this Convention adjourns to-day it will be to meet on Thursday, the tenth instant, at ten o'clock A. M.

Mr. COCHRAN. What is the original section to which that is offered as a substitute?

The *PRESIDENT pro tem.* The original resolution was to meet on Monday next.

The question is now on the amendment just read.

Mr. MACCONNELL and Mr. PORTER called for the yeas and nays, and they were taken with the following result :

Y E A S .

Messrs. Ainey, Black, Chas. A., Broomall, Cassidy, Curtin, Cuyler, Dodd, Fell, Finney, Fulton, Hanna, Long, Mitchell, Niles, Parsons, Sharpe, Smith, Henry W., Stanton, White, Harry and Worrell—20.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bartholomew, Beebe, Biddle, Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Clark, Cochran, Corbett, Corson, Dallas, Darlington, De France, Edwards, Elliott, Ellis, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hay, Hazzard, Howard, Hunsicker, Kaine, Knight, Lamberton, Landis, Lawrence, Lear, MacConnell, M'CLean, Mann, Metzger, Minor, Mott, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Patton, Porter, Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, H. G., Stewart, Struthers, Temple, Van Reed, Walker and Wetherill, John Price—68.

So the amendment as amended was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Bowman, Carter, Church, Craig, Cronmiller, Curry, Davis, Dunning, Ewing, Hall, Hemphill, Heverin, Horton, Lilly, Littleton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Patterson, D. W., Pughe, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—45.

The *PRESIDENT pro tem.* The question now recurs on the original resolution.

Mr. BRODHEAD. I move to reconsider the vote just taken.

Mr. KAINE. That is not in order. We are acting under the previous question.

The *PRESIDENT pro tem.* The motion to reconsider is not in order. The call for the previous question has been sustained by the House, and we must proceed to vote upon the propositions before the House, when the previous question was ordered. The Clerk will now read

the original resolution, which is the pending question.

The CLERK read as follows:

Resolved, That when this Convention adjourns to-day it will be to meet on Monday next at ten o'clock A. M.

The yeas and nays were required by Mr. Temple and Mr. Beebe, and were as follows, viz:

YEAS.

Messrs. Alricks, Armstrong, Bailly, (Perry,) Black, Charles A., Broomall, Brown, Buckalew, Calvin, Carey, Carter, Cassidy, Clark, Cochran, Cuyler, Finney, Funck, Gibson, Gilpin, Guthrie, Hanna, Kaine, Knight, Lamberton, Landis, Lilly, Long, M'Clean, Mann, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Reed, Struthers, Temple, Walker, White, Harry, Worrell and Wright—45.

NAYS.

Messrs. Achenbach, Ainey, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bartholomew, Beebe, Biddle, Bowman, Boyd, Brodhead, Bullitt, Campbell, Corbett, Corson, Curtin, Dallas, Darlington, De France, Edwards, Elliott, Ellis, Fulton, Green, Harvey, Hay, Hazzard, Howard, Hunsicker, Lawrence, Lear, Littleton, MacConnell, Minor, Mitchell, Mott, Niles, Patterson, T. H. B., Patton, Reed, Andrew, Reynolds, Ross, Smith, H. G., Stewart, Van Reed and Wetherill, John Price—47.

So the resolution was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ewing, Fell, Hall, Hemphill, Heverin, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, William H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

Mr. CAMPBELL. I offer the following resolution:

Resolved, That when this Convention adjourns it will be until Saturday morning at ten o'clock A. M.

Mr. CUYLER. I move to indefinitely postpone that resolution.

Mr. HOWARD. I move to amend it.

The PRESIDENT *pro tem*. The first question will be whether the Convention

will order the resolution to a second reading.

The motion was not agreed to, the ayes being thirty, less than a majority of a quorum.

ORDER OF BUSINESS.

Mr. LILLY. I move that we proceed to the consideration of the article reported by the Committee on the Judiciary.

Mr. HOWARD. I desire to offer a resolution.

The PRESIDENT *pro tem*. Well, sir, you are heartily at liberty to do so. [Laughter.]

ADJOURNMENT TO TUESDAY.

Mr. HOWARD. I now move that when this Convention adjourn to-day, it be to meet in Harrisburg on Tuesday next at ten o'clock, and I call for the yeas and nays on that question.

Mr. HARRY WHITE. I move to amend, by striking out Harrisburg.

Mr. BUCKALEW. I rise to a question of order.

The PRESIDENT *pro tem*. What is the question of order?

Mr. BUCKALEW. It is that the gentleman from Allegheny will be obliged to draw up a resolution in writing and submit it. He cannot by a mere motion, off-hand, change the rule.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

SUMMER RECESS.

Mr. HOWARD. I will submit it in writing.

Mr. AINEY. I offer the following resolution:

Resolved, That this Convention will take a recess until Wednesday, the second Tuesday of September next, as soon as the article on the judiciary shall have passed second reading.

On the question of ordering the resolution to a second reading and proceeding to its consideration, a division was called for, and there were thirty-six ayes.

Mr. AINEY. There is a large number of members not voting, and I therefore call for the yeas and nays.

Mr. BOYD. I second the call.

Mr. CORBETT. I rise to a question of order. This is the same proposition that has been voted down, only changing the word "adjourn" to "recess."

SEVERAL DELEGATES. It fixes a different day.

The *PRESIDENT pro tem.* The Chair would like to sustain the point of order, but he cannot.

Mr. AINEY. The second Wednesday in September will be the tenth of the month.

The yeas and nays were required by Mr. Ainey and Mr. Boyd, and were as follow, viz:

Y E A S.

Messrs. Ainey, Armstrong, Baker, Banan, Barclay, Bartholomew, Beebe, Bowman, Boyd, Brodhead, Broomall, Buckalew, Bullitt, Calvin, Cassidy, Corson, Curtin, Cuyler, Elliott, Green, Harvey, Hazard, Hunsicker, Knight, Lamberton, Littleton, Minor, Mitchell, Mott, Parsons, Patton, Reynolds, Sharpe, Smith, H. G., Stanton, Van Reed and Walker—37.

N A Y S.

Messrs. Achenbach, Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Brown, Campbell, Carey, Carter, Clark, Cochran, Corbett, Dallas, Darlington, De France, Dodd, Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hanna, Hay, Howard, Kaine, Landis, Lawrence, Lear, Lilly, Long, MacConnell, M'CLean, Mann, Metzger, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Struthers, Temple, Wetherill, Jno. Price, White, Harry and Wright—52.

So the resolution was not ordered to a second reading.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Davis, Dunning, Ellis, Ewing, Fell, Hall, Hemphill, Heverin, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Runk, Russell, Smith, Wm. H., Stewart, Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Worrell and Meredith, *President*—44.

ADJOURNMENT TO TUESDAY.

Mr. HARRY WHITE. I offer the following resolution:

Resolved, That when the Convention adjourns to-day, it be to meet on Tuesday next at ten o'clock.

Mr. H. G. SMITH. I rise to a point of order. That has been decided already.

Mr. TEMPLE. It is a different day.

The *PRESIDENT pro tem.* The resolution is in order. The question is on proceeding to its second reading and consideration.

The question being put, the ayes were forty-seven.

Mr. H. G. SMITH. I call for the yeas and nays on proceeding to the second reading.

Mr. CALVIN. I second the call.

The *PRESIDENT pro tem.* The Clerk will call the roll.

The yeas and nays were taken with the following result:

Y E A S.

Messrs. Alricks, Armstrong, Black, Charles A., Broomall, Brown, Buckalew, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Corson, Cuyler, Darlington, Dodd, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Hanna, Howard, Kaine, Lamberton, Landis, Lilly, Long, M'CLean, Metzger, Niles, Palmer, G. W. Palmer, H. W., Patterson, D. W., Porter, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Walker, White, Harry, Worrell and Wright—48.

N A Y S.

Messrs. Achenbach, Ainey, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Banan, Barclay, Bartholomew, Beebe, Biddle, Bowman, Boyd, Brodhead, Bullitt, Calvin, Corbett, Dallas, De France, Edwards, Elliott, Ellis, Harvey, Hay, Hazard, Heverin, Hunsicker, Knight, Lawrence, Lear, Littleton, MacConnell, Mann, Minor, Mitchell, Mott, Patterson, T. H. B., Patton, Reed, Andrew, Reynolds, Ross, Smith, H. G., Stewart, Van Reed and Wetherill, John Price—44.

So the question was determined in the affirmative.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dunning, Ewing, Fell, Hall, Hemphill, Horton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—41.

Mr. HARRY WHITE. I call for the previous question on this resolution.

The PRESIDENT *pro tem.* There has been a motion carried for reading it a second time; but in the meantime the previous question is called before the resolution is before the Convention.

Mr. HARRY WHITE. Let it be read a second time. I withdraw the call.

The resolution was read the second time and considered.

Mr. HOWARD. I move an amendment, to insert before the word "Tuesday" the words "at Harrisburg," so as to read:

"To meet at Harrisburg on Tuesday next at ten o'clock."

Mr. NILES. I rise to a point of order. The amendment is not germane to the resolution pending. It changes the place of meeting.

The PRESIDENT *pro tem.* The Chair cannot so decide.

Mr. HARRY WHITE. I submit that I called the previous question before the gentleman from Allegheny was recognized.

The PRESIDENT *pro tem.* The gentleman from Allegheny had the floor. The Chair would like to sustain the call for the previous question, but he was compelled to recognize the gentleman from Allegheny.

Mr. HARRY WHITE. Then I call the previous question now.

The PRESIDENT *pro tem.* Do eighteen gentlemen rise to sustain the call?

Messrs. Hanna, Kaine, Temple, C. A. Black, Simpson, Metzger, Lilly, Broomall, G. W. Palmer, Mott, Fulton, Guthrie, Brown, Struthers, Carter, Porter, Gilpin, Joseph Bailly, Cochran, Clark, Carey and Edwards rose.

The PRESIDENT *pro tem.* The call for the previous question is sustained. The question is, shall the main question be now put.

Mr. HUNSICKER. On that I call for the yeas and nays.

Mr. HOWARD. I second the call.

Mr. MACVEAGH. I rise to a parliamentary inquiry. If the main question be not ordered to be put, then the question will be out of the House for the day.

The PRESIDENT *pro tem.* The Chair will not decide that question until it arises.

The yeas and nays were taken, and were as follow, viz:

YEAS.

Messrs. Alricks, Bailly, (Perry,) Bartholomew, Beebe, Biddle, Black, Charles A., Bowman, Boyd, Broomall, Brown, Bullitt, Carey, Clark, Cochran, Corson,

Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Green, Guthrie, Harvey, Hazzard, Heverin, Howard, Kaine, Knight, Lamberton, Lilly, Landis, Littleton, Long, M'Cleane, Mann, Metzger, Mott, Niles, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Porter, Rooke, Sharpe, Simpson, Stewart, Struthers, Temple, Walker, Wetherill, Jno. Price, White, Harry and Wright—53.

NAYS.

Messrs. Achenbach, Ainey, Armstrong, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Brodhead, Buckalew, Calvin, Campbell, Carter, Cassidy, Corbett, Cuyler, Dallas, Darlington, De France, Elliott, Ellis, Hanna, Hay, Hunsicker, Lawrence, MacConnell, MacVeagh, Mitchell, Patton, Reed, Andrew, Reynolds, Ross, Smith, H. G., Smith, Henry W., Stanton, Van Reed and Worrell—35.

So the main question was ordered to be now put.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dodd, Dunning, Ewing, Fell, Hall, Hemphill, Horton, Lear, M'Camant, M'Culloch, M'Murray, Mantor, Minor, Newlin, Parsons, Patterson, D. W., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—45.

The PRESIDENT *pro tem.* The question is now on the amendment of the gentleman from Allegheny, to insert "Harrisburg."

Mr. HOWARD. On that question I call for the yeas and nays.

Mr. BOYD. I second the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Ainey, Alricks, Beebe, Boyd, Brodhead, Calvin, De France, Ellis, Funck, Green, Harvey, Hazzard, Howard, Hunsicker, Lamberton, MacConnell, MacVeagh, M'Cleane, Mitchell, Palmer, H. W., Patterson, T. H. B., Ross, Stewart, Van Reed and Walker—25.

NAYS.

Messrs.—Achenbach, Armstrong, Bailey, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bartholomew, Black, Chas. A., Bowman, Broomall, Brown,

Buckalew, Bullitt, Campbell, Carey, Carter, Cassidy, Clark, Cochran, Corbett, Corson, Cuyler, Dallas, Darlington, Dodd, Edwards, Elliott, Finney, Fulton, Gilpin Guthrie, Hanna, Hay, Heverin, Kaine, Knight, Landis, Lear, Lilly, Littleton, Long, Mann, Minor, Mott, Niles, Palmer, G. W., Patterson, D. W., Patton, Porter, Reed, Andrew, Reynolds, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Wetherill, John Price, White, Harry, Worrell and Wright—63.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Biddle, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Curtin, Davis, Dunning, Ewing, Fell, Gibson, Hall, Hemphill, Horton, Lawrence, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, H. G., Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward and Meredith, *President*—45.

The *PRESIDENT pro tem.* The question now recurs on the resolution that when we adjourn, it be to meet on Tuesday next.

Mr. CORBETT and Mr. CARTER called for the yeas and nays, and they were taken with the following result :

YEAS.

Messrs. Alricks, Armstrong, Baily, (Perry,) Black, Charles A., Broomall, Brown, Buckalew, Carey, Carter, Cassidy, Clark, Cochran, Corson, Darlington, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hanna, Kaine, Lamberton, Landis, Lilly, Littleton, Long, M'Clean, Mann, Niles, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Porter, Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Struthers, Temple, Walker, White, Harry and Worrell—45.

NAYS.

Messrs. Achenbach, Ainey, Bailey, (Huntingdon,) Baker, Bannan, Barolay, Bartholomew, Beebe, Biddle, Bowman, Boyd, Brodhead, Bullitt, Calvin, Campbell, Corbett, Curtin, Dallas, De France, Dodd, Edwards, Elliott, Ellis, Green, Harvey, Hay, Hazzard, Heverin, Howard, Hunsicker, Knight, Lawrence, MacConnell, Minor, Mitchell, Mott, Patterson, T. H. B., Reed, Andrew, Reynolds,

Ross, Smith, H. G., Stewart, Van Reed and Wetherill, John Price—44.

So the resolution was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, J. S., Church, Collins, Craig, Cronmiller, Curry, Cuyler, Davis, Dunning, Ewing, Fell, Hall, Hemphill, Horton, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—44.

PROPOSED ADJOURNMENT.

Mr. BARTHOLOMEW. I move that the Convention do now adjourn.

Mr. GILPIN. I second the motion.

Mr. D. W. PATTERSON. On that motion I call for the yeas and nays.

Mr. J. PRICE WETHERILL. I second the call.

The *PRESIDENT pro tem.* The question is on the motion of the delegate from Schuylkill.

Mr. LILLY. The motion does not appear to be understood. As I understand, it will adjourn us over until ten o'clock on Tuesday next, and it is not simply to take a recess until the afternoon.

Mr. HUNSICKER. I rise to a question of order. The motion is not debatable.

Mr. LILLY. I have the right to ask what the question is, and the gentleman has no business to interfere. He is out of order in doing so.

The *PRESIDENT pro tem.* The Chair will answer any proper question that may be put to him.

Mr. HUNSICKER. I might make another point, that the gentleman from Carbon is not in his place.

The *PRESIDENT pro tem.* If we adjourn now under this motion it will be until Tuesday next at ten o'clock.

The question was taken by yeas and nays with the following result :

YEAS.

Messrs. Ainey, Alricks, Baily, (Perry,) Baker, Bannan, Bartholomew, Broomall, Brown, Buckalew, Bullitt, Cochran, Corbett, Corson, Fulton, Gilpin, Hanna, Harvey, Kaine, Lamberton, Littleton, Long, M'Clean, Palmer, G. W., Palmer, H. W., Porter, Sharpe, Smith, Henry W., Stewart, Temple and Worrell—30.

N A Y S.

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Barclay, Beebe, Biddle, Bowman, Boyd, Brodhead, Calvin, Campbell, Darlington, De France, Dodd, Edwards, Elliott, Finney, Funck, Green, Guthrie, Hay, Hazzard, Howard, Hunsicker, Landis, Lilly, MacConnell, Mann, Metzger, Minor, Mitchell, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, H. G., Stanton, Struthers, Van Reed, Walker, Wetherill, Jno. Price and White, Harry—48.

So the motion to adjourn was not agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baer, Bardsley, Bigler, Black, Charles A., Black, J. S., Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Dallas, Davis, Dunning, Ellis, Ewing, Fell, Gibson, Hall, Hemphill, Heverin, Horton, Knight, Lawrence, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Parsons, Pughe, Purman, Purviance, Jno. N., Purviance, Samuel A., Read, John R., Runk, Russell, Smith, Wm. H., Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—55.

PUBLICATION OF DEBATES.

MR. BRODHEAD. I offer the following resolution:

Resolved, That the printing of the Debates of this Convention be discontinued from this date.

The **PRESIDENT** *pro tem.* put the question on proceeding to the second reading of the resolution and declared that the ayes appeared to have it.

MR. BRODHEAD. I call for the yeas and nays.

MR. HOWARD. I second the call. If we are to continue in session and are ever to close our proceedings, we must discontinue the publication of the Debates.

MR. LILLY. The gentleman has a perfect right to call for the yeas and nays; but I appeal to his sense of decency whether he ought to do so and thus waste time.

MR. NILES. I trust I shall be permitted to say just two words. ["Go on."] I suppose the Convention understands very well that they have made a contract with the Printer and with the Reporter, and if we discontinue the publication of the Debates, we are giving them so much; that is all.

The yeas and nays were required by Mr. Brodhead and Mr. Howard, and were as follow, viz:

Y E A S.

Messrs. Ainey, Brodhead, Broomall, Corson, De France, Funck, Green, Howard, Lear, Littleton, Long, MacConnell, M'CLean, Mitchell, Palmer, G. W., Patterson, T. H. B., Porter, Reynolds, Ross, Simpson, Smith, H. G. and Van Reed—22.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Bailly, (Perry,) Bailey, (Huntingdon,) Baker, Bannan, Biddle, Bowman, Boyd, Brown, Buckalew, Calvin, Campbell, Carter, Clark, Cochran, Corbett, Dallas, Darlington, Dodd, Edwards, Elliott, Finney, Fulton, Gilpin, Guthrie, Harvey, Hazzard, Hunsicker, Kaine, Knight, Lambertson, Landis, Lilly, Mann, Metzger, Minor, Mott, Niles, Palmer, H. W., Patterson, D. W., Patton, Rooke, Sharpe, Smith, Henry W., Stanton, Stewart, Struthers, Walker, Wetherill, Jno. Price, White, Harry and Worrell—53.

So the resolution was not adopted.

ABSENT.—Messrs. Addicks, Andrews, Baer, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Black, J. S., Bullitt, Carey, Cassidy, Church, Collins, Craig, Cronmiller, Curry, Curtin, Cuyler, Davis, Dunning, Ellis, Ewing, Fell, Gibson, Hall, Hanna, Hay, Hemphill, Heverin, Horton, Lawrence, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Newlin, Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Runk, Russell, Smith, Wm. H., Temple, Turrell, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—58.

RECESS.

MR. J. M. BAILLY. I move that the Convention now take a recess until three o'clock P. M.

The motion was agreed to, and (at twelve o'clock and fifty minutes P. M.) the Convention took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

The **PRESIDENT** *pro tem.* There is not a quorum present.

Mr. HUNSICKER. I move that the Sergeant-at-Arms be dispatched after the absentees.

Mr. J. M. BAILEY. Let the roll be called.

The PRESIDENT *pro tem*. The Clerk will call the roll.

On the call of the roll fifty-three delegates answered to their names.

Mr. HARRY WHITE. There being no quorum present, I move that the Convention do now adjourn.

Mr. LAWRENCE. I am not surprised that the gentleman should make that motion.

Mr. HARRY WHITE. I am quite as anxious to stay here as the gentleman from Washington, and quite as attentive to my duties. I will allow no slur coming from such a source.

Mr. HUNSICKER. I rise to a point of order. There is nothing before the House, and therefore discussion is not in order.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

Mr. PATTON. I hope we shall not adjourn. If we wait a few moments, we shall have a quorum here—

Mr. HARRY WHITE. I hope we shall adjourn. I have moved an adjournment, because I am satisfied that there is an effort here to adjourn over until fall, and if we adjourn to-day we ought to adjourn to meet on next Tuesday.

The PRESIDENT *pro tem*. The question is on the motion to adjourn.

Mr. HARRY WHITE. On that I call for the yeas and nays.

Mr. TEMPLE. I second the call.

The yeas and nays were taken, and were as follow, viz :

YEAS.

Messrs. Baily. (Perry,) Bailey, (Huntingdon,) Black, Charles A., Brown, Campbell, Carter, Clark, De France, Edwards, Fulton, Gibson, Gilpin, Guthrie, Kaine, Lilly, MacConnell, Mann, Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Simpson, Smith, Henry W., Temple, Wetherill, J. Price, White, Harry and Worrell—27.

NAYS.

Messrs. Achenbach, Ainey, Armstrong, Baker, Beebe, Bigler, Boyd, Brodhead, Broomall, Buckalew, Calvin, Corson, Dallas, Darlington, Elliott, Green, Hanna, Harvey, Hay, Hazzard, Hunsicker, Knight, Lawrence, Long, M'Clellan, Minor,

Mitchell, Mott, Niles, Patton, Reynolds, Ross, Sharpe, Stewart, Struthers, Van Reed, Walker and Wetherill, J. M.—38.

So the Convention refused to adjourn.

ABSENT. — Messrs. Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Biddle, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Cochran, Collins, Corbett, Craig, Cronmiller, Curry, Curtin, Cuyler, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Finney, Funck, Hall, Hemphill, Heverin, Horton, Howard, Lamberton, Landis, Lear, Littleton, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer G. W., Palmer, H. W., Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John B., Rooke, Runk, Russell, Smith, H. G., Smith, Wm. H., Stanton, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, President—72.

Mr. TEMPLE. I move that the Convention now proceed to the consideration of the article on the judiciary.

Mr. CAMPBELL. I second the motion.

Mr. SIMPSON. There is not a quorum here.

Mr. STRUTHERS. I offer the following resolution.

The PRESIDENT *pro tem*. There is not a quorum present, and no business is in order.

Mr. T. H. B. PATTERSON. I move then that we adjourn for want of a quorum.

Mr. HUNSICKER. I rise to a point of order. We have just voted on that very question.

Mr. DALLAS. I ask for a call of the House if that motion is not in order.

The PRESIDENT *pro tem*. There can be nothing done but to send the Sergeant-at-Arms for absent members or adjourn.

Mr. DALLAS. I ask for a call of the House.

Mr. CORSON. We have had a call.

Mr. DALLAS. Very well; let us have another.

The PRESIDENT *pro tem*. It is moved that the Sergeant-at-Arms be directed to request the attendance of absent members.

Mr. HARRY WHITE. I move to amend, by adding "and bring them to the Convention next Tuesday."

The PRESIDENT *pro tem*. It is moved that the Sergeant-at-Arms will be dispatched for absent delegates.

Mr. HARRY WHITE. I move to amend, by adding "and that he bring them to the

Convention on next Tuesday at ten o'clock;" and I call for the yeas and nays on that motion.

The PRESIDENT *pro tem*. It is moved to amend the resolution, by inserting "bring them before the Convention next Tuesday at ten o'clock."

Mr. DARLINGTON. I rise to a point of order, that when the House is about to direct its officer to execute its process and bring in members, it is not in order to make that returnable at a future day.

The PRESIDENT *pro tem*. The Chair sustains the point of order. The Clerk reports that there is now a quorum present.

Mr. HARRY WHITE. I ask leave to make an explanation. ["No." "No."]

The PRESIDENT *pro tem*. The delegate can have leave to explain if no objection be made. He will proceed.

Mr. HARRY WHITE. Mr. President: I merely desire, in a most respectful manner, to call attention to the fact that a resolution a few weeks ago was passed directing the Sergeant-at-Arms to take absent members in custody and bring them before the Convention at a subsequent session of the body. I merely call the attention of the Chair to that as a matter of precedent.

Mr. BROOMALL. The point of order was not raised; otherwise it could not have been done.

The PRESIDENT *pro tem*. There is a quorum of members now present, as the Clerk reports to the Chair after actual count.

Mr. STRUTHERS. I offer the following resolution—

Mr. D. W. PATTERSON. Is that in order without leave?

The PRESIDENT *pro tem*. Resolutions are in order. When the Convention took a recess the call was resting with resolutions, and we adjourned on that order. The resolution will be received and read.

The resolution was read as follows:

Resolved, That when this Convention adjourns to-day it will adjourn to meet on the third Tuesday of September, at ten o'clock. A. M.

Mr. HARRY WHITE. I raise a question of order.

The PRESIDENT *pro tem*. What order will the House take on the resolution? ["Second reading."] The Chair will state the question then, and the point of order may be raised. What order will the Convention take on the resolution? ["Second reading."]

Mr. HARRY WHITE. Now I rise to a question of order. It is this: That this morning, in a full Convention, a resolution was passed that when the Convention adjourn to-day it do adjourn to meet on next Tuesday. Now, less than a quorum being present, that resolution cannot be rescinded.

The PRESIDENT *pro tem*. There is a quorum present now.

Mr. HARRY WHITE. I ask for a call of the House.

SEVERAL DELEGATES. Second reading of the resolution.

The PRESIDENT *pro tem*. Will the House proceed to the second reading of the resolution offered by the gentleman from Warren?

Mr. MANN. I rise to a question of order, that the House having passed on that question, it is not in order to consider it in any other way except by reconsideration. It is not in order, the House having passed on that proposition, to receive a proposition of this kind again to-day. A majority can reconsider the vote of this morning, but it is not in order to proceed with this proposition.

The PRESIDENT *pro tem*. A motion was made this morning and voted down that when we adjourn to-day it be to meet on the second Tuesday of September. The resolution now pending is to meet on the third Tuesday of September. It is a different day, and the Chair cannot rule that it is out of order.

Mr. TEMPLE. I ask for a call of the House.

The PRESIDENT *pro tem*. A call of the House is demanded. The Clerk will call the roll of delegates to see whether a quorum is present.

Mr. MANN. I should like to ask the Chair a question. If the House now decides to adjourn will it then be in order to offer a resolution upon this subject that we meet next week?

The PRESIDENT *pro tem*. The Chair has already decided that this resolution is in order, and that if delegates are not satisfied with it they have the privilege of voting it down.

Mr. MANN. Yes, sir; but there is no use in voting it down if it can be offered continuously.

Mr. BUCKALEW. I desire to suggest to the gentleman from Philadelphia that he can accomplish the same object as having a call of the roll by calling for the yeas and nays on the resolution.

Mr. TEMPLE. I submit that the same result will not be arrived at.

Mr. STRUTHERS. When it is known to the Chair that there is a quorum here where is the propriety of calling the roll? The object of the gentlemen who desire the roll called is now apparent. Sundry of them are slipping off in order to leave the House without a quorum. I move that the doors be closed in order to prevent any more getting away, and that we then proceed to consider the resolution pending.

The PRESIDENT *pro tem.* The Chair cannot resist a call of the House. The Chair will direct that the doors be closed in order to prevent gentlemen getting away, and that the Sergeant-at-Arms be sent after those who have left.

Mr. KAINE. If I may be allowed to suggest anything to the President, I would state that the Sergeant-at-Arms cannot be directed to arrest members without an order of the House.

The PRESIDENT *pro tem.* Certainly.

Mr. KAINE. And while we are without a quorum no such order can be made.

The PRESIDENT *pro tem.* We had a quorum when the call of the House was made.

Mr. KAINE. That can be ascertained by having a call of the House, and if that is not demanded I demand it.

Mr. DALLAS. It has been ordered.

The PRESIDENT *pro tem.* The motion is to adjourn, on which the yeas and nays have been ordered.

The question being taken by yeas and nays resulted, yeas twenty-seven, nays thirty-eight, as follows:

The CLERK proceeded to call the roll.

Mr. HUNSICKER. Several delegates are standing outside for the purpose of leaving the House without a quorum.

Mr. HARRY WHITE. I raise the point of order that the gentleman has no right to reflect upon delegates.

Mr. STRUTHERS. I understood that the door was to be closed; that the Sergeant-at-Arms was to be ordered to close the doors and see that no gentlemen passed out.

The PRESIDENT *pro tem.* The Clerk will resume the call of the roll.

The CLERK resumed and concluded the call of the roll, and the following members were ascertained to be present:

Messrs. Ainey, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown,

Buckalew, Calvin, Campbell, Clark, Corson, Curtin, Dallas, Darlington, De France, Elliott, Fulton, Gibson, Gilpin, Green, Guthrie, Hanna, Harvey, Hay, Hazzard, Hunsicker, Kaine, Knight, Lawrence, Lilly, Long, MacConnell, M'CLean, Mann, Metzger, Minor, Mitchell, Mott, Niles, Patterson, D. W., Patton, Porter, Reed, Andrew, Reynolds, Sharpe, Simpson, Smith, Henry W., Stewart, Struthers, Van Reed, Walker, Wetherill. J. M., Wetherill, John Price, White, Harry and Worrell -62.

The PRESIDENT *pro tem.* Sixty-two delegates answer to their names. There is not a quorum present.

Mr. BROOMALL. I call for the Clerk to read the names of those who answered the call a few minutes ago and who are not present now.

Mr. HARRY WHITE. I object to that as being irregular.

The PRESIDENT *pro tem.* The Chair must state the question before the point is raised. It is moved that the names of those who answered to their names before and are absent now, be called.

Mr. BROOMALL. What I desire is information. I call upon the Clerk to read the names of those who answered the call a few moments ago and have not answered to this one. It is for information.

Mr. KAINE. I submit that the gentleman has no right to make a request of that kind.

The PRESIDENT *pro tem.* The gentleman from Delaware can come to the desk and examine the roll for himself.

Mr. BIGLER. Mr. President—

Mr. HARRY WHITE. I move that the Convention do now adjourn.

Mr. WORRELL. I second the motion.

Mr. HARRY WHITE. And on that I call for the yeas and nays.

Mr. DARLINGTON. The gentleman is out of order. The delegate from Clearfield is on the floor.

Mr. BIGLER. I rose for the purpose of making the only motion that is in order. I desire to say in this connection that although it may be possible to scrape up a mere quorum, the House would be too small a body for the important business which I know is impending; and I think, although it is severe on some of us, that we had better adjourn. I therefore make the motion that the Convention do now adjourn.

The PRESIDENT *pro tem.* The question is on the motion of the gentleman from

Clearfield, that the Convention do now adjourn.

Mr. BIGLER and Mr. REYNOLDS called for the yeas and nays.

Mr. DALLAS. I desire to say a word in explanation of my vote. I shall vote "nay" on the question of adjournment because I believe that a quorum is practically present.

Mr. CURTIN. Mr. President: The delegate from Washington (Mr. Hazzard) suggests a reason why we should stay here, and that the delinquents should be known—

The PRESIDENT *pro tem*. Debate is not in order. The Clerk will call the roll on the motion to adjourn.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Chas. A., Brown, Campbell, Clark, De France, Fulton, Gibson, Guthrie, Kaine, Lilly, MacConnell, Mann, Metzger, Patterson, D. W., Porter, Reed, Andrew, Rooke, Simpson, Wetherill, Jno. Price, White, Harry and Worrell—24.

N A Y S .

Messrs. Ainey, Armstrong, Baker, Beebe, Biddle, Boyd, Brodhead, Broomall, Buckalew, Calvin, Corson, Curtin, Dallas, Darlington, Elliott, Finney, Gilpin, Green, Hanna, Harvey, Hay, Hazzard, Howard, Hunsicker, Knight, Lawrence, Littleton, Long, ^{at Clear} hell, Mott, Niles, Patton, Reynolds, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Struthers, Van Reed, Walker and Wetherill, J. M.—42.

ABSENT.—Messrs. Achenbach, Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Bullitt, Carey, Carter, Cassidy, Church, Cochran, Collins, Corbett, Craig, Cronmiller, Curry, Cuyler, Davis, Dodd, Dunning, Edwards, Ellis, Ewing, Fell, Funck, Hall, Hemphill, Heverin, Horton, Lamberton, Landis, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Minor, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Runk, Russell, Smith, Wm. H., Stanton, Temple, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—67.

The PRESIDENT *pro tem*. The vote stands yeas twenty-four, nays forty-two, making sixty-six in all. There is not a quorum voting; but the Chair is compelled to state to the House that the delegate from Crawford (Mr. Minor) was in the hall and refused to vote, and the Chair feels obliged to count him.

Mr. MINOR. I am paired on this subject of adjournment with another member, and therefore I cannot vote.

Mr. BROOMALL. But the gentleman is to be counted to make a quorum.

The PRESIDENT *pro tem*. He is here, and it makes a quorum.

Mr. NILES. And he has no right to pair either.

Mr. CAMPBELL. Is it in order now to move to proceed to the consideration of the article on the judiciary? If it is, I make that motion.

The PRESIDENT *pro tem*. Resolutions are in order, and when we got into the little trouble we have just passed through a motion was pending to proceed to the second reading of the resolution offered by the delegate from Warren (Mr. Struthers.)

Mr. HARRY WHITE. I move to indefinitely postpone that subject, and I call for the yeas and nays on that motion.

Mr. DARLINGTON. I rise to a point of order. A motion to postpone a motion to consider a resolution cannot be in order.

The PRESIDENT *pro tem*. Not until it is before the House. The question is on proceeding to the second reading and consideration of the resolution.

Mr. HARRY WHITE. On that question I ask for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

The yeas and nays were ordered.

Mr. HARRY WHITE. I renew the motion to indefinitely postpone.

SEVERAL DELEGATES. That is not in order.

The PRESIDENT *pro tem*. The yeas and nays will be taken on proceeding to the second reading and consideration of the resolution offered by the gentleman from Warren (Mr. Struthers.)

The CLERK proceeded to call the roll.

Mr. H. G. SMITH (when his name was called.) I vote "no," because I do not want to see this question decided in a House as small as this.

The result was announced as follows:

Y E A S .

Messrs. Ainey, Armstrong, Baker, Beebe, Bigler, Boyd, Brodhead, Broomall,

Buckalew, Calvin, Corson, Curtin, Cuyler, Darlington, Elliott, Green, Hanna, Harvey, Hazzard, Hunsicker, Knight, Mitchell, Mott, Patton, Reynolds, Sharpe, Stewart, Struthers, Van Reed, Walker and Wetherill, J. M.—31.

N A Y S .

Messrs. Achenbach, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Brown, Campbell, Clark, Corbett, Dallas, De France, Edwards, Finney, Fulton, Gibson, Gilpin, Guthrie, Hay, Howard, Lawrence, Lilly, Littleton, Long, MacConnell, M'CLean, Mann, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Reed, Andrew, Rooke, Simpson, Smith, H. G., Smith, Henry W., Temple, Wetherill, Jno. Price, White, Harry and Worrell—39.

So the question was determined in the negative.

ABSENT.—Messrs. Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S. Bowman, Bullitt, Carey, Carter, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Funck, Hall, Hemphill, Heverin, Horton, Kaine, Lamberton, Landis, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Ross, Runk, Russell, Smith, Wm. H., Stanton, Turrell, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—63.

Mr. CORBETT. To save filibustering from this until six o'clock, I move that the Convention do now adjourn.

Mr. MANN. I hope, just for variety, that we work for half an hour. [Laughter.]

Mr. BUCKALEW. It must be perfectly apparent to everybody that we can do nothing if we remain here.

Mr. BOYD. I call for the yeas and nays on that motion.

Mr. MITCHELL. I second the call.

The yeas and nays were taken, and were as follow, viz :

Y E A S .

Messrs. Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, C. A., Brodhead, Broomall, Brown, Buckalew, Campbell, Clark, Corbett, Cuyler, Dallas, Darlington, De France, Edwards, Elliott, Finney, Fulton, Gibson, Gilpin, Green, Guthrie, Harvey, Hay, Howard, Lilly, Long, MacConnell, Mann, Mitchell, Mott, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Porter, Reed, Andrew, Sharpe, Simpson, Smith, Henry W., Stewart, Temple, Wetherill, Jno. Price, White, Harry and Worrell—48.

N A Y S .

Messrs. Achenbach, Ainey, Baker, Beebe, Boyd, Calvin, Corson, Curtin, Hanna, Hunsicker, Knight, Lawrence, Littleton, M'CLean, Reynolds, Smith, H. G., Struthers, Van Reed, Walker and Wetherill, J. M.—20.

ABSENT.—Messrs. Addicks, Alricks, Andrews, Baer, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S. Bowman, Bullitt, Carey, Carter, Cassidy, Church, Cochran, Collins, Craig, Cronmiller, Curry, Davis, Dodd, Dunning, Ellis, Ewing, Fell, Funck, Hall, Hazzard, Hemphill, Heverin, Horton, Kaine, Lamberton, Landis, Lear, MacVeagh, M'Camant, M'Culloch, M'Murray, Mantor, Metzger, Minor, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Ross, Runk, Russell, Smith, Wm. H., Stanton, Turrell, Wherry, White, David N., White, J. W. F., Woodward Wright and Meredith, *President*—65.

So the motion was agreed to; and (at four o'clock and nine minutes P. M.) the Convention adjourned until Tuesday morning, July eighth, at ten o'clock.

ONE HUNDRED AND THIRTY-FIFTH DAY.

TUESDAY, July 8, 1873.

The Convention met at ten o'clock A. M., Hon. John H. Walker, President *pro tempore*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of the proceedings of Thursday last was read.

Mr. J. M. BAILEY. I observe in the reading of the Journal by the Clerk that he has me recorded as seconding a call for the previous question. I did not, and never in this Convention will, second a call for a previous question; and if the Clerk will examine the vote he will find that I voted in the negative on the question "shall the main question be now put?"

The PRESIDENT *pro tem*. The mistake probably arose from the fact that the delegate from Huntingdon was standing at the time. The question was asked whether the call for the previous question was seconded. Of course it is impossible for the Clerk to prevent an error if in a case like that gentlemen are upon their feet. All who stand must be supposed to be seconding the call for the previous question.

Mr. J. M. BAILEY. I wish the record to now show that I did not rise for the purpose of seconding the call for the previous question.

The PRESIDENT *pro tem*. The record will be so made.

Mr. HUNSICKER. I find that a similar error exists with reference to myself. I am recorded as having seconded a call for the previous question. I did not rise to second that call, and on the question "shall the main question be now put" I voted in the negative. I desire that the record shall show this fact.

The PRESIDENT *pro tem*. The record will be corrected in that particular.

The Journal, as thus corrected, was approved.

LEAVES OF ABSENCE.

Mr. BIDDLE asked and obtained leave of absence for Mr. Mitchell for a few days from and including to-day.

Mr. DEFRANCE asked and obtained leave of absence for Mr. Dodd for a few days from to-day.

Mr. ARMSTRONG asked and obtained leave of absence for Mr. Campbell for to-morrow.

Mr. LAWRENCE asked and obtained leave of absence for Mr. Joseph Baily, detained at home by sickness in his family.

Mr. LAWRENCE also asked and obtained leave of absence for Mr. Hazzard, called home by sickness in his family.

Mr. BEEBE asked and obtained leave of absence for a few days from to-day for Mr. Minor.

Mr. BEEBE. I also, by request, ask for leave of absence for Mr. Bowman for a few days from to-day.

Leave was granted.

THE JUDICIAL SYSTEM.

The PRESIDENT *pro tem*. The Convention resumes the consideration, on second reading, of the article on the judiciary reported from the committee of the whole. When the House adjourned on Wednesday last it had under consideration the twenty-first section, and the pending question was on the amendment of the delegate from the city of Philadelphia, (Mr. Hanna,) which will be read.

The CLERK. The amendment was to strike out all after the word "court," in the fourth line, to and including the word "determine," in the twelfth line, in the following words:

"In every city and county wherein the population shall exceed one hundred and fifty thousand, the Legislature shall, and in any other city or county may, establish a separate orphans' court, to consist of one or more judges, who shall be learned in the law; and such court shall exercise all the jurisdiction and powers now vested in, or which may hereafter be conferred upon, the orphans' court; and thereupon the jurisdiction of the judges of the court of common pleas within such city and county in orphans' court proceedings shall cease and determine.

Mr. HANNA. Mr. President: I have moved the amendment for two reasons.

One respects the propriety of this provision being an article in the Constitution at all. By that I mean that the whole subject is within the power of the Legislature; that any separate court of any jurisdiction, or of any character whatever, may be established under the first section of this article upon the request of the people or of the bar of any separate district or city. That is the first objection. I am opposed to placing anything in the Constitution not absolutely necessary or anything except that which can be strictly called fundamental and organic. Anything that is included within the powers given to the Legislature is unnecessary to be placed in the Constitution of the State.

I propose by this amendment to strike out all after the word "court," in the fourth line, to the word "determine," in the twelfth line, thereby leaving it entirely with the Legislature to comply with a demand which may come up from the people upon this subject. That objection applies to nearly the whole of this section.

Another objection I have is that I believe in one city of the Commonwealth of over one hundred and fifty thousand population this is not asked for and is not necessary. In the city of Philadelphia, as I remarked before, the court which we propose to establish by this article can answer all the purposes of a separate orphans' court. If the object of the Committee on the Judiciary is to provide a separate court with power like that of an orphans' court, why not go a little further and make the system complete by abolishing the register of wills? I ask the honorable chairman of this committee if we are to have a separate orphans' court, what is the necessity for a register of wills in the large cities? I submit that all the duties of the register of wills, the granting of letters testamentary, the proving of wills, &c., can be performed by this separate orphans' court. If we are to have what has been spoken of here, a probate court, let us so understand, and then abolish the office of register of wills. We do not want in Philadelphia a separate orphans' court and a register of wills besides. It is entirely unnecessary to have both. If we are to establish what they have in New Jersey, New York and the surrounding States, a surrogate, then let us have it so, but not a hybrid system of this kind—a register of wills to attend to one duty, and then a separate orphans'

court to attend to another branch of the same business and the same practice. I therefore object to this provision on these grounds, but mainly because the whole subject can be provided for by the Legislature.

Mr. President, since our vacation, I have had an opportunity of conversing with a great many upon the work of this Convention, and hardly a single individual that I have met but has said to me, "you are endeavoring to do too much; you are placing so much in the Constitution that it will actually be a burden, carrying it down before the people." I therefore hope that we shall try and confine ourselves within the strict limits of a Constitution, and not in the organic law of the State confer upon the Legislature an authority which they already have, or impose upon them as an imperative duty that which they already have a right to do whenever they see fit and proper. I hope delegates will see that the views that I have stated bear with propriety upon this question, and that they will leave the establishment of all these separate courts in the State to the power of the Legislature at the request and demand of the people of the several districts.

Mr. SIMPSON. If there is any one subject that has come or will come before this body to which I have given considerable thought it is the subject now before us. During a practice at the bar of twenty years, Mr. President, I have learned that if there is one crying evil in this city, it is the system of auditing accounts in the orphans' court in Philadelphia. I speak advisedly when I say, and I repeat, that if there is one crying evil in this community it is the system of auditing accounts in the orphans' court of the city and county of Philadelphia. I know there are very many gentlemen who are appointed auditors by the court who are conscientious men, who perform their duties laboriously and faithfully to the court as well as to the estates of decedents, but I am sorry to say that there are very many also who seem to think that the estate of a decedent, the property of the widow and the orphans, is a prey upon which the vultures may feed.

Now, sir, supposing that there would be a discussion on this very subject, I took the trouble to go to the orphans' court office a few weeks ago and make out a list of the accounts that were referred to auditors during the year embracing 1872,

which I hold in my hand. I find by that table that there were two hundred and fifteen persons appointed auditors by the orphans' court during that year; that one hundred and ten of those gentlemen received one account each; forty-two of them received two accounts each; twenty-seven received three each; thirteen received four each; eleven received five each; three received six each; four received seven each; two received nine each; one received eleven; one received thirteen; and one received eighteen, making two hundred and fifteen auditors and four hundred and ninety accounts audited.

That was only the number of auditors and the number of accounts audited. There were seven hundred and three accounts filed. Of that number one hundred and twenty-seven were confirmed by agreement of parties, and I want to say a word about that in a moment. There were eighty-six that were neither confirmed, referred, nor disposed of in this way; but they remain there just so much dead wood in the office of the clerk, without any adjustment, without any settlement, hereafter perhaps to come before the court and litigation ensue upon them.

I find no fault with the court in referring these accounts to auditors. In the main the auditors selected by them have been gentlemen who have performed their duties faithfully and well and have been reasonable in their charges; but, unfortunately, as I said before, there are some who seem to think that the estates of dead men, the estates of widows and orphans, are the prey on which they may live and feed; and it is to break up that part of the system that I shall advocate and vote for the retention of the words that my friend proposes to strike out.

In examining this matter of agreements, the court, fearful lest there might be some wrong done, have hedged around and about parties connected with estates almost insuperable difficulties against getting an account confirmed by agreement. In the first place, they require that the accountant shall not only make affidavit that his account is just, but that some disinterested person must be brought in to testify that there are no debts due by the decedent, that the persons who sign the agreement to confirm are the only parties interested in the settlement of the estate, that they are all *sui juris*, and that there is nothing in the way. Who can tell that every debt due by a dead man has been

paid? Who is willing to assume the responsibility of swearing that? He may swear to the best of his knowledge and belief, but that is not sufficient. He must say upon oath before the courts that there "are no debts;" and unless that is said the account cannot be confirmed by agreement. But go a step further, and after all that is done, in the case of an administration account, the securities of the administrator must be brought in and they must ask the court to confirm likewise. There is no such system as this elsewhere in Pennsylvania. You gentlemen of the bar who practice out of the city of Philadelphia will bear me out that no such system as this exists elsewhere in this Commonwealth. Therefore it is necessary, to protect the estates of dead men, that there shall be a court to pass upon these accounts, a court to determine all these questions.

Now, what will be the effect of this? In the first place, I say that if the Legislature, following out this commandment of the Constitution, shall establish a court with five judges, and make appropriations for the requisite clerk hire, it will be fully occupied, its time will be well taken up in the settlement of these estates, and out of the fees of the office the entire expenses can be paid, all the salaries, and everything necessary to carry on the machinery, and the city of Philadelphia may be made the recipient of from \$25,000 to \$100,000 a year clear profit.

Nor does it stop there. Not only can it be made a source of revenue to the city of Philadelphia, but estates of dead men will be saved a quarter of a million a year to be distributed amongst the widows and orphans; and is that nothing?

I had the honor, Mr. President, of filling the office of register of wills of this county for four months, under the appointment of the Governor, and while holding that office I had an opportunity of seeing the whole of the inside track of all the transactions, of the charges for fees, of the amount of business, and I say to you and the gentlemen on this floor that no man who has not occupied a position in that office has an idea of the business that is transacted there in the course of a single year. If this be left to the courts it will not only be a saving of expense to the estates and to the city of Philadelphia, but a saving of time, and of that I speak advisedly. Under our present arrangement, according to our present laws and fee bills, the account is referred to

an auditor, and if he holds one meeting he is entitled to a fee of \$10, and for making up his report he is allowed \$25, which makes \$35 for a single meeting. If he carries the account into a second meeting he is allowed \$10 more, and so on for every meeting he holds he is allowed \$10. Hence you see what a great temptation it is to a man to do business in this way and to carry on the settlement of an estate from week to week and from month to month, and to multiply meetings for the mere sake of making \$10 every time they meet. I know that more than five meetings cannot be held, says the law, without the consent of the court. But it is very easy to get the consent of the court by an auditor whom it has appointed. He has only to state that there is a question of law raised, a question of intricacy or a matter requiring an examination of the books, or a large number of witnesses, and the court will allow additional meetings to be held, and open the door for an indefinite number of meetings at an expense of \$10 per day to the estate or taken from the amount due to creditors if the estate should be insolvent.

It was only on Saturday last that an auditor's fee was cut down by a judge of the orphans' court in this city from \$250 to \$50. An estate of \$950 was referred to an auditor and he brought in a bill for \$250, and the court after consideration reduced it to \$50 and saved \$200 to the estate of the dead man.

I say here, on my responsibility as a man, as a lawyer, and remembering that for every word I say here I am accountable in the great hereafter, that if you will pass this section as it is you will protect the estates of dead men; you will secure a speedy settlement of their estates; you will put money into the treasury of the city of Philadelphia by a proper system of fees and you will save to the estates and the widows and the orphans nearly a quarter of a million of dollars a year.

Mr. CAMPBELL. If the Convention wishes to accomplish a real reform and give something to the people of Philadelphia that they want, it will pass this section. I agree with every word that has been said by the gentleman who has just taken his seat (Mr. Simpson;) and although I do not think the section as reported is in the most perfect form, or is the best adapted to the wants of the people that could be devised, yet as it stands it is a vast improvement on the system

now in force, especially in Philadelphia. I myself would prefer to have an orphans' court, separate from every other court, with jurisdiction over all matters now cognizable by either the present orphans' court or the register of wills, and to have at least one of the judges of the court constantly sitting as a register of wills or probate judge, and granting letters testamentary or of administration as expeditiously as required. But as we cannot get that, the section as reported by the Committee on the Judiciary will be the next best thing, and therefore I hope that the amendment of the gentleman from Philadelphia (Mr. Hanna) will not prevail. There should be a constitutional provision making it obligatory upon the Legislature to establish for the city of Philadelphia, and for every other large city where the amount of business transacted may require it, a separate orphans' court, so that the estates of deceased persons may be managed properly and settled at a reasonable cost to the parties. I hope, therefore, that the Convention will vote down the amendment proposed by the gentleman from Philadelphia (Mr. Hanna) and retain the section exactly as it stands.

Mr. ARMSTRONG. I am told that it has become a sort of axiom among those who are best acquainted with the facts, that a man cannot afford to die in Philadelphia. [Laughter.] It seems to be settled that his estate becomes the prey of men who live and fatten upon dead men's estates. It is hardly worth while to recur again to the line of argument which has been followed upon both sides of this question in committee of the whole. The city of Philadelphia, according to the expression of a majority of the members of its bar, is satisfied with this section as it stands. It has been very fully discussed, and very ably discussed on both sides, and I trust now that it is not necessary to go over the arguments again. I hope, therefore, without consuming further time upon the subject, a vote will be taken and the section passed.

Mr. MACCONNELL. Mr. President: I merely rose to say, in view of the statement made by the gentleman from Philadelphia, (Mr. Hanna,) by which I suppose he meant Allegheny county, that he is mistaken in saying that we do not want it. We do want it.

Mr. HAY. Mr. President: I rise simply to state my concurrence in the views expressed by my colleague, (Mr. MacCon-

nell,) and to state the further fact that the complaint made in our county is that we ought to have two of these judges instead of only one. We think one will hardly be sufficient to do our business.

The *PRESIDENT pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Hanna.)

The amendment was rejected.

Mr. HANNA. I now move to amend, by striking out after the word "county," in the fifth line, down to and including the word "thousand," in the sixth line, and also the words in the sixth line, "shall, and in any other city or county," so that it will read:

"In every city and county the Legislature may establish a separate orphans' court."

I offer this amendment in good faith. I do it because I am opposed to placing in the Constitution an imperative duty upon the Legislature in this respect.

My colleagues from this city have begged this question entirely. They did not choose to reply to a single argument I made against the section; but they propose to cure certain evils of which they complain by forcing upon the people and also obliging the Legislature to establish this separate orphans' court in the city of Philadelphia. I agree with them that there are evils in the present system; but they have, whenever discovered, been corrected from time to time.

The best answer in the world that could be given to the argument of my colleague (Mr. Simpson) was given by himself, when he stated that excessive charges were made by auditors in the settlement of estates. He told us that the court only on Saturday rebuked a certain auditor and corrected the evil. What more could we want than that? That will occur whenever it is brought to the attention of the court.

Again, the Legislature has exercised its power in this direction by passing an act of Assembly which says that the fees of auditors shall be ten dollars for each meeting, not exceeding five, and twenty-five dollars for their report. That is the fee bill now, and it is seldom exceeded. I have never yet known it to be exceeded upon application to the court.

My friend says it is very easy to apply to the court for an extension of time. I have never known it to be done, and I insist that it is the proper way to leave it to the Legislature. Let them establish these courts whenever they are asked for,

and if they are needed in Luzerne the people of Luzerne can ask for them. If they are needed in Philadelphia we can ask for them. If a separate court is needed in Allegheny or Berks or Lancaster, or in any portion of the State, it can be asked for at the hands of the Legislature; and it is but seldom that any such request is denied. In Philadelphia we have never been denied. When we asked the Legislature to give us additional judges in the common pleas it was granted. When we asked the Legislature to give us two additional judges in the district court it was granted.

The proper way is to leave it to the people. When their wants and necessities demand a separate court let them apply to the proper body, namely, the Legislature. For this reason I am opposed to making this an imperative duty upon the Legislature to establish a separate court.

Mr. TEMPLE. I would like to ask the gentleman a question before he takes his seat.

The *PRESIDENT pro tem.* The delegate has concluded. The question is on the amendment.

The amendment was rejected.

Mr. TEMPLE. I move to insert after the words "register of wills," in the twelfth line, the words "recorder of deeds," so as to read:

"The register of wills and recorder of deeds shall be compensated by salary to be fixed by law."

Mr. LILLY. That is not in order. That is already.

Mr. CUYLER. The amendment will not be very appropriate here, but the proposition is a very proper one in the proper place. I hope to see a general constitutional provision that there shall be no officer in the Commonwealth compensated by fees.

The *CLERK.* The section has already been amended to read as follows:

"The register of wills shall be compensated by a fixed salary, to be ascertained and paid as may be provided by law."

Mr. TEMPLE. What I propose is to insert the words "recorder of deeds" after "register of wills." I see it is mentioned in the first part of the section.

Mr. NEWLIN. Put it in another place.

Mr. TEMPLE. If it is provided for elsewhere I will not press it here. I am informed it is provided for; I therefore withdraw the amendment.

Mr. CUYLER. Mr. President: The reading of the portion of the section by the Clerk just now suggests to my mind an amendment which seems to me important. As he reads the section, it is "shall be ascertained and fixed." I think those words are dangerous. I think under cover of "shall be ascertained," the Legislature, operated upon by the influences that sometimes are brought to bear there, may have it ascertained by a given amount of fees or something of that sort. The words are unnecessary. I move to strike out the words "be ascertained," so as to read "shall be fixed by law."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from the city of Philadelphia (Mr. Cuyler.)

The CLERK. The clause reads:

"The register of wills shall be compensated by a fixed salary, to be ascertained and paid as may be provided by law."

Mr. CUYLER. My motion, then, is to strike out the words "to be ascertained and."

Mr. Kaine. I rose for the purpose of moving to strike out this much of this section. It reads:

"The register of wills shall be compensated by a salary to be fixed by law."

I rose to move to amend the section by striking out all after the word "wills," in the twelfth line, to the word "and," in the thirteenth line, striking out: "shall be compensated by a salary to be fixed by law and," because we have already provided in a section in the article on county officers: "All county officers who receive compensation for their services shall be paid by a salary to be prescribed by law."

We have it already. I do not intend to make a motion, however. I have no interest in it.

Mr. CUYLER. My motion is to strike out "to be ascertained and." Then it will read "fixed by law."

Mr. D. W. PATTERSON. I ask the gentleman from Fayette to defer his motion until the question is taken on the amendment of the gentleman from Philadelphia.

The PRESIDENT *pro tem*. The question now before the Convention is on the amendment of the delegate from the city (Mr. Cuyler) to strike out the words "ascertained and."

The amendment was agreed to.

Mr. D. W. PATTERSON. As the gentleman from Fayette does not make his mo-

tion, I move to strike out all after the word "determine," in the twelfth line, down to and including the word "court," in the sixteenth line.

The PRESIDENT *pro tem*. The Chair is informed by the Clerk that that very amendment was voted down the other day.

Mr. D. W. PATTERSON. I think the Clerk is mistaken about that. That amendment was to strike out from the word "law," in the thirteenth line, not including the line above. I propose to strike out from the word "determine," in the twelfth line.

The PRESIDENT *pro tem*. The amendment of the delegate from Lancaster is before the Convention.

Mr. D. W. PATTERSON. I desire briefly to state that I make this motion for two reasons. In the first place, we have provided in the third section of the article on county and township officers that all county officers shall be compensated by salaries. There is no use, therefore, in repeating it in this article. The section in that former article reads thus:

"County officers shall be paid by salaries, to be prescribed by law, and all fees attached to any county office shall be received by the proper officer for and on account of the State or county as may be directed by law; and the annual salary of any such officer and his clerks shall not exceed the aggregate yearly amount of fees collected by him."

Of course, that applies to the register as well as any other county officer.

I have another reason for making this motion. This clause provides that the register of wills shall be *ex-officio* clerk of such separate court, and subject to the direction of said court in all matters. That may not always be practical; it may not always be economical. I know that the register in our county and in five or six other large counties is engaged all the time in the legitimate business relating to that particular office, and he is not able himself to execute it. In three or four counties I know he has one clerk, and in our county he has himself and two clerks constantly engaged in the legitimate business relating to the register's office. Hence it will not be practical, or if practical not economical, at all times to have the register act as clerk of this special court wherever one is provided for, and if provided for by an act of the Legislature, they will provide either for the election of clerks or the appointment of them by the

particular court or judges of the court, so that we should not make it imperative to make the register the clerk of such court.

Now, we have left it that the Legislature may establish such a court, and hence it implies that a county will not have this additional judge and court imposed upon it unless the people petition for it, unless the business absolutely requires it. In our county we have two law judges, and they are competent to do all the common pleas business, all the orphans' court business and the business formerly imposed upon the register's court. All that is now imposed upon them; and if they get along well and keep up with the business, the citizens of such county would hardly ask for an additional judge and a separate orphans' court. Hence I think we ought to leave that which I have moved to strike out entirely to the Legislature; first, because we have fixed the salary of the register—where he does exist—distinct from all connection with all other courts; and, secondly, because it will be inconvenient at many times to make him the clerk of this independent court, where it is established.

In the third place, a man may be elected register and be competent to select a good clerk who has had experience and may fill that place well, and yet may be very far from being competent to be the clerk of the orphans' court, and especially if you impose upon him the duty contained in the last few lines, namely, to audit all accounts and make all distributions. I know we have had registers who have performed their duties faithfully and satisfactorily, who would have been utterly incompetent to write out an auditor's report or make a legal distribution of an estate. If such be the case, we should leave the thing open so as to have provision by the Legislature through either for the appointment by the court or by election, so that we can elect clerks who are competent to perform the duties imposed. For that reason I hope we shall not make it imperative that the register shall be the clerk of this special court whenever established. It seems to me that would be a very injudicious policy, indeed, and unnecessarily expensive. Striking that out still leaves the court when it is demanded, and it even makes it imperative when a city of 150,000 wants it, and it still leaves it to be provided for when petitioned for, and the Legislature may establish it in

any county when demanded, and when the business requires it. I think we should not make it imperative that the register shall be clerk of that court when he may be elected with reference to other duties and be entirely incompetent to perform the duties of clerk and auditor of this proposed court. I am opposed to the court proposed altogether.

Again, part of this clause embraces a provision regulating the mode in which the register shall be paid, when that is already fixed in another portion of the Constitution. I hope, therefore, that the chairman of the committee and gentlemen of the Convention may see that this is legislation entirely and it is not necessarily required to be sustained in order to establish what they wish by this independent court, and when the court is required and needed.

Mr. ARMSTRONG. I should be very glad to concur with my friend from Lancaster if I could see the point as he does. I think it very important that the register of wills should be compensated by a fixed salary, and it is not entirely clear that the provision in the article on counties would cover it, for it may be open to some question whether the register of wills is strictly and technically a county officer. There can be no harm in avoiding all question of that sort, even if it were a duplicate expression of the same thing in the Constitution. In respect to that part which provides that the register of wills shall be *ex officio* clerk of the orphans' court—

Mr. D. W. PATTERSON. Allow me to ask the gentleman a question. Since we have taken away the exercise of any judicial power by the register, as we have, is the register anything more than a county officer; a ministerial officer of the county?

Mr. ARMSTRONG. It may be so; but I suggest to the gentleman that the very necessity of asking the question implies the probability of a doubt and, therefore, it is better to remove that doubt by fixing the matter in the Constitution.

In reference to that part of the section on which I was about to comment, that the register of wills shall be *ex officio* clerk of the orphans' court, it is for this reason: We provide that the orphans' court shall audit the accounts which are filed in the register's office and in the orphans' court. Of course it would be impracticable for the judge himself to audit these accounts if he alone were

competent to discharge that clerical duty; but when we make the register of wills *ex officio* clerk of the orphans' court we give an official relation between the court and the clerk which enables the court to control the action of that clerk, and thus in every legal sense to audit the accounts themselves; or, to express it otherwise, that the courts shall audit the various accounts which are filed as provided for in this section. I think it is better that the section should stand as it is.

MR. DARLINGTON. Mr. President: I think there is some misapprehension in the mind of the gentleman from Lycoming about the register of wills being a county officer. We have expressly said so in article No. 14: "County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers, surveyors, auditors or controllers, clerks of courts." All these are county officers. In another section we have provided that "all county officers shall be paid by salary to be prescribed by law, and all fees attached to their offices paid into the city or county treasury, as the case may be."

I cannot, therefore, see the propriety of confusing this section by saying anything about the register being paid by salary. We have already said it. As to the propriety of his being clerk of the orphan's court *ex-officio*, that is a matter about which gentlemen may well differ. It is said by the gentleman from Lancaster (Mr. D. W. Patterson) that in that county he has enough employment as register. Very well, let Lancaster county have a separate orphan's court. By its population, wealth and business, it may fairly be entitled to one, and a judge of the orphans' court would relieve the common pleas very much in that county, and I apprehend would be found a very great convenience to it. That is, however, for them. The power is in the Legislature.

Now, it strikes me that the proposition made by the gentleman from Fayette, (Mr. Kaine,) to strike out the words which leave this upon the footing of the other county officers to be compensated, would be right. Whether we shall strike out that which makes him *ex officio* clerk of the orphans' court, I am not so clear. I rather incline to the opinion that it is not necessary to maintain any relation between the register and the court. It does not follow that it would be convenient. If in the counties where he is abund-

antly employed otherwise he should be called upon to act as clerk of the orphans' court, we know very well that he must do it entirely by deputy, and I now instance the case of my own county, where, although the register's office is the very best in the county by reason of the pay and the smallness of labor, the clerk of the orphans' court, in connection with the clerk of the sessions, as they are there held, gives full employment to a competent man the year around, and the work cannot be done by one man. To make the register, therefore, the *ex-officio* clerk of the orphans' court would be only to give the register the appointment of the clerk of that court.

MR. ARMSTRONG. I will make a single suggestion to the Convention. It may be that gentlemen are correct in saying that another part of the Constitution makes the register of wills a county officer by express terms; but it is to be borne in mind that the Convention has not yet had the Constitution in any printed and connected form which enables the Convention as a body to examine this question with care. If the provision be really duplicated in the Constitution, it will fall within the proper duties of the Committee on Revision, and when it comes before the Convention upon their report we can strike out any duplication that may appear. I think for the present it is better to retain the section as it stands.

The amendment was rejected.

THE PRESIDENT *pro tem*. The question recurs on the twenty-first section.

MR. LANDIS. I move to strike out the words "*ex-officio*" in the thirteenth line. I object to the words "*ex-officio*" for two reasons: First, I do not think they are necessary at all—

MR. ARMSTRONG. I do not think the words are of any great value.

MR. LANDIS. I offer the amendment not as a very material matter, but still I think it better to strike out these words.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Blair (Mr. Landis.)

The amendment was agreed to.

MR. CORBETT. I wish to call the attention of the chairman of the Committee on the Judiciary to the word "expense," in the eighteenth line, in the phrase "without expense to the parties." I wish to know whether this language, "without expense," will cover all costs, or only the auditing. It strikes me that the expression is so broad that it would

not allow the court to impose upon the parties any necessary costs for the attendance of witnesses where there is a contest of facts.

Mr. ARMSTRONG. I should think not. The expression is that the account shall be audited by the court. The duty of auditing is different from the duty of laying proper evidence before the auditor. That which pertains to the calling of witnesses would not be part of the technical duty of auditing. That would be the duty of the parties in preparing and ascertaining the evidence, and I think is no part of the necessary duty of an auditor.

Mr. CORBETT. I do not propose any amendment.

Mr. J. M. BAILEY. Mr. President: I suggest to the Convention that as courts of common pleas are now constituted it would be a physical impossibility for the same judge to audit all the accounts that are filed in the register's office; but in such counties where the Legislature shall establish a separate orphans' court I think the provision is very wise and will answer all the objections that are made to the auditing system by the gentlemen from Philadelphia and Pittsburg. I therefore move to amend this section by adding after the word "office," in line seventeen, the words "in such counties where the Legislature shall establish a separate orphans' court."

Mr. LITTLETON. It means that already.

Mr. J. M. BAILEY. I think not. Also after the word "said" and before the word "court," in the eighteenth line, I move to insert the words "by the said court." That means the separate orphans' court.

Mr. MACCONNELL. I suggest to the gentleman to put in the word "separate."

Mr. ARMSTRONG. I suggest to the gentleman from Allegheny that the words "such separate" have been stricken out in the seventeenth line and the words "in the" substituted. The substance of it is to compel the auditing of accounts without expense in all the counties of the State, and to vest in the Legislature the discretionary power to create orphans' courts where they may be necessary; and if it should so happen that the common pleas courts in any county or district are overburdened by the duty of auditing, or supervising the auditing, which would be done practically by their clerks under their direction, it would be a sufficient reason for appealing to the sound discretion of the Legislature for the establish-

ment of a separate orphans' court within such district. As it stands now, I think the power is sufficiently guarded when we require it as a duty imposed upon the orphans' court of every county to audit every account without expense. It seems to me that we afford a means of relief for every court of common pleas which becomes overburdened by the auditing business.

Mr. J. M. BAILEY. I should like to ask the chairman of the Judiciary Committee a question. If it is impracticable for the court itself to do this, what counsel can they designate to perform this duty?

Mr. ARMSTRONG. The clerk of the orphans' court can do that duty. The register of wills is *ex-officio* clerk of the orphans' court.

Mr. J. M. BAILEY. But you have already in this very section given the register of wills duties that in many counties he does not now perform.

Mr. ARMSTRONG. He will have no duties which will be in conflict with the duty of the court to audit the accounts, which is the important question now pending. We impose upon the court the necessity of auditing accounts without expense to the parties, that is without the expense of auditing in any of the counties of the State. If they are overburdened by the imposition of such a duty, their relief will be found in the power which we have conferred upon the Legislature to create separate orphans' courts.

Mr. J. M. BAILEY. I still think the provision which I have suggested, and which will apply to such counties where there are already separate orphans' courts, will meet and answer all difficulties and also obviate all questions about expense. I think the chairman of the Committee on the Judiciary ought to be willing to apply it only to such counties where a separate orphans' court shall be established under this section.

Mr. ARMSTRONG. I am entirely desirous that we should have such a provision in our county, but I do not believe we shall reach 150,000 population very soon.

Mr. J. M. BAILEY. I propose that the Legislature may give you such a provision.

Mr. ARMSTRONG. The Legislature may give it when it is necessary, but that power is limited by the section as it stands.

The PRESIDENT *pro tem*. The question will probably be better understood if the words of the amendment of the gentleman from Huntingdon be read. The Chair will direct its reading if gentlemen will give attention.

The CLERK read the clause as proposed to be amended, as follows:

"All accounts filed in the register's office in such counties where the Legislature shall establish a separate orphans' court."

Mr. LITTLETON. In order to bring up the question, I move to strike out the words, "without expense to the parties."

It does seem to me that it is not right or just to put all this work on the courts and place on the community the burden and expense of auditing the estates of decedents. I do not think there should be any payment to auditors specially, but there certainly ought to be a tax of some sort imposed for the benefit of the State Treasury upon the estates to be settled in these separate orphans' courts, if the community is to bear the whole expense of it. It does not seem to be right or just or proper that the community should be saddled with the expense of auditing the estates of rich persons.

Mr. ARMSTRONG. That is a matter of detail which would fall within the province of the Legislature, and provision for which it is not necessary to place in the fundamental law.

Mr. LITTLETON. I beg the gentleman's pardon; the section as reported takes away all power from the Legislature on this subject. The only place where any expense can be incurred is where a special audit is had at the request of the parties.

Mr. SIMPSON. Does not the gentleman from Philadelphia see that when the Legislature fixes a fee bill for the register of wills, the fees can be so arranged as to cover all the expenses of the court? That is certainly within the province of the Legislature.

Mr. LITTLETON. I still think that the answer of the gentleman does not meet the objection. The account may be settled by agreement and may never reach an auditor. I contend that these words should be modified in such a way as not to take away from the Legislature the right to tax the business of these courts in amount sufficient to meet and defray the expenses of auditing.

Mr. ARMSTRONG. I do not apprehend that there is any doubt about the Legisla-

ture having that right now. They can by general law provide a system of taxation which will pay the general expenses of the court in such cases.

Mr. D. W. PATTERSON. I want the Convention to take notice that the words "such separate," in the seventeenth line, are now stricken out, and the chairman of the Committee on the Judiciary admits that with those two words stricken out the latter part, commencing with the words "and all accounts filed," down to the end of the section, applies to *every* county, whether a separate orphans' court is established in it or not.

Mr. ARMSTRONG. That is what it contemplates, as I understand it.

Mr. TEMPLE. We all understand that.

Mr. D. W. PATTERSON. Therefore I want to know if we now intend to impose all the duty of auditing the accounts of the estates of decedents upon the common pleas judges of Lancaster county, when they have all their other business to attend to? They now have the common pleas business, the orphans' court business, and all other judicial matters. To do more would be impossible.

Mr. SHARPE. Let them have a separate orphans' court.

Mr. D. W. PATTERSON. This provision is urged only because of this miserable—and I do not originate the term, for it has been so called by the representatives of Philadelphia—this miserable, corrupt Philadelphia, whose lawyers and judges, they say, are robbing dead men's estates. It is to cure a corrupt practice in this city that all the common pleas judges of the State must have this duty imposed upon them of auditing all the accounts of decedents! We do not want any such thing in Lancaster county.

Mr. HANNA. No prominent member from Philadelphia has said anything of the kind.

Mr. D. W. PATTERSON. Sir, they do admit that both the courts and the bar here are robbing dead men's estates to such a degree that they must have this restriction put upon them. When the subject was before the committee of the whole, I consented to let them have something for Philadelphia, as they seemed to demand and require it. I said if they were so corrupt as alleged by their delegates on this floor, Philadelphia should have some fundamental provision to correct this matter. But I do not want that extended to all the State; and now, by the admission of the chairman of the

Committee on the Judiciary himself, and by the reading of this section, the common pleas judges of Lancaster county, and of every other rural county, must act as judges of the orphans' court, must supervise the auditing of all accounts and must make the distribution of estates; and this must be done without expense to the parties, and without expense to any estate that comes into these courts for settlement! We have never had in Lancaster county any very heavy expenses charged for auditing accounts. I never heard of any complaint in Lancaster county such as we have heard from Philadelphia. The judges there supervise all the charges made for auditing accounts, and if a charge is unreasonable or unprofessional, they strike it down and reduce it to a proper sum. If the judges of Philadelphia do not exercise the same discretion in this matter, they should do so, and that would end very many of these complaints.

MR. NEWLIN. I desire to state to the gentleman that only last Saturday a case came before the orphans' court in this city where an auditor had charged a fee of two hundred and fifty dollars for auditing the accounts of an estate that amounted to nine hundred and fifty dollars. The matter was brought to the attention of the court, and the court reduced the fee to fifty dollars.

MR. D. W. PATTERSON. In what county was that?

MR. NEWLIN. This county.

MR. D. W. PATTERSON. That was only doing their duty. If they would do that in all cases, there would be no such complaints as we have heard from the Philadelphia delegates. But if your judges now, when an account on exceptions or distribution comes before them, can refer it to some one who will do it as well and as cheaply as it can be done, and do it satisfactorily to every executor and administrator and satisfactorily to everybody, why root up this practice and make your judges auditors of these accounts? If you make them do that besides doing all the common pleas work and all the orphans' court work, business which makes them to sit in Lancaster county for ten months in the year, it will be utterly impossible for them to attend to it. It is impossible for them to audit these accounts; but if we pass this section as it is they have that duty imposed upon them, and this, sir, when there is no necessity or public demand for it in Lancaster county or any

of the rural counties. This new machinery is all created to catch this rascality in Philadelphia city. Now, I would advise Philadelphia to get up a separate section for themselves, confine it to the city, a provision providing for building up a wall around that city forty feet high to prevent their impurities and corruptions from spreading out over the rural districts, and I will support it. But we do not require or want such laws to control the outside that city. If the courts and the bar cannot meet the wants of that community and administer the laws purely in Philadelphia, I say, for one, let them have a separate section to control that community and govern that city; but sir, because they are admittedly corrupt from top to bottom and bottom to top, so that crying abuses must be remedied in the city, do not impose such duties as are impossible and make provisions implying corruption and mal-administration on all the other judicial districts of the State.

I hope this will not be done, and I think if the rural members understand it they will not impose this duty, which is so onerous and impossible, on their common pleas judges. They have too much already. And now when those judges of the interior do the auditing and distribution of estates through auditors, at the same time supervising judicially those auditors in regard to auditor's fees, so as to prevent abuses, and doing this in a manner perfectly satisfactorily to all concerned, why change the law in respect to so large a portion of the State. Is there any complaint as to the present law outside of the large cities? Sir, so far as I have heard, there has been no complaint—no admission here from a member of the bar or a delegate from the rural districts indicating any dissatisfaction by the people or the bar.

I hope that we shall not pass this section after the explanation made by the honorable chairman of the committee that it imposes this additional and impossible duty of auditing all accounts upon the common pleas judges throughout the State.

MR. LILLY. I had hoped to be able to vote for this section all the way through; but with those words stricken out in the seventeenth line, I cannot see my way clear to do it. I hope to see our judicial districts remain as they are. I shall vote against making every county with a population of thirty thousand a separate ju-

dicial district. The way I vote to-day, I expect to see our district remain as it is. It is perfectly satisfactory to us. Our judge is able to do the business satisfactorily to everybody; and as to auditing accounts in our county, I have never heard the first word of complaint; I have never heard a complaint of an improper charge being made; and with those words stricken out, making it extend to the whole State, I cannot see how I can vote for the section, because I do not believe that our judge, with four counties in his district, can travel from county to county and audit all these accounts. I cannot see that it can be done; but with those words in, excepting districts of the kind that I reside in, I would very willingly vote for it.

Mr. ARMSTRONG. I think the gentlemen who have last discussed this subject omitted to observe that in the eighteenth, nineteenth and twentieth lines it is provided: "Except where all parties in interests in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint." The power is clearly vested.

Mr. D. W. PATTERSON. But that does not leave it in the power of the court; it depends on the consent of the parties.

Mr. ARMSTRONG. That is just the purpose of it, that when the parties are not willing to consent to the appointment of an auditor the duty of supervising and adjusting the accounts, filed in the register's office and the orphans' court shall be imposed upon the court as a part of their ordinary and official duty; and there is no good reason to distinguish between duties which are to be imposed upon the courts in any one line of judicial investigation and in another. It is a pernicious practice, alien to the very fundamental principles on which the judiciary ought to be established, and which ought no longer to exist. If the parties desire an auditor to be appointed, it is fully within the purview of this section to have such auditor appointed where the parties desire it. If they do not so desire then it falls upon the court as a part of its judicial duty. If those duties become burdensome, and they be unable to discharge them, the remedy is provided by that provision which authorizes the establishment of orphans' courts, distinctively so called, in every district in the State within the sound discretion of the Legislature.

I think, therefore, the section is well guarded; it meets every case; it is not liable to abuse; and in my view will be a great advance upon the present judicial system of the State.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. DARLINGTON. I move to amend, in the eighteenth line, by inserting at the commencement of it the words "if necessary." It will then read:

"All accounts," &c., "shall, if necessary, be audited by the court without expense to the parties."

Wherever an account is filed that is satisfactory to all parties, there is no occasion for troubling the court with it further or for auditing it; and the interests of all parties are sufficiently awake, the people are sufficiently attentive to their own interests, not to allow anything to pass that they are not satisfied should pass. I believe in a great measure the cause of the difficulty of which we have heard in Philadelphia has been the sending of everything to auditors, whether the parties were satisfied or not. I would never compel the court to audit or appoint auditors unless in their judgment it should be necessary, and that should be made known by exceptions.

Mr. ARMSTRONG. I would suggest that the auditing may be in many instances merely formal, but it is one of those forms which cannot judiciously be dispensed with. When an account is presented in either the register's office or the orphans' court it should pass through the ordinary forms, which will prevent undue haste in the confirmation of the account. When it is thus presented there can be no hardship or any delay, when there is nothing to be done. If so be that there is nothing to contest in an account the auditing, whilst it will be formal, will keep the record in the ordinary and proper form and will be the official evidence that the account has not been passed with undue haste.

I think, therefore, it is wise to retain these words as they are.

Mr. LANDIS. Before the vote is taken I have but one word to add. Up to this moment I had intended to vote for the section, but so long as the latter part of it remains in its present shape, I will not vote for it. It requires that the accounts filed in the register's office and orphans' court shall be audited by the orphans' court. To that I am opposed. In the rural dis-

tricts the practice at present is to audit only the accounts to which exceptions are filed or in which a balance is required to be distributed. The section as it now stands, however, requires that all accounts filed shall be audited, and that by the orphans' court. Now, sir, the judges of the separate orphans' court may find abundant time to do so, but the judges of the common pleas cannot.

Mr. CUYLER. Insert the words "which may be required by law to be audited."

Mr. LANDIS. I will agree to anything that will not require all accounts to be audited.

Mr. CUYLER. I think that would relieve the difficulty of many members.

Mr. LANDIS. I hope if the section remains in the shape it now is that the country bar will vote against it.

Mr. CUYLER. I move to amend by inserting the words, "which are required by law to be audited," to be inserted in that part of the section which provides for the auditing of accounts. As it stands now, all accounts would be required to be audited by a constitutional requirement. Where there are no exceptions, there is no reason for an audit at all, although it is the practice in this county to do it, simply for the purpose of increasing the patronage of the judges and the profits of members of the bar. We had better be rid of it. I therefore move to insert after the word "audit" the words "which are required to be audited."

The PRESIDENT *pro tem*. That is not in order. It is not an amendment to the amendment of the delegate from Chester.

Mr. DARLINGTON. I wish to modify my proposition so as to read, "shall, if excepted to, be audited."

Mr. J. S. BLACK. It certainly is not necessary in order to come within this law that the court or anybody else should go item by item over an account which all the parties to it after full notice admit to be correct. The account is sufficiently audited then.

Mr. LANDIS. That may be; but then the language of the Constitution, which says they shall be audited by the court, becomes a mere form. If the court has nothing to do but merely endorse a certificate, the auditing is merely a form.

Mr. J. S. BLACK. It is to be audited where there are no exceptions; that is all the court has to do or ought to do; but where there are exceptions, then it becomes the duty of the court or somebody

else to investigate the truth of what is alleged in the exceptions.

Mr. LANDIS. Yes, sir; and it is just with a view of meeting that difficulty that I am anxious that some gentleman should suggest an amendment, or the chairman of the committee should accept some modification that would permit the judges of the orphans' court to refer such questions to an auditor to pass upon the exceptions and report them to the court.

Mr. J. S. BLACK. That has been the mischief.

Mr. LANDIS. That has not been the mischief in the rural districts. It has been the mischief in the large cities, particularly in the city of Philadelphia, as admitted by the representatives from that city; but it has not been asserted up to this time that there has been any mischief at least in the large majority of the rural counties. In my own district I know there is no such mischief. I am opposed to it, and in behalf of the judges of the orphans' court of the rural districts I protest against any provision being engrafted upon our Constitution that will require them to perform that kind of duty.

Mr. MACCONNELL. I rise to suggest that the clause should be amended to read as follows: "Where exceptions are taken to any account filed in the register's office, it shall be audited by the orphans' court without expense to the parties."

Mr. ARMSTRONG. I suggest to the gentleman make it read thus: "All accounts filed in the register's office and in the orphans' court to which exceptions are filed."

The PRESIDENT *pro tem*. There is an amendment now pending, the amendment offered by the delegate from Chester (Mr. Darlington.)

Mr. DARLINGTON. Do I understand the chairman of the committee to propose to modify the clause as he has just read?

Mr. ARMSTRONG. The gentleman from Allegheny (Mr. MacConnell) submitted an amendment which strikes me favorably.

The PRESIDENT *pro tem*. The amendment of the delegate from Allegheny is not in order. The pending question is on the amendment of the delegate from Chester, to insert after the word "shall," in the seventeenth line, the words, "if excepted to," so that the clause will read: "All accounts filed in the register's office

and in the orphans' court shall, if excepted to, be audited by the court."

Mr. ARMSTRONG. I do not like the phraseology of that amendment as well as that of the gentleman from Allegheny.

Mr. DARLINGTON. I have no objection to any phraseology that will accomplish the object.

Mr. ARMSTRONG. He proposes to make it read:

"All accounts filed in the register's office and in the orphans' court to which exceptions shall be filed."

Mr. DARLINGTON. Very well; I will so modify it.

The PRESIDENT *pro tem*. The delegate from Chester accepts the modification suggested by the delegate from Allegheny, (Mr. MacConnell,) and the question now is on the amendment as modified.

Mr. D. W. PATTERSON. I merely wish to state that the amendment proposed implies that there is no necessity for an auditor except when exceptions are filed. Now, we know, and it is the experience of every lawyer here, that there is often a dispute about distribution, heirship, transferees, &c., which requires an auditor just as much as in a case of exceptions. You leave that entirely out. What will you do then?

Mr. J. M. BAILEY. I suggest to the chairman of the committee that the modification which he has accepted makes the section decidedly worse than it was before, because it requires all accounts, where exceptions are filed, to be audited at the expense of the parties, while those very accounts to which exceptions are filed are the ones as to which there should be no expense. I hope it will be withdrawn.

Mr. MACCONNELL. I believe I made a mistake when I suggested the amendment.

Mr. ARMSTRONG. I am entirely in agreement with the gentleman from Huntingdon, that we have been altogether too hasty in adopting this suggestion. I think it will be very dangerous, because it will allow the courts to order an auditor upon any account to which objections have not been filed, and that is a part of the enormous abuse of which the citizens of Philadelphia have a right justly to complain. As to the rural districts, I will say it is a term of very indefinite significance. In our part of the State we find the beginning of a system which is already becoming an abuse, and there is no

part of the State in which persons are not apt to learn that it is of decided profit, though it may be a very unholy and unwarranted profit. I think the section is right as it stands.

The PRESIDENT *pro tem*. The question is on the amendment as modified.

Mr. ARMSTRONG. I withdraw it.

The PRESIDENT *pro tem*. The delegate from Lycoming cannot withdraw it. It was offered by the delegate from Chester (Mr. Darlington.)

Mr. ARMSTRONG. Then I hope it will be voted down.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. COCHRAN. I shall vote, I believe, for this section, though with a great deal of hesitation. The practical difficulty which has been suggested here with regard to the auditing of accounts by the orphans' courts, without expense to the parties, in all the counties of the State, is a very great one, and it is practically impossible, I apprehend, for the judges in the interior of the State to attend to that business in the orphans' court. I do not see how it is possible for them to do it personally and directly. Then, in addition to that, with regard to the last clause of the section that has been so much talked about here, it simply refers to the auditing of accounts. Now, the question of distribution, which is not the auditing of an account at all, but the distributing of a balance on an account, is as important as any which arises on exceptions to an account, and that appears to me to be wholly neglected by the section. Not only questions of distribution between the representatives of the deceased party, legatees and others, but questions which arise in distribution where creditors are concerned, because under our decisions now creditors can go before the auditor to distribute and prove their debts before him and have them disposed of, just as they used to do where they resorted to the courts of common pleas for that purpose. I think that the section, while it may possibly be an improvement upon our present system, will still be very lame and very defective. The great defect of our present system with regard to the orphans' court, is, according to my observation and experience, that the business of that court does not receive the time and attention which it deserves from the courts themselves. It is passed upon hastily and hurriedly

in the intervals of other business, or even while other business is going on, and matters are taken too much for granted, and too little consideration is paid to them.

I had the honor to submit a proposition, and like everybody else, I suppose, thought my proposition the best. I thought the better plan would be, in counties of sufficient population and business, to establish a complete change of this system by erecting a probate court, dispensing with the registers of wills entirely, and putting this whole business in the hands of a separate judicial organization from the first issuing of letters of administration or the probate of a will (and that is as much a judicial question as any other, and the register acts as a judge in that particular,) down to the very close of the distribution, all passing under the eye of a single tribunal and all the papers filed in a single office. But, sir, we have gone too far for that; we cannot, I suppose, retrace our steps. When it was presented it was not acceptable to the Convention and it was rejected. That being the case, although I consider this section defective, and that it does not meet the wants which ought to be met, I shall vote for it, thinking it still probably an improvement upon the present system.

Mr. KAINE. There is no amendment now pending, I believe, and the question is upon the section.

The PRESIDENT *pro tem.* It is.

Mr. KAINE. I move then to amend, by striking out all after the word "county," in the third line, to the close of the section. That will leave the section remain as it is in the old Constitution.

"A register's office, for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county."

That is the old Constitution, nothing more and nothing less, and it is all that is contained in the old Constitution upon that subject. I cannot vote for the rest of this section, and shall content myself with calling for the yeas and nays upon it. What follows in this section after what I have proposed to retain, viz: "The register's court is hereby abolished," has already been provided for in the first section of this article. The first section of the article in the old Constitution provided for a register's court but we have now left that out; it will have no existence, and I see no use in putting that provision here. At any rate it should not be

in here if it even were necessary, because it should go in the schedule.

In my opinion the whole of the section beyond these words is objectionable, and I shall vote against it. If nobody else desires to make any remarks on the subject, I call for the yeas and nays on the motion to strike out.

Mr. H. W. SMITH. I second the call.

The PRESIDENT *pro tem.* The call for the yeas and nays must be seconded by ten gentlemen.

Mr. H. W. SMITH. The gentleman who has last spoken is certainly right.

Ten delegates not rising to second the call, the yeas and nays were not ordered.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Fayette (Mr. Kaine.)

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section.

Mr. HANNA. I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

Mr. D. N. WHITE. I should like to have the section read, that we may know in what shape it is now.

The PRESIDENT *pro tem.* The Chair will direct the section to be read as amended.

The CLERK read as follows:

SECTION 21. A register's office for the probate of wills and granting letters of administration and an office for recording of deeds shall be kept in each county. The register's court is hereby abolished, and the jurisdiction and powers thereof are vested in the orphans' court. In every city and county wherein the population shall exceed 150,000 the Legislature shall, and in every other city or county may, establish a separate orphans' court, to consist of one or more judges who shall be learned in the law, and which court shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such city or county in orphans' court proceedings shall cease and determine. The register of wills shall be compensated by a fixed salary, to be paid as may be provided by law, and shall be clerk of the orphans' court and subject to the direction of said court in all matters pertaining to his office. Assistant clerks may be appointed by the register, but only with the consent and

approval of the court. All accounts filed in the register's office and in the orphans' court shall be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.

The PRESIDENT *pro tem.* The yeas and nays have been ordered on this section, and the Clerk will call the roll.

Mr. DARLINGTON. I ask a division of the question. ["Too late."]

The PRESIDENT *pro tem.* The yeas and nays have been called on the section as it stands.

Mr. DARLINGTON. Is it too late to call for a division of the section? ["It is."]

The PRESIDENT *pro tem.* The yeas and nays have been ordered on the section as it is.

Mr. DARLINGTON. Does the Chair rule an amendment out of order?

The PRESIDENT *pro tem.* I think so.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baker, Barclay, Beebe, Biddle, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Campbell, Carey, Cochran, Corbett, Corson, Curry, Cuyler, Dallas, Darlington, Davis, De France, Edwards, Elliott, Fell, Finney, Fulton, Funck, Guthrie, Hay, Hemphill, Horton, Howard, Lamberton, Lear, Littleton, Long, MacConnell, McCulloch, Mann, Mantor, Metzger, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, Samuel A., Read, John R., Runk, Sharpe, Simpson, Smith, Wm. H., Temple, Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., Worrell and Wright—69.

NAYS.

Messrs. Addicks, Bailey, (Huntingdon,) Clark, Gibson, Gilpin, Green, Hanna, Harvey, Hunsicker, Kaine, Landis, Lawrence, Lilly, McClean, Patterson, D. W., Reynolds, Ross, Smith, H. G., Smith, Henry W. and White, Harry—20.

So the section was agreed to.

ABSENT—Messrs. Ainey, Andrews, Bailey, (Perry,) Bannan, Bardsley, Bartholomew, Bigler, Bowman, Brown, Calvin, Carter, Cassidy, Church, Collins, Craig, Cronmiller, Curtin, Dodd, Dunning, Ellis, Ewing, Hall, Hazzard, Heverin,

Knight, MacVeagh, M'Camant, M'Murray, Minor, Mitchell, Mott, Niles, Porter, Purviance, John N., Reed, Andrew, Rooke, Russell, Stanton, Stewart, Struthers, Van Reed, White, J. W. F., Woodward and Meredith, *President*—44.

Mr. PATTON. I move to amend, by inserting a new section at this point, and I ask the indulgence of the Convention for a few minutes while I present some reasons for its adoption. I ask the Clerk to read the new section.

The CLERK read as follows:

SECTION —. All legal notices or advertisements emanating from the courts and public offices in the respective counties of this Commonwealth, now or hereafter required to be published for public or private information, shall be printed in not less than two newspapers (if so many be issued) in the county where such courts or public offices are situated, one of which said newspapers shall be of the minority political party in said county having the largest circulation, the rates for such publication or advertising to be fixed by law.

Mr. PATTON. Mr. President: I trust this section, which is so much demanded and so eminently just and proper, involving as it does the interest and right of every tax-payer in the Commonwealth, will receive the sanction of this Convention.

Under the present unjust system of legal advertising, nearly one-half of the people of a majority of the counties are disfranchised; that is, they are not permitted under the present system to know through their own party organs what is transpiring of a legal character. As citizens and tax-payers, vested with equal rights, *but not enjoying this boon*, they are compelled to take an opposition paper or resort to loaning from a neighbor or to remain in ignorance on important legal matters involving their interests.

By passing this section the evil will be remedied, the system will be secured, and equal and exact justice will transpire. It may be urged that this belongs more properly to the Legislature. We grant it; but it is a *fact*, as gentlemen on this floor can testify, and as all know who have any knowledge on the subject, that the Legislature *has* declined and still *does* steadily decline to meet the want for reasons which this Convention can readily understand; and now the people expect this body, assembled for the purpose of correcting existing evils and supplying

the omissions of our present system, to act in their behalf, composed as it is of men free from partisan influences. As remarked, it is a well settled fact that the Legislature will give no relief. Some counties have *special laws* upon the subject, but these can only be secured when the representation is just right, and only occurs in isolated cases. If one county needs legislation on this subject, why, sir, not all the counties? We find other States regulating this advertising by law; we also find United States judges ordering the same regulations here asked for, which establishes the necessity and justice of enacting this section.

The evils flowing from our present loose and unsatisfactory system of legal advertising, involving the expenditure on the part of the people of a *million of dollars*, are manifold. I have not the data to present them all; but I can refer without fear of contradiction to some of them. Among the glaring evils are the partial publicity secured; the wide difference in charges for the same or similar notices, *varying, in some instances, one hundred per cent.* in different counties; corruption between county officials and printers in the struggle to secure this advertising, thus subsidizing the press, making it a mere machine in the hands of ambitious and, in many cases, bad men. I speak whereof I know when I assert that these evils exist, and that they are alarmingly on the increase.

Mr. President, it hardly becomes necessary for me to stand up before this intelligent body of delegates, representing the entire State, who are presumed to know something of this matter, and occupy time in proving what is manifestly true, and what is admitted by every intelligent man.

The last clause in the section I regard as important, as it will secure uniformity in prices. The cost of advertising a tract of land by the sheriff (assuming equal length of description) will be the same in Bradford county as in Blair county, and so with all other advertising; whereas, at present, with no governing principle, the prices being only regulated by a bargain between the official and printer, results in a wide difference of charges.

Mr. President: I desire to present a few facts as they exist in my own county, as more or less illustrative of every county in the State. The election proclamation, in which every voter is directly interested, has for years been published in only

one paper in the county. The same may be said of the proclamation concerning our courts.

The annual statement of receipts and expenditures, in which every tax-payer is deeply interested, exhibiting, as it did last year, the expenditure of over *sixty-one thousand dollars* of the people's money, has *only* been printed for years back in one paper, and the commissioners of Bradford county steadily refuse to make any further publication. Surely this state of things should not be permitted longer.

The sheriff's sales, prothonotary's notices, register's and recorder's advertising, &c., are printed in one principal sheet at the county seat, and a second paper of the *same party*, with only an indifferent local circulation of two hundred or three hundred is selected for this work. Thus proper publicity is avoided, and the people remain in ignorance as to the legal proceedings.

These evils have existed for years in Bradford county, and no change can be secured. The Legislature has been applied to but declines to give relief.

Mr. President, Bradford county has a population of some *sixty thousand*. She has thirteen thousand voters and fifty election districts. Admitting that the paper in which the legal matter appears has three thousand circulation, which is a high figure, we find by this unjust practice of our county officials that some ten thousand of our tax-payers are denied the privilege, I may say the right, of reading through the public press the legal transactions of the county. Is not this a manifest wrong, a monstrous, glaring evil?

What is true of Bradford is more or less true of most of the counties of the State. Surely, no effort on my part is needed here to prove the fact; it follows as a natural sequence.

In the State of New York, (I speak of New York, as I am more familiar with her system,) and also in most of the eastern and western States, the law requires the election proclamation to be printed in *every newspaper in the State*, and all other legal advertising is regulated by law. In Bradford county, Pennsylvania, with *seven newspapers* printed in it, the election proclamation, annual statement, &c., *only* appear in one newspaper!

By the last report of the Auditor General of the State we find that for advertising the amendment to the Constitution providing for the election of State Treas-

surer, the following wide difference in charges occurs: The lowest charge for daily advertising, in daily papers, is \$35; the highest is \$500; showing clearly that one publisher charges over *fourteen* times more than another for the same work. For advertising this amendment in the weekly papers we find in the same report the lowest charge to be \$7 25, and the highest \$92 50; showing that one printer charges twelve and a half times more than another.

Surely, sir, these are astonishing figures; but they are nevertheless true, and in the interest of the State call loudly for reform. We might very properly account for a difference of, perhaps, *four* or *five* times more between printers, owing to circulation, &c., but to suppose that one printer should charge over *fourteen* times more than another, for precisely the same work, cannot be justified by any rule of right or justice. These facts prove the propriety, and even necessity, of some *law regulating* the prices of advertising legal matter.

In dailies the advertising (as I am informed by the oldest and best printers) of the amendment referred to should not have cost the Commonwealth over an average of \$100, and in weeklies an average of \$20 would have been sufficiently remunerative.

I only refer to these facts that the Convention may see the evil complained of.

Mr. President, the main object in good government should be to equalize the rights, benefits and burthens of the people as much as possible. The present practice of partial official advertising is in unqualified contravention of that object. The dominant party in each county elects its own partisans to the county offices, and they give the public advertising exclusively to their own political organ, which, with but few exceptions, as we all know, is never subscribed for or read by the partisans of the opposite party, and hence the county sheriff may advertise in the dominant party organ a man's house or mansion farm to be sold at the county court house, while the owner may reside in a remote part of the county, and, being of opposite politics, he may not have seen or heard of the advertisement, and the first notice he may have of the sale and sacrifice of his property may be by the sheriff turning him and his family out in the street, and delivering his home—the hard earnings and privations of years—to some stony-

hearted, covetous purchaser and political opponent, thus giving him no opportunity to invoke the humane aid of his friends and neighbors to come to his rescue and save his property from a ruinous sacrifice, and he and his wife and children from being left homeless and without a shelter to cover their heads.

Again, the executors or administrators of a decedent's estate may advertise in the same organ for the creditors of the decedent to present their accounts for payment within a given time or be debarred from their payment, and a man may have a just claim against the estate, but being of opposite politics, he may not have seen the notice, and by not complying with its requirements he may thus virtually be defrauded out of a just debt.

In the case of the sale of property, by order of the orphans' court, for want of a more general notice the property of orphan children may be sold far below its value and their interests thus be greatly sacrificed. I could adduce other cases of injustice under this partial practice, but I think I have shown enough to justify the proposed change.

Under the present practice the paper of the dominant party, besides having the largest number of subscribers and greater pecuniary support, has also a monopoly of the public advertising; whereas, if this provision shall be adopted the organs of both political parties will have an equal share of the profits of official advertisements, without taking a dollar from the advertising patronage of the organ of the dominant party, and, moreover, it will promote the ends of justice and humanity.

This measure, Mr. President, addresses itself, not only to our imperative sense of justice, but to our just and humane sympathies for unfortunate debtors and unprotected orphans.

Pass this section, Mr. President, and the evils complained of will be obviated; uniformity will be secured; fair and just rates fixed; reasonable publicity secured; and I am justified in saying that a large saving to the people would be secured by avoiding exorbitant charges now so frequently extorted.

But, Mr. President, I have said enough. I yield the floor under the most sanguine conviction that the remedy asked for will be granted, by the adoption of this section or something like it.

Mr. H. W. SMITH. After the word "circulation," in the next to the last line

of the amendment of the gentleman from Bradford, I move to insert the words, "and also in one newspaper independent of all political parties, if such there be in the county."

Mr. BAER. Mr. President: I rise for the purpose of seconding the amendment of the gentleman from Bradford, (Mr. Patton,) because, as he said of himself, I too have had some experience in that direction. For a long time in our county we labored under the inconvenience of having all the proceedings published in only one paper. As at present organized we have publication in two, and we got that by procuring special legislation. It seems that the Legislature were more favorable to us than they were to Bradford. But I look upon it as a proposition entirely right, not violative of any fundamental principle, but wholly in accord with the very principles that underlie our government; and therefore, so far as I am concerned, I do not permit the question as to whether it is legislative in its character to decide for me whether I shall vote for it or not, for the reason that nine-tenths of all we have done since we have been in this Convention might in like manner have been done by the Legislature.

I shall vote for it, not because the Legislature cannot do the same thing, but, as the gentleman has so well said, because heretofore the Legislature has refused, or at least neglected, to provide for the wants of the people in this respect, and I assert that the people of the State of Pennsylvania should have the privilege of reading all these proceedings without being compelled to subscribe for both the political papers of their county, as they are compelled to do if you permit the publication to be confined to one paper only. They must either take both papers or they must not know what is going on.

It is entirely right that the people should be informed, and as the additional expense is but a mere trifle, it must be entirely proper for this Convention to incorporate it in the fundamental law. It is so for this reason: That when you put it here the people will be secure as against any political combinations in the Legislature by which to keep up some local party advantage at home; and when you send to the Legislature men from any county who are in the majority, as they must be, they feel a delicacy, they fear that they will be held to account if they do anything that would encourage the

paper of the opposition, as the publication of these proceedings to a certain extent does.

I think this Convention is here to do justice to all the people of the State without looking at the matter of politics on one side or the other, and although this does involve a question of politics it does not involve it in such a way as to make it improper to be considered by this Convention. I have held myself entirely aloof from all political questions since I have been in this body, and do now; and I go for this proposition, not because I come from a county that is in the minority, for though we be in the minority we are provided for by special legislation, but I go for it on the fair, plain principles of justice; and I hope the Convention will adopt the amendment and incorporate it in the fundamental law.

Mr. H. W. SMITH. Mr. President: I hope that the amendment which I have offered to the amendment will be adopted, although I am not prepared to say that if it is adopted I shall vote for the section when so amended. I think the time has come when we ought not to say in our great fundamental law that two parties exist in this country. If you wish to adopt any provision at all relative to legal advertisements, and provide that those advertisements should all appear in two papers, say that they shall be published in the two papers that have the largest circulation, and not in papers of the largest circulation of each of the two great political parties that are supposed now to exist.

The time is coming, let me say, when there will be an independent party in this country, in my humble judgment as there ought to be, against the two great political parties as they now exist.

What! Require in your Constitution that a legal advertisement should be published in political papers, in papers that advocate political parties, right or wrong; because where two political parties exist one pursues one policy and another pursues a different policy, and one must be wrong, and perhaps there may be times when the other is not right.

I trust that if the section as offered does pass it will be first amended, and that we may recognize independent papers as well as those of both political parties.

Mr. BEEBE. I move to amend the amendment after the word "party"—

The PRESIDENT *pro tem*. It is not further amendable. The amendment of the

gentleman from Berks (Mr. H. W. Smith) is an amendment to the amendment of the gentleman from Bradford (Mr. Patton.)

Mr. BEEBE. I will state for information what I should propose if it were in order, to insert the words, "and also one religious paper." There are people who read religious papers but who do not take any political papers at all.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

The amendment to the amendment was rejected, the ayes being ten, less than a majority of a quorum.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Bradford (Mr. Patton.)

Mr. ARMSTRONG. Upon this question I have only a word to say. It is so pre-eminently within the line of the Legislature, and the experience of the State has been so much against it, that I can hardly conceive it possible that the Convention will adopt this section. Wherever it has been adopted by the Legislature it has led to bickerings, disputes and ill-will. The matter had better be left to the Legislature.

Mr. DARLINGTON. I want to say a single word. I merely want to remind the the Convention that not long ago we got into our Constitution something about parties; we were ashamed of it in a day or so, and by common consent put it out. Now do not let us put it in again.

Mr. KAINE. I call for the yeas and nays on this question.

The PRESIDENT *pro tem*. It requires ten gentlemen to second the call for yeas and nays. Those seconding the call will rise.

More than ten delegates rose.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on the amendment of the delegate from Bradford (Mr. Patton.)

The question was taken by yeas and nays with the following result:

Y E A S.

Messrs. Achenbach, Baer, Bailey, (Huntingdon,) Baker, Biddle, Black, J. S., Buckalew, Campbell, Cochran, Curry, Dallas, Davis, Elliott, Fulton, Gibson, Gilpin, Guthrie, Hay, Hemphill, Horton, Howard, Kaine, Landis, Lawrence, Long, Palmer, G. W., Patton, Pughe, Purman, Ross, Simpson, Smith, H. G., Smith, William H. and Turrell—34.

N A Y S.

Messrs. Addicks, Alricks, Armstrong, Beebe, Black, Charles A., Boyd, Brodhead, Broomall, Carey, Corbett, Corson, Cuyler, Darlington, De France, Edwards, Ewing, Fell, Finney, Funck, Green, Hanna, Harvey, Hunsieker, Lear, Lilly, Littleton, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Metzger, Palmer, H. W., Parsons, Patterson, T. H. B., Purviance, Samuel A., Reynolds, Runk, Sharpe, Smith, Henry W., Stewart, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N., White, Harry, White, J. W. F. and Wright—49.

So the amendment was rejected.

ABSENT. — Messrs. Ainey, Andrews, Bailey, (Perry,) Bannan, Barclay, Bardsley, Bartholomew, Bigler, Bowman, Brown, Bullitt, Calvin, Carter, Cassidy, Church, Clark, Collins, Craig, Cronmiller, Curtin, Dodd, Dunning, Ellis, Hall, Hazzard, Heverin, Knight, Lamberton, MacVeagh, M'Camant, M'Murray, Minor, Mitchell, Mott, Newlin, Niles, Patterson, D. W., Porter, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Russell, Stanton, Struthers, Temple, Van Reed, Woodward, Worrell and Meredith, *President*—50.

The CLERK read the next section as follows:

SECTION 22. The style of all process shall be "the Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

Mr. ARMSTRONG. This section is the eleventh section of the fifth article of the present Constitution.

Mr. HARRY WHITE. I offer the following amendment to come in at the close of the section:

"And all criminal prosecutions shall be conducted by the Attorney General or deputies by him appointed and removed at his pleasure."

I will give way for the present to the delegate from York (Mr. J. S. Black.)

Mr. J. S. BLACK. It seems to me that a gentleman who leads this Convention ought to be prepared whenever he presents an amendment like this, to give a very full explanation of his reasons for it; but the gentleman from Indiana, it seems, want me to perform his duty. [Laughter.]

It must certainly be known to everybody here that the manner in which criminal prosecutions are conducted in some parts of the State is a crying evil. The duty of a public accuser is in some respects as important as that of a judge. Whether criminal justice shall be properly administered or not depends as much upon the prosecuting officer as the judge. The prosecuting officer can, if he sees proper, produce a great deal of injury to innocent persons by making false accusation against them. He may not be able to convict them, but he can put them to trouble and shame and vexation of spirit. Then he can do great injury to the public by relieving guilty persons from the punishment which is justly due to them. If you have a prosecuting attorney in any county who is of doubtful integrity you can by conciliating him do nearly what you please.

A criminal offence ought to be regarded as an insult to the peace and dignity of the Commonwealth of Pennsylvania; but in some portions of the State, it is said—I do not know with what truth, but it comes from authority that I do not feel myself justified in disregarding—that it is not an offence against the Commonwealth, but an offence against the district attorney. His functions are exercised like kissing, it “goes by favor.” He is in communication with the grand jury constantly, and he can tamper with it; at all events he can exercise a great deal of influence over it. A bill may be ignored where the proof could easily be produced to show that it ought to be found, and it may be found sometimes when it ought not to be, and a perfectly innocent party placed under the necessity of going through all the trouble and suffering, all the wear and tear of feeling that must necessarily be endured by a man who is in that situation.

One of the most important interests that society has is the just punishment of all persons who commit offences against the State; and where the prosecuting attorney is elected, where he depends upon popular favor, upon the votes of criminals as well as others, it is not likely that his duty will be performed fairly and impartially except where the criminals are very few and where the popular sense is very strong in favor of justice and right, as it is in the rural districts of the State.

If the city of London had been divided into parties as nearly equal as the city of Philadelphia now is, and the Whigs and

Tories had been in the habit of coming to elections every year or every two or three years and voting for all the offices, and among others for the office of prosecuting attorney, the sixty thousand thieves, to say nothing of other criminals, would have held the balance of power in their hands. Jonathan Wild, who was the head thief, could have elected for district attorney whom he pleased. He might have elected himself—certainly he would have chosen some one who would be sure to see him safe through any trouble he might get into. The necks of all his gang would have been safe from the halter.

There ought to be some provision in this Constitution which would put the prosecutions of criminals into the hands of some central authority responsible to the whole people of the State and not merely to a political party in the particular district where the offence is committed. The prosecuting attorney may be the representative of a party; he may be very unwilling to punish his own constituents; he may be a little too willing to give trouble to those who do not vote for him. He may perhaps even represent a ring inside of his own party which he takes under his special protection.

Perhaps it is true that better parties will have political objections to the measure now proposed. The politicians who belong to the majority party in any county are unwilling to let a case like this go into the hands of the central government, which may be opposed to them. It is taking away from them the power to bestow that much patronage upon their own partisans. But the administration of criminal justice is above such considerations. But I am afraid that party feelings will continue to govern us more or less in spite of all we can do, and sometimes against our better judgment. If, therefore, we make this provision apply to the larger towns it may be more acceptable. Let it apply to the city of Philadelphia and the county of Allegheny.

Mr. H. W. PALMER. And Luzerne.

Mr. J. S. BLACK. Or perhaps it ought to include Luzerne and Schuylkill. But we certainly ought to take the prosecution of criminals in this city under the control of the State. It is as much an injury to you and me, who live in Erie and York—

Mr. CAREY. The moral portion of the State. [Laughter.]

Mr. J. S. BLACK. Yes; in the moral portion of the State. I say it is as much an injury to us that a crime should be committed and go unpunished in the city of Philadelphia as it is to anybody who lives here. I hope, therefore, that this thing will be taken into serious consideration. If there are gentlemen who do not like it at first sight let them take a little time to reflect. I hope they will pause and ponder upon it before they reject it finally. If a little debate could be provoked it might do some good. Gentlemen who oppose it will see the futility of their reasons when they produce them in argument. At any rate we shall, in the course of a little time, as it is warm weather, ferment until we work ourselves pretty clear. [Laughter.]

Mr. ARMSTRONG. Mr. President: The argument of the learned and distinguished gentleman from York contains a very sound argument against the practice to which he would have this Convention return, which is not appropriate to the country districts, however it may be in his judgment appropriate to large cities. Certainly it is a system which was long practiced in this State, and was found to be utterly wanting. I remember to have heard a distinguished deputy under one of the Attorneys General of the State, who held the position and exercised it with distinguished credit to himself and advantage to his county, say that he was compelled to resign, and he gave for his reason among others to the Attorney General of this State that he could not afford to be prosecuting the Democrats at three dollars a head!

I do not know in what manner the amendment proposed is to reach any of the difficulties or the abuses to which the system of prosecution in the counties now is open. The system was tried and tried effectually, and I can see no reason why the district attorneys of the several counties should be appointed any more than judges or other officers. That whole system failed from beginning to end; and, whether wisely or unwisely, the State has grown in the estimation of the people, and I think, properly, far beyond the entire system. The deputy or prosecuting attorneys in the several counties as they now exist, as a rule, discharge their duties with fidelity, and I can see no remedy that exists by going back to an old discarded plan. I do not propose to take any further time in discussion at this time.

Mr. HARRY WHITE. Mr. President: I offered this amendment after consultation with some very distinguished members of this Convention. I offered it, furthermore, because it has the approval of my judgment. I shall not attempt to add to the argument so plainly and so comprehensively addressed to the Convention by the distinguished delegate from York, (Mr. J. S. Black,) but will only say that the philosophy of this amendment meets entirely the approval of my judgment. It is predicated upon the fact that all prosecutions should be conducted in the name of the Commonwealth and by the Commonwealth and under the control of her officials. It has always seemed to me that the theory, which originally obtained in our Commonwealth, of the appointment by the Attorney General of the deputy district attorneys all over the Commonwealth to conduct prosecutions in the name of the Commonwealth, and immediately representing her, was the correct and proper one, and I have never yet heard any satisfactory reason which called for the change. I have no especial object to accomplish by this, more than to preserve, if possible, the harmony of our system in this regard. To-day, notwithstanding we elect district attorneys, the Attorney General of the Commonwealth, the highest law officer of the Commonwealth, is constructively present.

I would furthermore remark that it is not exactly correct for delegates to rise in their place and say that in all parts of this Commonwealth the present system of electing district attorneys has operated well; has met all the necessities of justice. Refer to the statute book and you will find a number of cases where general laws have been passed to meet special cases, authorizing the courts to go over the head of the selected officer of the people, to disregard the district attorney, and appoint a prosecuting attorney themselves; and this was the result of complaints coming from different counties of this Commonwealth, and that authority has been exercised in numerous instances.

Now I submit, in confirmation of what the distinguished delegate from York has said, that there is such immediate connection, a feeling of obligation resting in the breast of the district attorney towards the people who have selected him, that I can imagine instances where a great crime can be perpetrated by his

friends, by the men who have put him in nomination or secured him his election, and I can readily understand the frailty of human nature which under these circumstances will refuse to prosecute; whereas if the prosecuting attorneys for the different counties of the Commonwealth are the appointees of the State government, that feeling of immediate responsibility, that feeling of delicacy, that feeling of obligation to malefactors who may be his neighbors and benefactors will be removed. I can see no objection to the amendment, but shall heartily support it.

Mr. DARLINGTON. Mr. President: I do not mean to detain the Convention for any length of time upon this question; but I want to add my testimony, so far as it is worth anything, to what has been so ably said by the gentleman from York (Mr. J. S. Black.) In my experience in looking at the practical workings of the system of electing district attorneys throughout the country, I think it will be generally acknowledged that the office has fallen into the hands of the young men who would travel farthest and beg most to get it. As a consequence in the prosecution of all criminal cases, however important they may be, the young and inexperienced man finds himself opposed by the older and abler members of the bar, and thus in all criminal proceedings the weight of talent is usually on the side of the thief or the criminal, and the inconvenience which may result and often would result to the Commonwealth is that that justice may not be done. This has been the case throughout the counties with which I have been acquainted.

Mr. KAINE. I wish to interrogate the gentleman.

Mr. DARLINGTON. I believe that is not in order. The gentleman will have an opportunity as soon as I am done. I only wish to recall to the members of the Convention what they all probably know as well as I do, that under that other system of the appointment of prosecuting attorneys by the Attorney General, a very different class of men had command of the prosecutions throughout the State. Go back to the administration of Governor Heister, who made Thomas Elder of Harrisburg his Attorney General. His appointments of deputies throughout the State were of the best members of the bar, men of experience. The same is true of John M. Read when he held the

office of Attorney General. The same is true of George M. Dallas when he held the office of Attorney General. A very different class of men held the prosecuting offices throughout the State from those whom you will find in those offices now. I need not refer to other instances. Such has been my experience and such is the judgment I have formed upon it. I am therefore in favor, if the people could only be induced to come to the point, which I fear they will not, of entrusting the Attorney General with the power of the appointment of his deputies throughout the Commonwealth. They would then be removable *instantly* if they were found incompetent or unworthy.

Mr. MACCONNELL. I merely arise to call the attention of members to the fact that in the article on county officers we have already provided that the district attorney shall be a county officer; shall be elected at the general election and hold office for the term of three years, if he shall so long behave himself well. Now, we shall just go back on ourselves if we vote for this amendment.

Mr. KAINE. I desire to say a word in reply to the gentleman from Chester. I do not know whether the gentleman was in earnest in what he said or not. I think he was not.

Mr. DARLINGTON. I am always in earnest. [Laughter.]

Mr. KAINE. If he was he was certainly entirely mistaken. He does not know anything about the history of the prosecuting attorneys of the State before they were elected or since. [Laughter.] I am well satisfied that the county of Chester has had as good district attorneys since they were elected by the people as ever it had before. I do not care whether they were appointed by Heister or Schultz, or any other Governor in the Commonwealth. I know that my experience in the other parts of the State has been just the reverse of what the gentleman from Chester's was when the Attorney General appointed the prosecuting attorney. The prosecuting attorney, appointed by the Attorney General, was usually some good-for-nothing fellow, who could not draw an indictment or try a case if he had an indictment drawn for him; whereas, now we have good active young lawyers. They are young sometimes, but if the gentleman from Chester will, if he pleases, if he desires, if he dares—[laughter]—come to Fayette county and try a case against the

prosecuting attorney we have there, I will venture to say he will come off second best. So I believe, anyhow, and so far as my knowledge is concerned, I believe it is in every county of the State, at least in the western part of it, and I hope we shall never go back to such a system as we had before.

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

The section as amended was agreed to.

The PRESIDENT *pro tem.* The twenty-third section will be read.

The CLERK read as follows:

SECTION 23. Any vacancy happening by death, resignation, or otherwise, in any court of record, shall be filled by appointment by the Governor, to continue till the first Monday of December succeeding the next general election.

Mr. BROOMALL. I desire at this time to offer an amendment, to come in as a new section, and then I wish to say two words on it and go home:

"In all cases of unlawful homicide, and in such other criminal cases as may be authorized by law, the accused, after conviction and sentence, may remove the indictment, record and all proceedings to the Supreme Court for review in the same manner as in civil cases."

That is the shape of the law at present, and it is what those who opposed the gentleman from Montgomery (Mr. Hunsicker) were willing to concede the other day if he had been willing at that time to accept it. I think it wise for us to prevent the Legislature from repealing the present law by making it a part of the Constitution, and it is with that view that I offer this section.

The amendment was agreed to.

The PRESIDENT *pro tem.* The question recurs on the twenty-third section.

Mr. ARMSTRONG. I move to amend, by striking out the word "next," at the end of the third line, and adding it after the word "December," and to add at the end of the section these words, "which shall occur two months after the happening of such vacancy."

Now I desire the section read as proposed to be amended.

The CLERK read as follows:

"Any vacancy happening by death, resignation or otherwise in any court of record shall be filled by appointment by the Governor to continue till the first Monday of December next succeeding the general

election, which shall occur two months after the happening of such vacancy."

Mr. ARMSTRONG. I will say that this is a part of the second section of the fifth article of the present Constitution. As printed it is in the precise language of the Constitution; but it was found to be inefficient in the regards which the amendment proposes to correct, and it was corrected by provision of law. This amendment is designed simply to put into the Constitution the law as it now stands in connection with the clause of the Constitution as it stands at present.

The amendment was agreed to.

Mr. ARMSTRONG. One further amendment. My recollection is—although I cannot at the moment turn to the precise section—that in consequence of the change which we have already made providing for the general election in November instead of October, the beginning of the term of office has been changed to the first of January instead of December.

Mr. MACCONNELL. That only refers to the county officers and members of the Legislature.

Mr. ARMSTRONG. As the election is to be held in November, instead of October, I think the same rule would apply here with propriety. I would therefore move to strike out the word "December" and insert "January."

The amendment was agreed to.

Mr. CUYLER. I do not like this section. It amounts to the appointment of a judge by the Governor, for whomsoever the Governor appoints will be the party nominee and the man elected; at least that has been all previous experience in our State under such circumstances. As we proceed on the theory that judges are to be elected by the people, I do not want any qualified exercise of that power in any way whatever. I consider this section as tantamount to the actual appointment by the Governor, and that, too, without the aid of the Senate, and for that reason I think there will be less evil in having a vacancy that may last for a few days or a few months than in vesting the appointment in the Governor. Therefore I hope that the election will be left entirely in the hands of the people.

Mr. ARMSTRONG. A vacancy may exist for almost an entire year, and in all constitutions by common consent there is an acknowledged necessity for providing for the supplying of vacancies.

The PRESIDENT *pro tem.* The question is on the section as amended.

The section as amended was agreed to.

Mr. HAY. I desire at this time to offer a new section to come in at this point as follows :

"In the cities of Pittsburg and Allegheny, there shall be but one alderman for every 10,000 inhabitants. Districts of as nearly equal population as may be and formed of compact and contiguous territory shall be established in a manner to be prescribed by law, in each of which districts but one alderman shall be elected, reside and hold office. Their term of office shall be five years. They shall be compensated only by fixed salaries to be determined and paid by the city in which they shall hold office.

"They shall exercise such jurisdiction and powers as are now exercised by alderman in said cities, excepting as the same may be changed or modified by law: *Provided*, That their civil jurisdiction shall not be increased to amounts exceeding one hundred dollars.

"All fees and perquisites received by said aldermen shall be paid by them into the treasury of the city in which they hold office, and be accounted for in such manner as may be provided by law."

Mr. ARMSTRONG. I would remark that I understand this section has been matured by the delegates from Allegheny. I do not know whether I am correctly informed or not.

Mr. HAY. I believe it meets the approval of all the delegates from Allegheny county; I cannot say that they have all matured it.

Mr. J. W. F. WHITE. I will answer for myself that I should favor something of this kind as legislation. I do not think it advisable, however, to insert it in the Constitution.

Mr. ARMSTRONG. Then I would suggest to the gentleman from Allegheny (Mr. Hay) that this new section be withdrawn for the present, printed, laid upon the desks of the members, and renewed at some subsequent time.

Mr. HAY. I have no objection. It can be printed. That was my object in offering it at this time.

Mr. ARMSTRONG. Then withdraw it and let it be renewed at some other time.

Mr. HAY. As we are about to adjourn, perhaps it should remain before the Convention at present, and it may be printed during the interval between this and the afternoon session.

The PRESIDENT *pro tem*. The hour of one o'clock having arrived, this Conven-

tion will take a recess until three o'clock this afternoon.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

The Convention resumed on second reading the consideration of the article on the judiciary.

The PRESIDENT *pro tem*. When the Convention took its recess, it had before it the amendment offered by the delegate from Allegheny, (Mr. Hay,) which will be read.

The CLERK read as follows:

"In the cities of Pittsburg and Allegheny there shall be but one alderman for every ten thousand inhabitants. Districts of as nearly equal population as may be and formed of compact and contiguous territory shall be established in a manner to be prescribed by law, in each of which districts but one alderman shall be elected, reside and hold office. Their term of office shall be five years. They shall be compensated only by fixed salaries to be determined and paid by the city in which they shall hold office.

"They shall exercise such jurisdiction and powers as are now exercised by aldermen in said cities, excepting as the same may be changed or modified by law: *Provided*, That their civil jurisdiction shall not be increased to amounts exceeding one hundred dollars.

"All fees and perquisites received by said aldermen shall be paid by them into the treasury of the city in which they hold office and be accounted for in such manner as may be provided by law."

Mr. HAY. I do not propose, sir, at this time to occupy the Convention by the discussion of the principles upon which this amendment is based. When section twelve of the present article on the judiciary was under consideration the whole subject was thoroughly and exhaustively discussed by many of the ablest members of this body. My desire is to have extended to the city of Pittsburg some part of the system which has been adopted by this Convention for the city of Philadelphia, with some necessary modifications and improvements. Retain the old office of alderman, which it has been decided shall be abolished in the city of Philadelphia, but I propose to have one for every ten thousand inhabitants, instead of one for every thirty thousand as provided in

the section establishing a new minor judiciary system for that city. The reason for proposing that change is this: Philadelphia is a very compact and closely built city, its inhabitants are closer together than they are in Pittsburg and they probably need a smaller number of such officers than we do. The number that is given to us by this amendment is, I think, about twelve in the city of Pittsburg, and seven in the city of Allegheny. We probably need that number, but we certainly do not need the large number now in office in these cities. The office of alderman is a very useful and important one to the peace and well-being of the community, and the office will be rendered more dignified, and more attractive to those who ought to serve in it by having fewer occupants than now, and by having attached to it a certain moderate compensation.

We have seventy-four alderman now in the city of Pittsburg, where twelve would be an abundant number for all our necessities. We have two for every ward in, I think, thirty-seven wards. Is not this statement enough to show that the number is excessive? When I proposed this amendment it was under the impression, derived from conversation with the delegates from Allegheny county on this floor, that the amendment met with their approbation; and I believe yet, that the delegates from the county of Allegheny are agreed in thinking that we need some change in the aldermanic system in our cities, and that the change proposed in this section are about those changes which are required for the improvement of our lower judiciary. The objection that is made to its adoption, by some of my colleagues, is that it is proper matter for legislation. That objection is certainly well founded so far as it goes. If this was the first occasion in this Convention on which it had been proposed to legislate in the Constitution of the State, the objection would possibly be conclusive. But we must remember this, that there has been already adopted by this Convention a section of this article providing for radical changes in the system of the minor judiciary of the city of Philadelphia alone, and that other cities in the State need reform in this matter just as much as does the city of Philadelphia.

There is no more crying evil to-day in the city of Pittsburg than the condition of its aldermanic system. We have many men in office there who are utterly

unfit to hold any office; men corrupt, ignorant, debased, and encouraging litigation of the very worst character every day they hold office. There are two great evils in connection with this matter—the number of the aldermen, and their encouragement of litigation, other evils, such as their ignorance and incapacity in many cases, the people must directly remedy for themselves by electing better men. I propose to reduce their number by providing that instead of having two for every ward there shall be but one for every ten thousand inhabitants in the cities; that they shall be elected in districts to be established in a manner to be provided by law, and that they shall hold office for the usual term of five years. Then I propose in order to remedy the other great evil of their encouragement of malicious and useless and improper litigation, by providing that instead of being compensated as they are now by fees and perquisites of office they shall be compensated only by a fixed salary, and that that salary shall be determined and paid by the city in which they hold office. That would remove the temptation from these men to encourage litigation by which the peace of the community is destroyed, by which crime is encouraged, and by which our courts are filled with business which ought never to reach them, and such litigation is encouraged merely to enrich the alderman or justice by the fees exacted in every case.

It seems to me that the city which must pay the salary of the alderman who will serve in the new districts should also have the right to fix and determine its amount. And I doubt not there are in the cities of Pittsburg and Allegheny many thoroughly competent men of some leisure, probably retired from active business, who would serve the people well in these honorable positions for a moderate and certain compensation. And I trust they will.

I hope that this amendment may be adopted. I do not know how otherwise the city of Pittsburg can obtain the relief which is certainly sadly needed there. In the article upon legislation a provision has been adopted which will prevent the Legislature from giving us any relief in the future. Unless we have it here, we will be forever tied down and fixed to our present system. We have provided that the Legislature shall not pass any local or special law regulating the affairs of counties, cities, townships, wards, bor-

oughs or school districts. Further on it has been provided that the Legislature shall pass no local or special law regulating the fees or extending the powers and duties of aldermen, justices of the peace, magistrates or constables. And unless there is some more serious objection to this section than the objection that its objects might possibly be substantially provided for by the future action of the Legislature, I hope the Convention will give the city of Pittsburg the relief that she needs. We have no reason whatever to look hopefully to the action of the Legislature; and I doubt whether after our previous action here, that body will have the power, if it had the will, to give us the changes required by the necessities of the case.

I will add just one word further. One or two of my colleagues, with whom I have discussed this subject—I do not know whether they will vote for the section or not—say that there is nothing upon which they have been more constantly approached and besought by the citizens of our county for a change than the aldermanic system of the cities.

Mr. S. A. PURVIANCE. Mr. President: I rise mainly for the purpose of suggesting to my colleague the propriety of withdrawing his proposition for the present. The attention of the Allegheny delegation was only called to it, I believe, this morning, and inasmuch as there is an important section yet remaining of the article on the judiciary which will occupy the time and attention of the Convention this afternoon, I would suggest to the delegate from Allegheny that he would have an opportunity of consulting with the Allegheny delegation by to-morrow, and in that way they would act in some concert.

Mr. HAY. I am very much inclined to think that this article may be disposed of to-day, after which it would be too late to offer the amendment.

Mr. S. A. PURVIANCE. Still the proposition of my colleague can be appended to the main article as well as to come in at any other place.

Mr. HAY. I should have no desire to press this amendment now upon the attention of the Convention, but for my fear that the article may be disposed of to-day and the opportunity for the presentation be lost.

Mr. S. A. PURVIANCE. We can bring it in to-morrow.

Mr. LILLY. I suggest that it be referred to the delegation from Allegheny county with instructions to report on the subject to-morrow morning, for it is a matter entirely for the members from Allegheny county, and I am willing to vote any way they may desire.

The PRESIDENT *pro tem*. The amendment has been journalized, and after an adjournment cannot well be withdrawn.

Mr. S. A. PURVIANCE. I move you that the further consideration of the subject of this proposed section be postponed for the present.

Mr. DARLINGTON. There is no trouble about withdrawing it. We have had no adjournment, only a recess.

The PRESIDENT *pro tem*. It has been journalized, and the Clerk can only reach it by striking out the proceedings in relation to it.

Mr. ARMSTRONG. There has been no action taken on it.

The PRESIDENT *pro tem*. There has been no action taken, and the entire proceeding may, therefore, be withdrawn. Does the gentleman from Allegheny withdraw the amendment?

Mr. HAY. No, sir; I do not withdraw it. I apprehended that it may not be possible for me to be in the Convention in the morning to bring this matter to its attention again at the proper time, and I desire very much to cast my own vote upon this question, whether the amendment is adopted by the Convention or not. I will, however, have no objection to withdrawing it from present consideration, if I can have an understanding with some one of my colleagues to present it at the proper time, and have the vote taken by yeas and nays.

It is a very simple proposition. It embraces but two ideas. One, the reduction of the number of aldermen in our two cities of Pittsburg and Allegheny; and the other, that they shall be compensated only by fixed salaries instead of as now by fees. I see no reason why these two ideas cannot be thoroughly comprehended in ten minutes. This is a subject that can be just as well disposed of now as on any subsequent occasion. The whole principle affecting it has been thoroughly discussed heretofore on two or three different occasions, and why members cannot vote now as well as at any other time I cannot conceive. So far as I am personally concerned, I much prefer that it should be disposed of now, and if my colleagues are not inclined to

favor it, of course I cannot help that; they must do as they think right; but my desire is to have the vote on my proposition while I am here present.

Mr. J. W. F. WHITE. I should much prefer that this matter should go over. My colleague showed me his proposition this morning at my desk, and I read it over hastily. While there are some features of it as a general plan that struck me favorably, I expressed then a doubt as to the propriety of putting it in the Constitution, and further reflection has only confirmed the misgivings I had in my mind then. I am free to say that I am not sufficiently familiar with the circumstances or necessities of our two cities to say that the number of aldermen proposed here is the proper number. The section proposed by my colleague will change the entire system of our two cities.

Now, while I believe that there ought to be some modification and some reform in the system in our cities, and in Philadelphia and other large cities, I am inclined to think that the difficulty is not so much in the present system as in the persons who are elected under it. I believe that our system of justices of the peace and aldermen, for the aldermen are only justices of the peace in cities, is a very good system. I should like to have a homogeneous system throughout the State. I was not in favor of a special aldermanic or police court system for Philadelphia. I have felt from the beginning unwilling to have these special regulations for particular localities of our State. I believe it to be wrong in principle. The better plan is to have a uniform general system throughout the entire State, and I believe it would be better that the cities should have the same general system we have in the country. However, the delegates from Philadelphia insisted on a different system, and the Convention yielded to their wish. I had my doubts then whether the system proposed by them would prove an advantage or not. I still have very serious doubts about it.

The old system is well known throughout the State, and where there are good men elected as justices of the peace or as aldermen I know of no objection to the system. The great objection, I repeat, is to the character of the men who are elected to these offices. That is a matter that can be remedied by the people whenever they desire to remedy it. If that system

needs some modification the Legislature can modify it; but if we fix it in the Constitution it is beyond change or remedy, except as we may leave it open for legislation, and if we are to leave it open to legislation why insert it in the Constitution?

Another reason why I hesitate at this time to accept the proposition of my colleague is that it recognizes the city of Allegheny as well as the city of Pittsburgh. It is a constitutional recognition of those two cities. Perhaps they may have to continue as separate cities. I do not know how my colleague himself stands on the question; but I believe every other good man of Allegheny county is in favor of consolidation. The two cities ought to be consolidated, and no doubt will be consolidated in course of time.

Mr. HAY. Does my colleague say that this section will prevent consolidation?

Mr. J. W. F. WHITE. I do not know what effect it might have upon that question. I do not think we ought to insert in the Constitution a provision that Allegheny city shall have—

Mr. HAY. I desire to state to my colleague that I believe I am the only delegate from Allegheny county who lives in Allegheny city, and I want Allegheny city to be recognized.

Mr. J. W. F. WHITE. Perhaps for that very same reason my colleague might wish it to be recognized for all time to come, and this might be one of the arguments against consolidation.

I repeat, Mr. President, that I would have preferred that this matter had gone over until the members from Allegheny county had a consultation over it. It is new here. Our people, so far as I am concerned, have not asked for this. I have heard nothing from our cities asking anything of this kind. On the contrary I believe an amendment proposed by my colleague to the left, (Mr. Ewing,) at least when the article was on first reading, looked forward to legislation in reference to the cities that would meet the object aimed at by my colleague on the right, (Mr. Hay,) and if the vote is insisted upon at this time I think I shall have to vote against it. I shall vote against it at present, because it is new to me. I think it is new to most of our people, and I am not at all satisfied that this would entirely meet their views. For these reasons I shall vote against this section.

Mr. MACCONNELL. Mr. President: I admit that our aldermanic system in Pittsburg works badly, and needs to be changed if any change could be contrived that would be an improvement.

My colleague from Allegheny showed me this morning the plan he proposes, and at first sight it struck me favorably. Further consideration of it, however, has changed my mind in regard to it.

I have several objections to it. It is a special provision confined exclusively to the two cities in Allegheny county. It is special legislation in the Constitution, and I am opposed to such legislation either by this Convention or the Legislature. On that ground I dislike the special provision that was adopted for Philadelphia and opposed it all the way through. I am in favor of all our laws, whether organic or otherwise, being general, and applying to all parts of the State alike. I would establish no law for any one part in regard to any subject. I would have all the parts live under and be governed by the same laws, administered in the same way, by the same class of officers and through the same forms. That, in my opinion, is the only way to preserve equality among all and do like justice to all.

The Convention saw proper to provide a special system for Philadelphia. That is no reason why it should adopt another for the cities in Allegheny county. We have a remedy that we can apply to our delinquent aldermen that I suppose they have not in Philadelphia, and it is a very potent one. We have in our county a penitentiary and a work-house, and we occasionally honor them by giving them an alderman for an inmate. Then we are not nearly as corrupt as Philadelphia.

The Convention has established a special system for Philadelphia, and now it is proposed to establish another for Pittsburg and Allegheny. If we carry out this proposition may not each other city in the State come before us and ask for a special aldermanic system for itself, and on what ground could we refuse the demand? Other cities will have the same right to demand special provisions in their behalf as Philadelphia or the cities in Allegheny county. I think we have gone too far already in doing what we did for Philadelphia, and that it will be unwise to go any further.

For these reasons, and others which I will not detain the Convention by advertising to, I will vote against the section.

Mr. CUYLER. Mr. President: A single word. We have heard a great deal in the Convention at different times with reference to making special provisions for special localities, and it is uttered in the ears of gentlemen as if it were a very dreadful thing. Now I wish some gentleman would assign some logical reason why we should not make special provision for special cases, or I wish some gentleman would give some logical reason that would justify us in omitting to do so, because just so long as the aggregation of seven hundred thousand or eight hundred thousand people in some particular spot, with the peculiar rights, interests and relations that result from that circumstance exist, just so long a system that will apply to a sparse country population of farmers will fail to be applicable to the aggregated mass of citizens, and if our Constitution is not adapted to special localities and special circumstances it will of necessity be a failure, because it will ignore entirely a condition of things that certainly does exist and that always will exist, and that our Constitution will be defective if it does not provide for. Therefore I think that the utterance of an apprehension on that subject, which seems to regulate the votes and affect the minds of gentlemen, will pass away, because it seems to me an utter folly.

I am not at all surprised that my friend from Allegheny county (Mr. Hay) should have been jealous of the well developed system that we have applied successfully to Philadelphia. It is very natural that he should, and I think that the system will grow and spread, and that other populous localities will need the same thing, and that was the very apprehension which the gentleman from Allegheny (Mr. J. W. F. White) just now indulged in. The system provided for this city will demonstrate its usefulness, and all places of large aggregated population will need in substance just such a provision as we have introduced in reference to Philadelphia, which I think perfect except on one point. I still insist that the magistrates therein provided for should be judges learned in the law. While we have accomplished much that is desirable, I, for one, shall always think that we have failed to accomplish all that is desirable by striking out that provision. If these men are to pass upon judicial rights, upon rights that are the proper subjects for judicial tribunals, the men

who are to decide upon them should, I venture to believe, be men learned in the law,

Instead of regarding that as a disqualification, as some gentlemen do, it ought to have been considered the highest possible requisite. But that has been decided; and as a Philadelphian, and having been the author of that section, I shall feel all ways that if we have failed to accomplish all that might have been done, we have still accomplished a great deal so far as it does go.

Mr. WM. H. SMITH. I do not know whether my colleague intends to press his amendments or not. That is for himself to decide. Nor do I know whether it is better that he should do so. But this I know, that he has attempted to remedy what is a notorious grievance, a very great and mortifying abuse that prevails in our city. The character of the aldermen of the city of Pittsburgh—and I have lived there for forty-five years and I know a great deal about that matter, having been in active business all that time—the character of justices of the peace has deteriorated just in proportion as the responsibility of their office has increased. I very well remember when it was considered an outrage, a great and dangerous stretch of power, for an alderman to make a summary conviction of a man for anything. He had to call witnesses, responsible witnesses, other than a single policeman, and something had to be proved against the man before he would venture to punish or to commit him. But that process became too slow, and with the increasing responsibility and power of the aldermen of the city of Pittsburgh, their character has confessedly degenerated, and grown worse from day to day, from year to year. It may be that a great many persons think that because there were two aldermen in each ward we could stand one incapable or corrupt man in the aldermanic office, and trust to the other to counteract whatever evil he might do. But we have found, unfortunately for that theory, that both have turned out to be equally bad, equally unfit, and equally untrustworthy.

I say here to-day, and I say it seriously, I say it more in grief than in any other spirit, because it is a grievous declaration to make, that I do not know five aldermen in the city of Pittsburgh that I would trust to collect a debt to the extent of twenty dollars and to pay it over. [Laughter.]

Mr. HANNA. They are worse than in Philadelphia. [More laughter.]

Mr. WM. H. SMITH. That could hardly be, but I will modify that statement and say ten instead of five; but sincerely I do not know ten aldermen in the city of Pittsburgh whom I would trust to collect a debt to the extent of twenty dollars. I say it in sorrow, and not in any vindictive spirit; but if there is a lawyer present who is familiar with the aldermanic system and customs and incumbents of the city of Pittsburgh—and there are in our delegation several members of the bar of that city—he will bear me out in the statement that if he had a little claim of under one hundred dollars to collect he would scarcely know to what alderman to go to have it collected *and paid over*. They have been continually growing worse under the elective system. I have opposed the elective system of judges because the experiment has utterly failed, as I believe, as applied to the judiciary, including Pittsburgh aldermen; but if we must elect the judiciary, I think we had better elect the judges than the aldermen. I only remember one striking instance in which an incompetent man was appointed by the Governor as an alderman. He was certainly below the average, for he was quite as ignorant as a man could be, and I recollect when we used to talk in Pittsburgh about Squire Wallace, who was about the last worst specimen of the appointive power as long as it lasted. He obtained his place, it was said, by appending the petition for a new turnpike to his application for the office of justice of the peace!

Now, in regard to leaving this matter with the Legislature. Some people believe in the Legislature and some do not. I, for one, do not believe in trusting any reform to the Legislature that it is evidently necessary to make, and which I have seriously at heart. I do not agree with my colleague (Mr. J. W. F. White) that the Legislature is quite as good as it was twenty years ago. I certainly believe it is worse, very much worse. It is notoriously more corrupt. If there were persons bought and sold twenty years ago, in the Legislature, there was nobody who dared to say so, and everybody dares to say so now. I do not believe that a nomination such as was made in Philadelphia for the Legislature two or three weeks ago would have been endured in Pennsylvania twenty years ago; nobody would have submitted to it, and

yet that loathsome infamy has taken place here! And why? Because the Legislature has become so degraded that such a nomination as the one I allude to does not seem so *very* outrageous.

Now, I will not trust the Legislature with any much-needed reform, and gentlemen here seem to agree with that view. I notice the care which any gentleman takes who has any measure at heart to see that the reform is secured *here*; he wants the thing fixed up certainly; he does not intend to leave it open to the Legislature to do or to ignore, and so my colleague (Mr. Hay) in his idea of not leaving this matter to the Legislature. In this he is right, for this is a great grievance; it is a thing that needs to be remedied. It does not take twenty-four hours or twenty-four minutes to find out the defects in the aldermanic system of Pittsburg; and we are just as ready to vote on it now as we ever shall be. Still if my colleague wishes to withdraw the amendment I have nothing to say. I must, of course, leave it with him; but this I say, that I differ with my colleague (Mr. J. W. F. White) in the notion that the Legislature has been incorrupt, if we are to judge by what they have done for the last ten years. If this thing is to be done, if this reform is to be instituted, some means must be taken to elevate the character of the aldermen and lessen their number.

If this reform is to be accomplished I do believe, and I join with my colleague (Mr. Hay) in that belief, that it ought to be done by this Convention; and I will repeat that whenever any gentleman here sees something to propose that is near to his heart and wants carried out, some great evil that he wants to remove, some great abuse that he wants to remedy, he is very careful to put it in this Constitution, and not depend on the tardy or tricky action of the Legislature.

I do not wish to prolong the discussion; I have already taken up more time than I intended; but I do declare that there is great room for reform in our aldermanic system in Pittsburg and Allegheny cities, and I do think that the Convention should listen to us here in what we have to say about it.

I am not of opinion, with the gentleman from Carbon, that these things ought to be referred to the delegates from Allegheny county at all. That is the corrupt habit which has obtained in Harrisburg, where members from a certain locality would say to other members, "now what

do you want; we leave you to fix up your own jobs," and the most abominable abuses have been practiced and carried out under that system. This, of course, is not an abuse that prevails in this body, but I do not like to see this body put on a level with the Legislature and to adopt the ways by which they usually carry on things in Harrisburg. No matter how outrageous the proposition was, some man would get up there and say "I want this done; it is for me; and for (or against) my section; and if you do not do it I will watch you; my friends and I will see that you do not get anything you want." Through that slimy system the most abominable abuses have been perpetrated at Harrisburg. I do not like such a practice, and therefore I would rather this matter, which all members can see is an abuse that requires correction, corrected by the whole Convention, and not referred to the members from Allegheny.

Mr. LILLY. I should like to explain. The explanation I desire to make is that I know the character of the delegates from Allegheny so well that I am very willing to trust the interests of Allegheny county in their hands, and I believe they will not go wrong. I deprecate the abuses at Harrisburg as much as the gentleman who has just taken his seat, but I think that the material that has been sent to Harrisburg for the last eighteen or twenty years is a very different material from that which Allegheny county has sent to this Convention, and that was the reason I was willing to submit the question to the delegates from Allegheny.

Mr. EWING. Mr. President: Among the many sensible things that the delegate from Carbon has said, what he has just now said is perhaps the most sensible of all. [Laughter.] In regard to the proposition before the House, I took occasion some time ago in Convention to state the general outline of my views on the subject of aldermen in cities, and the proposition submitted is very completely in accordance with what I would like to see adopted as a legislative provision.

My impressions at present are that we are entirely safe to leave that to the Legislature, but I shall vote for the proposition *now*, so that it can come in shape, trusting that if it is not satisfactory then my colleague will agree that it be withdrawn or voted out on third reading.

There is one thing it seems to me we had better change. It requires an alder-

man for each ten thousand inhabitants. Now, would it not be better to say—I do not know where it would come in—that there shall be not more than one alderman for each ten thousand, that the districts might be larger but not smaller. My present impressions are that it is a subject that ought to be left to the Legislature, but I am willing to vote for it to get it into shape.

Mr. ARMSTRONG. I am one of those in the Convention who believe that where sufficiently strong reasons are presented it is highly expedient to distinguish between the immense and highly concentrated population of the cities and the scattered populations of the rural districts; and such I conceive to have been the necessity that applied to Philadelphia, embracing a population of nearly one-fourth of the entire State; so also Allegheny, embracing nearly one-tenth of the population of the State; but the difficulty seems to be that the persons who are most interested in this question have not agreed upon a plan which they conceive to be to their advantage.

If the gentlemen from Allegheny were agreed in saying that the section proposed by Mr. Hay would meet the difficulties appertaining to their aldermanic system, I, for one, should vote for it; but it is so entirely within the province of the Legislature, and no sufficient reason having been given why it should be taken without the province of the Legislature, it seems to me at present it would be wise to reject the proposition and let it come up after a more deliberate consideration by those who are more particularly interested in it. We shall probably not get through this article to-night, and at present it is better not to adopt the amendment.

Mr. HAY. I desire to say one word before the vote is taken, and that is that I hope no member will vote under a misapprehension of the effect of his vote. So far as I can understand the Legislature will have no power hereafter to grant us any relief. They can pass no special or local law which will change the aldermanic system of Pittsburg and Allegheny alone. The Convention has prevented their doing that; and I do not believe that we should have any reasonable hope of securing any reform from the action of that body if they had the power. It is not likely that local representatives, who may be more or less under the influence of their local politicians—as legislators

are now elected—would be very apt to carry out a reform which would or might affect their influence at home. We must remember that the seventy-four aldermen of Pittsburg are seventy-four active and, in some cases, unscrupulous politicians, men who at times may be able to control the election of the legislators that are sent to Harrisburg. It is not very likely that the members who may be sent under such influences are going to offend their masters by taking away their offices. The members who vote against the section which I have proposed will vote against the reform, not against the mere plan proposed, because there is no other mode of accomplishing it than by the aid of this Convention. I call for the yeas and nays.

Mr. S. A. PURVIANCE. Before the yeas and nays are taken, I wish to say a word in reply to the gentleman who has just taken his seat. One thing is to be considered. So far as regards the change made applicable to Philadelphia, it is a notorious fact that Philadelphia came almost in a body before the Judiciary Committee and made complaint. Men of the highest respectability appeared before us and laid before that committee their grievances in this respect. They gave us the character of their aldermen, and they laid before us the necessity of a change for the better. But, sir, so far as regards the aldermen of Allegheny and Pittsburg, I have lived amongst them for the last twelve years, and I am utterly unable to confirm the statement of my colleague. I know of no such complaint, and I submit to this Convention whether, in the absence of any applications from Pittsburg or Allegheny on the subject, there should be a system fastened upon them without their being heard. In the case of Philadelphia they were heard; in the case of Allegheny county they have not been heard. I trust, therefore, that the Convention will vote down this proposition.

The PRESIDENT *pro tem*. On this question the yeas and nays are called by the delegate from Allegheny (Mr. Hay.)

Mr. EDWARDS. I second the call.

Mr. W. H. SMITH. I ask my colleague (Mr. S. A. Purviance) whether if he knew of a crying abuse, an open evil, an abominable shame to his constituents, he would feel it his duty to remedy it in this Convention if he could without any application from them?

Mr. S. A. PURVIANCE. I would certainly give the proper remedy.

Mr. W. H. SMITH. Then I charge this system to be just what I have said.

Mr. S. A. PURVIANCE. I say this proposition has been sprung upon the delegation from Allegheny county this morning, and they have not had time to consider it. That is all they ask.

Mr. TURRELL. I beg leave to say in behalf of myself and several gentlemen around me that we should like to vote with the delegation from Allegheny on this subject, but they disagree among themselves, and for the reason given by Mr. Purviance, that this proposition is brought in here at a late hour, we shall feel under the necessity of voting against it.

The question was taken by yeas and nays, and resulted as follows:

Y E A S .

Messrs. Alricks, Baer, Bailey, (Huntingdon,) Black, Charles A., Boyd, Brodhead, Buckalew, Bullitt, Clark, Corbett, Curtin, Cuyler, Dallas, Darlington, Elliott, Ewing, Funck, Gibson, Guthrie, Harvey, Hay, Howard, Kaine, Lamberton, Landis, Lilly, Long, M'Clellan, M'Murray, Metzger, Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Temple, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N. and Worrell—45.

N A Y S .

Messrs. Armstrong, Biddle, Broomall, Carter, Cochran, Corson, Davis, De France, Edwards, Fulton, Gilpin, Green, Hanna, Hemphill, Horton, Lawrence, Littleton, MacConnell, Mann, Mantor, Newlin, Palmer, G. W., Patterson, D. W., Purviance, Sam'l A., Simpson, Turrell, Walker, White, Harry, White, J. W. F. and Wright—30.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Bailly, (Perry,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, J. S., Bowman, Brown, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cronmiller, Curry, Dodd, Dunning, Ellis, Fell, Finney, Hall, Hazzard, Heverin, Hunsicker, Knight, Lear, MacVeagh, M'Camant, M'Culloch, Minor, Mitchell, Mott, Niles, Palmer, H. W., Porter, Purviance, John N., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Runk, Russell, Smith, H. G., Stanton, Struthers,

Van Reed, Woodward and Meredith, President—58.

The PRESIDENT *pro tem*. The next section will be read.

Mr. ARMSTRONG. Before the next section is read I would suggest to the Convention that, by unanimous consent, the twenty-first section should be divided at the word "determine," in the twelfth line. It is appropriate that it should be made into two sections.

The PRESIDENT *pro tem*. If there is no objection it will be so divided.

Mr. HARRY WHITE. I object.

The PRESIDENT *pro tem*. The Chair hears objection.

The CLERK read the next section as follows:

SECTION 24. Each county containing thirty thousand inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law, and the Legislature shall provide for additional judges as the business of the said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts as the Legislature may provide. The office of associate judge not learned in the law is abolished, excepting in counties not forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms.

Mr. KAINE. I offer the following amendment, to come in in the seventh line, after the word "provide:"

"Courts in banc shall be held by three judges of said districts, or a majority of them, in each county at such times and for the transaction of such business as may be prescribed by law. When holding courts in banc the judge oldest in commission, or oldest in commission and senior in age, shall preside."

That is a part of the amendment which I offered originally; and as it is desired by many members of the Convention that the original section as it is here, section twenty-four, should remain as it is, that each county having a population of 30,000 shall be a separate judicial district, this provision, if adopted, will enable the judges of adjoining districts to hold courts in banc for the decision of such questions as may be provided by law, leaving the whole matter to the Legislature. The subject has been discussed, and it is perfectly

understood I believe by every member of the Convention, and I shall not detain the Convention with more than a very few remarks on the subject.

I hold it, Mr. President, to be of the utmost importance to our courts of common pleas to have for the rural districts exactly what the Convention has adopted for the city of Philadelphia. The courts here are divided into divisions of three—four courts consisting of three judges each. Those judges, of course, hold separate, independent courts as courts of common pleas; and then the three judges of each court meet in banc for the hearing and decision of such questions as may be provided by law. It is good for Philadelphia, and I think, perhaps, it will work better in the country. Take the case of six adjoining counties, composing three judicial districts, with one judge to each two counties. Let each district elect its own judge, and then let the Legislature, under this constitutional provision, provide for the meeting of these judges at such times as they may see fit in the several counties composing those three districts to hold courts in banc for the hearing of causes such as will be heard by the courts in banc here in the city of Philadelphia. It strikes me that it will be a very great improvement on our present system, and will be very advantageous to the people at large.

Mr. BOYD. Mr. President: I hope that this amendment will not be adopted, first, because of the difficulty in getting these three judges together. Take away three judicial districts in this State of any importance whatever, and can you expect the judges of those three districts to be able to meet at a time which will be convenient for all of them? It will be a matter of very great difficulty; and the consequence is a very obvious one, that those cases that are referred to this court in banc will necessarily be very greatly delayed.

Now, you take Lehigh and Northampton, which are one judicial district, Bucks and Montgomery, which are another, and Chester and Delaware, which are another, all adjoining. The business which each of these three judges has to transact in those six counties is very great, so great that in our county we have a court the first Saturday of every month besides the four regular terms, the four stated adjourned terms, and special courts for special purposes intervening. So I apprehend it is in the other two judicial districts which I

have named. Now, it will be a practical delay, if not a denial of justice, in a great many cases that have to go before these three judges, because of the difficulty of getting them together so as to suit each other's convenience, and so as to enable them to transact the business in their own districts and attend to this at the same time.

Then there is another very decided objection to this course. Take a case that has been heard and determined by one of the judges in his district; he has pronounced a judgment upon it, and then it is referred to the two judges and himself; it is plain, therefore, that in nine cases out of ten the judge who sits with the other two—I mean the one who has decided the case, sitting with the other two before whom it has not been heard—and as a matter of course the influence of the judge who has heard and decided the case with the other two judges will be very potent. Everybody who takes a case to an appellate jurisdiction wants that court, whatever it may be composed of, to be of men who know nothing about the case. He does not want the judge there who has already decided it below, and who has prejudged it to influence it to represent, fairly if you please, to the other two judges how the case stands and how it ought to be decided, all tending to show that his decision should be affirmed.

Now I know that Judge Woodward's scheme was something like this: The judge, whose case was on review, should be considered as assessor, and he should simply sit there, somehow or other, as assessor. As I took occasion some time ago to remark on this subject when it was up, the assessor was nothing more nor less than the judge who had heard the cause, and he would be there, so to speak, assessing nothing, but to see his ruling confirmed by the other two judges.

I hope the Convention will vote down the section without hesitation.

Mr. ARMSTRONG. I think that the amendment of the gentleman from Fayette is a bright and shining example of the virtue of persistence. This is, I believe, the third time that we have been called on to vote upon what has been substantially the same question.

Mr. KAINE. This is only a branch of it. [Laughter.]

Mr. ARMSTRONG. The gentleman calls this a branch of it, but it is the same question. It has been discussed fully, and I do not propose to debate it further.

I simply look upon it as an attempt to introduce the proposition, already voted down, in its most objectionable and most useless form, and I trust that the Convention will not adopt it now.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Fayette.

The amendment was rejected.

Mr. BUCKALEW. I rise to speak against this section and to express the hope that it will be rejected by the Convention in its present form or in any form which shall retain its substantial features.

I have several objections to this section, which I will state in as few words as possible. In the first place, I think this apportionment of judges to the several parts of the State is to be made upon a wrong basis. Judicial service is to be assigned to different parts of the State in proportion to population. Counties containing 30,000 inhabitants are to constitute separate judicial districts, and additional judicial force is to be provided for counties containing much larger population, from time to time, at the discretion of the Legislature. This is the scheme, with the exception that counties falling below 30,000 in population are to be united together, or attached to counties adjoining them. The basis of this scheme is wrong. The number of people in a county does not measure the necessities of that people for judicial service. Nothing can be more certain than that, and I might illustrate my statement by numerous examples. My own county would be entitled under this section to a judge, for it contains 30,000 inhabitants. Yet our president judge would not be employed holding court more than eight or ten weeks in the year, and if you assigned him the duty of auditing the accounts filed in orphans' court he could not possibly consume more than four or five weeks more. How absurd to send out such a provision as this to the contemplation of our people in different parts of the State!

Our judge, as I said before, performs the business of our county and of two other counties, and then a part of his time he is employed in holding special courts in Schuylkill, Luzerne, Northumberland and other adjoining counties. Our county has about thirty thousand inhabitants, and the amount of judicial business I have mentioned. Now, take Wyoming, with but fourteen thousand inhabitants, and for ten years past, steadily, all the time, the business of that

county has been fifty per cent. more than that of Columbia. That is, fourteen thousand people have fifty per cent. more business in one county than thirty thousand inhabitants have in another. This illustration lies right at home under my own eyes, and is decisive with me against the whole plan of this section.

Take the district presided over by Judge Dreher, composed of the counties of Carbon, Monroe, Pike and Wayne. That judge has said that he has not work enough to occupy his whole time. He says so, I am informed, to gentlemen representing his own section of the State in this Convention. But under this section Carbon county would be entitled to a judge and Wayne to a judge.

Mr. S. A. PURVIANCE. The population of Carbon is not large enough.

Mr. BUCKALEW. Certainly it is. She has thirty thousand inhabitants. She had nearly that on the last census, and I am told has over thirty thousand now. In addition, therefore, to a judge in Carbon and a judge in Wayne, Pike and Monroe are left to form a third district, which, under this section, could be done by uniting them, and you have three judicial districts formed of what is now but one, and one that does not occupy the whole of the time and attention of the judge during the entire year. There is no relation between the number of population in a district and the amount of judicial service which is required for the transaction of its legal business.

Another objection to this section, and, if possible, a still stronger one—because the one I have mentioned is very much a matter of expense and of inequality of service—is this: That under this section the character and capacity of your *nisi prius* judges would fall down. You will have, upon the whole, throughout the State, men of inferior capacity selected for discharging the duties of president judge.

If you make all these counties of thirty thousand and forty thousand inhabitants into independent judicial districts, you will find that in one-third or more of them there are not competent men at the bar for the office of president judge. Yet the members of the bar of the dominant party in the county will all think they are competent, and some one of them will go out, button-holing the people through the county, and will secure the nomination. These little lawyers will be slipping upon the bench all over the State, and you cannot prevent it as you can

now. When you have several counties together in a district—as in my own district, which includes four counties—if an unfit man is nominated in his own county, the others can check his ambition. Very often now, by conferences between counties, a gentleman resident outside the district is called in to serve the people, and in that manner very competent men are selected. But where a nomination depends upon one convention, in a small county, perseverance in canvassing for a nomination by some active man, perhaps unfitted for the position, will be the end of the whole question of selection.

I am also opposed to this section because it abolishes without any popular demand the office of associate judge. Now, sir, I shall not go into the argument on that question. We have no associate judges at present in Philadelphia or in Allegheny, and the Legislature can abolish that office if there is a popular demand for it, and I am disposed to leave the subject with the members of the two Houses. In counties where a president judge does not actually reside, every one agrees you must have these officers. They are required to approve bail in every stay of execution; they are the proper officers to give information to the president judge or themselves to act upon questions of security to be given by all trustees, executors and administrators, and others. Their local information and knowledge is necessary in the appointment of numerous persons for the discharge of duties as viewers of public roads, commissioners to lay out townships, to act with reference to the erection of school districts, and for various other purposes. They are useful and necessary in the criminal courts to assist the president judge in the administration of the criminal law in many respects, particularly in the sentencing of offenders.

The PRESIDENT *pro tem*. The gentleman's time has expired. ["Go on."]

MR. BUCKALEW. Mr. President: I am opposed on principle to invading the rule at this stage of our sessions.

MR. HARRY WHITE. I am earnestly in favor of this section and the principle it represents. I confess to great surprise at the earnest opposition of the delegate from Columbia. If it is not in bad taste I will say that I have gradually become in favor of the section from some opportunities of observing the operations of our judicial system in the several parts of this Commonwealth and the demands for judicial relief.

I will not pause at the outset to pay a tribute to the character of our judiciary further than to allude to the high esteem in which our system is held not only in the Commonwealth, but in the nation. I will not willingly do anything which would detract from the high character of the Pennsylvania judiciary. But, Mr. President, some relief must be had. Complaints come up from all parts of our State for additions to the present judicial force for the administration of justice is imperatively demanded. Every delegate here regrets the business of his district as being far behind, and in some districts, at all events, the delay in this respect is equivalent to a denial of justice. These complaints may be exaggerated in many instances; but in some instances cases of long standing are to be found on record which have never thus far been tried, and probably never will be. There are few courts, indeed, in any district that I know of where an action can be tried within a year from the impetration of the writ.

This condition of public business absolutely requires a change. How is it to be had? The answer is apparent, by adding to our judicial force in such a way as not to invade the harmony of our system. How is this to be done? It is proposed in the section under consideration that each county containing 30,000 inhabitants shall constitute a separate judicial district and elect one judge learned in the law; and that any county having a larger population than this shall be relieved by assistant judges as the Legislature from time to time discovers the necessity; and the office of associate judges in counties that are made separate judicial districts is hereby abolished. That is the principle. That is the extent of the proposition immediately under consideration, and it meets my approval.

What is the objection to this? Complaint is made that this will render the office of president judge undignified, that it will unnecessarily multiply the number of the judges of the Commonwealth and reduce them to the *status* of aldermen or justices of the peace. I have taken the trouble of making a little table of the counties that will be entitled to separate districts. I will go over them hastily, for I have but little time for discussion. I discover the counties of Crawford, Beaver, Mercer, Venango, Westmoreland, and other counties—I shall not stop here to read them all—in the aggre-

gate making fifty-one judges, including the counties of Allegheny and Philadelphia. By referring to the statistics to-day I discover that under the present system the number of our law judges in our districts as at present constituted is fifty-five. Under the single district system, adding Philadelphia and Allegheny, and Luzerne, Schuylkill and Lancaster, we shall have but fifty-one. In addition to that, however, there are fifteen double districts, and those fifteen double districts of course have an additional judge. That, added to our fifty-one, would give us an entire judicial force in the courts of common pleas of the Commonwealth of sixty-six judges, while under the present system we have fifty-five. The proposed change will be an increase of just eleven judges to our present judicial force.

I submit, Mr. President, in view of these facts, which are of easy demonstration, the argument that this is an unnecessary increase of the judiciary, and will render judicial position undignified and of trifling character, cannot be sustained. Many gentlemen are disturbed by the matter of expense in the administration of justice by reason of this radical change. How is this? I hold in my hand the Auditor General's report of the last year, and I discover the expenses of our judicial system for the past year was in the aggregate \$289,117 25. Mark you, this is not including the expenses of the Supreme Court, but merely the district courts, the common pleas, the special courts and the associate judges, for whom we pay \$60,117. That is the expense of the judiciary of Pennsylvania under the present system. How will it be under the system we propose in this respect? We propose to make sixty-six judges, and it is fair to presume that their salaries will be continued as at present, \$4,000 per annum. This aggregates \$264,000.

That relieves us, however, of the expense of the salaries of the associate judges of the different counties. Thus we have under the proposed system \$264,000 against \$289,172 under the present system. That leaves a difference of expense in favor of the proposed change of \$25,000. But we have provided for certain double districts, and under the computation which I make there will be fifteen of them. Of course, we have provided for retaining associate judges there, and it is fair to pay the expenses of those judges for some time to come. That will make thirty judges, two to each county, at an

average salary of say \$4,000 a year, which will aggregate \$12,000, still leaving a balance on the side of economy in favor of this proposition of over \$13,000.

I submit then, Mr. President, in view of the fact that this proposition invades so little of our present system that it is substantial economy, and that some change is absolutely required to bring up the business of the different judicial districts; that this is the best possible change we can make.

Some persons may say: "A population of thirty thousand is too little; make it bigger, and I will support it." Why, sir, it is remarkable, if you take up the map and glance over it, the trifling change which fifty thousand makes in this regard. A population of thirty-five thousand makes no change whatever, except, possibly, of one. Forty thousand makes, possibly, a change of one more; so that we might all agree that at least forty thousand ought to compose a judicial district; and yet in view of the fact that practically we gain nothing by it, it is unnecessary to stand here and higggle upon that which is entirely an abstraction.

Some people say that this is a false principle to go upon: the basis of population does not regulate the necessities of the district. Mr. President, from time to time, as a delegate, I have sat here and heard eloquent gentlemen declaim that because of the increase of our population, because of our multiplying industries, some changes in our government in other respects were required. The increase then of our population, of manufactures, of railroad communications, the rapid development of our resources, the great and tedious delays of our legal proceedings, all speak trumpet-tongued in favor of the policy of the system which is now submitted to this Convention.

Some people will say, again, that these judges will have nothing to do to occupy their time. I care not. Take the county of Indiana, if you please. I have no selfish interests whatever in this matter. Take the county of Bucks, if you please

— The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. BROOMALL. Mr. President: This section proposes to do two things, and I desire the Convention to direct its attention to those two things. It proposes to leave the whole matter to the Legislature except, first, that it compels the Legislature to make a judicial district of every

county that has a population of thirty thousand, and, second, it prevents the Legislature from continuing the associate judges. That is all that it proposes to do. Beyond that everything is to be left to the Legislature, and the only question for us to consider is the propriety of these two changes. I entirely agree with the gentleman from Columbia (Mr. Buckalew)——

Mr. S. A. PURVIANCE. Will the gentleman allow me to ask him a question?

Mr. BROOMALL. Certainly.

Mr. S. A. PURVIANCE. Does not the language of the section create the district without submitting it to the Legislature at all? That is, having thirty thousand population, of itself, constitutes a district.

Mr. BROOMALL. Certainly; that is to be inferred from what I said. It controls the Legislature in those two points. Everything else is left to the Legislature. The Legislature is to decide how many judges forty thousand shall have; how many judges fifty thousand, sixty thousand and seventy thousand shall have; but thirty thousand must have one judge, and no county forming a judicial district, however badly it may want them, can have associate judges not learned in the law under this provision.

I agree with the gentleman from Columbia (Mr. Buckalew) in his entire argument. He touched upon both these things. I think the way to make the judges small judges is to give them little business and small districts. The gentleman from Columbia referred to his district; I may refer to mine. My own county, by this provision, will get a judge, and if you give a judge to every thirty thousand inhabitants it will get about a judge and a quarter; and yet it is only one-third of a judicial district, the judge of which has very little over half work.

I mention this for the purpose of showing what the gentleman from Columbia so well said, that population affords no criterion for judging of the amount of business. It is utterly impossible for us to assign judges according to population. There are districts where fifteen thousand might require a judge, and there are districts where one hundred and fifty thousand would require no more than one judge. Hence it is that I am opposed to the first provision of compelling every county with thirty thousand people to constitute a judicial district. I am opposed to controlling the Legislature in that mat-

ter. Let them make it so if there be a necessity for it, but do not compel it to be so.

I am also opposed to the provision with respect to the associate judges. I think that those side judges, as they are called, "candle-stick judges" as some gentlemen call them, in derision, are very useful appendages to the court. Nothing in the world would prevent corruption from entering the mind of a president judge, if such a thing were possible in Pennsylvania, so much as to have an honest man on each side of him who must know it if it existed. The object of those men is to keep the court right side up, and on all questions of right they do it, or at least something does it, because certainly the courts in Pennsylvania have, thus far at least, a most excellent reputation for integrity. In addition to this their information upon local affairs is of vast importance to the court.

Now, Mr. President, the gentleman who has just taken his seat (Mr. Harry White) says the districts are overworked. Grant it; let the Legislature apply the remedy, as they must do if we pass this section, in counties having a population over 30,000.

He says also what I hardly conceive to be true even in his own district, that suits in no county of the State can be brought to an issue and tried within a year. It is no uncommon thing for us in my district to bring a suit and have it finally disposed of within three months of the time at which the original writ is issued, and no case, unless both parties are desirous of delay, can hang over more than a year unless under unusual circumstances.

The gentleman says that this would be no increase of expense. Let me tell him when he satisfies us that an increase of judges will not increase the expenses, I desire him to inform us of that fact. I am not inclined to agree with him in that particular. Few persons will.

I trust that this section will be voted down. The article is perfect without it, and if we can afford to leave the whole question to the Legislature as to counties having more than 30,000 inhabitants, we can well afford to leave the whole question to the Legislature as to counties having a less population.

Mr. ALRICKS. I offer the following amendment: Strike out all before the words "may require," in the fourth line, and insert:

"Every county containing a population of not less than fifty-five thousand inhabi-

tants shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants shall constitute a separate judicial district, and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

Mr. President, it is very true, as was said by the gentleman from Columbia, (Mr. Buckalew,) that you cannot measure judicial force by population; but we must have some principle which shall govern the Legislature in the apportionment of judges. Now, I conceive that a population of thirty thousand might not give a judge sufficient work; but if you give him a population of from fifty-five to one hundred thousand, I think it will be found as near the standard as it will be possible for this Convention to come. Where there is a dense population they are generally engaged in commerce, and there they require an additional force. Where there is a sparse population scattered over a large territory, they will not require much judicial force. Therefore this amendment provides that until there is one hundred thousand people in a county there shall be but one judge. As the population increases after that, they are to be entitled to a judge learned in the law for every fifty thousand people. It is very certain that at this time the judicial force in Pennsylvania is not sufficient. I remember very well when I came to the bar in the county in which I have the honor to practice, we could not try a case for six years; but that was the fault of the judge, and not the fault of the mode in which judges were appointed.

I have brought this amendment to the attention of the Convention, and I trust it will meet their approbation. I think if they provide for the appointment of our judges in this manner it will obviate the objection to which this section is now open. The expense, as was very clearly shown by the gentleman from Indiana, (Mr. Harry White,) will not be very much greater than it is at present, and we will have such a force as will dispose of all the business that will be brought up in our courts throughout the Commonwealth.

I do not think there is much importance to be attached to the suggestion that we ought to retain the associate judges. They

answer very well in some cases. They may suit the president judge very well when he wishes to divide the responsibility of his office; but I apprehend we can get along a great deal better when the president judge has to assume the whole responsibility. He will give to his associates the appointment of jurors in railroad cases, and yet he will be very careful that they shall appoint those persons whom he wishes to act in that capacity. I therefore conceive that the office of associate judge is becoming less necessary every day in Pennsylvania, because if we require the president judge to live in a county where there is a population of fifty-five thousand inhabitants, he can very readily become acquainted with the great majority of the business men throughout that territory, and he will have no difficulty in appointing road-viewers and in securing proper bail at the orphans' court where guardians have to give security. I submit this amendment to the Convention, trusting that it will meet their approbation.

Mr. CARTER. Mr. President; I am opposed to the amendment first offered and also to the amendment of the gentleman from Dauphin. I can very well understand how it is proper to put in the Constitution of the State a provision as to the number and kind of courts or judges and the extent of their jurisdiction. Those are principles which lie at the foundation of a proper judiciary system and find their place properly in the Constitution of the State. But when we attempt to measure the amount of judicial service that thirty thousand people or one hundred thousand people may require, we invade the domain of the Legislature. I can scarcely think that the appointment of a separate judge in an agricultural county where there are thirty thousand people, even fifty thousand, where he might be required to sit on the bench and discharge his official functions eight weeks or ten weeks in the year, is likely to make a judge more competent or learned; and if it is true that associate judges may run into error in the appointment of road-viewers or railroad appraisers, and that corruptions which can be mentioned may be referred to that useful and somewhat ornamental branch of the judicial service, as it is insisted by the delegate from Dauphin occurs, it is possible that the same trouble might occur with president judges. Inasmuch as the character of the judges in Pennsylvania has not been assailed in

this Convention, it seems to me that much of their defence and praise is gratuitous.

Judges are just like other men. If you elect a judge for thirty thousand people, and declare in your Constitution that the people shall have that judge and no other judicial service, and if it turns out that he is not a very honest man, or not competent to the discharge of his duties, you fasten a very unpleasant weight indeed upon that thirty thousand people, for the Legislature can grant no relief until they get one hundred thousand people, so as to enlarge the jurisdiction and make two judges. A man who is located in a county alone, who is only in contact with one class of lawyers, with one set of legal ideas, and who discharges his duty in the presence of one class of jurors, is not likely to improve in his profession. The judge is most competent to the discharge of his judicial office who travels into many counties, hears a variety of legal opinions and suggestions and deductions of law logic and discussion from lawyers of different districts, who practice before a different jurisdiction; and he improves by contact with the outer world, and he brings to the discharge of his duties at home new ideas and larger views. He is a bigger man. If you appoint a judge in four or five counties, and if he cannot discharge the duties imposed you may associate him with another judge, and then alternate on the bench in the various counties, and they will improve. If you appoint a judge for thirty thousand people, in a remote county were the people are engaged in various pursuits which do not lead to litigation, he soon becomes like them; he dwarfs with the people around him. Nothing, all lawyers say, dwarfs a bar so much as making small counties. We all have an interest in the enlightenment of the bar; all men feel a satisfaction in knowing that lawyers are learned; that the men who belong to that highly honorable and reputable profession are learned men and not pettifoggers, and the lower you degrade the bar the nearer you come to the pettifogger.

It will be found from experience that in all judicial districts of Pennsylvania where the lawyers are in the habit of traveling from county to county and practising before a judge who travels on a large circuit, or in the presence of judges who come in from other circuits, they are men of larger views, of more learning; they are more ornaments to the profession than those who are dwarfed into

small counties; but if the dwarfing commences with small counties, and the lawyers are belittled, in God's name dwarf and belittle the judge, too, and bring him down to an ordinary alderman or justice of the peace, so that your new system will act in graceful harmony.

If the judge of thirty thousand people should become a bad man where is the remedy, because it is written in your Constitution, and is organic and fundamental law, that the thirty thousand people are to have that judge for ten years? If you incorporate the principle and establish the jurisdiction of your courts and the kind of judges you will have, and allow your Legislature to give judicial service as required, your judicial system is elastic, it meets the wants of the people, it enlarges and makes freer the judge, it enhances the value of the legal profession of the State, and it gives you a principle in your Constitution and leaves to your Legislature the enlargement of that principle, so as to give all the people of the State all the judicial service their wants may require. I will vote against it in every form.

MR. GIBSON. Is an amendment to the amendment in order now, Mr. President? The President *pro tem*. It is.

MR. GIBSON. I move to amend the amendment of the gentleman from Dauphin, (Mr. Alricks,) by inserting after the word "inhabitants," in the first line and in the third line of that amendment, the words "or where two or more adjoining counties contain said number of inhabitants such county or counties," so as to read:

"Every county containing a population of not less than fifty-five thousand inhabitants, or where two or more adjoining counties contain said number, such county or counties shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants, or where two or more adjoining counties contain said number, such county or counties shall constitute a separate judicial district, and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

MR. President, the amendment of the gentleman from Dauphin, it will be perceived, is confined exclusively to individual counties, and it makes separate judi

cial districts of counties containing at least 55,000 inhabitants to be entitled to one law judge, or where they have a population over 100,000, to be entitled to two law judges. Now, in order to test what virtue there may be in this distribution of the judicial power of the State, my amendment proposes to take notice of the smaller counties which may adjoin a larger one and be contiguous to it. For instance—and I cannot take a better illustration than this—there is the county of York, which contains a population of 76,000 inhabitants, and under this amendment would be entitled to one law judge. The county of Adams is contiguous to it, and that contains 30,000 inhabitants. The two together have 106,000, and, according to this amendment, therefore, they ought to be entitled to two law judges. In this manner I think the State could be divided into judicial districts which would fill the wants of the people in this respect. I do not think the amendment of the gentleman from Dauphin is complete without this. We must take some notice of the smaller counties, and they must be joined in some way with the larger ones in order to constitute judicial districts. That also will do away with the objection of the gentleman from Centre (Mr. Curtin.) It will enable one county of a certain number of inhabitants to join one, two or more, so that the judge will have a judicial district in which he will go from county to county, excepting only where the county may be large enough of itself to constitute a separate judicial district.

Mr. ELLIOTT. Mr. President: The section under consideration meets my hearty approval, and I hope it will be adopted without amendment. I believe that every county in this State having a population of thirty thousand is not only entitled to a court with adequate powers for the determination of all cases, civil and criminal, arising within its limits, but for the convenience of the people and the proper dispatch of business should also have within itself all the elements required to constitute such court.

A law judge is as much a part of the necessary machinery of such a county as any officer the people are authorized to elect for their local government. Such a county constitutes a separate community of no inconsiderable moment, with business and social interests to be protected and cared for by the courts, which cannot be done as efficiently in any other man-

ner as by giving to each of these communities a court complete in all its parts.

It is not merely during the terms of court held in a county that a law judge is needed, but his presence is required almost constantly in vacation to order stay of proceedings on writs, grant injunctions and many other things which will at once suggest themselves to every lawyer and business man in this Convention. It is true that we do many of these things before our associate judges not learned in the law in counties where there is no resident law judge, but whether we get them done correctly and in a proper manner or not is a mere matter of chance. There are many things, however, that we cannot get done before our present associate judges, and are compelled in many districts to travel from one hundred to two hundred miles to reach a law judge.

The proposition that it will be for the convenience of the people in counties of thirty thousand population to have a law judge resident therein is so self-evident that I do not believe that any gentleman of this Convention will attempt to controvert it.

What are the objections urged against the adoption of the principle contained in this section? Three reasons have been given by gentlemen who oppose the section, and I desire to examine them for a moment.

It is said that it will increase the expense of maintaining the judiciary of the State. After a careful calculation I am satisfied that it will add but a few judges to the present number.

But if it will serve to dispatch the judicial business of the several counties and will be a great convenience to the people, the argument that it will cost more money than the present system is unworthy the serious consideration of this Convention. Again, it is argued that if we make small districts it will detract from the dignity and importance of the position of judge, and that the result will be that we will have weak and inferior men on the bench. This section will not change the present districts so far as the large counties of the State are concerned, and in the counties having a population of thirty and forty thousand, we will have no difficulty in securing the best legal talent for the bench. The practice of the law is not so remunerative in the small counties of the State that the best lawyers in them will not be entirely willing to resign it for the honors and emoluments of

the bench. And contrary to the expressed opinion of delegates on this floor, the small counties will be able to furnish judges who will compare favorably with those of the large counties and cities of the State. It is also said, with some apparent force, that the counties containing a population not exceeding forty thousand will not furnish sufficient business to keep a judge constantly employed, and therefore we should have larger districts. I grant that in many counties of the population named in the section there would not be sufficient business to occupy a judge every moment of his time in the trial of causes, but I do believe that every industrious and conscientious judge would be employed in the discharge of his duties all of the time he would not need for study and relaxation.

I do not believe that we should require of a judge the last hour of labor that might be extorted from him under the pressure of business accumulating upon his hands in a large district. Suppose, however, that in a county of thirty thousand population a judge would not be required to devote more than four months in a year to the performance of his duties. That affords to my mind no argument against the section. I do not favor the formation of judicial districts with a view of compelling the judges to perform more or less labor, but I desire that they shall be formed in such a way as best to promote the convenience of the people and the dispatch of judicial business. The fact whether the judges will be compelled to work four or eight months in the year has not the weight of a millionth part of a feather with me, and I do not think it ought to with this Convention. It is said that if we do not form such districts as will compel the judges to work constantly they will become lazy and rusty. My judgment is that if we elect lazy lawyers we will have lazy judges, and the fewer duties they are compelled to perform the less harm they will be likely to do, but if we elect our industrious and careful lawyers to be our judges we will have industrious and efficient judges, whether the districts be large or small.

As I said before, I do not favor this section for any other reason than because I believe it will be a great convenience to the people of the smaller counties and will serve to dispatch business coming before the courts. I am not influenced in my course by reason of any inconvenience felt

in my own county, resulting from the present district system. At the last census there was a population in my district of about sixty thousand. We have two law judges, making one for every thirty thousand, as provided by the section under consideration, and both judges reside in my own county. At the very next election, however, M'Kean and Cameron might secure both judges, and we in Tioga would be a hundred and fifty miles by railroad from a law judge. The section secures us against such a contingency. I desire to say, further, that I do not discover in the judges of my own district an illustration of the argument made against small districts, that they will have the tendency to make the judges indolent and inattentive to their duties. The associate law judge although he has been on the bench but a short time, gives promise of making a most efficient and impartial judge, and the president judge, although comparatively a young man, has no superior and very few equals on the bench in Pennsylvania. I trust that this section will meet the same endorsement it received in the committee of the whole. I am fully persuaded that there is no more simple and efficient plan of arranging the judicial district of the State so that justice may be meted out to the people in a convenient and expeditious manner.

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. LILLY. I am opposed to this section as it comes from the committee of the whole. I am opposed to anything of the kind being done, but if this Convention determines to alter the present system and take from the Legislature the power of creating judicial districts when they are necessary, then I am in favor of the amendment of the gentleman from Dauphin, (Mr. Alricks,) because it makes a larger number. I speak from my own standpoint, and I know there is not sufficient work in my own county or in my neighborhood for a judge within anything like the limit of population named by the section. In Carbon county we have about 30,000 people. On the last census we had 28,144. That was three years ago, and probably since then we have increased that 1,800 people. Carbon county is growing very rapidly, but I believe we have not legal business enough in the county to employ a judge six weeks of the whole fifty-two in the year, and it would be preposterous to have a

law judge with nothing to do but to rove around the balance of the year. We have four terms of court in a year, and our courts are very seldom open over one week and sometimes three or four days. Cases that came up in January and March were tried in the court in June. Our cases are close up, and I, for one, do not believe that population is the basis for a judicial district at all. You may take a German population of 100,000, and they probably will not have as much litigation as a population of a different nationality of only 35,000. I believe that the entire subject should be left now, as it has been left before, to the Legislature. When the county of Tioga or any other county in the Commonwealth finds that business is growing so as to require a separate judicial district for its accommodation, let them go to the Legislature and show their dots to the Judiciary Committee and they will be sure to get relief by having the districts made to suit them. It has usually so been before. Applicants of this kind are very seldom turned away, and I know that they will be listened to hereafter.

Taking that view of the case, coming as I do from a district where neither in it nor in the surrounding districts is there sufficient business for a law judge, I see no reason why this section should be passed. I am told by gentlemen that the bar of Northampton and Lehigh, a district that contains one hundred and twenty thousand inhabitants, has so little judicial business that one judge can do all the work and play half the time. Now, you want to give them two judges in these two counties, in fact four under this ratio of thirty thousand inhabitants for a judge, and I do not see the propriety of any such action.

The idea of expense does not affect the case with me at all. I think that the people are entitled to have justice at any cost. But the convenience of the people is a point which has force in my mind, and I believe that the associate judges should be left as they are, and that districts should be formed by the Legislature as heretofore.

Therefore I am opposed, in the first place, to this section; but, as I said before, if this Convention is determined to fix population as the basis of judicial districts, then I am favor of the proposition of the gentleman from Dauphin.

Mr. CORSON. I believe the question is on the immediate motion of the gentle-

man from York, and a motion to amend that amendment will not be in order now. I give notice, for fear that the original amendment of the gentleman from Dauphin be adopted, that I intend to move to strike out "thirty thousand" and insert "seventy-five thousand." But inasmuch as it is not in order to do so now, I defer until a subsequent period what remarks I have to make upon the subject.

Mr. ARMSTRONG. I suppose that the purpose of all governments is to adjust the supervision of government to the practical necessities of the people, and it presents a practical rather than a theoretical question. A wise hatter would make hats for all heads, but he would not make all hats the same size. A wise Legislature will pay regard to the peculiarities of business, its different kinds and different necessities. There is no more reason for fitting all judicial districts in the same mould than there would be in a hatter making all hats on the same block. In this Constitution we are providing a rule which is to be a guide to the Legislature for the entire State, and it does not do therefore to base that rule upon the exigencies of particular and sparsely settled districts.

In the entire northern part of this State, from Warren county to Bradford, embracing about one-half of its entire length, there is not population enough for more than two judges according to the basis contained in this section. If then you take the north-western part of the State, leaving out Erie and Crawford, embracing Warren, M'Kean, Potter, Cameron, Elk, Forrest, Jefferson and Clarion counties, you have nearly one-eighth of the entire area of the State, and yet hardly enough population for two judges. When you come to adjust this thing—thousand population—to the necessities of judicial business, the impossibility of applying any such specific rule becomes apparent. Particular counties vary even more in the character and quantity of business than they do in population. Lycoming county with a population of about fifty thousand, embraces an active and necessarily litigious business that gives constant employment to the judge, and has during his entire term. With a single district we are more than a year behind in our trial lists. Judges of other districts, with far larger population, are by no means fully occupied. Take for illustration, the districts in the south-western part of the State.

Beaver and Washington counties compose the twenty-seventh district, and have a population of eighty-four thousand and over, by this time certainly eighty-five and possibly ninety thousand, and but one judge. The gentleman from Washington (Mr. Lawrence) told me, and he is present to correct me if I do not properly state his language, that with the eighty-five thousand population of that district, there is not business enough to keep one judge busy.

Mr. LAWRENCE. Not half the time.

Mr. ARMSTRONG. Not half the time, the gentleman tells me. So, too, take the district of Greene and Fayette; so, also, the district of Chester and Delaware, with a population of one hundred and sixteen thousand, of which it has been stated, without contradiction, on this floor that the judge is not fully occupied.

I entirely agree with the remarks of gentleman from Tioga, (Mr. Elliott,) that this is a question of the convenience of the people. But it is something beyond a matter of convenience. It is a question of the wants of the people, and of the mode of adjusting their system of litigation upon the best basis according to the forms of law and the actual requirements of their business. It has become almost a maxim that small counties dwarf the profession and small districts dwarf the judge. Let us leave the question just where the discretion will be most wisely vested. By the fourth section of this article of the Constitution we have already provided for a general and sufficient supervision in the Legislature. If judges in the sparse districts are needed to accommodate even a sparse population, let them be given; but do not make the necessities of such sparse population a rule by which a larger number of judges shall be apportioned and fixed upon large districts when there is no necessity for them and when they would be an encumbrance instead of an advantage. But these considerations by no means exhaust the objections. This system would compel the re-districting of the State.

The districts as they now stand have grown out of a century of experience. They have grown with the growth of the State, and the districts have been formed as judicial necessities have demonstrated the propriety or the impropriety of attaching one county to another. But let any gentleman in this Convention undertake a scheme of adjustment which shall cover the entire judicial districts of the State,

and I venture to say that he will fail just as the members of the Judiciary Committee who attempted it failed. I know that I tried three different schemes myself. I know other members of the Committee of the Judiciary who have tried other plans, and in every instance it was an admitted failure. Yet the adoption of this section would impose upon the Legislature a constitutional necessity to adjust and redistrict the entire judicial districts of the State. As to the associate judges, I was at first inclined to believe that it would be wise to abolish them entirely. But under the amendment to the section as it stands at present, giving associate judges only in separate districts, it would abolish them in only some eight or ten districts of the entire State. There are under the existing Constitution but eight counties of the State that constitute separate districts, and of these only Philadelphia and Allegheny are without associate judges not learned in law. All the other districts except eight are composed of from two to four counties. In the sparsely settled districts I readily admit there is a necessity for associate judges. The time has not yet come, perhaps, when as a universal policy we can strike them all out of the judicial system of the State. I do not think that in the thickly settled districts where the judicial business is great—that the associate judges are of very high advantage. In such districts it would be better to abolish them, but if we adopt this section it abolishes them only in a few of the thirty districts of the State. This would seem like an invidious distinction and one which this Convention ought not to put into the Constitution. I think we may with great propriety and advantage leave the whole question to the wise discretion of the Legislature.

But I am admonished that time forbids me to enter into a detailed discussion of this question. I have made these remarks more in the way of suggestion than in the light of a detailed and full discussion of the subject.

Mr. TURRELL. Will the gentleman from Lycoming allow me to make a suggestion to him? I would have the Convention to understand that he refers to the amendment of the gentleman from Dauphin.

Mr. ARMSTRONG. I refer to the section and amendment as it stands in the article under consideration.

Mr. TURRELL. But this language is not in the section.

Mr. ARMSTRONG. The paragraph to which I refer is in these words:

"The office of associate judge not learned in the law is abolished in counties not forming separate judicial districts."

Now, I believe this subject is fully covered by the fourth section of the present article, which wisely vests the necessary discretion in the Legislature. They will understand its bearings better than, in our limited knowledge of facts, we can possibly do. Our inquiry as to any particular district is necessarily collateral. Theirs will be immediate, direct and particular. Let it rest with them, that the Legislature may be untrammelled in giving to districts that require it a judge where it is necessary without imposing a rule which shall compel them to give a judge where it is not necessary.

Mr. BEEBE. Is the gentleman in favor of the section?

Mr. ARMSTRONG. I am not in favor of the section, and I will take this occasion to remark that it was not embodied in the report of the Judiciary Committee. It was passed when, unfortunately for myself, I was not present, or I should have then expressed my views upon it. Doubtless that would not have changed the result, but I should not have troubled the Convention with further discussion of it at this time. It was not recommended by the Judiciary Committee. It was very carefully and very fully considered by them and rejected, and I believe it is wiser to adopt their conclusion and leave this whole question to the discretion of the Legislature without trammeling them with a constitutional limitation which may be very inconvenient and injurious, whilst no sufficient abuse of existing powers, or any well founded apprehension of any such abuse in the future requires us to impose such restriction.

Mr. HARRY WHITE. Mr. President

The PRESIDENT *pro tem*. I believe the delegate has spoken.

Mr. HARRY WHITE. Not on this amendment. I do not desire to make a speech. I merely want to correct a misapprehension. There is a misapprehension prevailing in the minds of some gentlemen, some of whom are not members of the bar, that this provides for an additional judge for every thirty thousand population. One or two gentlemen have talked to me on that subject. Let me remark

that it is only necessary for those gentlemen to read the section as it stands to see that this makes no change in our practice in that respect, except to allow a county of thirty thousand to have at least one judge.

There is no disposition to make a special warfare on the associate judges. On the contrary, the spirit which prompted the election of associate judges originally is recognized and contained in this article. The reason for associate judges originally was to assist in the local management of the affairs of the counties, so that the president judge, living in a neighboring county, riding the circuit, not familiar with the localities, may be informed by the associate judges of some local necessities. Delegates will observe, who do not live in the county districts, that that necessity ceases as soon as you organize a county into a separate district; such county then has one of its citizens resident, living in the county, or a judge who has moved and become resident. He understands the local necessities and is able to relieve them, thus dispensing with the necessity of associate judges.

Then let it be understood under this system there will still be some double districts. I have grouped together some counties which are contiguous and proper to be joined, making fifteen double districts; not less than thirteen will be absolutely necessary under this system, blending together counties not having the necessary population or having counties adding the necessary population to contiguous districts, as provided by the section. There are fifteen districts here. You cannot make less than thirteen. It is recognized there that the associate judges must be maintained to assist in administering the local affairs of the county; consequently it is provided that the associate judges shall be continued in those districts. Therefore the remark which has certainly carelessly fallen from the lips of one of the delegates, the distinguished chairman of the Judiciary Committee, that the associate judges are abolished in every district but eight by this proposition, is inaccurate.

Mr. ARMSTRONG. I did not say that.

Mr. HARRY WHITE. Probably I misapprehended the gentleman; at all events I deemed it proper to make this statement in justice to the proposition.

I will make one other remark while I am on the floor. Every session the Legislature has applications made for the di-

vision of districts. Gentlemen say: "Let the Legislature attend to this matter and remove the difficulty." Why, sir, the Legislature encounters numerous difficulties in this regard; and for many reasons, which I could mention here were it necessary to go into details, the Legislature cannot, at all events thus far has not been able to, do justice to the material necessities of the different districts of this Commonwealth. Why, sir, last year there passed the House of Representatives I think two bills—I believe three bills—providing for additional law judges in three districts of this Commonwealth, one for Montour and Northumberland district. I do not know whether that passed the House or not. It was read in place, and I recollect members of the Judiciary Committee of the Senate were applied to in its behalf. In the district of York and Adams application was made for an additional law judge. Another application was made in the district of Dauphin and Lebanon. From time to time application is made to the Legislature, and in the district of Indiana, Westmoreland and Armstrong, in which I reside, the largest double district in this Commonwealth, in which it is admitted on all hands that there ought to be some addition to the judicial force, although the present, the able young judge there, is bringing up the business. There is no complaint whatever against him nor against any of the associate judges, more than to call attention to the fact that Westmoreland with her sixty thousand population, Armstrong with her forty-five thousand population, and Indiana with her, practically, forty thousand population, have but one law judge, the same that they had years ago. Efforts were made from time to time in the Legislature to divide the district or provide an additional law judge, but for some reasons it cannot be done, because all the conflicting interests could not be rectified.

In view of these practical difficulties, in view of the fact that it makes so little change, in view of the fact that it preserves the harmony of the system, I appeal to gentlemen of the city of Philadelphia, of the county of Allegheny, the great county of Luzerne, and the other large counties which are not affected in this regard, to come to our rescue and assist in the recognition of a fair and just principle in the organic law of the land, so that the Legislature hereafter can do justice in this regard.

Mr. BAER. Mr. President: I am heartily in favor of the section as it is reported. I regret very much that the gentleman from Columbia and the learned chairman of the committee should have expressed themselves as hostile to the adoption of the proposition.

Do gentlemen forget that we have increased ten-fold almost the labors and duties of the common pleas, and when they cite us to the counties of Washington and Beaver, with a population of 85,000, and no work for the judge, do they refer to the present status of the judge or that which shall exist after the adoption of this Constitution? I say that a population of 85,000 souls does create business for the courts in proportion to population, no matter who gainsays it. The more people in any county the more people will die. The more people who die the more business there is for the orphans' court; and the more business for the orphans' court the more auditing; the more auditing the more labor for the judge of the common pleas under section twenty-first of this article, which we have already adopted.

Now, sir, who does not know that the business of the auditing of estates to-day takes up more time than the trial of jury cases; and if the judge of the common pleas is to audit the accounts, as he must by that section, then his duties are multiplied at least four-fold; he has four times as much business to do as he has under the present Constitution when he only sits and tries jury cases. Members of the bar know that many an auditing takes from one to two weeks alone, even in the country districts, even when it involves only the estates of farmers, and the judge of the court who sits as auditor will require just as much time in hearing and determining the questions that come before him as any learned lawyer who acts as auditor for the time being.

Do you say then that the people are to be benefited by confining them to the system that is now in vogue or that which gives us a common pleas judge in every county with a population of 30,000? The people will endorse the proposition of 30,000 because it brings justice near to them; it brings it within speedy reach. They may not be compelled to wait months and years to have a case adjudicated, because the judge is always at hand; there can be no reason for the delay that they are now suffering from.

Now, sir, a county is a community that is entitled to some sort of protection at

the hands of this Constitutional Convention. It is not a mere matter of dollars and cents; it is the interest of the people; and the interest of the people in the interior, where districts are sparsely populated, are just as dear as those of large communities; and we admit that in a large county, having a population of 100,000, one judge will probably be needed to do the business, whereas the county of 30,000 may just need that one judge as much.

You forget also that having passed section twenty-first, by which you make the judge audit these accounts, that if you keep up four counties in a district, with the judge of course residing in but one county, that you make it impossible almost for him to attend to the audits in each of these counties unless you give him no time at all for the preparation of his official duties, and you will take up his time as a menial servant in the examination and auditing of reports and in sitting upon the bench trying causes, so that he will have no time for reading and reflection. I do not believe the doctrine that the circumscribing of the district will necessarily dwarf the judges. The greatest judge this Commonwealth has produced is in this Convention to-day. His duties did not extend beyond the farming community of the interior of Pennsylvania. There was no such thing as commercial law hardly existing in a single court that he presided over, and yet to-day he towers head and shoulders over any other judge or lawyer in this Commonwealth. I do not believe the doctrine that men are produced in any such way. If you elect a man who is ambitious to make a good judge, though he has but a single county, he will qualify himself, he will discharge his duties, he will not be willing to come short of all the powers that are within him.

If you reject this proposition then you entail upon the people of the interior that infamous practice that is now prevalent in some districts, where you place two judges in one district of four counties, making it a double district, and one coming at one term to try cases and at the next term another, and as a consequence a case is hung up for a whole year, because at one term the case is not determined and the judge takes the papers to his chambers in a distant county to determine and render a decision when he comes again, and something may occur that he will be away for an entire year; his colleague holds the court and the case

remains undecided. The people are tired of that sort of administration of justice, and the few paltry dollars more that are required to pay the expenses of a judiciary that shall be able to do their duty and do it well and do it promptly at the times when the people are seeking redress is a greater question than that of mere paltry dollars and cents.

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. FULTON. Mr. President: This seems to be one of the vexed questions of the Convention. I have been looking over the ground and trying to calculate how this arises. It occurred to me a few minutes ago, that for the last month we have been working at another subject in this Convention that partakes of about the same element of dispute: that is, the apportionment of the State for our Legislature. Now, Mr. President, why is it that gentlemen take such an active interest in these questions? It is because there are local interests that come in here and that induce gentlemen to traverse this Hall and work up every interest that can be brought to bear on these subjects, instead of taking a broad view of the whole question and doing that which would be to the interest of the people of this Commonwealth.

Appeals are made here to the delegates from this great city in the east and to the delegates from the great city in the west to come in and rescue a few of the counties that are here making this demand. I ask the gentlemen who represent these great cities to consider what was done with their case a few days ago when they came before this Convention. The Convention said, and I think wisely, "gentlemen, this is a local fight; it is a question upon which you cannot take the view that you should in a Constitutional Convention, and we will come in and settle it for you," and we did come in and settle it, and I am not certain but against the opinion of a majority of the delegates from this city. Now, I appeal to the delegates from the city of Philadelphia and the delegates from the city of Pittsburg to come forward and take that broad view of this subject that was taken of their question a few days ago by the Convention, and to settle it in such a manner that no local special interests will be looked after, but that they will give us the best and the strongest judiciary that we can possibly have in the State of Pennsylvania.

Gentlemen have spent hours here lauding the judiciary of our Commonwealth, and deservedly too. Why is it then that such an important change should now be made? Why is it that we should revolutionize the whole judiciary of the Commonwealth? Is there not danger that we may make it worse? Does it not at least commend itself to the minds of gentlemen to leave that judiciary where it has rested so long and where it has done so well? Had we not better leave it still with the Legislature? Have they not shown much wisdom in years gone by in preserving for us a good, honest and able judiciary in the State? I think the Convention will act wisely by coming forward without prejudice and voting down this whole section, leaving the subject in the charge of that body that has taken such good care of our judiciary heretofore.

But we are told that this section will furnish a law judge at every man's door and at less expense than the judiciary costs us now. I do not think it is necessary to go into a close calculation to demonstrate that more judges will cost less money. I think my colleague, the gentleman from Indiana, (Mr. Harry White,) did not intend to make that statement to this Convention. I had not the time nor did I have the figures to go over his calculations, but I can tell you that in this city ten judges receive \$1,000 each more than he put in his calculation; in the city of Pittsburg five judges receive \$1,000 each more; and in the county of Dauphin one judge receives \$1,000 more. There are \$16,000 that are lost in the calculation of the gentleman from Indiana; and I have no doubt if any gentleman has curiosity enough to look over the figures he will soon discover the balance and find that his account will swell far above, as it must do, the present expense of our judiciary. I hope the Convention will not allow themselves to be carried away by such calculations as that.

But, sir, I do not wish to take up the time of the Convention, and I will not make any further remarks.

MR. PUGHE. Mr. President: I did not intend to say anything on this question, for the reason that I do not consider myself competent to do so. The large majority of this Convention are gentlemen belonging to that honorable profession, the legal profession. I only wish to give you in a few words the views of an outsider on this question.

At first I was impressed with the belief that the section was right as it stands; but after listening to the debate with a good deal of attention it has changed my views. I do not believe that population is the correct basis for establishing judicial districts; and I will take the fact as stated by the chairman of the Judiciary Committee and assented to by the gentleman from Washington (Mr. Lawrence.) There is in his district, consisting of Washington and Beaver, a population of eighty-five thousand. They would be entitled at any rate to two judges and more under this section; and he stated that there is not work enough there to-day for one judge.

Now, I will give you a few statistics of my own county, Luzerne. We have two judges of the common pleas, independent of the mayor's courts. I ask the legal gentlemen here to pay attention to the figures I shall give, and then compare the labor of those two judges in that county with the labor of judges in the agricultural counties of the State, where they have a population of 30,000 or 40,000, and if they had 100,000 they would be entitled of course to the same ratio of judges. I will give you the business of the Luzerne county court for the year 1872, taken from the record by myself during the last week. In the court of common pleas in the January term there were 917 cases; February term, 995; April term, 930; October term, 3,221; November term, 438, making 6,501. The list of cases argued before the argument court in March, June, October and December amounted to 682. The cases brought before the orphans' court in the March, June and October terms amounted to 55, and December was passed over. There were also brought before the court equity cases to the number of 40. In the quarter sessions there were in the January term, 1872, 91 cases; oyer and terminer, 1; in the April term, 146 cases; oyer and terminer, 2; in the September term, 291 cases; oyer and terminer, 6; in the November term, 131 cases, oyer and terminer, 1, making 10 cases in the oyer and terminer, and the whole footing up 669.

Now, let me give you a recapitulation of the whole. In the common pleas, 6,501 cases; in the argument court, 682; in the quarter sessions, including the oyer and terminer, 669; in the orphans' court, 55; equity cases 40; total, 7,947 cases.

This is the work that two judges have to do in the county of Luzerne. If you take population as a basis we, having

160,000, ought to have at least about seven judges in that county. But in your agricultural counties, where the people are not litigious, they have but very few cases. I had before me some statistics forwarded by the prothonotaries to the chairman of the Judiciary Committee, and I was astonished at the small amount of business done in some of the counties that would have a judge under this section. I think it would be a great injustice to the rest of the State, for these judges who have to labor and work hard get no more pay than those judges who would be sitting on the bench for about three weeks or a month in the year and go fishing the rest.

This, sir, is my view as a plain business man on this subject.

Mr. S. A. PURVIANCE. Mr. President: Having taken some part in the drawing of this section, and finding that it is misapprehended, I wish to engage the attention of the Convention for a very few moments while I state its purport and effect.

The gentleman from Luzerne who has just taken his seat, (Mr. Pughe,) as I think I shall be able to satisfy him, entirely misapprehends the tenor of the section. The section is drawn for the purpose of graduating itself as well to the agricultural counties as to the mining and manufacturing counties. For instance, take the district of Beaver and Washington, which has been alluded to. It is entitled to one judge, having a population of 30,000. Under this section it may have another if it desires it, or if the business of the district requires it, it is entitled to another; but that depends upon the movement of the people of that district. So there is a misapprehension with regard to the smaller districts as referred to by the chairman of the Committee on the Judiciary as to the northern section of the State. The provisions there is in these words:

"Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or if necessary may be attached to contiguous districts, as the Legislature may provide."

Now, sir, the working of that is this: Two or three counties in the northern part of the State having a population less than 30,000 may be attached together. The Legislature may take into view the question of territory; they may take into view the inconvenience referred to by the gentleman from Tioga, (Mr. Elliott,) and if traveling is to be taken into the account,

although two or three counties may fall below 30,000, they will have the power of forming them into a judicial district. So that you see, sir, this section, if passed, graduates itself to every county in the Commonwealth, be it large or be it small.

A word or two in reference to the further workings of this section. Take, for instance, the county of Clearfield, to which I referred before in my remarks on this section. The county of Clearfield, I am told, has one hundred and thirty-six ejectments now at issue and ready to be tried. Does not that county need a separate judge? And because the county of Clinton and the county of Centre, with which it is connected, might not have work enough for a separate judge for each it is no reason why Clearfield should suffer.

Mr. ARMSTRONG. If the gentleman will allow me, he refers to the district of which Judge Mayer is the very efficient judge. Judge Mayer recently told me that if the cases were ready he could do all the business of that whole district and do it easily.

Mr. S. A. PURVIANCE. Well, sir, in a recent conversation with Judge Mayer on the subject, he desired that there should be an assistant law judge for that district, and suggested to me the propriety of making it imperative on the Legislature in a district having seventy thousand of a population (which will just about cover his) that there should be an additional law judge, and related to me the fact of one hundred and thirty-six ejectments at issue now in the county of Clearfield.

Mr. ARMSTRONG. Will the gentleman allow me further to explain?

Mr. PURVIANCE. Certainly.

Mr. ARMSTRONG. Judge Mayer, when the first project was suggested giving an additional law judge to that county, stated distinctly that it was wholly unnecessary, and he did not desire it. He is, however, in extremely ill-health; has recently been suffering under severe indisposition in the hands of a physician, and since that he has thought it would be a relief, but not to an able-bodied judge.

Mr. S. A. PURVIANCE. Well, Mr. President, let me say that any lawyer in this body who is familiar with actions of ejectment will at once concede the fact that any county having within it one hundred and thirty-six ejectments at issue ready for trial needs a law judge from one end of the year to the other; and because adjoining counties may not

need it, it does not follow, therefore, that injustice must be done to the county of Clearfield.

But, sir, the burden of this argument seems to be founded upon the present day and generation. We are not making a Constitution simply for the present day. Counties that now have barely the requisite thirty thousand, ten, fifteen or twenty, thirty or forty years hence will far outswell that number, and be entitled to their additional judge, and therefore we should as a Convention not regard the present as our standard, but should look to the future when about to establish a permanent organic law. It must be apparent to all that the population of the different counties to which allusion has been made is constantly increasing, and destined in time to duplicate and in some instances to quadruple. The gentleman from Carbon over and over again refers to his county, that has but twenty-eight thousand population. Why, sir, that county is swelling rapidly. That county may be a county of sixty thousand population before twenty years roll by.

Now, sir, I have but one word more to say. This feature was passed by the committee of the whole, after due and full consideration, in the absence of the chairman of the Judiciary Committee, but it was well considered. It was well and fully discussed, more so than it has been now, and it does seem to me that no better system can be devised than the one in this section.

Mr. CLARK. Mr. President: I will detain the Convention for a few moments only, having on a previous occasion addressed the committee of the whole on the same subject more at length.

The section under consideration is properly divisible into four distinct and separate propositions:

First. Each county containing 30,000 inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law.

Second. The Legislature shall provide for additional judges as the business of the said districts may require.

Third. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or if necessary may be attached to contiguous districts, as the Legislature may provide; and

Fourth. The office of associate judge not learned in the law is abolished, excepting in counties not forming separate dis-

tricts, reserving to the present incumbents their terms, &c.

I agree that population is not the proper basis for judicial apportionment. The business of a district depends much upon the character of the employment of its population. An agricultural community has less litigation than a mining or manufacturing or commercial community, and hence population alone would be an improper basis upon which to establish a complete, inflexible, constitutional apportionment. But, sir, I am of opinion that for a starting point some number of inhabitants might be assumed, upon the basis of the business likely to arise in an agricultural community, which would fairly entitle a county to one judge. This section assumes the number 30,000; if that be too small, make it larger, say 40,000 or 50,000. I prefer a larger number, believing the number in the section to be too small. Some number of people, I say, upon such a plan, might safely be taken as a basis for the employment of one judge. This estimate should be made to cover the amount of litigation in a county engaged in agriculture, as such pursuits are least inclined to originate business for the courts. The number being taken we have a starting point for a system which is self-adjusting, flexible and enduring. It will be a system which will do away with gerrymandering in the Legislature. It makes its own apportionment. Political knaves can have nothing to do with setting up judicial districts for their friends. Whenever a county arrives at the requisite standard of population it will be entitled to a judge.

By the twenty-first section of this article we have imposed new duties upon our judges of the common pleas. We will require them to audit all accounts filed in the register's office and in the orphans' court, and make distribution of the assets of such estates. This is a labor of great magnitude, and the extent of this character of labor depends in large measure upon population. Where many people live of course many must die, and hence the business of the orphans' court and the auditing and distribution of decedents' estates will be controlled by population. In this respect, therefore, population is a proper subject of consideration in a judicial apportionment. The abolition of the associate judges seems to be the unanimous sentiment of this body. Now, it must be conceded that a judge resident in every county is an indispensable requisite.

If the associate judges are dispensed with, are we not driven to the expedient provided by this section in order to effectuate that object? If large districts are made, and judges are chosen on the limited vote, as the opponents of this system desire, what assurance have we that every county will have a judge resident within its limits? Two or more of them may be chosen from the same county, depending, to a great extent, upon the population, political majorities or local feeling of the several counties composing the district, or the personal popularity of the candidates.

Beside all this there is and will be an especial advantage to the profession to have a judge within the county in which the subject matter of litigation is. Cases may be examined, discussed and determined in vacation as easily and as well as in term time. The judge can be seen at chamber at pleasure, and upon stipulated notice to an adversary party, a hearing is at all times practicable. Thus matters of great importance, matters involving haste or demanding immediate attention, as well as cases involving great conflict of testimony, or confusion or complication of fact, can at leisure, and without interruption, be quietly and carefully considered. Arguments of bills in equity or of reports of masters, auditors' reports, questions of distribution, motions for injunctions, *mandamus* or *quo warranto*, &c., &c., can all be determined away from the bustle and turmoil of a court term. Those members of the Convention who reside or practice in counties having a resident president judge can not fully appreciate the great inconveniences arising out of the absence of such a judge. And we submit that they should not dismiss this section without the gravest consideration of its merits and of the great advantage likely to result from its adoption to those who do not enjoy the same benefits which they now enjoy. This system brings justice home to every man's door. Terms of court can be arranged to suit the bar. Courts can be held whenever desired; such seasons can be selected as best suits the community in which the courts are to be held. In agricultural counties seed time and harvest will be devoted to the prosecution of the farmers' work, and no call to serve as a witness or juror will embarrass the farmers' work. In the lumber regions of the State the season of "the early and the latter rain" will be devoted to rafting, and the pursuits of those so engaged.

Thus the local interests of each community can be accommodated, and our courts will interfere with none of the material interests of the people.

Those who have discussed the section in opposition to it seem to misapprehend the character of its provisions. The gentleman from Luzerne, (Mr. Pughe) in his discussion of it, seemed to suppose that the section provided for a judge to each thirty thousand of population. This is incorrect. The first part of the section simply fixes the population which will entitle a county to one judge, and the second branch provides that the Legislature shall provide for as many other judges as the business of the district shall make necessary. Population only applies so far as to fix the standard for the first judge; after that the Legislature will and must provide.

The third proposition, contained in the section, provides for the apportionment of the smaller counties and the establishment of single districts, or if necessity requires, for the annexing of such smaller counties to contiguous districts.

Thus the system will be one consistent throughout; a single district system as distinguished from districts having two or more judges. I need not again refer to the disadvantages, delays and annoyances necessarily connected with such double or triple districts. I spoke somewhat upon that subject on a previous occasion. There can be no shifting of responsibility, no shirking of duty, no dividing up of the management of causes. One judge will do the entire business of his district, and, feeling his responsibility, will enter more earnestly and energetically upon his work.

The fourth proposition provides for the abolition of the associate judges. Upon this subject I need say nothing, as the unanimous sentiment and expression of the Convention seems to favor it.

In order, however, to provide a judge in each county, the associate judges are retained in such small counties as are formed into districts of more than one county.

I think the provisions of this section are wise and proper, and I hope the Convention will approve of them; and I am confident that the future will prove the wisdom of our work.

The PRESIDENT *pro tem.* The hour of six having arrived the Convention stands adjourned until to-morrow morning at nine o'clock.

ONE HUNDRED AND THIRTY-SIXTH DAY.

WEDNESDAY, July 9, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday's proceedings was read and approved.

INVITATION TO ERIE.

The President *pro tem.* A communication has been received, which will be read :

The CLERK read as follows :

CITY OF ERIE, MAYOR'S OFFICE, }
July 7, 1873. }

Hon. JOHN H. WALKER,
President of the Constitutional Convention
of Pennsylvania:

SIR:—At a meeting of the city councils a resolution was unanimously adopted instructing me to invite the Convention to hold an adjourned session in this city.

I take pleasure in communicating the resolution to the Convention. Our citizens would esteem it a high honor to have the Convention meet in our city, and I hope it may accord with the views of the members to accept the invitation.

Very truly, your obedient servant,

CHAS. M. REED,

Mayor.

Mr. DARLINGTON. I move that the thanks of the Convention be returned for the invitation, and that the communication lie on the table.

The motion was agreed to.

LEAVE OF ABSENCE.

Mr. GILPIN asked and obtained leave of absence for Mr. Mott for a few days from to-day on account of sickness.

THE JUDICIAL SYSTEM.

The Convention resumed on second reading the consideration of the article on the judiciary reported from the committee of the whole.

The President *pro tem.* The twenty-fourth section is before the Convention. The pending question is on the amendment of the delegate from York (Mr. Gibson) to the amendment of the delegate from Dauphin (Mr. Alricks.) The amend-

ment and the amendment to the amendment will be read.

The CLERK. Mr. Alricks proposed to amend, by striking out the first, second and third lines to and including the word "districts," in the fourth line, and inserting as follows :

"Every county containing a population of not less than fifty-five thousand inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants shall constitute a separate judicial district, and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

The amendment to the amendment is to insert after the word "inhabitants," in the first line, the words, "or where two or more adjoining counties contain said number of inhabitants such county or counties," and also to insert after the word "inhabitants," in the third line, the words, "or where two or more adjoining counties contain said number of inhabitants such county or counties."

Mr. SHARPE. Mr. President: The fourth section of the article on the judiciary provides that until otherwise directed by law the courts of common pleas shall continue as at present organized, except so far as they may be changed by the article itself. It also commits to the Legislature the whole business of the creation and arrangement of the judicial districts. This is part of the scheme that was adopted and reported by the Committee on the Judiciary; but after that report came in the section now under consideration was interpolated.

It is observable that this section takes a wide departure from the report of the Committee on the Judiciary. Its fundamental proposition is that every county containing a population of 30,000 shall be a separate judicial district, and entitled to one judge learned in the law. If this section passes, or if any section contain-

ing the same principle shall prevail, it is quite manifest that the discretion and action of the Legislature in arranging and framing of judicial districts will have received a very serious check.

Now, sir, the question is a very narrow one: Shall we leave this whole matter to the calm and deliberate action of the Legislature, or shall we strive to incorporate into the organic law of the Commonwealth a firm, hard and inflexible basis for the apportionment of the State into judicial districts, which time cannot vary, nor the necessities or the wishes of the people change? For myself, I greatly prefer to leave this whole matter to the Legislature. This power has been committed in all time past to the Legislature, and it has never been wantonly abused, so far as I am aware. Legislators, it is true, have bartered away legislation for filthy lucre in times past, and it is quite likely they will do so in times to come; but, nevertheless, there is a sanctity about the high priests of justice that has awed them into reverence. There is a purity about the judicial ermine that has constrained them to keep their polluted hands off the judges.

Now, sir, if we look around us we shall see that the changing population of counties, the increase and decrease of business, the increase and diminution of litigation, the characteristics and habits of the people, all admonish us that it is not safe and proper for the Convention to prescribe an unbending basis for judicial apportionment. These are the considerations that do influence legislative action, and ought to influence legislative action in the judicial apportionment of the State.

Now, sir, this proposition that is before the Convention contemplates that we shall undertake to district the State in this Convention. It contemplates that we shall establish a basis which shall not be changed and cannot be changed by any legislative action. What is the excuse; what is the reason that is alleged for the adoption of this section? It is said that justice ought to be speedily administered. In the language of one of the advocates of this section, it is said that justice ought to be brought home to the very doors of the people. Whilst it is true that justice ought to be speedily administered, and as conveniently for the suitors as practicable, it is nevertheless true that the farther and the higher you keep the judges above the suitors the purer will be the fountain of

justice. I assert, sir, here in this august presence, that one of the greatest obstructions to the proper performance by the judge of his judicial functions is in many cases his too intimate knowledge of the parties and their witnesses. He hears so much of the case out of court that it is with the extreme difficulty that he can hold the balances of justice even.

The proposition before this Convention looks to a reduction in the size of the judicial districts. It proposes to bring the judge and the suitors who are to appear before him into closer contact and more intimate relations, to give him a better opportunity and greater facilities for knowing the parties and their witnesses, to hear all about the cause, to have his sympathies enlisted or his prejudices excited, before he takes his seat upon the bench; and this, sir, is called reform! Nay, more, this is said to be bringing justice home to the doors of the suitors; nay, more, it is said that the proper administration of justice requires this innovation.

Why, sir, it has been well said in this debate already that population can never be the true measure of judicial service. Agriculture gives rise to but few contracts, and where there are but few contracts there are but few law-suits, for contracts are the pulsations of litigation. The tillers of the soil are independent, peaceable, and non-litigious. They seldom enter the temple of justice to invoke its ministrations. In the Sixteenth judicial district, composed of the counties of Somerset, Bedford, Fulton and Franklin, with a population of over 100,000, chiefly engaged in agricultural pursuits, there are two law judges. I think I give a liberal account when I say that the period of the sessions of the courts in those four counties annually does not exceed thirty weeks, or fifteen weeks to each judge. That district is fortunate in having two young and able judges, either of whom, with perfect ease and to the satisfaction of the people, could dispose of all the business in the district.

What does this proposition contemplate? It contemplates to give to a population of thirty thousand a judicial district, and proposes that that population shall engross the entire judicial labors of a judge learned in the law. In an agricultural district of thirty thousand people the judge will have so little to do that the rust will gather upon his armor and the bow of his strength will fail. If we

desire to have a good judiciary, if we desire to have one that will adorn the Commonwealth, if we desire to add additional lustre to the halo of splendor that has settled down upon the past and present judiciary of the Commonwealth, this section ought to be voted down. Select the best men, give them plenty of work to do, and pay them liberally, are the essential requisites in the framing of any scheme for the judicial department of the government.

Oh, sir, it is a thousand times better to wear out than to rust out, and no judge with physical strength and with mental vigor fitted for the station can object to being employed two-thirds of the year in active duties in the court. If this proposition contained in the section, or any similar proposition, passes this Convention it will inevitably lead to a deterioration of the judges. That is one of the greatest objections that can be urged to the section. We must have good judges. With less than good judges the people will not be content, and therefore I shall vote against any proposition which contemplates as the basis of judicial apportionment population alone.

Mr. KAINE. I am opposed to the amendment to the amendment as well as to the amendment itself, and in favor of the section as it is before the House. I am, perhaps, more fortunate than other gentlemen upon this floor, for I have not the special claims of any judge to represent here. Gentlemen like the one who has just addressed the Convention, who has a president judge residing in his town, are opposed to this proposition. The gentleman from Franklin lives near one end of a judicial district that is nearly one hundred miles long, while Somerset county is at the other end of the district and fifty miles from the president judge. He lives in what is known as a double district, one of those districts having a president judge and an associate law judge, a thing that I desire to see blotted out from the Commonwealth of Pennsylvania.

Mr. SHARPE. If the gentleman from Fayette will allow me to interrupt him, I beg to say to him that the president judge lives in Bedford county.

Mr. KAINE. I know he does; but how far is that from Somerset county? I believe it is nearly fifty miles, and if a citizen in Somerset county desires anything done that can only be done by a president judge, he has to send a boy on horse-

back fifty miles to bring the president judge to Somerset.

Mr. STEWART. He can go by rail now.

Mr. KAINE. I desire to abolish that kind of districts. I want the law judges of the Commonwealth to stand on the same platform. We have heard from the delegate from Somerset (Mr. Baer) upon this subject. He knows how this kind of thing works. In the gentleman's (Mr. Sharpe's) they have a law judge in Franklin county, in the town in which he lives. They have another one in Bedford. Those two judges desire to stay at home, as I understand, and hold courts in their own respective counties, and there is a continual quarrel between them as to who shall go to Somerset. Now 30,000 people in the county of Somerset, and more, are just as well entitled to the presence of a president judge as the people in Franklin or the people in Bedford.

Mr. SHARPE. Will the gentleman allow me to interrupt him? They had a president judge for thirty years in Somerset.

Mr. KAINE. That was in the last century. [Laughter.]

Mr. SHARPE. No, sir.

Mr. KAINE. I have read when Somerset county belonged to the judicial district in which I reside; and then the grandfather of the distinguished gentleman who represents in part Allegheny county upon this floor (Mr. Patterson) presided there.

Mr. STEWART. Will the gentleman allow me to correct him in one respect? He has referred to the relations between the two judges in the district. He has said that there has been a constant quarrel between them as to who shall hold court in Somerset. I think, perhaps, I can speak more correctly in regard to that than the gentleman who lives in a foreign district. The relations between the two judges are of the most amicable character, and I have never yet heard that there was any disagreement at all between them as to who was to hold court here or there; nor did I ever understand that either was desirous of holding court in his own county. I think my opportunities of knowing are better than those of the gentleman.

Mr. KAINE. That may be; but I want the gentleman from Franklin to know that I live nearer Somerset than he does, that I live nearer the Somerset county line, that our means of access to Somerset county are ten times better than his; and in what I have said upon that sub-

ject, of course, I have only spoken from report. I have heard a good deal upon that subject from members of the bar of Somerset county, and from the people; whether it be true or not I do not intend to say. I give it for what it is worth and as I have heard it.

The distinguished gentleman from Lycoming, the chairman of the Judiciary Committee, referred yesterday, in some remarks he made, to my district as not needing anything of this kind. I might say to him, as the gentleman from Franklin has just now said to me, that perhaps my opportunities in regard to that district are better than those of the gentleman from Lycoming. There are cases on the dockets of Fayette county standing at issue for ten years, and I looked this morning in the Journal to see the report of the prothonotary of Fayette county as to how many cases there were untried, but I have not been able to lay my hand on it. I think, however, from recollection, that there are some one thousand three hundred cases.

But, Mr. President, you must remember, and I hope the members of this Convention will remember, that we have passed a provision in this article that puts larger duties upon the president judge of the district: "All accounts filed in the register's office and such separate orphans' court shall be audited by the court without expense to the parties." I hold that that provision makes it incumbent upon the president judge of every court to examine and if necessary audit every account that may be filed in the orphans' court or register's office. That would be a very considerable increase to his duty. Where a county has thirty thousand population it is entitled to a judge. It may have fifty thousand or sixty thousand or seventy thousand and only be entitled to one judge. That is left to the Legislature hereafter.

The gentleman from Lycoming (Mr. Armstrong) also referred to the district composed of the counties of Washington and Beaver, on the authority of the distinguished gentleman from Washington (Mr. Lawrence.) The gentleman from Washington no doubt knows all about the legal business of his county, although he may not be a member of the profession, and although he does live within a distance of twenty miles from the county seat; but I profess to know something about the county of Beaver, and I know that the business in Beaver county is not

up as it is in other counties in this State. They have a very able judge in the counties of Washington and Beaver, one of the ablest in the State. Whether it has been from overwork or not in his district I do not know, but I do know that he is in very bad health, not able now to attend to any business whatever. Washington county is a large county, and there is ample business in that county for a single judge. The same is true of the county of Beaver. I desire that the people shall have justice brought home to them that it may be convenient to them. Why should the people of Beaver county be required to travel forty or fifty miles to get the aid of a president judge when required? They can travel by rail now fifty or sixty miles from Beaver to Washington. It answers very well for the gentlemen who have such judges living in their immediate counties, but in counties where there is no president judge it does not operate so well.

A number of gentlemen who have spoken on this subject, as well as the gentleman from Franklin who last addressed the Convention, have referred to the people wanting nothing of this kind, and they say they have heard no complaint. Sir, if there is any one thing more than another upon which I have heard complaint it is on the subject of the judiciary. What they wanted was more working force; the business was behind not only in the several districts of the courts of common pleas, but in the Supreme Court. At the time of the meeting of this Convention and for months afterwards our ears were filled with declamation on the subject of the necessity of more force in the judiciary of the Commonwealth. The plan proposed by this section is not what I would desire, but it is better than the present system, and therefore I shall support it. It will give us that which, in my opinion, has been much desired, and which I know is needed in the Commonwealth of Pennsylvania, more judicial force. It is a practical question. It is not a speculative one at all.

But it is said if you make the districts small, you will belittle the judges; you will have little judges. We do not expect to have giants for judges in these days; we do not expect men to come among us here for judges who shall be like Saul among the people, a head and shoulders taller than anybody else; but we expect to get men to do the business of the community well and faithfully

and according to the Constitution and laws of the Commonwealth; and if they do this, it is all we ask and all we desire. I hope therefore that the Convention will adopt this provision.

I was very much surprised to find the gentleman from Westmoreland (Mr. Fulton) opposing this provision—Westmoreland county that has been wanting to be separated from the other two counties for fifteen or twenty years. I know that for more than ten years at least they have been trying to have Westmoreland county established by the Legislature as a separate judicial district, but they have always failed. They attempted it when I was in the Legislature in 1862 and 1863, and they have attempted it since that time to my own knowledge: and yet the gentleman wants Westmoreland county to remain as it is in a district composed of Westmoreland, Indiana and Armstrong, each county containing more than 30,000, more than 40,000. I believe Westmoreland has more than 60,000 inhabitants, and yet she is not entitled to a single judge. No county in the State desires to be separated into a judicial district more than Westmoreland—

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. PURMAN. I think the amendment and the section under consideration are both pernicious, and, therefore, neither ought to pass. In the first place, population is not the true basis on which to rest judicial force, and in a great manufacturing, mining and commercial State like Pennsylvania we ought not to fix in the Constitution a rule by which judicial force is to be measured. If we leave it to the Legislature then it is flexible, and it can be accommodated to the wants and interests of the people throughout the whole State. When I say this I am quite aware that now and then the Legislature has failed to meet the proper expectations of the people in this regard, as in many others, by reason of political and other considerations; but the people always have the power in their own hands. If they say to their public servants, the Legislature, "in questions of this kind no party shall rule you, and we will refuse to return you to your seats unless you make such arrangements as will suit the convenience, interests and wants of the people," the Legislature would always accommodate them in their judicial districts and in providing the necessary judicial force for the administration of justice.

This proposition is pernicious because, as has been well said, it will create a large number of judges without sufficient labor to keep them actively employed during the year, and therefore it will dwarf the judiciary. It is hardly necessary for me to say to the lawyers of this Convention that if they want an efficient and active judge, they want him working pretty much the whole year; they want to keep his brain active. We all know that except in counties where they are extremely manufacturing or mining and full of litigation, a judge in a county of thirty thousand would not be employed more than about ten weeks in the year. That would leave him idle so much of his time that he would become almost inefficient.

The district in which I reside has been referred to by the gentleman from Fayette, (Mr. Kaine,) the gentleman from Lyscoming, (Mr. Armstrong,) and others. Now, by the provisions of law in our county we have three terms of two weeks each, and one term of one week, making seven weeks. In the county of Fayette, the county of my distinguished friend, (Mr. Kaine,) they have the same provision. That makes fourteen weeks that the judge in the Fourteenth judicial district would be employed. Then there may be adjourned courts, though not very often. We occasionally have an adjourned court, say one a year.

MR. KAINE. I ask the gentleman from Greene if he does not know that for the last four years we have had four or five and sometime six weeks of adjourned court every year in our county?

MR. PURMAN. I know they have some adjourned courts in Fayette county. The precise number of weeks and days employed I do not know. But suppose they had during the last four years five weeks of adjourned court in Fayette county; that would make nineteen weeks. We never had over one week of adjourned court in Greene county, and that would make twenty weeks. Now, I undertake to say that an active-minded and able-bodied judge can work forty weeks in the year, and that will leave him three months for general reading and recreation. Such active employment and mental industry would keep the judge fresh in all his duties, close to his books, accurate in his decisions, and faithful in every duty and fully appreciated by the people and the bar.

Something has been said about the state of the unfinished business of the county of Fayette and the county of Greene based upon the report of the prothonotary. I speak with some knowledge on this subject. I say a large number of the causes reported here as at issue, when they were originally brought were never intended to be tried; it is not now intended that they shall be tried, and they never will be tried if you had courts open every day in the year; and I speak from my experience as a lawyer that as to the large list of causes certified here from every county in the Commonwealth as at issue and untied the same is true of a large percentage of them. They are brought for various purposes, but never intended to be tried. I say if you were to employ a judge forty weeks in the Fourteenth judicial district for two years there would not remain a single cause there over a year untied; they would all be wiped out by such a course in the period above stated.

Yesterday my distinguished friend from Indiana (Mr. Harry White) appealed to the delegates from Philadelphia and Pittsburg not to oppose this section. I wish the gentleman had been susceptible to appeals a few years ago when I called upon him so tenderly to give us a judicial district out of Westmoreland county, but his love for the old judicial system, his love for the old Tenth judicial district, composed of Westmoreland, Indiana and Armstrong, was so strong that he refused us the boon of an independent district out of Westmoreland county; and certainly by his votes and his influence in the Senate he prevented the making of a district out of Westmoreland county on the ground, as the gentleman said then, of his love and attachment for the old system and the old district.

MR. HARRY WHITE. The delegate will allow me to explain. Everything that the honorable gentleman states is correct, but then I was representing my political constituents. [Laughter.]

MR. PURMAN. That is just what I thought. I observed a while ago that his political constituents ought to take him out for having refused to do justice to the people in the administration of justice, and if he persisted longer in it I have no doubt they would.

I think, Mr. President and gentlemen of the Convention, that upon every consideration we ought not to pass this sec-

tion and these amendments, leaving the matter to the Legislature.

It has been said that we ought to give a judge to each county, because in the twenty-first section we have provided that in the orphans' court all accounts shall be audited by the court without expense to parties. But this will not increase the labors of the judge, as the clerk, being a salaried officer, will be the auditor to ascertain the facts and report, and the judge will then pass upon the facts and conclusion as reported by the clerk. There is, therefore, no force in this argument, and it is no reason why the section should be adopted.

There is another objection to the section, to my mind well founded. If this section is adopted it will abolish the associate judges—the judges unlearned in the law—and this I am opposed to on principles of sound public policy. The associate judges directly represent the people in the court, and popularize the court, or give public confidence in the court. The people can look to them and feel that they can never lose their lives, their liberty or their property without the consent of men directly from themselves and of themselves.

The PRESIDENT *pro tem*. The gentleman's time has expired.

MR. MANN. Mr. President: I am in favor of the principle of this section, because I believe it is the only way that a growing evil in connection with the judiciary can be remedied. I do not say that I am in favor of this number of thirty thousand. That is a matter that can be easily arranged in this Convention. If that is too small a number, make it larger. But I maintain that the principle upon which this section is framed is the only one that will remedy the growing evil of forming double judicial districts throughout the Commonwealth and of forming them very unequally. I desire to point out a few of the glaring inequalities under the present system which gentlemen seem so anxious to adhere to.

I will take, for instance, the county of Lycoming, from which the able chairman of this committee (Mr. Armstrong) comes. There was in that county, by the last census, forty-seven thousand inhabitants. It is a single judicial district, and was made so by the persistent and determined efforts of the members of the bar of that county three or four years ago, they alleging that there was sufficient business in that county for one judge, and they

convinced the Legislature of that fact and secured for Lycoming county, with forty-seven thousand inhabitants, the formation of a single district.

Now, sir, if that is a proper measure of population for Lycoming county, I ask if it is not a proper measure for all the counties in the Commonwealth? Why not? Why should Lycoming county be thus favored; for, gentlemen, Lycoming county will never be connected with other counties again in all time to come. Having secured that position she will maintain it, and nobody will ever think of depriving her of the privilege which she has obtained, but she will remain from this time on a single judicial district; and for one I do not envy her her privileges. All I ask is that other counties in the Commonwealth shall have like privileges, and I maintain that it is only by the adoption of this section that equality and fair dealing can be obtained throughout the State.

I will take my own district as another glaring illustration of inequality. There are four counties in that district, with a population of about 60,000. A few years ago the president judge, an honored and respected man, one of the ablest judges in the State, was afflicted with some bodily infirmity that made it difficult for him to transact the business of the district, and the Legislature gave us another judge, so that we have now two judges, with a population of 60,000, both of them able bodied men, and that district will remain with two judges. They have their commissions, and nobody will think of interfering with them; and that district will continue with two judges. That is what grows up under the present system. It is the legitimate working out of the system. It is not an accidental thing, for it is going on all over the State. Whenever there comes a strong application to the Legislature for a particular district where, from some infirmity of the judge or for any other reason, there is a then present necessity, there will be relief furnished in just that way, while other districts which are not so pressing will remain without this great convenience of a judge at home.

Now, it is utterly impossible to argue with any justice that the system proposed by this section will work greater inequalities than the present system. I maintain that it will tend to equalize the benefits and blessings of prompt justice throughout the Commonwealth. Gentle-

men, I ask you just to run your minds over the objection made to this section. It has been opposed in this Convention by the very ablest men the floor. The gentleman from Columbia, (Mr. Buckalew,) who is generally so favorable to beneficent reforms, for some unaccountable reason opposes this section, one of the most beneficent in the whole article. I maintain that this twenty-fourth section has more good in it than the entire article combined without it. It will work out for the people more beneficent results than all the rest of the article, and yet for some reason the gentleman from Columbia feels constrained to oppose it. But listen to his arguments, and what are they? Are they such arguments as should convince any man unprejudiced in his judgment that he should vote against the section? It seems to me that the arguments are not such as would be expected from the ability of the gentleman who presented them. They are very feeble, and with all respect to the gentleman from Franklin, I must say the same thing of his: Confessedly one of the ablest lawyers upon this floor, for some reason he wants to oppose this section, and he can find no objection to present to the minds of delegates that ought to influence a single vote. He says if you make every county a judicial district, the judge will be familiar to all the people. Why, that occurs now, under the present system, just as emphatically as it could under the proposed plan. Take the district from which I come as an illustration. It is a district with sixty thousand inhabitants and two judges, both of whom live in the largest county in the district, and have lived there all of their professional lives. The present section could do no more than that. The county of Tioga has more than half of the population of that district and both the judges reside there. Are they not, under the existing system, just as familiar to all the people of that county as they would be under the operations of the section under consideration? Precisely what occurs under our present system is that the largest county in a district gets the judge, and will always have him and he will be acquainted with all the people there. This is all that is left of this argument, and it seems to me that it is not characteristic of the ability of the gentleman who made it. It is the greatest argument that he can make against the section, and if no better argument can be

made against it it ought to be adopted, for it has very great advantages and very great merits.

The chief merit which I suggest in favor of the section is that it will prevent the making of double-headed judicial districts where they are not needed and where they do positive harm. In districts with two judges there is always a divided responsibility, and justice is not meted out as speedily as it ought to be or would be in such districts as the section contemplates. Double districts may work well in cities, and very likely they do work well, but this Convention has decided over and over again that it will provide remedies according to the necessities of the location, and it is a necessity of the country districts that they shall have one judge for each district, and that there shall be a law judge in each county.

This section will forever prevent that evil, and it is a growing evil. There are already in the State nine of these double-headed districts, and I feel very confident that there is no delegate here from any one of them who will not pronounce them an evil, an evil to the profession, an obstacle to the dispensation of justice, and an evil to the judges themselves. You can say what you please about the harmony and good feeling that is maintained between the judges in double districts, but I know that the legitimate result of such districts is to create unpleasant feelings, little jealousies and injurious intercourse between the judges and the bar.

For myself I speak entirely without any personal interest, for the county from which I come could not possibly during my lifetime become a judicial district, nor will any county in the district from which I come be affected by this proposition if it should be increased according to the amendments now pending. If it be left at thirty thousand that will make Tioga county a separate judicial district, but my colleague who comes from that county is willing to accept any number that this Convention may see fit to adopt, so that the principle of the section shall be preserved and single judicial districts shall be established.

Mr. CURRY. I shall be obliged to vote against the amendment and against the section in turn. I presume that if there is any question that has attracted the attention of the people of the Twenty-fourth judicial district, composed as it now is of

the counties of Blair, Cambria and Huntingdon, more than another it is the question now before this Convention, and I think that I am safe in saying that I have not heard one man favor the change; but, upon the other hand, they seem to be opposed especially to this section as agreed to in committee of the whole; first, because we have not sufficient work in our district for one judge over six months in the year. In the Twenty-fourth judicial district we have a judge (Hon. John Dean) whose superior I presume cannot be found in the State. Should this amendment or should this section pass he would then be confined to one county, say to the county of Blair. The other two counties, according to this plan, would be entitled each to a judge, as we have in the district, as it now stands, a population of 105,870. We are content with the district as it is. We do not desire any change; first, because the judicial business would not be sufficient to employ any court one quarter of the time in case it was confined to either of the counties named; and second because of the expense. Three judges would be employed to do the work of one judge.

Again, this plan would abandon the associate judges. In our judicial district we have never heard any complaint against them, but claim that they are of great service in their capacity as assistants to the president judge.

Again, in case this section should be adopted and confine us to one judge in the county of Blair, then it is apparent that the compensation of this judge would be reduced, perhaps, to \$1,500 or \$2,000, because those who desire to carry out the spirit of economy would say at once, "surely this judge has nothing to do; why allow him \$4,000?" The people would rise up and say, "this judge has nothing to do, and yet we are paying him from \$3,000 to \$5,000." The cry would become so great throughout the various districts of the Commonwealth that a man of honor, a man of integrity, a man of ability, a man of keen sense of propriety would say at once: "I will not occupy the position." He would resign it at once, because he could make more money in the practice of law at the bar than by occupying the position of judge on the bench.

Now, Mr. President, for these reasons and others which I could state if necessary, I shall be prepared to vote against the amendment and the section.

Mr. BOYD. Mr. President: When this scheme was originally presented I was rather inclined in its favor, but the discussion of the past as well as the present has satisfied me that it will not do at all, for the reason, among others, that the debate seems to be based upon local considerations—gentlemen desirous of providing for their own particular districts, others having schemes looking to some other object, which shall be nameless; and, altogether, I am persuaded that it should be left exclusively to the Legislature.

Now, with a view of accommodating all the gentlemen who are here, and desirous of having a judge in a small county, we have got it down as reported from the committee of the whole to a judge for every thirty thousand population. We all understand exactly how that was accomplished. It was accomplished to enable certain small counties to have a judge, when it was admitted at the time that there was no occasion for such a judge; and it appears to me that this basis of population is wholly fallacious, because there are counties in the State (take, for example, Washington) where they may never have occasion for another judge, it being a purely rural district, and I suppose that as they have no mineral resources it will be devoted in the future, as it has been in the past, to the raising of sheep. Well, I should suppose it would not take more than one judge to adjudicate all the sheep that ever have been or will be in that county; and so of other counties of that description.

Now, you take a populous county, a large manufacturing county, where towns are being built and are gradually growing into cities, only the Legislature can determine, from time to time, the necessity for increased judicial force in those counties. You take the northern tier of counties, sparsely populated, almost wholly undeveloped as yet, still we all know that in the near future they will be developed, for they have immense mineral resources, which will, of course, augment their population and vastly increase their business. Now, for us to undertake to provide now for the future of those counties by specifying the number of judges they shall have, we may fall very short of their requirements, or we may go very far beyond them.

Now, then, it is said here upon this floor, and not denied by any gentleman, that the judiciary system of this State thus far has been a success. I apprehend

one reason for it is to be found in the fact that we have had a judicious disposition, made by the Legislature, of the judicial districts and good men have been selected as our judges. Now, then, if you are going to establish a judgeship in every small county where a judge will not be occupied perhaps more than two, three or four months, you will have a lot of aspirants for the bench in those counties. Gentlemen who have very little business will seek the position for the salary; and you will have those same men, not of any judicial experience or very limited, aspiring to the supreme bench ultimately, and thus demoralize that, or weaken it, by means of this immense accession of the judicial force throughout the counties, and undoubtedly will cheapen the character and standing of the judiciary and of the decisions as compared with what we have had in the past.

I shall therefore, for these reasons, vote against any apportionment of the State at all, and will vote in such a way as to leave it to the Legislature.

It is true that a great objection has been urged to these additional law judges which the Legislature have given from time to time as the exigency of the districts required, yet it will be in the power of the Legislature to revise that, to change it, and if we find the difficulty that we do in apportioning the State judicially, why it is not at all to be wondered that the Legislature has had difficulty. But they will, however, have the advantage in the future of taking up each particular case that arises and provide for it according to its then condition, but for us to undertake to fix up the judicial districts of this State upon a basis such as is proposed it seems to me, upon reflection, is a wild scheme and is likely to be unsuccessful and unsatisfactory.

Whilst I have indicated the vote that I shall cast upon this branch of the pending section I at the same time shall vote for that part of the section which dispenses with the associate judges, because I cannot conceive that they are of any use whatever; and as the article provides that the present judges shall continue until their commissions expire the people will be prepared for the change, and I do not think that any considerable number of lawyers in this body even claim that they are of use, and scarcely ornamental. And therefore I shall ask when the vote comes to be taken that we shall have a division of this section so that we can

have a square vote upon the number of judges that we are to have; and also upon the latter part of the section in relation to the associate judges.

Mr. J. N. PURVIANCE. Mr. President: I feel reluctant to see a vote taken on a question in which I feel that my constituents are so much interested without at least expressing my sentiments in regard to it. Since our recent adjournment I have mingled somewhat with the people of the counties of Armstrong, Venango, Clarion and Butler, and I have found a very general sentiment throughout those counties, and that is in favor of each county of a population of some thirty thousand or thirty-five thousand or forty thousand having a president judge. If there be any one subject upon which the people complain more than another, it is the delay in getting their causes tried. It is a subject-matter of universal complaint throughout this entire Commonwealth, and the people everywhere are looking to this Convention for a remedy, and it strikes me, so far as I can see, that this section is the proper remedy.

If it increased the expenses of the judiciary even that would not be an objection to it, because it is one of the duties which this Convention owes to the people to provide for the speedy trial of causes in each county as possible, to prevent delay in litigation. The party desiring to delay litigation is generally the party who has the wrong side of the case, and in many instances it happens that for years a just cause cannot be tried because of the impossibility of getting it upon the trial list, and the court in session prepared to try it.

If I could so amend the section I would throw upon the president judge of each county of a population of, say thirty-five or forty thousand, all the probate business of that county; the granting of letters testamentary and letters of administration, the granting of orders for the sale of real estate, the appointment of guardians, &c. I would require that president judge to do all such business, and in that way throw upon him an amount of labor which would occupy nearly his entire time. There is no class in this community that require protection more than the widows and the orphans, and there is no class in the whole community that is less protected, arising from our judicial system as it exists in Pennsylvania at this time. We have heard of the iniquities practiced in the city of Philadelphia, and

they exist to some extent in other counties and are permeating, as it were, the whole State. In every county, even the smaller counties, this system of auditing accounts and expenses incident to it exists. Now, if we had a president judge in each of the counties of the State with the population I have named, and all the probate business was required to be done by that judge in addition to the ordinary business of the common pleas and quarter sessions, and oyer and terminer and other courts, I take it he would have enough on his hands to occupy his entire time.

Then as to the expense, if you abolish the associate judges in the State, the cost of that branch of our judicial system is about \$60,000 a year. It is generally conceded that it is to some extent useless. It is not regarded as a necessary arm of the judiciary at all. If you dispense then with the associate judges, and thereby save the treasury \$30,000 a year, and adopt the system now proposed and add to the president judges about twelve, because that is all the addition it will make, you would add, say \$48,000, to the expense of the president judges and you would save \$30,000 by dispensing with the associate judges.

I am struck forcibly with the idea, and therefore I am inclined to address the Convention particularly on this point, that it is the duty of the Convention to do something (whether this is the best plan or not I do not know) to protect the estates of decedents. If you make the president judge of the county the probate judge, and he takes his seat upon the bench and examines critically and closely all accounts of executors, administrators, guardians and trustees, without any fee whatever, with no auditors to appoint, for he must be the auditor himself, and if he is not fit for that he is not fit for the place of president judge—I say in that way you would protect those who cannot protect themselves, and you would be doing a great service.

In conversations throughout the counties I have named, as well as various other parts of the Commonwealth, I have never yet found one single person to dissent from the proposition that each county with a population of thirty-five thousand or forty thousand should have a president judge, and I have never yet seen one either who objected to the abolition of the associate judges as wholly unnecessary. Of course the commissions of those in

office at present would expire by their own limitation. It is not proposed to interrupt the course of things at once or abruptly, but gradually, and the new system would come into operation to the great satisfaction of the whole people.

I need not repeat what has already been said that in every county in this State there are cases pending on the docket from two to five and seven years that cannot be reached and tried because the courts are not held often enough to dispose of them. If, then, you have a president judge in each county, and that judge holds all the courts, including the probate court, and you give him full and entire jurisdiction over the estates of decedents, there is not a county of the population I have named but would have given them the advantages I have stated. I do hope therefore that this section will prevail. I am satisfied that we shall make no mistake; in our proceedings here we should be desirous to commit no errors if possible, and I am satisfied that we shall make no mistake in establishing these county courts. They are looked for and expected by the people, and I trust the Convention will adopt them.

Mr. GILPIN. Mr. President: I had intended to keep quiet on this subject because at this stage of the sessions of the Convention it strikes me that no person can advance its business better than by remaining silent; but inasmuch as the gentleman from Butler has referred to Armstrong county as approving of this section, I am compelled to rise and explain (at least so far as I have been able to ascertain) what the wishes and opinions of the people of that county really are. After this section was adopted in committee of the whole I chanced to go to Armstrong county, and at a time when I was myself favorably impressed with the section, although I confess I had given it then but little consideration, and whilst there I found almost every man who had thought on the subject and had taken the trouble to look at our proceedings to be opposed to this provision. Many of them said, and said truly, that we could get along as well with a county judge there as with two or three judges in the united district as it now stands.

In regard to the principle involved, I think that the Legislature should have prescribed for it some rule or other—that is, we should not district the State, but we should mark out some lines within which the Legislature, upon this sub-

ject of making judicial districts and giving new law judges, should be confined. Now it is left to the Legislature's discretion entirely, and if anyone will take the trouble to look at the size of the various districts they will see the very great discrepancy that exists. They will see our district, the tenth, with one hundred and thirty-eight thousand population, and having but a single law judge, which is more population than any other district in the whole State has that has two judges.

But it may be said, "why do you not apply to the Legislature?" We have applied, yes have applied twice at least, every county in the district asking for it, and the Legislature has twice refused it. We are now entirely helpless. I confess that the legal business in the district is very much in advance of that which has been disposed of by the courts there, but the reason is that the district being thus large, our recent judge, Hon. Jos. Buffington, who was really worked to death, and died after a sickness of perhaps ten months, in which there was no resignation, and in which, of course, business continued to accumulate, and the present incumbent when he went upon the bench was met by a mass of undisposed business absolutely appalling. With more of courage than of proper regard for his physical strength, he has striven to stem this current of accumulated and current business, and by almost constant sessions of courts since he came upon the bench has kept pace with the latter and made some headway against the former. But physical strength can only bear so much of a strain, and if any man's is great enough to enable him to entirely dispose of all the accumulated and untried causes of that district, no one's is sufficient to do it and support life for any considerable time after the accomplishment of the feat. Does this proposed section remedy the evil under which we suffer? It may seem to do so, but I fear that if it is adopted that it will produce other evils greater than those it cures.

What is urged in advocacy of it? "That it brings justice to every man's door; that the judge comes almost to his door." But what kind of a judge comes? As has been well said, a small judge, not the judge of a large district, and it might also be said one that is less impartial; honest he may be, but he is still a man, and every man is influenced,

whether he knows it or not, by those about him. His social, his business and his political relations are all confined to one little section—that is, to a small population; he is there day in and day out; he participates in the field of local politics and may be controlled by local politicians, while a judge whose district is extended, over say three counties, and who is in each county less than a third of his time does not take any notice of or feel any interest in the petty affairs of a neighborhood or a county.

And it must be recollected that we have put into this article no provision prohibiting judges from being candidates again in their particular districts. Much has been said of the evils of an elective judiciary, and we can contemplate and imagine what kind of a judge there would be upon the bench who was a candidate for re-election in his own county, that county alone composing the district, when, as we know, counties are really controlled politically by two or three men. Imagine a county with two or three men, perhaps, as suitors in his court, who hold his re-election in their hands. Could we hope that he could under such circumstances be just against his masters? Such a danger or temptation would not be presented were the district larger, because the one county would not control the district; when we look at the question practically we see that it is beset with many evils.

Again, if we are to select a judge in the county, manifestly we should take a lawyer in good practice. We elect him, and what is the result? No cases can be tried before that judge perhaps for three years, perhaps for five years, because he is interested in every suit. But it will be answered, we may elect a judge out of the district. That is very hard to do unless he is a very popular man, and practically it will amount to nothing. But it will be answered again, "get the judge of a neighboring district to sit in such cases." We in our county have had some experience in that direction, and we found during the sickness of Judge Buffington that this thing of borrowing judges causes very great confusion. They have different rules of practice in the districts from which they come, and that leads to confusion. They are not acquainted with the various members of the bar, and sometimes they are prevented by business in their own districts from keeping their engagements in the needy county, and there

suitors bring their witnesses, prepare their causes and do not get them tried because there is no judge. After the experience in our county of getting judges from neighboring districts, I think I can fairly say that it was not satisfactory; and if we had to elect a judge in every county the same thing, I doubt not, would be the result in each particular county. In case of the sickness of the judge the same inconvenience would ensue.

Now, if, instead of adopting this section, some provision is adopted requiring judges to be elected in the various districts when the population of the district amounts to some fixed number, then you would have a rule laid down to govern the Legislature, and then you would have some fixed amount of judicial force given each one of the districts, and with this advantage where you have two or three counties in the district. Now, under this section as reported one county having but little business, no other would be benefited by the leisure of the unemployed judge. But if the judges are for the whole district, what one county lacked in business would likely be made up in the others, and in the case of the sickness or the disqualification of the judge by being interested in the cause, wherever that occurred one or both of the other judges that happened to be in the district would supply the place, and the business would go on without any trouble or delay whatever.

So I think that if there is to be any change made at all (and I believe there should be a change) it should be in prescribing some rule by which the Legislature hereafter may be governed in the creation of new judges wherever they may be required. We should not leave the determination of that question in the hands of the Legislature entirely, but that we should prescribe some fixed rule. For instance, we might say that a population of 30,000 over a certain amount should be entitled to another judge, or let it be 50,000, or whatever number you choose to fix. It should be a certain number, so that it would not be in the power of the Legislature to refuse the application of the people of a district when they reach the point that may be fixed as entitling such district to an additional judge.

Mr. BEEBE. Mr. President—

Mr. CORSON. Make it short.

Mr. BEEBE. Mr. President: The gentleman from Montgomery (Mr. Corson)

requests that I shall "make it short." I understand the feeling in the Convention. I understand that men had rather vote than talk; but inasmuch as the gentleman from Crawford (Mr. Minor) and the gentleman from Venango (Mr. Dodd) and various other members representing our portion of the State are absent, and inasmuch as we have not been at all represented in our opinions and our necessities, I beg the Convention to hear me for a few minutes. I ask the city delegates both from Pittsburgh and Philadelphia to mark that if this section is voted down and we are not to have a judge for thirty thousand or forty thousand inhabitants in a county, we must inevitably have associate judges continued, for the simple reason that to the mass of the people, circumstanced as they are in various counties, it would amount to a practical denial of justice in multitudes of cases in case this section should be voted down.

I need only say that a good deal of our time is occupied in motions at chambers or preliminary motions, equity, &c., and that it would require a travel of from sixty to seventy miles in almost every instance in order to make a simple motion or obtain an order.

After this section was debated before and considered, it seemed to meet with the favor of the Convention; but I observe that there has been a material change in the opinions of many gentlemen who say they had not sufficiently investigated this matter, and they propose now to vote against the section. I think I know why, or one reason at least, and that is this: The gentlemen in this Convention are largely lawyers, and their first impulse is to sit down and write to the judge of their district to know what he thinks about it. Now, I ask gentlemen to consider for a moment what the judge would say in the light of human nature as we find it? In the first place, he would not wish to say he was overworked; he would not wish to say that he wanted less to do, with the same salary. In the second place, I ask you, gentlemen, if you were to consult the Governor of Pennsylvania to-day as to the propriety of dividing the State, or the President of the United States as to cutting off a portion of the Union, what do you think would be the reply? What would be the reasonable reply of every man holding a certain amount of power, taken in the aggregate? "I do not want my power limited." I submit no man would. But it is from the

judge's stand-point that gentlemen look at it when they express that opinion which is derived from the opinion, I believe, of the judge himself. Judges have expressed this opinion whom we know are overworked every day of their lives, and whose health and whose lives are imperilled by the amount of work they are doing.

But, sir, the argument seems to be put in this way: 30,000 people do not have enough for a judge to do. As the gentleman from Tioga (Mr. Elliott) remarked yesterday, I think that is no answer to this question at all. The question is whether 30,000 people are so situated that they demand a judge for their convenience and for the administration of justice. But it does not rest here; 30,000 is really made the minimum, and there are very few counties but have a larger population and more business than would be indicated by the gentleman's argument. Why, Mr. President, look at your own county of Erie. You have plenty for one judge to do. You are now joined with another county in a district. Look at Crawford county. Already it has had a separate district, and as the gentleman from Potter (Mr. Mann) very well remarked, whenever a county has secured a judge they know too well the convenience of it to ever be joined with another county in a district again. Look at the county of Venango, with plenty to do for a judge, whenever this Constitution shall be adopted. Look at Butler; and all the counties around will have plenty to do; and we are not providing here merely for the present time, but gentlemen must look ahead, at the rapid increase of business and population in the State of Pennsylvania, and look ahead for twenty years, and see then what the deliberations of this body would have to do with what we should find in the future.

But, Mr. President, we propose that the associate judges' office shall be abolished. I admit that public sentiment in our section of the State is somewhat in favor of their abolition, and prefers the single district system with one law judge. I will admit that to be public sentiment, whether it be right or wrong—I think wrong. But we have additional business that an associate judge is compelled to do by virtue of his office, and that business is hereafter to be done by the law judges, and what is it? Locally the associates are the judges of the character and capacity of men who offer themselves as bail for men

charged with offenses, and as sureties for men in public station, and as guardians, appointments for offices, &c., and all this local knowledge is required in order that a judge may act judiciously; and we certainly have in this case to substitute the president judge for these associates for the purposes for which they were formerly elected.

I trust, therefore, that the Convention will bear in mind that if this section is not accepted, if it shall be voted down, it will be with the distinct understanding that we must necessarily have, in order to save this Constitution, at least for our section of the country, the office of associate judge retained. At the same time I believe it is the will of the majority of the people that the single district system be established, and the office of associate judge abolished.

MR. DARLINGTON. Mr. President: I am decidedly in favor of the principle contained in the body of this proposition before the Convention. If it is practicable to carry it out it is certainly the thing which everybody would desire to have—a judge for each county that contains the requisite business, and the residence of that judge in the county. This would promote the convenience of everybody in the county better than any other arrangement which can be made. But inasmuch as it is impracticable to carry it out to the fullest extent, the only next best thing we can do is to carry it out as far as we can and apply it to every county that has the requisite population and business. As to other counties that have not the requisite population this must be regulated in other ways; they must be grouped together so as to give the requisite business to the judge, and at the same time as far as possible promote the convenience of the suitors.

How shall we best carry out this idea? I am not very solicitous about the precise number that shall be fixed upon as constituting the requisite population. Let that be 50,000, or if you please, 70,000. I am not in favor of making these districts so small in population and business as to give the judge insufficient labor. You elevate the character of the judiciary, you draw out the best talents by giving it hard work. We have several large counties which have sufficient business for a single judge, such as Berks and Lancaster, each of which now has two, but who ought to get along with one apiece of the right stamp. So with every other county so

circumstanced, I would restrict it to a single judge and that judge should reside in the county, because, deny it who will, there is a vast convenience in having the judge reside in the county where the business is transacted.

In a county situated as ours is we do not need a single judge. He can still do the business of Chester and Delaware, which is the most convenient county to annex to us. As we are circumstanced, there is no need of a single judge and there is no need of another district. But we do not know that we shall always be so fortunate as we are now. The excellent judge who presides over that district may be translated, without seeing death, to a higher position, and we may have to put up with an inferior judge. I mean a man of less physical and mental ability, but still we may be so fortunate as to get along with the business a little behind what it is now. Still there is not as yet any fear but that we shall obtain either from my friend from Delaware (Mr. Broomall) or from some other source a judge competent to do all the business of the district.

So take any other district; take Lycoming, if you please. There may be enough business there for a single judge, and if there be the district should have a single judge. So with every other county, whether it be Venango, Erie, Warren or any other, which has the requisite amount of population and business. If it has these requisites it should have a single judge. I know very well the possible inconvenience to which every county is subjected which has not a judge residing within it. We had a taste of that ourselves upon a former occasion. One of the best judges in the State, presiding over our district, resided in Doylestown, and the consequence was that when attending our courts he was uneasy and restless and would not stay until the business was fairly over, and sometimes he would keep the court in session until midnight in order that he might reach a morning train; and this worked us too hard. Judge Chapman, of Doylestown, was an excellent judge, but we suffered great inconvenience from the fact that he did not reside in the district. He did not choose to move there for the short time he was likely to be upon the bench.

I think we ought by all means to attain that object, if it can possibly be attained. In every part of the State, where they have population and business enough, let

the judge reside in the district, and then he will always be at home and will be himself at ease. He can be with his family at night and among his books when he is not in court, and the business will be better done thereby. If this cannot be entirely carried out, let it be carried out so far as it can be attained by the adoption of the principle we have before us, taking the figures so as to suit the views of the great body of the Convention. I shall be satisfied with that; but as a necessary concomitant to this plan, whether we have a judge for every county or not, let us abolish utterly the associate judges unlearned in the law. Under no circumstances ought they to be retained. They are of no kind of use. Gentlemen from other parts of the State tell me that they find them convenient because they can make application to them to set aside a writ, to to stay an execution, or to open a judgment. All this, however, can be devolved upon the prothonotary, and it will be in ninety-nine cases out of one hundred better done, because the prothonotary will be better qualified to grant these preliminary motions than any associate judge unlearned in the law whom you can pick up. I do not now allude to one or two anomalous instances where the associate justices have been very excellent gentlemen learned in the law, gentlemen of the bar who had retired from the profession and had been selected as associate judges, but I take the great mass of associate judges all over the State, and I ask of what use is it to keep those associate judges upon the bench at an expense of \$60,000 a year? They are purely ornamental, as my friend from Montgomery (Mr. Boyd) has said, and sometimes not even that. Let us abolish them utterly. Let us fix this ratio at a sufficient amount, say fifty thousand, if you please, so as to insure business enough for a law judge in every single district where he shall be elected.

Then what follows? If he is short of business in trying cases, as has been suggested by some gentlemen upon this floor, he can aid in the auditing of accounts, and he can save to the suitors an immense amount of money by attending to the settlement of all such questions. Wherever they have disputes let him call the parties before him, and his decision will be generally satisfactory. I speak this without any fear, favor or affection. I certainly have no aspirations for the bench, and it would be inexpedient for anybody to

think of putting me on the bench. I prefer the elevation of the bar.

Mr. ARMSTRONG. I presume that this debate has already lasted so long as to weary the Convention; yet I deem it my duty to say a few words on the question, even at the risk of being tedious. I have listened with great attention and interest to the debate on both sides, and I am in strong sympathy with every desire expressed to afford the utmost judicial facilities to every part of the State, and in just proportion to its necessities. The point upon which I differ with many gentlemen upon the floor is this: I regard it as a pernicious principle to base judicial districts and to judge of judicial necessities by reference to the mere numbers of population.

But, in addition to that, the principle itself is impracticable in its application. Let me call the attention of the Convention to a few of its difficulties. The county of Lycoming has been referred to. It constitutes now a single judicial district, with an amount of business pressing upon the courts which leaves our trial lists more than one year behind; and yet we have a population of about 50,000 probably, not exceeding that. We have, in the judgment of the Legislature, and sufficiently justified by years of experience, a population and a business which require that that county should be a separate judicial district.

But by way of contrast—and showing the insufficiency of population alone as a safe basis—look at other counties and other districts of much larger population. Take the Twenty-fourth district, composed of the counties of Cambria, Blair and Huntingdon, embracing a population by the last census of over 105,000, and now claimed by members of that district on this floor to embrace 120,000. It is confessed by the members representing that district that there is not business enough in the three counties which compose it to occupy the attention of a judge for more than one-half of his time or six months in the year.

Mr. CORBETT. Will the gentleman permit himself to be interrupted?

Mr. ARMSTRONG. Certainly.

Mr. CORBETT. If you elect a judge and work him six months of the year, I ask if that is not as much work as he ought to do upon the bench? Where will then be his time to read and revise?

Mr. ARMSTRONG. I made no reference to the bench. I spoke of working a judge

six months in the year, which embraces his work on and off the bench, and by the statements of the gentlemen who represent that district there is not enough business there to employ his time, either on the bench or off, more than six months of the year.

But there are other districts. I have the statistics of Cambria county, which is one of the largest counties of that district, and the figures justify fully what has been stated by the gentleman representing it here. If 30,000 population is to compose a district, what will you do with the county of Greene, which is a county of over 25,000, whilst its adjoining county of Washington has a population of over 48,000, and Fayette, its only other adjoining county, has a population of 43,000.

Mr. KAINE. Will the gentleman from Lycoming allow me to answer that question?

Mr. ARMSTRONG. Yes, sir.

Mr. KAINE. Why cannot Greene county remain with Fayette, where she is now?

Mr. ARMSTRONG. That is what I was about to say myself. Create it by the Legislature into a judicial district, by attaching to it the county of Washington or the county of Fayette. But this is inconsistent with the principle on which the section is based and demonstrates how difficult, if not impossible, it is of practical application. If you will look over the counties in the western part of the State you will find that the county of Lawrence, with a population of twenty-seven thousand, is surrounded by the county of Beaver, with a population of thirty-six thousand, and the county of Butler, with a population of thirty-six thousand, what will you do with Lawrence? So, again, you may take the county of Somerset, with twenty-eight thousand, which is surrounded by the county of Fayette, with forty-three thousand inhabitants; Westmoreland, with fifty-eight thousand; Cambria, with thirty-six thousand, and Bedford, with twenty-nine thousand six hundred and thirty-five, which is doubtless over thirty thousand by this time. These are all instances, and others might be cited in which there is an absolute necessity for the exercise of legislative discretion, and in which the principle of the section must be set aside.

Mr. HARRY WHITE. Will the delegate allow me to interrupt him?

Mr. ARMSTRONG. Certainly.

Mr. HARRY WHITE. I aver that today Somerset county, with its railroad and coal works, has thirty thousand population, which would make it a separate district.

Mr. ARMSTRONG. I have no doubt of that, and I was about to further suggest what difficulty it leads to. The counties of Somerset and Bedford are adjoining counties. Bedford has twenty-nine thousand. If the district is to be composed upon the basis of the last census, then neither of them can be made a separate district, and if new enumeration is to be made it must be under some law yet to be enacted, and will necessitate a State census in some form, either general or partial. Without this a county might have the required population and no means of ascertaining it.

But suppose these counties, or any others, to have less than the requisite population for separate districts, and to be formed into one district, and in the course of one or more years thereafter the population of either county is legally ascertained to equal or exceed the constitutional requirement for a separate district. The Legislature would be shut up to the necessity of constituting such county a separate district, if, indeed, any legislative action would be at all required. But if so what is to become of the smaller attached county, and what is to become of the judge, and if they are to remain associated what becomes of the constitutional provision conferring the right upon the large county to be a separate district? Thus at any point, in spite of such constitutional requirement, its provision would go halting to an important conclusion. There are but few counties which could derive any advantage from such provision, whilst the embarrassment it would involve in the exercise of sound legislative discretion would be very great indeed. I can conceive of no practicable mode of putting this system of separate judicial districts into practical operation which does not necessarily involve the necessity of uniting counties as virtually to constitute a system of districts composed of adjoining counties, and this is our present system. The limitation proposed would seem to be fruitful only of trouble and embarrassment.

These difficulties might, and I believe would, extend largely over the State. We in this Convention cannot anticipate to what extent such difficulties would occur. What I have stated appears on the face of

the map on a merely cursory examination, but when it comes to be actually applied to the State at large, I apprehend the difficulties that must necessarily be encountered would be extremely great. And they all grow out of the same fundamental difficulty that population cannot be made a safe basis for judicial apportionment. Who can tell where we would land in the effort to construct a system of judicial districts upon such a basis? This section if introduced will necessarily compel the Legislature to re-district this State. If so, who will be struck? What judges will remain and what judges will be removed; what counties will go in and what counties go out, and where and what will be the new connections? The disturbance of the judicial system in one district is certain to affect the adjoining district. It cannot be otherwise. You have judges who now preside over four counties. It may chance that the largest counties may soon have population enough to compose a single district. How will it be with the other counties? The large counties would have a constitutional right to claim a separate judge and a separate district, whilst it would leave the other counties formerly attached to it with less population than is sufficient for a judge. What shall be done with them? If they are to be attached to larger counties with the requisite population then such county is deprived of its constitutional right. These things would inevitably occur, and other difficulties which no human foresight can anticipate or provide against.

But let us for a moment look more particularly at the several parts and relations of the section.

The first paragraph provides that thirty thousand shall be the population requisite for a separate district, but when it comes to the third, fourth, fifth, sixth and part of the seventh lines, it is merely enacting in the Constitution a power which the Legislature clearly possesses, and which they could clearly exercise without the necessity of placing it in the Constitution at all. All that part of the section then is totally unnecessary, and ought not to encumber the Constitution.

Mr. KANE. Will the gentleman allow me to ask him a question, as he has the conclusion?

Mr. ARMSTRONG. Certainly.

Mr. KANE. I want to know of the gentleman if the same objection was not made to fixing the number of seven

judges of the Supreme Court in the Constitution, but he thought that was all right? The Legislature could fix the number of judges of the Supreme Court just as well without putting it in there and better than they can with it in there; but it requires a constitutional provision in order to bring the Legislature to the right point. That is what we want here.

Mr. ARMSTRONG. No person, I suppose, ever questioned or denied that there was power in the Legislature to increase the number of judges of the Supreme Court, and the increase of judges there was not based upon any want of power in the Legislature, but because it was expedient that it should be thus embodied in the Constitution. The same question arises here precisely, and it is now a question of expediency. Why should we enact in this Constitution that which the Legislature has the right to do unless there be a paramount necessity which compels them?

Mr. KANE. I say there is.

The PRESIDENT *pro tem*. The time of the delegate from Lycoming has expired.

Mr. CUYLER. I move that he have leave to continue.

Mr. ARMSTRONG. I will not take up further time.

Mr. COCHRAN. Mr. President: I do not intend to go into any general discussion, but the pending question immediately before the Convention is the amendment which was offered by my colleague from York, (Mr. Gibson,) and I hope that in the discussion of the general subject, which has been carried on here at such length, that amendment will not be forgotten. Whatever be the fate of this section or the fate of the amendment to it, I hope the amendment to the amendment will be adopted.

The effect of the amendment offered by the gentleman from Dauphin will be to increase the specified number of persons residing in a county to be entitled to a separate judge to fifty-five thousand. That would necessitate the addition of a number of other counties to adjoining larger counties in order to constitute a district. You may take as an illustration the district in which I reside; the county of York having a population of some seventy-six thousand inhabitants, and the county of Adams something over thirty thousand. They have constituted a district for nearly forty years, and they will probably remain as a district under the provisions of this amendment. Now, it is

necessary that the amendment to the amendment should be engrafted on the amendment in order to enable that district to be accommodated; for the amendment simply says that each separate county having a population of one hundred thousand shall have two law judges. In order to meet the case of that district you must make that apply also to districts which are composed of more than one county, and therefore it is important that the amendment of my colleague should be engrafted on the amendment of the gentleman from Dauphin, whatever may be the fate of that amendment when it comes up for consideration. I hope, therefore, that it will not be overlooked and voted down, but that the amendment of the gentleman from Dauphin will be so perfected.

As regards the section itself, Mr. President, I do not see exactly how I shall be able to vote for it. If the principle of probate courts in the several counties had been adopted, and some provision made by which, in small districts containing not more than 30,000 population, the duty of probate judge could have been imposed on the courts of such counties, I probably should have supported the section, but that has gone by, and it seems as if we cannot get back to it or repair it. If this section be voted down I shall be compelled to move a reconsideration of the twenty-first section, which imposes upon the courts the duty of auditing all accounts. That becomes, under those circumstances, utterly impracticable. The judges of the districts cannot attend to that business, and to apply a provision of that kind to all the districts in the State would be practically to defer the settlement of decedents' estates to an indefinite time. That must be either stricken out or it must be confined, as it was originally, to counties in which the separate orphans' courts are established under that section. I know that it may be said that it will be a strong inducement to the Legislature to establish separate orphans' courts, to let it remain; but that is one of those contingencies which it is not wise, in my judgment, to depend upon. The Legislature might, nevertheless, refuse, because every additional orphans' court would impose an additional tax upon the public treasury for the payment of its judge, and therefore it would be very doubtful whether, even in the most meritorious cases, the Legislature would

be willing to listen to the demand or to comply with it.

I shall therefore, if this section should be voted down, move a reconsideration of the vote on the twenty-first section, though I voted for it in the condition of things as they then stood, with this section in the report of the committee of the whole unacted on—so that that portion of it may be changed.

Mr. M'MURRAY. Mr. President: I do not rise to make a speech or to detain the Convention from a vote on this question, but to discharge a duty which I believe I owe to the people immediately represented here by me.

When this question was before the Convention on a previous occasion I believe I voted against the section, not because I was opposed to it so much as because I favored another proposition. When I found that the proposition which I preferred had no chance of passing here I then favored this section rather than the system we have now. But, sir, I find that the people of the county in which I reside are almost unanimously opposed to this section. I believe every lawyer in the county is opposed to it, and their opposition is very active. During my visit to my home recently I conversed with nearly every lawyer in the county, and they all expressed themselves to me as being decidedly opposed to this section.

Even if I were personally in favor of it, under the circumstances I could scarcely justify a vote in its favor, especially when I learned that the people and the bar of the county of Armstrong, which is also in the same district, are opposed to it; and the same feeling prevails in the county of Forest, and to a large extent in the county of Clarion. However, the delegate-at-large from that county (Mr. Corbett) can speak for his own county.

I have some views on this question, but I will not express them at length now. I think under the circumstances the best thing we can do is to leave the question in the hands of the Legislature. With reference to this question, we have not the ground for complaint against the Legislature that we have had on many other questions. But seldom have we had occasion to complain of any act of the Legislature with reference to our judiciary. In one or two instances they have failed to do what many thought was their duty, and in one or two instances they attempted to do that which plainly was not their

duty and was beyond their power. With these exceptions, however, there has been but little ground of complaint. Therefore I shall vote against the section, and I simply wished to give these as my reasons for that vote.

Mr. CORBETT. Mr. President: I had not intended to trouble the Convention with any remarks on this question, and would not do so now if I had not been referred to by the delegate from Jefferson county. If the question could be referred to the Legislature to re-district the State as a whole, I might be willing to entrust the duty to that body; but that is an impossibility. It would interfere with the terms of the incumbents in the several judicial districts of the State; and you are well aware, Mr. President, of the decision that territory that took no part in the election of a judge cannot be attached to other territory over which a judge presides elected by it. Whenever you throw the districting of the State of Pennsylvania into the Legislature you meet with difficulties, and it will fail. The Legislature is not able to re-district the State under our elective system. They may make a new district, carve it out of other districts, or they may divide a district, and there their power ends.

Now with reference to the people of my county, if I am to speak for them, they are in favor of separate judicial districts by county lines. There is no question about that, and under this article, in my view, it becomes a necessity. You have now thrown the auditing upon the courts. I ask you, how is this auditing to be transacted and carried on if the judge is to live outside of the county limits?

Not only that; the convenience of the people of this State requires the adoption of some proposition like this. It is only a few years since that equity jurisdiction was engrafted upon our courts. An associate judge amounts to nothing when you come to proceedings in equity. Under the equity rules all orders are required to be made by a law judge; and I ask you, Mr. President, how the business of the State is to be transacted if judges are not convenient to the people? I know that it will become an impossibility. The needs and wants of the people of Pennsylvania ought to override every other consideration in this matter. The question is not whether a judge is worked up to his full capacity or not, but what do the business wants of the people of the

State require. I live in a county that will give a judge sufficient work, and it probably has but little over 30,000 population at the present time, and it is an impossibility now that the needs and wants of that people can be satisfied without having a judge learned in the law. If the president judge resides in an adjoining county you must go there for every order. Again, under the equity practice, which is now becoming a very important branch in Pennsylvania, it is absolutely necessary that a judge should be in the county from one to three days in every month.

Mr. President, I shall vote for the section as it is. One thing is evident: We either ought to have single judicial districts in the State of Pennsylvania or we ought to have double ones—districts composed of several judges or single districts. I listened to the argument of the learned gentleman who is the chairman of the Judiciary Committee on this subject, and I recollect the force with which he put it when he spoke of three judges or more in a district, each having equal power, each being able to overrule the decisions of the other, and he cited the judicial system of New York, and I know the effect and force with which that argument struck the Convention. And yet the proposition here is to reject this section; the proposition is to leave us under the old pernicious system, where you have districts that need additional force, such as the district of Westmoreland, Armstrong and Indiana, and other districts now having associate or assistant law judges in order to transact the business. Are we to continue this? Are we to leave it as it is, and incur the difficulty that the chairman of the Judiciary Committee pointed out in a former argument here? Is that to be continued? My colleague from Armstrong county (Mr. Gilpin) is in favor of judicial force in that district, and he knows it is required. There is a district that requires from two to three judges actually to accommodate the business wants of the community, and yet he is opposed to dividing it by counties; why, I cannot tell, unless he is afraid that some person will be elected judge in his county who may not be the person that the bar or the people desire. If they want material they can go outside. The fact that they have not the material on hand is no reason why single districts shall not be made throughout the State, a uniform system of districts that will meet the wants of the community.

Mr. President, I should not have troubled the Convention even with these few remarks if I had not been referred to.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Gibson) to the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. HARRY WHITE. I rise to a parliamentary inquiry. It is some time since the amendment was offered. Let me inquire whether the state of the question is as follows: The original section was under consideration, and the delegate from Dauphin (Mr. Alricks) offered an amendment, which has been laid on our desks, providing for districts with a population of 55,000, and so on. Then an amendment to that amendment was offered by the delegate from York (Mr. Gibson.) Is that the situation?

The PRESIDENT *pro tem*. That is the state of the question.

Mr. HARRY WHITE. I hope, then, that the friends of the section will vote against the amendment to the amendment.

Mr. WRIGHT. I call for the reading of the amendment and the amendment to the amendment.

The CLERK. The amendment to the amendment is to insert after the word "inhabitants," in the first line, and also in the third line the words "or where two or more adjoining counties constitute said number such county or counties," so as to make the amendment read as follows:

"Every county containing a population of not less than fifty-five thousand inhabitants, or where two or more adjoining counties constitute said number, such county or counties shall constitute a separate judicial district, and shall elect one judge learned in the law; and every county containing a population of not less than one hundred thousand inhabitants, or where two or more adjoining counties contain said number, such county or counties shall constitute a separate judicial district and shall elect two judges learned in the law; and every additional fifty thousand inhabitants in any county shall entitle said county to an additional judge learned in the law."

The question being put on the amendment to the amendment, a division was called for, and there were thirty-one ayes.

Mr. COCHRAN. As I observe there are many gentlemen not voting, and as the gentleman from Indiana (Mr. Harry White) made a very prejudicial remark

in reference to this proposition, I should like to have the yeas and nays upon it.

The PRESIDENT *pro tem*. It requires ten gentlemen to rise to sustain the call.

Ten delegates rising to second the call, the yeas and nays were ordered, and being taken, resulted as follows:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baer, Bailey, (Huntingdon,) Biddle, Brodhead, Bullitt, Cochran, Cronmiller, Davis, Fulton, Gibson, Gilpin, Guthrie, Hall, Lamberton, Landis, M'CLean, M'Murray, Palmer, H. W., Patterson, D. W., Reed, Andrew, Ross, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry and Wright—29.

NAYS.

Messrs. Armstrong, Beebe, Bigler, Black, Chas. A., Boyd, Broomall, Brown, Buckalew, Carter, Clark, Corbett, Corson, Curry, Curtin, Cuyler, Darlington, De Franco, Dunning, Edwards, Elliott, Ewing, Finney, Funck, Hanna, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Knight, Lawrence, Lear, Lilly, MacConnell, M'Culloch, Mann, Mantor, Palmer, G. W., Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reynolds, Rooke, Russell, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Turrell, Walker, White, Harry and Worrell—60.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Dallas, Dodd, Ellis, Foll, Green, Harvey, Hazard, Heverin, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Niles, Parsons, Porter, Runk, Struthers, Temple, White, David N., White, J. W. F., Woodward and Meredith, *President*—44.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Dauphin (Mr. Alricks.)

Mr. COHRSON. Now, I move to strike out "one hundred thousand," in the third line, and insert "seventy-five thousand." I do this because I am in favor of the section itself, but for fear that this amendment may pass I hope this amendment to it will be adopted.

The amendment to the amendment was rejected.

Mr. HALL. For the purpose of raising distinctly the question as to the number that ought to constitute a single district, I ask for a division of the amendment, the first division to end with the word "law," in the second line, so as to read :

"Every county containing a population of not less than fifty-five thousand inhabitants shall constitute a separate judicial district, and shall elect one judge learned in the law."

Mr. SIMPSON. I rise to a point of order. The amendment is not susceptible of that division, for if the first clause is voted down the second cannot stand.

The PRESIDENT *pro tem*. The Chair is of opinion that the point of order is not well taken. The second division may stand if the first is voted down. The question is on the first division of the amendment, ending with the word "law," in the second line.

The division was rejected, there being twenty-five ayes, less than a majority of a quorum.

The PRESIDENT *pro tem*. The second division of the amendment is now before the Convention.

The division was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. FULTON. I offer the following amendment: Strike out all after the word "section" and insert :

"Each common pleas district shall be entitled to at least one law judge for every seventy thousand inhabitants, and the Legislature shall from time to time provide for the election of additional judges to meet excess of population. Where there is more than one judge in any district, no two judges shall reside in the same county unless there be more judges than counties in such district. The judges shall have the right to select counties of residence in the order of seniority of commission."

I desire to say a few words, Mr. President, in explanation of the amendment. There are two questions here that seem to present themselves and require to be passed upon by the Convention. The first is that urged by the advocates of the original section before the Convention, that some number of population should be fixed that should entitle any county to a judge. The number fixed in the original section is thirty thousand. Now, Mr. President, I undertake to say that that

number is so far below the number that the experience of the members of the Convention must show them requires a judge that it cannot be sustained. It is true that the beautiful picture that we had drawn yesterday evening by the delegate from Allegheny on my right, (Mr. S. A. Purviance,) if based on a true premiss, had many things in it to induce the members of this Convention to support it. When we were told here that we were about to erect a monument that would stand for ages, showing the wisdom and the far-seeing into the future of this Convention, that would stand there long after each individual member of this Convention had been followed by slow and solemn procession to his last resting place and the cold clouds of the valley had covered our mortal remains, and after our spirits had taken their flight beyond where the moon-beams play and the wind's harps sing their doleful melodies, that this section should still stand as a monument of our wisdom—was very flattering indeed to the members of the Convention; but, sir, I say that with all its fascinating dreams the premiss is false, that this is not one of the kind of things that we can erect here as a monument through all the mutation of time.

Now, there are certain things that may be fixed in a Constitution unchangeably. For example, we may fix two months as the time of residence to entitle a man to vote, as we did in the article on suffrage, and that can remain; but on a question like this, where it is every day changing, where the population and the business of the district are changing and increasing, requiring more judicial force, or perhaps in other cases less, we cannot well fix any basis of population, certainly not so low a ratio as this.

Mr. President, in looking over the present judicial districts of the State we find that they average about 65,000, and it is admitted that many of the judges now in the State have not near the amount of work that they can perform. In this amendment I propose to fix the population requiring a judge at 70,000, with the power in the Legislature where the necessities of the case require it to add more judges in districts of that population, and I think, after consulting with many gentlemen of large experience, that this is as near the true number as we can get. If gentlemen think it should be lower, or even a little higher, I am willing to accept any change that meets the views of the

Convention. There are a number of districts reported to the Convention by their delegates as having 80,000 and 100,000, and still they say their judges are able to perform the work, and if that be the fact why should we reduce it down to so low a number as is suggested here?

It is proposed by several gentlemen that we impose upon our judges the work of auditing all the accounts in the orphans' court without fees. The delegate from Butler (Mr. J. N. Purviance) has told us that there is no department of the judiciary that has been crying so much for reform as the cases of the widows and the orphans in our courts. Now, sir, is it proposed here that we may make charitable institutions of the courts of the Commonwealth; that we provide that a certain class of cases shall be adjudicated as charity to the people? I tell you, sir, that where the widows and orphans of the Commonwealth have estates they will be cared for. It is proposed to put it into the hands of a single judge for each district. It is physically impossible for any one man, even in one of our smallest counties, to look so carefully after the interests of the widows' and the orphans' estates that they will not suffer. There must be other means provided. If you reduce our judges to mere clerical work you select men that are unfit for performing the duties of a judge. I hope, Mr. President, that something will be adopted that will leave our judiciary in at least as good a condition as it is now. This we certainly cannot expect to find under the original section. I hope the amendment will be adopted. The amendment was rejected.

Mr. D. W. PATTERSON. I offer the following amendment as a substitute for the section: Strike out all after the word "section," and insert:

"The Legislature shall, when necessary, create additional judicial districts, and when such districts consist of more than one county they shall be formed of convenient contiguous counties, and shall provide for additional law judges as the business of such additional and existing judicial districts may require; but no county shall be divided in forming a district. The office of associate judge not learned in the law is abolished, except in counties not forming separate districts, and in which neither the president nor any additional law judge shall reside; but the several associate judges in office when this Constitution shall be

adopted shall serve for their unexpired terms."

I fix no basis of population or territory here, and no restraint on the Legislature, except to prevent cutting up the counties in forming judicial districts. I leave it entirely to the Legislature. But for the first time, in case it shall be adopted, we put in an enabling clause, saying "the Legislature shall." There has been no clause of that kind in the existing Constitution; and the consequence has been—and it must be admitted—that the Legislature has often refused to increase the judicial force where it was absolutely required. They were given the power, they were given the authority, but as they were not directed by the fundamental law they often refused on account of the additional expense and the probability of its not being wanted. Now, I think it well to put in a clause saying that the Legislature shall, when necessary, create additional judicial districts formed of convenient territory, whether consisting of one county or more, and shall provide for additional law judges when the business requires it.

It is manifest that if the section reported by the committee of the whole passes as it is now, it will make some seventy-seven or seventy-nine judges in the State. ["No!" "No!"] Yes, it will. We now have fifty-two or fifty-four, and if you give each county a judge it will make some seventy-five or seventy-seven judges. That increase is too great. The people will not justify it; they will not sanction it. The business of the State does not demand it.

I should not have offered this amendment if I had any evidence that this Convention would vote down the whole section now under discussion. I think with gentlemen who have spoken here, that we should leave that entirely to the Legislature. As it is now, or would be under the amendment I propose, the Legislature will see the wants and necessities from the actual business arising in the State, and where a county or counties demand more judicial force they will have the power and will supply it. It is a flexible system—the existing one—meeting all the wants and necessities of the people in regard to judicial matters, and it seems to me it has worked well in the past and we should leave it there for the future. That is all I have to say.

My amendment, I should add, is somewhat different from the original section in

this regard: While it abolishes associate lay judges, it also retains the lay judges in districts formed of more than one county, but only in those counties where a president or an additional law judge does not reside, only providing for associate lay judges in those counties where there is no law judge, thus reducing the expense as much as possible. I retain that feature.

I have expressed my views on this subject and will not delay the Convention. I think they fully understand the whole matter after so much debate.

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section.

Mr. LANDIS. I move to amend by striking out "thirty thousand," and inserting "fifty thousand."

My desire has been to have the judicial districts of the State so fixed that the population may be the basis of arranging them at about one hundred thousand population. I gave my reasons before on this floor why I was opposed to the section as it now stands. I have since discovered that there are many gentlemen of the same opinion who believe that this is a section which should not be adopted. I, therefore, offer this amendment as a compromise to those gentlemen who are in favor of fixing judicial districts by population. I feel like making an effort here and asking those who are determined that the ratio shall be reduced, to agree to come up to this amount of population. I will never consent that the judiciary of the State shall be degraded, because I conceive that to reduce the population to so low a minimum as thirty thousand will degrade it. I will never consent to aid in adopting any policy that will thus degrade it and retard the growth and development of the judiciary of the State, a policy that will tend in turn to result disastrously to the interests of the people. I therefore appeal to the professional pride of this Convention, to do that here which will prevent the fixing upon the State a policy which I conceive will be injurious and prejudicial to her interests.

I ask for the yeas and nays upon this amendment. I hope it will be seconded.

The PRESIDENT *pro tem.* Is the call for the yeas and nays seconded?

More than ten members rose.

The PRESIDENT *pro tem.* The call for the yeas and nays is seconded, and the Clerk will proceed with the roll.

Mr. BEEBE. Before that is done, I desire to say that I hope this amendment will not prevail, because there are in the State several counties of less population than fifty thousand where there is more than enough business for one judge.

Mr. TURRELL. I move to amend the amendment by striking out "fifty thousand," and inserting "forty thousand."

Mr. J. N. PURVIANCE. Is it in order to move a further amendment?

The PRESIDENT *pro tem.* Not now. There are two amendments pending.

On the question of agreeing to the amendment to the amendment, a division was called for, which resulted twenty-three in the affirmative. This being less than a majority of a quorum, the amendment to the amendment was rejected.

Mr. J. N. PURVIANCE. I now move to amend the amendment by striking out "fifty thousand" and inserting "thirty-five thousand."

Mr. LANDIS. I hope the gentleman from Butler will withdraw his amendment to the amendment and allow us to have a direct vote on the amendment. He can then offer his amendment afterward.

Mr. J. N. PURVIANCE. I will do that.

The PRESIDENT *pro tem.* The question is on the amendment. The yeas and nays have been ordered, and the Clerk will proceed with the call.

The yeas and nays were as follow, viz:

Y E A S .

Messrs. Ainey, Alricks, Biddle, Bigler, Brodhead, Bullitt, Carter, Cochran, Curtin, Darlington, Davis, Ewing, Fulton, Gibson, Hall, Hunsicker, Lamberton, Landis, Lear, Palmer, G. W., Palmer, H. W., Patterson, D. W., Reed, Andrew, Reynolds, Ross, Smith, H. G., Smith, Wm. H., Walker, Wetherill, J. M., Wetherill, Jno. Price and Wright—31.

N A Y S .

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Beebe, Black, Charles A., Boyd, Broomall, Brown, Buckalew, Carey, Clark, Corbett, Corson, Cronmiller, Curry, Cuyler, De France, Edwards, Elliott, Ellis, Finney, Funck, Gilpin, Guthrie, Hanna, Hay, Hemphill, Howard, Kaine, Lawrence, Lilly, MacConnell, M'CLean, M'Culloch, M'Murray, Mann, Mantor, Newlin, Patterson, T. H. B., Patton, Pughe, Furman, Purviance, John N., Purviance, Samuel A., Read, John R.,

Rooke, Sharpe, Simpson, Smith, Henry W., Stanton, Stewart, Turrell, Van Reed, Wherry, White, Harry and Worrell—56.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Andrews, Bally, (Perry,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Black, J. S., Bowman, Calvin, Campbell, Cassidy, Church, Collins, Craig, Dallas, Dodd, Dunning, Fell, Green, Harvey, Hazzard, Heverin, Horton, Knight, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Parsons, Porter, Runk, Russell, Struthers, Temple, White, David N., White, J. W. F., Woodward and Meredith, *President*—48.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. DARLINGTON. I move to amend by striking out all after the word "abolished."

The *PRESIDENT pro tem.* The Clerk will read the part moved to be stricken out.

The *CLERK* read as follows :

"Excepting in counties not forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

Mr. DARLINGTON. I have only to remark upon this amendment that the vote of the Convention upon it will probably determine my vote upon the section. Unless we can secure the total abolition of these unlearned judges, we do not advance much in the direction of reform.

Mr. HARRY WHITE. We do.

The amendment was rejected.

Mr. C. A. BLACK. I now move to amend the section by striking out in the first line the words "each county containing thirty thousand inhabitants" and inserting the words "whenever a county shall contain thirty thousand inhabitants, it;" also by striking out the words "excepting on counties not forming separate districts" and inserting the words "except in counties which may contain less than thirty thousand inhabitants."

These are merely changes in phraseology. If the section is to be adopted at all, it should clearly provide for the counties that have the least population. This amendment is to provide for increase of population.

Mr. HARRY WHITE. I understand this is to merely perfect the section. It only changes the verbiage the little.

Mr. BIDDLE. Read it.

The *CLERK* read the section as proposed to be amended, as follows :

"Whenever a county shall contain thirty thousand inhabitants, it shall constitute a separate judicial district and shall elect one judge learned in the law, and the Legislature shall provide for additional judges as the business of the said district may require. Counties containing a population less than is sufficient to constitute separate districts, shall be formed into convenient single districts, or if necessary may be attached to contiguous districts as the Legislature may provide. The office of associate judge, not learned in the law, is abolished, except in counties which may contain less than thirty thousand inhabitants; but the several associate judges in office when this Constitution shall be adopted, shall serve for their unexpired terms."

Mr. CLARK. I think the first branch of the amendment is well taken, and perhaps improves the wording of the section; but the second part of it is to my mind objectionable in this: We provide in the latter part of the section that smaller counties may be attached to contiguous districts if necessity requires. Now, the small counties so attached would have associate judges whilst the larger counties or districts would not have associate judges, and the president judge might also reside in one of the smaller counties. The latter part of that amendment is open to that objection.

Mr. C. A. BLACK. I will withdraw the latter part, and allow the first part of the amendment to remain.

The amendment as modified was agreed to.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. ANDREW REED. I call for a division of the section, to end with the word "provide," in the seventh line.

The *PRESIDENT pro tem.* The first division will be read.

The *CLERK* read as follows :

"Whenever a county shall contain thirty thousand inhabitants it shall constitute a separate judicial district and shall elect one judge learned in the law; and the Legislature shall provide for additional judges as the business of said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to con-

tiguous districts as the Legislature may provide."

Mr. SHARPE. On that question I call for the yeas and nays.

Mr. ANDREW REED. I second the call.

The yeas and nays were as follow, viz:

Y E A S .

Messrs. Ainey, Baer, Beebe, Brodhead, Brown, Bullitt, Carey, Clark, Corbett, Corson, Cuyler, Darlington, De France, Edwards, Elliott, Ellis, Finney, Guthrie, Hanna, Hay, Horton, Howard, Kaine, Knight, Lamberton, MacConnell, M'Clean, Mann, Mantor, Newlin, Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Read, John R., Simpson, Smith, Wm. H., Stanton, Turrell, Walker, White, Harry, Worrell and Wright—42.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Broomall, Buckalew, Carter, Cochran, Cronmiller, Curry, Curtin, Dallas, Davis, Dunning, Ewing, Fulton, Funck, Gibson, Gilpin, Hall, Hemphill, Hunsicker, Landis, Lawrence, Lear, Lilly, Littleton, M'Culloch, M'Murray, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Van Reed, Wetherill, J. M., Wetherill, Jno. Price and Wherry—52.

So the first division of the section was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bannan, Barclay, Bardaley, Bartholomew, Bowman, Calvin, Campbell, Cassidy, Church, Collins, Craig, Dodd, Fell, Green, Harvey, Hazzard, Heverin, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Parsons, Porter, Runk Russell, Struthers, Temple, White, David N., White, J. W. F., Woodward and Meredith, *President*—39.

The *PRESIDENT pro tem.* The question now is on the second division of the section.

SEVERAL DELEGATES. Let it be read.

The *CLERK* read as follows:

"The office of associate judge not learned in the law is abolished, excepting in counties not forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

Mr. DARLINGTON. I ask for a division of the question, to end with the word "abolished."

Mr. ARMSTRONG. I trust this division of the section, however the vote may be taken, whether as a whole or in parts, may be voted down, that we may leave the entire question in the discretion of the Legislature, as we have determined to do as to president judges.

Mr. DARLINGTON. But on that subject I think there is no provision now for abolishing associate judges.

Mr. ARMSTRONG. No, sir; but it is in the power of the Legislature to abolish them where their abolition seems to be a necessity or to be expedient, and it is better to leave that discretion untrammelled with the Legislature.

Mr. HARRY WHITE. I rise to an inquiry. Do I understand the chairman of the Judiciary Committee to say that the Legislature of Pennsylvania, under the Constitution as it now is, can abolish the office of associate judge?

Mr. ARMSTRONG. I think so. If I am mistaken, will the gentleman point out the clause which prohibits it?

Mr. HARRY WHITE. My answer is this: That the office of associate judge is a constitutional office, and it is not in the power of the Legislature to abolish it. I will state furthermore that it is competent for the Legislature to require the associate judges to be men learned in the law. They have not, however, the power to abolish the office.

The *PRESIDENT pro tem.* The Chair is of opinion that the residue of the section is not divisible, because the last division would be senseless without that which precedes it.

Mr. ARMSTRONG. Gentlemen will allow me to explain, so that I may not be misapprehended on this matter. If the gentleman from Indiana will turn to the ninth section of the article, as we have proposed to adopt it, he will find that it is provided that all the judges of the courts of common pleas shall, by virtue of their office, within their district be a justice of oyer and terminer and general jail delivery. It is therefore, under the Constitution as it is adopted, a single judge. The president judge would be competent to hold the court of oyer and terminer, as well as the orphans' court and the court of quarter sessions, if our Constitution shall be adopted.

Mr. BUCKALEW. I desire on this question to call attention to the fourth section

of this article, which provides that "until otherwise directed by law the courts of common pleas shall continue as at present established, except as herein changed." That would authorize by express terms the continuance of the courts of common pleas with a president and two associate judges until by law a different regulation shall be made. Then, as we do not retain the amendment of 1850 with regard to the election of judges, there will be no clause in the Constitution that will make associate judges constitutional officers, and in my judgment their existence will be left in the discretion of the Legislature, as the gentleman from Lycoming has already explained.

Now, Mr. President, since the Convention has refused to adopt the first part of this section the latter part of course should be rejected also, for the reason that you have not made provision for locating a president judge in most of the small counties of the State. Their existence is, as the section now stands, a necessity in a large part of the interior of the State; and I beg to call the attention of members to the small expense which the public treasury incurs by the employment of this class of officers. Their pay in most of the counties of the State is but \$300 a year, making for both judges in a county an expenditure of but \$600—half the cost of a first class clerk in a bureau or department at the city of Washington. In short, the whole cost of these officers in a county is less than half the expense of the smallest sort of clerk.

Mr. BOYD. Allow me to ask the gentleman a question. Will he be good enough to state what they do that entitles them to even that much?

Mr. BUCKALEW. The gentleman wants me to go into a speech on the utility of associate judges—

Mr. BOYD. Yes, I want to know what use an associate judge of that kind is.

Mr. BUCKALEW. If the gentleman wants me to go into a speech on the general question of the utility of associate judges, I must decline his invitation. I spoke on that subject yesterday, and the whole matter is perfectly familiar to the gentlemen of the Convention. There are a vast number of things which the associate judge is required to do under the statute laws of the State. Let me add that I think the Legislature of the State could with propriety and with advantage to the public interests establish county boards, consisting of the board of county

commissioners and of the associate judges for the transaction of business that is now imperfectly managed under our existing system. I would constitute a county board in each county, of the commissioners and associate judges, to fix the tax rate upon the people every year, to have the power of appointing and removing the keeper or manager of the public prison of the county, and this would be important in counties where there are penitentiaries; to control also the appointment and removal of the superintendent of the poor house where a poor house is a matter of county administration, and to pass upon various other matters of local concern. If you have a county board of this sort established, it should perform all the duties that are discharged in the State of New York by county boards of supervisors, and in other States by similar bodies, and you would obtain all the advantages of a county board without creating new officers. You would use your associate judges in connection with your county commissioners for this purpose, and in the outcome, in my judgment, we would obtain a very great improvement in county government, in the administration of county affairs.

I confess this is one of the reasons why I desire to retain this office of associate judge in the counties of the interior. Of course, it is not a question of interest in the cities of Philadelphia and Pittsburg, communities which have a peculiar municipal organization; but in the remainder of the State I think great good would result from the creation of county boards, made up as I have described them, without additional expense upon the people.

For the present, however, I shall not go further into the question. I only allude to it in connection with this subject of rejecting the second branch of this section, which I hope will be done.

Mr. H. W. PALMER. Mr. President: The adoption of this division of the section will affect only six counties in the State, namely: Lancaster, Luzerne, Schuylkill, Berks, Lycoming and Crawford, for those are the only counties composing single judicial districts. In each of these counties, except Lycoming and Crawford, there are two law judges, and in each of them I feel free to say I believe the associate judges are neither useful nor ornamental. They cost something and are worth nothing, absolutely and utterly nothing. They bring the

administration of justice into contempt and beget a distrust of the judiciary which is more detrimental than any benefit they can possibly confer.

Mr. BEEBE. I rise to a point of order: That after the yeas and nays have been ordered upon a section, debate is out of order on a division of that section.

The PRESIDENT *pro tem*. The yeas and nays were not ordered on the section, but on the first division, which has been voted on. There is no order for the yeas and nays on this division. The gentleman from Luzerne is in order.

Mr. H. W. PALMER. Associate judges are sometimes consulted in making appointments of guardians and road-viewers, and at times when sentences are to be passed on criminals. Otherwise they are not claimed to be of use or value. Well, if the court would take the advice of the lawyers they would be as likely to get information, and of a more reliable quality. In the passing of sentences on criminals these judges are animated by their passions and prejudices instead of sound judgment. In the multitude of appointments that of late years have been put upon the judiciary which are political in their nature, the associate judges are guided by their political interests and prejudices alone. In the matter of granting licenses great abuses arise, because the associates are open to private solicitation, and for months before the license day they are belabored by every man who desires, but ought not to have, a license, and the business is fixed up so that when license day comes around the most shameless violations of law occur. Licenses are granted that ought not to be granted, and licenses are refused that ought to be granted, both in direct violation of express law.

I therefore say, because the office of associate judge brings contempt and distrust upon the administration of justice, is expensive, inconvenient, and useless, it ought to be abolished, especially in these large counties having two law judges. It affects, as I said before, only six counties in the State, and I believe that the representatives of those counties in this body are nearly unanimous in desiring the abolition of the office of associate judge. Of course there have been and are individual exceptions where associate judges have conferred honor upon the bench; but so long as the office is political and filled from the ranks of politicians unlearned in the law, the excep-

tions must of necessity be rare, and the rule as I have stated it.

The PRESIDENT *pro tem*. The question is on the last division of the section.

Mr. KAINE. I do not know whether it be in order or not to discuss the question that has been spoken to both by the gentleman from Lycoming and the gentleman from Columbia. I am satisfied, however, for myself, that unless some change is made in the amendments that have already been adopted by this Convention, the office of associate judge is now abolished, and you want nothing further upon that subject. There is no provision in the amendments that we propose for retaining that office; and if the position of some gentlemen here be correct, that where we have supplied or attempted to supply an article, it is superseded, then the office of associate judge, as I before said, is certainly abolished. The ninth section of this article, which has been referred to by the gentleman from Lycoming, provides that every judge of the court of common pleas shall by virtue of his office within his district be a justice of oyer and terminer and general jail delivery. That provides for the holding of those courts by a single judge, and nowhere in the amendments we have proposed is there any provision that the court shall consist of more than one judge.

Under the Constitution of 1790 the Governor was directly authorized to appoint not more than four, nor less than three, judges of the court of common pleas. That section was not retained in words or in form in the Constitution of 1837-38, but it is in substance where it provides that the courts of oyer and terminer shall consist of two judges. Therefore I think it makes no difference whether we vote this proposition down or not.

The PRESIDENT *pro tem*. The question is on the last division of the section.

The division was rejected.

The PRESIDENT *pro tem*. The next section will be read.

Mr. COCHRAN. I rise to what I believe is a privileged question, and that is, to submit a motion to reconsider the twenty-first section, as I intimated I should do in what I said this morning.

SEVERAL DELEGATES. Let us get through with the article first.

Mr. COCHRAN. Very well; I will defer making the motion until we get through with the article, as gentlemen seem to prefer that.

The CLERK read the next section as follows:

SECTION 25. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings, and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgment and decision of such courts, shall be uniform.

Mr. ARMSTRONG. I move to amend by adding at the end of the section these words: "And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the courts of common pleas and orphans' courts."

I call the attention of the Convention to the fact that the same provision is now embodied and has passed the Convention in the fifth section, which will be found on the third page of the printed report; but in the connection in which it stands it is open to a doubt whether it is not a limitation only upon the courts of the city of Philadelphia and Allegheny. It was intended to be a general provision as to all the courts of the State. I therefore move it at this place in order that it may be a general provision beyond all question, and if it should be adopted I shall then move to reconsider the fifth section for the purpose of striking out the same words in that section, where I think they were not properly inserted.

Mr. HANNA. I should like to ask the chairman of the committee whether this amendment is consistent with the first section of this article?

Mr. ARMSTRONG. I think so.

Mr. HANNA. That first section says that the judicial power of this Commonwealth shall be vested in certain courts, naming them, "and in such other courts as the Legislature may from time to time establish."

Mr. ARMSTRONG. This operates, then, as a limitation upon that power, and would prevent the Legislature from establishing other courts to exercise only the same jurisdiction that may be exercised by the courts of common pleas.

Mr. KAIN. I should like the gentleman to be more particular in his statement of what he intends to effect by this amendment.

Mr. ARMSTRONG. It is merely to trans- pose a provision which the Convention has already adopted, because in the place in which it now stands it is open to a possible construction that it applies only to

the courts of Philadelphia and Allegheny, whereas I believe it was the sense of the Convention to make it a general provision, applying to all the courts of common pleas in the State. It is only for the purpose of transposing the provision into a place which will free it from the objection that it is thus limited.

Mr. ELLIS. I should like to learn from the chairman of this committee what is especially sacred in the courts of common pleas and the orphans' courts that they should be guarded by this constitutional provision. All other courts are left at the discretion of the Legislature. In the first section of this article the courts to be established by this Constitution are defined, and then follow these words: "And such other courts as the Legislature may from time to time establish." Why is it that the courts of common pleas and the orphans' court shall be thus hedged around, so that the Legislature shall not interfere with them? Both those courts exercise jurisdiction in matters of mere dollars and cents; whereas the higher courts that deal with a man's life and personal liberty are left entirely at the discretion of the Legislature. The Legislature may alter and change from time to time at its pleasure those courts which deal with the lives of the citizens of Pennsylvania; and yet the chairman of the Judiciary Committee proposes that the courts which deal merely with dollars and cents shall be hedged around with constitutional provisions that the Legislature shall not alter or change.

I am impelled to make these remarks, Mr. President, from facts that have transpired, from landmarks in the history of the State that now exist, and which ought to teach us some wisdom in relation to this subject. In the county in which I reside but do not especially represent, (and I have alluded to it several times on this floor,) there exists a legislative court, a court of most extraordinary powers. In that county the political majority is largely on one side, and under the power to elect judges we always have, and perhaps always will, elect judges of one political persuasion. But the minority in the county, being dissatisfied with the administration of justice in that county in relation to criminal matters, determined that there should be a judge placed in our county whose political sentiments were in antagonism with those of the majority in that county. In order to do that a court was created nominally for three

counties, actually for but one. Some six years ago the counties of Dauphin, Lebanon and Schuylkill were made a district, and a court was created for the purpose of trying criminals in the county of Schuylkill. That court had a nominal jurisdiction in Dauphin and Lebanon, but a virtual, actual, continuous and exclusive jurisdiction in the county of Schuylkill upon criminal matters. Jurisdiction was given in the counties of Lebanon and Dauphin for the mere purpose of giving the voters of those counties the right of placing a judge in the county of Schuylkill. That judge has sat for six years administering criminal justice in the county of Schuylkill, with a jurisdiction in the counties of Dauphin and Lebanon, and has never tried a single case in the counties of Dauphin and Lebanon. He was called upon by the district attorney of the county of Lebanon to try one case there, but it resulted in the quashing of the indictment, and that has been the entire extent of the exercise of his jurisdiction in those counties.

I do not say this with any view of making any reflection upon the eminent gentleman who sits as the judge in that court. For him I have the highest respect, and so far as that court itself and the administration of justice in that county are concerned I have not a word to say against them. But, sir, it is an alarming example, which hereafter, in times of high political excitement, may be followed in every county in this State. What would the people of Lancaster think if Schuylkill and Berks were to elect their judges? What would any county in the State think if adjoining counties had the power to elect their judges? What does it mean? What did it mean in Schuylkill when two counties were attached to Schuylkill in order to elect a judge? It meant at the time the court was created just one thing: That unfair play should be administered to one set of citizens in that county, and different law and different rulings to others. That that has not been the operation of the law and of this court has been owing to the eminent character of the man who was elected. But, on the other hand, suppose the people should, as they have the power to do, and as in times of high political excitement it is very probable they would do, elect the veriest political demagogue in the district, what is the result? You drag down the high judicial ermine through the lowest cess-pools of politics,

and you everywhere plunge the State into disgrace.

Now, sir, I have no hostility to the proposition of the gentleman from Lycoming, if he will make it broad enough. I believe there ought not to exist in this Commonwealth courts of record other than constitutional courts. If we had adhered to the very wise report of the chairman of the Committee on the Judiciary, so far as the first section of this article is concerned, we would have done well; but now, since we have departed from that and permitted the Legislature to establish such other courts as they please from time to time, I am decidedly against establishing a constitutional barrier to protect merely those courts which deal with the property and not with the lives and personal liberties of the citizens of Pennsylvania. I had hoped that the first section would be amended so as to meet the gentleman's proposition, but a motion was made to strike out these words, "and in such other courts as the Legislature may from time to time establish," and it was lost. I, therefore, am decidedly opposed to any proposition that looks towards making such an outrageous distinction in favor of dollars and cents, and leaving those courts which deal with life and liberty at the will and pleasure of the Legislature.

And, sir, what is that Legislature? It may be a bare majority of one in each branch, and then the majority of that majority makes the law. This court to which I have referred was made under the dictation of a caucus of one political party. It was forced down the throats of a large minority of the political majority in the Legislature under that infamous caucus system which has disgraced our State and others. Your laws in relation to the courts will be made for you, not by the Legislature, but by the majority of the majority, by the political caucus, which may be a very great minority of the Legislature; and in times of high political excitement, as I said before, you may have the entire judiciary of the State changed.

The PRESIDENT *pro tem*. The delegate's time has expired.

MR. ARMSTRONG. It appears to me that the gentleman is under an entire misapprehension as to the effect of this amendment. It is to prevent the very thing which he argues against. It is to be borne in mind that at the time this clause was introduced in the fifth section

it was by an amendment offered by the gentleman's colleague from Schuylkill, (Mr. Bartholomew,) and it was adopted with a view to prevent the establishment of any courts which would exercise the same powers that the general courts of common pleas in the State exercise; and as it has already been passed and is in the Constitution, I could not imagine that a mere proposition to transpose it would create any debate whatever. I again say to the Convention that it changes nothing, it affects nothing, except to remove a doubt as to whether or not in the location in which it stands it is not trammelled by the possibility of being limited to the cities of Philadelphia and Pittsburg. If there is to be any debate about the amendment I will withdraw it, because it is not worth the discussion. It is already in the Constitution, adopted after full debate and fully understood. I will not stop to discuss it further, and if debate is to continue upon it I shall withdraw it.

Mr. CUYLER. I hope the amendment will not prevail.

Mr. ARMSTRONG. I withdraw the amendment.

The PRESIDENT *pro tem*. The amendment is withdrawn. The question is on the section.

Mr. KATNE. I think this is a very important section and should not be passed over hastily; neither do I think it should be adopted by the Convention. It is entirely new. It is certainly a novel thing to put into a Constitution:

"All laws relating to courts shall be general and of uniform operation—"

I suppose that is already provided for in the article on legislation—

—"And the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process, judgments, and decisions of such courts shall be uniform."

Now, I should like to understand what is meant by the force and effect of decisions of the several courts of common pleas of this Commonwealth being "uniform?" A judge in one part of the State decides a question one way, as he may construe an act of Assembly or as he may construe a decision of the Supreme Court upon that particular question under consideration, while a judge in another part of the State may decide the same question in a different manner. Now, how are you going, by a constitutional provision,

to provide that the judges of the several courts of common pleas shall make their decisions upon particular questions uniform throughout the Commonwealth? To my mind the thing is utterly impossible and is absurd. I have no objection to the rules of court being uniform all over the State, but I have objection to providing in the Constitution that the decisions of the courts shall be uniform.

Mr. STEWART. Only in their legal effect.

Mr. KATNE. Who is to be the judge of that? I propose to amend the section by striking out in the fourth line after the word "judgments" the words "and decisions," and inserting the word "and" before "judgments," so as to read:

"And the force and effect of the process and judgments of such courts shall be uniform."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Fayette.

The amendment was agreed to.

The PRESIDENT *pro tem*. The question is on the section as amended.

Mr. BUCKALEW. I should like to inquire of the chairman of the committee—I have not paid attention to the section—whether this requires the rules of court and practice in every county of the State to be exactly alike.

Mr. ARMSTRONG. It does not, as I conceive, and with that view I propose to offer a section to follow this which will provide for uniformity of practice in the State. The section which I will offer immediately following this will provide for a uniform practice throughout the State under the rules of court.

Mr. KATNE. Why not offer that in place of this?

Mr. ARMSTRONG. This is right.

Mr. BUCKALEW. I would not care to make it imperative that all the rules of court in relation to practice shall be exactly the same in the interior as they are in Philadelphia and Pittsburg. If the gentleman does not encounter that difficulty I shall have no objection to it.

Mr. ARMSTRONG. We do not encounter that, because we have made provision for it.

The CHAIR put the question and declared that the ayes appeared to prevail, and a division was called for.

Mr. ARMSTRONG. If there is any danger of this section not passing, I want to be heard upon it. ["Go on."] In the first place, this section has the advantage

of experience in the State of Illinois, and has been operating there since the adoption of their amended Constitution with eminent success and value, and it is embodied in this report as taken from the Constitution of the State of Illinois. Now, why should it not be so? We simply provide that all laws relating to courts shall be general. It is in the direct line of the limitation which we have already adopted as to other important matters in the article of legislation.

Why should it be left open to the Legislature to make a law which shall be applicable to the courts of one district and not applicable to the courts of another? I say there is eminent propriety and commanding necessity for so limiting the Legislature that they shall not impose laws which shall be applicable to and binding upon one court and shall not be applicable to and binding upon all other courts of the Commonwealth. If there be anything in the whole range of legislation in which there is necessity for holding the Legislature to the line of uniformity, it is in reference to the laws which affect the courts.

Now, this section is not intended to regulate practice, so far as it pertains to the mere rules of court. That I propose to cover by another section which I shall offer, in which the necessities of large populations are provided for; which, when it comes up, will be properly considered upon its merits. But I can conceive of no sufficient reason whatever that shall justify us in refusing to say that the Legislature shall not make laws which shall be operative upon one court of the State and not upon all alike. I think the section ought to be adopted.

Mr. CUYLER. I cannot agree with the gentleman from Lycoming. I cannot see that the courts of a great city like Philadelphia will be surrounded by the same circumstances, be situated in the same way, with courts of the sparsely settled parts of the State. I cannot see that there may not, and indeed I am well convinced that there will be many occasions where special laws affecting the operation and action of courts of one locality may be requisite which would be wholly inappropriate in another. I can very well understand, every gentleman can understand, that the *venue* that called a jury to a court in Philadelphia county will require the summoning of a larger number of jurors than that which shall call jurors to some other county in the interior of

the State; and yet if the section prevails and the laws that relate to the courts are to be uniform, I suppose the provision must be that the same number of jurors shall be called in an interior court that would be called here.

I might illustrate it in many other ways. Just so long as the circumstances of one part of the State may vary, and do vary, and largely vary from those of other parts of the State, just so long will the application of a law that shall be absolutely uniform operate with severity upon one or the other portion of the State. I am in favor of leaving that to the wisdom of the Legislature and letting them determine whether circumstances exist which should apply a system of legislation to one district which might be wholly inapplicable to another.

Therefore, unwilling to bind the Legislature in this respect, I hope that this section may be voted down.

Mr. ARMSTRONG. I desire to call the attention of the Convention to the fact that no such difficulties as the gentleman suggests could arise under this section. It only requires that the law shall be uniform, and that law may with propriety regulate the number of jurors in large or small districts; but it shall be a general law, and in that law provisions shall be made which shall adapt it to the exigencies of different counties, but it shall be general and shall be of uniform operation. It means that the law applied to the State at large, within the terms of that law shall not be different in one place from another; but it does not limit the Legislature in making a general law to provide for all exigencies which may be necessary, but it must be made by a general law and shall not be made by a particular and special law which shall apply to Philadelphia and shall not apply to Allegheny, or shall apply to that city and not to the other counties of the State. The section limits it to laws relating to the courts.

In our legislative article we have required that the Legislature shall legislate by general law on a great variety of subjects. This is a limitation upon the wide and unreasonable discretion of the Legislature to prevent that kind of special legislation which obtains in the Legislature—laws affecting particular cases—which is pernicious legislation at all times, and ought to be prohibited.

Mr. DALLAS. Mr. President. The gentleman has not yet replied to the objections well presented by my colleague

from Philadelphia, (Mr. Cuyler,) for there is a portion of this section still remaining to which his remarks can have no application. In the latter half of this section it provides in this way: "And practice of the courts of the same class or grade, so far as regulated by law, * * shall be uniform." In other words, we shall have in the city of Philadelphia and in the county of Allegheny precisely the same practice for the regulation of our larger courts that they have throughout the rest of the Commonwealth. That, sir, is certainly open to the objection presented by the gentleman from Philadelphia, and which has not been answered by the gentleman from Lycoming.

Mr. ARMSTRONG. I will ask the Clerk to read for information the following, which I will offer as a new section when this shall be passed.

The CLERK read as follows:

"It shall be the duty of the Supreme Court, as soon as practicable, and within one year after this Constitution shall take effect, and from time to time thereafter as may be necessary, to provide rules and regulations for a general system of practice in all the courts of record in the State, which shall be uniform in all courts of the same class or grade, and shall not be changed except by the Supreme Court: *Provided*, That special rules may be provided for cities and counties exceeding one hundred thousand inhabitants, and special rules may be added thereto by the presiding judge of any judicial district, with the consent and approval of the Supreme Court."

Mr. DARLINGTON. Mr. President—

The President *pro tem*. The hour of one having arrived the Convention will take a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

THE JUDICIAL SYSTEM.

The President *pro tem*. When the Convention adjourned the question under consideration was the twenty-fifth section of the article on the judiciary. It will be read.

The CLERK read as follows:

SECTION 25. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, and the force and effect of

the process, judgments and decisions of such courts shall be uniform.

Mr. DARLINGTON. I hope this section will not be agreed to. I think it will be found exceedingly inconvenient when we recollect that throughout the State there are a great many varying systems of practice, all of which are appropriate to and agreeable to the parties who have adopted them. In Philadelphia, for instance—and I presume this is intended to make the practice of universal application—there are now monthly return days for writs. They have that plan in Delaware and they have it in Allegheny, but Delaware differs from Philadelphia and Allegheny in this, that writs are returnable on the fourth Monday of the month, while in the others they are returnable on the first Monday of the month. In Berks it is the second Monday of the month. Thus we find in the different counties writs may be returnable exactly as it suits the convenience of the bar and the community there. In almost all other parts of the State we have a general law, passed in 1832, which contains three different return days for writs; first, the first day of the term; next, the next day preceding the last day of the term; and the third, if the writ shall be issued before ten days anterior to the commencement of the term and shall not be served until within ten days, then the defendant is to appear in ten days after the writ shall be served; so that under the general law there are the three return days, somewhat inconvenient, I admit, and cumbersome in practice.

In our county of Chester, in 1862, we had a special law passed, making the return day of all process for the commencement of action in ten days after the process was served, adopting one of those in the general law and abolishing all others as to that county, so that a writ issued there for the commencement of an action is in all cases made returnable in ten days after its service, and it is so stated on the face of the writ, so that the defendant has clear notice that he is to appear to the writ in ten days after it is served. That we find exceedingly convenient. We have practiced upon it for the last ten years with entire satisfaction to every member of the bar, the court, and the whole community. At the end of ten days, having filed our claim, if the action be for a money claim, or a statement of the cause of action, five days before the return day, if no affidavit of defence can

be made at the return day, we take judgment and issue execution. Thus it is that one-half, and it may be more than one-half, of all the cases for collections end with the ten days' judgment and execution, and we never hear of them in court; and this probably is one reason why our business is closely worked up.

Now, this satisfies our community. It might not satisfy the community elsewhere. We should not like to change it. Why, then, I ask, should we be compelled to change it? It suits our whole people better than anything else we have ever had; and if in Franklin or in Fayette or in Greene they might think other days more convenient for them, let them have them. There is no necessity for our having the same days or the same number of days of service in one county as another. There is no necessity for the uniformity which the section proposes to make.

"All laws relating to courts shall be general and of uniform operation."

It is all well enough to prohibit special legislation when you can, such special legislation as leads to mischief, as leads to bribery of members of the Legislature and everything of that kind. Do away with special laws; but these are not the things that anybody pays to get done; they are only granted by the Legislature when the people want them done, and it requires no corruption to get them done.

"All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction, powers, proceedings and practice of all courts of the same class or grade, so far as regulated by law, &c., shall be uniform."

Now, it would be highly inconvenient to the city of Philadelphia, I apprehend, where thousands of suits are brought every year, to have the same practice and rules of proceeding and the same return days, and such uniformity as that, which would be proper in other counties of the State. Certainly it would be very inconvenient for any county to give up that to which they are accustomed and which is most satisfactory to them, for the sake of uniformity. Can any one give me a reason why the rules of practice of two different courts should be the same?

My friend from Montgomery (Mr. Boyd) suggests that when he goes into another county to practice, it is inconvenient for him to learn new rules. When he commenced to practice in his own county he had to submit to the inconvenience of learning the rules there, and

they do not vary so much as to make it inconvenient for him to acquire them. He will always find when he comes to Chester county a willing friend to tell him all about them. [Laughter.]

Mr. HANNA. But he does not want to go there. [Laughter.]

Mr. DARLINGTON. We have no objection to his coming. When I go to Montgomery county I think I shall know the rules there sufficiently to keep within them. No gentleman has any difficulty of that kind. It has been my fortune to practice a little in several counties in the eastern part of the State, and I have always found gentlemen of the profession so courteous and kind and clever that I have never had any difficulty in getting along.

Mr. D. W. PATTERSON. I move to amend the section by striking out the words "proceedings and practice," in the second and third lines, and inserting the word "and" between the words "jurisdiction" and "powers."

I merely wish to say that this will provide for any necessary variation in practice or proceedings where it may be entirely necessary. I have spoken to the chairman of the committee and believe he is perfectly willing that these words should be stricken out, because it might be necessary that the practice and proceedings in some courts should vary from some others.

Mr. ARMSTRONG. I think the amendment suggested by the gentleman from Lancaster judicious, and I should be glad to have it adopted. I do not feel like sitting down without thanking the gentleman from Chester (Mr. Darlington) for so ably arguing in favor of this section. He argues very warmly in its favor, but says he is not for it. It occurs to me that if there be in his county a practice of such exceeding advantage as that stated by him, there is no reason why we should not have it all over the State. When I come to think over the various points of practice and points of law that make this section necessary, it is easy to indicate them, as in Allegheny county they have a special law which is different from the rest of the State as to the mode of collecting mortgages, I understand, under a special act recently passed. In Chester county they have one rule of proceeding and in other counties different rules. I could go over and mention numerous counties; but it is not necessary to delay the Convention with that. It is enough

to know that one of the greatest defects in the judicial system of Pennsylvania has been this want of uniformity. No lawyer is safe in advising on a point of law outside of his own county. There are special laws which no lawyer beyond the district can follow and which are not understood beyond the limits of the county or district to which they apply. This section, if adopted, would not apply to laws as they at present exist, but only as to future legislation, and with the amendment suggested by the gentleman from Lancaster I think it a section of very great importance. It will unify the laws respecting the courts. It will cut up that pernicious system of having a stay law in one place different from that which exists in another. It will cut up the practice of having the mode of collection of debts and mortgages in one county different from another, and will compel in all future legislation a uniformity of law as relates to courts of the same degree.

Mr. CORBETT. I should like to ask the chairman of the Judiciary Committee why keep in the word "practice," when it is provided in section nine of the article on legislation, line twenty-seven, (and probably it supplies another portion of this article also,) that the Legislature is expressly prohibited from passing special acts regulating the practice and jurisdiction of courts.

Mr. D. W. PATTERSON. What about the rules of practice?

Mr. CORBETT. That section prevents special legislation "regulating the practice and jurisdiction or changing the rules of evidence in any judicial proceeding or inquiry before courts, aldermen, justices of the peace, sheriffs, commissioners, arbitrators, auditors, masters in chancery, or other judicial officers, or providing for changing the methods for the collection of debts, or enforcing judgments or prescribing the effects of judicial sales of real estate.

Mr. ARMSTRONG. If it were entirely clear that the section referred to by the gentleman would cover the ground of this there would be no necessity for it. It covers the practice so far as it is regulated by law, but it does not cover the other points, I think that it does not cover the case, and that this section, which is in the same line of thought and of precaution which is taken in the section we have already adopted relating to legislation, is proper and will be wise.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lancaster (Mr. D. W. Patterson.)

The amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. ARMSTRONG. I call for the yeas and nays upon it.

Mr. STEWART. I second the call.

Mr. ARMSTRONG. I call for the reading of the section as amended, upon which the yeas and nays are to be taken.

The PRESIDENT *pro tem*. It will be read.

The CLERK read as follows:

SECTION 25. All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform.

The yeas and nays were taken on the adoption of the section with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Barclay, Beebe, Biddle, Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Buckalew, Cochran, Corson, Cronmiller, Cuyler, Dunning, Elliott, Ellis, Ewing, Finney, Fulton, Funck, Gilpin, Guthrie, Hall, Hay, Horton, Kaine, Lawrence, Lilly, MacConnell, McClean, McCulloch, M'Murray, Mann, Mantor, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Pugh, Purman, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry and Wright—62.

NAYS.

Messrs. Alney, Baker, Corbett, Dallas, Darlington, Davis, Edwards, Gibson, Hanna, Hemphill, Heverin, Hunsicker, Landis, Ross, Smith, Henry W., Temple and Worrell—17.

So the section was agreed to.

ABSENT. Messrs. Addicks, Andrews, Baily, (Perky,) Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Bullitt, Calvin, Campbell, Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Curry, Curtin, De France, Dodd, Fell, Green, Harvey, Hazzard, Howard,

Knight, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Niles, Porter, Read, John R., Reynolds, Rooke, Runk, Russell, Smith, H. G., Struthers, White, David N., White, Harry, White, J. W. F., Woodward and Meredith, *President*—54.

MR. ARMSTRONG. I offer the following as a new section:

"SECTION —. It shall be the duty of the Supreme Court, as soon as practicable and within one year after this Constitution shall take effect, and from time to time thereafter as may be necessary, to provide rules and regulations for a general system of practice in all the courts of record of the State, which shall be uniform in all courts of the same class and grade, and shall not be changed except by the Supreme Court: *Provided*, That special rules may be provided for cities and counties exceeding one hundred thousand inhabitants, and special rules may be added thereto by the presiding judge in any judicial district with the consent and approval of the Supreme Court."

As I remarked a few moments ago, I believe one of the great complaints of the judicial system of Pennsylvania has been its want of uniformity, and in nothing has this lack been more manifest than in the varied practice that prevails throughout the State. It will readily occur to any gentleman, when thinking on this subject, that it would not be wise nor indeed practicable to bring all cities and counties of the State under the same general practice. Large cities and counties having a concentrated population evidently require some rules of practice which would be inapplicable to the State at large. This necessity is fully provided for in the section proposed. Wherever a uniformity of practice has prevailed, it has been with marked good effect. The Supreme Court have prescribed rules which are in force throughout the State in all that appertains to their appellate jurisdiction; they have also established uniform rules in all that pertains to the equity jurisdiction; and in both instances the advantage is very marked and clear.

In the district formerly presided over by the distinguished Chief Justice Black, now a member of our body, when he went upon the bench, they had very insufficient rules. He established a system which has prevailed from that day to this. But many of the adjoining counties have

in vain attempted to procure the same rules or modifications of the same rules as applied to them. The rules of practice vary so much that lawyers going from one district to another are wholly at a loss to know the rules by which they must regulate their practice at a special court.

It was stated this morning in discussion upon a kindred topic that the judges called in special cases to hold special courts are greatly at a loss to know what the practice is in the district to which they are called. So also it has been frequently the case that the judges of the Supreme Court themselves have been under the necessity of inquiring of practitioners from various counties what the rules of practice in particular cases may be; and yet the rules of practice become rules of property; they become in a large degree the foundation of vested rights, and there is every necessity for having them uniform that can prevail as to laws.

It would not do to provide for a uniform practice by law because, that would not be sufficiently flexible; but under this provision, in which it is made the duty of the Supreme Court to provide a uniform system of practice, it is at all times open to and subject to change or revision by them as new necessities may arise.

It is said that the Supreme Court shall indicate or designate these rules. It might be wise to say that the court of common pleas might indicate them; but the body is too large, and the Supreme Court, without any sort of doubt, would consult the judges of all the districts until a system should be devised which would be uniform at the same time that it would give to every county the advantage of whatever rule had proved itself to be valuable in any district of the State. It provides also for changes so far as may be necessary, but it prevents changes except with the concurrence of the Supreme Court or with their approval, in order that the rules may not be liable to unreasonable and frequent change.

I have thus indicated what I believe to be the necessity for this section. I regard it as valuable and of great advantage. It would give uniformity to practice, it would enable attorneys to practice out of their own immediate district or county with greater facility and advantage; it would aid in the administration of justice, and I can see no reasonable objection against it, because under the proviso special rules may be adopted as applied to

large cities, which would not be applicable to the smaller populations of the State.

I trust that the section will commend itself to the approval of the Convention.

Mr. CORBETT. Mr. President: I hope this section will not prevail. If there is a benefit in a uniform system of rules, it ought to exist throughout the whole State; but it appears that there is to be an unbending system of rules to be applied to all the State except cities of over one hundred thousand inhabitants.

Mr. ARMSTRONG. No; the gentleman misapprehends. It is equally unbending as to all the counties, but special rules may be made in large populations where special necessities require.

Mr. CORBETT. Is that not unbending now except for cities of large populations, and there it is bending or flexible. There there can be a special rule made or a special system of rules. If there be any benefit in a general uniform system of rules it ought to exist over all the State, and there ought not to be a special exception here, as has been made in other cases, with reference to cities.

The truth is that the State of Pennsylvania has been composed of the city of Philadelphia and the county of Allegheny, and in every instance there is to be some exception in their favor. Now, if the city of Philadelphia requires special rules, or if the city of Pittsburgh or Allegheny does, I ask why the country districts do not?

Mr. ARMSTRONG. The gentleman will pardon me once more. It is also provided by the last clause "and special rules" the very same language "may be added thereto by the presiding judge of any judicial district."

Mr. CORBETT. "With the consent of the Supreme Court."

Mr. ARMSTRONG. The same as to the cities; it applies to both of them and in the same terms.

Mr. CORBETT. Applies to both what?

Mr. ARMSTRONG. Both the cities and the country.

Mr. CORBETT. Without respect to inhabitants?

Mr. ARMSTRONG. Yes, sir.

Mr. CORBETT. Then I ask why make it a provision of the Constitution? You only make it a little more difficult to change the rule. You will soon not have a uniform system of rules extending over the State, and I do not see the benefit of it. Why not leave every district to make

its own rules? Why not leave it to the district to adopt a system such as the exigencies of the practice require? You propose to insert in the Constitution, not a statute, but a section that means nothing. It provides that the president judge may change the rules with the consent of the Supreme Court, and under this very clause you will soon have as many different systems of rules in the State as you have now. Why insert it? If this change is to be allowed, I can see no benefit whatever that will arise from this section.

Mr. S. A. PURVIANCE. In addition to what has been said by the chairman of the Judiciary Committee, I rise to add my testimony to what I believe to be a very valuable proposition. It is a fact notorious that the Supreme Court have prescribed rules for the government of cases in equity. Those rules, I believe, every member of the bar, from one end of the State to the other, agrees are most valuable. Now, sir, this amendment is nothing more, as I understand it, than authorizing the establishment of rules by the Supreme Court to be made applicable to proceedings in law. I hold that that is absolutely necessary, and I put it to every member of the bar in the Convention whether he cannot occasionally turn it to advantage. Suppose, for instance, a client belonging to Philadelphia sued in the county of Erie; that client cannot remain there; he must come right home upon urgent business. He comes, naturally, to the office of his own attorney and submits the writ served upon him and makes a statement of his case; but what can that attorney say in reply? He has to say, "I am not familiar with the rules of the courts in Erie county; I can do you no service; you must go back at once to where you were sued." On the other hand, if this proposition is incorporated in the Constitution, we will understand the rules of practice in every county in the Commonwealth, and we can, in our offices, sit down and prepare the preliminary papers necessary in every case, just as well as though we were to send our client to the county in which he was sued. I therefore hope that this section will be adopted.

Mr. CORBETT. Allow me to ask the gentleman a question. Suppose that rule has been changed under this latter clause with reference to Erie county, how can he tell then?

Mr. S. A. PURVIANCE. I do not think that the change will take place unless it

should be some additional matter not affecting the general rule, and I presume that is what is covered by allowing a court to make special rules. As my colleague on the committee (Mr. Armstrong) suggests, the change must be acted upon by the Supreme Court, and of course thus be notified to the whole bar.

Mr. KAINE. I desire to say a single word in commendation of this provision. You know very well, sir, as every lawyer in this Convention knows, that the books of reports are full of discussions and remarks of the Supreme Court upon the subject of the rules of the different districts of the State. The Supreme Court have decided over and over again that each court must be the judge of its own rules. One district has a rule on a subject of one kind, while another district on the same subject has a different rule, and therefore it leads to confusion. The judges of the Supreme Court, by virtue of an act of Assembly a few years ago, established a set of rules in equity for the whole State, so that the attorneys in Philadelphia have to practice in the same way in equity that they do in the city of Pittsburg. Having this kind of rules established by the Supreme Court, I do not see why we should not have the same kind of rules established by the Supreme Court for the several courts of common pleas of the Commonwealth.

The PRESIDENT *pro tem*. The question is upon the amendment.

The amendment was agreed to.

Mr. PATTON. I move to amend by adding the following new section at the end of the article :

"SECTION —. All advertisements and legal notices emanating from any court or public officer, required by law to be published in any newspaper of any county of this Commonwealth, shall hereafter be published by the proper officers in the two newspapers, if so many be issued, of such county having the largest circulation; the rates for such publication of advertisements to be fixed by law."

Mr. President, as this section is shorn of those objectionable features which defeated the one I offered yesterday, looking towards the same object, I hope this will meet the approval of the Convention and be engrafted upon the article under consideration. This section only contemplates an enlarged publicity of legal matter emanating from the courts and public offices, and that the Legislature shall regulate the price thereof.

As the section is in the interest of all the people, I hope the friends of reform will give it their cordial support. The argument I made yesterday, and the reasons assigned for its adoption, are no doubt fresh in the minds of the members, and I will not add anything more at this time.

Mr. BAER. I move to amend the amendment by adding the following proviso :

" *Provided*, That said papers are not published in the interest of the same political party."

I offer this because the amendment of the gentleman from Bradford simply creates an additional expense to the State without meeting the difficulty. The two papers having the largest circulation in a county or city may be published by the same political party and taken by the same readers. I am in favor of having intelligence disseminated among the greater number of the people, and if there is to be any provision at all for disseminating information to a larger number, it must be by causing it to be published in papers of different political sentiments.

Mr. LITTLETON. I desire to further amend, if it is in order.

The PRESIDENT *pro tem*. There is an amendment to an amendment pending.

Mr. COCHRAN. I regret that the gentleman from Somerset felt called on to offer this amendment to the section, because it was bringing it directly to the point which we reached yesterday and which was the objectionable point to the minds of many gentlemen. Now I am not at all squeamish about the recognition of a fact so notorious as the existence of political parties, and I have no objection even to recognize that fact in the Constitution. But, sir, it seems to be thought indecorous, I believe, here to recognize it in that connection, and, therefore, I was in hopes that the section offered by the gentleman from Bradford would be acted upon without any such objectionable condition being attached to it.

Mr. President, it has been my lot the greater part of my life to be connected in some way or other, loosely or closely, with the political press of the country, not with the great daily organs of the city, but the small press of the country, and I have had a good deal of experience with regard to this matter of publishing these notices, and I know that throughout the country it is generally a matter of favoritism. The object sought after by those

who have had the control of them has been rather to compensate pets and to accommodate them than to give the information to the public, which is the real design intended in the publication of such notices.

I think that there is nothing wrong certainly in this amendment of the gentleman from Bradford. It will work justice. It is useless to say, Mr. President, as I apprehend, that it is entirely within the control of the Legislature. Now, that may be so, and the Legislature may pass such a rule as this, but it never has done it, and the probability is that for very obvious considerations it never will do it. In some counties, which are exceptions to the general rule, a provision of this kind has been adopted by consent, and I have never heard any complaint arising out of it. Now, although political parties are not recognized in the proposition as offered by the gentleman from Bradford, yet practically under the terms of this amendment citizens of different political sentiments will receive the information which is designed to be conveyed, and if there is any value in these notices at all, any value in this publication, it can only be fully realized by giving a reasonable opportunity to the entire community to have information and notice on the subject. Now, I think under these considerations that it would be right to adopt the section offered by the delegate from Bradford.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Bradford (Mr. Patton.)

Mr. H. W. PALMER. I move to strike out the words, "emanating from any court or public officer," and I think it will meet the views of the mover of the section and improve the phraseology. I do not like the words. With these words stricken out I am in favor of the section. It is eminently fair that the public advertisements should reach the people to be affected, and this is done by requiring those advertisements to be put in papers having the largest circulation. I have known cases where legal advertisements were put into little seven-by-nine papers having a circulation of one hundred to one hundred and fifty, totally subversive of the purpose for which the advertising was done. When the property of

a poor man is advertised to be sold at sheriff's sale, the advertisement of it is stuck into a German newspaper having a couple of hundred circulation, and he pays his money for nothing. It might as well be put up behind a barn as put there.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Bradford.

Mr. CORBETT and Mr. PATTON called for the yeas and nays.

Mr. ARMSTRONG. I will just call the attention of the Convention to one fact? It becomes of course, if adopted, a constitutional provision—

The PRESIDENT, *pro tem*. The yeas and nays have been ordered upon the amendment.

Mr. ARMSTRONG. I rise to explain for a moment, because, as the yeas and nays have been called for, I want to give the reason why I shall vote against the proposition. It is simply this: If a mistake should occur upon a question as to which is the paper of the largest circulation, it might vitiate the entire proceeding. It is dangerous for that and a great many other reasons.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Achenbach, Bailey, (Huntingdon,) Brodhead, Buckalew, Clark, Cochran, Cronmiller, De France, Dunning, Elliott, Ellis, Finney, Fulton, Funck, Gilpin, Guthrie, Hemphill, Kaine, Lambertson, Landis, Lilly, MacConnell, M'Murray, Palmer, G. W., Palmer, H. W., Patton, Purviance, Samuel A., Simpson, Smith, Wm. H., Stanton, Temple, Turrell and Wherry—33.

N A Y S .

Messrs. Ainey, Alricks, Armstrong, Baer, Barclay, Beebe, Biddle, Bigler, Black, Charles A., Boyd, Broomall, Bullitt, Corbett, Corson, Curtin, Cuyler, Dallas, Darlington, Davis, Edwards, Ewing, Gibson, Hall, Hanna, Hay, Heverin, Howard, Hunsicker, Knight, Lear, Littleton, M'Clean, M'Culloch, Mann, Mantor, Newlin, Patterson, T. H. B., Purviance, John N., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Smith, Henry W., Stewart, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, David N.,

White, J. W. F., Worrell and Wright—55.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Baily, (Perry,) Baker, Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Brown, Calvin, Campbell, Carey, Carter, Cassidy, Church, Collins, Craig, Curry, Dodd, Fell, Green, Harvey, Hazzard, Horton, Lawrence, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Parsons, Patterson, D. W. Porter, Pughe, Purman, Runk, Russell, Struthers, White, Harry, Woodward and Meredith, *President*—45.

MR. CUYLER. I ask leave to propose a new section, which I will read, and then I shall desire to state the reason why I think it ought to pass, stating that it is introductory also to another section which I shall propose. The amendment I now offer is:

"SECTION.— There shall be established a court in the city of Philadelphia, to be called "the Supreme Court *nisi prius*," having two judges, elected by all the qualified voters of the State, and holding office for fifteen years; but in the election of said judges where more than one is to be chosen each elector shall vote for only one person. They shall exercise the jurisdiction now possessed by the court of *nisi prius*, and in addition shall have jurisdiction of all appeals from the settlement of accounts by the Auditor General of the State, and original jurisdiction in all proceedings either in law or equity throughout the Commonwealth in which corporations, other than municipal, are defendants. They shall also have jurisdiction without further appeal of all writs of error and appeals from courts of common pleas, in which a sum less than one hundred dollars is involved; and in exercising this jurisdiction the State shall be divided by the Legislature into six convenient districts, in each of which an appellate court shall be annually held, and the several president judges of courts of common pleas whose districts are included shall be members of said court in such district."

I desire to state briefly the reasons why I think this section ought to pass. We need in the city of Philadelphia a court removed from local influences. The aggregated wealth and the aggregated population of the great city, developing individual and corporate interests and powers in such a manner as may, perhaps, be dangerous to the independence of the courts,

makes it necessary that in the city of Philadelphia there should be a tribunal which is removed from local influences. That tribunal we have hitherto enjoyed in the court of *nisi prius*, which has been a greatly serviceable court and one without which we really cannot do. Such a court is also necessary for the dispatch of the immense mass of business which accumulates in this county. The district court for the city and county of Philadelphia, in which most of the issues are tried, has to-day more than one thousand six hundred cases upon its lists awaiting trial. Of course the process of disposing of so great a mass of cases must be slow; and if the jurisdiction of the court of *nisi prius*, which has generally been confined of late years to jury trials of an important character, the heavier causes of jury trials and equity business, is to be cast upon the district court in addition to that which it already has, with its vast accumulation of cases undisposed of, now upwards of one thousand six hundred, the delay of justice in this county must come to be something fearful.

I do not understand that any gentlemen in the Convention really doubt the existence of the necessity to which I have alluded; but there has been an intense and persistent determination on the part of the Convention that the judges of the Supreme Court shall not be taken from the duties to which they have hitherto been usually confined and to which it is proposed expressly to confine them by the terms of the new Constitution—that the judges of the Supreme Court shall not be taken away from the exercise of their appellate jurisdiction to hold the court of *nisi prius*.

The section I propose gets rid of that difficulty. It does not give to the city of Philadelphia an additional tribunal, but it continues to it in substance the same tribunal it had before, and by providing for it judges who are especially devoted to the duties of that court it gives us a court during the whole year through, instead of during four or five months of the year, at most, and then interrupted by the business of the court in banc, as has been the case in previous time. It gives us then this tribunal without interfering in the slightest degree with that which is the persistent feeling of this Convention that such a tribunal if it exists shall not take away the judges of the Supreme Court for the purpose of the transaction of its business. It gives us a tribunal

presided over by a judge removed from local influences and elected by the qualified voters of the whole Commonwealth. There is propriety that the judge should be thus elected, not only in view of the reason that I have stated, but also in view of the character of the jurisdiction which this section provides for, because appeals from the Auditor General's office, which now consume much of the time of the court of common pleas in Dauphin county, would be transferred from a tribunal that is purely local; I say this with all respect to that court, for I have profound respect for the learned and distinguished judge who presides over it with great ability, but no man can say that for the future it will be as it has been in the past, when he shall pass away from it. It gives us a court which shall pass upon these questions, oftentimes of transcendent importance, which will be removed from the seat of government and from the immediate and overshadowing power of the government itself, which sometimes at least imperils the justice of decision in such a tribunal so situated.

It gives us, moreover, a tribunal that exercises in some degree a visitatorial power over corporations throughout the Commonwealth, and it meets another want, the existence of which no man can deny, but the remedy for which, as proposed by the Judiciary Committee, did not meet with the approval of the Convention; that is to say, it establishes an intermediate court which shall finally dispose of cases of minor importance and thus leave the Supreme Court proper relieved from the pressure upon it and enabled to transact all the vast business which now exists and hereafter in increasing degree must press upon it.

It is a fact, as was stated upon the floor when the circuit court question was under discussion, that the Supreme Court in this district is two years and a half in arrear, and I believe it is a fact that in the Western district of the State it is even more in arrears than that. How shall we get rid of this difficulty? Gentlemen coming from other districts whose lists are smaller and are usually disposed of at each term of the court fail to realize how severe the pressure is upon the bar in this district and in the Western district of the State by reason of the impossibility of the Supreme Court, situated as it is now, getting through the mass of business which has accumulated upon it. You will not relieve the difficulty by in-

creasing the number of judges. Seven judges can decide no more cases than five. Business is to increase, and the two years and a half of accumulation of business which we have upon us now is to become still greater in the future, until it will amount to a positive denial of justice to suitors. But here is a remedy proposed which is free from the criticisms that have been heretofore upon it on this floor and which is a remedy for this difficulty, a remedy which makes two judges elected by the whole people of the Commonwealth, with whom there shall sit the judges of the court of common pleas of the particular district from which the case came up, who shall decide those cases of minor importance which ought not to occupy the time of the Supreme Court in banc and delay the business of other suitors in that tribunal.

It is for these reasons which I have thus briefly stated, and which, it seems to me, should commend themselves to the confidence of the Convention, that I have proposed this amendment. I feel, as a member of the Philadelphia bar and somewhat cognizant of the necessities of business, both in our local tribunals and in the Supreme Court, that there is a crying and vital necessity for a larger provision of judicial force than has yet been made, and for the existence of a tribunal which shall be free from those local influences which necessarily accumulate about a large city like this. All those difficulties, I think, are provided for, and I ask for this section the support of the gentlemen of the Convention.

MR. ALRICKS. Mr. President: This proposition has taken at least one of the delegates by surprise. It is thrown in upon us just after dinner, and we have had no opportunity whatever to consider it.

They ought to have a sufficient judicial force in the city of Philadelphia. No person will dispute that fact. Whether it shall be organized in a manner different from that which is to govern the other good people of the Commonwealth is another question. But, sir, when it was provided in our Constitution and in our law that the Commonwealth cases should be tried at the State Capital, it was done because it would best answer the convenience of the Commonwealth. It will be understood by gentlemen of this Convention that the public papers must be kept secure. It is necessary that they should be used in a court that is convenient to the

place where those papers are deposited. Now, I appeal to the Convention that it would be very inconvenient for the Commonwealth to take her papers away from the capital of the State in order to accommodate other persons and to have the court in which those papers were wanted located in the city of Philadelphia.

I cannot for my own part see the propriety of the argument that has been made here that this new court should be established for the purpose of trying appeals from the decisions of the accountant department. You are all familiar with the value of the papers connected with the public institutions of the Commonwealth. You know the great inconvenience to which it would subject a bank to carry their papers from one end of the Commonwealth to the other. Why then should the officers of the Commonwealth having the papers in our accountant department be obliged to take them away from the capital of the State and come to the city of Philadelphia, where a court is to be established for the trial of cases in which the Commonwealth is a party.

If the judicial force of the city of Philadelphia is to be increased, let it be so; there will no objection to it; but I hope when it is increased it will be done with reference to the fact that it is the city of Philadelphia that is to be accommodated, and that other portions of the State are not to be put to an inconvenience, and above all that it will not be argued here that the cases of the Commonwealth should not be tried where the heads of the various departments are, and where the papers of the Commonwealth are kept by law. I therefore feel it my duty, as at present advised and as I understand the proposition, to vote against it.

Mr. CUYLER. I should like to say a single word before the vote is taken. If gentlemen do not like those special provisions that relate to matters outside of the county of Philadelphia, I have not the slightest objection, if the feeling of the Convention is to strike them out, that they should do so, by an amendment. What I am really after is the local tribunal. I think these other matters would be desirable, but I shall make no fight for them, and, therefore, if gentlemen who are not satisfied will move to strike them out I shall not have a word to say.

Mr. LANDIS. Can you not divide your section?

Mr. DALLAS. Let us have a division of the question.

The PRESIDENT *pro tem*. The question is on the section.

Mr. CUYLER. The gentleman from Schuylkill (Mr. J. M. Wetherill) desires me to say that he moves to strike out from the section so much as relates to appeals from the Auditor General. His modesty forbids his rising, and therefore at his request I have ventured to make that motion in his name.

The PRESIDENT *pro tem*. The question is on that amendment to the amendment.

The amendment to the amendment was rejected, the ayes being thirty-three, less than a majority of a quorum.

The PRESIDENT *pro tem*. The question now is on the section offered as an amendment.

Mr. CUYLER. On that I call for the yeas and nays.

Mr. DALLAS. I second the call.

Mr. CURRY. I should like to hear the section read before we vote upon it.

Mr. CUYLER. I withdraw so much of the section as relates to appeals from the Auditor General, at Harrisburg, and all that relates to appellate jurisdiction.

Mr. LILLY. I rise to a point of order. I think that portion has been voted upon once, and the amendment cannot be modified.

The PRESIDENT *pro tem*. The gentleman cannot now withdraw any portion of the amendment.

Mr. CUYLER. I ask leave to withdraw from the section so much as relates to appeals from the Auditor General's office, at Harrisburg, and so much as relates to an appellate tribunal to which minor causes should go and be finally decided.

I do this not because I do not deem those desirable features, but because there seems to be so much of antagonism to them in the Convention that I would sacrifice those for the sake of securing what I esteem to be a great boon to the county of Philadelphia.

Mr. DARLINGTON. As a matter of order, I think the gentleman has a right to modify his amendment.

Mr. KAINE. I hope the gentleman from Philadelphia will indicate where he proposes to strike out from. If it is from the words "*nisi prius*," it will be all right. I think that is what he wants.

Mr. D. N. WHITE. I rise to a point of order. The yeas and nays have been ordered and all debate is out of order.

The PRESIDENT *pro tem*. The Chair sustains the point of order.

Mr. TEMPLE. I submit that unless the Chair has withdrawn the call for the yeas and nays, the proposition is not in order.

The PRESIDENT *pro tem.* I have not done so, and cannot withdraw them. The Clerk will call the roll.

Mr. CUYLER. Can I not amend the proposition?

The PRESIDENT *pro tem.* Not after the yeas and nays have been ordered.

The CLERK proceeded to call the roll and Mr. Achenbach answered to his name.

Mr. CUYLER. I made the call for the yeas and nays, and it was seconded by Mr. Dallas. I ask leave to withdraw the call.

Mr. DALLAS. I withdraw the second.

The PRESIDENT *pro tem.* The call is withdrawn.

Mr. LILLY. I renew the call, and I make the point that after the yeas and nays are called for the delegate cannot withdraw the call.

Mr. CUYLER. Mr. President: Have I the floor?

The PRESIDENT *pro tem.* The delegate from the city has the floor.

Mr. CUYLER. Then I move to amend by striking out the words I have indicated.

Mr. LILLY. I rise to a point of order. My point of order is this: The yeas and nays were called for, and after they were ordered it was beyond the reach of the gentleman calling for the yeas and nays to withdraw the call. In addition to that the name of one gentleman has been called and his vote recorded.

The PRESIDENT *pro tem.* The Chair has decided the point.

Mr. TEMPLE. The roll had been partly called.

The PRESIDENT *pro tem.* The delegate from the city moves to amend the amendment in the manner that he will indicate.

Mr. CUYLER. I propose to amend by striking out the words "have jurisdiction of all appeals from the settlement of accounts by the Auditor General of the State," and also by striking out all of the amendment after the word "defendants."

Mr. SHARPE. I should like to have it read as it will stand if amended.

Mr. HOWARD. I hope it will be read, I have an idea that it is intended that we shall not sue the Pennsylvania railroad company except in Philadelphia. I suppose that is what it is for.

The PRESIDENT *pro tem.* The amendment will be read as proposed to be amended.

The CLERK read as follows:

"There shall be established a court in the city of Philadelphia to be called 'the Supreme Court *nisi prius*,' having two judges elected by all the qualified voters of the State, and holding office for fifteen years; but in the election of said judges, where there are to be more than one to be elected, no voter shall vote for more than one. They shall exercise the jurisdiction now possessed by the court of *nisi prius*, and in addition shall have original jurisdiction in all proceedings, either in law or equity, throughout the Commonwealth in which corporations, other than municipal, are defendants."

Mr. CORBETT. As I understand that proposition, we are not simply asked throughout the State to elect judges to hold a court in the city of Philadelphia, but we are asked to concede to that court original jurisdiction in all cases in which corporations are concerned.

Mr. CUYLER. Cases in which corporations are defendants, and original, but not exclusive, jurisdiction.

Mr. CORBETT. Exactly. If a corporation exists in the western part of the State, it is to be sued in this court in Philadelphia.

Mr. CUYLER. "May be," not "shall be."

Mr. CORBETT. Well; "may be." It can be sued here.

Mr. CUYLER. Move to amend it in that particular.

Mr. CORBETT. No, sir; I shall not move to amend, because I am opposed to the whole section in all its four corners. I am not willing to elect a judge for the city of Philadelphia. If she is not competent to elect judges to administer justice within her corporate limits all I have to say is strike out the power to elect at all, and let them be appointed. It is for herself, I say, to provide her own judges. I am not willing that we shall be convulsed all over the State by an election of judges who are to preside in the city of Philadelphia. I am not willing to do that. I am told that it has been done, but it has never been done with my consent. I never voted that there should be a *nisi prius* court in the city of Philadelphia. The Legislature gave it to you. She took the judicial force that belonged to the whole Commonwealth and she ap-

propriated it to the city of Philadelphia. I say it is not right to ask the citizens of this State to be convulsed in an election that the city of Philadelphia alone is interested in. It is not right to give to a court, so constituted, jurisdiction over every corporation within the limits of the State. Other members may do as they please, I care nothing about it; but I shall not give my hand to this measure, nor shall I vote for it.

Mr. HOWARD. Mr. President: I am very sorry to say that I have a very bad cold, so that I shall be unable to make a speech. This, I have no doubt, will make the Convention very happy, while it (the cold) makes me very uncomfortable. I was going to offer an amendment, and I think I shall before I get through, and that is to strike out "Philadelphia" and insert "Pittsburg," which is a great deal better place to sue corporations than Philadelphia. [Laughter.] It is a curious proposition, is it not? Take it altogether, it is really funny. My friend, the delegate from Clarion, (Mr. Corbett,) has treated it seriously, as though the delegate from Philadelphia (Mr. Cuyler) had offered this in serious earnest and expected it would be adopted by the Convention. Why, Mr. President, it only provides that if a person suffers damages from any of the corporations throughout the Commonwealth he shall come to Philadelphia to bring his suit, but it leaves them at liberty to go over the Commonwealth and sue anybody wherever they can get a court. It is a kind of one-sided machine at any rate, and I think that in order to accommodate the public, if we are to have this kind of court it would be far better to strike out "Philadelphia" and insert "Pittsburg;" and in order to test the sense of the Convention, I move to strike out "Philadelphia" and insert "Pittsburg," which will be much more convenient for plaintiffs, and on that I call for the yeas and nays.

Mr. H. W. SMITH. I move further to amend by striking out "Pittsburg" and inserting "Reading." We have a better court room there than any room in Philadelphia.

The PRESIDENT *pro tem*. There is an amendment to the amendment pending. The question is on the amendment of the delegate from Allegheny (Mr. Howard) to the amendment of the delegate from Philadelphia (Mr. Cuyler.) I suppose the delegate from Berks did not mean his

amendment seriously, or he would say "Erie." [Laughter.]

Mr. HOWARD. I merely want "Pittsburg" inserted. I withdraw the call for the yeas and nays.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to.

Mr. CUYLER. Now I move further to amend by striking out so much as relates to corporations.

Mr. DALLAS. What was the vote just now taken?

The PRESIDENT *pro tem*. "Philadelphia" was stricken out and "Pittsburg" inserted.

Mr. CUYLER. I understood the Chair to decide that there was an amendment pending and that the amendment of the gentleman from Allegheny was out of order, and therefore I understood the vote just taken to be on my amendment.

The PRESIDENT *pro tem*. Not at all. "Pittsburg" has been inserted.

Mr. ELLIS. I move to reconsider the vote on the amendment inserting Pittsburg. I voted with the majority.

Mr. BROOMALL. I second the motion. I voted in the majority.

The PRESIDENT *pro tem*. The question is on the motion to reconsider.

The motion was not agreed to, there being on a division, yeas thirty-four, noes thirty-six.

Mr. CUYLER. Mr. President: I wish I could have leave from the House to withdraw the amendment. ["No."] I offered the amendment in sober gravity.

The PRESIDENT *pro tem*. The delegate can move to postpone the section, I suppose.

Mr. CUYLER. Well, let the vote be taken.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia as amended.

Mr. BOYD and others called for the yeas and nays.

Mr. ARMSTRONG. I trust now that the gentleman who has offered this amendment, who did it in good faith and with the expectation that he would advance the interests of Philadelphia, will be allowed to withdraw it. It is against the sense of this Convention as clearly established, and why should we refuse him the courtesy of withdrawing it when he asks to do so? I think it is a discourtesy

which we ought not to perpetrate. I hope he will be allowed to withdraw his amendment—

Mr. TURRELL. I call the gentleman from Lycoming to order.

The PRESIDENT *pro tem*. The proposition cannot be withdrawn now after a vote has been had upon it.

Mr. DALLAS. Unanimous consent can allow it to be done.

Mr. HARRY WHITE. I move that unanimous consent be given to withdraw the proposition.

The PRESIDENT *pro tem*. Does any delegate object?

Mr. LILLY. I object.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Philadelphia (Mr. Cuyler) as amended.

The amendment was rejected.

Mr. SHARPE. I offer the following as a new section:

"The office of associate judge not learned in the law is abolished; but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

Mr. President, I offer this section simply for the purpose of having a fair and square vote whether this office is to be continued longer or not. I call for the yeas and nays.

Mr. BOYD. I second the call.

Mr. COCHRAN. I do not want to detain the Convention on a distinct proposition of this kind, but I want simply to say that I cannot vote for it as it stands under the circumstances in which we are placed. I believe it would be impossible for us to get along without these associate judges in some of the counties of the State; and that being the case, to abolish them utterly and entirely will deprive several of the counties of the State of that assistance which they need. I was very anxious that this office should be abolished myself, for I do not think it is generally very useful; but there are circumstances in which the services of an associate judge do become necessary and are required, and as we are now situated I cannot vote for an unconditional abolition of the office.

The yeas and nays having been required by Mr. Sharpe and Mr. Gibson, were taken and were as follow, viz:

Y E A S.

Messrs. Alricks, Baer, Baker, Barclay, Boyd, Clark, Corbett, Corson, Darlington,

De France, Edwards, Ellis, Finney, Gilpin, Hanna, M'Murray, Palmer, H. W., Patton, Reynolds, Sharpe, Simpson, Van Reed, and Worrell—23.

N A Y S.

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Beebe, Biddle, Bigler, Black, Charles A., Black, J. S., Brodhead, Broomall, Buckalew, Bullitt, Carter, Cochran, Cronmiller, Curry, Curtin, Davis, Elliott, Ewing, Fell, Fulton, Funck, Gibson, Guthrie, Hall, Hay, Horton, Kaine, Lamberton, Landis, Lawrence, Lear, Lilly, Littleton, M'Culloch, Mann, Mantor, Metzger, Palmer, G. W., Parsons, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Ross, Smith, H. G., Smith, Henry W., Stewart, Temple, Turrell, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N., White, Harry, White, J. W. F. and Wright—63.

So the amendment was rejected.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baily, (Perry,) Bannan, Bardsley, Bartholomew, Bowman, Brown, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Dunning, Green, Harvey, Hazzard, Hemphill, Heverin, Howard, Hunsicker, Knight, Long, MacConnell, MacVeagh, M'Camant, M'Clean, Minor, Mitchell, Mott, Newlin, Niles, Porter, Pughe, Runk, Russell, Smith, William H., Stanton, Struthers, Woodward and Meredith, *President*—47.

Mr. BRODHEAD. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. TEMPLE. I second the motion.

Mr. BROOMALL. I ask the gentleman from Northampton to withdraw that motion, while I make a privileged motion.

Mr. BRODHEAD. I withdraw the motion for that purpose.

Mr. BROOMALL. I move to reconsider the vote by which section twenty-four was defeated.

The PRESIDENT *pro tem*. How did the gentleman from Delaware vote?

Mr. BROOMALL. I voted with the majority.

The PRESIDENT *pro tem*. Is the motion seconded?

Mr. VAN REED. I second the motion.

The PRESIDENT *pro tem*. Did the gentleman from Berks vote in the majority?

Mr. VAN REED. I did.

Mr. LILLY. Upon that motion I call for the yeas and nays.

Mr. ARMSTRONG. This is a debatable motion, since the question to which it applies is debatable.

MANY DELEGATES. Oh, no!

Mr. ARMSTRONG. If there is any doubt about it, I will produce the authority, but I suppose after spending two or three days upon this question—

Mr. DARLINGTON. Is this question debatable, Mr. President?

The PRESIDENT *pro tem*. The Chair does not think it is.

Mr. DARLINGTON. It has been decided by the President of this Convention that a motion to reconsider cannot be debated.

The PRESIDENT *pro tem*. The Chair does not think the motion can be debated, but if the gentleman from Lycoming has any authority upon the subject, the Chair will be glad to hear it.

Mr. HARRY WHITE. I do not desire to interpose any objection to the gentleman from Lycoming reading any good authority on parliamentary law which bears upon this subject; but I submit as a question of order that this Convention should follow the rule as established by the permanent President of the Convention.

The PRESIDENT *pro tem*. Our own rules are certainly our guide, and in them it is laid down that a motion to reconsider is not a debatable question. It may be, however, that a good authority upon this subject will take a different position, and if the gentleman from Lycoming has any such authority, the Chair will be glad to hear it read.

Mr. ARMSTRONG. I do not so understand it. This is a privileged motion.

Mr. STEWART. Read the rule.

Mr. ARMSTRONG. I cannot find any such rule, and if the Clerk can refer the Convention to any rule on the subject I shall be glad to hear it. This is undoubtedly a privileged motion, and as it brings up the merits of the whole question, if the original question was debatable, then the motion to reconsider is debatable. I cite as authority upon that point Barclay's Manual:

"A motion to reconsider is not debatable, if the question proposed to be reconsidered was itself not debatable."

So authorities run along holding to that doctrine; but I do not think it necessary to quote them. We have already spent

two or three days upon this question, and to reconsider will only be to open the question again for a long and tedious debate upon a matter which this House well understands already.

The PRESIDENT *pro tem*. The Chair will decide that the question is not debatable. The question is upon the motion to reconsider the vote by which the twenty-fourth section was rejected.

Mr. H. W. PALMER. I call for the yeas and nays.

Mr. SHARPE. I second the call.

The yeas and nays were as follow, viz :

YEAS.

Messrs. Achenbach, Baer, Baker, Beebe, Biddle, Brodhead, Broomall, Clark, Corbett, Corson, Darlington, Davis, De France, Elliott, Fell, Gibson, Hanna, Hay, Horton, Howard, Kaine, Knight, Lamberton, MacConnell, Mann, Mantor, Parsons, Patterson, T. H. B., Purviance, John N., Purviance, Samuel A., Simpson, Smith, H. G., Temple, Turrell, Van Reed, Walker, White, Harry, White, J. W. F. and Wright—39.

NAYS.

Messrs. Atricks, Armstrong, Bailey, (Huntingdon,) Barclay, Bigler, Black, Charles A., Black, J. S., Boyd, Buckalew, Carter, Cochran, Cronmiller, Curry, Curtin, Edwards, Ellis, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Landis, Lawrence, Lear, Lilly, Littleton, M'Murray, Metzger, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Purman, Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, Henry W., Smith, Wm. H., Stewart, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N. and Worrell—48.

So the motion to reconsider was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailly, (Perry,) Bannan, Bardsley, Bartholomew, Bowman, Brown, Bullitt, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Dunning, Finney, Green, Harvey, Hazard, Hemphill, Heverin, Hunsicker, Long, MacVeagh, M'Camant, M'Clean, M'Culloch, Minor, Mitchell, Mott, Newlin, Niles, Porter, Pughe, Runk, Russell, Stanton, Struthers, Woodward and Meredith, *President*—46.

SEVERAL DELEGATES addressed the Chair.

Mr. BRODHEAD. I now renew my motion to refer the article to the Committee on Revision and Adjustment.

The PRESIDENT *pro tem.* The gentleman from Luzerne (Mr. H. W. Palmer) is recognized as having the floor.

Mr. BRODHEAD. I only withdrew my motion to accommodate the gentleman from Delaware.

The PRESIDENT *pro tem.* The Chair has recognized the gentleman from Luzerne.

Mr. H. W. PALMER. I offer the following amendment, to come in at this place as a new section;

"In counties where associate judges shall be authorized by law, such judges shall be chosen in the year 1877, and every fifth year thereafter, in the same manner as inspectors of elections under this Constitution. Any casual vacancy in the said office shall be filled by the Governor by the appointment for the unexpired term of an elector of the proper county who shall have voted for the officer whose place is to be filled."

I do not suppose that anything short of an earthquake or a thunderbolt could arrest the attention of this Convention now. You have decided to retain the associate judges. Now, let us reduce the nuisance to the lowest possible minimum by applying the same principle in their election that has been adopted for commissioners and county auditors. It is provided by this section which I have offered that after the year 1877—thus providing for the expiration of all the terms of the associate judges now in office—the associate judges shall be elected as inspectors of election are to be chosen under this Constitution. That is to say, every citizen is to have the privilege of voting for one of these officers, thus securing a representation of two political parties on the bench and transforming the associate judges from mere partisans, possibly to something better. The section further provides that in case of a casual vacancy occasioned by death, resignation or otherwise, the vacancy shall be filled by the appointment by the Governor, the appointee to be taken from the same party as the officer whose term is vacant. The principle of this amendment has been sufficiently discussed. It is doubtless thoroughly understood, and I trust that the Convention will adopt and apply it to the election of associate judges.

The PRESIDENT *pro tem.* The question is upon the amendment.

The amendment was rejected.

Mr. BRODHEAD. I now again move that the article be referred to the Committee on Revision and Adjustment.

The PRESIDENT *pro tem.* The Chair does not think it to be in his power to entertain a motion of that kind which might prevent gentlemen from proposing new sections. Several gentlemen are on the floor apparently with sections to offer.

Mr. ANDREW REED. I move a reconsideration of the vote by which the twenty-third section was adopted.

The PRESIDENT *pro tem.* How did the gentleman vote?

Mr. ANDREW REED. I voted in the affirmative.

The PRESIDENT *pro tem.* Is the motion to reconsider seconded?

Mr. STEWART. I second the motion.

The PRESIDENT *pro tem.* Did the gentleman from Franklin vote in the affirmative?

Mr. STEWART. He did.

The motion to reconsider was rejected.

Mr. HALL. I offer the following amendment, to come in as a new section:

"SECTION.—The parties, by agreement filed, may in any civil case dispense with the trial by jury and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same. The evidence taken and the law as declared shall be filed on record, with right of appeal from the final judgment as in other cases and with like effect as appeals in equity."

Mr. BOYD. On that I call for the yeas and nays.

Mr. BROOMALL. I second the call.

Mr. BUCKALEW. I would like to make one inquiry. This is exactly the principle of the existing referee law in this State, which has been applied in many counties. The parties may select as a referee the judge of an adjoining district as they often do, and he hears the case, and a writ of error goes direct from him to the Supreme Court.

Mr. HALL. You cannot compel the judge to hear the case.

Mr. BUCKALEW. The gentleman says you cannot compel him to hear it, but the principle is the same. By consent of both parties the judge, a man learned in the law, shall hear the law and the facts, and a writ of error shall go to the Supreme Court. What possible objection is there to this, if both parties agree and file their agreement in writing, and thus permit a summary trial of the question before a

judge, saving an enormous consumption of the public time and the expense of a lawsuit which may be more or less protracted? I cannot see any objection to it and I cannot comprehend why any man in or out of the Convention should object to it.

Mr. PURMAN. I differ with my distinguished friend, the gentleman from Columbia, (Mr. Buckalew,) for I do see some reasons why persons in the Convention and out of the Convention should object to this proposition. It compels judges to find the facts. It is a responsibility which has heretofore never been placed on the judicial office. The discrimination between the powers of the judge and the powers of the jury has been well defined and well preserved. The jury comes from the country at large, and nobody knows who they are until their names are called. They vanish again and no man knows who they were. The judge must make his daily round among the people. He must ascertain the facts and determine upon them. He must in his official capacity meet all these parties, and this places the judge in such relations to the suitors that he ought not to be called upon to perform such duties. There are many other considerations that I might adduce against this proposition, but I believe that it is unnecessary to take up the time of this Convention with them. I trust that the section will be voted down.

Mr. BROOMALL. I trust that the Convention will adopt this section. I see no reason why, if the parties in the case should agree, a judge may not find the facts, saving the delay and the expense and the uncertainty in many cases of a jury trial. If the parties are willing, nobody else ought to object. The only trouble is now that although the court may find the facts at the request of the parties, the case cannot go up on that finding. This is a provision making it legal for the judge to find the facts and also making it his duty to find the facts, where the parties unite to ask it to be done. I cannot see any reason in the world why the people should not have this privilege. It would be a great saving of expense and time.

Mr. H. W. PALMER. I think that I can suggest a reason why this section ought not to be passed. The Convention seems desirous to load down the judges of this Commonwealth and to transform them from officers of judicial dignity to mere arbitrators and auditors. Now, in addi-

tion to what we have done, put the duty of finding facts on the judge, and how long will it be before one-half of the citizens of a county will hate and despise their judge, because in the performance of his duty he must believe one and disbelieve another. In the performance of the duty of finding facts he will decide for one man and against another, and in this way enmity will grow up between the people and their judges, and hatred will be engendered, and the judges, instead of enjoying the confidence and respect of the community, will be hated and despised. That, I think, is a good reason why this section should not pass.

Mr. BEEBE. I just wish to say that this is one of the much needed reforms which our section of the country elected delegates to hold a Convention for the purpose of accomplishing. This subject has been well considered, and in the minds of our community it is looked upon as a desired and absolutely needed reform, as much so as any before us.

Mr. DARLINGTON. If there has been any question which has been well discussed, thoroughly considered, and finally settled by this Convention, this is that very one. It has been over and over again rejected by this Convention, and there has been no new light thrown upon the subject now. I do not know what has been done with gentlemen in the way of changing their minds, but this is the same project so often defeated, and in its bold and naked form is intended to compel a judge to decide the facts of any case instead of the jury; to compel the judge to take the trouble of deciding the facts, reducing the testimony to writing and give his decision. Then the Supreme Court are to decide upon that as upon an appeal in a case in equity. It requires them again to go over all the facts of the case, unless, indeed, they should say that the finding of the court below is conclusive as to facts. But the great objection is that you are throwing upon a law judge the decision of facts, for which he is not particularly qualified and for which an unlearned man is better qualified.

Mr. W. H. SMITH. I appeal to the gentleman who calls for the yeas and nays on this question to withdraw that call. I do it in the interest of progress in this business. We can certainly settle this question without an appeal to the time-consuming process of the yeas and nays. I hope the call will be withdrawn, and that we shall settle this question.

The *PRESIDENT pro tem.* The yeas and nays have been ordered, and the Clerk will call the names of delegates.

The question was taken by yeas and nays with the following result:

YEAS.

Messrs. Achenbach, Armstrong, Baer, Barclay, Beebe, Boyd, Brodhead, Broomall, Buckalew, Bullitt, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Davis, De France, Dunning, Edwards, Fell, Finney, Fulton, Gilpin, Guthrie, Hall, Howard, Landis, Lear, Lilly, MacConnell, M'Clellan, M'Culloch, Mantor, Patterson, D. W., Patterson, T. H. B., Patton, Reynolds, Ross, Simpson, Smith, Wm. H., Turrell, White, J. W. F. and Wright—45.

NAYS.

Messrs. Alricks, Bailey, (Huntingdon,) Baker, Biddle, Black, J. S., Brown, Clark, Darlington, Elliott, Ellis, Ewing, Funck, Gibson, Hanna, Hay, Horton, Kaine, Lamberton, Lawrence, M'Murray, Mann, Metzger, Palmer, G. W., Palmer, H. W., Parsons, Purman, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Sharpe, Smith, Henry W., Stewart, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, Harry and Worrell—41.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baily, (Perry,) Bannan, Bardsley, Bartholomew, Bigler, Black, Charles A., Bowman, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Newlin, Niles, Porter, Pughe, Purviance, Sam'l A., Runk, Russell, Smith, H. G., Stanton, Struthers, Temple, Woodward and Meredith, *President*—47.

Mr. FUNCK. I offer the following as a new section:

"SECTION —. The Legislature shall have authority to abolish the office of associate judge after the term of office of the present incumbents shall have expired."

I voted, Mr. President, in favor of retaining the office of associate judge, because I conceived that officer indispensable in counties in which no president judge resides. For instance, in judicial districts composed of more than one county,

the members of the bar are unable to get along without the advantage of an associate judge in a county where the president judge does not reside. In the counties where they have a president judge, I apprehend an associate judge is unnecessary; he can perform no useful office. I have submitted this amendment for the purpose of giving the Legislature authority to abolish that office in all the counties where they have a president judge, and if hereafter each county should have a law judge, the office of associate judge might be entirely abolished. Without a constitutional permission of this character, the Legislature, as the Constitution now reads, would have no authority to abolish the office.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Lebanon.

The amendment was agreed to; there being on a division yeas thirty-six, noes thirty-two.

Mr. COCHRAN. I move to reconsider the vote by which the twenty-first section of this article was adopted, for the purpose of amending the last clause in the report according to a suggestion which I made this morning.

The *PRESIDENT pro tem.* It is moved to reconsider the vote by which the twenty-first section was adopted. Who seconds the motion?

Mr. BAER. I second the motion.

The *PRESIDENT pro tem.* Did the gentleman vote with the majority?

Mr. BAER. I did.

Mr. ARMSTRONG. Will the gentleman from York indicate the purpose for which he moves a reconsideration?

Mr. COCHRAN. I will do so. I want to make the last clause of that section read as follows:

"All accounts filed in the register's office and orphans' court in those counties in which separate orphans' courts shall be established shall be audited by the court without expense to the parties."

The object is to remove the burden of auditing accounts from those counties in which there are no separate orphans' courts, and where there are separate orphans' courts then the accounts to be audited by the courts without expense.

The *PRESIDENT pro tem.* The question is on the motion to reconsider.

Mr. CORBETT. I call for the yeas and nays.

Mr. COCHRAN. I second the call.

The question was taken by yeas and nays with the following result:

Y E A S .

Messrs. Baer, Bailey, (Huntingdon,) Baker, Brown, Buckalew, Carter, Clark, Cochran, Corson, Cronmiller, Curry, Darlington, Davis, Dunning, Ellis, Ewing, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hall, Hanna, Howard, Kaine, Lamberton, Landis, Lawrence, M'Clean, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Purman, Read, John R., Reed, Andrew, Ross, Smith, H. G., White, Harry, White, J. W. F. and Wright—44.

N A Y S .

Messrs. Achenbach, Alricks, Armstrong, Barclay, Beebe, Biddle, Black, J. S., Boyd, Brodhead, Broomall, Bullitt, Corbett, Curtin, De France, Edwards, Elliott, Hay, Horton, Lear, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Metzger, Parsons, Patterson, T. H. B., Purviance, John N., Rooke, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stewart, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, David N. and Worrell—42.

So the motion to reconsider was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baily, (Perry,) Bannan, Bardsley, Bartholomew, Bigler, Black, Charles A., Bowman, Calvin, Campbell, Carey, Cassidy, Church, Collins, Craig, Cuyler, Dallas, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Newlin, Niles, Porter, Purviance, Samuel A., Reynolds, Runk, Russell, Stanton, Struthers, Temple, Van Reed, Woodward and Meredith, *President*—47.

MR. COCHRAN. I now move to amend the section by inserting after the word "court," in the seventeenth line, these words: "In those counties in which separate orphans' courts shall be established."

The idea of this amendment, as I before suggested, is simply to relieve the courts in those districts in which separate orphans' courts shall be established from the unendurable burden which would be imposed upon them of auditing all these accounts. It would be practically impossible for them to do it; and if they were required to do it, the result would be an

indefinite postponement of the settlement of decedents' estates. The amendment does not interfere at all with the regulations prescribed or desired for the city of Philadelphia. It simply affects those districts in which these separate orphans' courts shall not be established, and I think it will occur to every gentleman here that it will be impossible for the courts in those districts to discharge this duty.

MR. ARMSTRONG. It is not perhaps worth while to renew the discussion on this question. I wish simply to bring to the notice of the Convention precisely the effect of the amendment. As the section now stands, after full discussion when it was under consideration before, it was determined by the Convention that these accounts should be audited without expense in every county of the State. If I supposed that the Legislature would give no sort of relief and that the judges must personally, and each for himself, hear all the evidence and pass upon the accounts, item by item, as the auditor would do, I should consider it impracticable; but the auditing of the account essentially is the passing upon the account. The evidence might be taken in any manner designated by law, as in equity, or the whole duty might be referred to the clerks who have official connection with the courts as respects these accounts. I do not apprehend the difficulty which the gentleman from York apprehends, or I would be of his opinion. I do not think that practically the difficulties which he apprehends will necessarily grow out of this section. I believe the section to be one of great value, even as modified by the amendment which he proposes, but I believe it is of greater value as it stands. If in any district a judge is over-worked, the remedy is easy by an application to the Legislature, which would not be refused I apprehend, to have a separate orphans' court constituted where undue burden exists. Besides, it preserves the uniformity of the system throughout the State, which has been one of the chief purposes, certainly a prominent purpose, of the Convention to accomplish in our judicial system. I will forbear from any further comment.

MR. CORBETT. I hope this amendment will not prevail. If it be adopted, in populous districts decedents' estates will be audited without any expense to the State, while in the country districts the estates

will have to pay the fees of auditors; and let me say those fees are becoming onerous. They have not grown to such enormous amounts as we are told they have in this city; but they are approximating fast towards it, and they are becoming oppressive. I hope this Convention will not adopt a rule in this matter with reference to one part of the State and a different rule as to the other. The judicial force can be increased and this expense can be saved.

MR. BUCKALEW. A remark which has been made in favor of the amendment proposed by the gentleman from York is not satisfactory to me. If we are to adopt this section in its present form in order to force the Legislature to establish these orphans' courts in most of the counties, then indeed we have an argument against its adoption.

MR. CORBETT. I rise to an explanation. I did not say that the courts could be increased, but that the judicial force can be increased, and not by any orphans' court.

MR. BUCKALEW. I was not referring to anything the gentleman from Clarion had said.

Now, Mr. President, with regard to Philadelphia and Allegheny, we have made this arrangement: That the expense of auditing estates shall not be borne by the parties in each case, but shall be borne by the public. We provide that the judge shall receive a salary, to be paid him, instead of fees being paid by the parties to the proceeding. Now, in the interior if there is any abuse in this matter of auditing accounts (of which I know nothing in my section) the Legislature can extend this principle which we have applied where abuses do exist, in Philadelphia and Allegheny, and make it co-extensive with the entire Commonwealth if they choose; but at present it seems to me very improvident to establish this as a uniform rule throughout the State.

This provision is that the judge himself shall audit the accounts. I do not know what meaning will be attached to that; but an auditor, as we understand an auditor at present, is a person appointed by the court who hears all the testimony, who is to pass upon the credibility of the witnesses produced before him, who is to decide all the questions of law and all the intricate questions of fact involved, and who makes his report to the court. Now, when you say that the court shall audit an account I understand that you charge

upon the judge himself that whole duty. The gentleman from Lycoming contemplates something very different under legislation at Harrisburg. It is that the Legislature shall relieve the judge from the pressure of this broad duty, that it shall provide that he may appoint examiners who shall hear testimony and who shall make report to him of the evidence taken, and then that he shall simply review that evidence, and probably hear the parties by argument, to make up his judgment. Without this provision the Legislature can do all that, and doubtless, if there be any necessity for it, on application they will do it. They will provide for the interior that these auditors, instead of passing judgment on questions of law and fact involved in hearings before them shall be simply examiners, and the court shall pass final judgment. As there is no necessity for the provision, therefore, I am in favor of leaving it where the gentleman from Lycoming proposes to go at all events; that is, with the Legislature; and I am impressed with the suggestion which he makes that if this section is retained it will compel the Legislature to extend these orphans' courts and thus to increase the number of judges in the State.

Now, sir, I am getting tired of creating new judges, two in the Supreme Court, two in the common pleas of Philadelphia, and additional orphans' court judges in Philadelphia, Pittsburg and Luzerne, and nearly one half of the Convention want us to add from fifteen to twenty more *visi prius* judges, all these to be quartered upon the treasury at from \$4,500 to \$7,000 a year. I think we had better not set traps for the Legislature to compel them to further increase our judicial force hereafter.

MR. EWING. I am in favor of the amendment proposed by the delegate from York. I think, in a large portion of the counties, it would be well to leave this matter to the Legislature, who can make provision to remedy any evils or defects that may arise in those counties that have not separate orphans' courts. I will not repeat what has been so well said by some of the gentlemen favoring this amendment as to the impropriety of burdening the courts; but I imagine, in those counties especially where you have not a law judge located in the county, and where a district is composed of two, three, four or five counties, he cannot be present at the times and as often as will

be convenient to the parties in attending to an audit before the court. That audit, as I understand it, and as I suppose it is generally understood by the profession, means the taking of testimony, the entire investigation of the account.

Another thing: Unfortunately or fortunately, I do not know which, but a small proportion of lawyers, and I do not know that any larger proportion of judges, are competent accountants. Not one lawyer in ten is competent to take up and unravel a complicated and troublesome account, and probably some of the best lawyers are among the poorest accountants; and I know that a very considerable number of excellent, competent judges are totally unfitted to unravel a complicated orphans' court account. Now, in the counties where we are to have separate orphans' courts I imagine that judges will be selected with special reference to their legal ability, and also to their ability as accountants, and they will be much more competent to audit and pass upon these accounts than the judges who are selected for the common pleas without any reference to their qualifications as accountants. I shall vote for the amendment.

MR. BEEBE. Mr. President: I see no reason why the State should pay for the orphans' court and the orphans' audits in cities, and why in the country the estates, which are generally poor, should have to bear all the burden of the expense. Again, this abuse is not confined to cities alone, but it is becoming an evil all over the land; and that was the reason why this Convention voted largely for the section as it is. Now, why they should reverse this action I cannot conceive. I trust that the amendment will be voted down and the section retained.

MR. HANNA. Mr. President: Just as I anticipated when this special constitution manufacturing was entered into by the Convention, they would before they were through see many practical difficulties in the way of its being a successful machine so as to work satisfactorily to all parts of the Commonwealth.

I opposed this section because it was legislating for the city of Philadelphia and two other sections of the State, and not a general provision applicable to the whole Commonwealth. I am opposed to it upon principle. We have heard very much in considering this report of the duty of maintaining the uniformity of our judicial system, and for that reason I am op-

posed to the amendment of the gentleman from York. He sees the difficulty of imposing this burden of clerkships—for it is nothing but clerical duty—on the judges of his district. He sees the difficulty now of making the president judge of his district a mere clerk to audit administrators', executors' and guardians' accounts, and I see the difficulty here. I see why it should not apply to the city of Philadelphia with equally good reason, and for one I cannot consent that the judges of a constitutional court should be reduced to mere clerks.

The gentleman from Columbia (Mr. Buckalew) has spoken against increasing the number of judges, and I wish to correct what I think is a misapprehension on his part when he says that this section will do, because the municipalities will pay the salaries of the separate orphans' court judges. That is a mistake.

MR. BUCKALEW. No, sir, I did not say so.

MR. HANNA. I understood the gentleman to say that the municipality would pay the expenses of these courts, pay the salaries of the judges, and I differ with him because they will be State judges paid by the Commonwealth.

MR. BUCKALEW. Of course they will be paid by the State unless a law is passed imposing that duty on the city.

MR. HANNA. I do not see how that could be done. They will be just as much judges of the Commonwealth and State officials as the judges of the court of common pleas, and we have provided in this very article that the judges of the courts shall be paid by the Commonwealth and receive no salary, perquisite or anything of the kind from any other source. Therefore they must all be paid by the Commonwealth, and now if you establish a separate orphans' court for the city of Philadelphia, ten competent judges will be required.

MR. CORBETT. It says that they shall be paid by the State.

MR. HANNA. It does; but I have just said now that the orphans' court in the city of Philadelphia certainly cannot be managed without at least ten judges, in order to do all the auditing of the hundreds, I might almost say a thousand, of accounts annually filed in the register of wills' office. Just look at that, Mr. President. Those judges will be paid at least five thousand dollars per annum, and ten judges would add an additional sum to the cost of the judiciary of at least fifty

thousand dollars per annum. I think it is all wrong. The Commonwealth should not pay for the settlement of decedents' estates. We provide here that they shall be settled without any cost to the parties. I say it is all wrong. The parties ought to pay for it. Why should the Commonwealth at large be at the expense of settling a guardian's account, an executor's account, an administrator's account? I can see no reason whatever for it, but the parties themselves should be at the expense of it, and properly and naturally so.

But, sir, the evil of excessive costs and charges can be corrected. I have no fear whatever on that score. We have our acts of Assembly legislating upon the subject, and the courts do adhere to it whenever their attention is brought to it; and that is the proper plan. They are the proper persons to correct abuses. But here we are now providing for a separate judiciary, expensive to the State, and relieving the proper persons that ought to pay for the expense of settling the estates in which they are interested. I cannot vote for this amendment, because, as I said before, it is destroying the uniformity we have heard so much about; and then, finally, I shall vote against the whole section.

Mr. BAER. I hope the amendment of the gentleman from York will prevail. As much as I was in favor of the clause proposed to be stricken out, originally, I am opposed to retaining it now, because the necessity for it ceased the moment we voted down section twenty-four; and I ask the lawyers of the interior, living in counties where no president judge resides, what would be the effect of this provision, and whether they are willing to change the practice as it now prevails and adopt this; whether this will not necessitate the fixing of a week for the special hearing of auditors' reports at which the same rigid rules will be enforced as are enforced on the trial of cases in the common pleas? A party will go there to have his account audited, and the court will expect him to have all his witnesses there and finish at the first hearing. The purpose of an auditing is that parties shall have ample time and opportunity of being heard and the auditor full time for hearing and eliciting all the facts, and if it becomes necessary it may be adjourned from day to day, that all the facts may be ascertained; but the moment you fix in the Constitution the pro-

vision that we have now there the judge will be so burdened with labors when he comes from another county that he will be compelled to ask you to go through your hearing at once, as though you were in a court trying a cause, and the effect will be that cases will not be tried half so well nor results attained half so well as they are by the system that now prevails. That it should apply to cities and to counties where they have separate orphans' courts, I agree, and will vote for so much; but I will vote to strike out all that the gentleman from York proposes to strike out and insert what he proposes to insert, in order that the interior may not be afflicted as it would be by that provision.

If section twenty-four is restored I shall then again approve of the clause proposed to be stricken out.

Mr. BRODHEAD. Mr. President: I move that the hour of adjournment be extended half an hour for the purpose of finishing this article. ["No!" "No!"] If we do not finish this article this afternoon we shall waste the whole day tomorrow on it.

Mr. HARRY WHITE. Do I understand that the delegate from Somerset has concluded?

The PRESIDENT *pro tem*. The Chair so understood.

Mr. BROOMALL. I supposed I had the floor, if the motion of the gentleman from Northampton was not in order.

The PRESIDENT *pro tem*. The gentleman from Delaware has the floor.

Mr. BROOMALL. I shall not occupy two minutes. I only desire to say that the section as it stands makes the Commonwealth bear the expense of the auditing of accounts in all the counties of the State. The amendment proposes to make exceptions of certain small counties, among which mine happens to be numbered. Now, I am not willing that my constituents shall bear the expense of auditing their own accounts and shall help bear the expense of auditing the accounts in Philadelphia and Pittsburg also by paying their State taxes.

Mr. HARRY WHITE. ["Question!" "Question!"] I have not been heard on this section, and as it is a matter of the greatest moment possibly to the district in which I reside—and I know it is a matter of the greatest moment to the people at large—I desire to say a word.

I understand the precise question to be on the amendment offered by the honorable delegate from York (Mr. Cochran.)

May I inquire from the Chair the exact technical shape of the question before the Convention?

The PRESIDENT *pro tem.* The shape of the question is to insert after the word "court" the words, "in those counties in which a separate orphans' court shall be established."

Mr. HARRY WHITE. Mr. President: I sympathize entirely with the purpose of the amendment offered by the honorable delegate from York; and in corroboration of that, I would observe that I voted against this section entirely when it was before the Convention on a prior occasion. I voted against it because I was opposed to the principle of allowing the Legislature to impose upon the several counties of this Commonwealth, irrespective of population, a separate orphans' court when it is a matter known to every delegate here that the most important practice before the judges holding our courts of common pleas sitting as orphans' courts are questions arising in the distribution of the estates of decedents. Therefore I was opposed to the principle of the section itself.

I am not, however, here as a dog in the manger, unwilling to afford relief when delegates representing other counties and parts of this Commonwealth come here and say that they must have relief in a

particular direction. I am not willing to say that delegates representing the great city of Philadelphia, the great city of Pittsburg, the large and important county of Luzerne and the important counties of Lancaster and Schuylkill and Berks shall not be allowed the privilege of having a separate orphans' court if the business of those localities actually requires it, if the business of the locality actually interferes with the practice of the common pleas so greatly that it is impossible to transact the business there. But for the smaller counties, comprising a population of forty thousand, fifty thousand, sixty thousand, or seventy-five thousand inhabitants, I do pretend to be of opinion and insist that there shall be no gerrymandering, and no bartering should be allowed to obtain in the Legislature by which an act of Assembly is passed imposing a special orphans' court in those counties; and that is one of the reasons why I am in favor of the proposition offered by the honorable delegate from York, which deprives the Legislature of the power of imposing upon the judges of the court of common pleas or upon separate officials the duty—

The PRESIDENT *pro tem.* The hour of six having arrived, the Convention stands adjourned until to-morrow morning at nine o'clock.

ONE HUNDRED AND THIRTY-SEVENTH DAY.

THURSDAY, July 10, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tempore*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday's proceedings was read and approved.

RECONSIDERATION.

Mr. ARMSTRONG. I rise to a question of privilege. I move to reconsider the vote by which the action was taken yesterday on the proposition submitted by Mr. Cuyler. I voted with the majority.

Mr. HARRY WHITE. I hope that will not be done until we get to the judiciary article.

The PRESIDENT *pro tem*. The Chair will suggest to the delegate to withhold his motion until the article is taken up and before the Convention.

Mr. ARMSTRONG. Very well.

LEAVE OF ABSENCE.

Mr. HOWARD asked and obtained leave of absence for a few days for Mr. Beebe, on account of ill health.

INVITATION TO GETTYSBURG.

Mr. CURTIN. Mr. President: I received the following telegram yesterday, which I desire to lay before the Convention, addressed to myself and the distinguished delegate from York (Mr. J. S. Black.)

"Gettysburg offers a suitable hall, desks and chairs, and as good hotel accommodations as in Philadelphia, and our railroad offers free travel. So please come.

"E. HARMAN."

This is in addition to the invitation of the authorities of Gettysburg.

Mr. STANTON. I move that the thanks of the Convention be extended for the invitation.

Mr. TEMPLE. I move that the thanks of the Convention be returned to the person who sent that telegram, and that it be laid on the table.

Mr. COCHRAN. I hope there will be no further notice taken of that communication, for the simple reason that, as I understand it, it proceeds only from an individual. It comes here simply in the form

of a telegraphic dispatch, and I do not see how the Convention can properly take notice of that party. It seems to me that there ought to be no further action taken on the subject.

The PRESIDENT *pro tem*. It is moved that the thanks of the Convention be tendered to the sender of this telegram.

The motion was agreed to.

M'ALLISTER MEMORIAL.

Mr. HAY, from the Committee on Accounts and Expenditures, submitted the following report:

The Committee on Accounts and Expenditures of the Convention respectfully report:

That the committee has carefully examined the account of John Sartain, dated June 23, 1873, for engraving portrait and signature of Hugh N. M'Allister, \$77 50; the account of Henry Sartain, for printing five hundred copies of said portrait, \$7 50; and the account of William W. Harding, dated July 7, 1873, for printing five hundred copies of the memorial volume to Mr. M'Allister, \$225.

That the said accounts are all certified by the Committee on Printing and Binding of the Convention, which committee was authorized to have said memorial volume prepared and printed. The total cost of this volume, five hundred copies, three hundred and ten dollars, it is believed is very moderate, and even less than the memorial volume to Col. Wm. Hopkins, and its appearance, printing and binding are very creditable.

The following resolution is accordingly reported:

Resolved, That the accounts above mentioned are hereby approved, and that warrants be issued to William W. Harding for \$225, to John Sartain for \$77 50, and to Henry Sartain for \$7 50 for the payment thereof.

The resolution was ordered to a second reading, read the second time and adopted.

PAPER ACCOUNTS.

Mr. HAY. I am also directed by the same committee to submit another report.

The report was read as follows:

The Committee on Accounts and Expenditures of the Convention respectfully reports:

That it has examined the account of William W. Harding, dated June 27, 1873, for two hundred reams of paper, amounting to \$1,500.

That the contract of said Harding with the Convention required him to furnish paper in such quantities as might be ordered by the Committee on Printing and Binding of the Convention; that the paper mentioned in said account was furnished under the order of the said committee, and the bill approved by them. That the paper has been actually received by the Printer as appears by his receipt.

The following resolution is accordingly reported:

Resolved, That the above mentioned account of William W. Harding for two hundred reams of paper, amounting to \$1,500 is hereby approved, and that a warrant be drawn in his favor for the said sum in payment thereof."

The resolution was ordered to a second reading, read the second time and agreed to.

THE STATE CAPITAL.

Mr. NILES. Mr. President: In the absence of the chairman of the Committee on the Legislature, (Mr. MacVeagh,) I am directed to submit a report from that committee.

The report was read as follows:

"The Committee on the Legislature, to which was referred the resolution of the delegate from Fayette, (Mr. Kaine,) instructing said committee to consider and report upon the expediency of incorporating a provision in the Constitution locating the capital of the State permanently at Harrisburg, beg leave to report the following section, with the recommendation that it be adopted:

SECTION —. No law changing the present location of the capital of the State at Harrisburg shall be valid until the same shall have been submitted to the people at a general election and ratified and approved by them.

(Signed,) WAYNE MACVEAGH,

Chairman,

In behalf of the Committee.

The PRESIDENT *pro tem*. The report will be laid on the table and ordered to be printed.

Mr. J. PRICE WETHERILL. I give notice that a minority report will be pre-

sented by my colleague (Mr. Dallas.) He is not here this morning, or he would present it.

Mr. KAINE. I believe the President has decided that no minority reports are in order. A minority cannot report an article.

THE JUDICIAL SYSTEM.

Mr. MANN. I move that we proceed to the consideration of the article on the judiciary.

The motion was agreed to, and the Convention resumed the consideration on second reading of the article on the judiciary.

Mr. ARMSTRONG. I now renew my motion to reconsider all the votes on the proposition submitted yesterday by the gentleman from Philadelphia (Mr. Cuyler.)

The PRESIDENT *pro tem*. Only one vote can be reconsidered at a time. The last vote must first be reconsidered.

Mr. ARMSTRONG. I desire to reconsider the motion by which it was voted down, as well as the motion by which "Pittsburg" was inserted instead of "Philadelphia."

Mr. STANTON. I should like to ask the gentlemen from Lycoming if it is the additional section he asks to reconsider.

Mr. ARMSTRONG. The additional section proposed by the gentleman from Philadelphia (Mr. Cuyler.)

Mr. MANN. We refused yesterday to reconsider one of those votes.

Mr. ARMSTRONG. It is very manifest that the occurrences of yesterday were in some degree unfortunate. I cannot suppose for a moment that any member of this Convention intended anything like disrespect or want of courtesy to the gentleman from Philadelphia.

Mr. MANN. I raise the point of order that one of these votes cannot be reconsidered.

The PRESIDENT *pro tem*. The gentleman from Potter raises the question that the Convention refused yesterday to reconsider the vote by which "Pittsburg" was inserted in the stead of "Philadelphia" and that therefore that vote cannot be reconsidered this morning. The Chair believes that the gentleman from Potter is correct in his statement.

Mr. HARRY WHITE. I ask leave to make a statement at this time. I sympathize entirely with what has been said by the delegate from Lycoming with reference to this matter, and I think the shortest way to get rid of the difficulty, and accomplish the desire of all parties,

would be for the Convention to give unanimous consent for the withdrawal of this proposition and for the expunging from the Journal of all proceedings relating thereto. That can be easily done, and I hope unanimous consent will be given. I make a motion to that effect.

Mr. HOWARD. Mr. President: Is this question debatable?

The PRESIDENT *pro tem*. It is not debatable.

Mr. HOWARD. Very well, then; I hope it will not be debated.

The PRESIDENT *pro tem*. The Chair was trying to ascertain whether a motion to reconsider had not been acted upon yesterday. A motion is made that the Convention consent to a withdrawal of the proposition of Mr. Cuyler, and its expunging from the Journal. Will the Convention give unanimous consent?

Unanimous consent was given.

The PRESIDENT *pro tem*. The question is upon the amendment of the gentleman from York (Mr. Cochran) to the twenty-first section.

Mr. COCHRAN. If in order I wish to modify my amendment.

The PRESIDENT *pro tem*. You cannot now modify it.

Mr. COCHRAN. If I cannot modify it, I move to amend it by striking out all after the word "court," in the sixteenth line, to and including the word "court," in the eighteenth line, and inserting these words:

"When there is any dispute about any account filed, or about the distribution of the estate of any decedent in any separate orphans' court, such dispute shall be determined by such court without an auditor, and shall be audited without expense to parties."

This does not change the practical effect of the section in the least, nor does it interfere with the other part of the section, relating to auditing in the city of Philadelphia. This proposition says that whenever a dispute occurs about an account filed or about the distribution of the estate of any decedent in any of the separate orphans' courts, then such dispute shall be determined by the court without an auditor and without expense to the parties. That is to say, wherever there is a separate orphans' court the matter shall be determined without an auditor and without expense to the parties. Where there is no separate orphans' court the matter is not regulated by this amendment, but left to stand on the law

as it now is. It is precisely the same in effect as that I offered yesterday.

Mr. TURRELL. As I understand it, it leaves the matter just as it was left yesterday, and the same objection exists to it that it makes one rule for one part of the State and another rule for another part of the State. Where there are separate orphans' courts, the auditing will be done without expense to parties; where there are not, it will be done at the expense of parties.

Mr. TEMPLE. I should like to hear the amendment to the amendment read.

The PRESIDENT *pro tem*. It will be read.

The CLERK. It is proposed to strike out all after the word "court," in the sixteenth line, to and including the word "court," in the eighteenth line, and to insert as follows:

"Where there is any dispute about any account filed or about the distribution of the estate of any decedent in any separate orphans' court, such dispute shall be determined by such court without an auditor," and then follow the words "without expense to parties," &c.

Mr. ARMSTRONG. Mr. President: It is very difficult to know what the interpretation of the word "dispute," in that connection, would be. It is certainly a word not very familiar, and I think not often used in legal enactments. I should be a little at a loss to know what would be meant by a "dispute." If the section is to be adopted in that way there should be something to make the "dispute" more certain, by saying "in the nature of exceptions," or "when exceptions are filed." But it is worth while to consider that this whole system of auditors is apart from the ordinary exercise of judicial functions. Any matter which is to be audited is a judicial inquiry, and there is no reason why the important matters which are referred to an auditor ought not to go before the court by the same process and in the ordinary mode in which other litigations are pursued. The reference to a master is a matter of convenience, and every lawyer here knows that proceedings in the orphans' court are virtually proceedings in equity, so recognized repeatedly. If, then, a matter of audit should arise upon any estate, the orphans' court charged with the necessity of deciding that question could just as well decide it as they could decide other litigation that might arise. Nor do I see any objection to requiring the court to

pass directly upon those questions. It does not involve the necessity of the judge, in every instance, hearing all the evidence or figuring upon mere matters of account. There are clerical duties which the court can delegate to its clerks, or, in instances requiring it, refer to a master, and without at all impinging upon the principle that the audit shall be without expense to the parties, in the same sense that the trial of any other issue at law or in equity before the court is without expense to the parties.

Mr. HANNA. The gentleman says that matters arising in the distribution may be referred to masters. Now, if that is so, how shall the master be paid?

Mr. ARMSTRONG. I said that it might be referred to a master, but the master designated has official connection with the court and is designated in the section, by which the register is made *ex officio* the clerk of the court, and therefore the master to that extent, and always under the supervision and direction of the court. The section provides for it specifically and in terms and amply.

I think the whole system of auditing by which important questions, which are really of judicial consideration, have been taken by a false and injurious practice and vested in persons outside, who come into court to present their notions on the question, and which must be afterwards passed upon by the court, is of itself a blot upon our judicial system. It is to be noticed that the judicial system of Pennsylvania has been a growth, and it has grown up with its good and with its evil mingled together. This is the first time in the history of Pennsylvania that we have attempted to systematize and organize the judicial system of the State into something like harmony and symmetry, and I think we ought to persist in that attempt. We have had this system of auditing growing and growing until it is an abuse of monstrous proportions in the city, and it is growing every day in the country. Now I believe that the section is right as it stands, and that there is no evil connected with it that a little experience and a little legislation from time to time as needed, will not fully correct, at the same time that it leaves the judicial system of Pennsylvania in harmony with itself and complete. The sooner we blot out this system of independent auditing the better on all accounts.

Mr. BRODHEAD. I think the debate on this point has continued about long enough, and I therefore move the previous question. Otherwise we shall spend another day on this subject.

The PRESIDENT *pro tem*. Eighteen gentlemen must rise to sustain the call for the previous question.

Mr. BEEBE. I suggest to the gentleman to withdraw his motion, inasmuch as no one seems desirous to speak, and we are ready for a vote.

Mr. BRODHEAD. I am afraid if the previous question is not ordered we shall waste another day, mostly by the same parties, on the same subject-matter.

SEVERAL DELEGATES. Let us take a vote on the amendment.

Mr. BRODHEAD. I will withdraw the call in case a vote can be taken.

Mr. BOYD. I object to conditions.

The PRESIDENT *pro tem*. The question is on the proposed amendment of the delegate from York (Mr. Cochran) to his original amendment.

The yeas and nays were required by Mr. Cochran and Mr. Landis, and were as follow, viz:

Y E A S .

Messrs. Achenbach, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Black, Charles A., Buckalew, Carey, Carter, Cochran, Corson, Cronmiller, Curry, Curtin, Davis, De France, Ellis, Fulton, Funck, Gibson, Gilpin, Green, Hall, Horton, Lamberton, Landis, Lawrence, MacConnell, M'Clean, M'Culloch, Patterson, D. W., Patton, Purviance, John N., Reynolds, Rooke, Ross, Smith, H. G., Smith, Henry W., Wetherill, Jno. Price and White, Harry—40.

N A Y S .

Messrs. Alricks, Armstrong, Beebe, Biddle, Bigler, Boyd, Brodhead, Broomall, Brown, Bullitt, Clark, Corbett, Dallas, Darlington, Edwards, Elliott, Guthrie, Hanna, Howard, Kaine, Lear, Lilly, Long, M'Murray, Mann, Mantor, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Purman, Purviance, Sam'l A., Reed, Andrew, Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry and White, David N.—47.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bar-

tholomew, Black, J. S., Bowman, Calvin, Campbell, Cassidy, Church, Collins, Craig, Cuyler, Dodd, Dunning, Ewing, Fell, Finney, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Porter, Read, John R., Runk, Russell, Struthers, White, J. W. F., Woodward, Worrell, Wright and Meredith, *President*—48.

The *PRESIDENT pro tem.* The question recurs on the original amendment of the delegate from York (Mr. Cochran) to insert after the word "court" in the seventeenth line the words "in those counties in which separate orphans' courts shall be established."

Mr. COCHRAN. I wish to make just one remark. There were some gentlemen who voted against the amendment to the amendment under the impression that where separate orphans' courts were established and where there were no exceptions filed, there the court could refer the account to an auditor for action. That was the objection to the amendment to the amendment on the part of several gentlemen. Now, this proposition, it will be observed, is at least clear of that objection. The clause would then read:

"All accounts filed in the register's office and orphans' court, in those counties, in which separate orphans' courts shall be established, shall be audited without expense to the parties."

That would remove entirely the objection that an account to which no exceptions were filed could, in those counties, be still referred to an auditor by the court and the parties put to expense.

Mr. ARMSTRONG. My impression is that when the section was before the Convention before it was so modified in the seventeenth line, that it reads now, "all accounts to which exceptions have been filed." ["No." "No."] I think it was so modified.

Mr. DARLINGTON. I tried to get it in, but it was refused, and the section was not so modified.

The *PRESIDENT pro tem.* That modification was not made.

Mr. ARMSTRONG. Then I am in error in that, and I stand corrected. I now recall that that amendment was rejected upon the ground that it would leave it open to the courts to refer accounts to which no objections were filed. I supposed that the amendment on which we have just voted was the substitute offered by the gentleman from York (Mr. Coch-

ran) for the one just now pending. Doubtless I was in error on that subject, but it involves the same question. I suppose the Convention is ready to vote upon it as involving only the question and no more nor less than that on which we have just voted.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from York (Mr. Cochran.)

Mr. COCHRAN. I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

Mr. M'CLEAN. Does it not require ten members to second the call for the yeas and nays?

The *PRESIDENT pro tem.* It does.

Mr. CORSON. We certainly do not understand this question.

The *PRESIDENT pro tem.* It requires ten members to second the call for the yeas and nays. Ten have not risen to second the call.

Mr. CORSON. I trust that we shall leave this matter of auditors alone. It seems to me that we—

Mr. D. W. PATTERSON. I rise to a question of order. The yeas and nays have been ordered.

The *PRESIDENT pro tem.* Do ten gentlemen rise to second the call for the yeas and nays?

More than ten gentlemen rose, and the yeas and nays were taken with the following result:

YEAS.

—Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Black, Charles A., Buckalew, Carey, Carter, Cochran, Corson, Cronmiller, Curry, Davis, Ellis, Fulton, Funck, Gilpin, Green, Hall, Horton, Kaine, Lambertson, Landis, Lilly, M'Culloch, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patton, Pughe, Purviance, John N., Read, John R., Reynolds, Ross, Wetherill, Jno. Price and White, Harry—34.

NAYS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Barclay, Beebe, Biddle, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Brown, Bullitt, Campbell, Clark, Corbett, Dallas, Darlington, De France, Dunning, Edwards, Elliott, Guthrie, Hanna, Howard, Lawrence, Lear, Long, MacConnell, M'CLean, M'Murray, Mann, Mantor, Newlin, Niles, Parsons, Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Rooke, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stew-

art, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry, White, David N. and White, J. W. F.—56.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Bowman, Calvin, Cassidy, Church, Collins, Craig, Curtin, Cuyler, Dodd, Ewing, Fell, Finney, Gibson, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Porter, Runk, Russell, Smith, H. G., Struthers, Woodward, Worrell, Wright and Meredith, *President*—43.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. M'CLEAN. I desire to so amend this section as to abolish the office of register of wills by striking out, in the first line, down to and including the first four words of the second line.

The *PRESIDENT pro tem.* The words proposed to be stricken out will be read:

The CLERK read as follows:

"A register's office for the probate of wills and granting letters of administration, and."

Mr. M'CLEAN. I can see no necessity for the office of register of wills. I cannot see why all the business of that office cannot as well, and better, be transacted by the orphans' court through the clerk or clerks thereof. Why should all this circuitry, of which every gentleman in the Convention is so well aware, continue to exist? Every one knows that if the settlement of an account goes into the register's office it has to be copied and certified to the office of the orphans' court, and in that way gets into the orphans' court. I would ask gentlemen why the orphans' court cannot take charge of the estate of a decedent from the moment he is dead until the distribution of the estate among those who are entitled to it. Parties are unnecessarily burdened with costs by the existence of these two separate offices. There is no need for their existence, and I hope my proposition will receive the consideration of the Convention, and that the amendment may be adopted. The section as already adopted has abolished the register's court. This is taking one step toward the end at which I am aiming. The register's court has been found to be superfluous and useless. Why not abolish the office of register itself?

Mr. ARMSTRONG. Mr. President: I think it is necessary to retain that office. Gentlemen of the Convention will bear

in mind that there are judicial districts composed of several counties and that it is necessary there should be an office always open in those counties. It is not necessary to discuss it; the matter was discussed before.

Mr. M'CLEAN. I ask the gentleman if there is not a clerk of the orphans' court in every county, and if he might not as well transact the business as the register?

Mr. ARMSTRONG. That would be a distinction without a difference, I think.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Adams (Mr. M'CLean.)

The amendment was rejected.

Mr. HANNA. I move to amend the section in the fifth and sixth lines by striking out the words, "wherein the population shall exceed 150,000 shall, and in any other city or county," so as to read:

"In every city and county the Legislature may establish," &c.

Mr. TEMPLE. That has been voted down.

Mr. ARMSTRONG. That amendment is not now in order.

Mr. SIMPSON. I rise to a point of order. That very amendment has been voted down in the Convention.

The *PRESIDENT pro tem.* The amendment was proposed heretofore and voted down in Convention, and it is therefore not in order now.

Mr. J. M. BAILEY. Mr. President: If the chairman of the Judiciary Committee desires to preserve the entire symmetry of the system, I would suggest to him whether it would not be well to make some provision for the auditing of accounts filed in the court of common pleas. They are just as liable to pass upon the auditing system as those filed in the orphans' court; and if he wants to make this system entirely complete he should make some provision for them. I have no amendment to offer, but I merely suggest it to him.

Mr. ARMSTRONG. I suppose it would be difficult to distinguish as a matter of mere principle in any way that would exclude the accounts suggested; and yet I think it is not judicious to introduce such an amendment in this place and at this time. It pertains to the duties of the common pleas court; and if the system works well under this section, as we believe it will, the Legislature can add that duty at their discretion.

Mr. SIMPSON. An objection to the suggestion of my friend from Huntingdon is this: That in the courts of common pleas there are generally creditors alone interested, who are always vigilant in looking after their interests, while in the orphans' courts it is dead men's estates that are to be settled in which widows and orphans are interested, who are not always able to look after their interests.

Mr. CORSON. Is it in order now to move an amendment to this section?

The PRESIDENT *pro tem.* It is.

Mr. CORSON. I move to strike out all after the word "court," in the sixteenth line.

Mr. MANN. That motion was made yesterday and voted down.

Mr. CORSON. That is the reason I make it to-day. [Laughter.]

The PRESIDENT *pro tem.* The amendment is not in order, having been offered hitherto and voted down.

Mr. CORSON. I would like to know what is the exact amendment before the Convention.

The PRESIDENT *pro tem.* There is no amendment.

Mr. CORSON. Is the question upon the section?

The PRESIDENT *pro tem.* The question is upon the section.

Mr. CORSON. I wish to say just two words. I do trust that this Convention will have the good sense either to adopt some such provision as was proposed this morning by the gentleman from York, or to vote down this section, because we are treading upon very dangerous ground. We cannot undertake to regulate estates by a constitutional provision, and the poor people of the State by this section will be compelled to pay for the auditing of rich men's estates. We cannot afford to do that, and I for one will never agree to a proposition of that kind. I trust the section will be voted down.

The PRESIDENT *pro tem.* The question is on the section.

Mr. HANNA. I call for the yeas and nays.

Mr. D. W. PATTERSON. I second the call.

The section was read as follows:

SECTION 21. A register's office, for the probate of wills and granting letters of administration, and an office for recording of deeds, shall be kept in each county. The register's court is hereby abolished, and the jurisdiction and powers thereof are vested in the orphans' court. In

every city and county wherein the population shall exceed one hundred and fifty thousand the Legislature shall, and in any other city or county may, establish a separate orphans' court, to consist of one or more judges who shall be learned in the law, and which court shall exercise all the jurisdiction and powers now vested in, or which may hereafter be conferred upon, the orphans' court, and thereupon the jurisdiction of the judges of the court of common pleas within such city or county in orphans' court proceedings shall cease and determine. The register of wills shall be compensated by a fixed salary to be paid as may be provided by law. He shall be clerk of the orphans' court and subject to the direction of said court in all matters pertaining to his office. Assistant clerks may be appointed by the register, but only with the consent and approval of the court. All accounts filed in the register's office and in the orphans' courts in those counties in which separate orphans' courts shall be established, shall be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor, whom the court may, in its discretion, appoint.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Barclay, Beebe, Biddle, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Campbell, Carey, Carter, Corbett, Curry, Dallas, De France, Dunning, Edwards, Elliott, Ellis, Finney, Guthrie, Horton, Howard, Lamberton, Lilly, Long, MacConnell, M'Murray, Mann, Mantor, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Sharpe, Simpson, Smith, Wm. H., Stanton, Stewart, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, J. W. F. and Wright—63.

NAYS.

Messrs. Bailey, (Huntingdon,) Black, J. S., Brown, Clark, Cochran, Corson, Cronmiller, Curtin, Darlington, Davis, Funck, Gilpin, Green, Hall, Hanna, Kaine, Landis, Lawrence, Lear, M'CLean, Patterson, D. W., Reed, Andrew, Rey-

nolds, Ross, Smith, Henry W. and White, Harry—26.

So the section was agreed to.

ABSENT—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Bigler, Bowman, Calvin, Cassidy, Church, Collins, Craig, Cuyler, Dodd, Ewing, Fell, Fulton, Gibson, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, M'Culloch, Metzger, Minor, Mitchell, Mott, Porter, Rooke, Runk, Russell, Smith, H. G., Struthers, Woodward, Worrell and Meredith, *President*—44.

MR. PARSONS. I offer an amendment as a new section.

MR. ARMSTRONG. I ask the gentleman to allow me to perfect the phraseology of the eighth section, which I trust may be done by unanimous consent.

MR. PARSONS. Certainly.

MR. ARMSTRONG. In the third line of the eighth section the words "criminal courts" are used. I propose to strike it out and insert the words, "courts of oyer and terminer and the courts of quarter sessions," for the reason that there are certain duties pertaining to the court of quarter sessions which are not technically criminal, and therefore the phraseology should be changed.

The amendment was agreed to.

MR. PARSONS. I now offer the following amendment as a new section:

"Whenever a county shall contain forty thousand five hundred inhabitants it shall be constituted a separate judicial district and shall elect one judge learned in the law, and the Legislature shall provide for additional judges as the business of said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or if necessary may be attached to contiguous districts as the Legislature may provide. The office of associate judge not learned in the law is abolished, excepting in counties not forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms."

MR. BAER and Mr. Parsons called for the yeas and nays on the amendment, and ten delegates rising to second the call, the yeas and nays were ordered.

MR. ARMSTRONG. This seems to me very much as though it were "Monsieur Tonson come again." I should like the

gentleman who has offered this amendment to indicate to the Convention where in it differs from that which has been voted down.

MR. MANN. I rise to a question of order. The yeas and nays have been ordered, and debate is not in order.

The *PRESIDENT pro tem.* The Chair sustains the point of order.

MR. ARMSTRONG. I rise to a point of order?

The *PRESIDENT pro tem.* What is your question of order?

MR. ARMSTRONG. I inquire of the Chair whether the number forty-five thousand was not voted upon. Forty thousand was, and fifty thousand and fifty-five thousand.

MR. PARSONS. This is forty thousand five hundred.

MR. ARMSTRONG. And that is all the difference?

MR. PARSONS. Yes, sir.

MR. ARMSTRONG. Very well, sir. I suppose it is understood.

The *PRESIDENT pro tem.* The same principle has been voted upon, but not the same number.

The question was taken by yeas and nays, and resulted as follows:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Baer, Beebe, Biddle, Boyd, Brodhead, Brown, Bullitt, Campbell, Carey, Clark, Corbett, Corson, Dallas, Darlington, Davis, De France, Dunning, Edwards, Elliott, Ellis, Finney, Green, Hanna, Hay, Horton, Howard, Kaine, Lamberton, Lear, Long, MacConnell, Mann, Mantor, Newlin, Niles, Palmer G. W., Palmer, H. W., Parsons, Patterson, T. H. B., Pughe, Purviance, John N., Purviance, Samuel A., Read, John R., Simpson, Smith, H. G., Smith, Wm. H., Stanton, Temple, Turrell, Van Reed, Walker White, Harry, White, J. W. F., Worrell and Wright—58.

NAYS.

Messrs. Armstrong, Baily. (Perry,) Bailey, (Huntingdon,) Barclay, Bigler, Black, Charles A., Black, J. S., Broomall, Buckalew, Carter, Cochran, Cronmiller, Curry, Curtin, Fulton, Funck, Gilpin, Guthrie, Hall, Landis, Lawrence, Lilly, M'Clean, M'Culloch, Patton, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Smith, Henry W., Stewart, Wetherill, J. M., Wetherill, J. Price, Wherry and White, David N.—37.

So the amendment was agreed to.

ABSENT. — Messrs. Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Bowman, Calvin, Cassidy, Church, Collins, Craig, Cuyler, Dodd, Ewing, Fell, Gibson, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Littleton, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Patterson, D. W., Porter, Runk, Russell, Struthers, Woodward and Meredith, *President*—38.

Mr. STEWART. I offer the following as a new section:

"SECTION —. No election to fill a vacancy in any court of record shall be for a longer period than the unexpired term."

Mr. President, the Convention seems to have definitely determined to leave to the Legislature the business of districting the State. Now, the purpose of this amendment is to have all the commissions of the judges expire at the same time, so that when the Legislature does come to district the State judicially it will not be embarrassed by any such consideration as the unexpired terms of judges, but may district the State with such freedom of action as it ought to have when it undertakes a business of this character. I think the amendment ought to commend itself to the judgment of the Convention.

Mr. ARMSTRONG. A section of this importance ought not to pass without consideration. The principle involved in it has been very often considered; and, without being able to speak from the record, my impression is that it is not adopted in any of the States, or, if in any, certainly in very few. It is evident that an appointment for an unexpired term may be for any time greater than two months and any time between two months and the entire length of term. The effect of it will be that men of such character and standing as would adorn the position would refuse to take it for so small a term. There is no advantage in it, and it is inconsistent with the provision which we have already made as to the Supreme Court. Its judges hold their office for the entire term. There is no advantage in this idea unless it be as a mode of laying the ground work for the cumulative vote by having the terms of two or three or more necessarily expire at the same time so as to create the necessity of electing two or three or more at the same time. I may say that the question is one of those which were deliberated upon and passed upon by the Judiciary Committee with

very great care and with a conclusion that it was not a judicious section to adopt.

Mr. ANDREW REED. Mr. President: I am in favor of the section proposed by the member from Franklin. It places the judges in accordance with all the other officers of the State. We elect a Senator for the unexpired term, and so on. It is well known that we cannot legislate a judge out of his office. That has been tried in the district from which the chairman of the Judiciary Committee comes; and if we do not pass this, just see the effect that will be produced. The Legislature will never be free to district the State on account of the different times at which the terms of the judges will expire.

Owing to the development of some parts of the State in wealth or from some other cause, there may be a great increase of population in those parts which will require a districting of the State; and yet there may be a judge there whose term of office will not expire with the rest of the judges of the State. You cannot legislate him out; and there is a bar to the free districting of the State. I can see that it may be a question of great moment, and this will leave the Legislature free every ten years to district the State in accordance with the necessities of population or the judicial business of the people.

Mr. BROOMALL. I desire to say only that this question was fully discussed when the amendment to the Constitution providing for the election of judges came up before the Legislature and before the people. It was then thought advisable that the terms of the judges of the Supreme Court should be adjusted just as this provision requires those of all the judges of the courts of common pleas to be; but the disadvantage of allowing a judge to be elected for so short a time as two or three months under certain circumstances, the disadvantage of allowing such unequal terms to men of equal capacity, was such that whatever conveniences might arise from the plan were waived then, and I believe we have no new lights upon the question that would induce us to try now an experiment which was not considered judicious then. The Committee on the Judiciary debated this question and, I think, were unanimous in concluding that our predecessors in 1850 were right in what they did, and I trust that this Convention will conclude the same thing.

Mr. TURRELL. I cannot see any reason for this amendment. Why should

we limit the term of a man who goes into a president judgeship simply because his predecessor's term has been shortened by his decease? What reason is there in that for shortening the term of the successor? If you want to elect a good man, a competent lawyer learned in the law, he would often be willing to take the office for a full term when he would not accept it for a year or a few months. Therefore there is no reason in the case. There is no reason why we should not elect every man to a full term on the bench as well as his predecessors. This section is founded on a fallacy.

MR. ANDREW REED. I would move to amend the amendment by making it apply only to judges of the court of common pleas and not to the Supreme Court.

MR. STEWART. I accept that modification.

MR. TURRELL. Then I wish to say further that there might be some possible reason for such an amendment, where the court is constituted as the Supreme judges are, all going out at different periods, so as to keep the equality between them in their time of service. But the president judges of the courts of common pleas are not so constituted; they do not start at one time; and therefore the reason for this section, as far as they are concerned, does not exist.

MR. SIMPSON. If I am not very much mistaken in the article reported by the Committee on Suffrage, Election and Representation, there is a section which provides that all vacancies in the offices of the State shall be filled for the unexpired term; and if I am not mistaken in that it settles this whole question, and this section is unnecessary.

MR. CAMPBELL. Allow me to explain; that section was reported by the Committee on Suffrage, Election and Representation, but was voted down when the report of that committee was considered in committee of the whole, with the intention of taking it up again after the other reports had been gone through with.

MR. SIMPSON. Then I am to understand that the section was voted down.

MR. CAMPBELL. It was voted down temporarily.

THE PRESIDENT *pro tem*. The question is on the amendment of the delegate from Franklin (Mr. Stewart.)

The amendment was rejected, the ayes being twenty-four, less than a majority of a quorum.

MR. ELLIS. I offer the following amendment, to come in as a new section:

SECTION —. The Legislature shall not create any court, other than those expressly authorized in the Constitution, with civil jurisdiction in cases exceeding \$300, or criminal jurisdiction and powers in crimes the punishment of which exceeds a fine of \$100 or imprisonment for thirty days.

I will not detain the Convention with any lengthened remarks, but simply desire to say that this restriction is the substance of the first section of this article and what the committee itself reported to the Convention, with a slight difference in limiting the power of the Legislature to create criminal courts. We should not have high courts of any other character or nature than constitutional courts. Wherever the Legislature has undertaken to create other courts the experiment has in almost every instance been a failure. During our experience of one hundred years there has not been one instance in which a high court was created by the Legislature that it was not a failure. It may be answered that the district court of Philadelphia and that of Pittsburg was not a failure. Measurably they were not, but still, notwithstanding these courts have served a useful purpose, the present Convention have determined to do away with them; and the fact that the district court of Philadelphia had equity powers one year and the next year had not equity powers illustrates that these courts, though performing high functions, have been at the beck and nod of the Legislature at all times. In order that we should preserve the balance of judicial power in the Commonwealth the judiciary should be as independent as possible; and under the present system, if we allow it to continue, the Legislature will have the power to dot the whole State with legislative courts superceding the powers and jurisdictions of the constitutional courts. I shall not urge the matter further than this. It ought to be evident to the judgment of this Convention that such a provision ought to be established in the Constitution.

MR. ARMSTRONG. The section places a restriction on the power of the Legislature which under the Constitution, as we are now framing it, I think would not be judicious. It is demonstrated beyond all doubt that the Convention will not relieve the Supreme Court in any other manner or to any other extent than it has already

done, and particularly upon the ground that the Constitution leaves it in the power of the Legislature to furnish relief if it shall become necessary. This section would be an unnecessary restriction, whilst all that I believe to be necessary to be done is already covered by the section to which I have referred.

It is the fifth section, and provides:

"That the Legislature is hereby prohibited from creating other courts to exercise the power vested in the Constitution in the said courts of common pleas and orphans court."

The gentleman now proposes to extend this so as to take in criminal cases, and that is his point. I do not see that there is any necessity for it. The only instance in which such power has been exercised is in the creation of a criminal court having jurisdiction in Schuylkill, Lebanon and Dauphin.

Mr. ELLIS. I would ask the gentleman a question. Does he not know that a few years ago the Legislature created, in the city of Philadelphia, courts of exclusive criminal jurisdiction which lasted a year or two, and were abolished?

Mr. ARMSTRONG. Such was the case, but the good sense of the Legislature put those courts down, and they have never been renewed except in the instance referred to, and in that particular case, I believe, with eminent advantage to the suitors, particularly of Schuylkill county. I see no necessity whatever for this section.

The PRESIDENT *pro tem*. The question is upon agreeing to the amendment.

Mr. ELLIS. On that I call for the yeas and nays.

Mr. ROSS. I second the call.

The PRESIDENT *pro tem*. The yeas and nays have been demanded, and the Clerk will proceed with the call.

Mr. DARLINGTON. I rise to a question of order. This being not a section reported by the Committee on the Judiciary, but an amendment moved by the gentleman from Schuylkill, it requires ten gentlemen to second the call for the yeas and nays.

The PRESIDENT *pro tem*. Do ten gentlemen rise to second the call for the yeas and nays?

More than ten gentlemen rose.

The PRESIDENT *pro tem*. The call for the yeas and nays is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Alricks, Baer, Bailey, (Huntingdon,) Boyd, Brodhead, Brown, Buckalew, Campbell, Corbett, Curry, Dallas, Dunning, Elliott, Ellis, Gibson, Guthrie, Hall, Hay, Lamberton, Lear, M'Murray, Metzger, Niles, Palmer, H. W., Parsons, Patton, Purman, Reed, Andrew, Ross, Smith, H. G., Temple, Turrell, Wetherill, J. M. and Worrell—34.

N A Y S .

Messrs. Addicks, Armstrong, Baily, (Perry,) Baker, Barclay, Beebe, Biddle, Bigler, Black, Chas. A., Broomall, Bullitt, Calvin, Carey, Carter, Cochran, Corson, Cronmiller, Cuyler, Darlington, Davis, De France, Edwards, Ewing, Finney, Fulton, Funck, Gilpin, Green, Hanna, Horton, Howard, Kaine, Knight, Landis, Lawrence, Lilly, Long, MacConnell, M'Clean, M'Culloch, Mann, Mantor, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, Jno. N., Purviance, Samuel A., Reynolds, Rooke, Sharpe, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Van Reed, Walker, Wetherill, John Price, White, David N., White, J. W. F. and Wright—62.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Ainey, Andrews, Bannan, Bardsley, Bartholomew, Black, J. S., Bowman, Cassidy, Church, Clark, Collins, Craig, Curtin, Dodd, Fell, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Littleton, MacVeagh, M'Camant, Minor, Mitchell, Mott, Porter, Pughe, Read, John R., Runk, Russell, Struthers, Wherry, White, Harry, Woodward and Meredith, *President*—37.

Mr. KAINE. I move to reconsider the vote by which a section was adopted to this article, yesterday, providing that the Legislature may abolish the office of associate judges.

Mr. EDWARDS. I second the motion.

The PRESIDENT *pro tem*. Did both gentlemen vote in the affirmative.

Mr. KAINE. The yeas and nays were not taken.

Mr. STANTON. I would suggest that the whole matter be referred back to the Judiciary Committee. [Laughter.] We are amending, striking out and inserting, and it had better be recommitted.

The PRESIDENT *pro tem*. The question is on the motion to reconsider, made by the delegate from Fayette.

Mr. KAINE. I call for the yeas and nays.

Mr. HANNA. I second the call.

The PRESIDENT *pro tem*. The section which it is proposed to reconsider will be read.

The Clerk read the section as follows:

SECTION —. "The Legislature shall have authority to abolish the office of associate judges after the term of office of the present incumbent shall have expired."

Mr. COCHRAN. I do not know whether it would be in order, but I should like to have the gentleman from Fayette permitted to state his object in moving a reconsideration.

The PRESIDENT *pro tem*. That is not in order. The yeas and nays have been ordered, and the Clerk will call the roll.

The question was taken by yeas and nays with the following result:

Y E A S.

Messrs. Addicks, Baily, (Perry,) Bailey, (Huntingdon,) Black, J. S., Brodhead, Broomall, Buckalew, Carey, Clark, Curry, Curtin, Darlington, Davis, De France, Edwards, Elliott, Ellis, Gibson, Green, Hanna, Horton, Kaine, Lamberton, Lilly, Long, Mann, Patterson, T. H. B., Read, John R., Ross, Sharpe, Smith, H. G., Wetherill, John Price, White, David N., White, Harry, White, J. W. F. and Wright—36.

N A Y S.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baker, Barclay, Biddle, Bigler, Black, Charles A., Boyd, Brown, Bullitt, Calvin, Campbell, Carter, Corbett, Corson, Cronmiller, Dallas, Dunning, Ewing, Fulton, Funk, Gilpin, Guthrie, Hall, Hay, Howard, Knight, Landis, Lawrence, Lear, MacConnell, M'Clean, M'Culloch, M'Murray, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Patton, Pughe, Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Stewart, Temple, Turrell, VanReed, Walker, Wetherill, J. M., Wherry and Worrell—60.

So the motion to reconsider was not agreed to.

ABSENT.—Messrs. Ainey, Andrews, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Church, Cochran, Collins, Craig, Cuyler, Dodd, Fell, Finney, Harvey, Hazzard, Hemphill, Heverin,

Hunsicker, Littleton, MacVeagh, M'Camant, Mantor, Metzger, Minor, Mitchell, Mott, Niles, Palmer, G. W. Porter, Runk, Russell, Struthers, Woodward and Meredith, *President*—37.

Mr. ARMSTRONG. Yesterday I called the attention of the Convention to the fact in reference to a clause in the fifth section, which will be found on the third page, that the position in which it stands renders it doubtful, whether it is not limited to the cities of Philadelphia and Pittsburg, which is not the intention of the Convention. I then moved to transpose the clause to the end of the twenty-fifth section. Objection was made by the gentleman from Schuylkill (Mr. Ellis) and the gentleman from Indiana (Mr. Harry White.) Both of those gentlemen inform me that they have no further objection, and the gentleman from Indiana that he objected under a misconception of the proposition. I now move, and I trust it will be done by unanimous consent, to transpose to the end of the twenty-fifth section the clause which I shall ask the Clerk to read. Before it is read I will call the attention of the Convention to the language as it stands now in the fifth section:

"And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts."

I propose to transfer that to the end of the twenty-fifth section, striking it out in the fifth.

The CLERK. The numbers of the sections have been changed. At the end of the section beginning "All laws relating to courts shall be of general and uniform operation," it is proposed to transfer from the fifth section the following clause:

"And the Legislature is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts."

The PRESIDENT *pro tem*. Will the Convention unanimously agree to this transposition? The Chair hears no objection and it is agreed to.

Mr. BUCKALEW. This is a matter of arrangement and detail, and I desire to call attention to the apparent inconsistency between this proposed addition to the twenty-fifth section and the prior section, in which we provide expressly that the Legislature shall or may make two orphans' courts in various parts of

the State. It seems to me that that section and this would be inconsistent as far as the orphans' courts are concerned.

Mr. ARMSTRONG. The effect of it, I will state to the Convention, is simply to prevent the Legislature from vesting the same powers in other courts. It does not interfere at all with the enlarging of the powers either of the common pleas or orphans' courts, and they may make more courts of the same kind; but it prohibits them from creating Nicholson courts or any other anomaly of that kind.

Mr. BUCKALEW. I am not particular about it if the gentleman is satisfied that he has all the sections harmonious.

Mr. ARMSTRONG. I think so.

Mr. HARRY WHITE. Yesterday I made opposition to this proposition under a misapprehension.

The PRESIDENT *pro tem*. The question has been disposed of and the transposition made.

Mr. CORSON. I move that the article be referred to the Committee on Revision and Adjustment.

Mr. BUCKALEW. I have an amendment which I have attempted to offer about five times. I submit that the reference to the Committee on Revision and Adjustment must be of the entire article—

The PRESIDENT *pro tem*. It is of the entire article.

Mr. BUCKALEW. And as long as the article is not finished and the question submitted upon transcribing it to third reading, the motion is not in order. Heretofore such a motion has never been received until the question of ordering the article to third reading has been put.

Mr. ARMSTRONG. I trust the gentleman will be permitted to offer his amendment.

The PRESIDENT *pro tem*. The Chair supposed that all the proposed new sections had been offered.

Mr. BUCKALEW. I desire to offer an amendment as a new section.

Mr. CORSON. I made a motion, and I suppose that motion will have to be voted upon.

The PRESIDENT *pro tem*. The Chair must receive the amendment. It will be read.

Mr. MANN. I should like to make an inquiry. My inquiry is whether it will be possible for the majority of this body ever to dispose of this article?

The PRESIDENT *pro tem*. They can do so by ordering the previous question.

The amendment of the delegate from Columbia will be read.

The CLERK read as follows:

"SEC. —. The commissions of all common pleas judges learned in the law, in judicial districts containing less than one hundred thousand inhabitants, shall expire with the year 1883, and every tenth year thereafter. Within ten years after the organization of the General Assembly, at the session next prior to the expiration of the judicial terms aforesaid, the two Houses shall meet together in joint convention and by open vote appoint ten commissioners, who shall have power to divide the State into judicial districts, assigning to each one or more judges, as may be required, such apportionment to remain unchanged for a term of ten years. In choosing said commissioners each member of the joint convention shall vote for not more than five persons, and the ten highest in vote shall be elected. No city or county shall be divided in the formation of districts, and no district shall be formed to elect more than two law judges, unless in the case of a county containing over one hundred thousand inhabitants. The said commissioners shall be duly sworn, (or affirmed,) and shall be ineligible to election to the office of judge under an apportionment made by them; and any such apportionment shall be agreed to by at least seven commissioners."

Mr. BUCKALEW. Mr. President: I have been a participant in the debate upon various questions regarding the organization of the courts of the State, but have proposed nothing myself until this moment.

Now, let us look back at what we have done, or rather what we have not done. A proposition to establish a circuit court was elaborately debated and voted down. A proposition to divide the Supreme Court into two working bodies was also debated and voted down. A proposition in several forms for making plural common pleas districts was also considered and voted down. A proposition to make most of the counties of the State single judicial districts was rejected a few days since, and this morning an amendment was agreed to with reference to the arrangement of single county districts, which has but slight operation. Therefore we are now approaching the end of our consideration of this article without having done anything material with regard to the organization

of the *nisi prius* courts of the State presided over by law judges, except that we have increased the judges in Philadelphia, Allegheny and Luzerne, an orphans' court judge in each, and two common pleas judges in Philadelphia in addition to those which now exist.

Now, the question is upon the Convention, shall you leave this tangled system of *nisi prius* courts and *nisi prius* districts in the State as it is at present? Will you leave this confused system to such imperfect action and regulation as the Legislature of the State can give to it under the terms of the Constitution? I hope not. I hope that to this abundant confusion you will restore order, or will at least provide that at some future time—I do not care very much whether it is in the year 1883, or 1890, or at the commencement of the next century—some time or other order and regularity shall be restored to our system of courts of record of original jurisdiction. Sir, the only mode by which you can reach that object is to provide that all the districts of the State, (save a few of the larger ones, which will always of course be separate,) where you are forced to combine counties, shall at one and the same time be under the hand of some proper apportioning power by which districts can be formed and judges assigned to them.

The difficulty, the insurmountable difficulty, now encountered by the Legislature, is that the commissions of the common pleas judges expire at different times in adjoining districts. There is no regularity or system with regard to their expiration. You cannot make new districts, you cannot reorganize districts without turning judges out of office—always a thankless task to the law-making power, and repugnant to that sense of justice which is common among our people.

Now, sir, the amendment which I have offered is double, and I shall ask for a division in voting upon it. The first branch of it is, that with the year 1883, that is, at the end of it, and at the expiration of every period of ten years thereafter, the commissions of the common pleas law judges in districts composed of less than one hundred thousand inhabitants shall expire. If you adopt that, and it stands alone, the result will be that the Legislature every tenth year can arrange, reorganize, equalize the judicial districts of the State. With the year 1883 you will have commenced a new and orderly sys-

tem which will adapt itself to the necessities of our people in all future time.

The second branch of the amendment provides that these districts shall be made by a commission of apportionment selected by the Legislature itself in a fair and impartial manner, so as to secure a tribunal that will perform this duty with unquestionable fidelity. They are to be placed under oath, the ordinary oath of office that we have already provided (and a very stringent one) in the Constitution, and the members of that commission are not to be eligible to election to the office of law judge under any apportionment which they may make; and then it is provided that no district shall have assigned to it more than two law judges, unless in case of counties that have more than one hundred thousand inhabitants.

The practical result of the arrangement provided is this: Philadelphia, Allegheny, Luzerne, Schuylkill, Lancaster, and Berks as at present they exhibit populations, will be separate districts, and will remain such for all future time, and other counties that shall rise above 100,000 inhabitants of necessity will constitute separate districts, and in those districts the number of judges may be more than two; but as to districts under 100,000 inhabitants, where you are compelled to unite counties, as you will for two-thirds of the counties of the State, they will be in a reasonable, regular, orderly and proper manner. I prefer to have them made by this proposed board of apportionment, the plan of which I have copied mostly from the plan presented by the gentleman from Philadelphia (Mr. Simpson) in reference to another provision in the Constitution; but at all events I beg members of the Convention to pass the first branch of the amendment, whether they accept the second branch of the amendment or not.

MR. FUNCK. Will the gentleman allow me to ask a question?

MR. BUCKALEW. Certainly.

MR. FUNCK. It is whether there is any dissatisfaction with the judicial districts as now constituted?

MR. BUCKALEW. Certainly, a great deal.

MR. FUNCK. Where?

MR. BUCKALEW. Westmoreland, Indiana and Armstrong have been complaining for years. Their complaints have been echoing in both Houses of the Legislature year after year.

Mr. FUNCK. We know of none in the district I come from.

Mr. BUCKALEW. That is but an illustration of a great many cases. The Tloga district has a second law judge there, supposed to be about as necessary as a fifth wheel to a wagon. There is a second law judge in Bradford county, who, I insist, is altogether unnecessary. We have been patching this system in the Legislature, worrying over it, and not knowing what to do with it, giving assistant law judges here and there as best we could and stumbling along. Any man who has served in the Legislature during the last ten years does not need any argument from me to show that some change of this sort is necessary to extricate the Legislature from difficulty.

Well, now, what the Legislature does on this subject is done hap-hazard; it is done under pressure; it is done according to the popularity of some particular members who want something done for their districts. There is no system of regularity.

The PRESIDENT *pro tem*. The delegate's time has expired.

Mr. BROOMALL. Mr. President: I am surprised that the gentleman from Columbia should introduce at this late period of our proceedings a provision as complicated and as new as that which has just been read. However proper it might have been two months ago or three months ago to be submitted to a proper committee and to be digested and examined, I submit that it is too late to take up such a proposition now. I think there are grave defects in it. I think there may probably be some good in it. But the point that I make is this, that in the position in which we now find ourselves we shall do damage by going into a proposition so new and so complicated as that; and I hope that if the gentleman wants it considered he will even, late as it is, introduce it and have it referred to a select committee if he chooses, or to the Judiciary Committee if he choose, or any other proper committee, and have it fairly digested and considered before it is brought here. Certain I am that here it will not be considered, but will either be adopted or rejected without examination and without that consideration which it probably deserves, certainly without that consideration which the ability and position of the gentleman who offers it deserve to have for any measure that he offers.

I hope that it will be now voted down and if introduced will be introduced regularly and referred.

Mr. HOWARD. Mr. President: If I understand this proposition I do not know that there is anything very new in it. I think it is the cumulative plan for districting the State, and then the cumulative plan for electing afterwards, though it is perhaps in different language from that in which that plan has been before submitted, and I supposed we had got about ready for a vote. After working upon this article until I supposed I saw the last end of the tail, the delegate from Columbia, according to his habit, draws from that capacious pocket of his, that is chock full—and I do not believe it is half empty now—this long section. After we supposed we had got through with a section or article he always comes in with his long string and tries to tie it to the end, and we have sometimes to renew the fight for a week. He has a perfect right to do it, but it is a peculiar way of doing things that an important section of this description and this length shall be kept back in the breast of that gentleman and brought forward at this time and thrust upon the Convention, not even printed.

It seems to me it ought to be disposed of summarily, and for that purpose I call for the previous question, and I hope that the call will be sustained and that we shall dispose of it one way or the other.

The PRESIDENT *pro tem*. Is the call for the previous question sustained?

Mr. ARMSTRONG. I think we ought not probably to spend much time upon this complicated question and one which this Convention cannot understand in its bearings upon the hasty consideration which they can now give it. It occurs to me as an insuperable objection to it in view of the fact that we have already voted not to allow commissions.

Mr. HOWARD. I rise to a point of order. Is the question debatable whether we shall have the previous question? I called the previous question. Is that debatable?

The PRESIDENT *pro tem*. It is not debatable; but eighteen gentlemen did not rise to second the call and therefore the call for the previous question was not sustained. The gentleman from Lycoming is now entitled to the floor.

Mr. ARMSTRONG. I do not intend to insist on the floor because I should have been done by this time if not inter-

rupted. I only wanted to finish my sentence. I was saying that we have already decided that vacancies shall not be filled for unexpired terms. It follows, of course, that vacancies will be filled for the full terms, and there never will come a time when the commissions will all expire at the same time, and under the proposition now suggested it would happen that judges throughout the State would have their commissioners summarily cut off, some in ten years, some in nine, and so on clear down to one year or less. In that view of the case, it is wholly impracticable and I think ought not to be adopted.

Mr. H. W. PALMER. It seems to be evident that the Convention is not in a temper of mind to consider this proposition further, and because I am desirous of giving to a proposition emanating from this source the consideration due to it, I move that this article be now referred to the Committee on Revision and Adjustment, and I understand the parliamentary effect of that motion will be to carry this amendment with it, and it can be reported back by the Committee on Revision and Adjustment printed, and in such shape that the Convention can understand it.

The PRESIDENT *pro tem*. The Chair does not understand any such parliamentary rule as that.

Mr. H. W. PALMER. That, I think, is the parliamentary rule.

The PRESIDENT *pro tem*. The Chair does not understand how the Committee on Revision and Adjustment has anything to do except with what passes the House.

Mr. BUCKALEW. Mr. President: I suggest—

The PRESIDENT *pro tem*. The delegate has spoken once.

Mr. BUCKALEW. I am not going to speak, but I rise to suggest that our practice has been to refer a proposition to a committee with instructions to consider and report; but at this stage I agree with the Chair on the question of order.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Columbia.

Mr. BUCKALEW. I ask for the division I indicated.

The PRESIDENT *pro tem*. What is the first division?

Mr. BUCKALEW. At the end of the first clause.

The PRESIDENT *pro tem*. The first division will be read.

The CLERK read as follows:

"The commissions of all common pleas judges learned in the law in judicial districts containing less than one hundred thousand inhabitants shall expire with the year 1883, and every tenth year thereafter."

Mr. BOYD. I call for the yeas and nays.

Mr. BUCKALEW. I second the call.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates.

Mr. DARLINGTON. It requires ten.

The PRESIDENT *pro tem*. Gentlemen seconding the call will rise.

Ten delegates rose to second the call; and the yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Bailly, (Perry,) Bailey, (Huntingdon,) Barelay, Boyd, Brodhead, Buckalew, Campbell, Cassidy, Curtin, Dallas, De France, Dunning, Ellis, Fulton, Gibson, Gilpin, Kaine, Lilly, Long, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patton, Read, John R., Sharpe, Smith, H. G., Stewart, Van Reed Wherry and Wright—32.

NAYS.

Messrs. Addicks, Alricks, Armstrong, Baer, Baker, Biddle, Bigler, Black, Charles A., Black, J. S., Broomall, Brown, Bullitt, Calvin, Carey, Carter, Clark, Corbett, Corson, Cronmiller, Curry, Cuyler, Darlington, Davis, Edwards, Elliott, Ewing, Fell, Finney, Funk, Green, Guthrie, Hanna, Hay, Horton, Howard, Knight, Landis, Lawrence, Littleton, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Ross, Simpson, Smith, Henry W., Smith, Wm. H., Stanton, Turrell, Walker, Wetherill, Jno. Price, White, David N., White, Harry, White, J. W. F. and Worrell—63.

So the first division of the amendment was not agreed to.

ABSENT.—Messrs. Ainey, Andrews, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Church, Cochran, Collins, Craig, Dodd, Hall, Harvey, Hazzard, Hemphill, Hoverin, Hunsicker, Lamberton, Lear, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Porter, Pughe, Runk, Russell, Struthers, Temple, Wetherill, J. M., Woodward and Meredith, President—36.

Mr. BUCKALEW. I do not ask a vote on the second branch, except a formal re-ec-tion.

The PRESIDENT *pro tem.* The second division is before the Convention.

The division was rejected.

Mr. ARMSTRONG. If there be no further amendments to offer, I now move to refer the article to the Committee on Revision and adjustment.

Mr. SHARPE. I have an amendment to offer.

Mr. ARMSTRONG. Then I will wait.

Mr. SHARPE. I offer the following amendment, to come in as a new section :

"SECTION —. The Supreme Court shall sit in banc for the hearing of causes that come up by writs of error or appeal in the city of Harrisburg, but may for adequate reasons adjourn its sessions for a single term, or less than a term, to any other suitable and convenient place."

Mr. ALRICKS. On that I call for the yeas and nays.

Mr. STEWART. I second the call.

The PRESIDENT *pro tem.* Is the call sustained?

More than ten members rose.

The PRESIDENT *pro tem.* The call is sustained, and the Clerk will proceed with the call.

The yeas and nays were taken, and were as follow, viz :

YEAS.

Messrs. Achenbach, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Calvin, Cochran, Curry, Curtin, Dunning, Finney, Funck, Gibson, Gilpin, Kane, Land s, Lilly, M'Clean, M'Culloch, M'Murray, Metzger, Palmer, G. W., Palmer, H. W., Patterson, D. W., Reed, Andrew, Reynolds, Sharpe, Smith, Henry W., Stewart, Van Reed, Walker, Wetherill, J. M., Wherry, White, Harry and Wright—36.

NAYS.

Messrs. Addicks, Armstrong, Baker, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomail, Brown, Buckalew, Bullitt, Campbell, Carey, Cassidy, Clark, Corbett, Corsen, Cronmiller, Cuyler, Dallas, Darlington, Davis, De France, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Green, Guthrie, Hall, Hanna, Hay, Horton, Howard, Knight, Lawrence, Lear, Littleton, Long, Mann, Mantor, Niles, Patterson, T. H. B., Patton, Purman, Purviance, John N., Purviance, Samuel A., Read, John R., Rooke, Ross,

Simpson, Smith, William H., Stanton Turrell, Wetherill, John Price, White, David N., White, J. W. F. and Worrell—62.

So the amendment was rejected.

ABSENT. — Messrs. Ainey, Andrews, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Carter, Church, Collins, Craig, Dodd, Harvey, Hazzard, Hemphill, Haverin, Hunsicker, Lamberton, MacConnell, MacVeagh, M'Camant, Minor, Mitchell, Mott, Newlin, Parsons, Porter, Pughe, Runk, Russell, Smith, H. G., Struthers, Temple, Woodward, and Meredith, *President*—35.

Mr. ARMSTRONG. I now move that the article be engrossed and referred to the Committee on Revision and Adjustment.

The motion was agreed to.

THE STATE CAPITAL.

Mr. DALLAS. I ask leave to offer at this time a minority report from the Committee on Legislature.

Leave was granted, and the minority report was read as follows :

The undersigned, members of the Committee on the Legislature, respectfully dissent from the report of the majority of the committee upon the subject of the location of the capital of the State, and respectfully recommend that the word "Philadelphia" should be substituted for "Harrisburg" where it occurs in the section which accompanies said report of the majority of said committee.

GEO. M. DALLAS,

JNO. PRICE WETHERILL.

The PRESIDENT *pro tem.* The minority report will lie on the table.

RAILROADS AND CANALS.

Mr. COCHRAN. I move that the Convention proceed to the second reading and consideration of the article on Railroads and Canals reported from the committee of the whole.

The motion was agreed to ; and the Convention proceeded to the consideration on second reading of the article (No. 17) "On Railroad and Canals."

The PRESIDENT *pro tem.* The first section of the article will be read.

The CLERK read as follows :

SECTION 1. Any individual, company or corporation organized for the purpose, shall have the right to construct a railroad or canal between any two points in this State. Any railroad may intersect and connect with any other railroad, and no discrimination shall be made in passenger

and freight tolls and tariffs on persons or property passing from one railroad to another, and no unnecessary delay interposed in the forwarding of such passengers and property to their destination. The Legislature shall, by general law, prescribing reasonable regulations, give full effect to these powers and rights.

MR. T. H. B. PATTERSON. I move the following amendment to the first section, to come in in the fourth line after the word "railroad," "and may pass its cars, empty or loaded, over such other railroad."

I will just state to the Convention that this is an amendment which covers about one line and includes section fourteen, which was adopted and reported by the committee of the whole. Section fourteen, as we find it in this report, is, I think, materially included in this one line of the amendment that I have proposed and I have offered it with the consent of the delegate from Fayette, (Mr. Kaine,) who moved section fourteen as an amendment to the report of the Committee on Railroads and Canals. I do this in order to abbreviate our work, and I ask the delegate from Fayette if this is not satisfactory and does not cover the ground.

MR. LILLY. I think this amendment ought not to be put into this section, and I think the last section ought to be voted down for this reason: Cars may be brought from one road to another in entirely unfit condition to be passed over that road. This may do an immense deal of damage, may cause a great deal of difficulty and destruction of property. My experience upon this subject, and I have had something to do with railroads for the past thirty-five years, brings me strongly to the conclusion that it is impossible to carry out any such provision as is here contemplated. It is not at all practicable and ought not to be entertained. Different roads may be of different gauge and a physical impossibility be thus added to the objection which I have already raised. I think the amendment should be by all means voted down. It has no place in a Constitution. It is entirely impracticable and should not be tolerated, and I hope the good sense of the Convention will see this matter as I do. Let us vote the amendment down here, and then when the fourteenth section comes up for consideration, let us vote that out.

MR. BIGLER. Mr. President: It seems to me that this first section requires

grave consideration at the hands of the Convention. If we propose that the Legislature shall pass a general free railroad law, we ought to do that in the most distinct terms, and do it at length. For my own part I think it is much better than what is attempted in the section before us, and on that I desire to have the sense of the Convention. I have prepared an amendment to supercede this first section, and indeed it would supercede a number of the sections in the article, and I shall submit that as an amendment to the amendment, proposing to strike out the amendment, together with the section, and insert that which I send to the desk to be read.

The CLERK read as follows:

1. The Legislature, at its first meeting after the adoption of this Constitution, shall enact a general railroad law, open to the use of all persons or companies who may see proper to accept and comply with its provisions, based on and embodying the principles hereinafter set forth, and which law shall be so constructed as to embrace within its operation, as far as practicable, railroad corporations heretofore created.

2. Railroad corporations may intersect, connect and cross their respective roads, having due regard to the safety and convenience of the public. They shall receive from each other and make provision for the prompt transmission of cars, whether empty or loaded, from one road to another; and their charge for the transportation of passengers and tonnage over their respective roads per mile shall be the same, except that a reasonable discrimination may be made because of difference in the original cost and in the grades and curvatures of their several roads. The said general law shall provide for settling differences that may arise under this section.

3. Railroad corporations shall have the right to construct, equip and operate railroads between the points named in their respective charters, and shall have the right to construct engines, cars and all other machinery and equipage used on their roads, and they shall be common carriers; but they shall engage in no other business, and shall have no right to hold lands, real estate, freehold or leasehold, except to the extent necessary to the construction, equipment and effective working of their respective roads.

4. Railroads shall be public highways on which all individuals, companies, cor.

porations and associations shall have the right to have persons and tonnage transported thereon, and in fixing the charges for such transportation equal rates per mile, to all, shall be the general rule; but a reasonable discrimination may be made between passengers transported fifty miles and a less distance, as compared with those transported a greater distance; and provision may be made for annual or commutation tickets for passengers; and so, also, in fixing the rates on tonnage, a reasonable discrimination may be made between the rates on roads or parts of roads of heavy grades and short curvatures as compared with the charges on roads or parts of roads of better characteristics, and between different kinds of tonnage; and such corporations as may transport tonnage from other States through this shall make no unjust discrimination in their charges, against tonnage shipped within as compared with tonnage shipped without the State, and the said general law shall protect the public against all such unjust discriminations.

5. Railroad corporations may hold the stock and bonds of each other, and to make a longer road, in the direction of the connecting roads, may consolidate; but they shall not hold the stock or bonds of other corporations; nor shall any railroad corporation hold a controlling interest in the stock or bonds of another railroad corporation owning or operating a competing line of road. The purpose of this section being to maintain free competition between railroads, its spirit shall be effectively carried out in the details of the general law hereinbefore provided for.

6. Railroad corporations shall not take or appropriate or damage private property without first making compensation or giving ample security for the same; but in ascertaining the value of the property and the amount of the damages by a jury or in court, the direct and indirect benefits of the railroad to the owner or owners of the property taken or damaged shall be considered in mitigation of the amount to be paid.

7. The property of railroad corporations, except the road-bed, shall be liable to taxation the same as the property of other corporations, and the Legislature shall not release this liability.

8. Companies composed in part or in whole of officers and managers of a railroad corporation, shall have no right to transport tonnage over the roads with which said officers and managers are con-

nected without the consent of the holders of a majority of the stock of such corporations; nor shall they be charged lower rates for transportation, or be furnished greater facilities than other person or companies engaged in the same business.

9. It shall be the duty of the Legislature, in addition to enacting the principles of the foregoing article into a general law, to provide also for the construction and connection of lateral railroads, not exceeding twenty miles in length, which may be constructed by mining and manufacturing companies to convey their own products to market.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Clearfield (Mr. Bigler) to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson.)

Mr. J. PRICE WETHERILL. I rise to a point of order. It seems to me that is rather a lengthy amendment to this section and hardly in order. I merely throw out the suggestion that for an amendment to section one it is rather long, and it seems to me that instead of being an amendment to a section it is an amendment to the entire article. It is an entire scheme by itself, and it is virtually impossible for this Convention to properly deliberate upon an article of that sort as offered as an amendment to the section. Therefore I raise the point of order that it is not really an amendment, but that to be properly considered we should resolve ourselves into committee of the whole.

The PRESIDENT *pro tem.* The Chair cannot sustain the point of order. If adopted this certainly will supercede the greater part of the article; but that is not a question of order for the Chair.

Mr. CAMPBELL. I rise to a point of order that it is not an amendment to the amendment. There is an amendment pending to the section now.

The PRESIDENT *pro tem.* There is more in the point of order made by the gentleman from Philadelphia (Mr. Campbell.) This is hardly an amendment to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson.) It is more properly an amendment to the section.

Mr. BIGLER. If gentlemen will hear me for a very few minutes they will discover—

The PRESIDENT *pro tem.* The Chair will state that when the vote is taken on the amendment of the delegate from Al-

legheny, whether favorable or unfavorable, then the amendment of the gentleman from Clearfield will properly be in order.

Mr. BIGLER. Mr. President: I shall shape this business in any way to get a full and complete consideration of this subject. I regard it as of great importance.

Mr. CAMPBELL. Was not my point of order sustained?

The PRESIDENT *pro tem*. The point of order taken by the gentleman from Philadelphia was sustained.

Mr. CAMPBELL. The question, then, is on the amendment of the gentleman from Allegheny.

The PRESIDENT *pro tem*. That is the question.

Mr. BIGLER. The question is on the amendment; I understood the point of order; but I believe I have the floor.

The PRESIDENT *pro tem*. The gentleman from Clearfield has the floor.

Mr. BIGLER. And it is due that I should explain what I intended. This proposition of mine has been in print for some time, but I did not circulate it because I supposed, like most measures of this kind, it would be mislaid if I did.

Now, sir, I did not intend to offer this and press it to supercede the article as it stands, but I intended to say to the chairman of the Railroad Committee that if he preferred that the original text as it stands should be passed through with, I was willing to go through with that and endeavor to amend it. That is a clear parliamentary right on his part. If the chairman of the committee desires to amend the text he has the right to do that and to a vote upon it before the vote is taken on a proposition which would supercede it. I did not intend for a moment to attempt to strike out the entire article without its being considered by the Convention, but, sir, as it seems to be more agreeable to the body to pass first upon the article as it is, I shall yield to that; but I desired to impress upon the Convention this form of doing whatever we do on this subject, of requiring of the Legislature a general free railroad law, open to the use of all who will embrace and comply with its terms; for, Mr. President, in my judgment, that is the first indispensable step to what this Convention desires on the subject of railroads. There is more of relief to what is complained of now, more of safety to the rights of the people in competition, than in any other measure

you can adopt. I would induce that competition as far as possible by offering to the capital of the world the opportunity of coming in and constructing roads from the Atlantic to the great West, that shall have an influence upon the rates which we are required to pay.

And, sir, I desire the members of the Convention to determine, each one for himself now, whether we shall attempt to put this kind of legislation in the Constitution, or whether we shall lay down great principles to govern legislation, and then leave the details to the Legislature, for that is the point of difference between the two propositions—the article as it stands and that which I propose.

For myself I cannot see how this Convention is to give full expression to its views. Take, if you please, the first section. There ought to be provision, as required in the amendment submitted by me, for some tribunal to settle differences that will arise between railroad corporations under this first section, and surely to the public there is no graver question than that of great leading railroads crossing each other at grade. We cannot do this in detail. Why, sir, that single section would require a space equal to all that is now occupied by the article under consideration, and the details necessary for a free railroad law would be longer than the Constitution ought to be. Therefore I have regarded it as impracticable to say what the Convention ought to say on this question in detail, and have thought it would be wiser and safer to lay down the general principles and rules by which railroads should hereafter be governed and require the Legislature to attach thereto the details. That was the object of my interposing this proposition at so early a moment, that my purpose might be understood by the Convention.

With these remarks, I shall listen to the amendments proposed, if there are any, by the chairman, and follow him through, and hope that the section may be greatly improved.

Mr. COCHRAN. I desire merely to say, as the only question now pending before us is the amendment offered by the gentleman from Allegheny, (Mr. T. H. B. Patterson,) that I am perfectly satisfied that amendment should be inserted in this section, for the reason which he assigns, that it obviates the necessity of passing the fourteenth section separately. I hope, therefore, that the amendment will

be inserted here, and that we shall not throw it out and have an entirely different section for the purpose of accomplishing the same point which a few words will accomplish in this section. This is all that I need to say with regard to that at present. I shall not say anything with regard to the remarks that fell from the gentlemen from Clearfield.

Mr. CORBETT. Mr. President: I sincerely desire to restrict railroads reasonably; but, as was said by the gentlemen from Clearfield, it ought to be done by laying down general rules or general principles. I hope this amendment will not prevail. What is it? Just look at it for an instant. It provides that one railroad company shall have the right to pass its cars over the road of another company. How? In what manner? By putting its own locomotive on that other road and taking charge of a train and running it over it, interfering with its timetable and schedule and endangering the lives of passengers? Is that the meaning of this amendment?

SEVERAL DELEGATES. No.

Mr. CORBETT. It is not? Well, I apprehend that it may be claimed under the amendment as offered. It proposes to allow one company to pass its cars over the road of another. Is it to take charge of the cars and pass them over the other road, or is it merely to deliver them over to the other road and that road to do it? I apprehend it may claim the right to run over any other road at any time and at all seasons, interfering with schedule time, and endangering not only property, but life.

Mr. SHARPE. I refer the gentleman to the last few lines of the section, which say that the Legislature shall prescribe the regulations.

Mr. CORBETT. Well, suppose they may prescribe the regulations.

Mr. SHARPE. The language is that they "shall" prescribe.

Mr. CORBETT. Are you going to put a clause in the Constitution merely allowing regulations to be prescribed?

But in addition to that, in principle it is wrong. What right has any company to take possession of the railroad track of another corporation and run its cars over it? If a corporation has the right to do it an individual ought to have the right to do it; and the necessary consequence is that by allowing every person to run cars over a road, it does not control the running stock at all. I am entirely op-

posed to any such thing. I am willing to limit and restrict railroads reasonably, and desire to do so in everything with regard to which restrictions ought to be put upon them, but I cannot vote for this amendment and I will not.

Mr. T. H. B. PATTERSON. I will simply say, in reply to the gentleman from Clarion, that this section provides that the Legislature shall, by general law, prescribe reasonable regulations for carrying into effect these powers and rights; so that these are not arbitrary rights, but the section itself provides that they shall be only exercised under a general law providing for all emergencies and contingencies necessary to be provided for.

Mr. BEAR. Before the vote is taken I wish to call attention to the fact that the amendment offered by the gentleman from Allegheny does not justify a corporation in putting a locomotive upon another road and running it over it, and therefore the argument of the gentleman from Clarion will have no effect. It gives the right to pass cars over that road, but of course they cannot be passed unless the company owning the road attach their locomotive to them. Therefore there cannot be any interference. I think the amendment is entirely right.

Mr. BRODHEAD. I should like to ask the gentleman how will they pass their cars over the road if they do not have a locomotive connected with them?

Mr. BAER. Then they cannot pass them unless the company owning the road attach their locomotives to them, and therefore it cannot injure that company.

Mr. BIGLER. It is evident that many members of the Convention do not understand the effect and purpose of this first section. It is to regulate the relations between the railroads themselves where they connect. It often happens that there are serious differences between them. One railroad will stand up and make an imperious demand upon another and defeat connections. This is for the purpose of regulating those connections and the intercourse between railroads; but I think it is very deficient because it ought to provide for some arbitration. All that, it is true, is left to the Legislature, and it may be done properly. I have alluded to one of those difficulties, the passing at grade—

Mr. HOWARD. I rise to a question of order.

The *PRESIDENT pro tem.* The delegate will state his question of order.

Mr. HOWARD. The question of order is that the delegate from Clearfield has spoken on this amendment once.

The *PRESIDENT pro tem.* The point of order is well taken.

Mr. KANE. This is a very important provision, in my opinion. The principle of it is contained in the last section of the article as it is now before the Convention, which was offered by me in committee of the whole and adopted. The amendment now offered by the gentleman from Allegheny embraces everything that is material in that section, and it should be adopted here. It will be more uniform and better than where it is now.

I have not spoken before on this question, and I shall take up the subject just exactly where the gentleman from Clearfield left it. Great difficulty is experienced by the people from the disagreements of railroad companies, from one requiring of another things that are utterly impossible. Such things have occurred in my section of the State over and over again. There is a case now where two railroads run side by side together for a mile, and one company refuses to allow the cars of the other to run upon its road. They run together there, and the freight has to be unloaded from one car to the other. Now, sir, these are corporations created by the Commonwealth, and for the use and benefit of the people, and not for the exclusive benefit of the corporations themselves.

Mr. HOWARD. I desire to say to the gentleman that I am in favor of the amendment, and shall vote for it.

Mr. KANE. I am much obliged to the gentleman. I thought he was opposed to it.

Mr. HOWARD. No, sir, I am not.

Mr. KANE. It is just for the purpose of putting in the Constitution a provision that will require these companies, under suitable regulations made by the Legislature, to transfer each others cars upon their roads. Such an idea as not running a locomotive upon another road under a provision of this kind, as suggested by the gentleman from Clarion, is very strange to me.

Mr. CORBETT. Will the gentleman allow himself to be interrupted?

Mr. KANE. Not now.

There are a number of railroads in this State now being operated by companies whose charters contain a provision that individuals shall have a right to run their

cars upon the roads, and I doubt not that the charters of the railroads, or some of them, in which the gentleman from Northampton (Mr. Brodhead) is interested, contain provisions of that kind, for all railroad charters granted prior to 1847 contain such a provision. I have just been handed a section of the railroad law of New Jersey, which provides:

"That companies whose railroads shall be constructed under provisions of this act shall have the right to connect their roads with any railroads within this or any other State, upon such terms as may be agreed upon by those who have the management of said roads; and in case of a failure of an agreement on the part of those having the management of said roads within this State, then and in that case either of said parties may apply to the Supreme Court within the jurisdiction in which said connection is proposed to be made, whose duty it shall be to appoint three disinterested citizens wherein provided for the condemnation of land, who shall determine and fix said terms, which, when approved by said court, shall be conclusive, and thereupon said companies shall be required to carry said terms into effect; and all companies whose railroads are or shall hereafter be crossed, intersected or joined shall receive from each other and forward to their destination all goods, merchandize and other property intended for points on their respective roads, with the same dispatch and at a rate of freight not exceeding the local tariff rate charged for similar goods, merchandize and other property received at and forwarded from the same points for individuals and other corporations."

Now, sir, under the provisions which we propose here the Legislature can pass a law similar to that, which will carry them into effect. It is absolutely necessary in Pennsylvania that something of this kind should now be adopted. It will not do to let large railroad corporations set up for themselves to the injury of other companies and to the injury of the people.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was agreed to.

Mr. BRODHEAD. I move to amend the section in the second and third lines by striking out the words, "between any two points." I imagine it would be rather difficult to have a railroad without build-

ing it from one point to another. I think the words are surplusage.

The amendment was rejected.

Mr. BRODHEAD. I move further to amend, in the fourth and fifth lines, by striking out the words "in passenger and freight tolls and tariffs." The omission of those words will make better grammar and better sense. The words are entirely unnecessary, and the requirements of the section are fully met by the sentence as it will read with those words excluded.

The amendment was rejected.

Mr. COCHRAN. Mr. President: I move to amend the section in the first line by striking out the word "company," and inserting the word "partnership," and also by inserting the words "and operate" after the word "construct" in the second line, so as to read:

"Any individual, partnership or corporation organized for the purpose shall have the right to construct and operate a railroad or canal between any two points in this State."

The amendment was agreed to.

Mr. COCHRAN. I move to change the word "and," at the close of the fourth line, to the word "or," so as to read "and no discrimination shall be made in passenger or freight tolls," &c.

The amendment was agreed to.

Mr. CORSON. I move to amend by striking out the word "prescribing," in the eighth line, and inserting "prescribe," and inserting after the word "regulations" the word "and," so as to read:

"The Legislature shall by general law prescribe reasonable regulations and give full effect to these powers and rights."

Mr. T. H. B. PATTERSON. That would destroy the meaning of the sentence. If the delegate from Montgomery will notice, the sentence as punctuated should have a comma after the word "law" and after the word "regulations." It would then read:

"The Legislature shall by general law, prescribing reasonable regulations, give full effect to these powers and rights."

It is right as it is now.

Mr. CORSON. "And give full effect."

Mr. T. H. B. PATTERSON. No; it is right as it is now, with a comma after the word "law," and after the word "regulations."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Montgomery.

Mr. T. H. B. PATTERSON. I hope it will not be adopted.

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

The section was agreed to.

The second section was read as follows:

SECTION 2. Every railroad or canal corporation organized or doing business in this State shall maintain an office therein for the transaction of its business, where transfers of its stock shall be made and books kept for the inspection, by any stock or bondholder, or any other person having any pecuniary interest in such corporation, in which shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers.

Mr. J. R. READ. I move to strike out the words "or any other person having any pecuniary interest in such corporation," in the fourth and fifth lines.

Mr. CAMPBELL. That was very fully debated in committee of the whole, and the Convention after mature consideration inserted those words. I hope the amendment will not prevail.

The amendment was rejected.

Mr. BRODHEAD. I move to strike out the last "or" in the first line and insert the word "and," so as to read "organized and doing business in this State."

The difficulty with this section is that, having that word "or" there, it will include all foreign corporations and require them to keep an office in this State for the transfers of their stock. I do not believe this was the design of the committee or is the design of the Convention. There are quite a number of foreign corporations doing business here; and to ask them to do this would be asking rather too much. I think by striking out that word and making it "and," it will not include them.

Mr. COCHRAN. I must differ with the gentleman from Northampton on this subject. I do not see why any corporation having rights under the legislation of Pennsylvania and authorized to do business in this State should have superior immunities over corporations which reside in the State and are composed of our own citizens. If we grant an advantage to parties living outside of the State, allowing them to come in and transact business here and make money in this State, shall we not subject them to precisely the same regulations in this regard

to which we subject our own people? The section was drawn in this form with a view just exactly to meet that point and to include all alike and put them on an equal footing, so that we might have the same control over foreign as over domestic corporations in regard to this subject.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Northampton (Mr. Brodhead.)

The amendment was rejected.

Mr. J. M. WETHERILL. I offer the following amendment, to be added to the section :

"The chief officer or directors of every such corporation shall annually make a report, under oath, to the Secretary of Internal Affairs, which report shall include a detailed statement of its receipts and expenditures, assets and liabilities, as well as the receipts and expenditures, assets and liabilities, for or on account of any property leased or operated by it, and such other matters relating to its business as are now or hereafter may be prescribed by law."

Mr. President, a portion of the language of the amendment was embodied in the report of the Committee on Corporations, but not so fully as at present introduced. There are a great many railroads leased by the different corporations now in existence from which no report, or but a mere semblance of a report, is presented by the Auditor General to the people of the State. I have received through the post-office to-day, as have most members of the Convention, the detailed statement in the report of the Auditor General, and in glancing over it hastily I perceive that no report whatever is rendered to the people of the State, or at least but the semblance of a report, from a large number of railroad companies. These are the Allentown, Bald Eagle Valley, Barclay Coal Company, Bedford and Bridgeport; Buffalo, Bradford and Pittsburg; Catawissa, Chartiers, Chester Creek, Chester Valley, Chestnut Hill, Cleveland and Pittsburg, Cowanesque Valley, Colebrookdale, Columbia and Port Deposit, Connecting; Danville, Hazleton and Wilkesbarre; East Brandywine and Waynesburg, East Nahanoy, East Pennsylvania, Ebensburg and Cresson, Elmira and Williamsport, Erie and Pittsburg, Fayette County; Harrisburg, Portsmouth, Mount Joy and Lancaster; Hempfield, Jamestown and Franklin, Jefferson, Lawrence, Lehigh and Lackawanna, Lehigh and Susquehanna,

Lewisburg Centre and Spruce Creek, Littlestown, Little Schuylkill Navigation and Railroad, Lykens Valley, Mifflin and Centre County, Mill Creek and Mine Hill, Mine Hill and Schuylkill Haven, Mount Carbon and Port Carbon, Mount Pleasant and Broad Ford, Nesquehoning Valley, New Castle and Beaver Valley, Newry Branch, Pennsylvania and Delaware, Perkiomen railroad, Philadelphia and Baltimore Central, Philadelphia and Erie; Philadelphia, Germantown and Norristown; Philadelphia and Trenton, Pickering Valley; Pittsburg, Cincinnati and St. Louis; Pittsburg and Connellsville; Pittsburg, Fort Wayne and Chicago; Plymouth, Reading and Columbia, Schuylkill and Susquehanna, Schuylkill Valley Navigation, Shamokin Valley and Pottsville, Southwark, Sunbury and Erie, Sunbury and Lewistown, Tyrone and Clearfield, Wellsboro' and Lawrenceville, West Chester and the Western Pennsylvania.

All these railroad companies having been leased by corporations who own the charters of other roads, the reports of the receipts and expenditures, the assets and liabilities, and all matters relating to them, are lumped in the reports of the existing corporations by which they are leased, and hence the people of the State receive no information whatever, or but exceeding meagre information, on these subjects. I offer this amendment compelling the companies that operate these roads to make detailed statements and give the facts of their management to the public in the same manner that they do as to the roads the charters of which they own and operate themselves. I trust my amendment will pass, as I think that it will be a great advantage to the community.

Mr. TURRELL. Mr. President: The thirteenth section of this article, it seems to me, provides sufficiently for this. It provides for annual reports and provides that the Secretary of Internal Affairs may at any time call for special reports; so that this amendment is not necessary.

Mr. J. M. WETHERILL. Let me ask the gentleman a question.

Mr. TURRELL. I am not on the floor.

Mr. J. M. WETHERILL. I call for the yeas and nays on the amendment offered by me.

The *PRESIDENT pro tem.* Do ten gentlemen rise to second the call?

Ten gentlemen rose.

Mr. COCHRAN. Before the yeas and nays are called, I wish to say that, so far as the amendment is concerned, I entirely agree with its intention and design. The only difficulty I had about it was—and that I suggested to the gentleman from Schuylkill—that I supposed it was covered by the provision of the thirteenth section as suggested by the gentleman from Susquehanna (Mr. Turrell.) If it is I should rather not add unnecessary matter; but if it is not so satisfactorily covered by that, I am perfectly content that it shall go in here. I certainly do not oppose any information which is intended to develop fully the condition and management of these special corporations to the people of the State.

The PRESIDENT *pro tem*. The Clerk will call the names of delegates on the amendment of the delegate from Schuylkill (Mr. J. M. Wetherill.)

The yeas and nays were taken and were as follow, viz:

Y E A S.

Messrs. Achenbach, Alricks, Armstrong, Bailly, (Perry,) Baker, Black, J. S., Brodhead, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cochran, Curry, Dunning, Ewing, Finney, Funck, Gibson, Hay, Landis, Lear, MacConnell, Metzger, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Reynolds, Ross, Sharpe, Smith, Henry W., Van Reed, Wetherill, J. M., White, David N. and White, Harry—39.

N A Y S.

Messrs. Baer, Biddle, Bigler, Black, Charles A., Boyd, Broomall, Cassidy, Corbett, Corson, Cronmiller, Darlington, Davis, De France, Edwards, Elliott, Fulton, Gilpin, Green, Guthrie, Hall, Harvey, Horton, Howard, Kaine, Lambertson, Lawrence, Lilly, Littleton, Long, M'Clean, M'Culloch, Mann, Mantor, Niles, Pughe, Purviance, John N., Read, John R., Reed, Andrew, Rooke, Simpson, Stanton, Turrell, Walker, Wherry, White, J. W. F. and Worrell—46.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Clark, Collins, Craig, Curtin, Cuyler, Dallas, Dodd, Ellis, Fell, Hanna, Hazzard, Hemphill, Heverin, Hunsicker, Knight, MacVeagh, M'Camant,

M'Murray, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Parsons, Porter, Runk, Russell, Smith, H. G., Smith, Wm. H., Stewart, Struthers Temple, Wetherill, Jno. Price, Woodward, Wright and Meredith, *President*—48.

Mr. COCHRAN. The word "the," in the clause "for the inspection," is surplus. The words ought to be "for inspection." I move to amend by striking out the word "the."

The amendment was agreed to.

Mr. FELL. I move to amend by striking out, after the word "therein," the words "for the transaction of its business." That will make the section read: "Every railroad or canal corporation organized or doing business in this State, shall maintain an office therein, where transfers of its stock shall be made and books kept for the inspection by any stock or bondholder, or any other person having any pecuniary interest in such corporation," &c. It gives all the power for inspection that is required, but does not force the company to maintain an office for its business in the State. There are companies which have their offices in New York and Boston, where the transaction of their business is conducted, but they have offices for the transfer of stocks within the State. There is a feeling that there ought to be an office in the State where you can go and inspect what has been done in regard to the stock and who are the stockholders. That is very proper, I think; but if you were to force these companies to maintain an office for the transaction of their business within the State, it might cause a great deal of trouble without doing any good to the people of the State.

On the question of agreeing to the amendment proposed by Mr. Fell, a division was called for, which resulted fifty-two in the affirmative, and twenty-one in the negative. So the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

The section as amended was agreed to.

The PRESIDENT *pro tem*. The third section will be read.

The CLERK read as follows:

SECTION 3. The property of railroad and canal corporations, or other corporations of a similar character, doing business in this State, and other joint stock companies now existing or hereafter created, shall forever be subject to taxation; and the power to tax the same shall not

be surrendered or suspended by any contract or grant to which the State shall be a party.

The section was agreed to.

The PRESIDENT *pro tem.* The fourth section will be read.

The CLERK read as follows :

SECTION 4. No railroad, canal or other corporation, nor the lessees, purchasers or managers of any railroad or canal corporation shall consolidate the stock, property or franchises of such corporation with, nor lease, purchase, or in any way control any other railroad or canal corporation owning or having under its control a parallel or competing line; nor shall any of the officers of such railroad or canal corporation act as an officer of any other railroad or canal corporation owning or having the control of a parallel or competing line; and whether railroads or canals are parallel and competing lines shall always be decided by a jury in a trial, according to the course of the common law.

The section was agreed to.

The PRESIDENT *pro tem.* The fifth section will be read.

The CLERK read as follows :

SECTION 5. No railroad, canal, or other corporation, doing business as a common carrier, shall either directly or indirectly hold, guarantee, or endorse shares in the capital stock, bonds, or other indebtedness of any other corporation, individuals, or partnership, except those doing the business of common carriers.

MR. JOSEPH BAILY. I move to strike out all after the words "section five," and insert: "No railroad or canal corporation shall have the right to invest in, or purchase, or hold shares in the capital stock, bonds, or other indebtedness, or purchase, hold or lease the franchise and property or other estate of any other railroad, canal or other corporation, either in its corporate name, or by its officers, or through the intervention of trustees or other agents holding the same for its use."

I would now like the attention of this Convention for a few minutes. I have never occupied any of the time of this body until now, and I desire very much to be heard in what I have to say on the subject. I think it will take me more than ten minutes, and I hope my friends will indulge me until I am through.

MANY DELEGATES. Go on; take all the time you want.

MR. LILLY. I desire to say before the gentleman commences that I shall not object.

The PRESIDENT *pro tem.* The gentleman from Perry will proceed.

MR. JOSEPH BAILY. Mr. President: If the people of Pennsylvania are to have such safe-guard's incorporated in the Constitution as to afford them protection from the dangerous power of railroad monopolies, then other remedies will have to be adopted than those contained in the report of the committee of the whole. It is true there are many salutary provisions in that report, but they are all rendered nugatory by the sweeping powers contained in the last clause of the fifth section. The section reads as follows:

"No railroad, canal or other corporation doing business as a common carrier shall, either directly or indirectly, hold, guarantee or endorse shares in the capital stock, bonds or other indebtedness of any other corporation, individuals or partnerships, *except those doing the business of common carriers.*"

If gentlemen will examine the section carefully they will perceive that if the eight last words were not there the section would contain a direct prohibition to deal in each others stocks and bonds by railroad and canal companies, but the insertion of them changes entirely the character of the section.

This power to purchase the stocks of each other, together with the power to purchase or lease the chartered franchise of each other, has been the fruitful cause of building up the great monopolies which now stretch themselves like great giants across our fair Commonwealth. With such power these great companies can prevent the construction of rival roads by simply purchasing a majority of their stock, thereby changing the ownership and direction. The fourth section of the report prohibiting the consolidation of parallel or competing lines is rendered a nullity by this power to purchase each others stocks. Before a competing line can be built and in operation, a majority of its stock will be secured by its more fortunate neighbor, and absorption will be the consequence.

If the Convention deem it wise to legalize monopolies, then the proper plan has been adopted in this fifth section. But if, on the other hand, this Convention considers the rights of the people as paramount and the rights of corporations as subordinate to those of the people, then

this fifth section should be amended by a provision prohibiting railroad and canal companies from purchasing each others stocks, or chartered franchise or leasing the same.

I offer this amendment with the view of protecting the rights of the people and in no spirit of hostility to any company. I will never consent to deprive any railroad or canal company of any right essential to their usefulness as public institutions; but to confer powers injurious to the well-being of the institutions of the Commonwealth is another thing, and, so far as I am concerned, will be resisted.

I believe the amendment will operate as an effectual remedy for many of the evils complained of. It contains nothing new; nor is it the radical and dangerous measure that many persons believe it to be. It only restores the provisions of the original charters of all the older railroad companies. The Philadelphia and Reading, Lancaster and Harrisburg, Cumberland Valley, Minehill and Schuylkill Haven, West Chester Valley, and many smaller railroad companies, had no grants of power in their original charters to buy the stocks or franchise of each other, but on the other hand such grants were scrupulously withheld. These are the oldest railroad companies in the State. The Pennsylvania railroad company, chartered in 1846, had no such grants of power in its original charter, nor could it have obtained such a grant at that time. These grants have been insidiously obtained from time to time by special legislation, and have been the fruitful source of the corruption and demoralization of legislators and other public men, and not until 1870 did the Legislature so far forget its duty to the people as to confer, by a general law, the full and unrestrained power on railroad companies of purchasing each others stocks and chartered franchise and also to lease. Since then all the smaller roads worth anything have been purchased or leased by the larger and more fortunate ones, and the construction of rival lines, by the extension of some of these smaller roads, absolutely prevented. And now we have the extraordinary spectacle of almost all the transporting and carrying power of the State, being virtually under the control of one vast monopoly.

Was such legislation, granting such extraordinary powers to corporations, enacted in the interest of the people? No honest man can, I think, entertain such

an opinion. What equivalent have the people of Pennsylvania received for the concession of such unlimited powers? Has there been any reduction in rates of tolls? I think not, but on the other hand they have been increased. It is true the people living beyond the boundary of Pennsylvania, where the influence of the Baltimore and Ohio and the New York railroads come in competition with the Pennsylvania railroad, have their persons and property transported at greatly reduced rates.

This fact clearly and indisputably proves the advantages to be derived from rival lines, and ought forever to close the mouths of the advocates of one grand non-competing line. The section proposed by me prohibits railroad and canal companies from dealing in the property of each other. It provides as follows:

SECTION —. No railroad or canal corporation shall have the right to invest in, purchase or hold shares in the capital stock, bonds or other indebtedness, or purchase, hold or lease the chartered franchise and property or other estate of any other railroad, canal or other corporation, either in its corporate name, or by its officers or through the intervention of trustees or other agents holding the same for its use.

It will be observed that the amendment contains an explicit denial of the right to purchase or lease the franchise or to purchase shares in the capital stock of each other. By this provision the stockholders of each corporation will be protected in the ownership and control of their respective lines of improvement, and the continued fear of being absorbed by companies more powerful than themselves will be removed. Each company, being owned by individual stockholders, will always be under their control, and in the management of its pecuniary and internal affairs will be independent of all other companies; but being connected together, as provided in section fourteen of this article, and obliged to pass all cars, passengers and freight from each others roads at uniform rates, these separate and independent corporations, in their business operations, will furnish the people with a complete system of local and through transportation, and will be built wherever and whenever the wants of the people demand their construction. I cannot see why a net work of railroads all over the State, under such a system, will not be far more economical and advantageous

to the people than any system under the management and control of one great monopoly.

The national banking system is somewhat analogous, and I refer to it to illustrate this independent system of railroad transportation. The old United States bank, with a capital of \$30,000,000, was destroyed by President Jackson for the supposed political power wielded under the management of one head. But the national banking system, with a combined capital of near \$400,000,000, distributed all over the country, under the control of corporations with small capital, each company being managed by its own board of directors, and in its business operations entirely independent of all the rest, affords the people a system of banking and currency far superior to anything of the kind the old United States bank could have furnished; and the isolation of the individual banks entirely deprives the system, as a whole, of the power to wield serious political influence. Would any sane man ever have proposed the incorporation of one bank with a capital of \$400,000,000, to be located in any one of the large cities? The idea is preposterous. Yet, scattered all over the country and divided into a great number of isolated banks, the system furnishes the people with a sound and uniform currency, and the stockholders of this immense but divided capital are favored with a profitable investment.

In the place of one great national bank, with its vast political power, we have a system of national banks so separated in their business operations as to be incapable of combining together for any political purpose. In a similar way I propose a system of railroad corporations without power to purchase each others rights, but so connected together as to afford every facility for transportation, yet so independent and separated from each other as to prevent the possibility of a combination calculated to interfere with the institutions of government, instead of one great railroad corporation capable from its very nature of seriously impairing the whole fabric of government itself.

The population of Pennsylvania is increasing very rapidly, and her great interest in agricultural, manufacturing, mining and commercial purposes are expanding and developing far more rapidly than the calculations of the most sanguine have indicated.

In twenty years our population may very nearly reach ten millions of souls. Who can predict the business necessities of such a population. Will it be wise to subject such numbers and such vast interests to the transporting power of one great monopoly.

Yet this will inevitably be the result if the last clause in the fifth section should unfortunately become a part of the Constitution. Rivalry in transportation will be impossible, for the greater will always absorb the less corporations in any attempt to establish competing lines.

The Pennsylvania railroad, with all the efficiency and wisdom of its present management, is certainly very nearly worked to its profitable capacity. To run many more trains will deprive them of the power to keep the road in repair. There is a limit to the carrying capacities of any railroad from this cause. Workmen always avoid danger from passing trains, and their repair force, from this cause, lose at this time a very considerable percentage of time.

Suppose two more tracks be added to that road, it will scarcely double its present capacity, on account of the increased difficulty and danger of keeping the inside tracks in repair. I think it cannot be successfully denied that the policy of that company has been exerted to discourage and prevent the building of rival roads. In the single case of the Cumberland Valley railroad this policy is fully illustrated. That company had extended its road to form a connection with the Baltimore and Ohio railroad, thereby with the Connellsville railroad in the west and the Reading railroad, by its Harrisburg branch, in the east, was prepared to furnish the people with a competing line from Philadelphia to Pittsburg; but the project has been defeated by the Pennsylvania railroad company purchasing a majority of the stock of the Cumberland Valley road, and converting that old and well-established road into a division of the Pennsylvania railroad. By this shrewd operation the ownership of near one hundred miles of this new line to the west is now lodged in the Pennsylvania railroad company, and the people have been deprived of the advantage of a rival line to the west. If the amendment proposed by me had been part of the present Constitution this thing could not have occurred. I speak of the Pennsylvania railroad company with no

feelings of hostility. I know the gentlemen who control that great and wonderful organization to be honest, and are actuated, most probably, by motives of patriotism. In the course of things they must pass away, and their places may be filled by others actuated by more sordid purposes than those gentlemen now having control of that company. I only war with the power conferred upon a single vast corporation to monopolize and control the whole carrying trade of the Commonwealth. In my judgment it is the duty of this Convention to give to this question of transportation all the consideration that a subject of so much importance deserves. The movements of the people all over the country warn us to the task. In the west they are banded together by hundreds of thousands to effect reform in this particular; and the influence of these organizations will soon be felt in the east.

The necessity for such organizations is greatly to be deplored, and a corrective should at once be adopted which will avoid the necessity of their longer continuance. Why should the friends of the great corporations of this State oppose this amendment?

Let us see whether its adoption will not, in the end, be advantageous to them. An opposition line is about being built from New York to Philadelphia; and this road, supported by a combination of the great capitalists of the country hostile to the Pennsylvania roads, may soon be extended across the State to the west. By the power and ingenuity of such a combination the stocks of our present companies may be ruinously depressed and a majority of it purchased by the new and more powerful company, until the Pennsylvania and other great corporations may become mere divisions of a greater than themselves. The new company would only be following the teachings of those it had absorbed. The adoption of the amendment offered by me will secure these companies from absorption by this new and more powerful combination, and save the people of Pennsylvania from the infliction of a greater monopoly than now exists, and the stockholders of those companies from ruinous losses by depreciation in the price of their stock.

If this monopoly policy should unfortunately be adopted and supported by constitutional sanction, then we shall ever be cursed with this continually recurring warfare of the greater absorbing the

weaker companies, in order to prevent competition in the transporting and carrying business of the country.

The stronger will not permit the weaker to exist as rival roads, but will absorb them by this power to purchase their stocks or franchise. In such a warfare between these soulless monopolies to circumvent and absorb each other, demoralization of the people and their business interests will be the inevitable consequence.

Will it be wise to legalize, by constitutional provision, such a dangerous policy; fraught, as it must be, with ruin to the industrial and free institutions of the State?

In addition to the evils I have portrayed, by reason of the existence of such absorbing monopolies, let us dwell for a moment upon the political effect which will inevitably result. The Legislature and high officials of the Commonwealth will be selected and elected by this one power. The legislation will be framed under its dictation and in its interest; step by step it will encroach upon the liberties and rights of the people until this process of absorption will reach its final culmination in the destruction of the present institutions of government, and the Commonwealth will then only exist in name.

The PRESIDENT *pro tem*. The hour of one o'clock having arrived, the Convention takes a recess until three o'clock.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

LEAVE OF ABSENCE.

Mr. DARLINGTON asked and obtained leave of absence for Mr. Hemphill for a few days from to-day.

RAILROADS AND CANALS.

The Convention resumed the consideration, on second reading, of the article on railroads and canals.

The PRESIDENT *pro tem*. When the Convention took its recess, the pending question was on the amendment of the delegate from Perry, (Mr. Jos. Baily,) to strike out all of the fifth section, after the word "section," and to insert in lieu thereof what will now be read.

The CLERK read as follows:

"No railroad or canal corporation shall have a right to invest in, purchase or hold shares in the capital stock, bonds or other indebtedness, or purchase, hold or

lease the franchise and property or other estate of any other railroad, canal or other corporation, either in its corporate name, or by its officers or through the intervention of trustees or other agents holding the same for its use."

Mr. JOSEPH BAILY. On that amendment I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. COCHRAN. Before the yeas and nays are taken, I only wish to say that I am in entire harmony with the gentleman from Perry in the views which he expressed here this morning, and so far as I am individually concerned—I suppose I cannot answer for others—I am in favor of the amendment which he has offered and shall vote for it.

Mr. BIDDLE. Before the vote is taken I ask the chairman of the Committee on Railroads whether the section was not originally reported without the eight last words which this amendment proposes to strike out?

Mr. COCHRAN. The section as originally reported did not contain the last eight words.

Mr. BIDDLE. Then the amendment makes it in harmony with the report of the committee.

Mr. BAER. I wish simply to call attention to the fact that the amendment does not bring the section in harmony with the original report. Those eight words make it quite different from the amendment adopted. This precludes the leasing or purchasing of a small road, which the original did not. I hope the amendment will be voted down, as it will effectually close all enterprise in the interior of the State. It will be the death-blow to the making of railroads in the interior. I trust it will be voted down.

The PRESIDENT *pro tem*. The yeas and nays will be taken on the amendment.

The yeas and nays were taken and resulted as follow, viz:

Y E A S .

Messrs. Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Broomall, Buckalew, Calvin, Campbell, Carter, Cochran, Funck, Guthrie, Landis, Lawrence, Lilly, MacConnell, M'Clellan, M'Culloch, Mantor, Newlin, Palmer, G. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Sharpe, Smith, Henry W., Temple, Wherry, White, David N., White, Harry, White, J. W. F. and Wright—32.

N A Y S .

Messrs. Armstrong, Baer, Bigler, Black, Chas. A., Boyd, Brodhead, Brown, Cronmiller, Cuyler, Darlington, Davis, De France, Edwards, Elliott, Ellis, Fulton, Gilpin, Hall, Hay, Heverin, Horton, Howard, Kaine, Long, Mann, Metzger, Niles, Purman, Purviance, John N., Reed, Andrew, Rooke, Ross, Smith, Wm. H., Stewart, Turrell, Van Reed, Walker, Wetherill, J. M. and Wetherill, Jno. Price—39.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Clark, Collins, Corbett, Corson, Craig, Curry, Curtin, Dallas, Dodd, Dunning, Ewing, Fell, Finney, Gibson, Green, Hanna, Harvey, Hazzard, Hemphill, Hunsicker, Knight, Lamberton, Lear, Littleton, MacVeagh, M'Camant, M'Murray, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Patterson, D. W., Patton, Porter, Pughe, Read, John R., Runk, Russell, Simpson, Smith, H. G., Stanton, Struthers, Woodward, Worrell and Meredith, *President*—62.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. COCHRAN. I move to amend by striking out all after the word "partnership," in the fourth line.

This clause of the section was not in the report of the committee which had this subject in charge, but was introduced into the section in opposition to the friends of the article. It is in fact an almost entire destruction of the whole aim and object contemplated when this section was drawn. With this clause in it there is very little substance in the section, very little left of it. It simply prevents railroad companies from investing in the stocks and bonds of corporations other than railroad companies. That is to say, it may prevent them from investing in the stocks and bonds of mining companies and manufacturing companies; but it does not prevent the evils which flow from the combination and absorption and uniting together of the different railroad companies throughout the State, and so building up and combining an overwhelming and overshadowing influence against which there is no power left in the State or among the people to resist.

Now, sir, railroad companies, of course, act under privileges granted by the Commonwealth, and each railroad company that is incorporated receives its charter for the purpose of building a specific road from one point to another designated in its charter, and this is the power which has been conferred upon it by the people through the Legislature of the State. But such has been the operation and effect of the policy which has been pursued and of legislation which has been superadded that this original idea which was included in the legislation of the State has been entirely departed from, and there has been an aggregation of power by combinations through the purchase of a controlling influence by one railroad in the stock of another that the State has become in effect unable to resist it.

This is secured in many ways, sometimes with and sometimes without the knowledge of the stockholders of the particular railroad which is thus affected, and we have had illustrations of it time and again. One was given by the gentleman from Perry (Mr. Joseph Baily) this morning, in regard to the Cumberland Valley railroad and the result and the effect of the policy which was pursued in that particular case; and there are numerous other cases which might be cited in all parts of the State, showing the detrimental effects of permitting a policy of this kind to continue.

There is no reason why the railroad companies should become dealers and brokers in the stock of each other. There is no reason why they should become alienees and purchasers, as railroad companies, of stocks in this Commonwealth. That is not the design for which they were incorporated. The design of their incorporation was to be transporters on the particular lines of road which they were incorporated to build; but instead of that they become traffickers in the stocks of one another, the whale swallowing the minnows, and in this way we have aggregated a power in this State which there is no power outside of it shortly which will be able to overthrow.

Now, sir, the policy is a dangerous one. It is a dangerous one in various points of view, and it is one which it would be well for gentlemen here to consider in view of the facts of which we are apprised from day to day in the history and events of the times in which we live; and it is not politic nor wise for us to allow this system to go on and continue any longer.

The time has come when it must be stopped here, or it will be stopped in some other way which I should be very loth to see applied to it.

I hope, Mr. President, that this portion of this section will be stricken out and that it will be left to stand on the same footing which it occupied when it was reported by the Committee on Railroads and Canals, and, with that done, I believe that most of the advantages which would have been secured by the passage of the amendment offered by the gentleman from Perry (Mr. Joseph Baily) will be realized, and that you will adopt a wholesome system for the management of railroads in the future.

Mr. NILES. I hope the Convention will pause before they pass the amendment suggested by the chairman of the committee. He is right when he tells us that the Committee on Railroads are not responsible for this provision. That is true. The committee of the whole are responsible for it, after a long and interesting debate upon the question. While I do not pretend to represent anybody's railroad here to-day, I undertake to say that we ought not by our policy put into the Constitution a system that will serve to build up a Chinese wall around the State as far as improvements are concerned, or which, in effect, will go far towards tearing up the railroad tracks of the Commonwealth. We ought to treat the railroad interests of this State precisely as we treat all other interests.

Sir, what is this proposition? It simply says that no existing railroad shall endorse the bonds of any other struggling railroad in this Commonwealth. That subject was all gone over in the debate in committee of the whole. The portion of the State from which I come has a deep interest in this question. We have lived during the whole existence of this State outside of the great railroad interests of Pennsylvania, and the only aid that we have ever had and the only aid that we expect is that the railroads that are in existence to-day will aid us and assist us in the development of our section of the State. There is no struggling railroad in existence to-day trying to build itself that is not asking the aid of corporations of this State and the capitalists of the Old World to buy its bonds; and shall the roads that have simply an existence on paper be debarred from the advantages that the roads that are now in existence have had? Why, sir, the first

great railroad that was built in this State, from Columbia to Philadelphia, was built upon the credit of the State. The Philadelphia and Erie railroad, that has opened up the way to your beautiful city, has been built by the endorsement of its bonds by the State and certain railroad companies. The Allegheny Valley railroad, with its short lines and easy grades, is being built to-day by the endorsement of its bonds by the other railroads of the State. It has been so in the past. It has been one of the great means by which the different sections of the State have been opened up and developed. And shall we say here to-day in the hard lines of the Constitution that these advantages that we have had in the past, and which have worked so admirably, shall not be extended in the future? I hope that in our crusade against corporations we will pause and reflect before we put a provision in the Constitution of the State which, if adopted by the people, will prevent any aid in the future to the struggling railroads of the State.

Mr. MANN. I desire to add a few words to what my colleagues has said on this subject. These few lines which the chairman of the committee desires to strike out are of vital importance to northern Pennsylvania, especially to that portion of Northern Pennsylvania from which the gentleman from Tioga and myself come. The Buffalo, New York and Philadelphia railroad is already constructed from the city of Buffalo to the Philadelphia and Erie road at Emporium. It is a leading, vital and active road, and it has brought the only railroad advantages to the counties of M'Kean and Potter that they have ever received. We have received no benefit whatever from our own State, and if this section is to be adopted, in all probability we never shall receive any such. It will not only prevent us from receiving any aid from the railroads of our own State, but it will prevent the Buffalo and Washington Railroad from doing what it desires to do. It has secured authority from the Legislature of New York to guaranty the bonds of the Pine Creek railroad to the extent of \$10,000 per mile, and they are ready to extend aid to the construction of the Pine Creek railroad, extending from Port Allegheny, in M'Kean county, to Linden Bridge, in Lycoming county, a distance of one hundred and six miles, whenever a certain amount has been expended upon

it beyond that which has already been expended.

Now, sir, if this section be inserted in this Constitution it will be an entire bar to any such assistance as this company is desirous of giving to us. The Pine Creek road and the Buffalo road, in connection with the Reading, will make the shortest route from tide-water to Buffalo. It will bring Philadelphia nearer to the city of Buffalo than New York is; and yet you propose in the Constitution of the State to prevent the construction of that link which is now needed to bring the great city of the lakes nearer to your city than it is to the city of New York. Already the Pennsylvania railroad company has put upon its own road and its connections, and over the Buffalo and Washington railroad, a train that takes passengers from Philadelphia to Niagara Falls quicker than they can be taken from New York city to Niagara Falls, and it is by means of this Buffalo road, which stands now ready to assist in building this other connecting link that shall bring it twenty-eight miles nearer still. Now, this is but a single instance. There are various companies constructing railroads in northern Pennsylvania in the same situation. The Pine Creek railroad has been located; work has been commenced upon it at both ends, and with such help as it can obtain under existing laws it will be constructed within a few years, and will develop more of Pennsylvania than any railroad proposed to be built—I mean of the remaining undeveloped portion of the State.

What possible harm can come from this construction of extending lines? Is there any objection to making one line from Philadelphia to Buffalo under one management, one control, thereby economizing time and money, and cheapen the cost of carrying passengers and freight from Philadelphia to Buffalo? One company, under one organization, can carry both passengers and freight at least fifteen per cent. cheaper between these two points than three or four companies can; and what harm comes of it? None whatever. The idea that there will be any more power in the hands of one company extending between two points than if is divided up between three or four companies is entirely imaginary. The railroad interest, whatever it may be, however the number of companies may be enlarged or diminished, is one

interest; it can as easily consolidate if there are twenty of them as if there be but one, as to their effect upon legislation.

Now, then, for the sake of the undeveloped portions of Pennsylvania, I beg gentlemen not to strike out these lines at the closing part of this section. You have stood coldly by long enough; you have refused by legislation all assistance to help northern Pennsylvania in any particular, except by the building of the Philadelphia and Erie railroad, which strikes a few of the northern counties. Now, do not put your hands on the rest of them and say they shall neither be developed by your own companies nor by the railroad companies of the State of New York who may be willing to do it; for every mile of railroad from Buffalo towards the city of Philadelphia, which may be constructed by the aid of the Buffalo and Washington railroad, is a direct contribution to the business, wealth and prosperity of Philadelphia, and it will be paying into the Treasury of the Commonwealth large amounts of revenue. Why put obstacles in the way of it? Simply because there has grown up in the minds of some men the idea that every additional railroad is an additional danger to the liberties of the people. A greater fallacy, it seems to me, never entered into the mind of man.

Mr. ARMSTRONG. It appears to me that the words which the gentleman from York proposes to strike from the section are of great value to it. The section as it stands, with these words in it, imposes all the restrictions which ought to be imposed, for it prevents railroads from engaging in business foreign to the purpose of their organization, which is transportation, or in other words, the business of common carriers. Now, the northern counties of this State, beginning at Warren and extending to Bradford, are effectually cut off from the central portions of the State by a line of hills which can be pierced only in certain places, and it happened not many years ago that they were so effectually cut off from intercourse with the lower part of the State that the social sympathies and inclinations of the people of that portion of the State were far more intimate with New York than with Pennsylvania.

Mr. NILES. They are now.

Mr. ARMSTRONG. The gentleman from Tioga says that they are now. Now, this line of territory embraces valuable coal,

iron and lumber interests which ought not to be diverted either in its transportation or manufacture from the State of Pennsylvania. The roads which are necessary to pierce this line of hills and to bring these northern counties into closer intimacy with the State must be built with the assistance of other railroad corporations having an interest in their transportation.

We are now getting, in my judgment, too far upon this question. The whole framework of the article seems to be based upon the idea that the railroad interests antagonize the interests of the State. I do not so regard it. Railroads require some restriction, but we have gone so far that there is every great danger that we have already so crippled and trammelled their business, that we greatly impair their usefulness, and I believe that the amendment proposed by the gentleman from York to this section ought not to be adopted. As the section stands, it will prevent a railroad corporation from engaging in business not germane to the objects of their organization, but will still leave them at liberty to assist such corporations as cannot live without such assistance. It is the interest of the people everywhere that those portions of the State, sparsely settled and poor because they lack the necessary facilities of business, shall be built up, and we ought to throw no embarrassment around such assistance as great corporations able to render assistance may be willing to render. Capital is always sufficiently cautious to guard well its own investments and to care for its own interest well. The discretion is soundly left to great corporations when we trust it to the timidity which is proverbial in the investment of capital.

Mr. TURRELL. I have never been accused of any particular friendliness to railroads in this Convention, but rather the reverse, having been considered as going to the verge of insanity in opposition to them. But this is a practical question, and I desire to look at it as such. I will not go over the ground which has already been taken in the argument. I say this, a demonstration of which has come under my own observation and which will commend itself to the mind of every man who will stay to think about it. There are all along in the vicinity of the main lines of railroads in this State communities which are mainly agricultural, which have no mineral wealth or any-

thing that will attract the capital there to invest in and build railroads, aside from the capital which already exists in those communities. They are too poor to build the roads themselves, and they are deprived of communication with the outer world by railroads on that account.

Now, sir, as it has occurred under my own observation, a community of that kind have had this said to them by the main line: "You raise money enough to do the grading of this road, and we will furnish the means to put on the superstructure and the rolling stock." Their interests are joined, and they go to work and they build that road in that way. The inhabitants raise money enough to do the grading; the superstructure and the rolling stock are furnished by money from the stockholders of the main line, and the road is built and they both enjoy the advantages of it. One has the advantages of being brought into connection with the markets of the State; the other has the additional business brought on to its line, and they are both benefited, and I should like to know who is harmed.

Now, sir, this amendment if you adopt it, destroys the right to so build railroads, prevents it; and there are thousands of these communities all along the main lines just in these circumstances, which would be deprived of the advantages that are thus given if you adopt this amendment.

I will not spend words upon it. As I said before, it is a practical thing, and every man who looks at it will see that these circumstances exist everywhere in the State, and we ought not to prevent the mutual assistance which is thus rendered and by which both parties interested are benefited.

Mr. BIGLER. Mr. President: In confirmation of what has been so well said by the delegate from Susquehanna, I will state that through Centre county at this time a railroad is being constructed precisely on the principle which he has set forth. The agriculturists there are unable, they cannot command the means to construct a railroad and put down the iron and equip it. It was on this principle that a railroad was constructed to my own town, and that road is now intended to be extended to what is known as the low grade on the Mahoning. In truth, sir, off the main lines all railroad facilities in the northwest have been secured in that way.

Now, sir, I agree that local interests and especially personal interests must give

way if there is a great public necessity, especially if there be something that endangers the liberty of the country or the rights of the people; but, with the delegate from Susquehanna, I ask in all this what harm has been done? So far from adding to the power of the great corporations that carry it through, it rather diminishes their power; and yet I know no effort that any corporation put forward which could bestow such vast blessings upon this great Commonwealth.

I am only anxious that those general principles shall be laid down which will in the future advance these great enterprises and bestow upon the people these unequalled blessings, and this can be done without hazarding any interest. I am familiar with, and for thirty years I have listened to, this kind of alarm. I had something to do with the organization of the great corporation that has bestowed, I do not hesitate to say, a larger share of physical development and general prosperity on this State than any other that ever existed or probably ever will exist. Understand, I do not say or pretend to say that its policy has been faultless; I do not pretend to say that they should for that reason have undue power; but I will say that so far as the head of that company is concerned this day, I would not hesitate to trust the welfare of every man, woman and child in this country in his hands. I believe him to be pure and honest, and that he would not usurp a solitary right. But, sir, this great power may go into other hands. For that reason I would have all the restrictions and restraints and safeguards that can be laid down consistent with the public welfare.

But I only rose, sir, to say that these two sections, four and five, and indeed the general spirit of all this article, is to lock the stable after the horse has been stolen. It is to contribute to the power and influence of corporations now in existence, instead of the wiser and broader and better policy of facilitating the construction of competing lines.

Sir, I happen to know that just at this time a question of furnishing capital to construct great lines from the Atlantic to the Great West is a matter of agitation, in order that there may be a greater restraint upon the railroad power that now exists. I desire to see that movement facilitated and encouraged. Hence it is that I prepared what I thought, as a whole, would be for our State a wiser policy than that found in the article before us. I did that

in great sincerity and I trust with becoming humility, although I had no position in connection with the subject. Yet I have had some experience and some observation in railroad affairs. I contended against their power. I stood alone against the power of this corporation. I stand alone against it anywhere, but what is dictated by my sense of true policy and duty I will do again, though I may stand alone in this body; and I say, sir, that it would be wiser for this Convention to lay down great leading principles to direct a railroad policy in the future and allow the Legislature to attach the details, because it is not possible to do that here.

Furthermore, some of this article which remains to come before us, I do not hesitate to say, is utterly impracticable. What it asserts cannot be carried out by the best practical railroad men in this country. You cannot, on any business principles or principles that lead to success, lay down arbitrarily that per mile tonnage shall be charged the same rate. Everybody knows that who has ever had anything to do with this business.

And now, sir, I hope not only that the amendment will not prevail, but that the section will be voted down also.

Mr. J. PRICE WETHERILL. I desire to occupy the time of the Convention but for a moment upon this subject. I entirely agree with the remarks of the delegate from Clearfield and believe that we should be extremely careful how we vote for an amendment of this sort, because I believe it will probably defeat the very object the gentleman from York has in view. His great objection to the railroad companies seems to be this: That by their ability to endorse bonds, and to buy stock, they will therefore monopolize the carrying trade of this State; but, sir, he has overlooked the fact that possibly just the reverse result will be secured by the scheme he proposes.

Now, sir, let me examine the effect of the position he assumes. There is to-day a great coal road in the State of Pennsylvania, which, by privileges which this section would have deprived them of, has been enabled to build a road and to control a road from the coal mines of this State to Lake Erie. Thereby they have a through line and secure in a measure the monopoly of that trade. Another great coal road, by the simple building of a hundred miles of road, will gain the same advantages and will secure to the State of Pennsylvania the same privileges.

There you have one road, without this section, which has been, and will be perhaps for years to come, quite a monopoly; but if you do not pass this section, another coal company by the simple building of a hundred miles of road, or helping to build it by endorsing its bonds, will secure you a competing line, which would of course be a great benefit to this State, if competing lines are an advantage.

Another illustration has been cited in regard to the Philadelphia and Erie road. After having raised thousands upon thousands of dollars, it was only by the Pennsylvania railroad agreeing to endorse its bonds and to carry it through that it was completed to Lake Erie. That road would not have been built if this section had been in operation at that time, the time of its trouble.

Another point. I have no doubt that every man here has been proud of the American steamship company's work. Nearly all the delegates on this floor have visited those magnificent steamers. There is not a gentleman on this floor who will not say that that was a noble undertaking. The commerce of New York is now controlled by English capital; the commerce of Baltimore in its steamship lines is in a measure controlled by English capital; and yet, sir, by the assistance of the Pennsylvania railroad the American steamship company was established here, and that great line has been brought to a successful issue, and to-day we are all proud, not only in this State, but throughout the country, that we are enabled once more to sail under the protection of the American flag. That has been secured, not by this section, which would have prevented the building of a single ship, but by the liberal policy heretofore pursued by the Legislature in allowing railroad companies in their proper discretion and by the vote of a majority of the stockholders, to say what they shall do with their surplus means and their surplus credit. What harm has been done by it? As the gentleman from Clearfield has said, none that I can see. But what good has been done? Surely the balance is in favor of the good side of the scale and not of the bad.

For these reasons I do hope that we shall be extremely careful before we adopt any such provision as this. Sir, this is a vital question to the State of Pennsylvania. Gentlemen favoring this section have spoken in eloquent terms of

our manufacturing, agricultural and mining interests. They are proud because we are the second, and should be the first, manufacturing State in the Union. What has made us so? Not such a policy as this section would indicate. If this section had been in operation twenty years ago, we would have had a far different result from the magnificent result which this State presents to-day. Our success has been owing to a liberal, broad and comprehensive policy, and the prudent use of the surplus means and surplus credit of the railroad companies of the State. Now, let us be careful, and I think as prudent men, after fully understanding this matter, we will be satisfied that this amendment is not a proper one and will vote it down.

Mr. HOWARD. I do not understand that the chairman of the committee in proposing this amendment, or in any suggestion that he has made about this section, undertakes to speak for the Railroad Committee. I suppose he is at perfect liberty to take whatever course he may think proper in regard to it. So far as I am concerned, as it now stands, I cannot support it. If it had limited railroad corporations to taking no more than say one-third or two-fifths of the stock of another, I might perhaps have supported it; but in this form I am unwilling to support it, and I think it will be far better for the Commonwealth if this entire section is swept away.

Here I will remark that I believe, if adopted, it will come in conflict and do away in a great measure with the virtue of section four. That section is one of vital interest to the people of this Commonwealth. It undertakes to protect parallel or competing lines so that the people may have the benefit of competition, and they have a right to have it. If this section is adopted, then one common carrier company may buy all the stock and bonds of any other common carrier company, and if that is so, it might be the stock or bonds of a parallel or competing line, and while under the fourth section they might be prohibited from directly officering it, yet indirectly, necessarily, they would control it.

Mr. President, with the safeguards provided by the fourth section and the sixth section (for remember those are restrictions that the people of the Commonwealth have never yet had the benefit of) I think this section is unnecessary. We have provided in the sixth section that

the officers and managers of these roads shall not be engaged in mining or manufacturing business connected with their companies. We have taken away the motive and the inducements for them to act fraudulently against the public in these matters. I can see no reason why one railroad should not build another. I do not see why the credit of one railroad should not be used to endorse the bonds of another railroad, and thus go on and build railroads all over the Commonwealth to such an extent as shall be permitted by the Legislature. But there are reasons, strong, good and valid ones, why, when the people have a parallel or competing line, that line shall continue to be a competing line and the public shall have the benefit of it. Therefore I am opposed to this fifth section as reported from the committee of the whole, and I hope it will all be voted down. I do not regard the section as the work of the Committee on Railroads in any sense whatever.

Mr. CUYLER. Mr. President: It is a source of infinite delight to me that I should be able upon a single section to stand on the same platform with the distinguished gentleman from Allegheny who has just spoken (Mr. Howard;) and that that should occur on a question relating to railroads fills me with as much amazement as delight. (Laughter.) What sudden influence has operated to convert the gentleman, what light has fallen upon his pathway as he has journeyed and has brought him to stand where he now stands and to see as he now sees, I am at a loss to comprehend; but I am infinitely delighted that I am able to endorse all that he said—no, not all that he said, but all that he said with reference to the impropriety of this section.

I did not rise for the purpose of going into an extended discussion of this article or of its policy, but simply for the purpose of saying a word or two with regard to this section; a section which, more than any other, is calculated, if it stands in this article, to put a knife right into the heart of the prosperity of the State of Pennsylvania; a section which is based upon ignoring the experience of mankind for the last twenty years, which is designed to undo all that we have done, and to blot out all that we have accomplished hitherto and throw away the whole benefit of the experience we have derived from it. If you look over the statute book of Pennsylvania with refer-

ence to railroads, you will perceive that the great aspiration of the people of this State has been for the expansion of the railroad system. It has been to entice by every possible inducement that could be suggested the expansion of existing lines of railway and the investment of the capital which had been invested previously in railroads to assist in other railroad enterprises. Two-thirds of all the legislation of the State of Pennsylvania on the subject of railroads for the last twenty years has been precisely of that character; and I take that legislation to be some indication of the current of the popular mind and the conviction that existed in the heart of the people of Pennsylvania that it was a wise policy.

Now, sir, if you pass outside of the State of Pennsylvania, I hazard nothing when I say that the same remark is true of every other State in the Union. All their railroad laws have pointed to consolidation, to extensions, to enticements to railroad companies already existing to extend their lines and to invest their capital for the purpose of creating other roads. The same thing is true of England. Consolidation, extension, aid from existing railways to other railway enterprises is shown by the British statute book to have been the current of the British mind and to have been the demand of the British people. And yet we stand here gravely this day in this Constitutional Convention, with one hundred and thirty-three representative gentlemen, selected, I suppose, for peculiar intelligence and peculiar devotion to the interests of this State, to roll back all this current, to say it is all unwise, it is all foolish, it never should have existed, that which the common heart and judgment of the people of Pennsylvania and the people of every other State of this Union, and the people of England, and I fear nothing when I say the people of every country where a railroad system has existed, has declared to be a necessity, is wrong, and we want to write an iron rule in our Constitution so that it shall never exist for the future. Can it be possible that such an absurdity as this is to be perpetrated by this Convention? What mischief has resulted? A State grander in her development today, confessedly, than any other State in the Union, a State having more miles of railway than any other State in the Union, and thousands of miles of railway built by the operation of the very system that this section is intended to condemn

—all this grand development of the State of Pennsylvania, the result of the very thing that we are seeking now to stop! What argument can gentlemen urge in support of any such thing? I have heard none urged. I have seen gentlemen rise here, and almost trembling like aspens and filled with that insane apprehension of the growth of corporate power that seems to distress the minds of so many people; but beyond vague declamation on that subject I have not heard a solitary argument urged which could support the wisdom of such a section.

I cannot believe, therefore, that we are going to shut our eyes to all the experience of this and of other States, that we are going to close our eyes to the vast prosperity which exists in our own State by reason of the very system that this section seeks to condemn and write into the Constitution an iron law that shall paralyze, for future time that very instrumentality which has been grander than any other for the development of the State of Pennsylvania.

Mr. CURTIN. Mr. President: At the risk of wearying the Convention, I desire to say a very few words on the amendment offered by the chairman of the Railroad Committee.

Mr. President, there is no doubt that we are here to restrain the power of railroads as one of the reasons for calling this Convention. But the people of Pennsylvania, if remarkable for any quality, are distinguished for their steady fixed common sense; that is to say, we are a level-headed people in Pennsylvania; and while we should restrain railroads, the people of Pennsylvania do not desire us to arrest the development of the vast wealth which nature has been pleased in her bounty to pour within the territory of the State. Sir, I live in a part of Pennsylvania just in process of development. The Briarean arms from the sea coast are just reaching the rich minerals in our mountains, and our productive valleys are beginning to be so near the market that agriculture remunerates and rewards the labor of the husbandman.

If you look at the topography of the State you will find that the long lines of railroads passing east and west necessarily pass around that part of the State known as the central section, in which I live, and the people of which I pretend in some measure to represent on this floor. The consequence has been that for many years we were without the means of

communication by railroad. The people of that central part of Pennsylvania subscribed liberally, too liberally in many instances, expended their means, so far as they could, to reach the markets of the east and the west, and their contributions were supplemented by the assistance of the older railroad corporations that had gathered means and money from the trade of the richer and more fully developed portions of the Commonwealth. At present, as has been said by the delegate from Clearfield, there are railroads making through the county in which I live. The means of the people are exhausted. They are assisted by two railroad companies, one east and one west.

Now, what principle is it which should be put into the organic law by which in the feeble effort of remote parts of this Commonwealth to make highways to the market and the means of inter-communication, the rich and the powerful should be forbidden to give them assistance? Ask for bread and get a stone. And the part of the State in which the delegate from Potter county (Mr. Mann) lives is yet without the means of communication by railroad; it is a mountainous district, and is far from market. The products of labor, land and mines do not yield as they do to the people of the eastern portion of the State and nearer to market, and they, alike with us, are struggling for the means of rapid transit and communication; and yet we are asked to put into the fundamental law of the State, not an act of Assembly which can be repealed, but to put in as a great living principle of government, that the poor and feeble parts of the Commonwealth shall not be assisted by the rich and powerful and hold in check capital willing to relieve them.

Mr. President, representing a people who require the means of communication, I cannot give my assent to any such proposition. I am not carried away by the wild flight of ideas which are hurled against railroads and other corporations. I know their power, and I am here to assist in placing limitations on that power by any reasonable and just restraints; but it is a reasonable and just ambition to desire our work to be approved by the people of Pennsylvania. We have made reforms now which should commend themselves to the approbation of the sensible people of the Commonwealth, and I have no doubt they will be ratified and approved; but if we choose

to load down our work with restraints upon the riches and power of the great centres of trade and commerce to assist the remote and poor and necessitous parts of the State, I fear very much that we shall add weights and multiply enemies that may encumber us in receiving the approbation of our constituents when our work is finally submitted to their will.

I sincerely trust that the good sense of the Convention will come to the conclusion so justly and forcibly insisted upon by the delegate from Potter. For the many reasons offered in opposition which, with all due respect, I do not believe have been answered, I cannot give the amendment offered by the chairman of the Committee on Railroads my approbation.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from York (Mr. Cochran.)

The amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. CAMPBELL. I hope the section will pass. We had one of the longest debates in committee of the whole on this section that we had on any of the sections of the report; and after that long debate it was finally amended so as to make it read in its present form, on the motion of the gentleman from Dauphin, who is not here to-day, (Mr. MacVeagh,) and then it passed by a pretty large vote. I do not see that there is any reason why we should reconsider our action and vote the section down at the present time. The sense of the Convention seemed to be against the amendment just now offered by the chairman, but as the section stands there can be no harm in having it passed. I do not propose to go over the arguments that we had in committee of the whole, but hope that we will sustain our previous action.

Mr. T. H. B. PATTERSON. I just wish to recall to the recollection of the Convention the debate on this question in the committee of the whole, and I shall not detain them one moment. They will remember, if they will cast their minds back to the time when this section was under consideration before, that the able president of a great railroad, who has left us, boldly opposed this section on the ground that it simply prevents railroad companies from going into manufacturing enterprises and mining business and other concerns along the line of their road and becoming partners in those concerns and

endorsing the bonds and the obligations of such manufacturing and mining concerns. And he boldly took the position in this Convention that that was right and that it was to the interest of the people of Pennsylvania so to transact their business as to allow the great common carrier corporations of this State to go into private manufacturing and mining concerns; and in that debate other gentlemen of the Convention boldly took the position that that was not to the true interests of the people of Pennsylvania. The question was fully discussed and this was the result of the discussion.

The effect of the section as it stands and as now worded would be—and it was contemplated that this would be the only effect it would have—that it would not interfere with the development of the railroads themselves. This has been so ably debated by gentlemen here that I need not refer to it. I will only say that the section is correct as it is without any amendment whatever. It only prevents railroad corporations from going into private business and controlling the private business alongside of their line, and overshadowing and crushing private citizens, and I ask every gentleman on the floor of this House before he votes against this section to look at it carefully. As it now stands before us, it was adopted by the committee of the whole; the results of its adoption were ably discussed, and the section was adopted after full consideration. Let us adopt the section as it stands, because it will not interfere at all with the development of railroad corporations. It does not interfere with the healthy development of the country, and simply leaves the question of private manufacturing and private mining open to equal competition among the various private citizens of this State.

MR. BROOMALL. Before voting on the section I desire to know what it is I am asked to vote for. By reading it, I find that by its terms no corporation can hold the indebtedness of any individual. If the section means that no individual is to be allowed to become indebted to a corporation, the section ought to have some little more explanation before we vote for it. I find, too, that it provides that no such corporation shall endorse any indebtedness of an individual. If it means by that that if I become indebted for freights to the amount of \$1,000 to a railroad company, and am obliged to give them my note or my check, or any evi-

dence of indebtedness of that kind, that they cannot endorse it over and get the money on it, I want to know something more about it before I vote for it. It looks to me very much as if this section has been very carelessly drawn, or as if it embraces too much. Indeed I have very great doubts whether or not we are not undertaking to cripple future railroad enterprises without at all correcting evils in the management of the present ones, in the most of this railroad article. I have all my life been trying to get the lands of my county covered as far as possible with railroads. I own no stock in any railroad thirty miles long. I am not the solicitor of any railroad, and I have recovered in more suits against railroads than I have ever brought for them, but I have always believed in railroads. I think there are some lands in Pennsylvania that are worth more to build railroads on than for any other purpose. For the first time in my life I find myself in the presence of a community that seems to have had enough of railroads. I never meet any such spirits in every day life. I am afraid we have been frightened with the bug-bear of the Pennsylvania railroad company until we are inclined to hinder twenty other Pennsylvania railroads from rising up in the State to prevent it from being such a monopoly as it is.

Now, sir, the first section guarantees free railroads, and that is right. Let us secure unlimited competition, and it looks to me as if that is about all we can do in the direction of reform in this department. The third section prevents the Legislature from fooling away our right to tax railroads. That is right and wise. The tenth section provides for the payment of full damages for all injuries done by railroads both in their construction and operation, and that of course is wise and proper. I look upon the rest of the article as a part of it unfit for legislation and part of it tolerably good legislation, but none of it adapted to the organic law. I trust that we will not allow ourselves to be frightened out of our propriety, and be induced to prevent the development of the resources of the State by any power that, under proper guards, can develop them, by anything that may have been said against the enormous power of the Pennsylvania railroad company.

The power of the Pennsylvania railroad company is only temporary. It will go to pieces and dissolve itself into a dozen small companies, and the State will be the

better for it. It is but a work of time. Those interested in that railroad may laugh at the prophecy as much as they will, but it will go to pieces, and let it go, but do not let us keep that day off and keep the power in the hands of the present monopolies by preventing future combinations of new enterprises. When we have opened the entire State to railroads everywhere upon equal terms and untrammelled, we have done about all we can do toward restraining and governing the present monopolies.

I trust that this section will be voted down as well as several other sections of the article.

The *PRESIDENT pro tem.* The question is on the section.

Mr. COCHRAN. I call for the yeas and nays on that question.

Mr. CUYLER. I second the call.

The question being taken by yeas and nays resulted as follows:

YEAS.

Messrs. Alricks, Baer, Biddle, Buckalew, Calvin, Campbell, Carter, Cochran, Cronmiller, Ewing, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Horton, Landis, McCulloch, Mahtor, Newlin, Palmer, G. W., Palmer, H. W., Patterson, D. W., Patterson, T. H. B., Reynolds, Rooke, Sharpe, Simpson, Stewart, Turrell, White, David N., White, Harry, Worrell and Wright—35.

NAYS.

Messrs.—Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Brown, Bullitt, Curtin, Cuyler, Darlington, Davis, De France, Dunning, Edwards, Elliott, Ellis, Fell, Green, Hall, Hanna, Howard, Kaine, Lamberton, Lawrence, Lilly, Littleton, Long, MacConnell, McClean, Mann, Niles, Patton, Pughe, Purman, Purviance, John N., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Walker, Wetherill, J. M., Wetherill, John Price, Wherry and White, J. W. F.—48.

So the section was rejected.

ABSENT—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Corbett, Corson, Craig, Curry, Dallas, Dodd, Finney, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, MacVeagh, McCamant, McMurray, Metz-

ger, Minor, Mitchell, Mott, Parsons, Porter, Purviance, Samuel A., Ross, Runk, Russell, Smith, H. G., Stanton, Struthers, Temple, Van Reed, Woodward and Meredith, *President*—50.

The *PRESIDENT pro tem.* The sixth section will be read.

The CLERK read as follows:

SECTION 6. No incorporated company doing the business of a common carrier, nor the officers or managers thereof, shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation over the works of said company; nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.

Mr. FULTON. I move to amend the section by striking out in the second line after the word "carrier" the words "nor the officers or managers thereof."

Mr. HOWARD. We might as well strike out the whole section as strike out those words. That section was made just to cover officers and managers who engage in business.

Mr. FULTON. I do not profess to understand very much about the railroad laws of the State, but in looking over this section I discover that it will very seriously affect the people of my county, and I take it the people of many other counties are in just the same situation. We have a number of branch railroads that our people are very desirous to build. Those roads must be built by the energetic business men of the county taking lead, and it so happens that in a number of instances that I have now in my mind the men who must be the active men and furnish the capital to build these roads are the men who will have most use for them after they are completed.

For example, I know one road now about fifteen miles long that all the people along the line of the road are very much interested in, and in looking around over the people in that country the man whom they all selected unanimously as president of the company is one of the largest manufacturers, owning a large tract of timber with saw-mills upon it on

the line of the road, and he will ship more over the road than any other man there. Now, is it reasonable to suppose that after individuals of that kind put their money into the construction of a railroad and after the people unanimously select them as the men that have the energy and the skill to construct and operate this road, they must either abandon their legitimate business or abandon the road in which they have invested their capital? I could name five or six other instances of the same kind; though it is said—I have heard the objection by several gentlemen here—that these men form rings in the company and that they operate against the interests of the company. The remedy there is simple. Let the company displace them if they misbehave in that position. I have no objection to making the law as stringent as possible and allowing equal rights to shippers over all the railroads, whether they be officers or who they may be, as you have a mind to, but not to amount to a prohibition. We have a provision I believe in the eighth section that will correct the evil that is meant to be corrected here, and I hope that the section will be so amended.

MR. ANDREW REED. MR. President: I am in favor of the amendment of the gentleman from Westmoreland. This section would do very well for a railroad like the Pennsylvania railroad or the Reading railroad that has already been long built, but look at any new railroad, any railroad that has been built within the last three, four or five years, or any railroad building now. Who build those railroads? Certainly the people who want to use them. They are never built as a speculation to make money out of in the first instance. They are built by men who have mines that they wish to develop, by men who have tracts of timber, the products of which they wish to manufacture into lumber. Five or six energetic men who have large tracts of timber undeveloped in a portion of our State desire to manufacture that timber into lumber and get it to market; they subscribe stock and they build the road; and yet we put in this section a provision that they shall not control their own property; they must go and elect somebody else, another person who was not interested in building the road. It might apply to the large railroads that are already built, and not affect them injuriously, but it will have the ef-

fect of crippling every new enterprise in the State.

Men are not going to put their money in a place where they cannot manage it, and if you put stool-pigeons in as managers or other persons who have no great interest to manage these railroads—they are the men who can be controlled by corporations and can be worked in their interest, and who will sell out more readily than if the men who are largely interested had the direction of the road.

Then, again, they are prohibited either directly or indirectly from having any interest in mining or manufacturing articles passing over such road. A director of a railroad living in a town may desire to aid some industry which will benefit the town and build it up, and he is asked to take some shares of stock in it. He cannot subscribe for a single share of stock to any company that would improve his native town, because he must neither directly nor indirectly be engaged in the manufacturing of anything that passes over the road. Thus you will drive some of the best and most active business men of the State from all those enterprises that would build up the State.

I submit to any delegate on this floor in whose district a railroad has been built within the last ten years if the men who own the mines are the men who subscribe to build the road. Are we not crippling them? It may not injure a road like the Pennsylvania railroad, whose officers have enough to do to attend to the road itself, but there are other roads that it will seriously injure. We are indirectly doing that which we would not do directly. As was well said by the delegate from Delaware, the best thing we can do is to make the building of railroads free to all. Then, if a railroad does not act properly, other parties can build another road and we shall have competition. This proposition will shut out such new enterprises.

But it is said by the gentleman from Allegheny (Mr. Howard) that they desire to prevent the formation of "rings" of railroad officers in these fast transportation companies. I am willing to vote for any section that will prevent any person, officer, president or director of a railroad from directly or indirectly shipping freight over that road at a more advantageous rate than any one else. Insert such a clause and you will prevent any such

thing as that; but do not prevent men who desire to develop their own property from managing their own business.

Mr. DARLINGTON. I desire to say a word on this section, and only a word. I cannot conceive a more insane policy than this section seems to me to foster. It appears to suppose that gentlemen who have amassed some capital by manufacturing or mining and who are willing to have the region of country in which they live improved by a railroad, and are willing to contribute their means to it, are not fit to manage it. That is precisely what you assume, that they are not fit to be trusted for fear they will give themselves some special advantages!

Sir, take the small railroad in my own county that runs from West Chester to this place. It has been eighteen years since it started, and the construction of it was largely owing to a gentleman of capital and means residing upon the line of it. He has been a director from that time to this without one cent of compensation, for it has but lately for the first time made a dividend. For eighteen years has that gentlemen been a director of that road. Nobody has complained of any impropriety of his ever having had any advantages in any way in reference to it, and yet it could not have been built without the aid of such as him.

Take another road, the Wilmington and Reading road, gotten up and largely fostered by a manufacturing gentleman of our county, of large means, its president, Mr. Hugh Steel, and who transports over the road of the products of his works more than any other man. It enables him to get them to market; but nobody pretends to say that he has any special advantages by it. Would you deprive him of the privilege of being a director in that road, or I should rather say, would you deprive the stockholders of the benefit of his services when half his time is given to them?

Again, take another road, the Pennsylvania and Delaware, also running through my county, and striking the valuable lime quarries of some gentlemen who contributed largely to the road, and without whose aid it could not have gotten along. They, too, were thought proper persons to be directors of that road.

You cannot lay out a railroad in any community without finding just such men as these, the active business men of the country, who have, by their energy and industry, made some money, and are

willing to improve the country by the building of roads. You cannot, I say, turn to any railroad company in which you will not find some men who are the best business men that you can pick up, in order to control and manage it. Now, why should they not do so? Restrict them, if you please, as the gentleman from Mifflin (Mr. Andrew Reed) says, so that they shall have no special privileges; limit the vast freight lines and express companies, if you please, and I am willing to go with you in that, from all special privileges in running on railroads; but do not deprive the stockholders and owners, those who contributed their money, those most interested in the road, of the privilege of having the best men in the country to aid in their management.

Mr. H. W. PALMER. What has been said thus far has had reference to the first part of this section, and I quite agree with the views expressed, but I have objections to the latter part of the section also, which provides that no incorporated company shall "directly or indirectly engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business."

The objections are that four or five great railroad corporations now possess the privilege of holding lands and mining coal, of which they cannot be deprived, and to pass this section would be to forever prohibit any competition with them. It would be to secure the monopoly in the hands of these companies and to shut out any other railroads that might be built under our free railroad law from coming into competition with them. The value of those monopolies would be enhanced by the operation of this section an hundred fold. If it is the design of the framers of it to restrict the objectionable operations of railroad companies and to restrain corporations for the public good, I fear it will not have that effect.

It seems to me quite essential for the prosperity of the great coal fields of this State that they should be open and free to the competition of all the world. We look with great anxiety and expectation to the introduction of a branch of the Erie railway into the Lackawanna coal fields. We hope that great corporation, now honestly and fairly managed, will

enter into competition there, and that the iron grasp of the companies who have laid hold of most of the lands in that region will be to some extent unloosed. But pass this section and the Erie railroad can never own lands and mine coal there. At the southern end of the Wyoming coal fields we are looking for the advent of the Pennsylvania railroad, and to the time when she shall stretch out a helping hand to that region and come in competition with the Delaware, Lackawanna and Western, with the Delaware and Hudson, with the Pennsylvania coal company, and with other giant corporations that are fast absorbing the mineral lands there, and we expect great benefits from this competition; to enact this obnoxious section would be to strike competition dead. Therefore it seems to me that the interests of the people of these sections and incidentally the interests of the people of the State will not be promoted by the passage of this section. I shall vote against it.

By habit and education I am an enemy of the aggregation and extension of corporate power. I believe no prophetic vision is needed to foretell the time when it will be necessary for the people to strike a sharp and deadly blow at combinations that will be made by corporations to take possession of their government and steal away their liberties. That the railroad kings have assumed the control of the State Legislature and are laying grounds to capture the Congress of the United States seems plain, but it is not, in my judgment, by such measures as this that the swelling and dangerous tide is to be stayed. I would deliver no uncertain and ineffectual blow. When the supreme hour arrives for action, when the servants clothed in their borrowed strength and grown great upon the benefactions granted them shall make their purpose plain, I would send them stripped and shorn into the shades of retirement and restore their misused franchises to the power that gave them.

Mr. COCHBURN. Mr. President: The question immediately pending is the amendment offered by the gentleman from Westmoreland (Mr. Fulton.) The gentlemen who have been discussing the matter have been talking about the section itself, which is not now directly under consideration.

The object of drawing the section in this way was to meet an evil which has been experienced in various parts of the State,

and that is this: The departure of the corporations from their legitimate business and engaging in private business, and engaging by their officers also in private business directly in competition with others who are compelled to transport on the lines of these railroads, and who are injured in their property and their affairs by the competition which is brought to bear upon them, and the disadvantage to which they are put by persons who are in the railroad companies and who prevent them from the enjoyment of equal privileges on those roads.

It must be plain to any one, it seems to me, when you present to yourself the case of an individual who has, for instance, a mine on the line of a railroad. He has opened that mine, and is conducting it and working upon it, and transacting his business to an advantage. Then comes some one or more parties who combine and confederate together, and establish mining operations in competition with him, and being inside of a great railroad, being themselves members of that corporation, and having a large interest and control in it, give the preference to the transportation of their own property and throw every impediment in the way of the transportation of the property of the other party. That is the evil which this section was designed to relieve.

We have always encountered here on every great public question the interest of the small railroads. We have on the one side the small railroad companies begging that they shall not be disturbed; but that you should regulate the large railroad companies. Then when you come to the large railroad companies you are met with the argument that they are the great benefactors of the State and you must not throw the slightest obstacle in their way; that they must be left to have their own way in every thing and on every question because they are the greatest blessing to be found in the Commonwealth. That would be a very good argument for a despotism of any kind. There may be such a thing as a beneficent despotism; there may likewise be such a thing as a beneficent monopoly under certain circumstances; but if you are to make a despotism the rule of government or a monopoly the ruler of the Commonwealth, then certainly you do not act upon sound general principles.

Now, this pending section is to meet that particular case, of individuals who are put at disadvantage by the competi-

tion of the officers of railroads with their employment and their work, bringing upon them often the destruction of their interests, and causing them not only to suspend business, but often to be involved in insolvency and ruin.

Now, sir, I am assured that this is the state of things which has occurred in various parts of this Commonwealth in relation to such interests, and it is for the purpose of protecting the interests of individuals from this unequal competition with parties who have such decided advantages over them that this section was drawn, and that is the reason why I think the amendment of the gentleman from Westmoreland ought not to be adopted.

Mr. HARRY WHITE. May I ask what is the exact question?

The PRESIDENT *pro tem*. The exact question before the Convention now is the motion of the delegate from Westmoreland to strike out the words "nor the officers or managers thereof."

Mr. HARRY WHITE. I have an amendment in my hand which I will offer if this amendment is withdrawn or voted down. I sympathize entirely with the purpose of the delegate from Westmoreland. May I have the attention of the delegate from Westmoreland? I am going to offer this amendment after the word "carrier," in line two. The amendment of the delegate from Westmoreland is to strike out the words "nor the officers or managers thereof." I propose, if he will withdraw that amendment, to add the words "on a railroad exceeding fifty miles in length."

I will explain that in a word. Gentlemen need not get impatient until they understand the precise effect of this amendment.

The PRESIDENT *pro tem*. The delegate from Westmoreland does not withdraw the amendment.

Mr. HARRY WHITE. I will proceed then. Everything the delegate from Westmoreland has said on this subject is exactly right, and it is the duty of the gentleman from Westmoreland, as well as all others representing that region of country, to seek to protect their material interests. I, in common with the Committee on Railroads, sympathize with the great evil this remedy seeks to strike at. The claim is that by reason of the interest of individual officers managing railroad companies and also interested in the manufacture of certain articles and in mining coal, other miners and other manufac-

tures cannot get justice done in their transportation, that there is discrimination against them. This is a great evil and retards the development of our interests. I sympathize, as I apprehend all fair-minded men, with the efforts of the committee to correct this evil. But it has been well said that in seeking this desirable object we should not retard the legitimate business enterprises of the Commonwealth, we should not repress the energy of business talent and enterprise of the country from building railroads.

If you read the section carefully you will see that this principle has been kept in view. You will find: "The officers or managers thereof shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation over the works of said company, nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines or manufactures on its railroad or canal, not exceeding fifty miles in length."

You will observe then here is a saving clause. It was in the minds of the committee of the whole when this provision was placed in the section, that lateral railroads connecting with main lines must be allowed to be owned and constructed by miners and manufacturers. The general railroad law, as far back as 1849, when railroads were in their infancy, allowed the construction of lateral railroads by mining or manufacturing companies, fifteen miles in length. Now, that has been enlarged from time to time, and it seems here that a liberal spirit animated the committee of the whole or the Committee on Railroads, when they authorized a mining or manufacturing company to construct a railroad and transport the products of its own mines on a railroad fifty miles in length. Now, I propose to extend to these kinds of mining companies the privilege of managing their railroads as they may see fit by officers selected from the corporation itself if they desire. This amendment is in entire harmony with the whole spirit of the section, and I apprehend it carries out the idea of the intelligent delegate from Mifflin, who very properly said that if we could stop this thing now and take a new

departure in the Commonwealth, it would reach the Pennsylvania railroad or Reading railroad, who are the objects of some complaint in this regard. This is very desirable, but the provision before aims, I fear, a fatal blow at the business enterprises of the Commonwealth. With this explanation, if the delegate from Westmoreland will withdraw his amendment, for I know the persons now engaged in building railroads in his locality will be protected by the amendment I hold in my hand and propose to offer.

MR. LILLY. It strikes at other interests besides fifty miles of lateral railroad.

MR. HARRY WHITE. That may be, sir, but the amendment I allude to will accomplish the object I, as well as the delegate from Westmoreland, have in view.

MR. CUYLER. MR. President: If the gentleman from York, the chairman of the Committee on Railroads, is correct in his view of the purpose of this article then it seems to me the article is very unhappy in the language it uses to express any such purpose. If the purpose of the article is that which the chairman of the committee describes it to be, then the article is simply declaratory of the common law of the State enforced by repeated decisions of our Supreme Court, not doubted by any professional gentleman, so far as I know, in this age of the world, for if there is any one doctrine that is more purely elementary than any other doctrine, with reference to carrying corporations, over and over again affirmed by our Supreme Court, and not doubted by the profession, it is that they are bound to serve all who are similarly situated precisely in the same way. Our law is full of abundant remedies for difficulties when they arise under such circumstances; our citizens have not been slow to demand their protection, and our courts have not hesitated to grant the relief when it has been asked. It is the common law of Pennsylvania; it is the common law of England; it is the common law of every State in the Union, that a carrying corporation cannot discriminate between those who are similarly situated, but must hold out the same terms and give the same service under the same circumstances, and for the same compensation, to all who are in similar circumstances. Nobody doubts that. We need no constitutional provision for that. The law is well settled. Why write in the Constitution of the State that which is only simply declarative of the common

law of the State as it is to-day? So that if that be the purpose of this section, as described by the chairman of the committee, it were utterly in vain to write it here. It is the law already. Corporations are not restive under it, and courts are not doubtful of their duty and of the obligation that rests upon them to enforce that law.

But this section is capable of and does naturally bear an interpretation that is very far outside of that which the chairman of the committee states, and that interpretation is one which is largely detrimental to the development and to the prosperity of our State. We want to invite capital by every ingenious art that we can devise and apply; we want to invite capital in the State, its investment in our industrial enterprises and its application to the development of our Commonwealth. We do not want to write in the Constitution something that is to keep it out; we do not want to place in the Constitution something that is to prevent the application of capital at those points within our Commonwealth where capital is constantly wanted. Is there any sin in the fact that one who wants to have his capital invested in a particular enterprise happens to have some invested in another enterprise at the same time? Is there any wisdom in a law that would confine a man to the investment of his capital in one particular line of business and say to him, "when your capital becomes abundant you shall not invest its surplus in any other enterprise?" Why apply to a railroad corporation or any other corporation a different rule from that which wisdom and common sense and sound policy have shown to be proper with reference to individuals? Why say to a corporation, "if you have more capital within your control than is requisite for the mere and simple purposes of your company, you shall not use it in the development of the region of country through which you pass?" Why, sir, the Philadelphia and Erie railroad would have disappeared almost from the map had it not been for wise investments of capital by the lessee of that road in the development of enterprises along the line of the road. Such was the condition of the harbor of Erie and of the relations of that city to the great carrying business of the lakes that the reliance of that road came for a time to be of necessity upon the development of the region of country through which it passed. Shall it be said

in the State of Pennsylvania that the assistance granted by the lessee of that road in the development of that region of country was a thing which should not have been, that it ought to have been prevented by a constitutional amendment? A policy so short-sighted, so unreasonable as that should certainly find no defender in this intelligent body of gentlemen.

Take an illustration from our own body. I sit next to one of the most esteemed members of this body, (Mr. Knight,) a gentleman who is president of the American Steamship Company, who has a large manufactory of sugars, who has furnished to the vessel which has gone out and returned, and will furnish to that vessel on her next trip a very considerable portion of her cargo from his own manufactories; and yet this section would have prevented that. What wrong would be done? Who is damaged? What interest is harmed by the ability of this gentleman, who has invested some of his surplus capital in this steamship enterprise; what harm is done to the people of this Commonwealth by his shipping a few hundred casks of molasses or sugar by one of these steamers? Yet this constitutional provision would prevent it.

I ask, then, gentlemen to pause and look at this in the simple light of common sense, and show me where the mischief is. What is there that calls for a remedy? What wrong has been done or can be done to the people of this Commonwealth by the investment of the surplus capital in the development of the great material interests of the Commonwealth; and yet that system is to be stopped by just such a section as this; for that is the natural meaning of the section, or if its meaning be that more restricted interpretation which the gentleman from York puts upon it, and which is not its actual meaning, then I say the section is utterly unnecessary, because that is the common law of the State. Does any man complain? Have we heard that in this Commonwealth there are officers of corporations who are engaged in other business, and who have a personal benefit or profit, denied to others, from the transportation of their own manufactures over the road? I know of no such cases. I have heard of no such cases. I do not believe any such exist.

There is then, Mr. President, no evil which the section is calculated to guard against, and there are vast interests in

this Commonwealth upon which its enactment would inflict a most incalculable injury.

Mr. ARMSTRONG. The evil which this section is intended to correct is stated by the chairman, the gentleman from York, to be that railroad corporations engage in business in competition with individual enterprise. If this evil exists, as it doubtless does, to a limited extent, let it be corrected in terms and by the Legislature, where its correction properly belongs, and whose power is ample. But the evil which would be perpetrated by the adoption of this section is infinitely great as compared with the evil which the learned chairman suggests would be corrected. There are in Pennsylvania hundreds of thousands of acres of coal and timber and mineral lands which are yet wholly undeveloped, and which must be reached by transportation facilities before they can be of advantage either to individual owners or to the State at large. Now, that which has been will be, and let us learn something from our experience. It occurred to me in thinking over this matter that a vast number of railroads have been built in Pennsylvania based exclusively upon the intent of owners to develop their lands. The Snow Shoe railroad, in Centre county, which was built to the Snow Shoe lands, of which at one time the gentleman from Centre (Mr. Curtin) was an owner, and with which he is perfectly familiar, was built for this exclusive purpose. So also the Millersburg railroad was built for a similar purpose. The Northern Central railroad is a trunk line, but passes within reaching distance of the Shamoken coal region, from which it draws a large percentage of its trade. The Millersburg railroad has been built by the owners of coal lands in order to bring them within the reach of transportation upon the Northern Central railroad, connected as it is both with the lakes and with the seaboard. So also the Shamokin railroad, running from Sunbury to Shamokin, was organized and constructed exclusively by capital interested in the development of lands owned by individuals who became the stockholders in that road. The Williamsport and Elmira railroad, which has now become a through line, was originally built under its charter from Williamsport to Ralston, and Matthew Ralston, of this city, invested in that railroad almost his entire fortune for the purpose of

reaching his coal lands, which lay near that point. The Lehigh Valley railroad was built for the purpose of reaching the Lehigh coal fields, and has now extended to a trunk line of great value to the State. If you look at Schuylkill county it would be easy to name twenty or thirty, and possibly forty, railroads which have been constructed there for the sole purpose of reaching its coal fields and bringing them within the limits of transportation on the main line of the Reading railroad. The Delaware, Lackawanna and Western railroad is another line that was constructed to develop private lands and bring their mineral wealth within reach of markets. It was organized and built by the owners of the Delaware and Lackawanna Coal and Iron Company lands. The particular interest of other land owners led to the construction of other railroads to reach the coal and iron which sought development in the great and rich county of Luzerne.

But it is useless to go over the multitude of instances which could be mentioned. These occurred to me on a very cursory examination. Doubtless every gentleman on this floor knows of a great number of cases in which the sole moving inducement to the construction of a railroad has been the intent to develop the private interests which lay at the terminus or along its line and to bring these interests into close connection with transportation upon the main lines. The same influences that have been at work in the past are in full operation now. The same interest, the same motive exists today for the extension of railroads for the purpose of developing private interests in other portions of the State and bringing them into convenient channels for transportation. This process must necessarily go on until the entire mineral regions of Pennsylvania are fully developed.

All this would be greatly embarrassed, if not rendered impossible, by this section, because its effect would be to take away the leading motive for railroad construction. The moment a road is built this section would either prohibit such road from becoming a common carrier in the sense of transporting either the persons or property of other persons, or would confine it to the transportation of the products owned by such railroad company alone, to the great detriment of the public and to their exceeding great inconvenience.

In looking over this section, I throw these ideas out suggestively and not by the way of exhaustive argument, for I bear in mind the stringent limitation of debate. I can see an immense deal of mischief to be wrought by this section, while the amount of good to be accomplished by it, is comparatively small indeed. The evil to be corrected by it is very slight; the evil which it would do would be immense and far reaching.

Then, again, it is to be remembered that the coal lands and mineral lands of various kinds which require development are largely owned by capitalists outside of Pennsylvania. When these lands come to be developed, capital from Boston and the New England States, where there are owners of very large Pennsylvania properties of this kind, and from New York, and from many other quarters, must be employed, and thus you would concentrate this foreign capital in Pennsylvania largely to the development of our taxable property and of the material interests of the State in every regard. I cannot but believe (and I have certainly endeavored to look with candor and fairness upon this subject) that this section has been prepared in view of what was supposed to be the powerful influence of the Pennsylvania railroad company. That company, I would venture to suggest, has been too much in the minds of this Convention in the consideration of this article. It is framed in a mode which is intended to restrain that company, and to restrain them unnecessarily, whilst at the same time it does a vast deal of evil in restricting other interests which perhaps the Railroad Committee did not intend to reach. I believe it is wiser and better to adopt a few restrictive clauses of general and comprehensive character and leave all details upon the subject to the Legislature, where it properly belongs, and that we would act wisely in voting down not only this but some other sections which we shall reach in the progress of the consideration of this article.

I think this whole section ought to be voted down. Then let us come to the consideration of the others with a view to what the great interests of the State require and not as to what particular restraint might be placed upon the Pennsylvania railroad company. Their interests are secured already. We can do but little to touch them; but we can do, in the effort, and if this article be adopted.

as it stands are likely to do, a vast amount of evil to the general interests of the State.

Mr. LILLY. I have but very few words to say upon this subject in addition to what has already been said by the gentleman from Philadelphia (Mr. Cuyler) and the gentlemen from Lycoming (Mr. Armstrong.) They have left very little to be said on this subject, and I think that any one who has listened to their arguments ought to be satisfied that this section should not be adopted by this Convention. There are some things in the first part of the section which I heartily approve, but if the section were adopted the men who have perfected these great improvements in Pennsylvania, not the Pennsylvania railroad alone but a thousand others, will be prevented from participating in the control of their own property. It was simply by allowing in this respect that perfect freedom that always should be given to capitalists in the management of enterprises their own capital has constructed, that so many small railroads have been built in Pennsylvania, and by consolidation and extension have become trunk roads sometimes of three hundred miles in length. These roads, although trunk roads now, still represent the same interests which they represented when originally constructed, and much of their prosperity as main lines depends upon the successful development of these local interests.

If you adopt this section you will so interfere with these particular interests that you will seriously cripple the usefulness of these trunk lines. I speak of this more particularly because I well understand the destructive influence this section would exercise upon the development of the mineral wealth which lies along the route of the Lehigh Valley railroad. With that railroad I am most familiar, and no act of ours could more injuriously affect the mineral wealth of the section through which it passes than the adoption of this section. I know nothing about the Pennsylvania railroad company, and do not know how true are the evils which have been complained of in reference to that company. I suppose they have been greatly exaggerated, but even if they were true I never would consent to attempt to correct them by striking at the material interests of the entire State. I would throw around the management all the safe-guards to prevent favoritism, and make any discrimi-

nation in favor of directors, officers or stockholders, and make any infringement of the same a penal offense, punishable as such by law. I will go as far as the farthest in that direction. I cannot, nor will not, give a vote that will cripple the great interest that has made the Commonwealth what it is in material prosperity.

Mr. HOWARD. I have listened to the arguments that have been made against this section in particular and the whole railroad report in general. Very little has been said upon the specific proposition that is now before this Convention, namely, the striking out of this section of the words, "nor the officers or managers thereof."

I regard this section as one of the most valuable, if this Convention will adopt it, that will be presented to the people of the Commonwealth for their ratification. The fact that officers of railroads have become interested in special business along the line of their roads, to the great detriment and injury of other individuals that do not have the facilities enjoyed by these railroad officers, has been a common complaint, coming up from one end of the Commonwealth to the other. Let delegates understand that this section does not strike at manufacturing corporations nor at the coal companies, in which, perhaps, my friend, the delegate from Westmoreland, (Mr. Fulton,) is interested. It simply provides what I believe should be declared, that officers of such companies as are declared to be common carriers, companies engaged in the business of carrying the property of all men, should not be permitted to be engaged in mining and manufacturing enterprises along the line of their railroads. That is simply what is prohibited by this section. The officers and managers of these corporations are prohibited from being engaged in the production of articles that will come directly in conflict with articles produced by citizens outside of these corporations, who have not the facilities which they have under their control.

To permit an officer of a railroad to be engaged in any manufacturing and mining business along the line of that road leads him to be dishonest. It leads him to act dishonestly to the community because the interest which would lead him to deal fairly with the people is brought in contact with his own pocket. It makes him dishonest towards the

stockholders of his corporation, and these officials defraud their stockholders just as much as they do the public at large, because a manager gives special favors as an officer of the company to himself as an individual, and the loss both of the stockholders and of the public is his individual profit.

It was only a few weeks ago that I heard the gentleman from Lycoming state upon this floor that he had been very largely engaged in a coal enterprise that was good for nothing. The enterprise was located along the line of a railroad. It had at hand all the facilities for conducting a prosperous business, but they could not procure those facilities because no railroad official was personally interested in the success of the company. As soon, however, as the gentleman from Lycoming sold his stock some of the railroad officers became connected with the enterprise, gave facilities to themselves that they would not give to others outside of their ring, and the enterprise became valuable and its stock rose in the market. We know perfectly well that men have been broken up, have been ruined, and have been driven out of the coal trade west of the Allegheny mountains because they were not in the officers' ring. This is as much a matter of common report as that there is such a city as Paris. The matter was investigated by the Legislature, and an examination made for the purpose of showing under oath how this thing was done, how these special rates were arranged, and how these companies changed their rates, not only every day, but a dozen times a day, upon a mere telegraphic dispatch.

This amendment should be voted down. To strike out these words is to strike down all that is valuable in the section. We create a railroad company for the public benefit. We say it is a common carrier, that is, a carrier for everybody, and yet here it is asked that we shall say its officers may go into business pursuits, mining and manufacturing articles, along the line of the road to come into competition with individuals. It is a stultification on the face of it. It is an outrage, and I am surprised that any delegate upon this floor would defend a doctrine so monstrous and so unjust, upon the miserable plea of bringing money to the Commonwealth. I would like to know if other people have not money, and I do not care how much money individuals may have, if an officer, an executive, official or man-

ager of a railroad company engages in the same business with them he will crush them out. The railroad officers have done it and will always do it, unless prevented by this section of the amended Constitution, and it will be an outrage and a shame if this Convention shall now strike out the vital words of this section and leave the people of this Commonwealth at the mercy of the executive officers of railroads, who will always have as an inducement to oppress the people their personal profit. The people cannot compete with railroad officials when they are interested in manufacturing or mining companies, and these railway officials always become interested in them. There will always be inducements held out to some executive officer of a railroad company to become connected with these private enterprises, and if the matter cannot be arranged in any other way, they will give him an interest in order to induce him to furnish them with special rates and favors in transportation.

These are simply facts, and the Convention knows them as well as I do, and whatever the Convention will do, I hope they will not strike out these words. Let us vote down the amendment and then let us adopt the section.

MR. J. PRICE WETHERILL. I just desire to say that I think we all now fully understand the length and breadth of this section and it is virtually this: That no manager of a railroad shall, directly or indirectly, engage in any mining or manufacturing business. Why should we confine that to mining or manufacturing? Look at it! Allusion has been made to my colleague, Mr. Knight, who is engaged in the manufacture of sugar. He could not ship his sugar over the Pennsylvania railroad because he is a director in that company, yet another director could import sugars from Cuba and ship that article to Pittsburg. What would be lawful for one director would be unlawful for another. Is that logical? Is that proper? Is that right? Is that a correct principle?

Why should you confine the provision of the section to mining and manufacturing? Why not extend it to importing and to every other business where goods are required to be transported to the West, so that every business man engaged in shipping goods to the West upon a railroad or transportation company shall be debarred from being a director in that corporation? If that is the object of this

section, I can understand very fully why the members of a Convention containing one hundred lawyers would favor a proposition which would make the position of a railroad director a comparatively easy thing for them to secure. Why, sir, if this section be adopted, you will take from the management of our railroad companies the men who have made these enterprises successful, the best business men of the country, the men who know all about the wants of the railroad companies and the transportation wants of the State and of the country, and you discriminate in that way unwisely against the best business men, in my opinion, to the injury of the corporations. If we want to act fairly we should place all business men upon an equal footing, and extend the operations of this section to every man doing a jobbing or manufacturing business or who is engaged in importing goods which are shipped over any railroad. If you want to extend the effect of this section to one class or to two classes of business men you should extend it to all, and then thereby you will drive all business men out of the railroad direction of the Commonwealth, and you leave the railroads of the State entirely in the management of either professional men or men of leisure. I suppose the one hundred lawyers who compose this Convention would not object to that, but I regret that I hold the opinion that such a result would not be perhaps very desirable.

Mr. BUCKALEW. The argument of the members of the Railroad Committee on this question is based upon the ground that the words which this amendment proposes to strike out of the section are its material part. The amendment proposes to strike out the clause which provides that no officer or manager of a carrying company shall himself manufacture products or produce them for shipment over the road.

Now, sir, I should like to know of what value this provision can be as a check, in view of the plain fact that such person engaged in mining or manufacturing instead of putting himself into the board of management can put his attorney or his friend into the board to serve his interests there. Holding stock of the company, he makes or assists in making the directors and managers by his vote. The check is quite illusory; it amounts to nothing. It can be evaded as easily as a man can turn his hand, and if there be no value in this section except in this clause of it, it is, in

my judgment, an unfit one for insertion in the Constitution.

When I propose to strike at corporate bodies to prevent abuses or with the avowed object of preventing abuses, I desire that my blow shall be effectual for the purpose in view. It is the worst policy in the world to simply worry and anger without limiting the power or abuse at which we strike; and that would be simply the effect of this most remarkable and much lauded clause.

Now, sir, there is but one other thing in this section, and that is that the carrying companies shall not engage in the business of mining coal or in any manufacturing business, or any other business except that of common carriers. Sir, I was originally, many years since, when I was concerned in the enactment of laws, in favor of that policy; but matters do not stand now in our State as they stood twenty years ago. The case has entirely changed. I recollect standing for several sessions in the Senate of this State resisting the grants of mining privileges to railroad companies in the county of Luzerne, and succeeded in keeping away from that county legislation of this character. I thought that the great railroad lines should be carrying lines, pure and simple. But, sir, the tide of self-interest or, if you choose, of improvement, has passed over all those limits, and now the very heart of our great coal fields is in the hands of powerful corporations having their seats of organization at the cities of Philadelphia and New York, and it is not proposed to limit them, to place upon them any restriction by so much as the weight of a feather. While the Reading railroad company, penetrating into the mountains of Schuylkill and Northumberland and holding many thousand acres of land, can mine coal from it and ship it to Philadelphia and New York and to all the other points where markets are open to her, while the Lehigh Valley railroad can do the same thing in two of the other great coal fields of the State, and the Delaware and Hudson canal company and the Delaware, Lackawana and Western railroad company in the coal fields of Luzerne, now you propose to take a solemn pause and to lay down a great and salutary principle in the Constitution which will do what? Limit them? No, sir, but limit any competition against them hereafter, and that is introduced to us by the Committee on Railroads as the specific which is to cure all our business

ills in connection with the management of railroads in this State.

I do not think you will accomplish anything useful by this section. This section will only be one of irritation, a matter of dispute and discussion. Here we have it. It will be debated before the people, and in the courts of law possibly; and yet out of it, in my judgment, you will get no substantial good, no limitation of abuse, no protection of the business system of the State in connection with the transportation of its products to market.

While I stand, as I have ever stood, entirely free from any connection with corporate bodies in this State, free from their influence or association, owing fealty and fealty alone to that portion of the people represented by me on this floor, I still refuse utterly to give false, hypocritical and buncombe votes upon questions of this kind announcing my hostility to corporate abuses. I refuse to bow my head before any such imposture as this and similar sections in this article.

Mr. T. H. B. PATTERSON. Mr. President—

The PRESIDENT *pro tem*. I think the delegate has spoken.

Mr. T. H. B. PATTERSON. No, sir, I have not spoken on this amendment.

Before the Convention votes on this question I wish simply, and I feel called upon after the able arguments that have been made in opposition to it, to ask the Convention for a moment to reflect on the truth that has been stated.

The learned gentleman who has just taken his seat has announced boldly his opposition to all limitations upon common carrier corporations taking part in the private business of this State. He places himself broadly upon that platform, that because in the past common carrier corporations of this State have been allowed to go unlimitedly into all other branches of business against all the former rules of corporation grants in any other country under heaven, it is too late for the remedy proposed in this section.

Mr. BUCKALEW. I rise to explain. I disavow having made any such declaration as that which the delegate imputes to me.

Mr. T. H. B. PATTERSON. I simply refer to the statements that the gentleman made in the debate, and I refer to the report of that as it will appear on the debates. If I have mis-stated him I am mistaken, but I hold that I have not.

The principle that he announces covers the whole ground that I claim it covers. The State of Pennsylvania in the past has made the mistake of granting to corporations the power to go into all sorts of business at the same time. Instead of limiting them to one line of corporate business, as was originally the intent of corporate existence, it has made the mistake with many of these great railroad and common carrier corporations of allowing them privileges in their charters which enabled them to go into branches of business outside of their legitimate object of creation, and has allowed them to interfere with the development of the individual growth and the healthy business of this State.

The gentlemen who have argued the other side of this question—and it has been argued on that side almost exclusively this afternoon—have taken the broad ground that because this mistake has been made, therefore this Convention, and certainly no other power beneath this Convention should ever undertake to check them—if this mistake has been made and certain giant common carrier corporations have grown up with these powers and have got the people of Pennsylvania and the State of Pennsylvania in their grasp, then the position of such gentlemen is that we must not attempt to correct this mistake, because by so doing we shall prevent other corporations from getting similar privileges. That is the logic of their argument. Because we have traveled so far in this dangerous way therefore we must never take a step in the right direction, because in so doing we might unsettle the relations of corporations and might give an existing corporation an advantage over the future one.

Now, Mr. President, I ask this Convention to stop a moment and calmly consider whether that is the real state of this case. Are the advocates of railroads in this House speaking so vehemently and moving earth and heaven as they have been doing to defeat this section because it is futile? Men who have seen as much of human nature as the men who compose this body are not to be deceived by such flimsy pretences as that. Men do not fight shadows; they do not contend against provisions that will not hurt them; they do not get up here and make arguments and bring forth able advocates to represent their case merely to prevent

those provisions being adopted which would be futile.

The section here strikes right at the evil. It says that railroad companies and other common carrier corporations shall not go into mining and manufacturing along the lines of their road, which are the main pursuits in which they engage, to the detriment of private enterprise.

Now, Mr. President, we do not propose to interfere with other lines of pursuit, because they are more general and are not generally carried on in such concentrated and powerful corporations as mining and manufacturing. There are no complaints coming up here with regard to railroads engaging in other pursuits, but with regard to their controlling the mineral wealth of this State along both sides of their roads, gradually going into the important branches of manufacture in using that mineral wealth, we have heard from every section of this State the loudest complaints. And this section proposes to remedy that evil, to say to the legitimate common carrier corporations of this State that they shall confine themselves strictly to the object for which the people of Pennsylvania intended to create them, and to say to them that they shall not go on this side and on that to take possession of the wealth and minerals and property and real estate of this State and monopolize them, against individual competition which is healthy and which it is the true interest of this State to foster.

Mr. President, this section was adopted as one of the sections of this article in committee of the whole. The Railroad Committee are not responsible for this any more than every delegate on the floor of this House. It was adopted after full deliberation and debate of days, and it was adopted as one of a system of sections; the twelfth section of which provides that all corporations now in existence in this State shall not have any more beneficial legislation from the State without accepting the provisions of this section. That is where the shoe pinches on the old corporations. That is the section which makes this section efficient in reaching all the corporations in existence in this State to-day. Furthermore, this section provides also that corporations of this character shall not hold real estate for any other purpose than the legitimate object of their own common carrier existence. I should like to ask the gentlemen who say that this section is futile in

reaching that object how they get rid of that restriction?

Mr. MACCONNELL. Will the gentleman permit me to interrupt him for a moment?

Mr. T. H. B. PATTERSON. Certainly.

Mr. MACCONNELL. Section six of the article on corporations reads in part in this way: "No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business." That section we have already adopted. It seems to me unnecessary, therefore, to repeat it here.

Mr. T. H. B. PATTERSON. That section was adopted unfortunately in the language in which it is. It does not cover the ground that it might have covered if the committee that reported it or the Convention had properly amended it. If it had provided that no corporation should go into any other business than one business authorized by its charter, it would have covered a great deal of ground that it should have covered, and would in a great measure have dispensed with the necessity for this section; and if this section should be adopted, we can so consolidate the sections as to reach that object.

But the misfortune of the case is that the Legislature of Pennsylvania, under the enlightening influences that are brought to bear upon that body by these corporations, have authorized corporations to do anything under heaven. They have not limited them to one line of corporate existence, but they have given charters which are in existence to-day which authorize corporations to do anything that a man can do, and more too, because they enable them to do all those things with the advantage of unlimited life; and that is what delegates on this floor must look at. They must remember that these corporations come into competition with individual enterprise without limit of life at their back, and they can pile up dollar after dollar, build railroad after railroad, mill after mill, manufactory after manufactory on to eternity. There is no end to corporation existence, and the corporations in Pennsylvania have been chartered to do every kind of business under the same corporate existence. I say this is an evil, and we must stop it somewhere and by some means. No other nation under heaven has ever given this power to corporations, and no other nation is now suffering un-

der their power as the people of the United States are to day. There must some stop put to it.

Now, we do not propose to interfere with the stockholders of these corporations going into any business they please, but we simply say that it is for the healthy interests of this State that the management of these public corporations should be conducted by men who make it a business, and that they shall keep their hands off the other businesses of the State.

The *PRESIDENT pro tem.* The gentleman's time has expired.

Mr. COCHRAN. I ask for the yeas and nays on the pending amendment offered by the gentleman from Westmoreland (Mr. Fulton.)

The yeas and nays were ordered, ten delegates rising to second the call, and being taken resulted as follows:

YEAS.

Messrs. Achenbach, Armstrong, Baer, Barclay, Bigler, Black, Chas. A., Boyd, Broomall, Brown, Bullitt, Corbett, Cronmiller, Curry, Curtin, Cuyler, Darlington, Davis, Dunning, Edwards, Elliott, Ellis, Fell, Fulton, Hall, Hanna, Kaine, Lambertson, Lawrence, Lilly, Littleton, MacConnell, McClean, Mann, Niles, Palmer, G. W., Palmer, H. W., Patton, Pughe, Purman, Purviance, John N., Purviance, Sam'l A., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, Harry, White, J. W. F., Worrell and Wright—54.

NAYS.

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Buckalew, Calvin, Campbell, Carter, Cochran, De France, Ewing, Funck, Gibson, Gilpin, Guthrie, Horton, Howard, Landis, McCulloch, Mantor, Metzger, Newlin, Patterson, D. W., Patterson, T. H. B., Reynolds, Rooke, Sharpe, Simpson and White, David N.—29.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardley, Bartholomew, Beebe, Black, J. S., Bowman, Brodhead, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Dallas, Dodd, Finney, Green, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, Long, MacVeagh, McCamant, McMurray, Minor, Mitchell, Mott, Parsons, Porter, Ross, Runk, Russell, Smith, H. G., Stan-

ton, Stewart, Struthers, Temple, Van Reed, Woodward and Meredith, *President*—50.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. COCHRAN. I move to amend by striking out after the word "articles" in the third line the words "for other persons or corporations." I offer this amendment because these words were inserted in order to meet an objection which had been raised to the clause which has just now been stricken out and with a view of modifying it to meet the views of some who thought that that clause was wrong. The clause itself being stricken out, there is no occasion for keeping in those words, "for other persons or corporations." The section with that amendment made, would read: "No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over the works of said company."

The amendment was agreed to.

Mr. S. A. PURVIANCE. I ask for a division of the section, ending with the word "company," in the fourth line.

Mr. H. W. PALMER. I do not see that it is divisible at that point. I do not see that the remainder of the section would make sense.

The *PRESIDENT pro tem.* It would have to be amended afterwards to make the second branch sensible. The first division, however, is before the Convention, ending with the word "company," in the fourth line.

Mr. CUYLER. I call for the yeas and nays.

Mr. J. M. WETHERILL. I second the call.

Mr. COCHRAN. The first division of the section itself being before the Convention, I want to make a few remarks on the subject of the section and in support of it.

This section is not, as was represented by the gentleman from Columbia (Mr. Buckalew) in his speech, intended as a specific to cure all our business ills. It would take more than is contained in this section to accomplish such a purpose as that, and certainly I never intended to represent it so in any remarks that I made before the Convention.

I confess, Mr. President, that I cannot understand what the gentleman from Columbia meant when he spoke of a vote given on this section as being false, hypocritical and for buncombe. Sir, the friends

of this section support it with earnestness and sincerity. They intended it for a good purpose, and they do not vote for it for false, hypocritical or buncombe purposes.

The proposition before the Convention has been assailed from various quarters and for various causes, and it is impossible to discuss this proposition at length in the short time which is limited to any speaker. But, now, on this first division, where is the injustice or the wrong in confining these transportation companies to the business and the object for which they were incorporated? Where is the error in requiring that they shall not enter into and overwhelm with their competition the business of individuals throughout this State? Is the individual citizen nothing? Is the corporation everything? Is there to be a power vested in these corporations which they can wield, and which, as it has been asserted here this afternoon, they have wielded to the injury and the wrong of individuals who were dependent upon them for the means of transportation? The very privileges which were reposed in them by the Commonwealth for the purpose of promoting the benefit of its citizens have been warped and diverted to the injury of its citizens, and can be so warped hereafter, unless they are restricted by a provision such as this.

Now, sir, if there never had been a case in which such injury had been wrought, still the fact that under the present condition of our legislation and of the powers vested in these corporations such injury may be wrought, is a reason why we should protect the people against such results. Why, sir, we have heard the gentleman from Columbia tell us how he voted for years to prevent the introduction of a policy of this kind in the affairs of the State; and is that policy, which was wrong then, any better now? Because we have taken a wrong step, shall we never retrace it? What is the remedy proposed by those who do not deny the evil and the injury? The remedy they propose is simply competition, competing lines of railroad. Why, sir, no more delusive conceit, in my judgment, than that ever was entertained! What do your competing lines of railroad amount to, and what have they amounted to? They simply amount to this: That they fight each other until the one finds that it cannot devour the other and then they

"First endure, then pity, then embrace."

That has been the history of competing lines of railroad in this State. Why, sir, for nearly thirty years we knew of a warfare between two great railroads leading eastwardly from Pittsburg, one southerly, and the other more towards the middle of the State, and their opposing workmen almost came to blows; but since the time I believe that this article was under consideration in committee of the whole, when the courts came in and decided the dispute, what was the next result? Why, those two very railroad companies agreed with each other, and settled upon a single rate of tolls and transportation. Such is the information I have from the public journals of the day.

What is then this great principle of competition, what does it amount to? It amounts to nothing. Capital is selfish, and understands its own interests, and it is *not going to fight beyond that point* where it has a hope of making gain or profit; and the minute that two competing lines running in the same direction, or running from the same point to different points, find that their conflicts are no longer profitable and that the one cannot devour and destroy the other, that minute the competition ceases, and they who are enemies at first become friends and allies, and the parties who suffer by the formation of this "holy alliance" are the people who are dependent on these corporations for the transportation of their goods to market.

The history of competing lines in the State of Illinois verifies what I have said here. They undertook to counterbalance the evils of their railroad system, the evils under which the people groaned and complained in that State, by constructing competing lines, and the result was that those lines were scarcely finished and their works in operation before the competitors became associates and a common toll-sheet was adopted regulating the freight and passenger traffic over their roads.

Mr. President, this Convention is called upon to do something in regard to the protection of the public interests in this behalf, and this section proposes to do three things. It proposes, first, to prevent transportation companies from engaging in the business of mining and manufacturing, business which is certainly alien to all the objects for which they were originally incorporated. Sir, shall we be told here when we undertake to accomplish a purpose of that kind, that

we are simply giving false, hypocritical and buncombe votes? Is that the way to meet that which is at least an honest effort to correct what has not, as I understand, been denied to be an evil of at least some magnitude? Is that effort to be so stigmatized when the interests of the public are involved in a question of this kind?

Mr. President, certainly there can be no ground for raising any objection to that clause in this section which is now immediately pending before the Convention.

Now, what more does the section propose? It proposes to prohibit corporations from holding any real estate which is not necessary to carry out the original design of the corporation, and to enable them to transact their proper business. What is there wrong about this? Do you want to put the real estate of Pennsylvania

into mortmain? Do you want to have it all engrossed in the hands of corporations? Is there to be no restraint put upon this at all? What occasion have transportation companies with real estate, except the real estate which is necessary to enable them to transact the business permitted to them under their charters?

The PRESIDENT *pro tem.* The gentleman's time has expired.

Mr. CAMPRELL. I move that we adjourn.

Mr. H. W. PALMER. I move that the time of adjournment be extended until we take the vote on this section. ["No." "No."]

The PRESIDENT *pro tem.* The hour of six having arrived, the Convention stands adjourned until to-morrow at nine o'clock.

ONE HUNDRED AND THIRTY-EIGHTH DAY.

FRIDAY, *July 11, 1873.*

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. James W. Curry.

The Journal of yesterday's proceedings was read and approved.

PETITIONS.

Mr. FULTON presented the petition of citizens of Westmoreland county asking for the recognition in the Constitution of Almighty God and the obligation of the Christian religion, which was laid on the table.

LEAVES OF ABSENCE.

Mr. H. W. PALMER asked and obtained leave of absence for Mr. Davis and also for himself for a few days from to-day.

Mr. WRIGHT. I had occasion to ask leave of absence for myself a week ago to-day. I did not then avail myself of the privilege. I now renew the request for leave of absence for myself for a few days from to-day.

Leave was granted.

Mr. BROOMALL asked and obtained leave of absence for himself for a few days from to-day.

Mr. CORSON asked and obtained leave of absence for Mr. Ross for to-morrow.

PAY OF OFFICERS.

Mr. PARSONS submitted the following resolution, which was read twice:

Resolved, That the Committee on Accounts and Expenditures be requested to report a resolution directing warrants to be drawn for the payment of the clerks and other officers of the Convention for one-fifth of their compensation.

Mr. DARLINGTON. I move to refer the resolution to the Committee on Accounts.

Mr. HAY. This is a resolution of instruction to that committee. It does not need any reference.

Mr. PARSONS. That is all. The clerks and other officers of the Convention have already received three-fifths of their pay, and this resolution is simply a request to the Committee on Accounts to report a

resolution directing warrants to be drawn for an additional one-fifth.

The PRESIDENT *pro tem.* The question is on the resolution.

The resolution was agreed to.

SUBMISSION OF THE CONSTITUTION.

Mr. BUCKALEW. I offer the following resolution, to lie on the table:

Be it resolved as follows: *First*, That when the article on railroads shall have passed second reading, the Convention will adjourn to meet again on the 15th day of September, at ten o'clock A. M.

Second, That articles passed on second reading, including the legislative article, be reprinted as amended; and that three thousand copies thereof be printed in pamphlet form for general distribution.

Third, That this Convention will submit the new or revised Constitution prepared by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next.

The PRESIDENT *pro tem.* What order will the Convention take on this resolution?

Mr. BUCKALEW. I desire to state that I shall call up the resolution hereafter. I do not wish to take it up at this moment.

The PRESIDENT *pro tem.* It will lie on the table.

ADDRESS TO THE PEOPLE.

Mr. HARRY WHITE. I offer a resolution, to lie on the table:

Resolved, That a committee of one from each Senatorial district be appointed to present the result of the labors of this Convention to the people of the State by preparing an address to accompany the new Constitution and the use of such other means as may be necessary to secure a proper consideration of the same by all the voters of the Commonwealth, and that such committee shall so present any article when it shall have passed through third reading.

The resolution was laid on the table.

PERSONAL EXPLANATION.

Mr. BIGLER. I desire to make a personal explanation, which I believe is al-

ways in order. I find by the newspaper report of my remarks yesterday I am made to say virtually that I would not hesitate to trust the welfare of every man, woman and child in the State to the c the Pennsylvania railroad company. I did not say that. What I did say was in reference to the head of that company, Mr. Thomson. I did say that I would not hesitate to trust the welfare of every man, woman and child in the State to his care, because I believe he is pure and honest and would usurp no man's rights. That is what I meant to say.

RAILROADS AND CANALS.

The PRESIDENT *pro tem*. The next business in order is the consideration of the article, No. 17, on railroads and canals. Is it the pleasure of the House to proceed to its consideration? ["Yes." "Yes."] The article is before the Convention for consideration on second reading. When the Convention adjourned yesterday the sixth section was pending. The question is on the adoption of the section as amended, on which the yeas and nays were called for but not ordered.

MR. SHARPE. Mr. President: It is with extreme reluctance that I rise at this late day to consume any portion of the time of the Convention. Were it not for the uncandid and unfair criticism which some gentlemen on this floor have made, not only upon the section under immediate consideration, but upon the whole article, I would gladly have remained silent. But, having had the honor of being a member of the Committee on Railroads, and having participated in its deliberations and concurred in its report, I have felt it to be my duty, and I have felt impelled by a sense of honor, to stand up here for its defence.

The article is not the crude, hasty and ill-digested product of inexperience and ignorance, which some gentlemen have been pleased to stigmatize it. My knowledge of this subject, I confess, is limited. My pathway in life, from my youth up, has been in a different direction, and through a different channel of thought. But upon the Committee on Railroads were gentlemen of large experience and sound judgment about these matters, and the article which has been produced and which some delegates on this floor seem determined to pursue with a hue and cry, has been the result of calm, conscientious and honest deliberation and con-

sideration by the committee during a period extending over several months.

I entreat, therefore, from this Convention a candid consideration and an unbiased judgment. I hope I may be allowed to say, standing upon the threshold of these remarks, that I have no hostility whatever to railroad companies. I candidly admit that they have taken this Commonwealth up in their Briarean arms, and have placed her upon a pinnacle of greatness and grandeur. But, sir, in the early stages of this Convention it was determined that a Committee on Railroads should be created and that committee was appointed with entire unanimity. As there was a committee, it was certainly expected that it should do some work, and present an article on the subject of railroads to this Convention. Both before and after the appointment of that committee, this Convention was flooded with suggestions of delegates which they hoped to see incorporated into the organic law. Out of this raw material the committee has digested and compiled the report which has received such favorable consideration from the committee of the whole. If we turn to the present Constitution of the State we shall discover that it contains no section on railroads. At the time of the framing of that instrument the construction and operation of railroads was an almost unknown and unheard of phenomenon among the people. The whole system was then wearing the swaddling clothes of infancy; but after the lapse of thirty-five years we find great lines of railroad stretching out through mountains and through valleys in all directions. The stately steppings of these mammoth corporations sound throughout the Commonwealth like the tread of giants. We live in different times, surrounded by different circumstances and different influences, from those who framed the Constitution of 1837 and 1838.

Now, sir, was it expected that the Committee on Railroads should enhance or curtail the rights of railroad corporations? Was that committee to increase or diminish their prerogatives? Was it to plant more firmly the heels of monopoly upon the necks of a prostrate people, or was it to lift them off? Was it to attempt to bind this modern Sampson with the green withes of sympathy or the new ropes of delicate consideration, or was it to seize firm hold of him and shear him of his unhallowed locks, wherein his strength abides? The Convention was

not alone responsible for the appointment of the Committee on Railroads; but as the cry of the children of Israel came up from the land of Egypt to the ears of the great I Am, so the cry of an oppressed people against corporate oppression and corporate despotism came up and filled the ears of this Convention, demanding relief.

What says the voice of the people? It arraigns these corporations and charges that they were originally chartered to build highways for the commerce of the State; that their roads were to be open and free and common to the business wants of all the people, at reasonable prices and under reasonable regulations; that they were to be common carriers of passengers and freights and that alone; that they were to afford the people the fullest facilities to carry the products of their industry to the best market; that they were to serve and protect all alike, and to hinder and oppress none; that in consideration of these advantages to the people, they consented that the right of eminent domain and the high prerogatives of the Commonwealth might be lodged in these corporate bodies; that they authorized them to construct their roads where they pleased, and to take any man's property they chose, with the single restriction that he should be compensated for his property; that an examination of the original charters of these companies will show that the sole purpose and object of their creation was intended to be the transportation of tonnage and passengers.

But that same voice of the people complains now, that by various supplements these companies have entirely departed from the original object of their creation; that they have become the largest landed proprietors in the Commonwealth; that they have possessed themselves of the richest coal fields in the world; that they have almost usurped the monopoly of this greatest necessary of life; that they have become miners and manufacturers; that instead of being the common carriers of the products of other people, they are largely engaged in carrying the products of their own mines and manufactories; that they crush out whom they please and elevate whom they will; that they have assumed a deadly hostility to private capital and private enterprise. Aye! The people charge home upon these corporations that they have stolen from them—I use the term advisedly—

have stolen from them, those august privileges and regal powers, by the connivance and with the consent of a bribed and a corrupted Legislature; that the railroad companies from being the servants of the people have become their masters, and that the Legislature instead of being the law-making power of the people, simply registers and promulgates edicts of these imperial corporations. The whole scope of this article on railroads is to lead back these wandering companies to their original and legitimate functions. Especially is that the purpose and the object of the section immediately under consideration. What does it propose? It proposes two things: First, that “no incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining on manufacturing articles for other persons or corporations for transportation over the works of said company;” and second, “nor shall such company, directly or indirectly, engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business;” with this saving clause: “but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.” This is “the whole head and front of the offending” of this section, that has caused such consternation, and excited such indignation amongst the friends and advocates of railroad monopoly. Why, sir, what good logical reason can be given why a company chartered as a common carrier should not remain such? What good reason can be given why a company chartered for transportation should become a mining and a manufacturing company, to the detriment of individual enterprise and individual capital? Did time permit, I could give many instances of the enormities practised on individuals by these companies, under the protection of the stolen immunities and privileges.

What is the argument against the section? It has a two-fold aspect. First, that the companies already organized and in existence have got all they need and all they want and that this section cannot and does not reach them. And secondly, that the section, if adopted, will prevent competition among companies

hereafter created, and thus greatly increase the power and monopoly of the present companies, and thus aggravate the grievances from which the people are now suffering. But the argument misconceives the scope of the section, and is therefore fallacious. The language of the section is general. It applies to all the corporations now in existence, and to all who are to come into being hereafter.

It declares that no company incorporated as a common carrier shall engage in mining or manufacturing. These companies that have been given possession of these vast domains of the people's territories; that now hold in their covetous grasp the coal basins of the Commonwealth; that can raise the price of the poor man's coal to any figure they please; if they are prohibited from mining and manufacturing they must let go their hold upon this property. They cannot have any further use for it if they cannot mine or manufacture, and they would have to break up these large estates and sell them to private individuals and private companies and private partnerships, and thus these vast monopolies would cease. This is the purpose and scope of the section. I scorn to disguise its meaning.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. BIGLER. I have not spoken on this section, and therefore will take the privilege of making a few remarks. I, for one, am anxious only to do that which will best protect the public in all these questions relating to railroads, and surely I never would agree to incorporate any railroad companies without the denial which is made in the latter part of this section.

No railroad should be allowed to acquire real estate beyond that which is absolutely necessary for the construction and successful or practical working of the road. I presume there are very few, if any, delegates who would be willing to take the converse of this position and say that in incorporating a railroad company in the future they should have real estate beyond that which is absolutely necessary. This is an old and a favorite doctrine of mine, and so far as it appears in this section I endorse it thoroughly; but, sir, I am not prepared to say, I am not lawyer enough to inquire into the question of how far it would affect companies who have heretofore acquired it. But as it stands as to future companies it is right, and for that part of the section I am willing to vote.

I voted in favor of the amendment that struck out the interdiction against the managers and officers for the reason that I could not see why a man along the line of a railroad engaged in mining and manufacturing should be excluded from taking a part in the management of a railroad. Now, sir, I do not see that in mining and manufacturing along the line of the road by those interested in it articles as may be transported on the road can do any public harm. I do not think this clause is in a proper form or place, but I do agree that no railroad company should be allowed to become a mining and a manufacturing company; that they ought to be confined to the legitimate business of common carriers.

While this section in its form is not what I would be glad to have it, I do not hesitate to say that those things which are denied to railroad companies on its face ought to be denied; they ought not to be miners and manufacturers; they ought not to have more real estate than is necessary for the legitimate purposes of a railroad company. That is all I have to say.

Mr. J. W. F. WHITE. I agree, Mr. President, with the remarks of the delegate from Clearfield on this point, that a railroad company which is incorporated as a common carrier should not engage in any other business, nor engage in mining and manufacturing; but it has occurred to me there is far more in this section than that, and I call the attention of the chairman of the Committee on Railroads and of the members of the Convention to this fact: Suppose a company shall be incorporated mainly to reach the mining regions of our State and mainly as a coal company to develop and take to market the coal from different portions of our State; its main business is not that of a common carrier; will not this section now prohibit that company from carrying passengers or accommodating people at all? It says that no incorporated company doing the business of a common carrier shall do so and so. Carrying the few passengers that might be on the line of their railroad or accommodating the people living along the line of that railroad of a very limited character would make them common carriers; and under this section they would be prohibited from carrying the coal of that region to market.

It strikes me that this section will cover a case of that kind, and if so I think

it would be very injudicious to place it in the Constitution. There are many mining regions of our State where there are coal and iron, and the common carrier business would not authorize the construction of a railroad merely for public business; it would be mainly for the carrying of the products of those mines belonging to the company to market; and I ask the question, would not this section prohibit such a company from accommodating the few people along the line of that railroad?

Mr. COCHRAN. If the gentleman will permit me to reply I will simply say that I do not understand it in that way. The gentleman from Allegheny is certainly a very able lawyer and is as able to construe this section as I am, but I think, taking the section together, it does not have that effect.

Mr. J. W. F. WHITE. It occurred to me, Mr. President, that the moment they become common carriers they will have to cease carrying the products of their mines to market, under this section. They must cease under this section if they are common carriers at all.

And, Mr. President, if it does not cover a case of that kind, then the section will be of no use, because it can be got around by incorporating the company for any other purposes. I call the attention of the Convention to the sixth section of the article on private corporations, and it seems to me that that section covers all we need. The sixth section of the article on private corporations, which has already passed second reading, is in these words:

"No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business."

Now, does not that language cover all that is really valuable in the section before us; and is it not more proper in the article on private corporations than here, because there it is applicable to railroads and all other corporations? It seems to me that there is no use in burdening down our Constitution by repeating sections and provisions in different parts of it; and as that section has already passed second reading, embracing what may be considered the material portions of the section now before us, it seems to me useless to pass this.

Now, one word as to the closing sentence of this section. I call the attention of the

Convention to the limitation here as to the power of mining and manufacturing companies:

"But any mining or manufacturing company may carry the products of its mines or manufactories on its railroad or canal, not exceeding fifty miles in length."

Why should we limit mining or manufacturing companies to fifty miles on a railroad? If they have a right to construct a railroad fifty miles to carry the products of their mines and manufactories to market, why should they not have the right of going fifty-five miles or sixty miles? What principle is there that will limit these mining and manufacturing companies carrying the products of their own mines and manufactories over their own roads only fifty miles? I cannot conceive of it; it does seem to me a most pernicious section of the Constitution. Why not say that they may carry their products over their own railroads a hundred miles? If they have a right to construct fifty miles, why not give them the right to construct longer than that to reach other regions of our State and develop other portions of it? Why say they shall carry fifty miles and no further? It does seem to me that that restriction is wrong, and if the section is to be adopted the latter part of it, that limits them to fifty miles, ought to be stricken out.

Mr. BIDDLE. Mr. President: I intend to vote for this section, maimed and mutilated as it is by being deprived of the words that were struck out by the amendment adopted yesterday. I intend to vote for it because I cannot get anything better. I regret very much that there seems to be a disposition on the part of the House to strike out nearly all the provisions of this article which I deem valuable.

The blows come directly from two classes of attacks. The one class, at the head of which I place my distinguished friend, the delegate from Philadelphia who sits in front of me, (Mr. Cuyler,) sees nothing in all the legislation of this State for the last twenty years in regard to these corporations but what is admirable. In his apprehension everything that has been done has been rightly done, and every effort that has been made on this floor to check or qualify the partial and one-sided legislation, about which we have been entertained in almost every debate upon every article of this Consti-

tution, has been wrong. He sees everything through the rosy mists of his prepossessions; and whether we are called upon to place these corporations, in regard to limitations of time or limitations of amount, or in any other respect, on the same footing as individuals, he thinks it all wrong. Indeed, if I understand him aright, he seems to think it an evidence of the highest prosperity of one of these great institutions, that they are already provided with the means of running limitably into debt; and, while on the one hand he indulges in remarks about investments of surplus capital, which I did not quite understand, on the other, he thinks that the power of borrowing millions and hundreds of millions is a most desirable thing.

MR. CUYLER. Will the gentleman pardon an interruption?

MR. BIDDLE. As our time is justly limited to ten minutes, and I do not intend to transgress a second over my time, I would rather keep it all to myself.

There is another class of objectors, who object to almost everything that is presented in this article, because it is said that so much mischief has been already done it is in vain to attempt to stem the current. It is extremely difficult, therefore, to meet both classes of objectors, but still something may be said in defence of this section and of the article generally. I, for one, believe it to be most valuable, and shall continue to believe that the management of these companies should be by persons who have no partial or indirect interests to foster which weaken their allegiance to the body of proprietaries, whose servants they are, and to the public generally, and therefore I voted against the amendment of yesterday. I am one of those who believe it most valuable to keep these transportation companies in the direct line of their duty. I do not care how swimmingly we may appear to go on just now, when gales are prosperous and skies are clear. I believe the day of reckoning is to come when every departure from the proper principles of the management of these roads will be visited with woes unutterable upon those who have embarked their capital in these adventures, and necessarily upon the public at large. I shall, therefore, go for every measure of restriction that is possible. If it is only to enounce a principle and nothing more, still I shall vote for that.

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I feel the force of what was so well said by the gentleman from Allegheny (Mr. T. H. B. Patterson) yesterday when he pointedly called the attention of the House to the twelfth section of the article, by which you provide, reaching, retrospectively if you please, companies already chartered, that no future legislative favors shall be bestowed upon them unless they conform themselves to the law of this article; and I believe, notwithstanding what has been said on the other side, that an enormous amount of good will still be done by passing the different sections of this article, in spite of the vast grants of power that have been already made. Every attempt to put them on the same footing of equality with the rest of the public seems to be met in this way. When it was a question of extending to the rest of the community the same right of borrowing money at the same rates of interest as is conferred by special privileges upon these corporations, what was the argument? "Oh, it is legislation." Now, I call such a provision as that a direct blow in the face; and yet I found the distinguished member from Columbia, (Mr. Buckalew,) who expressed his readiness to deal such a blow at the proper time, voting against that most wholesome provision. Perhaps the blow was too direct.

I found in the substitute offered for the fifth section yesterday a most wholesome provision, taking from the grasp of these larger corporations the smaller lines which were devised and constructed for peculiar local purposes. I thought that a very direct blow; and yet this Convention in its wisdom turned it aside from these corporations; so that it seems to me, whether the law be direct and open or whether it be a little more indirect in its operation, the same arguments are addressed to prevent its operation upon these bodies.

Now, I have no purpose at all to subserve except what I believe to be the interests of the whole community. I have no private griefs to redress; I have no peculiar interests to advance. I suppose I may say at least that much. Most of the addresses upon this subject have been prefaced by statements of what the speakers are or were in regard to this subject. These declarations are generally of very small value; they are either the effusions of sincere and pardonable vanity, or they are something else. Sometimes they are meant as a cover for apparent inconsistency, and they amount to about this:

"Heretofore my position has been thus and so; I have been a very consistent opponent of the particular style of legislation which is thought to be so injudicious; but now I find the current so strong that I cannot swim against it any longer, and, therefore, I will take a new departure." I do not attach a great deal of value to such declarations. They are generally entirely apart from the point under discussion. The individual *status* of the speaker has really very little to do with the question. What is all important is, "can you do and are you doing anything to check that which, by one universal cry from the whole community, is believed to be wrong." Why, sir, it was just to prevent sins of this kind that this Convention thought it necessary to adopt a peculiar style of oath, and that extraordinary provision which enables a jury to review the legislation of the Legislature—it was just this kind of legislation that was intended to be struck at by those provisions.

Now, I say most respectfully to this House—but still I say it as emphatically as I can—what a farce to pass such provisions as those if, when you have the opportunity of directly meeting the evil, you omit to do it, and then hug yourselves in the delusion that by these extraordinary retroactive provisions you are going to do any good!

The PRESIDENT *pro tem.* The gentleman's time has expired.

MR. BULLITT. Mr. President: I have an amendment to offer. I move to strike out all after the words "section six," and substitute the following:

"Presidents, directors, officers, agents and other employees of railroad and canal companies shall not engage or be interested, directly or indirectly, otherwise than as stockholders in such companies, in the transportation of freight or passengers as common carriers over the works of any company of which they are presidents, directors, officers, agents or employees, and they shall not so engage or be interested in the transportation of freight or passengers over the works of any other such company, except as stockholders therein, which may be leased or the majority of the capital stock of which may be owned or controlled by the company of which they are presidents, directors, officers, agents or employees."

It appears to me, Mr. President, that this subject of railroads is a very deli-

cate one for this Convention to deal with. The value of railroads to the commerce of this country is a conceded fact, I suppose, on all hands. The State of Pennsylvania to-day is reaping the largest benefits from the system of railroads which has penetrated through almost every part of her territory. They are the great arteries of commerce in times of peace; they build up and contribute more to the growth of your State, to your wealth, to your population, to your power, than probably any other one element; and the moment you undertake to trammel or restrain or constrain them, you incur the hazard, possibly, of impairing their usefulness and rendering them inefficient for the purposes which were originally intended to be accomplished by them. At the same time, Mr. President, it is important that they should be put within such restraints and within such bounds as may keep them within proper control and prevent them from acquiring power which will enable them to overcome the powers and the authorities of the State itself.

The section under consideration appears to me to be objectionable in that it puts a trammel upon railroads which may in time prove to be injurious and detrimental, instead of beneficial. There is, however, an object which it seems to me ought to be accomplished, and that I have endeavored to reach in the section which I propose as an amendment; that is, to prevent the officers, agents or employees of railroad companies from converting the railroads themselves into the means of conducting to their own private wealth at the expense of the stockholders and to the injury of the public. It is an injury to the stockholders inasmuch as any intermediate line which is controlled and managed in the interest and for the benefit of the officers or employees of the railroad companies themselves must obtain more favorable terms from the railroad companies than they could do if this matter were left in the hands of persons not interested in the railroad.

Another effect of the interest of parties controlling railroads in these intermediate lines is to induce them to make contracts with the railroad companies at higher prices and thus injure the public. To-day the freights upon all the large railroad companies are higher than they need be in consequence of these intermediate lines. That is known to be the fact, and is felt to be an evil in all the large commercial communities.

If you put the power into the hands of the men who control the railroad companies themselves to make contracts and bargains for themselves, no man can resist the temptation, I care not who he be. The conscience can always be salved over with excuses to enable a man to reach such a point as that, and necessarily he will make contracts, as I said, injurious to the stockholders and injurious to the public. Besides that, the effect of this is necessarily injurious to the official morality of the men who are in the management of these railroad corporations. This evil of intermediate lines, controlled by the officers of the railroad companies in the interest of and for the profit of the officers and employees of those companies, has extended throughout this State, and I do not think anybody will contradict me successfully when I say that it is at least generally believed that such a system prevails to a very great extent, not only in Pennsylvania but throughout the whole of this country. One of the ablest reports ever made to the Legislature of any State, and which caused a deep interest throughout the State of Ohio at the time, was a report made some four or five years ago by a committee of the Legislature of that State upon this very subject, in which that committee showed that this system ramified throughout every county in the State of Ohio, and was corrupting and injuring the trade of the State, the business of the State, and the railroad interests of the State in every direction.

While I am not willing to vote for this section as it now stands, I think that the substitute which I have offered reaches a point which seems to me to be intended to be reached by this section, but which has been stricken out. I propose now this as a substitute for the section, as reaching an evil which I think ought to be corrected by this Convention.

MR. CARTER. I desire to occupy but a few minutes time, not with the slightest hope of effecting any change in the mind of any individual present, but to define my position in regard to this matter and to give expression to some general thoughts which have been suggested by the debate of the last session. It seems that we are in danger of losing sight of the true question or principle at issue, in the many eulogiums paid to the railroad systems of this State and of other States with reference to the vast good that they have conferred upon those Commonwealths.

No one doubts it; no one calls in question the fact that they are indispensable to human progress. Sir, I would regard that man as insane who would wish to trammel or cripple injudiciously or injuriously this great and important interest. But is it not the teaching of history that there is a liability to abuse this, and that abuse has arisen in these great monopolies? It seems to be the intention of the report of the Committee on Railroads and Canals to correct that abuse.

There seems to be a disposition, however, to forget that there is a danger in great monopolies. What is to become of the teachings of the great exemplar of Democracy, Andrew Jackson, who raised his voice in opposition to monopolies and warned the people, in his day and time, of the danger and the evil that would flow from them? Does not that danger exist at present? Nay, are we not in the very midst of it? If his warning voice is still extended, if he is yet revered, not only merely by his political friends and partisans, but by the whole people, it is for the resolute and determined stand he made against a monopoly which only controlled some \$30,000,000 of capital, that we hold was wise and judicious; and, sir, is there no danger now to the liberties of the people from this great railroad interest that has ten times the power and ten times the amount of capital, and whose Briarean arms extend to the remotest parts of this Commonwealth, and would fain embrace this Convention, that has been controlling the Legislature of the State in a way that the United States bank against which he warred never attempted, or if it did attempt, failed of success?

Is it denied that the Pennsylvania railroad company has interfered with the legislation of the State? If it has done so, is not this then a time for men to pause and think before we heedlessly vote down all the provisions of this article, which have been designed to correct this evil? I think that the danger is imminent. It is not denied. I have the highest authority, that of the gentleman behind me, (Mr. Cuyler,) for saying that that institution *has interfered* with the legislation of the State.

MR. CUYLER. I ask the gentleman to whom he refers.

MR. CARTER. I refer to the gentleman who interrogates me.

MR. CUYLER. I deny it.

MR. CARTER. Well, sir, I repeat it.

Mr. CUYLER. The gentleman says that I said that to him.

Mr. CARTER. I did not say that you said it to me.

Mr. CUYLER. Well, I deny that I ever said it to him or anybody else.

Mr. CARTER. The gentleman did say it, and I repeat the remark. I care not what the minutes or published reports of this Convention say; I trust my own ears; and I will tell the gentleman when he said it. He said it in a colloquy upon this floor between himself and the distinguished gentleman from York who stands before me, the delegate-at-large, (Mr. J. S. Black,) in which he denied, when the question was closely put, the existence of interference with the legislation of the State of Pennsylvania, by the Pennsylvania railroad company, but *he admitted* that when the Pennsylvania railroad company had *interfered* it was to prevent hostile legislation.

Have I not made out my case? I insist upon it that if they interfered to prevent hostile legislation they can interfere and would interfere and have interfered to induce favorable legislation. Now, sir, have I not established my allegation? That he had admitted interference.

We have heard much of the corruption of this controlling influence on legislation. It has been said that our country is going head-long to destruction from the corruption of our legislative bodies. Now, gentlemen of the Convention, pause and ask yourselves what has been the cause of that corruption? I say again that these vast monopolies are the corrupting power; it is they who are responsible; and never, by act or deed will I aid to increase this power. It is unsafe for the liberties of the people.

In replying to these views as expressed by others we have had a siren song sung of the great prosperity of the State as brought about by these institutions. They ever sing this same song in our ears. The gentleman from Lycoming presents a beautiful picture worthy of Claud Lorrain of the great prosperity of the vast prairies of the west, induced, fostered and created by railroads. But, sir, there was a background to the picture which he did not fill up. That background is the frowning brows and the angry eyes of a half a million of men who believe that this has not been an unmixed good, an unmixed blessing. I refer to those organizations now existing by thousands, not thousands of men, but thousands of

granges. I would ward off that thing if I could. So long as the people of this State rest in the belief that this evil is growing no worse, and that this great Commonwealth, as the gentleman from York (Mr. J. S. Black) said, is possessed of strength enough to bear off the burden of evil and this corruption as did Samson the gates of Gaza, I am not willing to remain silent in view of the perils of the future. There is a limit to the power of the State of Pennsylvania to stand this oppression, to endure these evils, and now is the time and hour to do it. I am not aggrarian in feeling—far from it; but for the sake, not only of the people, but of the railroads themselves, let us put in the Constitution such restrictions as the exigencies of the occasion require.

One word as to the speech of the gentleman from Columbia (Mr. Buckalew.) I have been accustomed all my life to put things on principle. I believe that a corrupt tree cannot bear good fruit. It must bear corrupt fruit. He says that for years he contended with this railroad influence and did not believe that common carriers should be engaged in any other business than that for which they received their charters and that they should not engage in mining or manufacturing. He fought it for years, he said, but yet at last it was consummated. Now what does he propose? Why, to give up the fight. Would not the gentleman then at that time have liked to have such a constitutional inhibition as this to have supported him? It would have come in place then and there, but now he yields the fight. Some Delilah has shorn the locks of our Samson; he has lost his strength and power; he has yielded the fight. Not so with me. Sir, I believe if a thing is wrong in principle it is wrong always. If it was wrong ten years ago it is wrong now. If it would produce wrong results ten years ago it will produce wrong results ten years to come. And I would yet interpose this section, this prohibition that they should be confined to the business of common carriers.

I have been accustomed to listen to the words of wisdom from that gentleman, and I have almost felt as if sitting at the feet of Gamaliel, with his long acquaintance with public affairs and calm deliberate manner; but I must acknowledge that I was utterly disappointed when he came to that most lame and impotent conclusion which was that now, inasmuch as this wrong, as he held it to be, had

been perpetrated, now we must acquiesce. Oh most lame and impotent conclusion! Why, sir, if a thing is wrong and on a wrong principle, why fight on, and fight ever, to correct it. I know no other rule than that.

But I know that this Convention is tired of this subject, and I have had the desired opportunity to express my opinions and certainly honest convictions. I do not want gentlemen to lose sight of the fact that there is danger of yielding up to vast monopolies and conferring to great power. Many young men are in this Convention, and I will take the liberty of saying this to them, to be somewhat careful of making their record against these judicious restrictions that the people of the State expect us to apply. The grangers will be on after awhile, there is no doubt of it. I disapprove of it, I oppose those things, and I would do everything we can do to avoid the supposed necessity of such organizations in our grand old Commonwealth.

Mr. T. H. B. PATTERSON. I wish to call the attention of the delegate from Philadelphia (Mr. Bullitt) who offers this substitute, to the fact that after the striking out of the words, "nor the officers or managers thereof," by the amendment yesterday, his substitute does not seem to be strictly germane to this section, and therefore I appeal to him to withdraw his substitute and offer it as a separate section in order to get a fair and square vote both on the section and on the substitute.

Mr. BULLITT. I withdraw the motion to strike out and also withdraw this amendment, and I will offer it as a separate section immediately after this section is voted on.

The PRESIDENT *pro tem*. The amendment is withdrawn. The question is on the section.

Mr. BUCKALEW. I rise to move an amendment: To strike out all after the word "business," in the eighth line. The words to be stricken out are:

"But any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal, not exceeding fifty miles in length."

The more I examine this section, the more defective it appears to me to be. The first part of the section and the latter part are quite inconsistent and mutually destructive. The first part of the section forbids any carrying company from en-

gaging in mining or manufacturing. The concluding part of the section allows any mining or manufacturing association to become a common carrier, to engage in the business of transportation, to manage and conduct railroads, save only that the lines shall not exceed fifty miles in length.

Now, sir, there are but few points in the State from which fifty miles will not carry you out of the State or to a connection with other railroads of the United States. All that a railroad company that desires to mine coal, to engage in the business of transportation, will have to do will be to organize a mining company of its own members or of a clique of its members, and then they will have completely, of course, the privilege of using the line of road if it is already constructed, or if not constructed, to themselves build a line of railroad fifty miles long, and thus as a common carrier become at the same time a producer either of mining or manufactured articles to be transported over the road.

So this section has absurdity stamped upon it. The first part of it and the last part of it neutralize each other, and nothing remains of it except a limitation that mining and manufacturing companies or associations cannot transport their products over the road beyond fifty miles.

Mr. President, the main question involved in this section is covered already by the sixth section of the article on corporations in rather better language. That section, which has been read two or three times, provides that no company shall engage in any other business than that provided for in its charter; and then in the article on legislation we have provided that the Legislature shall pass no special charter for any sort of incorporated companies to carry on business pursuits.

Now, sir, I know nothing that you can add to the section already agreed to in the article on corporations, unless it be a provision that the Legislature shall not authorize corporations to be created to carry on more than one business or one employment at the same time. I do not see what else you can do except add a provision of that sort. Of course, here are two or three clauses of this section which, standing by themselves, I should be willing to vote for, but the section is inconsistent with itself, destructive as I have already explained, and then the

only language in it that is of any consequence is already in better form in the article on corporations, to wit: The limitation of a corporation strictly to its corporate business. That, of course, would be a conclusion of law; undoubtedly that is an ancient principle of the common law, but I have no objection to having it inserted in the Constitution, but it is already there in our other work.

Mr. J. S. BLACK. Where?

Mr. BUCKALEW. In the article on corporations, section six. Mr. President, there is another limitation contained in one section of this article which we have already voted down; that is in section five:

"No railroad, canal or other corporation doing business as a common carrier shall, either directly or indirectly, hold, guarantee, or endorse shares in the capital stock, bonds or other indebtedness of any other corporation, individuals, or partnership, except those doing the business of common carriers."

That we voted down. It was done against my opinion and against my vote; but that would have meant something. Why, sir, here in debate it was explained on a former occasion that a railroad company can become concerned indirectly in the business of manufacturing iron—

Mr. J. S. BLACK. The gentleman referred me to the sixth section of the article on corporations. In what part of the sixth section on corporations does the gentleman find any provision which will prevent the Legislature from making the charter of a corporation as broad as it pleases and allowing any number of businesses to be done by one company?

Mr. BUCKALEW. I did not say that. I said that was the only thing that could be added that I could think of.

Mr. J. S. BLACK. If it be not in that article, why should we not insert it in the article now under consideration?

Mr. BUCKALEW. If the gentleman will prepare a clause of the sort, I will look at it with very respectful attention.

That fifth section, which has been voted down, I think might be useful in preventing corporations from being indirectly concerned in the business of other corporations by guaranteeing their stock and bonds. I was willing to vote for it and I have no objection to voting, for some careful and proper provision which shall limit the Legislature in the matter of passing omnibus charters, if I may use that expression; that is, charters enabling the

corporators to carry on several business pursuits; but as to this section, for the reasons I have just given, in addition to those mentioned by me yesterday, I think the whole of it should be voted down.

Mr. HOWARD. There is still a little left in this section that I think is very much better than section six of the article on corporations. The delegate from Columbia seems to think that section six of the article on corporations will supply all that is left in this section and in a better manner, therefore the Convention should vote this down. Now, section six of the article on corporations does not supply it. Section six of the article on corporations declares that corporations shall be kept within the limits of their charters; that is, they shall be confined to the business specified in the charter of incorporation. I can refer the delegate from Columbia to charters of incorporation to-day that embrace railroading, the business of common carriers, the business of mining, the business of manufacturing, the business of banking, the business of building passenger railways, of doing everything under the sun but running the government of the United States and the government of Pennsylvania; and yet under the sixth section of the article on corporations they can do all these things, provided they are specified in their charters!

So the Convention will understand distinctly if they vote down this section on the idea that it is better supplied by section six of the article on corporations, they certainly will be mistaken. This section six in the railroad article provides that they shall be limited to the business of common carriers; that is, it brings them right down to the specific business for which they were chartered. We have got that much left of the sixth section of this article, while the sixth section of the article on corporations permits them to do anything that is specified in their charter; and I repeat here again that a company called the Pennsylvania company, a right arm of the Pennsylvania railroad, has more power than ever was conferred upon any corporation before in the world. It has the right to do anything that it is possible for the Pennsylvania Legislature to give it, manufacturing and mining, not only common carrying, but building passenger railroads, doing everything that can be done by man under the sun, except to run the government; and yet that kind of a cor-

poration would be covered, saved and protected by the sixth section of the article on corporations that the delegate from Columbia thinks is a great deal better than what is left of the sixth section of the article on railroads.

Then again he seems to think that the section is inconsistent with itself, and that the latter two lines and a-half should be stricken out, because that clause allows mining companies having a road not exceeding fifty miles in length to carry the products of their own mines and manufactories, and he says that will turn these companies into common carrying companies when it was not intended by their charters that they should be anything more than mining or manufacturing companies. Now, what does the section say? It does not say anything of that kind. The language is: "but any mining or manufacturing company may carry the products of its mines and manufactories." They are permitted to carry the productions of their own mines and their own manufactories. They cannot become common carriers unless they carry for others. This section does not permit them to do that, and therefore they cannot be turned by this section, if adopted in the Constitution, into common carrier companies when they were not intended to be such by the Legislature. There is, therefore, nothing in that argument of the delegate from Columbia.

If the members of this Convention mean that hereafter when a company is chartered as a common carrier company, it may do everything else that is embraced in such a charter as that obtained by the Pennsylvania company, then they will strike down this section and say they are satisfied with section six of the article on corporations; but if they do not mean to have such broad charters as that hereafter, if they mean that when a charter is granted to a company to do the carrying trade of the State, it shall be limited to that business, then they will vote for the balance of this section six.

Why, sir, these latter lines were inserted in order to meet the objections that would be raised to the section by those who are opposed to all reform. I find it is utterly impossible in this Convention, and it has always been so, not only here, but everywhere, to please everybody. You never can please those who are opposed to all reform whatever. Of course there will always be objection. Objection

and fault can be found to the best plan that ever was proposed.

I think the amendment proposed by the delegate from the city (Mr. Bullitt,) and subsequently withdrawn, is fully covered by the eighth section of this article, which prohibits the officers of these companies from engaging in the business of transportation on the lines of their roads.

Mr. President, I admit that the life, the real value of it, has been taken out of this section, but still there is something left that ought to be asserted as a principle by this Convention, namely, that when a company is chartered as a common carrier they should be limited to that business and the Legislature should not have the power to confer upon them any other powers or privileges.

Mr. BAER. As a member of the Committee on Railroads I wish to say a word on this article. I believe I am responsible for the latter clause of the section as it stood before it was modified, but not exactly as it appears at the end of the section now. I urged it then for the reason that the first clause as it stands in the proposition, to my mind was a perpetual barrier to all the development of the interior by small railroads. While I was willing that large companies that were incorporated for the sole purpose of common carriers should be restricted to their legitimate business, yet I thought, in order to protect companies that were incorporated as mining companies and who became common carriers only as a necessity, because they were carrying their own products and carrying for others as a mere incident, that this other clause became necessary, and I think so still. I think now that if the first part of this section is adopted, the latter part becomes a necessity unless we intend to cripple all the small enterprises in the State. I hope, therefore, that if one is adopted the other will be. I admit that there is a clause in this section that is wholly, and perhaps better, covered by the sixth section of the article on corporations. But, sir, as I understand the question now pending, the gentleman from York proposed a division of the section, the first division to end with the word "company" in the fourth line. If so—

Mr. COCHRAN. I wish to say to the gentleman from Somerset that that division was not called for by me.

Mr. BAER. Does not that call still stand, and will not the vote have to be

taken in that form? If that is so, then I ask is not the amendment offered by the gentleman from Columbia entirely out of order? It becomes necessary, therefore, to consider the section as it stands upon that division. The first clause reads: "No incorporated company doing the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over the works of said company." That clause, I think, should be amended so as to cover the objections that are raised here. For that reason, if it is in order, I move to amend the first division, by striking out all after the word "section" and inserting as follows:

The PRESIDENT *pro tem*. There is an amendment now pending, to strike out all after the word "business," in the eighth line.

Mr. BAER. But I raise the point of order on that amendment that a division has been called on the section, and the first question is on the first part of the section, and the amendment of the gentleman from Columbia must be out of order as it applies to a subsequent part of the section.

The PRESIDENT *pro tem*. The delegate is laboring under a misapprehension. A division was asked for yesterday, but the Chair stated that the last clause would be senseless under such a division, and therefore ruled the division out of order.

Mr. BAER. Then I shall withhold my amendment until the pending amendment is disposed of. I will read it at this time so that gentlemen may understand the amendment that I propose to offer at the proper time:

"No company organized to do the business of a common carrier shall directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over the works of said company."

The difference between the two propositions is simply this: That while the section as it stands interferes with the small companies whose special and legitimate business is mining, and who only become carriers from necessity, without interfering by any possibility with any interest in any locality, this amendment will confine it to corporations that are incorporated for the purpose, and whose main business is that of common carriers, and that is as far as we ought to go.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia.

Mr. BUCKALEW. On reflection I am willing to allow the vote to be taken on the section, and I will withdraw the amendment.

Mr. BAER. If that amendment is withdrawn I move to amend the section, by striking out all after the word "section," and inserting the following:

"No company authorized to do the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for transportation over the works of said company."

Mr. ARMSTRONG. It seems to me, Mr. President, that the debate on this question has not been characterized by the candor which has ordinarily heretofore attached to the debates of this Convention. It is not true, I think, that gentlemen who oppose this section oppose it because they are particularly railroad men, or because they believe that all legislation heretofore passed on the subject is without exception, or because they think that the evils have grown so large that they are beyond all remedy. It is, as I believe, far more based upon a well founded apprehension that it would be needlessly embarrassing without accomplishing any corresponding good.

For myself, I readily admit that railroad corporations have exercised at times an injurious influence over the legislation of the State. I could point to instances in which I believe the influence has been corrupt; but I do not believe that the people of this State are hostile to railroads. What does it all mean, and what is the summation of all the popular feeling manifested upon this subject? If I correctly understand it it is, first, that railroad corporations have exercised undue and sometimes corrupt influence in legislation; next, that they have exercised an unwise and unfair discrimination in freights. Beyond those two particular items of complaint, so far as my knowledge goes, the people of the State are not dissatisfied with railroads, nor, except in a few instances, with railroad management.

Now, what have we done by way of improvement in that direction? As to legislation, we have limited it in the most precise terms. We have said that the Legislature "shall not pass any local or special law to regulate labor, trade,

mining or manufacturing, nor create incorporations by amending or renewing the charters thereof, nor granting to any corporation, association or individuals, any special privilege or immunity; nor shall the Legislature indirectly create such special or local law by the repeal of a former law; nor shall any bill be passed granting powers in any case where the granting of such powers can be covered by general law."

In addition to this we have limited, I trust effectually, the power of corporations or any other parties to procure legislation through corrupt means by requiring that every bill shall be printed, that it shall be referred to a committee, that it shall be passed upon three separate readings, and the yeas and nays called and entered upon the record. We have also provided what I believe to be a crowning protection, namely, taking from fraudulent legislation the protection heretofore accorded to it by putting it in the power of the courts to inquire into the fraudulent passage of a law and to declare it to be null and void. Now, in the face of these provisions, have we not sufficiently guarded against the corrupt influence of corporations? Have we not greatly limited, if we have not effectually stricken down, the power which they can bring to bear injuriously and unfairly to secure improper legislation?

Now, what have we done as to corporations? We have already provided, in the sixth section of the article on corporations, that no corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate, except what may be necessary and proper for its legitimate business.

Mr. CORBETT. That is private corporations.

Mr. ARMSTRONG. Yes; and a railroad is a private corporation. In the ninth section we provide that "the Legislature shall have power to alter, revoke or annul any charter of incorporation now existing and revokable at the adoption of this Constitution or any hereafter to be conferred." So that by this Constitution we have taken into the hands of the State complete control over this entire subject, to prevent, first, improper legislation, and in the next place, to deprive them of its benefit, if it be corrupt, and lastly, to deprive a corporation of all its powers if it abuses its franchises.

But this section is faulty and inefficient in another sense. I took occasion, yesterday, to point out how hundreds of thousands of acres of lands, now lying undeveloped in this State, are waiting for the power which this section would take away to lead on to their development, and without which the land must lie continuously undeveloped and useless, for there is no local trade or local influence, apart from mining or manufacturing, that ever can or ever will develop those lands.

But, apart from this, it is complained that these corporations are gathering into their hands an undue amount of land and influence, and gentlemen have in their minds the Reading railroad, and yet I venture to say that the Reading railroad, as a corporation to-day, is not in its own name the owner of any considerable body of coal land in Schuylkill county. Whether they own, or however it may be in fact, the lands are in the ostensible ownership of other corporations. What have they done in this direction under their own name? Nothing. Other corporations have been created which doubtless they control, and whose means they furnish which have bought up these lands. But gentlemen will reply that the Reading railroad company is the real owner—so it may be. So they doubtless are to a considerable extent; but will this section prevent that kind of dealing? If it be necessary to create a corporation for such a purpose and the Legislature does create an incorporation for such purpose who can prevent it?

Then, again, we have provided in our article on corporations that "any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with the requirements of law, form themselves into an incorporated company," &c. Now with such facility of corporate organization how futile this section will be! Under the powers which we have already granted it would force these corporations, if so be that they desire to exercise such powers or to hold lands or corporate franchises, simply into the creation of collateral companies, setting aside this constitutional provision by the most facile evasion. It puts a premium upon indirection, evasion and fraud. It leads to corruption in a thousand forms, and as far as the people are concerned is utterly useless and inefficient.

In view of consequences like these, so probable and so easy, I cannot bring my mind to approve a section which seems to me to be so full of needless restraints and which can accomplish so little good. It will trammel the development of the State to a degree which those of us who live in the country and know the necessities for corporate assistance in such developments would regret in the highest degree. Along the head-waters of the West Branch of the Susquehanna river there are thousands upon thousands of acres of land where mineral wealth never can be touched until by the great leading trunk lines of transportation assistance shall be given in development; and yet this section would largely prevent it. Examine this question with somewhat of the minuteness with which it will be investigated when it reaches the courts, if it should do so. It is provided that "no incorporated company doing the business of a common carrier shall directly or indirectly engage in mining"—that strikes at the coal interests—"or manufacturing"—that strikes at the iron interests; and I venture to say now to any gentleman who will look over the railroad interest of this State that he cannot put his hand on any railroad, unless it be the Pennsylvania railroad, in the entire State, which has not been built up with a view to the development of individual and particular interests, either at the terminus or along the line of the railway. The Pennsylvania railroad as a trunk line, connecting the seaboard with the far west, was built as a transporting road. The Reading railroad was built to reach the Schuylkill coal fields; so the Lehigh Valley; so the Delaware, Lackawanna and Western. So I might go over the railroads of the State, and with the map in my hand, I could point out not less than one hundred railroads in this State, large and small, that have been built for the exclusive purpose of developing the individual interests which lay along the line or at the terminus of the roads; some of them built with a view to reach a particular interest have been extended to reach other interests a little beyond until in time they have become trunk lines themselves of far greater extent than fifty miles, the limitation named in the proviso of the section. These roads thus extended and strengthened have branched out in a hundred directions, reaching the collateral private interests which lie along their line. Now, under

this section, no man owning land would venture to take stock in such a company for the purpose of developing it, because the moment the road is built, if they open it to the reception and transportation of whatever promiscuous freight, great or small, may be offered for transportation, they become instantly *ipso facto* a common carrier. A common carrier is one who carries for the public, for all the public, and it does not depend upon whether the thing to be carried be much or little

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The PRESIDENT *pro tem.* The gentleman's time has expired.

I will not encroach upon the rule, but I regret that time forbids to develop the argument. I regard the section as pernicious, and the proviso only mitigates its evils, without commending the section.

MR. J. S. BLACK. Mr. President: There can not be—I do not believe there is—any difference of opinion in this Convention about the main principle of the subject under consideration. Nobody here, nobody anywhere that I know of, is or has been for a quarter of a century past opposed to railroads. We might as well make opposition to agriculture or commerce, or some branch of the mechanic arts. If it be true that we desire to have such improvements in the country it follows that we are willing they shall be made on reasonable terms by corporations; for in that way alone can we get them. Corporations which are established for that purpose, and which execute the purpose fairly, should be encouraged. It is a great public service to the community for anybody to invest his capital in such business, and the man who does it should be encouraged and within proper limits rewarded for what he does.

But it is equally clear that a corporation entrusted with the performance of a public duty should be strictly confined by law to the one end and object of its creation. When its powers are perverted to the purposes of unlawful gain it becomes dangerous. In all the courts wherever the English language is spoken on this and on the other side of the Atlantic, it has always been regarded as one of the most important of judicial duties to hold corporations and hold them hard within the limits of the authority expressly bestowed on them by the Supreme Legislature.

Assuming (what I am afraid is not quite as true as I wish it to be) that the courts will perform this duty well and faith-

fully, the tendency to accumulate powers which are not necessary or proper in the hands of corporations can not be checked by judicial authority alone so long as there is no restriction on the Legislature in creating and extending them.

Knowing as I think I do the public sentiment on this subject, and feeling certain that it is well warranted by reason, I would be amazed beyond expression if this Convention would separate without making some provision forbidding the Legislature to make these unreasonable grants of power to railroad corporations in the future. Let the original charter of the Pennsylvania railroad company be the model for all future ones. It was cautiously and well drawn. It not only withheld all unnecessary powers, but it expressly forbade the exercise of those not granted. It is a great public misfortune that the act of incorporation was afterward so unreasonably expanded.

But you must couple your restrictions upon the Legislature with a prohibition upon the company to use such powers when they are granted. Charters may be given to one company or one body of adventurers and transferred afterward for a consideration to another. The traffic in that business will be stopped hereafter, but there is a large stock of charters on hand now ready for sale and delivery; like those medical diplomas which used to be made, signed, sealed and ready to insert the name of a learned doctor who would pay the money. These acts of incorporation can be got now in every variety, I am told. They come cheap, I think, but I don't know the market price.

But after all your prohibitions you cannot expect obedience to your laws, unless you affix some penalty to their violation.

You must make it the interest of the corporations to keep within the bound you set for them; otherwise they will overleap them without the slightest hesitation. I therefore propose an amendment to this section what I think will be effectual. I desire to add to the section:

"All property acquired by any company or held by another party for the use of any company contrary to this article shall be forfeited to the State, and the stockholders of the offending company shall be individually liable for its debts."

The PRESIDENT *pro tem.* That is an amendment to the section. There is already an amendment to the section pending.

Mr. J. S. BLACK. Well, I mean that as an amendment to come in anywhere; wherever you can find a place to put it. [Laughter.]

Mr. COCHRAN. I am opposed to the amendment of the gentleman from Somerset (Mr. Baer) in the shape in which it is presented as a substitute for this section, because I do not think it covers the ground of the section. I think that there is very valuable matter in the section which ought to be included and which would be excluded should his amendment be adopted. In addition to that, I think that the limitation of companies specially organized would be a very questionable limitation and would be liable to very great abuse; and if that amendment is to supercede the section, which I hope will not be the case, I do not wish it to do so without being amended. Therefore, I offer to amend the amendment by inserting at the end of the amendment the following words:

"Nor shall the Legislature at any time authorize the incorporation of any transportation company with other powers than such as are necessary and proper to the business of a common carrier."

I suppose that the meaning and the application of that amendment are apparent to every gentleman. It has been said that a section of the article on corporations covers this ground, but in point of fact it does not cover it. It does not exclude or prevent the creation of companies with as many heads as Cerberus and with as many powers as the Legislature choose to confer, and to do as many things as they can conceive of. But this amendment will confine the charter of every transportation company to the conferring of such powers as are necessary and proper for the transaction of the business of a common carrier; bringing it back to the true idea and restricting such companies to their proper functions and duties. While I am opposed to the amendment taking the place of the original section, I do not want it to prevail, at any rate without this amendment of mine being added to it.

The PRESIDENT *pro tem.* The question is upon the amendment to the amendment.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem.* The question recurs on the amendment as amended.

Mr. KANE. I move to further amend the amendment by striking out after the

word "manufacturing," in the original amendment, these words:

"Articles for transportation over the works of said company."

Mr. KAINE. Now the section reads:

"No company organized to do the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing. Nor shall the Legislature at any time authorize the incorporation of any transportation company with other powers than such as are necessary and proper to the business of a common carrier."

I do not see the use of the last sentence. If it is the purpose to prevent railroad companies from engaging in manufacturing and mining, why not let it be in that way originally? If these words remain in this amendment they will be only limited to manufacturing so far as transporting over their own roads. They might engage in manufacturing and mining anything to send over the works of other companies. I do not think the clause is necessary at all; and it ought not to be in.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the amendment as amended.

Mr. COCHRAN. I hope that the amendment as amended will not be adopted, and that we shall go back to the original section. In order to test that question I ask for the yeas and nays.

Mr. SHARPE. I second the call.

Mr. CUYLER. Gentlemen will observe that the bearing of these words is quite sufficient to prevent any railroad company from having their own shops for repairs or construction. They cannot construct cars or locomotives or have any shops of repair. The words are quite broad enough for it.

The PRESIDENT *pro tem*. Is the call for the yeas and nays seconded?

More than ten gentlemen rose.

The PRESIDENT *pro tem*. The call for the yeas and nays is sustained, and the Clerk will proceed with the call.

Y E A S .

Messrs. Alricks, Baer, Black, J. S., Church, Edwards, Fell, Giffin, Guthrie, Kaine, Lilly, M'Murray, Mantor and White, J. W. F.—13.

N A Y S .

Messrs. Achenbach, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Boyd, Brodhead,

Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, De France, Dunning, Elliott, Ellis, Ewing, Finney, Funck, Gibson, Hanna, Harvey, Hay, Horton, Howard, Knight, Lamber-ton, Landis, Lawrence, MacConnell, M'-Clean, M'Culloch, Mann, Metzger, Newlin, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Patterson, T. H. B., Patton, Parman, Purviance, John N., Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Sharpe, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Stewart, Struthers, Temple, Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, Wherry, White, David N., White, Harry, Worrell and Wright—83.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Craig, Dodd, Fulton, Green, Hall, Hazzard, Hemphill, Heverin, Hunsicker, Lear, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Porter, Pughe, Runk, Russell, Stanton, Woodward and Meredith, *President*—37.

The PRESIDENT *pro tem*. The question recurs on the section.

Mr. CAMPBELL. I call for the yeas and nays on the passage of the section.

Mr. J. S. BLACK. Now I renew the offer of the amendment which I submitted before.

The PRESIDENT *pro tem*. Where is it proposed to insert the amendment?

Mr. J. S. BLACK. At the end of the section.

The PRESIDENT *pro tem*. The amendment will be read.

The CLERK read as follows:

"All property acquired by any company or held by another party for the use of any company contrary to this article shall be forfeited to the State; and the stockholders of the offending company shall be individually liable for its debts."

Mr. J. S. BLACK. Several gentleman, among others the chairman of the railroad committee, think that this would come in more appropriately at the end of the article, and I will for that reason withdraw it for the present, though I think it would apply as well here as any place else, with the understanding that the chairman of

the committee himself will offer it at the close of the article.

The *PRESIDENT pro tem.* The amendment is withdrawn. The question recurs on the section.

Mr. COCHRAN. I have nothing to say further with regard to this section, because it has been fully discussed, than simply this: That the section as it stands now, and as I think it ought to have stood, with the amendment of the gentleman from Somerset, does not prevent transportation companies from making their own machinery.

The *PRESIDENT pro tem.* The question is on the section.

Mr. CAMPBELL and Mr. CUYLER called for the yeas and nays.

Mr. T. H. B. PATTERSON. I ask to have the section read before the yeas and nays are taken.

The *PRESIDENT pro tem.* It will be read.

The CLERK read as follows:

SECTION 6. No incorporated company doing the business of a common carrier shall, directly or indirectly, prosecute or engage in mining or manufacturing articles for other persons or corporations for transportation over the works of said company; nor shall such company directly or indirectly engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length.

The question was taken by yeas and nays with the following result:

Y E A S.

Messrs. Achenbach, Alney, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Chas. A., Black, J. S., Brown, Calvin, Campbell, Carey, Carter, Church, Cochran, Corson, Curtin, Dallas, De Francoe, Ewing, Finney, Funck, Gibson, Gilpin, Guthrie, Harvey, Hay, Horton, Howard, Kaine, Landis, Lawrence, McLean, McCulloch, M'Murray, Mann, Mantor, Metzger, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Purviance, John N., Reed, Andrew, Reynolds, Roeke, Ross, Sharpe, Smith, H. G., Stewart, Temple, Van Reed, White, David N., White, Harry, Worrell and Wright—53.

N A Y S.

Messrs. Armstrong, Barclay, Boyd, Brodhead, Broomall, Buckalew, Bullitt, Corbett, Cronmiller, Curry, Cuyler, Darlington, Davis, Dunning, Edwards, Elliott, Ellis, Fell, Hanna, Knight, Lambertson, Lilly, MacConnell, Niles, Palmer, H. W., Parsons, Patton, Purman, Purviance, Sam'l A., Simpson, Smith, Henry W., Smith, Wm. H., Turrell, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry and White, J. W. F.—38.

So the section was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Craig, Dodd, Fulton, Green, Hall, Hazard, Hemphill, Heverin, Hunsicker, Lear, Littleton, Long, MacVeagh, McCamant, Minor, Mitchell, Mott, Porter, Pughe, Read, John R., Runk, Russell, Stanton, Struthers, Woodward and Meredith, *President*—37.

Mr. BULLITT. I now offer the proposition which I submitted before, to come in as a new section at this point:

SECTION —. Presidents, directors, officers, agents and other employees of railroad and canal companies shall not engage or be interested directly or indirectly, otherwise than as stockholders, in such railroad or canal companies, in the transportation of freight or passengers as common carriers over the works of any company of which they are presidents, directors, officers, agents or employees; and they shall not so engage or be interested in the transportation of freight or passengers over the works of any other such company, except as stockholders in such company, which may be leased, or the majority of the capital stock of which may be owned or controlled by the company of which they are presidents, directors, officers, agents, or employees.

Mr. COCHRAN. Mr. President: I am entirely in sympathy with the object sought to be accomplished by the gentleman who has offered this new section. I, however, respectfully suggest to him that this is in effect a substitute for the eighth section of the report of the committee. If the report of the committee does not meet the approbation of the gentleman from Philadelphia, if he would withdraw this proposed section here and offer it as a substitute for the whole or part of the eighth section, it would reach the very proper place where the subject matter of the amendment would come under consider-

ation. I merely suggest it to him. I have no objection to the section here, but I think it is directly a substitute for the eighth section, and probably better than the eighth section.

Mr. BULLITT. It occurred to me on reading the eighth section that the words which the gentleman from York supposes cover this provision do not cover it entirely. Again, the eighth section seems to me to cover some other matters than those provided for in this section which I now offer here as an amendment.

Mr. COCHRAN. I will merely state by way of explanation, if the gentleman from Philadelphia will permit me, that I suppose what he says is correct; that there are other things in the eighth section which are not probably covered by his amendment, especially in the latter part of the eighth section, and if it can be offered as an amendment to any part of the eighth section we could have the advantage of considering the two in connection. I think myself his provision is better than the general language of the eighth section.

Mr. BULLITT. I shall propose, when the eighth section is under consideration, to amend it, by striking out the words "except officers and partnerships or corporations composed in whole or in part of officers of each respective railroad or canal who are hereby prohibited from engaging in the business of forwarding or transporting on the lines thereof." Those are the only words which seem to me to be covered by the section I now propose.

Mr. BIGLER. I was about to suggest to the delegate from the city that if it is not the positive rule, it is the question to defer all new sections and until the original ones have been passed upon. This amendment comes in as a new section, requiring a change of all the subsequent sections, and I agree with the delegate from York that this proposition ought to be considered in connection with the eighth section, whether it be an entire substitute or not; but I make no question of order.

Mr. BULLITT. I think if you will look at it you will see that it comes in very properly just where I propose it, and that the words which I shall propose to strike out in the eighth section are probably not as well placed there as they should have been, and are better where I offer the amendment.

Mr. CUYLER. I should like to ask what practical good is proposed to be effected by this new section? As I under-

stand it, it simply provides that presidents and managers and officers of corporations shall not be interested otherwise than as stockholders in these transporting companies, but as stockholders they may be interested.

Mr. BULLITT. Will the gentleman allow me to explain?

Mr. CUYLER. I should like to hear the explanation.

Mr. BULLITT. The gentleman entirely misapprehends the section. It provides that they shall not be interested except as stockholders of the company of which they are officers. Of course, no man can be president or director of a company unless he is a stockholder of that company, and the exception is simply intended to enable a man to hold stock in the company of which he is director or officer, but it prohibits him from being interested, either directly or indirectly, as stockholder or otherwise, in a company which is doing a transportation business over the works of the company of which he is an officer or director. In plain words, it is intended to strike at that which we all think, or which I believe is generally thought to be an evil, that the directors, president or officers of a railroad company should be interested in what are known as fast freight lines. I think the section covers that.

Mr. CUYLER. It would amount to nothing as a practical fact. A transfer of stock into another name will accomplish the result just as effectually as if they have it in their own name, and therefore it will cover nothing at all. It will be utterly powerless to achieve any good.

Mr. BIGLER. I offer an amendment to supercede the amendment proposed by the gentleman from the city, to strike out all after the word "section" and insert:

"Companies composed in part or in whole of officers and managers of a railroad corporation shall have no right to transport tonnage over the roads with which said officers and managers are connected, without the consent of the holders of a majority of the stock of such corporations; nor shall they be charged lower rates for transportation or be furnished greater facilities than other persons or companies engaged in the same business."

Mr. President, at the time this subject was discussed in committee of the whole the impression made upon my mind was that it was a question for the stockholders of these companies, and I think to the stockholders it might properly be con-

fided. I know nothing about how these organizations are made, nor how they are conducted. It seems to me very clear that the managers and officers ought not to constitute separate organizations for the purpose of transacting business on the road without the knowledge and assent of the stockholders; and under those impressions I framed this amendment, intended to meet that case. It is simple, easily understood, and I think covers all the essential ground of the amendment proposed by my friend from the city.

The PRESIDENT *pro tem*. The question is on the amendment to the amendment.

The amendment to the amendment was rejected.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from the city (Mr. Bullitt.)

Mr. HOWARD. Mr. President: There is something in the amendment offered by the delegate from the city that I can support, but this question of permitting the officers of railroad companies to engage in fast lines, palace cars, and sleeping car companies, and have them on the track of the stockholders and make money at the expense of the stockholders was all fully considered in committee, and in order to meet that question section eight was prepared, which, in my judgment, covers all that is covered by this proposition, and more, and I consider that section a far better provision than this. It is no new question that is presented by this new section, but it was fully discussed, week after week, time after time, in the committee. I took the ground that it was all wrong for the officers of these corporations to be concerned in fast lines, palace cars and sleeping cars, and making money off of the stockholders' track. As a principle, I am willing to support the amendment, but I say the ground is covered and better covered in section eight, and more. The committee, after full consideration of the subject, having digested this matter fully, fairly and thoroughly, reported that section which covers the whole ground. It reads thus:

"All railroads and canals are declared public highways, and all individuals, partnerships and corporations shall have equal right to have persons and property transported thereon, except officers and partnerships or corporations composed in whole or in part of the officers of each respective railroad or canal, who are hereby prohibited from engaging in the

business of forwarding or transporting on the lines thereof."

That is the whole of this proposed new section. It prohibits the officers of these companies from engaging in the business of transportation of passengers and freight on their roads. That is all there is in this amendment, and that is embraced in section eight of the report, and much more. The amendment brings the business down to the stockholders themselves; in other words, that the stockholders shall have all the carrying of freight and passengers; but this section eight means more; it drives out the officers from that business and it puts the public upon their track and gives the public the right to have cars upon it and to load those cars, and then compels the company to furnish the motive power and give the transportation. If this amendment is adopted it will be an excuse for striking down section eight, which is a far better provision for the great public who are interested in this question. If there was nothing but this proposition standing alone, I would vote for it unhesitatingly, because I have always advocated the principle. I believe that the public suffer and the stockholders suffer continually; aye, sir, they are robbed by this plan of piling corporation upon corporation on the stockholders' track; but, nevertheless, I am constrained to vote against the amendment here, because I believe it will only be used as an excuse for the purpose of defeating a much better provision which covers the whole ground, and was fully and thoroughly considered by the committee in all its bearings.

Mr. BULLITT. One word in reply to the gentleman who has just taken his seat. He entirely misapprehends the object and purpose of this section. So far from being in conflict with section eight, that portion of it which it is intended to supply meets with my approbation; but I supposed it was necessary to give it much more point than that provision in section eight does. Section eight certainly does not reach a point quite as important as any other; that is, to prevent the officers of railroad companies from being interested in the transportation of freight and passengers over roads which may be owned, controlled or leased by the companies of which they are presidents, directors or officers. That was what led to the drawing of this section. It seems to me that the provision in sec-

tion eight does not go far enough. My purpose was to strike at that which I consider one of the greatest evils connected with our railroad system, and not with a view of crippling this article.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from the city (Mr. Bullitt.)

Mr. CUYLER. On that I ask for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. CAMPBELL. Before the yeas and nays are ordered I should like to say a word.

The PRESIDENT *pro tem.* They have been ordered.

Mr. BULLITT. I ask that the question be stated.

The CLERK read the amendment as follows:

SECTION —. Presidents, directors, officers, agents and other employees of railroad and canal companies shall not engage or be interested, directly or indirectly, otherwise than as stockholders, of such railroad or canal companies in the transportation of freight or passengers as common carriers over the works of any company of which they are presidents, directors, officers, agents or employees, and they shall not so engage or be interested in the transportation of freight or passengers over the works of any other such company, except as stockholders of such company, which may be leased, or the majority of the capital stock of which may be owned or controlled by the company of which they are presidents, directors, officers, agents or employees.

The CLERK proceeded to call the roll.

Mr. COCHRAN (when his name was called.) As I prefer to consider this section in connection with the eighth section, I am compelled to vote "nay."

The roll call was then concluded, and resulted as follows:

YEAS.

Messrs. Achenbach, Ainey, Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, J. S., Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Church, Corson, Cronmiller, Dallas, De France, Ewing, Fell, Finney, Funck, Gilpin, Guthrie, Hanna, Hay, Horton, Kaine, Lamberton, Landis, Lilly, MacConnell, M'Clellan, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purviance, John N.,

Purviance, Sam'l A., Ross, Sharpe, Smith, H. G., Smith, Wm. H., Stewart, Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F., Worrell and Wright—63.

NAYS.

Messrs. Armstrong, Black, Charles A., Boyd, Cochran, Curry, Curtin, Cuyler, Darlington, Edwards, Elliott, Howard, Lawrence, Mann, Parsons, Patterson, D. W., Patton, Reed, Andrew, Reynolds, Rooke, and Smith, Henry W.—20.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Carey, Cassidy, Clark, Collins, Corbett, Craig, Davis, Dodd, Dunning, Ellis, Fulton, Gibson, Green, Hall, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, Littleton, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Niles, Porter, Pughe, Purman, Read, John R., Runk, Russell, Simpson, Stanton, Temple, Wetherill, Jno. Price, Woodward and Meredith, *President*—50.

Mr. ALRICKS. I offer a new section that has been reported by the committee, to come in at this place in our proceedings:

"Any combination or agreement by and between railroad companies or by and between any railroad and coal companies *unreasonably* to increase their rates of transportation of freight, or to increase the price of coal or of manufactured products, shall work a forfeiture of the charters of such companies."

This section has been modified in some manner. It was reported by the committee, and the word "*unreasonably*" was not inserted in it.

There may no doubt be consultation between different transportation companies and different coal companies with regard to the price of the article that they may have for sale, or with regard to the freights that are carried on the railroad, but those companies have no right to enter into any agreement by which they would *unreasonably* increase the price of coal or raise the price of freight.

Now, I trust that this provision, as reported by the committee, will meet the approbation of the House, because I am told that such a combination exists at this time, and it is the duty of this Convention to protect the people against any attempt to make them pay an undue

price for the coal that it is necessary for them to consume, not, I grant you, in this weather, but during the winter season. I have it from a gentleman in this Convention that he has direct knowledge of the fact that where a large coal operator was putting in the market a thousand tons of his coal at a reasonable price it was for the purpose of unjustly keeping up the price of coal that one of the railroad companies agreed to take his coal so that the price might not be reduced. Now, I feel that this is the proper time for this Convention to act in the premises. When I left this Convention last evening I confess that I was somewhat dispirited, because I had informed my constituents and others that I believed we would make a Constitution which would be entirely satisfactory to the people, because it would put proper restrictions upon corporations. Last evening it appeared as though "a change had come over the spirit of our dreams," and as though we were disposed to abandon the position we had taken, and I felt then some alarm that if our restrictions upon railroads were stricken down, every restriction that has been adopted by this Convention would piecemeal be struck down in the same way; but from the votes which have been taken this morning I feel encouraged, and I believe that this Convention is not disposed to back down but that they will do what is right in the premises.

I submit this section as it was reported by the committee, with as light modification, and trust it will be adopted.

Mr. BROOMALL. Mr. President: I desire to ask whether it would not be better to punish the individuals so unlawfully combining than to punish the innocent stockholders by forfeiting their chartered privileges.

The PRESIDENT *pro tem*. The question is on the section proposed as an amendment by the delegate from Dauphin (Mr. Alricks.)

Mr. ALRICKS. I ask for the yeas and nays.

The PRESIDENT *pro tem*. It requires ten delegates to second the call for the yeas and nays.

Ten gentlemen rose.

Mr. CUYLER. Before the yeas and nays are called I hope the House will pause a single moment—

The PRESIDENT *pro tem*. Over ten gentlemen rose, and the Clerk will call the roll.

Mr. CUYLER. This question was thoroughly considered and debated in committee of the whole, and the proposition was voted down by a large majority.

Mr. LILLY. I desire to have the proposed section read.

The PRESIDENT *pro tem*. It will be read for information.

The CLERK read the amendment.

The yeas and nays were taken and resulted as follow:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, J. S., Brown, Calvin, Campbell, Carter, Church, Cochran, Corson, De France, Finney, Funck, Gilpin, Guthrie, Horton, Howard, Landis, M'Clean, M'Culloch, M'Murray, Mantor, Metzger, Newlin, Patterson, D. W., Patterson, T. H. B., Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Smith, Henry W., Smith, William H., Stewart, Turrell, Van Reed, White, Harry, and Worrell—41.

NAYS.

Messrs. Ainey, Armstrong, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Carey, Cronmiller, Curry, Curtin, Cuyler, Darlington, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Hall, Hanna, Hay, Kaine, Lamberton, Lilly, Littleton, MacConnell, Mann, Niles, Palmer, G. W., Palmer, H. W., Parsons, Patton, Pughe, Purviance, John N., Purviance, Samuel A., Reed, Andrew, Struthers, Walker, Wetherill, J. M., Wetherill, J. Price, Wherry, White, David N., and White, J. W. F.—46.

So the amendment was rejected.

ABSENT. — Messrs. Achenbach, Addicks, Andrews, Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Corbett, Craig, Dallas, Davis, Dodd, Dunning, Gibson, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lawrence, Lear, Long, MacVeagh, M'Camant, Minor, Mitchell, Mott, Porter, Purman, Read, John R., Runk, Russell, Simpson, Stanton, Temple, Woodward Wright and Meredith, President—46.

Mr. HOWARD. I offer the following amendment to come in as a new section:

"No railroad, canal or other corporation doing the business of a common carrier, shall, directly or indirectly, hold shares of the capital stock, or endorse or guarantee the bonds, notes or other indebted-

ness of any other corporation, partnership or individual engaged in the business of mining or manufacturing."

Mr. J. PRICE WETHERILL. I rise to a point of order. That does not materially differ from the section which was voted down yesterday.

The PRESIDENT *pro tem*. The Chair cannot decide the amendment out of order.

Mr. HOWARD. This is a piece of the wreck of section five. This simply prohibits common carrier corporations from taking the capital stock or endorsing the bonds or notes or other indebtedness of mining and manufacturing corporations and individuals. It was stated here when this question was very fully discussed, that certain corporations along the line of these railroads have been engaged in endorsing and in guaranteeing the paper of certain individuals, building up certain great establishments to the detriment and injury of others that cannot command the same kind of endorsement or guarantee; and that after these railroad companies have embarked in the business of endorsing and building up these manufacturing companies, they have given a preference to the companies to whom they have given their favor. I know when this question was before considered in committee of the whole that this was deemed a great and a growing evil. I remember very well a distinguished delegate from the city of Philadelphia, who no longer occupies a seat upon this floor, if I understood him correctly, stated that his railroad company had guaranteed or endorsed to the amount perhaps of millions. Well, as a matter of course, if the common carrier companies are permitted to endorse the paper or guarantee the bonds of mining and manufacturing companies along the line of their railroads, they will necessarily give the preference in the transaction of their business to those that enjoy these favors.

There is no doubt at all that they ought to be prohibited specifically from endorsing the paper of individuals. There ought to be some limit put by this Constitution upon their right to go in debt. We have certainly, by striking down the second section, said that they may go on so far as the Legislature will permit them to go, because the way it now stands they can go on and endorse and guarantee bonds for the building of other railroads and in fact guaranteeing for partnerships and individuals.

They are in fact without limit except so far as they may be hereafter limited by the Legislature, and I think we should have a constitutional prohibition against their endorsing the paper of manufacturing and mining companies and individuals.

The PRESIDENT *pro tem*. The question is on the amendment.

Mr. HOWARD. On that question I call for the yeas and nays.

Mr. FUNCK. I second it.

Mr. DARLINGTON. It will require ten to second it.

The PRESIDENT *pro tem*. Do ten gentlemen rise?

More than ten gentlemen rose.

The PRESIDENT *pro tem*. The call is sustained and the Clerk will proceed with the call.

The yeas and nays were taken as follows, viz:

Y E A S .

Messrs. Ainey, Alricks, Bailly, (Perry,) Biddle, Black, J. S., Buckalew, Calvin, Campbell, Carter, Church, Cochran, Corson, De France, Ewing, Finney, Fulton, Funck, Guthrie, Hall, Horton, Howard, Landis, M'CLean, M'Murray, Mantor, Metzger, Newlin, Palmer, G. W., Palmer, H. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Rooke, Ross, Sharpe, Smith, H. G., Stewart, Van Reed, White, David N. and White, Harry—40.

N A Y S .

Messrs. Achenbach, Armstrong, Baer, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Bullitt, Carey, Cronmiller, Curry, Curtin, Cuyler, Darlington, Edwards, Elliott, Ellis, Fell, Hanna, Kaine, Lamberton, Lawrence, Lilly, Littleton, MacConnell, Mann, Niles, Parsons, Patterson, D. W., Patton, Pughe, Purman, Purviance, John N., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Struthers, Turrell, Walker, Wetherill, J. M., Wetherill, John Price, Wherry, White, J. W. F. and Worrell—47.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Andrews, Bailey, (Huntingdon,) Baker, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Cassidy, Clark, Collins, Corbett, Craig, Dallas, Davis, Dodd, Dunning, Gibson, Gilpin, Green, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lear, Long, MacVeagh, M'Camant, M'Culloch, Minor, Mitchell,

Mott, Porter, Runk, Russell, Simpson, Stanton, Temple, Woodward, Wright and Meredith, *President*—46.

The *PRESIDENT pro tem.* The next section of the article will be read.

The *CLERK* read as follows:

SECTION 7. No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation; and the charges for freight and fares for passengers shall for equal distances in the same direction be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance, and no special rates or drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles.

Mr. J. PRICE WETHERILL. I wish to say a word before this section is acted upon by the Convention, and before doing so I move to amend by striking out all after the word "thereof," in the fourth line. I shall be very brief in what I have to say on the subject, and very practical, for it is a practical matter.

Whenever the subject of railroads comes before this Convention it is generally followed by very eloquent remarks from most of the gentlemen on this floor. I cannot for the life of me understand why in a matter of such a practical character as this those eloquent speeches about hydra-headed monopolies and other very wonderful and fanciful imaginations should be brought forth.

Now, under this section the charges for freight and fares for passengers shall be the same for a shorter as for a longer distance. How would that work? The freight from Philadelphia to Chicago, a distance of one thousand miles, is to-day forty cents per hundred pounds. Now, if this section prevails, the freight from Harrisburg to Philadelphia would be four cents per one hundred pounds; the freight from Philadelphia to Lancaster would be three cents per one hundred pounds; and if any gentleman knows anything about freights

and transportation he must certainly know that these rates with such charges would be simply ruinous to the railroad company compelled to carry out any such regulations.

Again, extra charges may be allowed under this section for distances not exceeding fifty miles. How will that work? The rate from Philadelphia to Lancaster under this ruling would be three cents per one hundred pounds and the rate for freight ten miles this side of Lancaster would be twenty-five cents per one hundred pounds, or just what the railroad company would desire to charge. The rate named is nothing in the world but a fair and reasonable and liberal rate, and what would be the consequence? Not a commission merchant could do business on the line of the Pennsylvania railroad inside of fifty miles from Philadelphia, and they would all have to go to Lancaster where their freight would be so much cheaper.

There is unreasonableness in the whole thing, and when you come to work it out it will not accomplish, in my opinion, a good purpose. The same thing was tried in Illinois. They left this matter to the Legislature and the Legislature passed an act discriminating in the same way as indicated by this section, and the whole State is in arms to-day against it. Lines of railroad in the interior to-day on freight have been compelled to make charges of such rates locally as absolutely to drive the transportation from the State, to ruin the railroads which have been built in the State of Illinois, and to throw trade upon competing lines controlled by capital outside of the State. The freight to-day from the eastern line of the State of Illinois is forty cents per one hundred pounds, but when you go one hundred miles back into the State of Illinois, on account of these local rates which must be charged in order to make local freight pay and railroads live, sixty-five cents per one hundred pound, and as a consequence, the land on the eastern line of Illinois is enhanced in value thereby, and the land in the central part of Illinois is injured in value thereby. The farmers are beginning to see exactly how this thing works, and they are up in arms about it, and they are willing and anxious to repeal this act of Assembly.

Again, take the town of Quincy, Ill., which is on the western border of the State, and connected by two roads, one via St. Louis and the other via Chicago.

The town of Quincy is about two hundred miles, I am told, from the city of Chicago, and they, to secure the great through freight, carry that through freight at a low rate; but by this law they are compelled to charge the same freight for equal distances, and when they found that they must charge a fair local freight it so increased the through freight and brought it up to such a figure that the through freight to-day around Quincy, Ill., goes through the State of Missouri, via St. Louis, and over roads over which the State of Illinois has no control and into which the State of Illinois never put one dollar of capital, thus contributing to railroad improvements outside of the State of Illinois and injuring the city of Chicago to, I am told, the extent of a daily receipt of many car loads of freight per day.

Now, what will be the effect of this section? It will be simply this: That the through railroad companies must do one of two things; if they must charge the same rate for a lesser as for a greater distance, they must either put up the rates of freight upon the local charges to such a figure as will pay, and if they do that they thereby increase the through freight to such a rate that other roads competing will take the traffic and they will lose all their through freight. But, on the other hand, if they make their local freights the same as their through rates it will, as I have shown, result in putting the local freights at such a low figure that it will cripple and ruin the companies who will undertake to do that sort of business. That is the proposition fairly and clearly stated. The gentlemen of this Convention can take either horn of the dilemma. Either the one or the other will be the result in the State of Pennsylvania just exactly as it was the result in the State of Illinois, and our great railroad enterprise, in order to compete with the other trunk lines, will suffer an immense loss.

Now, I desire to call the attention of the gentleman to what the State of New York has done in this regard under her new Constitution. Every one must admit that the State of New York certainly has suffered under railroad mismanagement and under railroad monopoly and under railroad control long enough. I have not heard that we have Fisks or Goulds or men of that sort managing our railroad companies. Our railroad companies, through lines and local roads, are managed in the main by honest men, men having not only the interest of the stock-

holders but the interest of the State at heart; and the results show it. But New York perhaps has been in a different condition; and what does the New York Constitution do in regard to the railroad companies? So jealous were they of their own interests, so jealous were they of their manufacturing and their commercial interests, that they passed in their Constitution just two lines on the subject of railroads: "The Legislature shall not authorize the consolidation of railroad corporations owning parallel and competing lines of roads," no more, no less. Here we are loading down the organic law by harsh iron rules about the details of which very little is known by the members on this floor. The business men on this floor probably know as much as the lawyers do about it, and the business men confess themselves that in the working of all these harsh, inflexible sections, no man can tell the injury which they will inflict, and I do hope we shall be extremely careful not to cripple the great railroad interest of this State.

For these reasons, I do hope we shall either vote for the amendment I have proposed or vote down the section.

MR. J. R. READ. Mr. President: I agree with the delegate who has just spoken, but I think that his amendment could be improved by adding to the words of the section that are left the word "unreasonable" after the word "any" on the second line, and the words "or between" after the word "against" in the third line. The section would then read:

"No corporation engaged in the transportation of freight or passengers in or through the State shall make any unreasonable discrimination in charges for the carriage of freight or passengers against or between the people thereof."

Now, I desire to say a few words on that subject.

THE PRESIDENT *pro tem*. Does the gentleman offer that as an amendment to the amendment?

MR. J. R. READ. I do if it is in order.

Mr. President, I am in entire sympathy with what I believe to be the desire of the Railroad Committee of this Convention, and that is to prevent any unjust, unreasonable, or undue discrimination against the people of this State as compared with the people of other States, or between the people of this State as inhabitants thereof. But I do not believe that that object can be attained by the provisions of this section. If the gentle-

men of this Convention will turn to this section, and examine it critically, they will find that it is impossible to carry it out, or impossible to attain by its provisions the object that they desire. It provides in the seventh and eighth lines that for freight carried on the works owned or controlled by such corporations, charges for freight for equal distances in the same direction shall be the same.

Now the effect of these lines is that you would be able to have transported equal distances, for the same price per ton per mile, a ton of feathers or a ton of pig-iron.

Mr. EWING. No.

Mr. J. R. READ. I beg your pardon. Those are the words of the section, and the construction I have placed upon them is fair and reasonable, and the only one they are properly susceptible of, although it may not be the intention of the committee that they should be so construed, and I hardly believe that it can be.

Mr. CORSON. There is no difference in weight.

Mr. J. R. READ. There is no difference in weight, but one takes up a good deal more room than the other. This illustration shows the false economy of the provisions I have referred to.

Now, the subject of *legislation*, in regard to the regulation of rates for the carriage of passengers and freights on railroads, has received considerable attention from the Legislatures of other States and the Parliament of Great Britain, and it has been found to be a fallacious doctrine that improper charges could be cured by legislation. No general law or special law has ever yet been framed to remedy the mischief that prevailed by reason of unfair or improper charges for transportation; and on that point I should like to turn the attention of the members of this Convention to the report of the Board of Railroad Commissioners of the State of Massachusetts. That board was organized under the provisions of an act of the Legislature of Massachusetts for the purpose only of protecting reforms and supervising railroad companies, in the year 1869. It is composed of some of the ablest and purest men of that State, namely, Mr. Charles Francis Adams, Mr. J. C. Converse and Mr. A. D. Briggs, all men of sound and discriminating judgment. They have given this subject a very great amount of careful investigation, and I should like

to read to the Convention, if they will bear with me for a few moments, their opinions on this subject. I quote from their report:

"There are then two questions on which this board now feels called upon to express opinions: First, How can the existing corporations most effectually be brought into a close sympathy with the wants of the community and the popular expectations?—and, second, in case of the failure of all attempts to create this close sympathy, how can the community be most readily prepared to substitute a new and more satisfactory system of management for that now existing?

"These questions were somewhat considered during the session of the last Legislature. A law was passed declaratory of the general right of the Legislature to regulate at its direction all tariffs of fares and freights on the several railroads of the Commonwealth without regard to the amount of net earnings. The commissioners are unable to see how any satisfactory results can be arrived at through action under this law. The grounds on which they base this impression can be stated in very few words. All legislation in the direction indicated must be either general or special—general as applying to all the railroads of the Commonwealth, or special as applying to some individual one of them. No general law of this nature has yet been framed adequate to meet the wants of the case, though attempts at it have frequently been made; nor, indeed, do the commissioners now see how such a law could be framed. Not that it is here meant to imply that the regulation of railroads by law is impracticable, but the doubt is confined to their regulation in this particular way. Other methods have been, and hereafter will be suggested, and their practical merits can only be ascertained after trial; this method has, however, repeatedly been tried and with a uniform result. The cause of failure in this case is indeed most apparent. A general law regulating fares and freights, which would very slightly touch one road, would inevitably ruin another; a tariff which would apply to one class of articles would be simply ridiculous when applied to another. The law found generally on the statute books provides a *minimum* per mile for each passenger and for each ton of freight. A law on this principle, framed to meet the case of the Boston and Albany road by materially reducing its present rates,

whatever result it might produce on that company, would speedily send the Housatonic road into insolvency; a law which allowed the Housatonic to earn a dividend would have no application to the Boston and Albany. So of descriptions of freight; a rate per ton per mile applicable to coal or pig iron, would produce results eminently unsatisfactory to the corporations if applied to feathers, wicker-work, wooden-ware, or household furniture. It is, however, useless to discuss this question; a general law which shall meet the circumstances of all the separate roads and provide for all classes of freights, degrees of speed and arrangements for comfort, is a practical impossibility."

And yet that is precisely what this article proposes to do. In other words, it is nothing but the child of its parent, the equal mileage system. That equal mileage system has been found by the experience of railroad men and by the experience of the communities that have tried it to be impracticable as a general system; and yet gentlemen seek to imprint it with inflexible rigidity, with hard and fast lines, into the fundamental law of this Commonwealth. I beg them not to attempt to incorporate into this Constitution what is deemed in this report, from which I propose further to read, a confessed failure.

Now, sir, the object of this section is in a general way which is all the more objectionable to regulate fares and freights on railroads by saying that for equal distances in the same direction the charge shall be the same; that is to say, for any fifty miles or one hundred miles on the Pennsylvania railroad, or any other railroad, the charge shall be the same. As the whole can be no greater than its aggregated parts, it is nothing more nor less than saying that the charge for transporting freight upon any fifty miles on any one railroad shall be the same as the rate for the transportation of freight upon any other fifty miles of the same railroad. This in effect is no more than the equal mileage rate, or a fixed rate per ton per mile—at least, that, in my opinion, is its logical sequence.

Now, sir, what do we find to have been the result of the careful investigation and searching inquiry made by this board of railroad commission from whose report I quote upon this subject? As they have expressed their views concisely and well, I shall use them as part of my argument. I am sure the Convention will not regret

hearing them. In their report made in this year to the Legislature of Massachusetts, after four years of continuous service, they use the following language:

"By chapter fifty-eight of the Resolves of 1872, this board was directed to consider the subject of regulating railroad fares and freights by law, and report in the form of a bill or otherwise on the first week of the next Legislature.

"This question was discussed at some length in the last annual report of the board. (Third annual report, pp. 170-4.) Since that report was made, the whole subject has been most thoroughly investigated by a joint select committee of both Houses of the British Parliament, and the evidence and documents submitted to that committee, and its own conclusions thereon, have been published in a 'Blue Book' of more than one thousand folio pages. In various of the State Legislatures of this country, also, measures have been brought forward, of which copies have been transmitted to this board, all of which bore closely on the matter referred to in the foregoing Resolve. There is, indeed, no question connected with railroad legislation which has occasioned during the last forty years so much discussion or so many statute enactments as the attempt to regulate fares and freights by law. There are now in force on the statute books of various counties, laws of every conceivable description, from a simple act establishing charges at so much per mile for each traveller or ton of freight carried by rail, to enactments of the most elaborate nature, under which roads are classified, goods enumerated, periodical revisions provided for, and differential, special and through-rate tariffs, with distinctions of terminal charges, are all specified in detail. The efforts in this direction have, indeed, been systematically pursued both in this country and in Europe, from the first inception of the railroad system down to the present day.

"In the earlier days of the railroad system, and especially in America, the acts regulating fares and freights were very simple, and apparently there could be no difficulty in their enforcement. They limited charges to so much per mile for each passenger and for each ton of freight; adopting what is known as the equal-mileage rate. Economically there can be no doubt whatever that this legislation was founded on a wrong principle. If the amounts paid by the public are in any degree to correspond to the cost of the

services rendered by the corporations, then the distance that a person or thing is carried has very little necessary connection with the cost of carriage.

"This principle is perfectly well established, and has been repeatedly dwelt upon in the reports of this Board. Its truth can be made very apparent by a simple illustration. Lynn is ten miles from Boston, and Chicago is a thousand. An article of merchandise going to the one place or the other has to be received, handled, stored, placed on a car and forwarded; on reaching its destination it must be unloaded, stored and delivered by the company, or received and unloaded by the consignee; in either case, the car is necessarily subject to delays, during which it earns no freight. Under these circumstances it is very apparent that the fixed cost incurred by the railroads in the work of transportation—that cost which is common for all articles or persons, no matter how long or how short a distance they are to be carried—must constitute a very considerable part of the whole cost. So obvious is this fact, that it is well known that the corporations earn large net profits on their long business at a third or quarter of that rate per mile, which is barely remunerative on short business. The simple and obvious fact that wheels earn money only while they are in motion, and that they earn it as long as they are in motion, has constantly been disregarded by those seeking to frame laws regulating fares and freights. If a car can be loaded with passengers or goods and started on a journey of two thousand miles, the wheels of that car are steadily earning money for days together, though moving, perhaps, at low rates; if, however, the cost of starting that car, including the fixed outlay of the corporation in officers, employees, station-buildings, real estate, rolling stock and road-bed—an outlay which is in large degree the same for long transportation or for short—if this cost has to be distributed over a few miles only in which the wheels are in motion, then it is evident that the cost of transportation per mile must largely increase. If it is limited by law, and not allowed to increase, then the long traffic must pay a loss on the short traffic.

"As regards merchandise, this is so apparent that it needs only to be stated to be understood. Of course this economical principle must not be confused with the abuses perpetrated by the railroad

corporations in charging heavier rates to intermediate than to competing points, or with the extortions at times practiced on local business.

"As regards the carriage of passengers it is equally true. The longer the distance travelled the greater the profit on each passenger, and, numbers being equal, the cheaper he can be carried. In practice it is apparently otherwise, as it is notorious that the fares for short distances are the lowest; but this is apparent only, and it is due to the numbers transported. The accumulation of small profits, by dividing the cost of running the train among vast numbers of persons, operates in exactly the same way as if it were distributed over a great distance measured in miles.

"The equal-mileage laws were therefore founded on the erroneous principle that the fare or freight should be proportioned to the cost of carriage, and the cost of carriage was held to be uniform without regard to distance. An infinite number of acts based on this principle are to be found in the statute books of this country. Nowhere, however, has the system been more persistently followed out than in Ohio. In that State there are at least nine distinct rates for the transportation of passengers and freight authorized by law, and yet others are under discussion. The matter has been incessantly legislated upon, and yet the State railroad commissioner, in his report for the year 1870, asserts that these laws are the most fruitful source of complaint, and that, 'there is not a railroad in the State, whether operated under a special charter or the general law, upon which the laws regulating rates are not in some way violated nearly every time a regular passenger, a freight or mixed train passes over it.'

"On those roads where scrupulous effort is made to act within the limits of the law, it is violated in some instances by charging passengers who fail to purchase tickets an excess of regular ticket fare, and in others by charging an excess of the legal rate for short distances upon the purchase of tickets; and in almost every instance where light and bulky articles, such as furniture, willow-ware, feathers and the like are carried, a greater rate per ton per mile is charged than the law allows, and articles of a hazardous nature or of great value are charged in excess of their true weight. While this is done often without complaint, and the justice

of the rule is conceded by many, it is nevertheless a violation of the law.' * *

"A strict enforcement of the provisions of the law would, however, compel some companies to ultimately suspend business, prohibit the transportation of certain articles by rail or compel their transportation below actual cost.

"In their report for 1872 the commissioners referred to the English system of Parliamentary trains as an exceptionally successful result of legislation on fares and freights. The law in this case was intended to compel the companies to provide certain slow and cheap trains at a low rate of fare for the vast population of the very poor class which is to found in Great Britain. This result, it was implied, the law had accomplished. The report of the Parliamentary committee which has just been referred to throws grave doubts on this conclusion. On the contrary, the committee says that 'the history of the traffic in third-class passengers affords a strong argument against attempting to foresee and provide for a want of this description by imposing general, compulsory and permanent obligations on railway companies. It has been shown that Parliament, anxious to protect the lower classes at any rate, from the apprehended monopoly of railway companies, imposed special obligations on the companies supposed to be in favor of these classes, and attached to these obligations a special exemption from railway taxation. It has also been shown that railway companies, in their own interest, are now doing for third-class passengers more than Parliament ever thought of requiring; that third-class traffic is one of the most growing sources of profit, and that the present operation of the special legislation on the subject is to give a very questionable exemption from general railway taxation, to create confusion and litigation, and to give the companies inducements for withholding from third-class passengers facilities which they would otherwise give. The ill-success of this attempt may well justify hesitation in entering upon further general legislation of the same kind.'

"The familiar law in force on the New York central road, and which is very frequently cited as an instance of the successful operation of simple laws regulating fares, is of a different character. Under it two cents per mile is the regular fare which the road is allowed to charge, and the rule applies to all trains, descriptions

of travel or rates of speed. No package, commutation or season ticket is sold at any reduced rate, and consequently the man who travels every day, and by accommodation train, pays exactly the same rate (two cents) per mile, as he who travels once a year by express.

"When a similar law, applying to all roads in the Commonwealth paying more than eight per cent. dividends per annum, was proposed in the Legislature of 1871, the discussion upon it elicited such unexpected results from its operation that the measure was rejected. For instance, though the bill was limited to roads paying annual dividends of eight per cent. and upwards, the effect of competition made it apply to other roads which either paid less dividends, or, in some cases, had never paid any dividend at all; practically threatening such roads with bankruptcy.

"Again, there is not a considerable business centre in the Commonwealth which is not surrounded by towns in which people have settled, built houses and effected every arrangement for residence, relying upon a regular and very cheap access by rail to their places of daily business. A law which substituted a uniform rate of two cents a mile for the commutation rates at which such persons now travel, would necessitate an entire change in their modes of life. Such a system might work well where a community has grown up under it; if, however, suddenly by act of Legislature introduced into a community which has established itself under the discriminating tariffs always hitherto in use in Massachusetts, the commissioners do not see how it could fail to produce most disastrous results.

"How serious, as regards regular season ticket passengers, such a change would be, may be inferred from an examination of the tables at the close of this report (No. 127.) It will be seen that those who travel most on the roads of this State, instead of paying two cents per mile, now pay but from one fourth cent to one and a half cents per mile.

"The rule of uniform mileage rate is also wholly opposed to the fundamental principle of taxation, that the burden should in all cases be so imposed as to rest most heavily where it will be least felt. The man who travels every day over a given route has a right, on every principle of economy, to buy his passage at wholesale rates, and to him a concession is a matter of great moment, whereas it is of com-

paratively little consequence what he pays, within reasonable limits, to the man who travels very rarely. A law, therefore, which imposes an additional cent per mile on the daily traveler to give it to the occasional one does not seem to place the burden of taxation where it is least felt.

"The commissioners are inclined to believe that the system of discriminating rates now generally in use on the Massachusetts roads is not only more profitable to the corporations than the uniform price per mile system of the New York roads, but it at the same time is more advantageous to the traveling community through its practical adjustment of the burden.

"The equal mileage rate has not only been found to be wrong in principle, but its universal application is apparently out of the question. It might, indeed, be practicable if its expediency were admitted, if all the railroads in the State were consolidated into one corporation and operated by one responsible management. In such case it would be possible to strike an average, and, by making the profits on one portion of the system counterbalance the losses on another, arrive at the basis of a law. Such a policy of consolidation, however, has never been encouraged by the Legislature of Massachusetts. There are accordingly now in this State no less than fifty-five corporations owning on an average forty miles of road each, while some thirty-five distinct boards of managers control about sixty miles each, varying from two hundred and fifty miles in the case of the Boston and Albany to less than six in that of the Fall River, Warren and Providence. These corporations represent almost every conceivable form of railroad existence. Some are very wealthy, others are very poor, and yet others are bankrupt; some pay dividends, but many do not; some are through roads, others are local branches; some run between large cities and through a level and densely populated region, others are constructed through broken and sparsely settled districts; some find their profit in carrying passengers, others in carrying freight, and yet others in the two combined; some derive a large income from the suburban travel of those holding season tickets, others have scarcely any local travel at all. To take such a system as this and to apply to it one hard, unyielding law of charges, would be an experiment which the mem-

bers of this board are not prepared to commend. In their opinion it would be not only wrong in principle but impossible of application.

"It remains to consider the expediency of special laws regulating in detail the charges of particular roads; and general laws classifying roads and regulating charges in accordance with such classifications, discriminating for all possible differences of condition or vicissitudes of traffic.

"The precedents for special laws regulating in detail the charges of certain roads to which alone they are applicable, are very numerous in European legislation. They have, however, by no means resulted advantageously. Of them the parliamentary committee of 1872 says: 'Legal maximum rates afford little real protection to the public, since they are always fixed so high that it is, or becomes sooner or later, the interest of the companies to carry at lower rates. The same thing is true of terminal charges. The circumstances are so various and so constantly changing that any legal maxima which might now be fixed would probably be above the charges now actually made, certainly far above those which will hereafter be made. Indeed, attempts made in 1861 and 1866 to fix a maximum for terminals broke down, because the only maximum that could be agreed upon was so much beyond the charge then actually made to coal-owners that the coal-owners feared it would lead to a rise in that charge.'

"And again: 'The attempt to limit rates and fares by the principle of fixing a maximum has almost always failed in practice, and is almost always likely to fail, for the simple reason that the Parliamentary committees and authorities, by whom such limits are decided, cannot do otherwise than allow some margin between the actual probable rate, as far as they can forecast it, and the maximum rate; and cannot foresee the contingencies of competition, of increase in quantities, of facilities or economy in working, or of alteration of commercial conditions, which may occur in the course of years after such limits have been arranged by them.'

"The result of thirty years of successive and wholly abortive effort in this direction in England has been that Parliament has at last settled down in the conviction that the development and necessities of trade in practice always have nul-

lified, and inevitably must nullify the provisions of special acts, no matter how carefully and skilfully they may be prepared. This, too, has hitherto resulted from common consent, all parties recognizing the fact that these enactments did not possess the flexibility absolutely requisite to the movements of modern commerce.

"In the United States the difficulties in the way of this class of legislation would be infinitely greater than in England. There the several roads are at least throughout their entire lengths under the control of one central legislative power. In America this is not the case. Few roads of any importance lie wholly within the limits of any one State, and the process of consolidation is rapidly reducing the number. Practically, in every case, the laws of any one State apply only to the segments of an entire line. The real seat of an existing grievance is often therefore a thousand miles removed from the point where it makes itself felt and where the remedy is asked for. Were these difficulties all removed, the most serious difficulty of all would still remain. To be done successfully this work must be done very thoroughly and very intelligently; those having it in charge must be thoroughly informed on the whole theory and practice of transportation by rail, and fully alive to all its fluctuations and vicissitudes. The labor involved, if the laws were to remain anything more than dead letters on the statute book, would consequently be enormous, and any Legislature which undertook it must not only remain in continuous session but must contain within itself an unusual proportion of railroad experts. Under any other conditions the experience of Great Britain would but repeat itself.

"The only other method of dealing with the subject which suggests itself is through general laws classifying roads and regulating charges, in accordance with these classifications, in such a way as to allow for all probable differences of condition or vicissitudes of traffic. This is the plan now most in favor in this country, and a number of attempts have been made to devise a satisfactory form of law to meet the case. One of these has been placed upon the statute book in Illinois, and others have been prepared and submitted to the Legislatures of other States. It is impossible to speak certainly of such a system in advance; but the commis-

sioners are unable to find in it anything which has not been repeatedly tried with unsatisfactory results elsewhere. It is the English measure of maximum special rates generalized so as to cover the case of several corporations instead of one. It would appear that the more such measures are extended in their operation the more complex they become, and the greater must be the difficulties in the way of their successful operation. Whatever weight attaches, therefore, to the experience which has been earned respecting the simpler and earlier experiments, attaches in a yet greater degree to the more general and complex. The Legislatures undertaking to deal with the subject have but a partial jurisdiction over it; under the effect of competition the laws intended to be applicable only to roads of one class become applicable to those of another; there is no discrimination as regards special requirements either of localities or of corporations, provided they fall within the lines of classification, and a passenger road may find itself put on the same footing as a mineral road; it is almost an impossibility that any measure could be framed at once sufficiently precise and sufficiently flexible to meet the requirements of so complex a system; and, even were it possible to frame it, it is extremely improbable that it could pass the ordeal of any legislative body.

"The final difficulty with all legislation of this class is its excessively dangerous and politically corrupting tendency. It forces the corporations, whether they wish to come there or not, into the lobby of the Legislature and the rooms of committees and commissions. They are forced there for the protection of their interests; for the essence of the system is, that certain persons, whether the Legislature itself or officials designated by the Legislature have devolved upon them the responsibility of establishing the revenue of property belonging to others. The commissioners have grave doubts as to the success of any effort at the regulation of the railroad system, which practically effects a separation between the ownership of a railroad and its management.

"Entertaining these views as the result of their investigations, the commissioners have not thought it expedient to report any bill or form of law in which it would be apparent that they themselves entertained little confidence. It is unnecessary to add, however, that should the Legisla-

ture or the Joint Committee on Railways arrive at a different conclusion as to the expediency or practicability of legislation of the nature of that under discussion, the members of this board will contribute every assistance in their power towards maturing an effective measure."

Now, Mr. President, will this Convention treat this subject lightly, and are they quite sure that the section under consideration has within its four corners the panacea for the ills with which we are afflicted. I fear it will be found to be sadly wanting, and for this reason I shall vote for the amendment of my colleague, (Mr. J. P. Wetherill,) and at the proper time, if his amendment should be adopted, move to insert the words, "unjust, undue or unreasonable," before the word "discrimination," where it occurs in the remainder of the section.

Mr. CAMPBELL. Mr. President: This section, like most of the other sections of this report, is met at the outset with a savage attack upon it by the advocates of railroad corporations. All the heavy guns are brought to bear at once upon the whole report of the committee, with the hope, I suppose, that under the cover of a heavy fire the section immediately under consideration will be annihilated. But we must not be frightened at these desperate attacks. We must consider the section without regard to them. Now, sir, there is a great deal to be said in favor of this section, or at least in favor of the principles embodied in it. Above all, there is this to be said, that the people of the State—not the stockholders in railroads, not the railroad managers, not certain classes of business men engaged in manufacturing or mining, but the masses of the people of the State—desire some provision of this kind.

The gentleman from Philadelphia (Mr. J. Price Wetherill) stated a little while ago that the Legislature of Illinois had passed a law attempting to regulate the charges for freight and fares, as we propose to regulate it in this section, and that the people of Illinois were up in arms against it. He is laboring under a monstrous delusion. It is just the other way. The people of Illinois are up in arms in favor of the law and against the Supreme Court of the State, which decided that the law was unconstitutional. Less than a month ago, when the judge who rendered the decision was a candidate before the people for re-election, he was swept out of power by a popular hur-

ricane, you may call it, and another man put in his place. That shows the feeling of the masses of the people of Illinois, and it is the same, though to a less extent, in this State.

In considering this section, we have to decide two questions. First, shall we sacrifice the interests of the people of this Commonwealth for the sake of enabling railroad corporations to build up an immense western trade and enrich their stockholders, managers and directors? Shall the interests of the people of this State be subordinated to the interests of the people of other States? Shall we for the sake of bringing into the State the stream of traffic from the West that is so much talked of, put up our local freights and make our people suffer in consequence of it. Would it not be better, if it be necessary for the protection of the people of this State, to partially cut down our western traffic—to have less of it—so that we can have the interests of our own people protected? Let our western traffic grow in proportion as the real well-being of our people requires it.

The second question that we have to decide is, shall we in order to enrich the people in large and populous cities, in order to accumulate wealth, in certain portions of the Commonwealth, make the agricultural population and the other people outside of the cities, suffer from the exactions of railroad corporations in regard to freight and passenger fares? Shall the agricultural population be compelled to pay out of their labor to enrich the people in the large cities? That is after all the real conflict. The capitalists who are engaged in manufacturing and mining enterprises, whose interest it is to aggregate population in cities, so as to provide ready markets for their products, are all opposed to this section; but the people in the agricultural districts, the large masses of the people of the State and of the country are in favor of some provision of this kind; and I say to gentlemen unless we provide some remedy for the evil that exists and that is so bitterly complained of, unless we adopt some provision like the one contained in this section, the people of the State of Pennsylvania will sooner or later do what the people of the State of Illinois have done.

Mr. LILLY. I should like to ask the gentleman a question, with his permission.

Mr. CAMPBELL. I prefer to go on, as my time is limited. We have almost

reached the hour for a recess. The gentleman can speak when I am through.

The people of Pennsylvania, if they do not get something of this kind, will rise in their might, and will take the law into their own hands. If they cannot get such a law as they ask for, from the Legislature, (and it is confessed on all hands that they cannot,) if they cannot get it from this Constitutional Convention, which is their last legal resort, then they will rise and get what they want by sheer force.

Gentlemen, I do not wish to have mob law in this State; I do not wish the people to act outside of the law; but unless we give them what they demand, unless we insert some provision in the Constitution of the kind proposed in this section, I tell you, they will take the matter in their own hands, and get what they want, just as the people of Illinois will, in time, get what they want. I hope, therefore, this section, or the substance of it, (for if gentlemen wish to amend it so as to make its phraseology better they can do so,) will be adopted.

The PRESIDENT *pro tem*. Is the Convention ready for a vote?

MR. CUYLER. I hope the vote will not be taken on this question in a hurry. It is now within two minutes of our time of adjournment, and I therefore move that we take a recess.

MR. CARTER. I second the motion.

The motion was agreed to, and (at twelve o'clock and fifty-eight minutes P. M.) the Convention took a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

RAILROADS AND CANALS.

The PRESIDENT *pro tem*. When the Convention took its recess, the question pending was the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill) to strike out all after the word "thereof," in the fourth line, to the end of the seventh section of the article on railroads and canals.

MR. AINEY. Mr. President: Before the vote is taken I desire to suggest one thought to the Convention. It seems to me that the amendment ought to be adopted and that portion of the section stricken out. Perhaps I can best illustrate why I object to that portion by instancing the experience we have had in

my section of the State. On the Lehigh Valley railroad, Mauch Chunk is the distributing point. All trains are made up at that point. Through freight, through coal, or other articles that are shipped, are put in one train, and local freights in another train. Five or six local trains run down our valley daily and distribute coal and other articles to the different manufacturing establishments along the valley. Now, as I understand this section it would require all local freight along the valley to be carried at the same rate of freight or at least that a higher rate of freight should not in any case be charged than is charged on freight that runs through to the end of the Lehigh Valley road.

If members will but give the matter a moment's reflection they will see that trains made up at Mauch Chunk, to go directly through to Easton without stopping, will run over that distance in a much shorter time, with less wear and tear on the cars and locomotives, and with a less number of hands on the train, than local trains. The expense per ton or per car will be materially less in conveying the through train of coal or other freight to Easton than it will be to the town where I reside, Allentown. There is justice in charging a higher rate of freight on coal that is stopped at Allentown and taken out of the way train than there is on freight that goes through to Easton on a train making no stops. In the manufacturing enterprise with which I am connected we receive say twenty-five to thirty cars of coal per day. We have been paying more freight on that coal constantly than is paid through to Easton, and I maintain that it is right. The railroad company cannot afford to deliver that coal to us as cheaply in their way trains, stopping at the different points along the valley, as they can deliver freight that goes directly through to the end of their road without stopping.

MR. COCHRAN. May I ask the gentleman a question?

MR. AINEY. Certainly.

MR. COCHRAN. How far is it from Mauch Chunk to Allentown?

MR. AINEY. Twenty-eight miles.

MR. COCHRAN. What is the distance between Mauch Chunk and Easton?

MR. AINEY. Twenty miles further, forty eight miles.

MR. COCHRAN. The latter part of this section allows a discrimination within fifty miles.

Mr. ARNEY. The principle remains the same. It does not allow a higher charge for a shorter distance. I will take the Pennsylvania railroad company, which extends more than fifty miles. If the Pennsylvania railroad company makes up its trains at Pittsburgh for Philadelphia and has not to stop at any way station, it can carry that freight at a less rate per ton or per car than it can way freight that has to be distributed along its road at all its different stations.

Members, if they will direct their attention to it, must see that we cannot fix an absolute arbitrary rule which shall apply in all cases. I apprehend that the most that this Convention can properly do, in any case, is to limit the charges so that they shall be the *same upon the same class under the same circumstances*. Any attempt to go beyond that in my judgment will prove an utter failure and will produce a result directly opposite from that which we intend or desire. I hope, therefore, that this amendment will be adopted, and the portion proposed stricken out.

Mr. LILLY. Mr. President: I entirely agree with what the gentleman from Lehigh says, that we ought to continue further to carry the matter out. Now, take the coal at Mauch Chunk which is deposited along the line of the road, which is one thing, and the coal that goes beyond the road and comes in competition with the upper Luzerne coal and with the coal from the Schuylkill and from the other mining districts. If the Lehigh Valley railroad company, and the Lehigh and Susquehanna, and New Jersey Central railroad company, that carry the coal out of that valley, could not discriminate in our favor our article would be shut out entirely from the New York market. We should also be shut out entirely, as we are pretty nearly crowded out now, from the Philadelphia market for the same reason. When this section passed the committee of the whole, I thought it was so worded that it would allow that thing to be done, and that the only restriction, according to my understanding from the debate at that time and the manner in which the section was left, was that there was nothing in it that would prevent that sort of thing.

The only thing that was in it was that coal leaving Mauch Chunk, going down the valley, or any other freight on any road, might be charged as much to Allentown as it was charged to Easton, Easton

being eighteen miles further, but no more of a charge could be made to Allentown; but, if I understand the discussion this morning by the gentleman from Philadelphia, (Mr. Wetherill,) in the way that he apprehends the section now, that is not so. If it is not, it should be made so, because that was really the understanding of the committee of the whole when it left the committee of the whole, that the railroad companies were to have full power to discriminate, so as to carry any competition with the great through roads north of us and the great through roads south of us. If you pass this section in any other way, you dwarf every one of our through roads and trunk lines into mere local roads, and leave them merely for the accommodation of local trade, and we should lose entirely the *prestige* that we have had, of having the great carrying trade to the west pass through Pennsylvania.

Now, if the chairman of the committee does not apprehend it in that way, and if the Convention does not understand that it allows that, if it is not written so that we can clearly understand it, I am certainly opposed to it. I am perfectly willing to give the railroad companies the right to discriminate in such a manner that they can compete with other roads. I do not want their discrimination, however, to go so far as to work an actual wrong to the people of the State or the people along the lines of the different roads.

Mr. BAER. I should like to vote for this section, but I opposed in committee of the whole the section as it stood then for the reason that it necessitated a charging at the same rate per ton per mile for a long distance as it did for a short. After a long discussion this section was hurriedly agreed to, but not fully considered, for I assert now that it does involve precisely the same thing that it did before, and that it compels the companies to charge the same rate per ton per mile as the old section did; and to do that now is, first, to cripple the great through lines of this State, and, next, to make the people pay an increased rate both for the carriage of passengers and freight, because you drive from this State entirely all the freight that seeks to go from the Atlantic seaboard to the far west and make it pass over the New York or Baltimore lines. No other alternative exists. No great company expecting to do a great trade, such as the Pennsylvania

Central is bound to do now, can possibly live if this section is incorporated in the fundamental law.

While there is much in the section that is good, indeed, while all that is in it is good if there are some additions made to it, I cannot vote for it as it stands. It reads :

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation."

Does not that compel them to carry them precisely at the same rate per ton per mile on the roads, for instance, from New York to Harrisburg, as they would from that point if they were going to Chicago or the far west? Unquestionably it does. Now, if you were to stop there and incorporate at that point what I think might be added, to my mind it would cure the trouble and not injure the roads and not injure the people; and that would be by inserting after the word "corporation" these words, "taking into consideration the distance of transportation and the character of the road transported over." That would permit railroads to discriminate, as they ought to have a right to discriminate, on account of the distance and the character and condition of the road. Unless that is permitted we may as well pass a provision here that henceforth railroads shall cease to exist in this State.

I appeal to the members of the Convention to consider this question before we pass upon it finally. Is it not as certain as that the sun shines that if you drive away a certain portion of the freight of this great line, in order to live it must increase its fares, it must increase its rates of freights, and they have the right to do so under existing laws now. There is a maximum established to which the road has not yet gone, and the moment you pass this section it will have to abandon this through freight and fall back on the Pennsylvania freight and charge fully up to the maximum allowed them by the statutes under which it was organized, and by that means we crush the interests of the State and thereby crush the interests of the people.

This is a move in the wrong direction. The tendency is to cripple the interests of the people instead of promoting them by merely undertaking to injure a great enterprise like the Pennsylvania or the Reading railroad. It was adopted before, not because it met the approval of the majority of the members of this Convention, but because the delegate from Philadelphia, not here now, combatted the section as long as he could, but finally yielded. I do not know whether it was for the reason that the Reading railroad was not a line carrying through freight to the far west, and therefore not interested; but whether that was the reason or not, whether that was right or wrong so far as that road is concerned, it is a monstrous iniquity as applied to the Pennsylvania railroad. The people of this State are not ready to crush that great enterprise, and, for one, I shall record my vote every time the question is raised here in favor of protecting the interests of that company when it is sought to be stricken down without at all benefiting the interests of the people. I am ready to stand up for the rights of the people, but not at the sacrifice of the great interests of the people in another direction, because they are as much interested in the success of that great railroad to-day as they are in the existence of the State. We would be a miserable, petty, six-penny State to-day if it were not for that great corporation. Men may hoot at corporations until doomsday; the truth is nevertheless apparent to all men and believed by all men that they are in their legitimate sphere a great blessing to all the people of the State, and I, for one, do not propose to shut my eyes to that blessing and run off because a hue and cry has been gotten up here against railroads. Let us do justice though the heavens fall.

MR. BIGLER. Would an amendment be now in order to strike out all after the word "section?"

The PRESIDENT *pro tem*. No, sir. There is an amendment now pending. An amendment to that amendment would be in order.

MR. BIGLER. That is an amendment to perfect the text.

The PRESIDENT *pro tem*. There is an amendment pending to strike out all after the word "thereof" to the end of the section. Another amendment was proposed in the forenoon, but the Chair deemed it his duty to rule it out because

it was not properly an amendment to the amendment.

Mr. BIGLER. The Chair was right upon that ruling; but this is a different proposition. It strikes out all after the word "section." Now, according to all the practice that I have seen, the vote would be taken on the pending question first, because that is a proposition to perfect the text, and then the amendment to supercede the section would be voted on afterwards. I am aware that the amendment offered now would not be voted on first.

The PRESIDENT *pro tem*. If the gentleman's amendment is to the pending amendment the Chair will be compelled to recognize it; but if it is an amendment to the prior part of the section not affected by the amendment, the Chair considers himself bound to rule it out.

Mr. BIGLER. It is a proposition to strike out all the preceding portion of the section. Does the Chair decline to entertain it?

The PRESIDENT *pro tem*. I do.

Mr. CUYLER. I hardly suppose that gentlemen mean to be satirical when they propose amendments to this section, and yet it might almost seem so because it is so incurably and atrociously bad that it is absolutely incapable of being amended. It is founded upon a false principle and therefore the seeds of destruction are planted within it, and it must inevitably perish. It is founded upon an ignoring of the plainest and simplest and most elementary laws of trade. Therefore we may write it in our Constitution as much as we will, we may pass as many acts of Assembly as can be passed to give it strength, but it never can survive because it is founded upon a false principle. It ignores the fact that competition regulates prices at all points where competition can possibly exist. We all practice that in the ordinary duties of life. Every merchant and manufacturer and man of business is accustomed to practice it. It is strange that when he comes to deal with corporate interests he should forget that the same great laws of trade and business apply to the corporations that apply to the individual.

The gentleman who closed the debate this morning before the recess, who is a member of the Committee on Railroads, the delegate at large, (Mr. Campbell,) frankly admitted the difficulty and frankly stated what the remedy was to be. In other words, he frankly said to the Convention, "we will abandon the trade that

is outside of the State of Pennsylvania and confine our transporting corporations to the service of the citizens of the State; we will throw away the business of Chicago, of St. Louis, of all the points in the west, of every other point outside of the State of Pennsylvania." Thus did he frankly avow his sentiments, and I suppose them to be the sentiments of the committee of which he is a member. "We will throw all this away, will confine our transporting corporations by the operations of this section to the business of the citizens of Pennsylvania." Is this House ready for that proposition? In the case of the Pennsylvania railroad alone \$75,000,000 of capital have been invested for the purpose of binding this city and this State to other cities and to other States of this Union, for the purpose of giving to the citizens of this State their fair chance in the competition with the citizens of other States in the great business of the country; and yet we sit here to-day deliberately and confessedly, according to the language of one of the members of this committee, for the purpose of abandoning it all and throwing it away, and going back again to the condition of affairs that existed before these roads established through connections that enabled them to reach other and distant points in other States. In other words, we are to dry up the business of the city of Philadelphia in its relations to the commerce of the country outside of the State of Pennsylvania; by a constitutional provision we are to say that that trade which we could carry through at reduced rates in competition with the cities of New York and Baltimore, we are to abandon and give up altogether. For what result? What is to be achieved? Lower rates to the citizens of Pennsylvania? Not at all, but precisely the reverse; for this invested capital will earn a competent dividend, and if you will not give it a chance to earn some portion of that dividend from that which it carries from beyond the line of the State, it will burden the trade of the State with an increased charge in order that it may earn its fair return for its stockholders. That is the inevitable law of trade and business.

Therefore, Mr. President, following out the thought of the member of the committee to whom I have alluded, we are to dry up the commerce of our own great cities, and in doing that we are to impose an added burden on the commerce of our own State; for, just in proportion as you

are able to earn something from beyond the line of the State where you carry on a competition with other roads, you are doing that much toward a fair return for capital to the stockholders of these corporations and that much in relief of the pressure that otherwise would rest upon those within our State who require transportation.

These are common sense principles; there is no mystery about them; they are the principles upon which every merchant and manufacturer and man of business has been accustomed always to transact his own business; and why shall he ignore these great laws of trade when he comes to deal with this practical question which is before this Convention to-day?

The gentleman alluded to the State of Illinois. It was a most unhappy allusion. We have borrowed this crude and preposterous suggestion from the legislation of that State; but that State to-day suffers by reason of it under an ill by reason of which she cries out in positive agony. It is indeed true, as the gentleman said, that the people of Illinois have dragged the ermine from the shoulders of a judge who dared to decide honestly and justly and according to his conscience, and the gentleman alluded to that act as if it were an act that should be praised on the part of the people of that State, instead of being condemned. It is true they have done that; but what has followed? That decision of the court has been acquiesced in by the transportation companies of Illinois, and to-day the agricultural population of Illinois find themselves burdened with twice the cost of transportation that they paid before that decision was given. They have had the poisoned chalice commended to their own lips; they are reaping the very thorns that they themselves have planted, and they are finding that that very legislation which is copied into this article, is burdening the trade of the State with twice the charges that it bore before. Nay, more, they find that their own dear city of Chicago is now placed in that position where her trade is in danger of drying up as against the trade of other cities with which before she was able to compete. Take the case of the city of Quincy, a railroad centre within the State of Illinois. The Chicago and Burlington road carried a large freight from that point to the city of Chicago until the adoption of this provision.

Now, the Chicago and Burlington road cannot afford to carry that trade, and the city of Chicago is cut off from it as she is from trade from other points. It goes to and builds up the rival city of St. Louis. And so it is, I say, that it is God's own good providence that this Convention has not come to consider this article until it has before it the sad experience of the people of Illinois to demonstrate the unreason and folly and absurdity of these propositions. I hope, therefore, that not only will this particular amendment prevail, whereby the latter part of this section will be cut off, but I hope that the whole section will be voted down. This is a late day in the history of this country for us to begin to dwarf our railroads to mere State institutions. All our legislation, all our history, all our experience, demonstrates that the tendency of the American people is to disburden these roads from the charges they have been placed upon them and to enable them to grow and expand, to reach beyond State lines even to the remotest boundary of the country. And yet we are proposing to-day to enact a constitutional provision that will carry us back to the very beginning of railroad life and exclude and ignore all the experience of the last quarter of a century.

MR. W. H. SMITH. I would ask what is the question?

THE PRESIDENT *pro tem*. The amendment is to strike out all after the word "thereof."

MR. W. H. SMITH. Would it be in order to forward another amendment to that?

THE PRESIDENT *pro tem*. That would depend upon what the amendment is.

MR. W. H. SMITH. I desire to strike out some parts of the section, from the word "thereof" down to the word "distance" in the tenth line, leaving in the words: "And no special rates or drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore and reasonable extra rates within the limits of the charter may be made."

I would strike out all after the word "made," which will retain what I have read, and then after the word "drawbacks" I would insert "on freights or passengers." Then the section will read in this wise:

"No corporation engaged in the transportation of freight or passengers shall

make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and no special rates or drawbacks on freights or passengers shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made."

The PRESIDENT *pro tem*. The Chair cannot entertain that amendment. It proposes to amend in part what the delegate from the city proposes to strike out, and it is hardly an amendment to the amendment.

Mr. WILLIAM H. SMITH. If that is the case I shall say a few words. I shall vote for this section as it stands, but I would much rather it were so amended as I have proposed. I will also vote for the amendment of the gentleman from Philadelphia, and if the amendment does not carry I shall then vote for the section. I would vote for it more cheerfully if I could see or feel or believe that the framers of it knew exactly the effect of what this section will be on the railroad interest, and upon the interest of everybody outside of the railroad interest. I do not think that we can measure the effect of this section. Besides, I think that it is rather too complicated to be carried out under any circumstances. I am convinced and believe that something must be done in connection with this proposition, and as a general rule I will always go for the report of a committee which has been elaborated, no doubt industriously and honestly and faithfully, to remedy the ills we have been sent to cure; but I still think that to cut this section down as I have proposed would be better.

Now, in regard to these discriminations this section says that there shall not be "any discrimination in charges for the carriage of either freight or passengers," and that "the charges for freight and fares for passengers shall, for equal distances in the same direction, be the same, and a higher charge shall never be made for a shorter distance than is made for a longer distance." I do not know, but it seems to me it would be impossible to carry that principle out.

We hear, first, that the people in the interior of the State, whether the freights are carried to Pittsburg or Philadelphia, are complaining of the rates for short distances, and we have been told by the delegate at large from Philadelphia, (Mr.

Campbell,) that there is imminent danger that the people will rise in their might and fix the rates to suit themselves over all the railroads of the State if they do not get rates to suit them. And while we here in Pennsylvania are complaining about the rates for short distances, it appears that the people of Illinois have raised a sort of rebellion and have stripped the ermine from a judge because he did not decide as they wished, while they are contending against excessive rates for long distances.

Now, there is something difficult to reconcile in this. To me it is a perplexing question. I do not pretend to say that I have any view about it that is worth much, but I can see this great inconsistency and this great trouble, that while the people here are complaining, and justly complaining, no doubt, about the rates of freight for short distances, the people of Illinois are deeply agitated and making almost a revolution against the rates of freight for the longest distances possible. I only mention this to show how perplexing the question is, and the impossibility there is for us to treat it here to the extent and in the varied detail that is attempted in this article.

Now, in regard to the discriminations, this section says:

"And no special rates or drawbacks shall, either directly or indirectly, be allowed, but commutation tickets to passengers may be issued."

Commutation tickets are now issued at both ends of the Pennsylvania railroad's main line, from Pittsburg eastward and westward on the Fort Wayne road, and eastward from Philadelphia, sometimes at one cent a mile and sometimes at one and a half cents, within twenty miles, while passage from here to Pittsburg is three cents a mile. I do not know how that is to be arranged or whether it is intended to make the railroads charge three cents a mile everywhere. I do not think there is any complaint about the disparity on the part of the people who live in or near the cities, but they would surely complain if they had to pay three cents where they now pay *one cent* a mile. There may be some complaint about the prices charged for passage from here to Pittsburg, but three cents a mile would surely be thought too much when you have to travel from your home to your business, some twenty miles apart.

But this is going much further than I supposed I would. I do not know how

this subject is to be disposed of. I do not believe it is to be settled by this article, as I have before stated; nor that it is the best that can be done. And yet because there has been an effort, and a just and proper effort, to relieve the State from the usurpations or attempted usurpations of railroad corporations, I shall go for this section.

Mr. M'MURRAY. Mr. President: I desire to say but a word on this section, and for this reason: I think a construction has been put upon it here by delegates that the section will not in any fair manner bear; first by the delegate from Philadelphia (Mr. J. Price Wetherill) and then by the delegate at large from Somerset (Mr. Baer.) They both insist that under this section railroad companies would be compelled to charge a certain rate per ton per mile for carrying freights. Now, it appears to me that the section cannot receive any such construction. The reading of it is plain, so plain that any man who can read and understand the English language can read and understand it:

"The charges for freight and fares for passengers shall, for equal distances in the same direction, be the same."

What does that mean? What would any common man understand by that? Simply this: That if I have a ton of freight to carry from Philadelphia to Harrisburg, one hundred and five miles, the railroad company shall not charge me a higher rate for carrying that freight in that direction west than it would charge another man for carrying a ton of freight one hundred and five miles on the west end of the road in the same direction. That is all it means, nothing more. They shall not charge me more for carrying that ton of freight that hundred and five miles on the east end of the road going west than another man for carrying a ton of freight on the same road any given hundred miles at any place on the road. There is nothing about rate per mile in the section. It simply means that if I am a passenger riding on that road from Altoona to Pittsburg, going west, they shall not charge me more for that distance than they would another man riding from Philadelphia an equal distance on the same road, going in the same direction, and so coming east. This is all that the section means; and this other construction has been put upon it here by those who are opposed to the section, in order to mislead delegates. It certainly

does not bear the construction, and I venture to say there is not a lawyer in this Convention, if he were sitting on the bench as a judge, who would dare to put such a construction on this section as these gentlemen put upon it. Sir, I insist that this matter shall be treated fairly; let this question stand or fall on its merits, but do not let any delegates get up here and attempt by a false construction to mislead delegates and get them to vote otherwiser than they would on the real merits of the question.

Mr. HOWARD. The delegates in this Convention I have no doubt understand tolerably well by this time that there is a difference of opinion between the people of Illinois and the railroads in that State; and they understand perfectly well that that difference is a pretty lively one. We understand another thing: that since the people have taken the matter in hand, the railroads will embarrass them all they can. We know that they will badger them in every possible way. If they can get over the law, if they can evade the law, if they can possibly raise their rates, if they can do anything to embarrass those people and war upon them so as to get them back in the old channel, they will do it; and there is no question that here in Pennsylvania the same state of circumstances surrounds us and has been growing for years that brought the people of Illinois into their present position of antagonism to the railroads of that State.

I do not suppose that the intelligent delegates of this Convention are going to be frightened by the Roorbach stories that are retailed in this Convention, and by whom? It would be supposed that if this legislation on the part of the people had been so disastrous to the people, the friends of the people would have been concerned, they would have cried out against this great mistake made against their true interests; but, no, it all comes from gentlemen situated like my distinguished friend, the gentleman from Philadelphia, (Mr. Cuyler,) and it comes from other men whom we know by their votes and speeches to be identified with the railroad interest, and against any real reform in favor of the people of the Commonwealth. It is very strange that these gentlemen should have made the discovery that the people of Illinois, in trying to effect a reform, have only cut their own heads off. Now, I believe the people of Illinois are all perfectly square, their heads are level and they are turned in the right direction

and this thunder that has been published through the newspapers about the trouble the people of that State have brought upon themselves, has been in the interest of the railroads and has all been paid for. It is part of the clap-trap and clamor got up to din into the ears of this Convention.

Why, Mr. President, what is there in this section? What is there that, fairly considered, fairly carried out by a railroad company, could possibly work injury to any one? Why, the very fact that it is fair, that it lays down a straightforward and just rule that compels them to do what is right to all men, is the reason why they raise such a clamor and howl against it. This is as fair and straight a proposition as it is possible for men to frame or present. This proposition was considered by the Railroad Committee faithfully and earnestly by sitting nearly every day during a period of over two months. It was considered in the light of all the intelligence and information that they could command; and what is it now? In the first place it provides that no corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof.

Now, what delegate on this floor will say that the principle is not right that they should not be permitted to make any discrimination against the people of this State? That is the rule. We say, "discriminate as much as you choose, but when you do that, you shall not discriminate against that Commonwealth that gave you life and vitality." No, Mr. President, it is not right that they should discriminate against the people of this Commonwealth. We do not say they shall not discriminate. Discriminate, gentlemen, in your judgment just as much as you please. Pile on your discriminations in favor of your outsiders, your men from Ohio, your passengers from Illinois, but when you come into Pennsylvania, treat Pennsylvanians just as fairly as you treat these men from Ohio and their goods. Why, Mr. President, the proposition is so straight and fair that I wonder that any man should question it, and no man would unless his mind was warped by that self interest that never can see anything in its right, proper and just light.

What next follows? "And such corporation shall carry the persons and goods

of the people of this State on as favorable terms as those of other States." Who can object to that? What is there in that that is going to ruin railroads when you require that they carry the people and the goods of Pennsylvania on as favorable terms as they carry the people and the goods of Ohio, Illinois or New Jersey, who come into and pass through Pennsylvania? Is there anything wrong in that that should make delegates hesitate? I cannot see what it is. I can see how the railroad companies, themselves interested and looking at the question through their pockets—and of course they look at it in that light—may make opposition to this proposition which may cut down in some measure their profits; but to men disinterested, as this Convention should be, standing between these corporations and the people of this Commonwealth, there should not be, nay, there cannot be any fair or reasonable objection to this section, but every reason possible in favor of it.

Then what further? It only says that they shall not discriminate against our people, that they shall give us as favorable terms as they give the people of other States. Then what else? "Charges for freight and fares for passengers shall, for equal distances in the same direction, be the same." Why, that is just as fair and as true as in mathematics it is to say that twice one is two. It is just as plain a proposition that they shall charge no more for an equal distance in the same direction to one man than to another. What terrible outrage is that? How can a railroad be injured by such a proposition? It is utterly impossible, and it is only because fairness strikes at wrong and justice strikes at rascality that these railroad representatives whine and howl. A fair and honest proposition meets a storm of opposition. That is the straight truth in regard to it, expressed in plain English, and there is no mistake about it.

Then "that a higher charge shall not be made for a shorter distance than shall be made for a longer." What honest argument can ever be advanced for charging a man for fifty miles more than you charge him for one hundred miles? Yet railroads have been doing that very thing, charging a man actually more for going fifty miles than they do for going one hundred, and compelling men in Pennsylvania that I know to ship their goods away up into the State of Ohio in order to get Ohio rates in reaching the city of

Philadelphia. A system like that is too abominable to be tolerated by any community; and yet such for years has been the case. Goods can be shipped from the city of Pittsburg to-day into the middle of Ohio, shipped to Cleveland and then returned back through the city of Pittsburg over the Pennsylvania railroad and brought to the seaboard for less money than they can be shipped from Pittsburg to Philadelphia, and men that were engaged in the manufacturing business in the city of Pittsburg, largely engaged in the manufacture of horse shoes and who had spent large sums of money to erect valuable machinery for that purpose, in order to supply horse shoes to the western market, were broken down and driven out of business by an establishment in Troy, in the State of New York, whose goods were carried directly through the city of Pittsburg at a rate less than was charged the Pittsburg men. Was that honest toward the business men of Pittsburg? No, sir. It was nothing but sheer rascality. I do not blame the stockholders. The stockholders knew nothing about it. It was the executive officers of that road that were interested in the other establishment that crushed out the Pittsburg people just as they crushed out parties in the west who were interested in the coal fields of Westmoreland county and who did not have connection with the officers' ring in the Pennsylvania railroad company.

MR. ROOKE. It is with reluctance that I rise to say anything to this Convention, but I suppose I feel as much interest on this subject as any member of the Convention. I was a member of the committee that reported this article on railroads, and while there are a great many sections that meet my approbation, and that I think will be an advantage to the State, there have been some very injurious sections reported, that will interfere with its interests, and among those sections, as I have said to that committee, and I say here now, the one which I believe, above all others, will do the greatest harm to the interests of the State is the very section now under consideration. This is a section that I think is calculated so do great harm, both to the railroad companies and to the business men of the State. It will do an injury to everybody who has to buy flour or grain, or depend upon the cheap products of the west, because if this section be adopted its immediate effect will be to

prevent our railroad companies from competing for the western trade, a trade that is very necessary to the people of this Commonwealth.

It will go still further. It will prevent the railroad companies at home from competing against one another. If I were able to present my views upon this subject so as to be intelligently understood by this Convention, I have no doubt that this section would be voted down. I will give the reasons why I believe this is true. As I said before, it will destroy the competition between the railroads of this State, and I will illustrate it in this way: Suppose a railroad company carrying coal from Pottsville to the city of Philadelphia was to carry coal at one cent per ton per mile—which is about as low as it could be carried—the Lehigh Valley road carrying coal from Wilkesbarre, double the distance, would have to carry it for one-half cent per ton per mile, one-half what the other road would carry it for, and of course they could not afford to do that and pay a profit to their stockholders. The result of it would be that they could not deliver coal to the city of Philadelphia, as this section would compel them to deliver to all local points at the same rates, and that city would have to depend upon the short route. Therefore it must be very evident that this would destroy competition and that the short roads would do all the carrying between the different cities.

There has been great complaint in the State that the railroad companies have acted unfairly with our manufacturers by carrying freights for citizens of other States at less rates than they have carried for our own citizens. If they have carried freights at less rates then they can afford to be carried, I no not see that we have any right to complain. The question with us is not whether they have charged others too little, but whether they have charged us too much. I have been in business for twenty years, and my experience has been that instead of our railroad companies making unjust discriminations against us in rates, the railroads that have grown up around us have gradually been reducing the rates of freight. They used to charge us two and one-fourth and two and one-half cents per ton per mile for shipping iron, and they have reduced that until this year the average rate is one and three-tenths cents per ton per mile on the Pennsylvania railroad and one and four-tenths on

the Philadelphia and Erie railroad. They carry on the Philadelphia and Erie railroad at this price because they have to compete with the New York and Erie railroad, and they really carry at less rates than they can afford if they mean to pay any dividend to the stockholders of the road. They would not do it if they were not compelled to do it, for there is not enough custom along the line of the railroad to keep it up, and consequently they have to carry for what they can get, in order to pay interest on their investment and to keep up the business of the road as nearly to a prosperous condition as possible.

This section would deprive such railroad companies of the chance of picking up outside freights, thereby making money and assisting to reduce the freights here. The consequence would be that they would increase the freights on us. They would have to do so because they only derive one fourth of their profits from outside freights, and if they could not get these outside freights in this way, and be thus benefited by these privileges, they would have to put the rates of freight up to three or three and a half cents per ton per mile, as their charter allows, whereas they now only charge one and three tenths, as I said before.

It would be just as reasonable for this Convention to put in a constitutional provision saying that a manufacturer shall not sell his surplus outside of the State for less than he sells to home consumers. This is a discrimination against the citizens of this State. It is notorious that manufacturers, when they produce more than the home trade can consume, ship the surplus to outside parties and sell it for what they can get. If we were to prevent that privilege and put a constitutional provision of that kind into this instrument, how many manufacturers in the State could subsist for any length of time? It would be as reasonable to put a constitutional provision of that kind here as to say that a grocer shall sell to a customer who buys by the ton for no less rate than to a customer who buys by the pound. No grocer could live and do a business of that kind very long; and railroad companies could not live if they are to be affected by provisions of this kind.

I am not supporting railroad companies, but I know what they have done for this State, and I know what provisions are necessary to allow them to attend to the proper management of their business,

and I say that they must be allowed to make these discriminations. I feel reluctant to speak of that, because I am interested. The railroad companies that carry coal from our anthracite coal fields to western Pennsylvania, to Erie and the northern part of New York, have cars returning without any freight, and they say to the manufacturers, and have said to the iron manufacturers in our country, "if you will take the iron ore that is being developed in New York, we will carry that back to you at three-fourths of a cent per ton per mile." And very many of our manufacturers allow them to do it. Is not that a discrimination? They carry their freights outward from our country for one and one-half cents per ton per mile, and carry freights inward at three-fourths of a cent per ton per mile—less than they can afford—less than it has been shown by the gentleman from Philadelphia that they can afford to do it at, but they accept this freight at this low rate because otherwise they could get none and would be compelled to bring their cars home empty. This is a discrimination, but not against the people of Pennsylvania, for the people of Pennsylvania are benefited by it, and we must allow such discriminations as these. We must allow the railroad companies to charge a higher rate of freight for shorter distances than for longer distances, and I will tell you why.

They at times do not have on a line of road near me sufficient to keep their cars constantly occupied. They then will hold out inducements to iron men: "If you will ship iron to Elmira we will carry it for you for a cent and a quarter a ton a mile." We know they cannot realize great profit from it because the New York roads in carrying iron from the Lehigh district take it at very low prices, and we say, "If you will do it at a certain price, we will send it, and they deliver our iron in the Elmira market for a little over a dollar and a half a ton, one hundred and forty miles, whereas they charge us from our place to Lockhaven, which is only about seventy miles, two dollars a ton. I do not think that unreasonable; but that is more for a shorter distance than a longer distance; and the manufacturers of Pennsylvania are benefited by just such a course as that. If this Convention put in the Constitution a provision of that kind, they not only injure but destroy them. I should not like this Convention, in its blind zeal to restrain

railroad companies, destroy the interests of this State.

I know that a great many people in looking at this proposition think it so infinitely fair that they are inclined to vote for it. They do not study the effects it is likely to have on the business interests of the State. The gentleman from Allegheny (Mr. Howard) says it is evidently fair that all should be charged alike, and I know he is inclined to vote for it; but I think I have shown, practically, how improper and unjust it is.

It was with great hesitancy that I got up to make this imperfect statement; but you will excuse me, gentlemen, because it is the first time I ever attempted to say anything in public.

In the latter part of the section it says there shall not be any drawbacks made. I have never seen any injury done to the interests of this State by drawbacks. I have been interested in drawbacks. I have never been profited by them, but the only drawbacks I ever knew to happen were in this way: The company would say to a miner, when I was in that business, "you mine fifty thousand tons of coal this year; if you increase the product from your mine to one hundred thousand tons, we will give you drawbacks." It is an inducement to encourage men to do more business; and the people of the State are benefited by that encouragement. They have given a drawback of ten cents for doing this. Is anybody injured by such drawback?

Mr. BROOMALL. Mr. President: I desire to add a word or two to what has been so well said by the gentleman from Union, and that is this: It seems to me there are so many cases in which it is right and proper for railroads to make discriminations in freights, that we had better leave this whole matter to the laws of trade under what legislation may be seen necessary.

I will mention one instance. Some of the railroads in the vicinity of Philadelphia, and probably all of them, offer inducements to persons to locate themselves and their business along the line of those roads, somewhat in this way: They will propose to carry the building materials and all freights for the business for a given length of time at half or quarter rates, if the individual will locate along their line. Now, I want to know whether there is any harm in that. I want to know whether that is not perfectly legitimate and proper, and I want to know

whether we ought to put a provision in the Constitution that shall prevent that.

I know that there may be discriminations made that are evil; but I take it that the most of the discriminations are of the character that I mentioned, those that are to the advantage of the stockholders and to the advantage of the community in which the railroad is, where the discriminations are made in favor of a business that is to be built up, and with a view to the building up of business. And shall the West Chester railroad, for example, be told a year hence, when it desires to locate some Philadelphia gentleman at Media, that it would take his building materials at half rates only that it is no longer constitutional? What a spectacle we shall present to forbid a railroad company from fostering the business along its line by discriminations that are innocent and to the advantage of the party in whose favor the discrimination is made.

I say we cannot prohibit railroads from making discrimination without doing more damage in a dozen directions than we do good in some one or two in which evils exist, and I trust the whole section will be voted down.

Mr. J. M. BAILEY. Mr. President: It seems to me quite strange that there should be so much opposition to this section. The first part of it only prohibits carrying corporations from making discriminations in their rates of transportation of freight and passengers in favor of people of other States and against our own. This is certainly reasonable, and why any delegate in this Convention should find fault with it I cannot comprehend. The necessity which requires the incorporation into the organic law of such a just proposition is, I admit, to be regretted; but no business man in the Commonwealth can shut his eyes to the fact that such a necessity does exist. Day after day the great powers and franchises granted by this State to the railroads are used to the injury of her manufacturing and producing interests. Why should this be so? It is said that "corporations have no souls" and of course cannot be grateful, but they should at least be just; and if it requires the restraining power of a constitutional provision to make them deal justly with our people, let us have it. Why, the unjust and unfair discrimination against the people of the Commonwealth that breathed life into these corporations; that parted with some of their own rights

that these railroads might live; that nursed them by liberal legislation, granting to them great powers when they were young and weak, is, I confess, sir, beyond comprehension, and contrary even to the laws of common gratitude. Mr. President, the principal argument urged here against this section is that railroads cannot charge as much for shipping the freights of foreign States as our own, because there is competition for that business, and if they charged higher rates than they now do, this business would be diverted to other lines. This may all be true, sir, but it proves nothing and should weigh nothing in the consideration of this section, for it is not alleged that at the rates they ship this foreign freight, they do not make large profits. The contrary, sir, is true. The annual reports of the Pennsylvania railroad company show that on these through freights they make a very large profit. Now, sir, will any gentleman of this Convention give me any good reason why the railroad corporations should not be obliged to ship the products and manufactures of Pennsylvania at the same rate at least as they do those of Ohio and Illinois, showing that they make large profits on them. But if it should be alleged that they make nothing on the shipment of these foreign freights, then why carry them at such rates? Why should they be permitted to oblige the people of Pennsylvania who ship the local freights to pay such rates that the freight of the other States can be carried for nothing?

The other part of this section is intended to prevent carrying companies from charging more for shipping the same class of freight a shorter distance than a longer one. I would like any gentleman of this Convention to inform me why there should be any objection to a proposition so manifestly fair as this? I cannot imagine, sir, what course of reasoning can possibly lead any man to the conclusion that it is right for a railroad company to charge *more* for shipping the same class of freight one hundred miles than for three hundred miles. Strange to say, sir, we have gentlemen in this Convention who contend that such discrimination is all right and proper.

It is seriously contended here, sir—for the effect of the argument is such—that a manufacturer or producer within one hundred miles of the market should pay *larger* freight for the transportation of his goods to market than he who lives three

hundred miles away. And such a system of charging we are very nicely told by the gentleman from Union (Mr. Rooke) is to the great advantage of our manufacturers. Good business men usually make it an object in the selection of property for manufacturing purposes, to get near the market, but such a system as is contended for reverses this well settled rule, and I suppose in the future we may expect to find business men trying to get as far from the market as possible. Some gentlemen who have been opposing this section have talked to us very fluently about the “natural laws of trade,” but it strikes me, sir, that the system of charging freight on our railroads which it is contended the laws of trade demand, is not very “natural.”

This section is very liberal to the corporations, and I am greatly surprised that they oppose it so vigorously. For my part I should be willing to go further even than the section, and prohibit carrying companies from charging *as much* for a longer distance as for a shorter one, excepting, however, from that rule freights carried for a shorter distance than say fifty miles. I admit that they ought to be allowed to charge a greater rate per mile for a quite short distance than a longer one. The reasons are quite obvious. A mention of a few of the instances of oppression which the people of my district have suffered from unfair discrimination by railroad corporations in this matter would, perhaps, be interesting to the Convention.

In the town of Bellefonte, the home of my distinguished friend, Governor Curtin, who is now a delegate upon this floor, an establishment was erected a few years ago for the manufacture of glass; the competition was principally in the city of Pittsburg; now mark it, the railroad company charged more per hundred for shipping the soda-ash, which is largely used in the manufacture of glass, from Philadelphia to Bellefonte than to Pittsburg, which is nearly one hundred miles further. I have been told by a responsible gentleman, resident in Bellefonte, that the railroad corporations actually charged them thirty cents per hundred for shipping soda-ash to Bellefonte, while at the same time they were shipping the same article to their competitors at Pittsburg for sixteen cents per hundred. We are told by the gentleman from Union (Mr. Rooke) that such a system of charging is greatly to the interests of our man-

ufacturers. Perhaps it may have been to those in Pittsburg, but I am unable to see how it was of very great advantage to those in Bellefonte. It is indeed a strange reasoning that leads to the conclusion at which my friend has arrived.

Again, Mr. President, on account of the scarcity of wheat last season it became necessary for some of our manufacturers of flour at Huntingdon to buy wheat in the State of Illinois and have it shipped east. Would you believe it, sir, that the railroad company refused these manufacturers the privilege of paying the same amount of freight on a car of that wheat to Huntingdon that they were charging to Philadelphia—more than two hundred miles further—and have the cars dropped out of the train at Huntingdon—for they had to pass through Huntingdon to reach this city. They did refuse this privilege and actually charged from forty to fifty dollars a car more for shipping the wheat to Huntingdon than they were charging at the same time to ship it to Philadelphia. And still we are seriously asked to believe that such discriminations hurt nobody and are of great advantage to everybody.

I have another instance, Mr. President. The bituminous coal mined in the county of Huntingdon and adjoining counties has its chief competitor in the coal mined at Cumberland, Maryland. Since the construction of the Bedford and Bridgeport railroad, a great amount of the Cumberland coal is transported to market right through the Broad Top coal field in Huntingdon county, and is about eighty miles further from market than our coal, and yet the carrying corporations actually charged eight cents per ton less for shipping the Cumberland coal than they shipped the Huntingdon coal for, although they had to carry it eighty miles further and close by the mouths of the Huntingdon mines.

Delegates may talk about the "natural laws of trade," but it is hard to make the people of Pennsylvania believe that such a system of charging freights is to their advantage.

Mr. President, is it any wonder that the people who have sent me here have an abiding interest in this subject? The district which I in part immediately represent here is traversed many miles by the Pennsylvania railroad and its branches, and I can say for my people that they are proud of the greatness and magnificence

of the great corporation that controls them. As Pennsylvanians they have a State pride in their great Pennsylvania railroad. Its achievement in developing our Commonwealth's internal power and in bringing to light her immense resources have created in their minds a grateful respect.

It may be said, as it has been said, that this matter is peculiarly appropriate to the functions of the Legislature. I admit the force of this, but the people have year after year asked their legislators at Harrisburg for some relief in this matter and have received none; judging from the motives that usually influence most of our law-givers, it is not hard to guess the reason that no relief has come. What astringents have from time to time been applied to the Legislature that has prevented the flowing out to the people of this simple act of justice is, of course, to us a mere matter of speculation, but rumor upon this point is not uncertain. The people have often asked the Legislature for relief and been so often refused that they will consent to nothing from this Convention that does not bring them substantial relief. It cannot longer be doubted, sir, that there is evil existing in the present system of freight charges, and it must be remedied speedily and effectually. The people look to this Convention with great hope and confidence. Shall they be disappointed? We shall see.

Mr. President, I think the railroads will make a great mistake if they do not cheerfully accord to the spirit of this section, or they might "go further and fare worse." It is not possible for them much longer to outrage public sentiment and public rights with impunity. Great and powerful as the corporations of this State have become, they could not for a single day brave public indignation when aroused to such a degree that it will feel obliged to assert by force the rights that it should have had by peaceful means. Will our railroad corporations not heed the lesson taught to those of Illinois? Will they not take the hint that there is a point beyond which the forbearance of the people even of Pennsylvania, with their steady and conservative habits, cannot go? Will they refuse this small measure of relief until an outraged people shall rise in their terrible might and power and, with their hands at the throats of these gigantic and soulless corporations, force from them the rights they know to be theirs. And that will be a sad day for

the Commonwealth as well as the railroads.

MR. CURTIN. I desire to say a few words on this subject. I occupied the same position when in the committee as the gentleman from Union, (Mr. Rooke,) and since am fully in accord with what he said. While I agree that there is very much in the report of the committee that is good and will prove beneficent in the future of the State, there is much of it that I do not approve, and especially this section.

MR. President, we have more railroads than any country in the world; in fact, we have nearly as many miles of railroad in the United States as all the rest of the world. I believe we have fifty-seven thousand miles of railroad, and we are building at the rate of about eight thousand miles a year. We have large amounts of capital invested in those roads. Then it is a fact that we carry passengers and tonnage cheaper than any country in the world. Our maximum rate is three cents per mile per ton, and there is no country in Europe that carries for less than four cents per mile. With all their advantage of full population and age, and cheap labor and abundant capital, we have the most perfect system of railroads in the world.

But, says my intelligent colleague who has just taken his seat. (Mr. J. M. Bailey,) the railroads must be restrained; that is, one railroad; for it is not unjust to say that the usual amenities of this Convention and the pleasant parliamentary proprieties with which all our debates have been conducted heretofore, seem to have been forgotten, and instead of the courtesies which usually prevail, we have asperities and language in this discussion heretofore unknown to this Convention. "Scoundrel" and "thief" and "robber" are common terms. That is polite language now. "Rascality" has grown into a classic term in this Convention; and God knows what kind of language we will come to next. [Laughter.]

Now, Mr. President, as I was about to say, my intelligent colleague says there must be some restraint on the charges of railroads, or there will be commotions, violent physical commotions; that is, that the railroads shall be compelled to carry a barrel of flour or a car load of freight of any kind from the town of Huntingdon to Hollidaysburg at the same rate per mile that they carry a barrel of flour or a

car load of tonnage from Chicago to Philadelphia, or from the town of Huntingdon to Philadelphia, as from Chicago to Philadelphia.

MR. J. M. BAILEY. I did not say so. said the railroad companies should not be permitted to charge more from Huntingdon to Hollidaysburg than they charge from Huntingdon to Chicago.

MR. CURTIN. I understand that perfectly. The gentleman and myself will not call any of those hard names; we will not fall into that indiscretion in this Convention.

MR. J. M. BAILEY. I do not think I used any hard names.

MR. CURTIN. That is true. Now, sir, my colleague and many gentlemen of this Convention strike at one railroad, and they say that railroad shall carry freight at the same rate per mile from Pittsburg, which has suffered dreadfully, or from Huntingdon, which has suffered a little, as they carry it from Chicago. The Pennsylvania railroad company have what the lawyers call vested right. They made their bargain with the State when they obtained their franchises. Their bargain was that they should take part of the property of the people of the State under the right of eminent domain for which they should pay, that they should carry passengers and tonnage at given rates, and it was fixed in the bargain that they should carry tonnage at the rate of three and a-half cents per mile. When the tonnage tax was commuted in 1861, that half-cent was taken off, and the agreement remained, the covenant between the railroad and the people of the State that they should carry at three cents per ton per mile. That is the maximum rate. It is not pretended that the Pennsylvania railroad company charges up to the maximum. On the contrary, they charge only about one and a-half or one and three-fourth cents per mile. Now, suppose they do choose to charge the farmer or the merchant of Illinois less than three cents per ton per mile for long distances, or less than one and three-fourths cents per mile; I do not know that we can interfere with that arrangement. At all events they are under the maximum, and so long as they keep their bargain we cannot interfere. But if you declare that they shall not carry the tonnage of the West at a less rate than they carry Pennsylvania freight, and you could enforce such a declaration, you would exclude the tonnage coming from the West and force it

into the competing lines north and south of us, and the Pennsylvania company would be compelled to put up their rates to the maximum. Then who suffers? You have aimed a heavy blow at the Pennsylvania railroad, but you missed the breast of the railroad, and 'it falls on the people who produce and travel on the works of that company. That is an illustration made by my friend, Dr. Rooke, who was on the committee.

My colleague from Huntingdon will understand that you cannot change the bargain; they can charge three cents per ton per mile, and if they choose to carry for less than three cents per ton per mile in grappling with competing lines of other States for the trade of the west, and in drawing it to this city, where the money was furnished to build this great artery of trade, the product of the field and the mine of the west for less than that, rather than it should go to New York or Baltimore, and carry it at a less rate than they made a bargain with the State they should have from our people, who has a right to complain? If it enriches our State and affords to our people facilities in trade and travel, if scarcity of breadstuffs requires us as our manufacturing interests multiply to go to the west to get them, who will complain that in getting our bread and our beef from the great valley of the Mississippi we pay low freights to get it here, while the railroad that carries it is entirely within the terms of the covenant made with the State at the time of its creation?

Without speaking of the tyranny of railroads, or, in the language of the enlightened and eloquent gentleman from Franklin, (Mr. Sharpe,) of the majestic and imperious tread of the Pennsylvania railroad company, without any affinities or connection with it, I do think that when we attempt to cripple that company and bind it hand and foot we give them an opportunity of increasing their rates, and the manacles with which we expect to bind this corporation fall upon the arms and the ankles of the people, and of the State, and instead of being beneficent in our action we are passing entirely outside of the domain and limits prescribed for a Constitutional Convention and legislating for the public. We should be careful that we do not so legislate as to cripple trade and commerce and destroy the interests we should foster and protect in attempting to cripple the interests with

which we seem to be at war, that we do not fail, and fail signally in all such vain efforts that are controlled by the laws of trade and commerce as certainly as the rain which falls upon the mountain will find its way to the sea by the course of the rivers.

Mr. COCHRAN. Mr. President: There is no question which has been brought before this body in which from the means of information that I possess—

The PRESIDENT *pro tem*. Will the gentleman state that he has not spoken on this question?

Mr. COCHRAN. Yes, sir; I shall state that because I have not done it.

The PRESIDENT *pro tem*. The Chair cannot always keep the run of those who have spoken, and did not know how the fact was. The gentleman will proceed.

Mr. COCHRAN. I say, Mr. President, that there is no question which has been brought before this body in which there is so deep an interest entertained by the people of this Commonwealth as that which is included within the four corners of this section. There is more popular interest involved in it, and the people of this State believe that there is more of their substantial welfare and their rights involved in it, than there is in any other subject which has been presented to our consideration. I have heard nothing with regard to our proceedings which in any degree approaches that which I have heard on this question. This subject cannot be safely glossed over, nor can this section, in my apprehension, be wisely and judiciously either negated or made of no effect by striking out its substantial and efficient provisions. I have heard no gentleman rise here, from the practical gentleman from Philadelphia who was not afraid of hydras, through all the others who have discussed this question, who have denied the apparent equity and justice of the contents of this section. It is impossible to deny that the equality which is intended to be brought about by the enforcement of this section is the equity which is the highest duty which we owe to the people whom we represent.

But it is said that this section must be negated, it must be stricken out of this article because it was against the everlasting laws of trade, and matters of that sort. Mr. President, if there is any law on the face of the earth that works such injustice as has been portrayed here and as we know has been wrought in this Commonwealth through this unjust dis-

crimination against the people of our State, then that law of trade ought no longer to exist and we ought to pay no regard to it.

The gentleman from Centre who has just taken his seat (Mr. Curtin) has undertaken to tell us about the great rights of the Pennsylvania railroad company which they have derived from the State, that they have the right to charge three cents per ton per mile, and that they do not charge their maximum rate and therefore do us no wrong. Sir, I submit that within the limits of the maximum you can do as much gross injustice to the people by discriminating against them as you can do by raising your prices up to the maximum and putting them on an equality. If you place your charge for one man at two cents a ton per mile and for another man at one cent per ton per mile, you do him as gross injustice as it is possible for you to do; by charging up to your maximum, you do him as great a wrong, you prostrate and destroy his business, and you interfere with his rights and his prosperity.

Sir, it is said that if we dare to pass this section, then the Pennsylvania railroad company will undertake to raise its freights up to its maximum of three cents a mile, and in that way it will take its revenge, I suppose, upon the people of this Commonwealth for inserting a section of this kind into their fundamental law. Why, sir, we have (and it has already been referred to) some experience of that kind, I admit, in the State of Illinois. Because the people of that State chose to adopt a certain policy which they believed was essential to their rights and their welfare, then it was that the railroad companies chose by arranging new toll-sheets and raising the price of transportation on their roads, to inflict upon them a penalty and a punishment for their audacity in interfering with their assumptions. Sir, if that is the issue, it is to become a question of endurance and of power between the people and the creatures whom they have made; it is a question in whose hands shall be the mastery. Sir, I deprecate such an issue, and I do not believe for one moment the passage of a section of this kind is going to be attended with any such consequences or fraught with any such evils as the gentleman from Centre predicted in his speech.

Mr. President, this section, in the first place, claims that the people of Pennsyl-

vania should receive at least equal favors from their incorporated bodies as the people of other States. But, it is said that this destroys the law of trade, that you must, in order to get trade from other States, make a discrimination in their favor and against the people of this Commonwealth. Why, sir, how is it? Do the railroad companies of this State carry through this State at a profit? Have they a profit from bringing goods through this Commonwealth? Then if they make a profit why can they not carry for the people of this State and be content with the same profit that they derive from the people of other States? Do they carry at a loss merely for the sake of carrying the property? Then shall the people of this State be required to come forward and make up that loss out of their pockets which they sustain in consequence of this disastrous policy which they have adopted?

I apprehend that the first clauses of this section are entirely right, entirely proper, and entirely just. But, sir, this matter has been argued as if we were fixing an iron, inflexible law of a rate per ton per mile. When this section was reported from the Committee on Railroads there was, I admit, a provision of that kind in it; but that section was stricken out on my motion in the committee of the whole. I do not believe in applying any such law as that. But this section relates to aggregates and not to details. It does not go into the rate per ton per mile; it goes into the aggregate charge made for transportation. What is the principle of it? Why, sir, if men who ride the same distance on a railroad or have their goods transported the same distance in the same direction on a railroad, will you say it is right to charge one man double and the other man half? Is that equity? Is that the kind of discrimination which you wish to allow to be practiced? That is the whole of it, that where men travel equal distances in the same direction or goods are transported equal distances in the same direction, there shall be equal charges.

Then, further, that there shall not be more charged for transporting a shorter than a longer distance. Why, sir, what is more liberal than that? You shall not charge a man more for transporting his property from here to Lancaster than you shall for transporting it from here to Pittsburg. That is a very poor boon to the man who lives in Lancaster; and yet

that is the only restriction that is contained in that part of the section! You can actually, under this section, charge a man in that way as much for going to Lancaster as to Pittsburg, as the section is drawn; that is, you shall not charge him more for transporting him the shorter than the longer distance. Unfortunately the fact is that charges for shorter distances are often larger under the present policy of this State than they are for the longer distances, and it is to correct that evil merely, to put that moderate restraint upon this policy, that this section was drawn and was presented and is now advocated before this body.

I think that the section is not liable to the objections which have been made against it. I think that in sound policy and in justice this very small boon at least is due to the people of this State. Sir, I do believe that if this be refused by this Convention, or if this is not the exact measure, if some measure of protection is not afforded to the people, the result of it will be eminently disastrous in many respects both upon our work and in the social and business condition of the community.

MR. DUNNING. I do not propose to take up much time, nor shall I attempt to discuss this question at length. I confess my inability to attempt the discussion of it; but I have not failed to listen very attentively for the last two days to the arguments, because I have been anxious to be enlightened upon this very troublesome and vexed question, and I am compelled to say, after having listened to the very able arguments, I find myself involved in just about as much doubt and difficulty as before I heard a word on the subject.

I did feel at the commencement of our labors that this was one of the questions that would trouble this Convention. I felt that it was one that would affect this Commonwealth to a greater extent perhaps than any other question that could possibly be considered. It brings to us the question that of all others most directly affects the development of the resources of this Commonwealth, and of the companies who have been instrumental in the development of those resources. When gentlemen say upon this floor that privileges of a most extraordinary character have been granted to corporations, no man doubts it. But while these privileges have been granted, and companies are operating under them, the

question also comes to us, can we disturb vested rights under these privileges? In listening to the discussion here, it would seem that this Convention, or a portion of it, is making, not an effort to see how they shall best regulate commerce, how they shall best regulate transportation on the railroads of this Commonwealth, but to see how they shall best create an interference with, or if you please a fight upon the corporations that now exist in the State. At the risk of coming under the censure of the gentleman from Allegheny (Mr. Howard) who this morning said that pretty nearly every man who spoke upon this subject had undertaken to give his own record in advance as to what his position had been in reference to railroads, I want to say that I am not here as the representative specially of any railroad or other corporation. I own no stock in any railroad. I live in a county that is interested in railroads, in a county that has been benefited by railroads, and I believe in the doctrine that has been here enunciated, that the State of Pennsylvania has been more benefited by railroad companies in the development of her resources than by any other interest; but I am not willing to stand here and say that this interest, because it has done this, shall have rights that are paramount to all other interests. They should be protected in their rights. These enterprises were projected in an hour when their success was questionable. The gentleman from Franklin (Mr. Sharpe) this morning well stated the question when he said that in 1837-38 the railroad question was new and the experiment untried. When that Convention met it did not know the interests of this Commonwealth as we now see them. It did not know what were the necessities in relation to railroads, or in relation to the laws that should govern them. From a small beginning the railroad interest has grown into the possession of powerful franchises and has invested hundreds of millions of money. If, then, we have fostered these institutions, if we have given them the power to develop the resources of the State, if we have allowed them to construct their roads and to extend and multiply their enterprises and interests, let us now protect them in their legitimate rights; but at the same time do not let us put into the fundamental law anything that will prohibit other individuals from assuming similar positions. If, sir, the railroad corporations

that exist to-day are gigantic and are endangering the interests of citizens or of individual enterprises, and if you now place in this Constitution such restrictions as will prevent other parties from coming into competition with them, if gigantic now they will soon become colossal.

I believe it is utterly impossible for us to make a fixed rate of tolls upon a road that reaches from the city of Philadelphia to the city of Chicago. I believe that the tolls should be placed as nearly on an equality as can be; but if you load a train of cars in Philadelphia to be sent through to Chicago, that train can be carried for a lower rate of freight than a train which will be compelled to stop at ten or twelve different points and unload its cars. There is no doubt about this question at all. Transportation within the State may be proportionally regulated, but through transportation from Commonwealth to Commonwealth cannot be controlled by constitutional provision or by legislative enactment. So far as transportation in the State is concerned make it equal, if you please. You can put it on an equality, but you cannot do it upon longer distances. That is impossible. Will you restrain an individual from charging any price for his labor? A man may labor for any price he chooses if he can get it, but if he chooses to labor for half a dollar less per day than another individual may charge, or the law may contemplate he should receive, you cannot restrain him from doing so, neither can you restrain corporations from charging less if they please to do so. Put them in a position in which they shall not charge more and I will agree with you, but you cannot say that they shall not charge less. They may carry their freights for nothing if they choose from any one point to another on their line, and it would be perfectly legitimate to do so.

As I said at the outset of my remarks, I have been looking for light upon this question and I confess that I have not received a great deal of it. I have listened to a great many arguments, some of them most ingenious, but I have not found anything yet that has convinced me of the propriety of the doctrine found in this section, or that a man, because he holds a position in a railroad company, has not a right to be an independent man in any other respect.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. ANDREW REED. I do not desire to make a speech upon this question, but I do desire to say a few words to explain my position. There are some wrongs with reference to these discriminations in the carriage of freights that should be corrected. I do not, however, think that they can be remedied by the adoption of this section in its present shape. It will inflict greater wrongs, or at least as great, as it is intended to remedy.

My colleague, the gentleman from Huntingdon, (Mr. J. M. Bailey,) has given instances of what I consider are wrongs that should be remedied, and I do not think the answer that was made by the distinguished gentleman from Centre (Governor Curtin) was exactly in point. It is true that railroads cannot carry freight for a short distance at as low a rate as they can for a longer distance, but they should not charge more for a shorter distance than they do for a longer. That is what was meant by my colleague. For instance, to bring a car-load of wheat from the city of Chicago to the town of Huntingdon should not cost more than a car-load of wheat taken upon the same train on the same road to Philadelphia, one hundred and eighty miles further. There is no justice in that.

Part of that section to which I am opposed is this: "And the charges for freight and the fares for passengers shall for equal distances in the same direction be the same." Now, the advocates of this section say that this means that a railroad company shall charge for fifty miles on the same road, going the same way, just what they will charge on another part of the road for another fifty miles. That would not be just. Take the case of a railroad in the county in which I live, for example. It is a railroad of some fifty miles in length, and on one end of that road there is a railroad bridge crossing the Susquehanna river that cost from three hundred thousand to four hundred thousand dollars to construct, more than it cost to build twenty miles, perhaps, of the balance of the road. Persons living on the banks of that river, if they are to have their goods transported simply over that bridge upon the same rate per ton per mile that is charged to others at the other end of the line, would have an unfair discrimination made in their favor. That would be certainly unfair and unjust, and for that reason I cannot support that part of this section.

Further, the section says: "And a higher charge shall never be made for a shorter distance than is made for a longer distance." The same objection would apply to that which applies to the other, though not to so great a degree. When I have the opportunity I shall move to amend the section by striking out the words "and the charges for freight and fares for passengers shall, for equal distances in the same direction, be the same," and insert, after the word "charge," the words "for freight, or higher fare for passengers." Then also after the word "distance," in the tenth line, to insert the words "including such shorter distance," which will make the section read that a railroad company shall not charge more for a longer distance, going over the same road, "including such shorter distance," than they do for such shorter distance. This will cure the evil to which my colleague refers. That is, they cannot charge more for bringing a car load of wheat from Chicago to the town of Huntingdon than they would for bringing the same to the city of Philadelphia, one hundred and eighty miles further upon the same road. That, I think, is just. I think there are cases where I can see that a railroad might perhaps bring freight further at a less expense to them than for a shorter distance. Still I think that so far railroads might be willing to go. But anything further than that I would not be willing to consent to.

Mr. GILPIN. I did not intend to make any remarks on this question; but I wish simply to correct what seems to be a misapprehension in the arguments that have so far been made upon this subject. Those who have preceded me upon both sides of the pending question seem to have assumed as true two points, namely: First, that the Pennsylvania railroad company has been the only offender in regard to the discriminations complained of; and, second, that it is only the country or communities between the termini of the road that is affected or that alone are injured. So far as my observation extends, there are other parts of the State than those lying along the line of the Pennsylvania Central railroad that have been injured by these discriminations against Pennsylvanians; and other railroad companies that have there made the discriminations we, by the section proposed, strive in future to prevent.

Situated on the line of the Allegheny Valley railroad, and about eighty miles from the city of Pittsburg, there is a large and productive oil field known as Parker's Landing, and from that point to Pittsburg by the railroad the freight charged is much greater than to the city of Cleveland, in the State of Ohio, although the distance to the latter is three times as great. For one-half of the money that the railroad charges for taking a barrel of oil from Parker's Landing to Pittsburg, it will take the like quantity from Parker's Landing to Cleveland. The result of this discrimination has been that the oil refineries in and about Pittsburg, and in the erection of which millions of dollars have been expended, are abandoned and the money invested in them lost, and the oil produced in our own State now goes to Ohio to be refined, and the profits of refining—which are very great—accrue to the people of Cleveland instead of to the citizens of Pennsylvania. Pittsburg is one of the termini of the Allegheny Valley railroad and her people are those that are particularly discriminated against and injured for the profit and benefit of citizens of Ohio. Talk about this railroad benefiting people of this State. Why, this very railroad was built by the bonds of Allegheny county and of the city of Pittsburg, and yet aside from the money and bonds so given and advanced that county and city would be better off to-day (so far as the oil trade is concerned) if that railroad had never been built. If to-day oil had to be transported from Parker's Landing in road wagons or by river, it would all go to Pittsburg to be refined, for it could not by these means be so rapidly, easily or cheaply carried to any place outside of the State, and Pittsburg would to-day be surrounded by thriving refineries instead of the empty tanks and ruined works of bankrupted refining firms and companies which now alone remain to mark what at one time seemed to be, and which, had it not been for unjust railroad discriminations, would have been the beginning of a large and profitable industry for her people.

The arguments against the section, in which the objectors allege that it attempts and does violate the laws of trade, seem to be based upon a misconception of the words contained in it, certainly of the idea which its words convey. And this misconception is more clearly shown by the comparison which was brought forward

against the section by the gentleman from Union, (Mr. Rooke,) viz: "That the rule laid down by the section would say that a grocer must not sell his groceries to a purchaser who buys a ton for a less price per pound than to the man who purchases a single pound." Whereas a correct simile is that the grocer must not charge the purchaser of a pound more for that single pound than he charges for a whole ton to the purchaser of the ton.

An inspection of the words in the section shows that the railroad companies are prohibited from charging more for carrying a shorter distance than they charge for carrying a longer distance; observe, not more per mile, but more than the whole charge for the longer distance. That is, if the Pennsylvania railroad company charge ten dollars for carrying a ton of freight from Pittsburg to Philadelphia, it must not charge more (although it may charge that much) for carrying a ton of like freight from Harrisburg to Philadelphia. Surely no injustice is done the railroad company by giving them for but a part of the journey compensation equal to what they charge for carrying the whole distance. A part is not greater than the whole, but on the contrary, if I recollect the axiom correctly, it is "the whole is greater than any of its parts." Do the gentlemen mean to say that, by the laws of trade, that axiom is not true? and that the laws of trade are so inconsistent with common honesty as to require the master of the vineyard to pay to the laborer who has agreed to work the whole day for a penny, more than that sum, merely because he was required to labor but a part of the time agreed upon?

Mr. STEWART. It may seem idle to prolong this discussion, but inasmuch as I will be called upon to vote on this section, I do not want my vote to be misunderstood. As the section stands I shall feel myself compelled to vote against it. There are several provisions in the section which, if they stood by themselves, I should most heartily support. Wherever it is demonstrated satisfactorily that an evil or abuse exists, I am ready to make any proper effort to remedy it. Now, our people do suffer certain grievances at the hands of these corporations. That is unquestionable. They have been pointed out by different delegates upon this floor. The gentleman who sits behind me (Mr. J. M. Bailey) has clearly demonstrated that our people are dis-

criminated against unfairly and unjustly in his particular section. He has told us that the people in Maryland can send their coal to the eastern markets for less than the people in his own section, eight cents per ton I think he said. Certain other gentlemen have pointed out other instances, but I need not go further than to my own home to get an illustration just as forcible and just as directly to the point. The people upon the northern frontier of Maryland, say in the neighborhood of Hagerstown, can send their flour to the eastern markets through Pennsylvania to New York and Philadelphia, for less than the people of my own section. Let me state it in the way it was presented to me by a farmer of my own county: "A farmer in Franklin county can afford to haul his produce to Maryland rather than to Chambersburg, if it is to be shipped to New York or Philadelphia, because it can be shipped for less money from Maryland than it can from our own town, and the difference will compensate him for the additional transportation to Hagerstown. This is all wrong, and it becomes us here to-day to do what we can to remedy it.

If the section attempted nothing more than the gentleman from York stated in his argument I should support it, because I understand this to be all that he claimed for it. But it does more than that. I submit that this one expression which is in the ninth line of this section would remedy all that evil: "That no corporation shall make a greater or heavier charge for a shorter distance than it does for a longer distance." If the Pennsylvania railroad company, or any other railroad company shall haul the produce of the people of other States at a loss to themselves, in order successfully to compete with other through lines, we cannot complain. We cannot expect them to do that for us, but we can reasonably demand of them that they carry our produce for as small an amount as they do the produce of other States, and when they do that, they do all we can reasonably demand of them. They must not put us at a disadvantage.

But if we should adopt this section it would prevent all reasonable competition and it would dwarf the operations of all these railroads. We are not hostile to the railroads and we should be most careful how we restrict them, because their interests are the same with ours. All that

we can reasonably ask of them is that they shall not discriminate unfairly and unjustly against us; that they shall afford us the same field for competition that our neighbors in the adjoining States have. When they give us that, they give us all we have a right to demand. When they deny us that, I repeat, we should interpose.

As I said before, if that provision stood alone in this section I should support it heartily, but inasmuch as the section if passed would dwarf and cripple these enterprises and prevent them from entering into successful competition with the great lines of other States, I shall vote against it.

The necessities of the case do not require this much of us, and indeed I am firmly persuaded that any such unnecessary restriction would injure not only the railroads, but the people whose interests are being so earnestly advocated in this discussion.

What the people want is a fair market, with honest competition. What the railroads want is a fair field to compete with each other. Both can be accommodated without abridging the just rights and privileges of either. Gentlemen seem to think that if, for the purpose of competing with rival companies, the Pennsylvania railroad should transport the freight of Chicago to Philadelphia at a loss, it should do the same for the people of Pittsburgh. The proposition needs only to be stated to be rejected. And yet their arguments are fairly stated in this modest proposition. They would by a schedule of rates establish a protective tariff for the benefit of our people, for it virtually amounts to this. The charges are to be in proportion to the distance, so that we who are nearer the markets shall have the unquestioned right to place our products in market for less than our neighbors. I am free to say that our people do not need any such protection, and I do not believe they want it. Give them always the right to transport their products at rates as low as their neighbors are made to pay, so that they can enter the markets with fair competition, and they will be satisfied. With less than that they will not be satisfied, and we owe it to them to secure to them this undoubted right. This we can do by adopting the single provision in the section to which I have referred.

Mr. T. H. B. PATTERSON. I merely wish to call the attention of the Conven-

tion for one moment to what we wish to accomplish by this section. The learned gentleman from Philadelphia (Mr. Cuyler) has announced as the foundation principle by which we ought to be guided in this matter, that competition is the life of trade. I say it is the life of trade and the life of the people also, and all we wish to accomplish by amending this section or by adopting it, is simply to keep competition open. That is all we ask. When a railroad takes my land or yours, it takes a public highway, and it takes it for the purpose of using it for the benefit of you and me, and it has no right to take that public highway and use it so as to take my property and then to go out west and bring another man's property and put it down in the east between me and my market. That is all we ask to prevent. We do not ask a *pro rata* freight bill. They have that in New York and they have it in other States, but we do not ask it here. But this section does ask that when they transport the property of the people of this State, and the property of people of other States, they shall make no discrimination against the people of this State; and also, to provide that there shall be no greater charge for a shorter than for a longer distance. That is all we ask, and the arguments that have been made here by the opposition against false positions and supposed positions have been merely made for the purpose of effect and in order to mislead the votes of delegates upon this floor.

Now, all we ask is just simply this: That a man out west shall not have the advantage of rich land and a far western back-woods home, and at the same time bring his products into market here at a less rate than a man who has to live in the east and within the bounds of Pennsylvania. We simply ask that a man who lives a hundred from a place shall not be made to pay a less rate than a man who lives only thirty miles. We simply ask that the right of competition shall be kept open, and that the public highway rights in the hands of these railroads shall still preserve to every man his relative position, shall preserve to him the relative position that he holds and that his property holds in the community where he was born and raised; and that is all that the people of Pennsylvania ask at the hands of this Convention. That is all that this section is intended to cover, and if it covers any more than that, then all

that the friends of reform will have to do is simply to vote down this amendment, which really strikes at the whole section, and then so amend the remaining part of the section as was indicated by the gentleman from Mifflin (Mr. Andrew Reed.) They have to do nothing more than amend, so as to prevent this unjust discrimination on transportation, and this unjust taking of a man out of his place in a community and discriminating against him and destroying fair, healthy competition on the *locus* where a man's home and his property is situated.

This pretended argument against a discrimination in favor of outside railroads amounts to nothing, because it is not aimed at by the section, and is not claimed on this floor by the friends of this measure. And if they did it would be nothing more than claiming that railroad companies should do their work at a rate that would pay them, and then outside of that should not make the people of this State pay for doing under-work for other States.

We simply ask that railroad companies as trustees of the public highways shall run them fairly and squarely, make a reasonable profit, and then shall not charge the people of this State or anybody else for additional profit; but if, by reason of the location of parties outside of this State, they have the privilege of competing roads and other local advantages which enable them to ship on through lines and by rivers and other means, that is no reason why we should allow our corporations to take and carry their produce to market at a lower rate and bring them right in and put them down in effect between us and our market. And yet that is what is contended for by striking out all restrictions, and by this amendment.

This amendment proposes to strike down all restrictions whatever and to say that a man who may live in San Francisco or on the Mississippi river can ship his freight over our railroads, right through, past our doors, and have it carried into market lower than we can have it carried, not lower per mile, because there is nothing of that kind in the section and nothing of that kind is contended for here; but simply that he shall not have the advantage, when he lives out beyond us, of coming in and doing business on better terms and a nearer market; that is all.

Now, I ask gentlemen on the floor of this House to vote against this amend-

ment for that reason, and then if they are friends of reform, as many of them profess to be, let them amend the section so as to prevent any misconstruction as to *pro rata* rates and vote for a measure which will enable the people of Pennsylvania to do business on their relative position and their relative distance from market, without being compelled to compete with the cheap labor and the rich farms and the far-off backwoods of the west. That is all we ask, and we therefore ask the Convention to vote down this amendment.

The PRESIDENT *pro tem.* The question is on the amendment.

Mr. CAMPBELL. I ask for the yeas and nays.

The PRESIDENT *pro tem.* Do ten members rise to second the call?

The yeas and nays were ordered and taken with the following result:

Y E A S .

Messrs. Alricks, Armstrong, Barclay, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Bullitt, Clark, Corbett, Curry, Curtin, Cuyler, Darlington, Dunning, Edwards, Elliott, Ellis, Fell, Fulton, Hanna, Kaine, Knight, Lamberton, Lilly, Mann, Niles, Parsons, Purman, Read, John R., Rooke, Smith, Wm. H., Van Reed, Walker, Wetherill, Jno. Price, Wherry and Worrell.—39.

N A Y S .

Messrs. Achenbach, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Black, J. S., Buckalew, Calvin, Campbell, Church, Cochran, Corson, Cronmiller, De France, Ewing, Finney, Funck, Gibson, Gilpin, Guthrie, Hall, Hay, Horton, Howard, Landis, Lawrence, MacConnell, McClean, McCulloch, McMurray, Mantor, Newlin, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Patton, Purviance, John N., Purviance, Sam'l A., Reed, Andrew, Reynolds, Sharpe, Smith, Henry W., Stewart, Struthers, Turrell, White, David N., White, Harry and White, J. W. F.—48.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Carey, Carter, Cassidy, Collins, Craig, Dallas, Davis, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Lear, Littleton, Long, MacVeagh, McCamant, Metzger, Minor, Mitchell, Mott, Palmer, H. W.,

Porter, Pughe, Ross, Runk, Russell, Simpson, Smith, H. G., Stanton, Temple, Wetherill, J. M., Woodward, Wright and Meredith, *President*—46.

Mr. CAMPBELL. I call for the yeas and nays on the section.

Mr. BAER. I move further to amend.

The *PRESIDENT pro tem.* The delegate from Somerset moves to amend the section. The Chair will receive the amendment.

Mr. BAER. I move to strike out the words, "and the charges for freight and fares for passengers shall for equal distances in the same direction be the same," in the seventh and eighth lines, and insert:

"Taking into consideration the distance of transportation and the character of the road transported over."

I understand the chairman of the committee and the friends of the section to favor a construction that some of us think cannot fairly be put on the section as it stands. The amendment which I have here proposed will leave the section precisely with the construction they put on it and remove all doubts as to the charge per ton per mile. We can put the section in such condition as that we can vote for it without injuring the railroad companies in that regard and at the same time giving all that the most ardent friends of the section, according to their construction, ask at the hands of this Convention. I trust they will give it the consideration it deserves and that they will sustain the amendment; and in that shape, the section then being so amended, adopt the section itself. With this amendment in I shall go for the section. With this out or without something equivalent to it in its place, I shall be compelled to vote against the section, and I infer from the remarks of the gentleman from Franklin, with whose remarks I entirely concur, that he would be somewhat in the same condition; that he would feel himself compelled to vote against the section unless something of this kind be inserted. My own opinion is that he is right, he taking the same view that I do on this question.

Mr. HOWARD. Mr. President: I think that the delegate from Somerset perhaps has misapprehended the section under consideration. I judge from the character of the amendment offered and from his remarks that his idea is that this will prescribe or fix some rate that must be uniform on all the different roads of the

Commonwealth. That is not correct. This does not prevent each particular railroad company from fixing its rates; but whenever such roads as have connections outside of Pennsylvania bring in freights from other States and passengers from other States, they shall not discriminate in their rates against the people of Pennsylvania.

But this section does not undertake to regulate the freights inside of the State, freights starting for instance from one point in the State to another, only so far as it says that they shall not charge for a shorter distance more than they do for a longer distance. If a road has heavier grades it will fix its rates accordingly, but when fixed, they cannot charge more for a longer distance than a shorter one. If their grades are heavier their rates will be higher. This by no means undertakes to say that the railroads throughout the Commonwealth shall make uniform charges; nothing of the sort.

Am I right in understanding that the amendment is to the effect that, wherever the grades or the character of the road is such as to make the transportation more expensive, there the charge may be greater?

The *PRESIDENT pro tem.* The Chair cannot tell. The amendment has been read.

Mr. HOWARD. Let it be read again.

The *PRESIDENT pro tem.* The Clerk will read the amendment and the delegate will understand it for himself.

The *CLERK.* The amendment is to strike out the words, "and the charges for freight and fares for passengers shall for equal distances in the same direction be the same," and insert in lieu thereof the words, "taking into consideration the distance of transportation and the character of the road transported over."

Mr. HOWARD. I cannot see that the amendment can proceed upon any other idea than that some roads will have grades that make it more expensive to transport over than others.

The *CLERK* read the section as proposed to be amended.

Mr. HOWARD. Still I cannot see the propriety of the amendment, unless it is upon the idea that some roads have heavier grades and it will be more expensive to transport over them than other roads. This section seven does not undertake to prescribe any uniform rule at all for the roads of the Commonwealth; only specifies that where they have con-

nections outside and bring freight or passengers into this State they shall give Pennsylvanians as favorable terms as they give people of other States.

While I am up I desire to refer to an act of Assembly passed in 1861 that affects the Pennsylvania railroad, because a good deal has been said about that road. We are told that it is going to fall back upon its original charter and it is going to charge us clear out of court; and objection has been made to this clause providing that they shall not charge a higher rate for a shorter distance than for a longer. I speak now only so far as the Pennsylvania railroad is concerned, and this will apply to the amendment so far as that road is concerned. Now, sir, when the act of Assembly was passed repealing the tonnage tax the Pennsylvania railroad entered into a new contract with the State whereby they surrendered their charter in all the particulars that are specified in this act of Assembly, and one of the particulars is this: "Nor shall the rates charged to any local point exceed those charged to any point of greater distance in the same direction."

That is precisely this section; but they have violated this act of Assembly every day since they signed this contract; and so far as that road is concerned, it is applying no new principle to it at all to apply the principle that is contained in this proposed provision of the Constitution.

It also stipulated that so far as the rates to the east and west, to Baltimore, New York and Philadelphia are concerned, it would charge no higher rates than it charged to its western customers. In other words, it agreed by this act of Assembly not to discriminate; so that it cannot fall back upon its charter, so far as the main line is concerned.

It stipulated also that "the local rates between Pittsburg and Philadelphia stations, on the line of the Pennsylvania railroad, shall at no time exceed the gross rates charged between Philadelphia and Pittsburg."

It stipulated also: "Nor shall local rates between any two stations on the road, between Philadelphia and Pittsburg, exceed the through rates made from time to time under the provisions of this act; nor shall the rates charged to any local points exceed those charged to any point of greater distance in the same direction."

Now, sir, the agents of the Pennsylvania railroad ought to be estopped by their own contract. They should not find fault

with this section because they have agreed to it. So far as their charter was affected by this act of Assembly, they surrendered their chartered right to charge a greater sum between Pittsburg and Philadelphia—that is, the whole length of the main line—and on freights through to Baltimore, New York or Philadelphia, or freights passing westward; and yet they violated this act of Assembly. There is no penalty specifically attached to it, and shippers only remedy would be to bring an action for damages, I suppose, in the courts.

Mr. President, I cannot see that the amendment offered by the delegate from Somerset would have any material bearing upon the section. If I did I should be glad to support it, for I certainly do not wish to be captious. I am willing to accept anything reasonable, so far as I am concerned, to save what I conceive to be a great and just principle.

Mr. KNIGHT. Mr. President: It has been stated by members of the Convention that this is a very important subject. In that statement I fully agree. It is a subject concerning enterprises wherein over five hundred millions of money are invested in this State. It is a subject that is not sectional, but to a very great extent national. We have railroads running from the Atlantic to the Pacific, and in a few years will, perhaps, have a larger number of them. I have listened to the debates here with very great interest, and am somewhat in doubt whether we are able to make proper laws governing the railroad interests of this Commonwealth. The stockholders, the people interested in having the railroads properly managed, generally use the best judgment they have in selecting men of experience and talent whom they suppose qualified to manage them.

This subject is so important that I think it proper that I should make a remark cautioning the Convention not to put into our Constitution so much of legislation. We were talking here against the Legislature some five or six months, so that I almost came to the conclusion at one time that, if we could, it would be better to abolish the Legislature entirely; but that cannot be done.

Sir, it is a great deal easier to pull down than it is to build up. I do not pretend to know as much about managing railroads as some others, but I think if you pass all the sections reported by this committee, it will be utterly impossible to

live up to the law and manage the railroads of this Commonwealth. If there was a national law governing all the railroads north and south of us, with regard to their freights, time, equipment, qualities of road &c, it might be done; but unfortunately for the State of Pennsylvania it costs more to build our railroads per mile, as I believe our statistics will show, than the railroads in any other State in the Union. With our expensive roads, not only expensive to build, but expensive to run, we have to come in competition with other roads constructed and operated at a greatly less cost. Now, sir, if we attempt to cripple our railroad corporations, something must be injured; either the travel will not be properly accommodated, or else the property itself will be greatly injured.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from Somerset.

Mr. BAER. On that I call for the yeas and nays.

Ten delegates rising to second the call, the yeas and nays were ordered, and being taken resulted as follows:

Y E A S .

Messrs. Achenbach, Alricks, Baer, Bailey, (Huntingdon,) Barclay, Biddle, Boyd, Brodhead, Broomall, Brown, Bullitt, Carter, Clark, Corson, Curry, Curtin, Darlington, Dunning, Edwards, Elliott, Ellis, Ewing, Fell, Fulton, Funck, Gibson, Guthrie, Hall, Knight, Lamberton, Lawrence, Lilly, MacConnell, Mann, Niles, Palmer, G. W., Parsons, Patterson, T. H. B., Patton, Purviance, Samuel A., Read, John R., Reed, Andrew, Smith, Henry W., Smith, Wm. H., Struthers, Turrell, Walker, Wetherill, John Price, Wherry and White, J. W. F.—50.

N A Y S .

Messrs. Armstrong, Baily, (Perry,) Black, J. S., Buckalew, Calvin, Campbell, Church, Cochran, Corbett, Cronmiller, De France, Finney, Gilpin, Hanna, Hay, Horton, Howard, Landis, M'Clean, M'Culloch, M'Murray, Mantor, Patterson, D. W., Purman, Reynolds, Rooke, Sharpe, Stewart, Van Reed, White, David N., White, Harry and Worrell—32.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Aincy, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bigler, Black, Chas.

A., Bowman, Carey, Cassidy, Collins, Craig, Cuyler, Dallas, Davis, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Kaine, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Porter, Pughe, Purviance, Jno. N., Ross, Runk, Russell, Simpson, Smith, H. G., Stanton, Temple, Wetherill, J. M., Woodward, Wright and Meredith, *President*—51.

The PRESIDENT *pro tem*. The question recurs on the section as amended.

Mr. CORSON. I move to strike out all after the word "same," where it occurs the second time in the eighth line, or rather all after the amendment just adopted. I have no desire to discuss the question. It is very plain; it is a matter of detail, and ought not to be here.

Mr. BUCKALEW. Mr. President: I have so far been voting to retain this section in order that it might be within reach on third reading and receive further consideration prior to that time. I confess I require myself some information in regard to the operation of some of the clauses of this section. What I desire to say at this time is that my vote for this section is provisional and subject to such further examination as I shall be able to give it before the question shall be finally disposed of. But if the amendment of the gentleman from Montgomery (Mr. Corson) shall be adopted, striking out that part of the section which follows the word "same," in the eighth line, the section will come so near meaning nothing that I believe, for one, I shall consent very heartily to drop it.

There is to be no discrimination against citizens of our own State—that is all the first part of the section says—"taking into account the character of the road," travel, and so on. If anything can be made more vague and more completely unimportant than that I should like to see it. There is still retained in the section the clause borrowed from Illinois providing against charging more for a shorter than for a longer distance. If the section shall be retained as it now stands I will vote for it in order that it may be further considered.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Montgomery.

The amendment was rejected.

Mr. EWING. I move to amend by inserting after the word "distance," in the

tenth line, the words, "including such shorter distance." I can understand why a railroad company might be permitted to charge a greater price for carrying goods ten miles on one part of its road than it should charge for carrying twenty miles on another part of the road, depending on the character of the road. But I think it is a fair limitation to say that they shall not carry freight over a longer distance, including that shorter distance, and charge a less rate; in other words, that they shall not charge more for carrying from Harrisburg to Lancaster than they charge for carrying from Harrisburg to Philadelphia; and I think that the limitation that is put on them not to charge more for a shorter distance than they do for a longer distance, should be over the same part of the road. So I move this amendment and I hope the friends of the section will agree to it.

Mr. CUYLER. I call for the yeas and nays on the amendment.

The call was seconded by ten delegates, and the yeas and nays were taken with the following result:

YEAS.

Messrs. Achenbach, Bailly, (Perry,) Broomall, Clark, Corbett, Curry, Darlington, Edwards, Elliott, Ewing, Hall, Hay, Kaine, Knight, Lilly, Mann, Niles, Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, White, David N., White, J. W. F. and Worrell—29.

NAYS.

Messrs. Alicks, Armstrong, Baer, Barclay, Biddle, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Church, Cochran, Corson, Cronmiller, Curtin, Cuyler, De France, Dunning, Ellis, Fell, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hanna, Horton, Howard, Lamberton, MacConnell, M'Clellan, Mantor, Palmer, G. W., Parsons, Patton, Read, John R., Rooke, Sharpe, Stewart, Van Reed, Walker, Wetherill, Jno. Price, Wherry and White, Harry—48.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Bailey, (Huntingdon,) Baker, Bannan, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Bowman, Ca-

rey, Carter, Cassidy, Collins, Craig, Dallas, Davis, Dodd, Green, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Landis, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Culloch, M'Murray, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Russell, Simpson, Stanton, Struthers, Temple, Wetherill, J. M., Woodward, Wright and Meredith, President—56.

PAY OF CLERKS, &c.

Mr. HAY. I ask leave to make a report.

The PRESIDENT *pro tem.* Shall the gentleman have leave? ["Yes."] The Chair hears no objection and the report will be received.

Mr. HAY. I am instructed by the Committee on Accounts and Expenditures to make the following report:

The Committee on Accounts and Expenditures, in pursuance of the following resolution of the Convention, to wit: "*Resolved*, That the Committee on Accounts and Expenditures be requested to report a resolution directing warrants to be drawn for the payment to the clerks and other officers of the Convention of one-fifth of their compensation," respectfully report the following resolution:

Resolved, That warrants be drawn in favor of the following-named persons, the Clerks and other officers of the Convention, for the sums set opposite their respective names, being one-fifth of their compensation as fixed by the Convention:

D. L. Imbrie, Chief Clerk.....	\$550 00
Lucius Rogers, Assistant Clerk....	550 00
A. D. Harlan, do do	550 00
John L. Linton, Transcribing Clerk.....	400 00
A. T. Parker, Transcribing Clerk....	400 00
James Onslow, Sergeant-at-Arms,	400 00
C. M. Brown, Assistant Sergeant-at-Arms	360 00
Clement Evans, Doorkeeper.....	360 00
Frank Bently, Assistant Doorkeeper.....	360 00
Henry B. Price, Postmaster.....	360 00
B. F. Major, Assistant Postmaster	360 00
	<hr/>
	\$4,650 00

The resolution was read the second time and agreed to.

The PRESIDENT *pro tem.* The hour of six having arrived, the Convention stands adjourned until to-morrow morning at nine o'clock.

ONE HUNDRED AND THIRTY-NINTH DAY.

SATURDAY, July 12, 1873.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tempore*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday's proceedings was read and approved.

RESIGNATION OF MR. COLLINS.

The PRESIDENT *pro tem.* laid before the Convention the following communication, which was read :

UNIONTOWN, FAYETTE COUNTY, PA., }
July 9th, 1873. }

Hon. WM. M. MEREDITH,
President Pennsylvania Constitutional Convention :

SIR : I hereby tender, through you, my resignation as a member thereof.

Respectfully your obedient servant,
JOHN COLLINS.

Mr. LILLY. I move that the resignation be laid on the table.

Mr. WHERRY. I second the motion.

Mr. LAWRENCE. I regret exceedingly that Mr. Collins has found it necessary on account of ill health to tender his resignation. I hope he will soon be better. We all know that he has been laboring under severe physical affliction since the winter, especially during the latter part of the session. I hope the resignation will be laid on the table and that Mr. Collins will be requested to reconsider his action.

The motion to lay upon the table was agreed to.

LEAVES OF ABSENCE.

Mr. ANDREW REED. I ask leave of absence for Mr. Ellis for next week.

Leave was granted.

Mr. PURMAN asked and obtained leave of absence for Mr. J. N. Purviance for a few days from to-day, on account of illness in his family.

Mr. PARSONS asked and obtained leave of absence for Mr. Stewart for a few days from to-day.

TO-DAY'S SESSION.

Mr. LILLY. I offer the following resolution :

Resolved, That this Convention will adjourn to-day at twelve o'clock M., to meet on Monday next at ten o'clock A. M.

The resolution was ordered to second reading and read the second time.

Mr. DARLINGTON. I move to strike out "twelve" and insert "one." ["No." "No."]

Mr. KAINE. What do you gain by that?

Mr. LILLY. I will compromise with the gentleman on half-past twelve.

Mr. DARLINGTON. I will not press my motion.

The resolution was agreed to.

SUBMISSION OF THE CONSTITUTION.

Mr. BUCKALEW. Mr. President: I desire to call up the resolution I offered yesterday. I am indifferent about it myself; but a number of gentlemen desire the question acted upon. I do not contemplate debating it.

The PRESIDENT *pro tem.* The resolution will be read.

The CLERK read as follows:

Be it resolved as follows :

First. That when the article on railroads shall have passed second reading the Convention will adjourn to meet again the fifteenth of September next, at ten o'clock A. M.

Second. That articles passed on second reading, including the legislative article, be reprinted as amended, and that three thousand copies thereof be printed in pamphlet form for general distribution.

Third. That this Convention will submit the new or revised Constitution proposed by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next.

The PRESIDENT *pro tem.* The question is on proceeding to the second reading and consideration of the resolution.

Mr. LILLY. I hope the delegate from Columbia will not press it now.

Mr. TEMPLE and Mr. ELLIS called for the yeas and nays.

The CLERK proceeded to call the roll, and concluded the call.

While the Clerk was footing up the result of the vote, Mr. J. R. Read entered the Hall and asked to have his vote recorded in the affirmative.

Mr. LILLY. I object to the gentleman voting. He was not within the bar when the roll was called. He has just come into the House.

The PRESIDENT *pro tem.* The Chair will inquire of the delegate from Philadelphia whether he was in the Hall at the time of the calling of the roll.

Mr. J. R. READ. I was not.

The PRESIDENT *pro tem.* Then the name must be omitted under the rule.

The result of the vote was announced as follows:

YEAS.

Messrs. Achenbach, Addicks, Alricks, Baer, Barclay, Bigler, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Calvin, Curry, Curtin, Darlington, Dunning, Elliott, Ellis, Ewing, Fell, Howard, Knight, MacConnell, M'Murray, Parsons, Patton, Pughe, Reynolds, Rooke, Sharpe, Stewart, Struthers, Turrell, Wetherill, J. Price, White, J. W. F., and Worrell—36.

NAYS.

Messrs. Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Campbell, Carter, Clark, Cochran, Corbett, Cronmiller, De France, Edwards, Fulton, Funck, Gilpin, Guthrie, Hay, Horton, Kaine, Landis, Lawrence, Lilly, M'Culloch, Mann, Mantor, Newlin, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Simpson, Smith, Wm. H., Temple, Walker, Wherry, White, David N., and White, Harry—38.

So the question was determined in the negative.

ABSENT.—Messrs. Ainey, Andrews, Armstrong, Baker, Bannan, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Bullitt, Carey, Cassidy, Church, Collins, Corson, Craig, Cuyler, Dallas, Davis, Dodd, Finney, Gibson, Green, Hall, Hanna, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Lamberton, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Niles, Palmer G. W., Palmer, H. W., Porter, Purviance, John N., Read, John R., Ross, Runk, Russell, Smith, H. G., Smith, Henry W., Stanton, Van Reed, Wetherill, J. M., Woodward, Wright and Meredith, *President*—59.

HOURS OF SESSION.

Mr. BRODHEAD. I offer the following resolution:

Resolved, That on and after Tuesday next the sessions of this Convention shall be from nine A. M. to three P. M.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for, which resulted, ayes twenty-one; less than a majority of a quorum. So the resolution was not ordered to a second reading.

RAILROADS AND CANALS.

Mr. D. N. WHITE. I move that the Convention proceed to the consideration of article No. 17.

The motion was agreed to, and the Convention resumed the consideration on second reading of the article on railroads and canals.

The PRESIDENT *pro tem.* When the Convention adjourned yesterday it had under consideration section seven of the article as printed. That section will be read as amended.

The CLERK read as follows:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof, and such corporations shall carry the persons and goods of the people of this State on as favorable terms as those of other States brought into or through this State on the works owned or controlled by such corporation, taking into consideration the distance of transportation and the character of the road transported over; and a higher charge shall never be made for a shorter distance than is made for a longer distance, and no special rates or drawbacks shall either directly or indirectly be allowed; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. T. H. B. PATTERSON. I move to amend by striking out all after the word "section" and inserting the following substitute:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof, nor make a

higher charge for a shorter distance than for a longer distance, including such shorter distance; and no special rates or drawbacks shall either directly or indirectly be allowed, except excursion and commutation tickets."

Standing here as the representative of the railroads of the State as well as of the people, I think that the representatives of the railroads, as well as those who are seeking to restrict them, ought to concede that there is some middle ground, some right principle on which we can all agree, and which will be a protection to the railroad interests of this State in their healthy operation as well as to the shippers and producers of the State. As such I have offered this substitute, and I ask the earnest attention of those delegates upon this floor who have been contending for the interest of railroads as against producers, as well as of those who have been contending for the interests of shippers and producers and against the monopoly of railroads; I ask the earnest attention of gentlemen for about one minute while I indicate wherein this substitute changes the section before the Convention.

It includes all the first part of the section, down to the word "thereof," and it includes all the first part of the section which my learned and able friend from Philadelphia (Mr. J. Price Wetherill) proposes to leave in the article, and the only modification it makes in that portion of the section is to insert the words "between or" before the word "against," in the latter part of the third line, so as to make that read "between or against the people thereof."

Then, immediately after the word "thereof," it puts in the words "nor make," and then strikes out all of the section from the word "thereof" down to the words "and shall," in the closing part of the eighth line. Then it reads "nor make a higher charge," omitting the words "shall never be made for a shorter distance than for a longer distance;" omitting the words "is made," in the tenth line, and inserts the words "including such shorter distance," and then goes on with the section, "and no special rates or drawbacks shall, either directly or indirectly, be allowed, except commutation and excursion tickets."

Now, if the delegates will give me their attention I will read the substitute.

"No corporation engaged in the transportation of freight or passengers in or

through this State shall make any discrimination for the carriage either of freight or passengers between or against the people thereof; nor make a higher charge for a shorter distance than a longer distance, including such shorter distance. And no special rates or drawbacks shall, either directly or indirectly, be allowed except excursion and commutation tickets."

I wish to say this: This substitute proposes distinctly three things. It omits the *pro rata* provision. It does not attempt to prescribe any *pro rata* rate or any rate whatever. The term "charge" is an aggregate charge, and if any delegate on the floor of this House will prefer to put in the word "aggregate" I am perfectly willing to so modify the substitute by putting the word "aggregate" before the word "charge."

But I take it, if we come to a legal interpretation, it is simply a charge for a longer than for a shorter distance and has no reference to rates whatever.

Now, this section just proposes three things: First, it proposes to prevent a railroad or common carrier company, after it has taken the property of the people of Pennsylvania, from taking a western farmer, or a western producer, or a western manufacturer, or a shipper, and placing him between the Pennsylvania manufacturer and farmer and producer and his market. It does not prevent their bringing him up to the State line. They can bring him up to that point; that is, they can bring the western man or the far-off shipper and put him on an exact equality with the home or short shipper but they cannot put him nearer. That is all it prevents. It does not attempt anything like a *pro rata* apportionment. There is not a word in it that looks to that.

Now, I call the attention of the railroad men on this floor particularly to that feature of this subject. It is free from any such criticism. It simply says that a man shall ship his freights to market on an equality with everybody that is not nearer to the market than him, and that no man further from market shall ship cheaper than he shall, but they shall all be equal. Therefore it does not interfere with the competition of through routes at all, because competition on through routes can bring men right up, and put them on an equality with you; they can put their rate outside just as low as they please, but they shall not take another man's property under different circum-

stances of location and put him at a shorter distance; that is all it proposes. It says that the manufacturers of the west, and the producers of the west, as against the manufacturers and shippers and producers of the State, shall not have the advantage of being taken and put nearer their objective point than other shippers or manufacturers, but shall remain on an equality so far as prevents them from being put nearer by railroad companies; although railroad companies may put them as near, provided they do not change the relative position by putting them nearer. Now, gentlemen, is not that fair? Is it right that a common carrier corporation (and here I speak as a matter of principle) should take your property and mine, and then after they have taken our property, take and put us out of the market, putting men who are further away from market between us and our market, so as to interfere with our manufacturing interests and our products of every kind and description by taking and removing us away up to the Mississippi river, and putting other men between us and our objective points. That is all that this section aims to do in that regard.

Then the second object of this section (the first is produced by the first two clauses of the section) is to prevent discriminations against or between the people of the State, and charging a higher rate for a shorter than a longer distance. It covers that ground and no more; it has nothing to do with *pro rata* rates.

Then the other provision of this section is simply to provide that no drawbacks or special rates shall be allowed, except in commutation and excursion tickets. Now what does that do? That clearly prevents railroad companies from taking and giving special favors; in other words, it prevents railroad companies from taking and saying to this manufacturer, this business man, you shall stand up on high, and saying to another man, you shall go down. As my learned friend from Union (Mr. Rooke) very well said, it very often benefits a man to have special rates or to have a drawback, and that, as a matter of personal and private favor, no man would object to; but when it comes to a public corporation who controls the highway rights of the State, who have taken your and my property in order to build that highway—when it comes to making such discrimination and building up whom they please and putting down whom they

please, then it becomes unjust; and this simply says, if they have any such discriminations or favors to give, they shall give them generally.

Now observe, and I ask the delegates to attend one moment, all the good that could be accomplished by the special rates referred to by the gentleman from Union can be accomplished by general rates. For instance, they can establish a general rate by which they can give to all the manufacturers of a certain capacity certain discriminations and favors, provided they increase their capacity to certain other amounts. In doing that they make no discriminations and they give no special rate or drawback, because it is a general rate; and whenever a drawback or a special rate is made a general plan, then it does not hurt anybody, and it can foster the manufacturing of any locality without touching or hurting the individual. Therefore, I say that is a safe principle to put in the Constitution, that there shall be no principle rate or drawback, because whenever you make the special fostering favors general to all that come within their reach, then they are not special rates and are not touched by this prohibition.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. BAER. Before the vote is taken by which all that was done yesterday shall be wiped out, I wish to say one word. I shall not undertake to repeat anything that any one else has said except to say that the amendment offered by the gentleman from Allegheny does not cure the evil complained of. It leaves the section in just the same bad condition that it was originally. It does not remove the bad feature of compelling the paying of the same rate of freight per ton per mile, although in express terms it does not say so. If you ship freight to Philadelphia, the amount is not ascertained in the aggregate or in bulk; when you come to ascertain what it shall be it is figured out on the basis of so much per ton per mile, and the only way to ascertain it at all is to put it on that basis. The amendment is therefore lame in that respect, and unless it be further amended, we shall still be perpetrating this injustice.

Now, sir, in reply to a remark of the gentleman from Allegheny that those who are in favor of railroads and against the producers are here urging the passage of this section, I beg to say to him that I claim to be, not one in favor of railroads and against the producers, but one of the

producers themselves; and I ask this Convention now how many of the lawyers who are advocating this proposition have taken stock in railroads whereby the country has been developed? How many of them have invested in enterprises to develop the mining and manufacturing interests of the State? How many of them have put their dollars and cents into such a condition that the interest of the people shall be benefited? Why, sir, when lawyers rise to speak on this subject they invariably preface their remarks by saying that it is an interest entirely foreign to them, that they have no interest in railroads either one way or the other, and yet they need not say so because their votes in the Convention indicate and prove to the people that they not only have no investments in that direction, but that they have no heart for the great business that encourages the industries of the people. How many of them I ask have made it possible for two spears of grass to grow where one grew before? How many of them I ask have given the industries of the State such an impulse that two poor men can procure labor where but one could procure it before? How many of them have made it possible for two poor families to live where but one lived before? Their votes here and their disposition, have been to crush these enterprises, so that their pretence of being in favor of the poor laboring man is all profession.

Now, sir, I shall test the sincerity of the friends of this measure by agreeing that the amendment proposed by the delegate from Allegheny shall be passed if they will insert but two words more in it. If they will insert the words "unjust or unreasonable" in it, it will do justice all around, and those two words I propose to insert in the third line of the amendment after the word "any," so as to make it read: "That no unjust or unreasonable discrimination shall be made." If they will put in those words I will vote for the amendment. If they do not put them in, it leaves the provision just as bad as it was before, and I shall vote against it. I inquire of the Chair if it is proper to move an amendment at this time?

The PRESIDENT *pro tem.* It is.

Mr. BAER. Then, sir, I move to insert after the word "any," in the third line of the amendment, the words "unjust or unreasonable," so as to make the amendment read:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any unjust or unreasonable discrimination."

The PRESIDENT *pro tem.* The question is on the amendment to the amendment.

Mr. COCHRAN. Mr. President: I am somewhat surprised at the spirit which is manifested here to-day by the gentleman from Somerset (Mr. Baer.) He seems to have had some sort of new spur applied to him to make him more than ordinarily denunciatory this morning. I understand him to say that this measure is iniquitous. Well, sir, that is a very hard word to use with regard to any measure which is presented before this body and which has received the consideration, as I understand it, fair, mature and deliberate of a committee of which he himself was a member, and which he certainly will not say was controlled or governed by any iniquitous design or purpose.

But why pitch into the lawyers of this Convention this morning? There is an old proverb that "it is a dirty bird that fouls its own nest." Now, sir, it unfortunately happens for my friend from Somerset that he himself is one of us; he is one of the great class of lawyers whom he denounced this morning as not having put one dollar of their money, as I understood him, into any of these great works of improvement in this Commonwealth, but have simply lived as parasites upon the industry and prosperity of the community. Sir, I did not expect a charge of that kind to come from a member of the profession of which I am one of the humblest members. I never understood that the legal profession in this State was a profession that was lacking in public spirit or in giving aid to measures which were calculated to promote the public interests.

It is suggested that we never have any money. I admit, sir, we have not as much money as some other people in the community, but of the little that we have I think we contribute rather a larger proportion than most other classes to objects of that kind.

Now, Mr. President, I am one of those who are sincerely desirous to pass a reasonable, just, and at the same time efficient measure on the subject which is now under consideration. The amendment of the gentleman from Somerset, which was adopted yesterday, was adopted in haste, without time for consideration and reflection, and although I

voted against it, I admit that I did so with some hesitation at the time; but further consideration and reflection induces me this morning to sincerely believe that that amendment is in itself one of the most impracticable and inapplicable provisions that you could possibly insert in any section of this article.

Why, sir, how in the world could you determine a question which depended upon the consideration of the distance of transportation and the character of the road transported over? What measure, what rule, what possible test could you apply to a provision of that kind? How could you bring it down to practice? Why, sir, the great difficulty of this question is the use of these general indefinite phrases. I know of a case which has recently occurred between individuals and one of the railroad companies in this State, in which I believe that it was admitted that there was strong equity in favor of the plaintiff; and yet if I understand that case—I have not seen the decision—it was determined on the construction of the single word "average," ruling out all the equity which was apparent on the face of it in favor of the plaintiffs. If I am wrong in that, the honorable gentleman from my own county, distinguished as a farmer, will correct me.

Mr. J. S. BLACK. What is that?

Mr. COCHRAN. I stated that the case was decided on the construction of the word "average." Am I wrong or right?

Mr. J. S. BLACK. I believe it was.

Mr. COCHRAN. I believe it, too, although I have not seen the opinion. Mr. President, there is the difficulty in placing in statutes or in sections of the Constitution words of general and indefinite signification, words under which you are compelled to resort to the use of the testimony of so-called experts, whose testimony is as unreliable in matters of business as the testimony of medical experts is in cases of homicide.

Now, the proposition is to introduce into this amendment the qualifying adjectives "unjust or unreasonable." What construction are you going to put upon these words? Let me just state by way of illustration what I understand to be the difficulty in regard to this matter, a difficulty which has brought about great trouble and great confusion, all this trouble and confusion in the State of Illinois. The Constitution of the State of Illinois provided that there should be no unjust discrimination. That was, I be-

lieve, its language. Then the Legislature undertook to pass a law on that subject, inserting in the statutes the words we have already put into this section, that a higher charge should never be made for a shorter than for a longer distance. When the courts were called upon to construe that they said that that law was unconstitutional because it did not always follow, in their estimation, that a greater charge for a shorter distance might not be made than for a longer distance so as not to be inequitable or unjust. That was a narrow construction on that one word which brought about the whole of this trouble in the State of Illinois, which brought about that unseemly controversy between the people and one of the learned judges of that State, whose motives I certainly do not impeach. It brought about the removal of that judge from the bench and his substitution by another—a thing which I presume every right minded gentleman will regret, but which, it seems to me, you can scarcely blame the people for effecting under the circumstances.

Now, sir, will you in this Constitution throw in a bone of contention by inserting such qualifying adjectives as these? Can you not adopt something which is positive, direct, clear and distinct, so that when you come before your courts of justice you will not be ruled out by a construction of indefinite phrases, or put to the impossible alternative of proving that which is almost in the nature of the case incapable of being made out by evidence such as I apprehend would be required under the amendment of the gentleman from Somerset, adopted yesterday afternoon. I do not characterize that amendment as iniquitous, for I know it was not so, and not only do I not so characterize it, but I say, in justice to that gentleman, that I feel confident that he intended it in all fairness and rectitude. Believing that, I was strongly induced to favor it, but further reflection convinced me that without any design on his part whatever that amendment will work great and manifest injury and be destructive of the whole substance of this section of the Constitution.

I hope we shall not throw any such qualifying words into this section as the gentleman this morning proposes. I hope we shall stand by the amendment of the gentleman from Allegheny, (Mr. T. H. B. Patterson,) which I am willing to take,

as it removes largely from this section matter which has been objected to by other gentlemen. I am willing to accept it as a compromise and an attempt to avoid objectionable provisions, and I hope, therefore, that this Convention will sustain the amendment and pass the section as it shall be so amended.

Mr. PURMAN. I suppose that any man who considered the importance of the subject and the difficulty of having a clear conception with regard to it would have expected the discussion upon this section and the preceding sections of this article to have been as spirited as it has proved to be. It is not denied, I suppose, even on the part of the most ardent friend of railroad interests in Pennsylvania that some abuses have crept in with regard to the carrying of freight, more perhaps than with regard to the carrying of passengers. Some unjust discriminations have been made. It is impossible that a great interest, such as the railroad interests of this State, should be carried on for any length of time without some injustice having been done to the people. It is not surprising that the people should agitate the subject and protest against the slaughter of their interests in this particular. I regard it for the best interests of the railroads as well as of the people that some proper limitations should be thrown around the carrying interests of railroads, such as will not cripple them, and at the same time to secure the confidence of the people. I have often attempted to draft a section which would protect the people from the abuses of which they complain, and at the same time not cripple the railroad interest of the people and the State, but I confess it is extremely hard to find apt words which will accomplish the object only. This task I found to be the more difficult and perplexing, because the interest of railroads is the interest of everybody. It is not necessary for me to deliver a lecture here this morning upon the value of railroads, what Pennsylvania would have been without the aid of railroads and what they have done for Pennsylvania; and on the other hand it is not necessary for me to attempt to portray the injuries, either real or imaginary, which the people have suffered at the hands of the railroads. The practical question for us to consider is, how we are to so meet the troubles that are upon us as to restore confidence to the people in these great public enterprises, and at the same time not to cripple the railroad interests, be-

cause in crippling the railroad interests we cripple the people. I say it is very difficult to put in phraseology a section that will be elastic enough to extend and embrace and allow the railroads to grow, and at the same time to protect the people.

No one will pretend to say that the railroads can carry freight ten or twenty miles for the same consideration per mile that they can carry it for one hundred or five hundred miles. It requires the same number of hands to load the cars and unload them, to switch them on and switch them off the track to carry freight ten miles as it does for five hundred miles. When a railroad company charges what it costs them to load and unload their cars or freight carried for ten miles, the same as if carried five hundred miles, it does nobody injustice. Then when it comes to the actual distance carried, they cannot apportion it as ten miles is to five hundred and no reasonable man can ask it. People do not ask to impose any such burdens or restraints upon the railroads. What they want is that they shall be reasonable and that they shall not be oppressive. I think the amendment of the gentleman from Pittsburg, (Mr. Ewing,) offered yesterday, was a very reasonable one, that they shall not charge for carrying freight a shorter distance a greater sum than they would charge for carrying it a greater distance over the same road.

For illustration, if the railroads can carry freight or passengers from A to C for one dollar they ought to be able to carry freight or passengers from A to B, B being the intermediate point, for one dollar, because the expense of loading and unloading cars, the switching on and off, the peculiarities of the road over which it is carried and the value of that portion as a carrying interest for passengers and freight are all involved. But we should in some way provide to reach this case. Goods should not be shipped in Philadelphia to Cleveland and brought back to Pittsburg for a less rate per ton than would be charged to carry them from Philadelphia to Pittsburg. We should protect the interests of Pennsylvania, and prevent the railway interest from building up Cleveland at the expense of Pittsburg, and prevent the railroad company from charging less on goods shipped from Philadelphia out to Ohio and brought back again to Pittsburg, than they do on goods shipped directly to Pittsburg. I do not know the facts. I do not pretend to say, of my own personal knowledge, that such

has been the fact, but if such has been, it ought to be prevented in the future. Doubtless instances of this kind have occurred inadvertently. Doubtless they have occurred sometimes in an effort on the part of these corporation to make money, and if it is done in that way at the expense of the people and particular business interests it ought to be restrained. They ought to be restrained also from giving a preference for carrying coal brought out of their own mines over that of some individual or individual corporation that has no interest in the railroad in carrying the coal from their mines. If the railroad companies are engaged in mining and manufacturing (which they ought not to be) they ought not to give any preference to their goods in transportation over their road, and as common carriers they cannot without a violation of law, and incurring liability to the party injured. And in all such cases, doubtless, falsehood is practiced by the shipping agents, so as to protect the company from liability to the injured party.

We all know very well, as lawyers, that as common carriers they cannot refuse to carry the coal or other goods of other corporations or individuals without incurring a liability. But practically, when it comes to enforce it, the party is injured as much by seeking his remedy in law as he would be to submit without making any complaint. Now, what do we gain by putting such a restriction in the Constitution? Railroad companies are bound to carry in the order in which the application is made to them for transportation. When they depart from this rule and avoid liability, they must manage the business of common carriers unfaithfully. If their agent untruthfully represents that A has presented an application for transportation before B, whereby the goods of the first is favored at the expense of the latter, the only remedy would then be in an action on the case for fraud, and in such a case a constitutional provision would be no better than the common law. This whole subject depends so much upon the laws of commerce and the peculiar interests of individual enterprise, as to render it extremely difficult to manage. Indeed we are likely to produce as much or more mischief by our action, and injure the people, as they have already suffered.

This section would, perhaps, be as effectual as any constitutional provision

you can make, but very much, after all, depends on the fidelity and integrity with which these roads are represented by their agents. I am not sure, if I cannot get anything better, but that I shall vote for this section. I would like to see it improved, yet I am not sure that there is not as much mischief in it as the mischief which is intended to be avoided by it. I confess that the subject is a very difficult one, and I do think that no reflections ought to be made against the Committee on Railroads and Canals, or upon its distinguished chairman for the manner in which this report was prepared. I suppose that anybody else would have encountered the same difficulties that that committee has encountered, the subject being new and difficult. They were, however, gentlemen who have had experience in this subject and they have done that which seemed best to be done. I have been thinking for the past four or five years upon the matters embraced in this section, and I confess that it has always staggered me to reach any satisfactory conclusion, and perhaps it is still better to trust to the great principles of natural justice, trust to the elastic power of the common law, and the rights that parties have under it as it now stands, and as it may be applied in wise and experienced hands. The people all over the State demand the construction of more railroads, and will not approve anything which will cripple their chances for their erection. I will vote for the amendment of the gentleman from Lycoming (Mr. Armstrong) because it is more elastic than anything else which has been presented.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Somerset (Mr. Baer) to the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment to the amendment was rejected.

Mr. ARMSTRONG. Mr. President: The extreme difficulty of this subject is very apparent. I suppose every member on this floor accords to the Committee on Railroads the credit of the highest consideration and integrity in everything which they have presented for our consideration. The numerous amendments suggested clearly indicate the inherent difficulty of the question. I have given this subject a good deal of reflection and am prepared to offer an amendment which in my judgment meets the only difficulty which re-

ally calls upon us for a constitutional provision.

I ask the attention of the Convention for a few minutes and I will briefly indicate what I believe to be the real issue, and I can do so better by an illustration than by mere abstract statement.

Suppose two parties desire to ship freight from Chicago, one to Pittsburg and the other to Philadelphia. It is wrong that he who wants to ship to Philadelphia shall get his freights for a less sum than he who wishes to ship the same cargo to Pittsburg. By the same rule it is wrong that if one party desire to ship to Philadelphia and another party desires to ship to New York, the railroad company shall transport that freight right through Philadelphia to New York and deliver it there for less than they will deliver it in Philadelphia. It is wrong that a railroad company should undertake to ship freights as a common carrier and transport freights as they do, right through the town of Williamsport, for instance, over the Philadelphia and Erie railroad, upon the same train, and charge more for delivering such freights at Williamsport than to carry it through to Philadelphia, two hundred miles further? All this is wrong. I believe it is wrong in principle, and injurious in the end to the best interests of the railroad company, and is a discrimination against the interests of the State which we are called upon by constitutional provision to prohibit.

This I believe is the evil which it is our purpose to strike down directly, pointedly and unmistakably, by a prohibition which shall be in such terms that it shall not be open to doubtful legal construction, which shall be too plain for the railroads to mistake, so plain that the way-faring man, though a fool, need not err therein.

My objection to the amendment pending is that it provides that a higher charge shall never be made for a shorter distance than is made for a longer distance. This is not always practicable. It limits and controls unnecessarily the discretion of the transporting company both within and beyond the lines of the State. We have just the same interest in every part of the State in allowing transportation companies the largest possible discretion in competing for freights which are without and to be brought within the State. To illustrate: At Chicago the Pennsylvania railroad meets an intense competi-

tion which compels the company to carry freight from that point to the seaboard, either at New York or Philadelphia, at the very minimum of rates upon which, if they make any profit, it is as they constantly represent, a very small profit indeed. The reason of it is that the New York capital which controls the rival routes to that point would rather have the commercial enterprise dependent upon such transportation centered in New York, and get less dividends upon their railroad stocks, than to have that freight diverted to another and a rival city. But this competition is not met with at every point along the line of the railroad. For instance, at Cincinnati they have sharp competition, but not so severe as that they meet at Chicago. It is a shorter distance, but it is not, therefore, right that the railroad company should be compelled to transport from a point where there is not such destructive competition at the same rates that they are compelled to receive from points where the competition is intensely active, and where, if they do not reduce their freights to the nearest minimum, they cannot receive the freights at all.

This section, then, is too broad in that it limits unnecessarily the discretion of the company at points beyond the State. We have no interest in that. Our interest is, in common with the railroads, to draw within the State whatever freights we can transport from all points beyond the line of our State.

This being so, what is the point at which we should direct our restrictions? It is that the railroad company shall not charge more for delivering freights at any one point in the State than they could charge for carrying them ten, twenty, fifty, one hundred or three hundred miles further. Nor can the railroads justly complain of this, for if they can transport to Philadelphia for a certain fixed rate or aggregate charge they surely cannot complain that by a constitutional provision they may stop that freight when required one two or three hundred miles short of that destination and yet collect precisely the same amount for transportation.

In view of this I have drawn an amendment which I will say I have drawn with great care, and I will further add, with exceeding great difficulty, for I found it extremely difficult to express. I propose, then, to offer this amendment, to come

in after the word "thereof," in the fourth line:

"Persons and property transported by any such company shall be delivered at intermediate stations within the State at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station."

I believe that covers the whole ground, so far as it is judicious for us to restrict the operation of railroads, which must, in spite of whatever restrictions we may impose, be mainly controlled by the laws of trade. It prevents the Pennsylvania railroad from taking freights at any point west and refusing to deliver it at Pittsburgh or Williamsport or Harrisburg, and receive for it the same money that they would receive if they carried it through, over the same line and past these points, to Philadelphia. I am not aware of any other great evil to be complained of. The amendment I propose operates to the same effect within the State. Transportation companies could not take up freight at Pittsburgh and carry it ten miles and charge more for it than they do for carrying the same freight twenty miles. They could not take freight at Pittsburgh and carry it to Altoona and charge more for it than they would to carry the same freight to Harrisburg. The language is broad enough to cover all transportation within the State. It is purposely expressed as it is to prevent any interference with the discretion of the company in seeking freights which they are to procure beyond the State line.

Mr. KAINE. I desire to ask the gentleman a question with his permission. I do not understand him exactly. Does he mean the railroad company may charge the same for carrying the same class of freight from Pittsburgh to Greensburg that it does from Pittsburgh to Philadelphia?

Mr. ARMSTRONG. I say that they shall not charge more, but I have not in this section undertaken to limit their discretion as to the rates per mile between any given points. This we could not safely do.

Mr. FUNCK. Does the gentleman make any provision as to drawbacks in his section?

Mr. ARMSTRONG. No, sir, there is nothing in the section that proposes anything about drawbacks in direct terms.

Mr. FUNCK. There is where the trouble comes in.

Mr. ARMSTRONG. But it would indirectly be involved because any system of drawbacks which would reduce the freight for a shorter distance below what it charged for a longer distance in the same direction would be in violation of this section, and no indirect and evasive method of that kind would be tolerated by the courts.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. ARMSTRONG. I only desire to say a very few words that I may finish what I have to say on this subject. ["Goon."] I certainly shall endeavor to be brief, but it is a question of such exceeding importance that I think we ought to discuss it at length.

The PRESIDENT *pro tem*. The Chair called the time because of the rule only.

Mr. ARMSTRONG. I recognize it, and it is with great propriety that the Chair did so, and it is with great reluctance that I venture to trespass even for a few minutes longer. I shall not discuss the question further, but will read the section as it will stand if this amendment be adopted:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers against the people thereof."

The gentleman from Pittsburgh (Mr. T. H. B. Patterson) introduces the word "between," which I think is not of any especial importance in that connection. But that part of the section, I think, is of value, because it provides in general terms that there shall be no discrimination against the people of the State, and that far it is wise. With this amendment added to it I believe it covers every important abuse complained of by the people on the part of the railroad companies.

Mr. SHARPE. Would this amendment allow the railroad companies to carry freight from Philadelphia to Chicago for less than they can carry it to Pittsburgh?

Mr. ARMSTRONG. I do not think it would. I am hardly prepared to express a positive opinion without further consideration, but I think it would not.

Mr. SHARPE. If a manufacturer in Chicago manufactures the same goods as a manufacturer in Pittsburgh, why should he be allowed to transport his goods at a less rate than the manufacturer in Pittsburgh, and thus be enabled to undersell our own manufacturer?

Mr. ARMSTRONG. There is a difference in distance of about seven hundred miles between Chicago and Pittsburg and Philadelphia. If the railroad company should do that thing it would be only to a limited extent; but I would ask the gentleman whether or not it is in our power to control it if we would, as being beyond the limits of the State? Besides, it would be limiting the discretion of the railroad company in that regard to a degree which would render our interference dangerous without necessity, since no considerable abuse has been or is likely to be developed in that direction, and if it did it is fully within the power of the Legislature. We have no difficulties of that kind which are of practical effect, and I believe that under a fair construction of this section it could not be done. But certainly this amendment would cut up by the roots that great evil which the people do complain of, that freight is carried right past their doors, hundreds of miles beyond the point where they desire to have it delivered, and they cannot, even by paying the same rate, get it delivered at such intermediate destinations, but it must be carried one or two hundred miles further and then shipped back. This is wrong. I submit the amendment, and I believe it covers the ground as fully as in any constitutional provision it is safe to go. Should other abuses, not now foreseen, arise, they can be safely dealt with by the Legislature, and under such legislative securities as we have provided I believe it will be wisely and safely vested there.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Lycoming (Mr. Armstrong) to the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson) which will be read.

The CLERK read the amendment to the amendment, which was to strike out all after the word "thereof" and insert:

"Persons and property transported by any such company shall be delivered at intermediate stations within the State at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station."

Mr. LILLY. Mr. President: I do not desire to hamper this amendment or to tie it up in any way by anything that I may say or do; but I wish to impress upon the Convention the fact that this amendment does not cover the whole

subject as the gentleman from Lycoming thinks it does. There is another case which I think is more important to be provided for than any yet spoken of, which has been left out of sight. For instance, suppose I go to Erie and buy a cargo of Lake Superior iron ore, and propose to carry it by rail to the Lehigh valley to be smelted, without asking anything about freights, but take the schedule price expecting to pay it, and I do pay it. My neighbor, who has a furnace alongside of me, goes to Erie and buys his cargo, but he goes to these railroad companies and obtains a special rate, and gets it carried for half the freight to the Lehigh valley that I do, because of that arrangement with the companies. His ore is smelted and his iron comes in competition with mine in the market, and he is able to undersell me. I think that is a point that ought to be guarded against. I do not think the railroad companies ought to be allowed to make that sort of discrimination, but it is done every day. As I said some time ago when this subject was under consideration, that is the main evil complained of on the Erie railroad. There is hardly a thing carried on that railroad to any extent that is carried by regular schedule. The freighting is in the hands of a few parties who control the whole thing to the exclusion of the general public. Now, I take it these railroads are for the general benefit of the people. I have always been friendly to the railroads, and feel so to-day, and would not do the first thing to cripple them; but I think if we are to make an article on the subject of railroads at all, we ought to restrain them from doing just such things as I am speaking of. If it were left to me, I would make an article on railroads that would only contain a couple of sections that would be much shorter than this, and leave the whole matter to the Legislature to fix by general law. But if this amendment carries I hope an amendment to it will be made providing:

"That no discrimination shall be made in favor of any parties in carrying freight of the same kind the same distance, by drawback or otherwise."

The PRESIDENT *pro tem*. That cannot be offered at this time.

Mr. ARMSTRONG. I find that in the latter part of the seventh section, as printed, there is a proviso saving commutation tickets, &c. I want that to go in,

and if the amendment should be adopted I propose to add that at the end of it.

Mr. CUYLER. Mr. President: I quite agree with the delegate from Lycoming, who offers this amendment, in any words he may say of personal respect and regard for the Railroad Committee, and yet I cannot but express regret, as a member of this House, that the distinguished President of this Convention, in constituting that committee, carefully excluded from it, so far as one may judge, in his selection of members, gentlemen in this House who had experience and knowledge of the particular subject which was referred to that committee; but, of course, the committee is not blameable for that. But with profound respect for that committee, they are—I use the word in no offensive sense whatever—censurable for one thing, and that is that they did not seek, at least, the benefit of the experience and the suggestions of those who could have enlightened them upon the subject committed to their charge. In other words, I complain that in a city that abounds with men of the purest character, the loftiest patriotism, and the largest intelligence upon this subject, this committee did not invite at least an expression of the views of those gentlemen. Why was it that such men as Mr. J. Edgar Thomson, Mr. Thomas A. Scott, men who have served this Commonwealth and this country grandly, were not at least invited by this committee to give them the benefit of an experience so vast, a patriotism so large as theirs, and a love for this State and for this city that is not surpassed in the bosom of any citizen of this Commonwealth? Why is it that we, a body composed almost entirely of lawyers, sit here to-day to legislate about a question that is outside of the pale of our ordinary experience, while within sound of our voice there dwells that enlightenment and experience and knowledge that would largely serve us, and we are shut out from it?

Now, sir, I claim for the gentlemen to whom I have alluded, whose experience and knowledge would have been largely valuable to this body, as great intelligence and as pure patriotism as can possibly be predicated of any gentleman here; but I cannot speak of one of those gentlemen particularly—I might say of both—without emotion. I cannot suffer myself even to speak of Mr. Thomson, the President of the Pennsylvania railroad company,

without an emotion of gratitude to him as a Pennsylvanian and pride and glory as a citizen of this Commonwealth in the fact that another State has not robbed us of the services and the ability and the capacity of that man, for they would have valued them, though we do not; a silent man to whom nature has almost denied the power of speech, and yet who has written his thoughts on the face of this Commonwealth in lines of vast internal improvement, bridging rivers and filling valleys and subduing mountains to make a highway for the trade of this State, that we might be bound to our sister Commonwealths and might discharge our duty not as Pennsylvanians merely, but as members of a grand Union, to a whole country. Not circumscribed in our patriotism by the narrowness of mere State lines—but with a broader view and a grander conception of our privileges, our duties and our obligations, rising to the contemplation of our relations, not merely as citizens of Pennsylvania but of the United States.

Now, I have to say to this Convention, after a conversation with that gentleman and with Mr. Scott, and with other railroad men, that the subject which we are handling to-day, with issues so vast to the prosperity of this Commonwealth, is one in regard to which those gentlemen declare that, with all their experience, they are not competent to write a constitutional article upon and feel a conviction that it will not work ruin to the State. I mean to say that we are in the infancy of railroad science, dating back but forty years in this country since the first short line of railroad was opened, with every year and every month developments of some new principle and some new rule, so that what to-day may seem the height of wisdom will to-morrow be apparent to the intelligent mind as the supremest folly and absurdity. And yet we, inexperienced, however pure in our motives and however intelligent in our ordinary avocations, sit here to write this inflexible law in the Constitution, not only without the intelligence and experience which have been acquired by men like these, but absolutely shutting them out from us, excluding them from us, not seeking them at all, not availing ourselves of their experience and profound knowledge of the subject to any extent whatever. I say, Mr. President, that in the ordinary pursuits of human life such conduct as this Convention pursues on this question

would be called the very height of folly and absurdity. When we desire to deal with a subject that is new to us in the ordinary experience of life, we seek the benefit of the intelligence and information of those who have trodden in the path in which we desire to walk, and who can give us the results of an accumulated experience. That is the ordinary rule that guides all intelligent men; and yet we, intelligent men, on this question of vast and overwhelming importance are shutting it out and excluding it from us altogether.

So much, Mr. President, by way of general remark. I say fearlessly to this Convention that any effort on the part of this Convention to write an iron law in this Constitution that shall go more than one step, will be the height of folly and infatuation. All that we can do is to come down to principle. That which we rest on solid principle, which the experience of mankind confesses to be principle, we may rely upon. The moment we step beyond that, to expediency, we step in the dark; and what the ruin may be that is to follow that step no human sagacity can predict.

Now, what step can we take? What has the experience of mankind shown of the great question which underlies this article? It has shown, with reference to human affairs, that the proper protection of society is to be found in a large, healthful, untrammelled competition. What matters it that men like Mr. Vanderbilt, of New York, or Mr. Astor, or others that might be mentioned, or Mr. A. T. Stewart, have been enabled to amass fortunes that run up to forty or fifty millions of dollars, without danger to a free people, while if such fortunes accumulate in the hands of a corporation gentlemen are filled with horror and suspicion, when they are not so when those fortunes are in the hands of an individual? Simply because society is protected by the law of a healthful competition. If an individual engages in business and charges an unreasonable price for his goods, we all know that some other party will go into that business and bring his price down, by the law of a healthful competition. If an individual deals unfairly, or with lack of integrity or justice in his transactions with his fellow-man, we have no fear of the result. Why? Because we know that side by side with him will spring up some other man of business who will be

actuated by integrity and honor and high principle, and by a healthful competition he will remedy the unreasonable charges of the other. And I ask gentlemen to tell me what law of trade is there, what law of commerce is there, that does not apply with just the same force to a corporation that it does to an individual? Why is it that if a corporation deals unjustly, that if a corporation charges unreasonable prices or is oppressive upon the masses of the people, it is not at once brought to its proper place by the operation of the simple law of free and healthful competition.

What then do we want? How far can we go with safety? We can go with safety just so far as this, that we may write into our Constitution that it shall be the absolute right of the citizen to associate himself with his fellow-citizens and build a railroad or transporting line when he will, and where he will, and on what terms he will, consistent with the general safety of the public; so that if it be true that the Pennsylvania railroad company, or any other railroad company, fails to be just to the community or oppresses them with unfair and unreasonable charges, the injured community may associate its capitals together and may plant side by side with it a rival line that will destroy its unreasonable charges and bring it down to a reasonable state of things by reasonable, fair and healthy competition. Here is a panacea, and it is a panacea for all the ills that are at least supposed to afflict the State in this direction. A panacea is to be found in a constitutional provision that shall write into our fundamental law the law of the largest and the healthiest competition, so that when corporations fail to do their duty to the public, the public may have the same self-protecting power against their wrongs that it has against the wrongs that are inflicted upon it by anybody else. That far we can go, because that far experience has taught us that we are stepping upon the foundations of eternal truth and justice. But when we go a step further than that we are inflicting a wrong upon the community, and a wrong upon ourselves, or at least stepping in the dark when we cannot see the depth of the abyss into which we may be plunged.

I desire to say a few words in regard to the amendment of the gentleman from Lycoming, (Mr. Armstrong,) which is the more immediate question before the House. I have the greatest respect possi-

ble for my friend, but his amendment must, of necessity, fail to accomplish the purpose at which he aims. He asks this House if two individuals wish to ship from Chicago, one to Philadelphia and one to Pittsburg, why the man who is to have his goods carried to Pittsburg shall be required to pay as large a price as the man who desires to have his carried to Philadelphia, and he says to this House: "That thing is wrong; that thing is wrong in principle; that thing is manifestly unjust and unfair and unreasonable." So, at a hasty glance, it is; so, to an imperfect comprehension, a wrong seems to be wrapped up in that proposition; so, on the first statement of that proposition to an ordinary man, it is a gross and positive wrong; but is it so in point of fact? Let us see.

Chicago is a point of union for several competing lines, and these competing lines are emancipated from the control of the State of Pennsylvania. We cannot say to them: "You shall carry at a given figure." If it were possible to have a compact between the different States of the Union, whereby this law that we seek to write into our Constitution in the shape of the amendment of the gentleman from Lycoming would be written in the laws of other States through which these competing lines run, then I should not object to write it in here; but until you can accomplish that result, I will show you that it is altogether wrong and works out precisely the opposite of the consequence which the gentleman from Lycoming contemplates.

Let us see. An individual who desires to ship the same article to Philadelphia which another individual desires to ship to Pittsburg, and who is charged the same price for the Philadelphia shipment as is charged for the shipment to Pittsburg, has at Chicago the choice of several different lines by which he may ship, only one of which goes through the State of Pennsylvania. He says to the Pennsylvania railroad company: "If you will carry my article to the city of Philadelphia on the same terms that the New York Central railroad will carry it, I will give it to you." If the Pennsylvania railroad company does not carry that article on the same terms, the New York Central railroad carries it; Pennsylvania does not get it, and the freight is carried by the New York Central railroad, which takes it around to New York and sends it by

water to Philadelphia and puts it down at the same price that would have been charged if the Pennsylvania railroad had carried it, and which is charged to the Pittsburg party.

Suppose the Pennsylvania railroad company refuse to carry it, is it any benefit to the Pittsburg party?

Is Pittsburg any gainer by reason of our refusal or of our inability to carry that article? Not in the slightest degree. The Pittsburg party has not received his freight any cheaper by reason of that circumstance. He has not been benefited one single iota by reason of it. He has had his commodity carried from Pittsburg to Chicago at a stipulated price, and he has not prevented that other commodity from being carried from Chicago to Philadelphia at the same price at which he gets his carried to Pittsburg. Nay, more, the Pittsburg man has been damaged by preventing the carriage per the other party to Philadelphia, because in case the Pennsylvania railroad company are able to carry that article from Chicago to Philadelphia, making any profit, no matter how small, it is gaining something toward a fair dividend for its stockholders, and to that extent it is relieving the burden of the railroad company which it has to lay upon its local freights in order to return to its stockholders that dividend on its capital which is their right, and to which their invested capital is fairly entitled.

The PRESIDENT *pro tem*. The gentleman's time has expired.

Mr. STEWART. I move that unanimous consent be given the gentleman to continue.

The PRESIDENT *pro tem*. The Chair hears no objection.

Mr. CUYLER. I thank the House for its courtesy and will continue, very briefly, what I have to say.

This is a great practical question. I believe I understand it, and if I fail to demonstrate it to this House, it must be from my own incompetency and not the lack of truth in the propositions I desire to present.

Mr. FUNCK. Will the gentleman permit me to ask him a question?

Mr. CUYLER. If the gentleman will allow me to follow my present current of thought, at the close I will answer any question he or any other gentleman may desire to ask me.

Mr. FUNCK. Very well.

Mr. CUYLER. In 1846 the State of Pennsylvania incorporated the Pennsylvania railroad company. So scarce was capital and so impoverished were our great cities that the city of Philadelphia alone—oppressing her inhabitants by this burden—had to subscribe five millions of dollars to build that road, and patriotic citizens went from door to door in the city of Philadelphia and solicited individual subscriptions to shares of stock from porters, clerks, nay from very servant-girls, to build that road. You said, you the Commonwealth of Pennsylvania said, in the charter of that company: "If you will build this road and put your money in it, you shall have liberty to charge a price not exceeding so much for each passenger and for each ton of freight which you may carry over that road." Thus the road was built. It was built with a grand and lofty purity which has not been surpassed in the establishment of any public work in the world. I utter these words and challenge denial as I say them. It was built in the interest of this Commonwealth, and when I point over the vast State studded over with prosperous cities and villages, to deserts that are now blossoming like the rose and the whole land covered with the fruitage of marvellous prosperity, I point to that which is conclusive proof that it has done that which it was established to do. Nay, more, Mr. President, sitting as it has been my fortune to do, alongside the men who have guided the destinies of that road, as a professional adviser, there are no words in this language which can overstate the profound conviction, which I utter from the bottom of my heart, of the purity, the dignity and the patriotism which have actuated those gentlemen in the administration and in the extension of that road.

I have to say, Mr. President, that within my personal knowledge the Pennsylvania railroad has always insisted upon the doctrine that the city of Philadelphia was fifty-nine miles nearer to the great west than the city of New York, and that no line could be built to the great west which did not cross our State, and which, therefore, was not bound to concede to our State that fact, that we were fifty-nine miles nearer to the great west than the city of New York was. And I say it as a fact within my knowledge, that in one year did the Pennsylvania railroad sacrifice \$900,000 by carrying trade at less than cost until it broke down the weaker lines

running from the city of New York that refused to acknowledge and submit to that great principle which has been a cardinal doctrine of that road in its administration always.

Now, this road has had in view as its cardinal duty always—I ask gentlemen to bear with me and to accept my statement of that in its broadest sense—this road has had in its view always the fact that its highest duty was to the Commonwealth of Pennsylvania and to the trade and the business of this Commonwealth. While it has reached out into the far west, and touched the Pacific upon the west and the Gulf upon the south, that it might bring the treasures of the nation within the bosom of our State and lay them here at the feet of our people to minister to their enterprise and promote their prosperity, it has gone beyond the boundaries of this State and taken trade from the west and from the south only when it could carry that trade at some profit and thereby be enabled to carry cheaper for the citizens of the Commonwealth herself. And as a practical result to-day, confessedly the Pennsylvania railroad company carries the local trade of this State at an average of only one-half the price that her charter permits her to charge. It is because of this trade from beyond the boundaries of our State, it is because of the profit that she has been able to earn from the trade outside our boundaries, that she has been able to disburden the local trade of Pennsylvania to the extent of one-half the charge which the law permits her to impose upon it.

What then are you proposing to do? You are proposing to say to the Pennsylvania railroad company, "you shall give up your freight which comes from beyond the boundaries of the State." What then? Why, as a matter of course she must put up her charges upon her local trade nearer to the maximum price that her charter permits her to demand in order that she may earn a fair return for the capital she has invested. And I warn gentlemen that just in proportion as they shall burden that extra-State trade by imposing the local charges upon it, will they destroy the prosperity of this Commonwealth by taking away from it the trade that comes from beyond its boundaries and by planting upon the local trade of the State an increased and heavier burden; for I say to gentlemen, every dollar that you take off the extra

State trade of the road you impose upon the local trade.

Now, I ask gentlemen to trust something to the purity and the integrity and the wisdom of the men that govern that great enterprise. I ask them to see in the vast prosperity of this Commonwealth and in its progress and its glories, the city of Pittsburgh on its western boundary and all these similar villages that stud our whole State over—I ask them to see in all this some proof that the men who govern this enterprise are above small and sordid and selfish motives and do grasp the interests of the whole Commonwealth and seek to promote them. I do ask gentlemen here to pause and consider, and not blindly shut their eyes to the experience that these gentlemen have accumulated, driving blindly over all that is before them, adopt a policy the effects of which they can but imperfectly comprehend themselves and which men of so much larger grasp and greater experience see will be simply ruinous to this Commonwealth.

Therefore, Mr. President, I entreat the House to vote down the section bodily. There is no amendment which you can write in it that will not work mischief and probably be ruinous to this great Commonwealth. I entreat you not to say to this city of Philadelphia, which has put \$5,000,000 of her capital into this enterprise, I entreat you not to say to this great and prosperous Commonwealth, that you will blight and paralyze the prosperity which meets your eyes everywhere, and which has been the result of the very system that you are seeking by this section to strike down and destroy.

Now, Mr. President, I have been betrayed into lengthy remarks that I had not dreamed of when I rose, but I could not but express the feeling that has been pent up in my bosom for days as I have listened to the discussion of this question. I not only feel, but I know, that this Convention walks, so far as this great subject is concerned, along the crumbling edge of an abyss profound, whose depth no human eye can measure and into which they will plunge the Commonwealth and be overwhelmed. I ask this Convention not to drive the chariot of the sun unskilled in such an enterprise. I ask this Convention to say: "We will go just so far as experience has shown us sound principle lies, and we will not speculate or substi-

tute our own crude thoughts and fancies for solid principle." I ask this Convention to say that just as the law of individual enterprise is, that if it be unreasonable, if it be oppressive, if it be unjust, competition is the remedy that will come to our relief, just so it is with regard to corporations, and that all we can do on this great question is to strike out the article as we have written it, the whole article as we have written it, and put in its place a provision that shall in the largest, in the broadest, in the fullest and most unrestrained way arm the citizens of this Commonwealth with a power to build railroads and canals when, where and as they please, so that under the fair and healthy law of competition they may break down and destroy the power of any corporation that forgets its duty to the people that gave it birth and oppresses the interests which it was created to nourish, cherish and promote.

I thank the House for the indulgence they have given me.

Mr. ARMSTRONG. Before the gentleman takes his seat, I should like to make a single suggestion. I should like to know from him how the interests of the railroad company can be injured if they get one hundred dollars for carrying a certain amount of freight to Philadelphia and get the same one hundred dollars for cutting it off at Pittsburgh, three hundred miles short of Philadelphia.

Mr. CUYLER. I will answer the gentleman. The treasury of the company is injured by this circumstance: If they did not earn the small profit they made on that which they carried through to Philadelphia, they would have to charge against that which was carried to Pittsburgh in addition to the one hundred dollars, the amount of profit they made on the carriage to Philadelphia. In other words, they would have had to charge the Pittsburgh man say one hundred and five dollars for that which they did carry for him for only one hundred dollars. That is the answer. Compel the company to give up the profit, however small, it earns from competing points beyond the State, and you compel it to add at least an equivalent amount to the burthen placed on local trade. You withdraw from the commerce of our State and the industries of our people the articles which would be brought into our State from places beyond its limits and you subtract from the revenues of the Commonwealth the propor-

tionate amount of tax on gross receipts, or to be more accurate, you take thus much off from citizens of other States and place them on our own.

Mr. LANDIS. Mr. President: It is with great reluctance that I rise this morning to say what I have to say about this question. I am the more reluctant because it so happens that in placing myself on the record with regard to this question, I follow closely upon the gentleman from Philadelphia, (Mr. Cuyler,) who has so enthusiastically and so earnestly defined his position on the subject, as he has so often done before.

I am not a member of the Railroad Committee. I do not stand here this morning to explain any of their actions. I cannot account for any of the impulses in their breast which led them to the conclusions which they have reported to us. I stand here as a citizen of Pennsylvania, representing a portion of her people, and seeking as best I can with the convictions of my conscience and with such promptings on the subject as my judgment may furnish, to discharge my duty towards those people.

Now, sir, had one happened in this Hall casually this morning, and had not listened to all of this debate, after hearing the earnest and impassioned appeal of the gentleman from Philadelphia, he would have supposed that here were assembled a body of men who were desirous of affixing upon the corporations of Pennsylvania a provision which must be simply ruinous. The burden of his speech has been as though this Convention sought to do that which must forever nullify the objects for which these corporations were created, to affix upon them such restrictions that hereafter they could not exist. I contend that that has been the burden of his argument, because if what he says is true, the great corporations of Pennsylvania, if this provision should be incorporated in the Constitution, could never exist.

He has said that that committee should have invited Mr. Thomson and Mr. Scott to attend its deliberations. Perhaps they should have done so. Had I been a member of the committee I would gladly have seen those gentlemen present. But, sir, they were not so invited, and I am not here either to apologize or explain. The gentleman from Philadelphia says that in mentioning those names he feels an "emotion" of some kind which he has

not explained, but an emotion, are we to presume, which influences him in the course that he takes here? Now, sir, I am not impelled by any such emotion. No man feels a more respectful regard for those distinguished names than myself, but the name of no one man or set of men impels me to the discharge of my duty when I come to discharge it in the light of my convictions and in view of my responsibility.

What do we find? We find in regard to every section of this article that the gentleman is opposed to it. Not one of them finds any sympathy in his bosom; and were we to consult his desires, were we to vote as he has uniformly voted up to this time, and as I presume he will vote to the close, we would not have in the Constitution of our State a single article in regard to railroad corporations. Is this due to the particular "emotion" which the gentleman experienced on naming such gentlemen as Mr. Thomson and Mr. Scott? I presume if the gentleman had happened to have experienced a similar emotion when other articles were under consideration, the State of Pennsylvania, so far as he is concerned, would have no Constitution at all.

Mr. President, I entirely sympathize and agree with all that the gentleman says about the greatness of the Pennsylvania railroad company, not forgetting that there are other corporations that are likewise great, though not so great. I sympathize with feelings of pride with all that may be said in praise of that company so far as its grandeur and its power, considered as mere power, are concerned. But it becomes our duty as citizens of Pennsylvania, as members of a Constitutional Convention, to remember that there may be even in the State of Pennsylvania a power too great, a power which her citizens should not permit to continue, or, if continued, to continue under such salutary restrictions as that that power shall not be dangerous to the rights of the people and the sovereignty of the State itself. Who dare gainsay this proposition? I say to controvert it is to announce that which is hostile to the very principle of our government, and which, if not arrested, will sap the foundations of our State government itself. I say we must rise to the occasion. We must see to it by our votes here that there shall not be, as it were, an *imperium in imperio*: that there shall not be a sov-

ereignty within this State drawing its life and its support from the people which shall rival, yea, rise superior to the power of the people themselves. I hold that any gentleman here who contends otherwise does not manifest that patriotism which he should as a citizen of Pennsylvania.

But, sir, to come more particularly to the question before us, as I have but a few minutes allotted to me, I regard the proposition of the gentleman from Lycoming (Mr. Armstrong) as not at all meeting the requirements of the case. I regard it as an insidious proposition, one which while on its face it might not seem to suit the railroad companies, would in its operation be prejudicial to the interests of the companies themselves as well as to the interests of the people. I have not sufficient time to enter into any elaborate argument to prove that that is so, but I think a careful examination of it will show that that would be its operation, because it would not furnish the remedy which the people desire, and at the same time it might so interfere with the foreign or outside operations of the railroad companies and so cripple them that they would not be able to transport freight and passengers in the manner that they should for their own benefit and for the accommodation and benefit of the people themselves.

There is another objection that I have to it. It will be observed that, by the language of the amendment, it applies to discrimination in freights in the same direction. It does not prevent discrimination on freights which are returning in an opposite direction; I mean between a schedule of rates for freight carried eastward and a schedule of rates for freights carried westward—or northward and southward. Let me illustrate it. Suppose that persons who are engaged in shipping coal in the bituminous region desire to send the coal to Philadelphia or intermediate points; they are charged a certain rate. Then those who are engaged in the shipping of anthracite coal in the eastern region are permitted to ship coal in various directions. In shipping coal westward, if the railroad companies are not prevented from discriminating, they can ship anthracite coal to the bituminous regions at so much less rates as entirely to destroy the home business—the local trade of the bituminous operators. I give that as an illustration, and that illustra-

tion is founded upon fact. I stated before, on this floor, that bituminous coal, which had been shipped for many years for a distance of twenty miles, and the operators enjoying the benefit of a home market, was last year interfered with by the shipment of anthracite coal two hundred and twenty miles off, so that the trade of the operators in bituminous coal was taken from them, although the coal which was put in the market in competition against them was brought a distance of two hundred miles further. An evil of that kind the amendment of the gentleman from Lycoming would not reach.

In regard to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson) as a substitute for the section, whilst in some particulars it is not as I would have it, because I do not know that in all respects it protects the corporations themselves to the extent I should like to see them protected, and because also it does not furnish that adequate protection to the shippers in the State of Pennsylvania which I would have. Yet in view of the great difficulty, in view of the various conflicting interests, in view of the exceeding embarrassment which all gentlemen have experienced who have attempted to furnish any proposition to meet the difficulties of the case, I am willing at this stage of the question to accept that amendment.

There is this fact to be remembered in the determination of this question: That the settlement of it as regards corporations bears no sort of analogy to the settlement of questions of trade and commerce between private individuals. It must be remembered that railroad corporations obtain their life and existence from the State, and the State has the right to affix to that corporate existence such terms and conditions as she sees proper to impose; whereas, so far as the rights of private individuals are concerned, they are left to exercise them as they may see proper, and as they may be legitimately affected by the laws of trade, and therefore there is no analogy in the two cases. Gentlemen are incorrect when they say that the same rule should be applied to the transporting companies of the State that is applied to the private individual who is engaged in trade or business. Corporations have not all the rights of individuals, nor individuals all the privileges of corporations. Therefore, when this constitutional provision requires that

there shall be certain enactments which may seem to be rigid and binding in their character, it is not for the professed friends of corporations to complain of there being an iron rule, because it is only under the effect and power of some rule of that kind that transporting companies are or should be permitted to transport passengers and freight, and otherwise perform their functions as corporations and as servants of the public.

Now, sir, I have not desired to detain the Convention unnecessarily, but I was desirous of calling the attention of the Convention to the amendment of the gentleman from Lycoming. I hope that amendment will be voted down, as I said before, because it does not meet the case either as the railroad companies would have it, on one hand, or as the people would have it, on the other. The amendment of the gentleman from Allegheny, whilst faulty in some particulars, and whilst not meeting the requirements of the case to that extent that all right and fair-minded men should desire, I am perfectly willing to accept, in view of the difficulties surmounting the question; and when the vote is taken I shall support it.

MR. CLARK. Mr. President: I understand the amendment of the gentleman from Lycoming (Mr. Armstrong) to be the question now under consideration; am I right in that?

THE PRESIDENT *pro tem*. That is the question now before the House.

MR. CLARK. Then I propose an amendment to that amendment.

THE PRESIDENT *pro tem*. The pending question is an amendment to an amendment, and the motion is not in order.

MR. CLARK. I will then suggest an amendment or modification which I think the mover of the amendment to the amendment will accept when it is stated.

The proposition of the gentleman from Lycoming (Mr. Armstrong) provides:

"That persons and property transported by any such company shall be delivered at *intermediate* stations within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station."

What are we to understand by an *intermediate* station? All stations between the termini of any railroad might be called intermediate. And I think that would be the reasonable interpretation of

the term intermediate in this amendment. If this is a fair construction, and I think it is, the amendment proposes that "persons and property transported by any such company shall be delivered at all intermediate stations, (that is stations situate between the termini of the road) within the State at charges not exceeding," &c., &c.

This would cover and prohibit any discriminations against all freight and passengers to be *delivered* at such intermediate stations; but what of freight and passengers *from* these intermediate stations to be transported to the termini of the road? All this class of persons and freight is unprovided for by this amendment. I therefore suggest as a modification of this amendment to strike out the word "*intermediate*" and insert the word "*any*." The amendment will then read:

"Persons and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction, to any more distant station."

MR. ARMSTRONG. I have listened with much interest to the suggestion of the gentleman from Indiana, (Mr. Clark,) and I believe that this criticism is well founded. I think it does enlarge the operation of the section within the intention wholly, and I will therefore accept his modification.

THE PRESIDENT *pro tem*. The amendment to the amendment will be so modified. The question is on the amendment to the amendment, as modified.

MR. COCHRAN. Mr. President: I have not spoken on this amendment and am very reluctant to say a word on it now, but I feel impelled to do so by a sense of duty.

The gentleman from Philadelphia, (Mr. Cuyler,) who discoursed so ably on this question to-day, commenced his address by a reference to the action of the Railroad Committee. He censured that committee for not having called before them certain gentlemen who, he supposed, would be able to give them the information which they did not possess, and he said they were inexperienced, however upright in their intentions, and they should have called for such assistance.

Now, sir, what did the gentleman's conclusion amount to on that subject? What benefit should we have derived if we had

done what he has suggested? Why, almost in the next succeeding sentence he went on to tell us that those gentlemen could have given us no information that would have helped us in this case; that the gentlemen to whom he referred had considered this subject, and had said that it was so difficult a question that they were not able to comprehend it in all its details themselves; and at last the conclusion was arrived at in the minds of those gentlemen, and in the mind of the learned gentleman from Philadelphia, that there was nothing that this Convention could do, or ought to do, or was competent to do, except simply to pass a single section allowing a general railroad law to be enacted by which every man or company or association of men might make railroads where they pleased. Now, sir, if it comes to that, whatever fault might have been imputed to the committee, if they were justly chargeable with such, we could have derived no benefit from such consultations as he has suggested here. I do not think that committee were called upon or required to enter into any such consultation. The question here was a question of principle, a question which involved the interests of the people of Pennsylvania, and which sprang out of the fact that the very gentleman whom he wanted us to call into council had imposed the discriminations of which we had complained, and it was not to be expected that those gentlemen would either admit that they had done anything wrong or that there was any remedy for that evil. If those gentlemen had desired to be heard before that committee as other gentlemen requested to be heard before other committees of this Convention, they would unquestionably have been heard, and heard with respect, the respect to which their position and their experience entitled them, but no such application was made, and the committee made no such application to them, and the reason and the futility of doing so are very apparent from the conclusion to which the gentleman from Philadelphia himself arrived in his speech.

It is very easy to say that a panacea for all these evils which we endure is to be found in a general railroad law. It is not so easy, though, when you come to ask an investment of millions of money for the purpose of raising that competition which the gentleman seems to consider the panacea for all these ills. The

corporations of this State, it must be remembered, are the creatures of the State, possessing special privileges from the State, of large aggregated wealth, with great advantages and established privileges; and now simply to say that you are to put the community at large to the necessity, in order to remedy an evil which they endure from these creatures of their own making, of seeking around to find capital for the purposes of investment, and for building up an opposition to another company, for instance, which may have one hundred millions of capital and one hundred millions of bonded debt, is to impose upon the people of this State a burden which certainly this Convention never ought to be called upon to impose, in order that they may be saved from unjust discrimination and unjust rates in this matter of the transportation of their goods.

Mr. President, there is no analogy between the growth of individual and corporate wealth, such as has been drawn here to-day. I have heard no man complain of the wealth which grows up in the hands of individuals. Happily under our institutions we have no laws of entail and primogeniture. As sure as a man dies, as was said by one of the judges of the Supreme Court in this State, in a well-known case, so surely his estates go into the orphans' court. I care not how rich any individual in the State becomes; on the contrary, I am always rejoiced to see industry and enterprise rewarded by the accumulation of that material wealth which is their proper and just reward; but, sir, the aggregation of wealth in incorporated companies is a very different and a very distinct thing. It grows out of special privileges conferred; it is subject to no such disposition at stated times; there is no death to your immortal corporation, and there being no such thing, there is no distribution of this wealth; it remains in the corporation, however it may vary in its distribution among individuals. The corporation is the entity, and the wealth abides there and the power which it confers remains with it, and there is a clear distinction and there is a just analogy between the cases.

Mr. President, I have said before and I repeat that the people of this Commonwealth do complain, and it is apparent from all that has been said here by every gentleman, except one gentleman from the city of Philadelphia that there do

exist these causes of complaint. There is no one gentleman in this Convention who has yet risen to say that there is no such cause of complaint, except the gentleman from Philadelphia, and I apprehend that with all his ability—and it is not disputed—the views of that gentleman must largely be referred to his peculiar associations and the relations in which he stands; and when I say this I say it with no disrespect, for every man's opinions and views are colored by the circumstances in which he lives. We are not apt to look with disfavor upon the things which we do ourselves or the means by which we undertake to accomplish our purpose.

Now, sir, is this Convention determined that it will do nothing in this regard for the relief of the people of this State? The objection to the amendment of the gentleman from Lycoming was struck at once and directly by the interrogation, as I understood it, of the gentleman from Franklin (Mr. Sharpe.) I understood it to be admitted by the gentleman from Lycoming that his amendment would not prevent such a discrimination against the people of this State, as that the labor, the manufacturing productions, the enterprise, the produce of every kind of other States, might not be brought through here at such rates as would discriminate against and even destroy the enterprise and the industry of our own people. It would not prevent the manufacturer of Chicago, as the illustration was, from bringing his goods to Philadelphia, past the very door of the manufacturer of Pittsburg, and putting them in this market at a lower rate for the expense of transportation than it would place the same articles for the manufacturer in Pittsburg in this market.

Now, sir, any amendment which has that practical effect never ought to receive the sanction of this body. What we ask is simple justice; what we ask is fairness of dealing in this matter as regards the citizens of this State. We do not say that we can come down here and lay a line of strict and accurate demarcation. That is not our idea at all. It is not practicable, I admit, to do that. At the best, you can only approximate it, and at the very best this section and the amendment of the gentleman from Allegheny are but an approximation to the right rule. But it is necessary in a matter of this kind that there should be some play given, that

there should be some room for the great transporting corporations of the Commonwealth to arrange their business within certain limits; and the practical limit here defined is that the citizen of the State shall not be put at a disadvantage in comparison with the citizens of other States, and the citizens within the State shall not be injuriously discriminated against as between themselves. That is the whole principle involved in this. It is justice, justice as nearly as you can attain, not exact in all that we should do if it lay in our power, as I apprehend, for the people of the State, but it is all that we can do. We can approach the mark no nearer than that.

Sir, I shall not undertake, and I should not, I suppose, be able to do so, to reply to all the arguments of the gentleman from Philadelphia; but I did want to bring distinctly before the members of this Convention these particular provisions of this section; and I do not think, however ably the argument may be put, as ably as any argument ever was put by any advocate for his clients in any court, that this Convention is willing to consent to the course of policy suggested by the gentleman from Philadelphia, and to surrender everything, without any check, to the corporations of the State, give no relief, whatever, to the people, and pay no attention to their call, because, with regard to this matter, the people have called upon this Convention to act. This report is not the mere spontaneous growth of the Committee on Railroads and Canals. They did not act merely upon their own inward consciousness in preparing something of this kind for the purpose of bringing it before the consideration of this Convention, to manifest that they had a miraculous understanding of all the workings of this great subject. They did not even, in the most particular of these propositions, deserve the credit of originality. As to some of the language, it is an exact copy of that which has been furnished to them by others. They accepted it, because they believed it was intelligible, and because it was as near an approximation as they could get to the exact mark of justice, and with that view they have presented it to this Convention, in the earnest hope that it will meet its approbation and be adopted by it.

Mr. HOWARD. I regret that we are compelled to submit a proposition of this

magnitude and importance to the people of this Commonwealth in so small a Convention. It is a little too small, I should think, for practical purposes, and I am afraid it is too small to act with safety for the people of this State. I have listened to the very extraordinary argument of the delegate from Philadelphia, (Mr. Cuyler,) and it certainly was very eloquent. It ought to have been eloquent because a portion of it was expressing his own particular gratitude to the gentleman to whom, I have no doubt, he is under very great obligations; and perhaps some of the rest of us would be equally grateful if placed in the same circumstances. But the butt-end of the argument, and all there was in it, was this: That if we dared to do justice to the people of Pennsylvania, then they would somehow or other be compelled to fall back upon the original rights conferred in their charter and in some way they would have to crush out our trade in order that they might still compete for the trade of other States. There may be something in that argument that looks as if it amounted to something, but it so happens that there is nothing in it at all. I hold in my hand the report of the Pennsylvania railroad company, sworn to by J. Edgar Thomson, in which he swears that the cost of the carriage of freight is so much per ton per mile, and that at their very lowest rates they make thirty-three per cent., and that is certainly enough.

MR. CUYLER. Will the gentleman pardon an interruption. That thirty-three per cent. has to be charged with all the interest on the investment of the company.

MR. HOWARD. I understand that, but still it is a pretty large profit. If any man engaged in any business manages his affairs with any sort of prudence, out of thirty-three per cent. he ought to meet his expenses and have a little over.

MR. CUYLER. That only realizes a net ten per cent. to the stockholders.

MR. HOWARD. I understand that, too; but I say that at this margin of profit on the lowest rate of freight carried by them they ought to realize and do realize a handsome dividend on every share of stock they have issued, and yet every time we come here and ask for justice we are met by the threat, "if you dare to do justice to the people, we will retaliate upon them by going back to our charter." It happens that so far as the main line is

concerned, they cannot do it. I have read here the act of Assembly that was passed when they got the tonnage tax repealed. There was then a new deal so far as their charges upon the main line are concerned, and they expressly agreed in that act of Assembly to what they call now one of the most obnoxious features of this section, namely: That they shall not charge for a shorter distance more than they do for a greater. That is expressly stipulated in that act of Assembly, and they signed it as a part of the new contract, and filed it in the office of the Secretary of the Commonwealth.

Here it is laid down in this sworn report of the president of the Pennsylvania railroad company that the actual cost of carrying a ton of freight is a fraction less than seven-eighths of a cent. Why, their average charge, with all this competition, is over a cent and one-third, and that is for through freight, and they charge more than that on their local freights, and they say that if we ask them for justice they will be compelled to retaliate upon the people of the Commonwealth. It is not true in point of fact. According to their own showing, they can make on their own rate thirty-three per cent. over and above the cost.

But they say that they must make their discriminations on account of the through passengers. I want to look at that. I have not had the report for 1872 but I have for 1871, and I find that in that year the Pennsylvania railroad carried passengers to the number of four million six hundred and ninety-nine thousand. How many outsiders, for whom such eloquent appeals are made, do you suppose were included in that number? It has been told us that the people of Pennsylvania are to be destroyed for the sake of this outside passenger trade. I have already said that the entire number of passengers carried over the Pennsylvania railroad company was nearly five millions, and out of this number about one hundred and eighty-six thousand were outsiders, not one outsider to twenty-six Pennsylvanians. And these outsiders are to have more favorable terms than the people of the State, and the oppressive discriminations under which we have labored are to be continued in order that these one hundred and eighty-six thousand outsiders may be carried at less rates! There is no necessity for this state of things. This railroad company can

honestly carry the people of this State and of other States for a great deal less money than was originally stipulated as the maximum in their charter. I maintain here that this question does not stand upon the charter as far as that road is concerned, and if it did, I hold that the charter can never be used by the road as an instrument of fraud to crush the industry of Pennsylvania, and it would be so used if they are to be permitted to still keep up the maximum charges fixed in the charter for Pennsylvania passengers and Pennsylvania freights and then to bring New Jersey, Ohio and New York passengers and freights into Pennsylvania at rates so low as to crush out the local industry of this State. Whenever they do that, I have no doubt the courts will step in and say: "This people of Pennsylvania gave you life and vitality and they gave you all the rights you have and you cannot use those rights to crush them." It would never be tolerated.

Then what remains of the gentleman's argument? There is no argument in it. There is no necessity for it. They can carry their freights and passengers at a reasonable price, and they can still make a fair profit and they can do justice to our people, and that is all we ask. We only ask that they shall not discriminate against the people of Pennsylvania. Who would have supposed that we should have been compelled to listen to an able, eloquent and ingenious speech, of very considerable length, to prove that that would ruin the Commonwealth of Pennsylvania, a proposition that if the railroad companies should not be allowed to discriminate against the industries of the people of this Commonwealth, the people of the State will be ruined! Why, Mr. President, the man that makes such an argument as that must have been prompted by some very peculiar arrangement. I myself cannot understand it. It is perfectly right that a man should be grateful; it is perfectly right that he should eulogize Mr. Scott and Mr. Thomson and set them up just as high as he pleases; but there are some people in the State who believe that while Mr. Thomson and Mr. Scott may have done much for Philadelphia, they have done injustice to other parts of the Commonwealth; that they have discriminated against them and stricken down their industries, and they know it. Why, sir, the people of Philadelphia to-day, if they would vote for this proposition,

would be largely benefited in bringing here the coal that makes the gas which lights their city, for they would get it at a far cheaper rate.

This Convention has already struck out of one of the sections of this article the very important clause that the officers of any railroad company shall not be engaged in mining or manufacturing articles to be transported on roads of which they are officers. Yet we all know that the gas coal that comes to Philadelphia is entirely in the hands of a monopoly. No man west of the mountains can engage in this mining business and compete with the gas coal monopoly, because the officers of the Pennsylvania railroad company have possession of that trade, and possession of the transportation. They can make their own special rates to suit themselves, and they furnish themselves with facilities and with their own cars which no one else can procure. Yet in the face of all these facts, with this industry absolutely prostrate and monopolized by these men, and in the hands of the "ring" men of the Pennsylvania railroad company, we are told that if we adopt the simple proposition here proposed to do justice to the great body of the people, it will be the ruin of the Commonwealth. It ought to be the ruin of some of these monopolies, at least so far as to bring them down to an equality with other men. That is all we ask, nothing more, nothing less, than that the railroad companies shall not discriminate against the people of this Commonwealth.

Mr. ARMSTRONG. I now modify my proposed amendment to the amendment by striking out all after the word "thereof," and inserting:

"Passengers and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station."

Mr. T. H. B. PATTERSON. I wish to call attention to the fact that this amendment to the amendment leaves out entirely all that which relates to drawbacks and special rates, and does not provide for excursion or commutation tickets at all.

Mr. ARMSTRONG. I was about to remark that the subject of drawbacks was covered by the section, and that part of it relating to commutation tickets might be added if any gentleman desired it.

Mr. CAMPBELL. I ask for the yeas and nays.

The yeas and nays were ordered, ten members rising to second the call.

Mr. HARRY WHITE. I want to know after the remark of the delegate from Lycoming what is the exact state of the amendment.

The PRESIDENT *pro tem*. The amendment to the amendment will be read again.

The CLERK. It is proposed to add these words:

"And no special rates or drawbacks shall, either directly or indirectly, be allowed, except excursion and commutation tickets."

Mr. HARRY WHITE. Does the gentleman from Lycoming adopt that as part of his amendment?

Mr. COCHRAN. I ask that the roll may be called to determine whether there is a quorum present.

Mr. EDWARDS. The yeas and nays will determine it.

Mr. BOYD. I move an adjournment.

Mr. ARMSTRONG. What I propose to add to my amendment is:

"But commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. COCHRAN. I do not know now the exact terms of the amendment.

The PRESIDENT *pro tem*. The Clerk, for information, will read the entire amendment of the delegate from Lycoming.

The CLERK. The amendment to the amendment is to strike out all after the word "thereof" and insert:

"Persons and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. COCHRAN. I understand there is nothing about drawbacks in it. I should like to appeal to the Convention to ad-

journ. The House is thin and it is not fair to take the question in its present condition.

Mr. CUYLER. I quite agree with the gentleman from York. I hope the Convention will adjourn, and adjourn until September.

The PRESIDENT *pro tem*. The yeas and nays have been ordered on the amendment.

Mr. T. H. B. PATTERSON. A call of the House was asked for before the yeas and nays were ordered. I insist on a call of the House.

The PRESIDENT *pro tem*. The yeas and nays will determine whether there is a quorum present or not. The Clerk will call the names of delegates.

The CLERK proceeded to call the roll on the amendment to the amendment.

Mr. MANTOR [when his name was called.] I am paired on this question with the gentleman from Dauphin, (Mr. Lamberton,) who was opposed to the section, and I in favor of it.

The CLERK resumed and concluded the call of the roll.

Mr. CUYLER [after having voted in the negative.] I desire to change my vote and to vote for the amendment, not because I agree with the amendment, but because I think it better than the section as originally written. Then I propose to vote against the section. Therefore I ask leave to change my vote.

Mr. T. H. B. PATTERSON. I object.

The PRESIDENT *pro tem*. Did the gentleman vote in mistake?

Mr. CUYLER. I cannot say that I did, but I would prefer to make that change.

The PRESIDENT *pro tem*. If the gentleman voted in mistake, he has the right to change his vote.

Mr. CUYLER. I cannot conscientiously say that I voted in mistake, but I think it would be wiser to vote for the amendment because I think it is better than the section.

Mr. DARLINGTON. If the gentleman voted under any misapprehension of the effect of his vote, he has the right to change.

Mr. BUCKALEW. I should like to inquire whether we have a rule prohibiting members from changing their votes. Under the general parliamentary law any member has an absolute right to change

his vote at any time before the result is announced. In the Legislature by special rule we have no change of vote, but I do not think that rule prevails here.

The *PRESIDENT pro tem.* I think the gentleman from Columbia is correct, and that the delegate has a right to change his vote.

Mr. COCHRAN. It certainly has been the practice hitherto in this body not to allow the change of a vote unless where a delegate voted under a misapprehension.

The *PRESIDENT pro tem.* It will not change the result, and I think the delegate may change his vote.

The CLERK again called the name of Mr. Cuyler.

Mr. HARRY WHITE. I rise to a question of order, because this may become an exceedingly important matter. ["No." "No."] I claim my privilege of raising the question of order.

The *PRESIDENT pro tem.* What is the question of order?

Mr. HARRY WHITE. My question of order is that the delegate has not a right to change his vote unless he states that he voted under a misapprehension of the question.

The *PRESIDENT pro tem.* Will the delegate turn to the rule wherein that is laid down?

Mr. LILLY. Rule thirty-six.

Mr. HARRY WHITE. I will read it:

"On the call of the yeas and nays, one of the secretaries shall read the names of the delegates after they have been called, and no delegate shall be permitted to change his vote, unless he at that time declares that he voted under a mistake of the question."

I raise the question of order.

Mr. BUCKALEW. Mr. President: My question is answered. I did not know that we had adopted the rule which prevails in the Legislature on this subject.

Mr. HARRY WHITE. It is the common parliamentary practice.

Mr. ARMSTRONG. Under this rule—

The *Chair* *pro tem.* The Chair decides that the delegate cannot change his vote.

Mr. ARMSTRONG. I would suggest to the Chair that it is after the names have been called. Until that time it is entirely within the discretion of members. The rules say: "One of the secretaries shall

read the names of the delegates after they have been called, and no delegates shall be permitted," &c.

Mr. HARRY WHITE. I understand the question to have been decided.

Mr. CUYLER. I will not make any change. I learn that there are other gentlemen whose votes were somewhat affected by mine, and it would perhaps be hardly right that I should make the change. I therefore withdraw my request.

The result was then announced as follows:

YEAS.

Messrs. Ainey, Armstrong, Barclay, Bigler, Black, Chas. A., Boyd, Brodhead, Brown, Buckalew, Carter, Clark, Corbett, Cronmiller, Curry, Darlington, Edwards, Elliott, Fell, Fulton, Hall, Lilly, MacConnell, McCulloch, Mann, Niles, Purman, Purviance, Samuel A., Reed, Andrew, Simpson, Struthers, Walker and White, J. W. F.—32.

NAYS.

Messrs. Achenbach, Alricks, Baer, Bailly, (Perry,) Bailey, (Huntingdon,) Bidle, Bullitt, Calvin, Campbell, Carey, Chureh, Cochran, Curtin, Cuyler, De France, Ellis, Ewing, Finney, Funck, Gilpin, Guthrie, Horton, Howard, Kaine, Landis, Lawrence, M'Murray, Newlin, Patterson, D. W., Patterson, T. H. B., Patton, Reynolds, Rooke, Sharpe, Smith, H. G., Smith, Wm. H., Temple, Turrell, White, David N., and White, Harry,—40.

So the amendment to the amendment was rejected.

ABSENT—Messrs. Addicks, Andrews, Baker, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Broomall, Cassidy, Collins, Corson, Craig, Dallas, Davis, Dodd, Dunning, Gibson, Green, Hanna, Harvey, Hay, Hazzard, Hemphill, Heverin, Hunsicker, Knight, Lamberton, Lear, Littleton, Long, MacVeagh, McCamant, McClean, Mantor, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Ross, Runk, Russell, Smith, Henry W., Stanton, Stewart, Van Reed, Wetherill, J. M., Wetherill, John Price, Wherry, Woodward, Worrell, Wright and Meredith, *President*—61.

Mr. COCHRAN. I move that the Convention adjourn.

Mr. CUYLER. Having voted with the majority, I now move to reconsider the vote on the amendment just voted on.

Mr. TEMPLE. I second the motion.

Mr. CAMPBELL. I call for the yeas and nays.

Mr. HARRY WHITE. I submit that a motion to adjourn was made.

Mr. COCHRAN. I moved that the Convention adjourn.

The motion was agreed to; and (at eleven o'clock and fifty-eight minutes, A. M.) the Convention adjourned until Monday next, at ten o'clock A. M.

ONE HUNDRED AND FORTIETH DAY.

MONDAY, July 14, 1873.

The Convention met at ten o'clock A. M., Hon. John H. Walker, President *pro tem.*, in the chair.

Prayer by Rev. J. W. Curry.

The Journal of the proceedings of Saturday last was read and approved.

LEAVES OF ABSENCE.

Mr. S. A. PURVIANCE asked and obtained leave of absence for Mr. Darlington for to-day.

Mr. CLARK asked and obtained leave of absence for Mr. Metzger for to-day.

PROPOSED RECESS.

Mr. D. N. WHITE. I offer the following resolution, and ask that it be laid on the table:

Resolved, That when all the articles adopted in committee of the whole shall have passed second reading the Convention shall adjourn to meet again on the 15th of September, at ten o'clock A. M.

Resolved, That articles passed on second reading be arranged in their proper order by the Committee on Revision and printed in pamphlet form, leaded pica type, with a broad margin, on sized paper, and three copies sent to each member as soon as possible after the adjournment.

The PRESIDENT *pro tem.* The resolution will lie on the table.

EXECUTIVE COMMITTEE.

Mr. NEWLIN. I call up a resolution which was offered by me on the 28th of March, and which is now on second reading.

The PRESIDENT *pro tem.* The resolution will be read.

The CLERK read as follows:

Resolved, That rule twenty-nine be amended by adding a standing committee of fourteen, to be called the Executive Committee.

The PRESIDENT *pro tem.* The question is on proceeding to the consideration of the resolution.

Mr. NEWLIN. That has laid over one day under the rules, and I believe is now on second reading.

The PRESIDENT *pro tem.* Still it must first be taken up. It is for the House to say whether it will proceed to consider it or not. The question is, will the Convention agree to proceed to the consideration of the resolution?

The motion was not agreed to.

INVITATION TO ALTOONA.

Mr. CURRY. I have received a communication which I desire to have read.

The PRESIDENT *pro tem.* The communication will be received and read.

The CLERK read as follows:

CITY OF ALTOONA,
Office of President City Council. }
July 11, 1873. }

Hon. J. W. CURRY, *Member of the Constitutional Convention, Philadelphia:*

DEAR SIR:—At a regular meeting of the common council of this city, held July seventh, the following resolution, offered by Mr. Samuel Lloyd, was unanimously adopted, viz:

Resolved, That the Hon. J. W. Curry, our member of the Constitutional Convention, be instructed to request the members of that Convention to visit our mountain city previous to their final adjournment.

Certified to be a correct copy of the resolution.

Attest:

T. B. PATTON,
Secretary.

Mr. CURRY. I ask that the communication be laid on the table.

Mr. BOYD. I move that the invitation be accepted.

Mr. CURRY. Let it lie on the table.

Mr. BRODHEAD. I would like to ask the delegate from Blair what they wish us to come for, whether to hold our sessions there or only on a friendly visit?

Mr. BOYD. If it is on a visit, I should like to go.

Mr. CURRY. The city council of Altoona extend an invitation to this body to meet and hold its sessions there. They do this in good faith. I am sure I can say that they will be willing to do anything in their power for the comfort and convenience of the members of the Conven-

tion, in case they accept the invitation contained in the communication which has been read. So far as room is concerned, I think we could furnish a very comfortable hall there, and, so far as a place of boarding is concerned, I presume a majority of the Convention could make it convenient to board at the Cresson house, at Cresson Springs, which is only about fourteen miles away.

Mr. BOYD. Will the gentleman allow me to ask him a question?

Mr. CURRY. Yes, sir.

Mr. BOYD. Do you mean that this is an invitation to go there and spend a day, or to go there and deliberate and finish our work? Which is it?

Mr. CURRY. I will answer the gentleman. It will be for the Convention to decide whether they shall remain one day, or stay and complete their work at the city of Altoona.

The PRESIDENT *pro tem*. It is moved that the communication be laid on the table, and that the thanks of the Convention be returned to the city council of Altoona for their invitation.

The motion was agreed to.

PRINTING ACCOUNTS.

Mr. HAY. I desire to present a report from the Committee on Accounts.

The PRESIDENT *pro tem*. The report will be read.

The CLERK proceeded to read the report.

Mr. HAY. I did not propose to press the present consideration of the report, but to ask that it be laid on the table and printed, and if that meets the approbation of the Convention, I will move to dispense with the further reading of the report and that the Committee on Accounts be authorized to have two hundred and fifty copies printed for the use of the Convention.

Mr. BUCKALEW. I object. I want to hear it read first.

Mr. D. N. WHITE. I should like to hear the report read also.

The CLERK resumed and concluded the reading of the report, which is as follows:

The Committee on Accounts and Expenditures of the Convention respectfully reports:

That the Convention, in pursuance of an opinion that further warrants for payments for its printing should, under the provisions of the general appropriation act of 1873, be drawn by the Auditor Gen-

eral, on the fifteenth day of May, 1873, adopted the following resolution, viz.: *Resolved*, That no warrants be drawn for payments to the Printer of the Convention, but that the Committee on Accounts shall continue to ascertain, and from time to time report to this Convention what sums may be due to the Printer, and copies of such reports, when approved by the Convention, shall be forthwith sent to the Auditor General by the Clerk." Whereupon the committee addressed a communication to the Printer, directing his attention to the resolution, and requested him to "present to the committee a complete statement, in detail, of all the printing and binding done by him under his contract with the Convention, and of books furnished, and of all other claims of any kind which he might have against the Convention up to the fifteenth day of May (then) instant, and to state in the account not only the total sum claimed by him up to that date, but also the particular prices charged in every case." An account up to the fifteenth day of May was furnished soon after a repetition of this request had been made. This account when first presented was not accompanied by any vouchers of any kind, and some have not yet been supplied. These facts serve to explain the delay in first reporting upon this subject.

In the examination of this account, the committee has been governed by the same rules and principles which control the settlement of private accounts; and while endeavoring to be accurate and careful, has also endeavored to be strictly just to the accountant. Wherever the Convention has made any order in the matter it has been rigidly observed; and the contract with the Printer, found on page 228 of the Journal, has been kept constantly in view, and its terms undeviatingly followed.

That contract provided, *inter alia*, as follows: "Now I, Benjamin Singlerly, the State Printer aforesaid, do by these presents covenant and agree to * * do all the printing and binding of the said Convention, and * * that I will execute the said printing for the Debates and Journal, and such other printing as may be ordered, in such form and in such type, and to furnish and bind such number of copies as may be ordered, and that I will execute such orders in the premises as may be given me by the Convention, or the Committee on Printing and Binding thereof; and that all the said printing

and binding shall be done and executed on the same terms and in the same manner as now provided by my existing contract with the State of Pennsylvania."

This contract with the State is to "do all the State printing and binding in the manner and in all respects subject to the provisions of the act of 9th April, A. D. 1856, and the supplements thereto, approved February 25, A. D. 1862, and March 27, 1871, for the period of three years from the first day of July, (1871,) at the rate of forty-one and one-fourth ($41\frac{1}{4}$) per centum below the rates specified in said acts."

The act of March 27, 1871, entitled "A further supplement to the act of 9th of April, A. D., 1856, regulating the public printing and binding," provides that "the standard rates of compensation or price for the public printing and binding, and for all objects of charge against the Commonwealth by the public Printer shall be according to the schedule appended to this act."

The rates mentioned in this schedule, so far as applicable to the account before the committee, are as follows:

"*Printing*.—For all composition, in whatever type, except on legislative bills, per thousand ems, as follows:

"Plain composition, sixty cents.

"Rule and figure work composition, one dollar.

"For press-work, for each token of two-hundred and fifty impressions, or less, fifty cents.

"For each page of legislative bills in pica type, including composition, press-work, folding and delivery, one dollar.

"Tabular work shall be executed in brier or smaller type, without additional charge.

"No composition, except of bills, shall be leaded or scabbarded, without the direction of the superintendent, nor shall any composition, upon any pretence whatever, be fixed at other rates than those herein prescribed.

"*Folding, et cetera*.—For folding, gathering, stitching and collating, and delivering, per one hundred sheets of any size, twenty cents.

"*Binding*.—For half-binding, leather back, corner tips, paper sides and labels, per volume, fifty cents. For binding all books or documents in muslin covers, whether plain, gilded or embossed, with lettering on side or back, or both, per volume, twenty cents.

"*Miscellaneous*.—Per hundred sheets, for cutting "and dry pressing, two cents."

The Committee has adopted, in making this settlement, the invariable rule that, wherever applicable, the prices to be paid the Printer, were those mentioned in the said schedule, less the discount of forty-one and one-fourth per centum from those prices, at which the public printing and binding was allotted to Benjamin Singlerly; and has therefore refused to allow any charge made for work coming within the enumeration of said schedule which was in excess of the prices therein prescribed, less the discount. The Committee understands its functions in this matter to be simply to audit according to law, and not to decide as to the sufficiency of the prices fixed. Wherever the prices for work done were not fixed by law, the Committee has allowed what, in its opinion, was a fair price therefor. There being very little of what may be fairly called *extra work*, not provided for in the schedule, done for the Convention, it may be that the Printer, under his contract with the Convention and the State, has a hard bargain, and that he would not be fully and fairly remunerated by strict adherence to the terms of his contract; but the Committee, while expressing no opinion upon this subject, has had in the audit of this account to look only to the law existing for its guidance, and to report accordingly, leaving it to the Convention itself to take such other or further action in the matter as may be deemed necessary and proper.

For purposes of convenience and to show in the clearest and readiest manner the differences between the claims of the Printer and the allowances of the committee, there has been prepared, (and is hereby submitted, marked "A,") a statement, on the one side of which is a substantial transcript of the Printer's account, and on the other side, in corresponding columns, the same items as allowed, disallowed or suspended, by the committee.

The Printer's account to May 15th, as rendered, is for a total sum of \$24,970 36, of which he claims that only \$7,599 43 is subject to a discount of $41\frac{1}{4}$ per cent., and that \$17,371 23 is not subject to any deduction; leaving the bill \$21,835 90.

The committee in the appended statement have restated this account.

1. Allowing, as charged, the sum of..... \$3,179 75

2. Disallowing entirely, for reasons given in the statement, items amounting to the sum of.....	1,668 08
3. Omitting from present settlement for reasons given in the statement.....	2,060 45
4. Reducing, in different proportions, sundry charges which amount, in the account as rendered, to	18,062 08
	<hr/> 24,970 36

The items omitted from the present settlement will be further examined, and included in a subsequent report.

One of the chief results of the examination of this account has been to place the bulk of the items, the charges for which are claimed as not subject to any discount under the law, in the column of items which in the opinion of the committee are legally subject to the discount of forty-one and a quarter per centum from the rates fixed in the Act of March 27, 1871. The greatest differences made have been caused by this change, by the reduction of charges made for work included in the schedule in excess of the prices therein mentioned, by the variations in the calculation of the quantity of matter printed between the Printer and the committee, and by the reduction of sundry charges for extra work not included in the schedule.

For printing wrappers for newspapers, members of the Legislature and heads of departments, the sum of \$974 26 is charged as for regular composition and press work. The charge should have been made as for job work, and it is believed that the sum allowed by the committee, \$200 00, is amply sufficient to compensate the Printer, and that the same work could be done in the most responsible printing offices for that sum. For folding and mailing the Debates sent in these wrappers, the sum of \$591 00 is charged. This is nearly six dollars per day for work which would be fully paid for by one-third of that sum, and \$200 00 has accordingly been allowed. For one thousand one hundred files for Debates, Journal, suggestions and reports on desks of members there is charged \$275 00, or \$25 00 per hundred. These articles, it is believed, could be supplied at \$15 00 per hundred, and the charge has been

accordingly reduced to \$165 00. For marbling the edges and lettering the backs of the volumes of the Debates, the additional charge of ten cents per volume is made. The committee has allowed five cents per volume, which is a very full price for marbling edges, but has refused to allow any additional sum for the label on the back, for the reason that the cost of the label is included in the price for binding—fifty cents per volume—as will appear by reference to the schedule. The Printer claims that the label mentioned in the description of the style of binding for which fifty cents per volume is allowed is not a gilt but a printed paper label. The committee do not concur in his opinion, but believes that the label contemplated is such a label as would suitably and properly be placed on a volume bound in the manner described in said schedule. Supposing that there would be seven volumes of Debates, of four thousand five hundred copies to each volume, there would be altogether thirty-one thousand five hundred volumes of Debates, and one thousand five hundred volumes of the Journal, the difference upon which, on account of this charge, at five cents per volume, would be \$1,650.

Exclusive of the items omitted from the present settlement, together amounting to the sum of \$2,060 45, there is due to the printer, up to the fifteenth day of May, 1873, the following amount not subject to any deduction.....\$1,196 18
And the sum of.....\$13,858 87
Subject to a discount

of 41¼ per cent..... 5,716 78 8,142 09

Total sum due.....\$9,338 27

The sum of five thousand dollars has already been paid the Printer on account.

The following resolution is reported for the action of the Convention :

Resolved, That there is due to Benjamin Singerly, Printer for the Convention, in full of all claims to the fifteenth day of May, 1873, (excepting items in the account above mentioned yet to be fully audited, together amounting to the sum of \$2,060 45,) the sum of \$9,338 27, on account of which has been heretofore paid the sum of \$5,000 00; and that a copy of this report and the action of the Convention thereon, be forthwith transmitted by the Chief Clerk to the Auditor General of the Commonwealth.

DEBATES OF THE

[A.] STATEMENT showing the differences between the claims of Benjamin
and the allowances of the Committee on

CLAIMS OF BENJAMIN SINGERLY.

	Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/2 per ct.	No. 4. No discount
Debates, Vol. 1,	250	Standing committees.....		\$3 64	
		Paper for same.....			\$3 85
	250	Resolutions, offered by Harry White.....		4 06	
		Paper for same.....			
	500	Yeas and nays.....		3 00	
		Paper for same.....			5 88
	200	Yeas and nays.....		2 50	
		Paper for same.....			2 52
	5,266	Copies.			
	57	Forms, four having been cancelled by order of committee on printing			
	3,129,984	Ems, minion, at seventy-five cents per 1,000 ems.....			2,347 48
	219,648	Ems, cancelled forms, at seventy-five cents per 1,000 ems.....			164 73
	1,342	Tokens, at forty cents per token.....			533 80
		Folding at twenty cts. per 100 sheets.....		645 60	
Debates, Vol. 2,		Dry pressing, at two cents per 100 sheets.....		64 65	
	4,500	Copies, binding, at fifty cents per volume.....		2,250 00	
	450	Copies, marbling edges and extra lettering, at ten cents per volume.....			45 00
		Indexing Vol. 1.....			200 00
	5,266	Copies.			
	53	Forms.			
	2,910,336	Ems, Minion, at seventy-five cents per 1,000 ems.....			2,182 75
	54,912	Ems, cancelled form, at.....	\$0 75		41 18
	1,188	Tokens, at.....	40		475 20
		Folding, at.....	20	572 40	
Debates, Vol. 3,		Dry pressing, at.....	2	57 24	
		Indexing, Vol. 2.....			200 00
	5,266	Copies.			
	58	Forms.			
	3,184,896	Ems, Minion, at.....	75		2,388 67
	1,276	Tokens, at.....	40		510 40
*Debates, Vol. 4,		Folding.....	20	614 80	
		Dry pressing.....	2	61 48	
	5,266	Copies.			
	22	Forms.			
May 15, 1873.....	1,208,064	Ems, minion, at.....	75		906 04
	484	Tokens, at.....	40		193 60
		Folding, at.....		233 20	
		Dry pressing.....		23 32	

* These items in Vol. 4 are allowed on account of the

Singerly, printer for the Convention, in his first account, (May 15, 1873,) Accounts and Expenditures of the Convention.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/2 per ct.....	No. 4. No discount of.....
.....	.....	.....	\$3 64	.....
.....	.....	.....	4 06	\$3 85
.....	.....	.....	3 00	1 21
.....	.....	.....	2 50	5 88
.....	.....	.....	.....	2 52
5, 254	Copies.	.....	.....	.....
57	Forms.	.....	.....	.....
2, 862, 860	Ems, minion, at sixty cents per 1,000 ems.....	.....	1, 717 71	.....
216, 832	Ems, minion, at sixty cents per 1,000 ems. ....	.....	130 10	.....
1, 254	Tokens, at fifty cents per token.....	.....	627 00	.....
.....	Folding at twenty cents per 100 sheets.....	.....	604 20	.....
.....	Dry pressing, at two cents per 100 sheets.....	.....	60 42	.....
4, 500	Copies, binding, at fifty cents per volume.....	.....	2, 250 00	.....
450	Copies, marbling, (no extra lettering,) at five cts. per volume.....	.....	.....	22 50
.....	Indexing Vol. 1, price fixed by committee on printing and binding.....	.....	.....	200 00
5, 254	Copies.	.....	.....	.....
52	Forms.	.....	.....	.....
2, 815, 428	Ems, at sixty cents per 1,000 ems.....	.....	1, 689 25	.....
1, 144	Tokens, at fifty cents.....	.....	572 00	.....
.....	Folding, at twenty cents.....	.....	551 20	.....
.....	Dry pressing, at two cents.....	.....	55 12	.....
.....	Indexing Vol. 2.....	.....	.....	200 00
5, 254	Copies.	.....	.....	.....
52	Forms.	.....	.....	.....
2, 757, 832	Ems, at sixty cents.....	.....	1, 654 70	.....
1, 144	Tokens, at fifty cents.....	.....	572 00	.....
.....	Folding, at twenty cents.....	.....	551 20	.....
.....	Dry pressing, at two cents.....	.....	55 12	.....
5, 254	Copies.	.....	.....	.....
1, 208, 064	Ems, at sixty cents.....	.....	724 84	.....
484	Tokens, at fifty cents.....	.....	242 00	.....
.....	Folding.....	.....	233 20	.....
.....	Dry pressing.....	.....	23 32	.....

volume, and not particularly to the 15th day of May.

DEBATES OF THE

STATEMENT—Continued.

CLAIMS OF BENJAMIN SINGERLY.

	Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/4 per ct.....	No. 4. No discount off.....
Journal.....	1,500	Copies.			
	92	Forms.			
	4,121,600	Ems, brevier, at.....	\$0 75		\$3,091 20
	552	Tokens, at.....	40		220 80
		Folding.....		\$276 00	
		Dry pressing.....		27 60	
Suggest'ns and Amendments...	200	Copies.			
	35	Forms.			
	1,050,786	Ems, long primer, at.....	60	630 47	
	21,054	Ems, long primer figurework.....	1 00	21 05	
	35	Tokens, at.....	50	17 50	
		Folding.....		14 00	
		Dry pressing.....		1 40	
Wrappers for newspapers.	436				
	834,604	Ems, long primer, plain, at.....	60	500 76	
	436	Tokens, at.....	50	218 00	
Wrappers for Legislature & Heads of Departments.	155				
	296,670	Ems, long primer, plain, at.....	60	178 00	
	155	Tokens, at.....	50	77 50	
		Folding, packing and mailing 591 copies Debates for 100 days.....			591 00
Populat'n maps	500	Copies.....	12 1/2		62 50
Small's Hd Bk,	140	Copies, at.....	1 25		175 00
	500	Yeas and nays.....		3 00	
		Paper for same.....			1 68
	1,000	Yeas and nays.....		3 98	
		Paper for same.....			3 36
Man'l of rules...	500	Copies.			
	3	Sheets.			
	67,200	Ems, minion, plain, at.....	60	40 32	
	6	Tokens, at.....	50	3 00	
		Folding.....		3 00	
		Dry pressing.....		30	
	500	Copies binding, at.....	20	100 00	
	500	Yeas and nays.....		3 00	
		Paper for same.....			1 68
	3	Forms delayed three days, sixty hours, on account of delay in returning proof.....			417 00
	1	Form delayed three hours.....			6 96
	3	Forms debates cancelled, signatures 41, 42, 43.....			
	176,640	Ems.....			162 48
	66	Tokens.....			33 00
	3	Forms, forty-eight hours waiting for proof.....			334 08
		Correcting members' first proof, 20 hours.....			46 40
		Correcting members' second proof, 15 hours.....			34 80
		Correcting members' first proof, 5 hours.....			11 60

CONSTITUTIONAL CONVENTION.

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STATEMENT—Continued.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 4 1/2 per ct....	No. 4. No discount of.....
1,500 Copies.				
1,435,200 Ems, brevier, at.....		\$0 60	861 12	
260 Tokens, at.....		50	180 00	
Folding.....			117 20	
Dry pressing.....			11 72	
200 Copies.				
26 Forms.				
350,262 Ems, long primer, at.....		60	210 16	
21,054 Ems, long primer, at.....		1 00	21 05	
26 Tokens, at.....		50	13 00	
Folding.....			10 40	
Dry pressing.....			1 04	
436 Wrappers.....				\$200 00
145 Wrappers.....				
500 Copies.....				200 00
140 Copies, at.....		90		62 50
			3 00	126 00
				1 68
			3 98	3 36
500 Copies.				
3 Sheets.				
67,300 Ems, at.....		60	40 32	
6 Tokens, at.....		50	3 00	
Folding.....			3 00	
Dry pressing.....			30	
500 Copies binding, at.....		20	100 00	.
500 Yeas and nays.....			3 00	
Paper for same.....				1 68
	[This delay in waiting for proof, so far as made known to your committee, was not by authority of the Convention, or any of its committees, and was in direct contravention of the positive resolution of the Convention, that its Debates should be furnished the day after their delivery.]			
	[There was nothing before the committee to show that these forms were cancelled for the fault, or by the order, of any other person than the printer himself.]			
	[This is an expense for which the Convention cannot be justly held responsible; and can only be regarded as a matter of private arrangement and agreement between the printer and such delegates as he may have accommodated by this extra care.]			

DEBATES OF THE

STATEMENT—Continued.

CLAIMS OF BENJAMIN SINGERLY.

	Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 4½ per cent.....	No. 4. No discount of.....
		Correcting members' second proof, 5 hours.....			\$11 60
		Correcting members' second proof, 5 hours.....			11 60
		Correcting members' second proof, 5 hours.....			11 60
		Correcting members' third proof, 10 hours.....			23 20
		Correcting members' third proof, 2 hours.....			4 64
		Correcting members' fourth proof, 2 hours.....			4 64
		Cover paper for Hopkins Memorial purchased prior to the order for print'g, it being countermanded(?)			13 75
		Services of an employee at Convention, preparing and laying printed matter upon members desks.....			216 00
	1, 100	Files for Debates, Journal and articles and suggestions.....	\$0 25		275 00
	100 qrs...	Lithographed letter heads.....		\$10 00	
	80 qrs.....	do..... note heads.....		20 00	
	60 qrs.....	do..... letter heads.....		24 00	
	200 qrs.....	do..... note heads.....		50 00	
	80 qrs.....	do..... letter heads.....		32 00	
	60 qrs.....	do..... note heads.....		15 00	
	80 qrs.....	do..... letter heads.....		32 00	
	660 qrs...				
	2, 000	Envelopes, No. 6.....			9 30
		Lithographing same.....		5 00	
	1, 000	Official envelopes, No. 10.....			10 25
		Lithographing same.....		2 50	
	3, 000	Official envelopes, No. 6.....			13 95
		Lithographing same.....		7 50	
	3, 000	Envelopes.....			13 95
		Lithographing same.....		7 50	
	9, 000				
Majority and minority reports of committees.	200 qrs...	Bill paper.....			70 00
	200 qrs...	Journal paper.....			70 00
	1, 000	Copies.			
	5	Forms.			
	241, 920	Ems, brevier, at.....	60	145 15	
	20	Tokens, at.....	50	10 00	
		Folding.....		10 00	
		Dry-pressing.....		1 00	
Reports of committees in bill form.	300	Copies on each bill, 450 pages.....		450 00	
	1, 000	do..... do..... 16..... do.....		16 00	
	12	Tokens.....		6 00	
	433	Copies on each bill, 62 pages.....		62 00	
	16	Tokens.....		8 00	
	81	Reams double cap paper for same.			
	28 lbs.				680 40

CONSTITUTIONAL CONVENTION.

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STATEMENT—Continued.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 41 per cent....	No. 4. No discount of.....
.....	[So far as appears, there is no justification for this charge, and the printing and binding of the Memorial was done by other persons.]			
.....	[There does not appear to be any ground for this charge, and the Convention has its own employees and officers to perform such duties.]			
1, 100	Files, at.....	\$0 15		\$165 00
.....	[These letter and note heads and envelopes, it appears from the statement of the Chief Clerk and the printer, were not ordered by any officer of the Convention, but were voluntarily supplied, in the hope that they would be eventually paid for. In the opinion of the committee, this is not a "proper expense" of the Convention, so far as the supply to the members is concerned, the State having previously paid to each member the sum of fifty dollars as an allowance for stationery. The fact that this claim would not be reported upon favorably by this committee was made known to the printer, upon his inquiry, at the time they were first seen here, and the reasons therefor fully explained to him.]			
.....	[Passed over for want of sufficient vouchers or evidence that the quantity charged for was actually furnished.]			
.....	[Passed over for want of sufficient vouchers, information and means for making estimates of correctness of charge.]			
.....	[Passed over for same reasons as last above mentioned.]			
.....	[Passed over for same reasons as last above mentioned.]			

DEBATES OF THE
STATEMENT—*Continued.*

CLAIMS OF BENJAMIN SINGERLY.

Column, No. 1.....		No. 2.....	No. 3. Subject to discount of 41½ per cent.....	No. 4. No discount off.....
	Postage on Debates to 591 newspapers and heads of departments, three quarters Discount of 41½ per cent. off..... Claim'd to be not subject to deduction \$7,599 43 3,134 76 4,464 67 17,371 23 21,835 90	\$531 90 17,371 23

CONSTITUTIONAL CONVENTION.

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STATEMENT—Continued.

ALLOWED BY THE COMMITTEE.

No. 1.....		No. 2.....	No. 3. Subject to discount of 4½ per ct....	No. 4. No discount off.....
	[Passed over for same reasons as last above mentioned.]			
	Discount of 4½ per cent. off.....		\$13,858 87 5,716 78	\$1,196 18
	Not subject to deduction.....		8,142 09 1,196 18	
			9,338 27	
	Not yet finally audited of this account, marked above as "passed over" for the present.....		\$2,060 45	

Mr. HAY. I move that the report be laid on the table, and that the Committee on Accounts and Expenditures be authorized to have two hundred and fifty copies of the report printed for the use of the Convention, that members may examine it.

The motion was agreed to.

RAILROADS AND CANALS.

Mr. D. W. PATTERSON. I move that we proceed to the consideration of the article on railroads and canals.

The motion was agreed to, and the Convention resumed the consideration on second reading of the article on railroads and canals.

The PRESIDENT *pro tem.* When the Convention adjourned on Saturday, the seventh section of the article as printed was before the Convention.

Mr. COCHRAN. According to my recollection, when the Convention adjourned on Saturday, the motion pending was a motion to reconsider the vote by which the amendment of the gentleman from Lycoming (Mr. Armstrong) had been rejected.

The PRESIDENT *pro tem.* It was. The pending question is on the motion of the gentleman from Philadelphia (Mr. Cuyler) to reconsider the vote by which the amendment offered by the gentleman from Lycoming (Mr. Armstrong) to the amendment of the gentleman from Allegheny (Mr. T. H. B. Patterson) was rejected.

The reconsideration was agreed to, there being, on a division, ayes, thirty-seven; noes, thirty-one.

The PRESIDENT *pro tem.* The amendment of the gentleman from Lycoming to the amendment is before the Convention.

Mr. KNIGHT. Be kind enough to have it read.

The PRESIDENT *pro tem.* The Clerk will read the amendment to the amendment.

The CLERK. The amendment to the amendment was to insert, after the word "thereof," in the amendment, these words:

"Persons and property transported by any such company shall be delivered at any station within the State, at charges not exceeding the charges for transportation of persons and property of the same class, in the same direction, to any more distant station; but commutation tickets to passengers may be issued as heretofore,

and reasonable extra rates, within the limits of the charter, may be made in charges for any distance not exceeding fifty miles."

Mr. WHERRY. I ask that the section, as it will be amended if this amendment shall be adopted, be read.

The PRESIDENT *pro tem.* The amendment as it would read if amended as proposed by the gentleman from Lycoming (Mr. Armstrong) will be read.

The CLERK read as follows:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof. Persons and property transported by any such company shall be delivered at any station within the State at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but commutation tickets to passengers may be issued as heretofore, and reasonable extra rates within the limits of the charter may be made in charges for any distance not exceeding fifty miles."

Mr. ARMSTRONG. I do not desire to reopen the debate upon the question, but there are some members who were not here when this question was taken before, and I merely call their attention to the fact that the effort has been in this proposed amendment to totally prohibit that which has been the great standing abuse against which the people of the Commonwealth have complained, namely, that freights are carried past stations on the line of a railroad and delivered at more distant points for less money than the company are willing to deliver them at points past which they must necessarily carry them. At the same time it is so guarded so as not to interfere with that sound discretion of the companies which is necessary to the safe transaction of business to enable them to compete successfully with other railroad lines. I believe that with this amendment everything is guarded sufficiently to leave a sound discretion in the company and yet to protect the people against the evils which I have indicated.

Mr. COCHRAN. I wish to call the attention of the Convention simply—I do not propose to go into a discussion of this question—to the fact there is nothing in this amendment which refers to special rates

or drawbacks, and also that it will not meet, to a very great extent, the object which the gentleman from Lycoming, its author, proposes, as was stated here in the discussion on Saturday. I hope therefore that the amendment to the amendment will not be adopted, and on its adoption I call for the yeas and nays.

Mr. CAMPBELL. I second the call.

Mr. ARMSTRONG. One word of explanation, as I do not propose to re-open the discussion upon this point—

Mr. D. N. WHITE. I rise to a point of order. The gentleman has already spoken upon this subject.

Mr. ARMSTRONG. I do not intend to to speak upon the question; I merely rise to an explanation.

Mr. D. N. WHITE. I insist upon my point of order.

The PRESIDENT *pro tem.* The Chair must decide the point of order well taken.

Mr. BUCKALEW. A single word, Mr. President.

The PRESIDENT *pro tem.* The gentleman from Columbia will give way for a moment. The yeas and nays have been demanded. Do ten gentlemen rise to second the call?

More than ten gentlemen rose.

The PRESIDENT *pro tem.* The call for the yeas and nays is sustained. The gentleman from Columbia will proceed.

Mr. BUCKALEW. But a single word. I shall support this amendment because it contains some matters of which I approve and which are not in the section. I desire to call the attention of the Convention to the fact that after this amendment is agreed to, if the Convention sees fit to adopt it, it will be possible to amend it further by adding anything else; so that the clause which the gentleman from York refers to, and which he desires to have placed in the section, he can still move after this amendment is acted upon. I mention this in order that his objection may not militate against the adoption of the amendment on the present vote.

Mr. CAMPBELL. Was there not an amendment previously offered, and is not this an amendment to the amendment?

The PRESIDENT *pro tem.* The gentleman from the city is correct. There was an amendment offered by the gentleman from Allegheny (Mr. T. H. B. Patterson) pending, and this amendment is an amendment to that amendment.

Mr. CAMPBELL. Then I ask that that amendment be stated.

The CLERK. The original amendment was to strike out all after the word "section" and insert:

"No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof, nor make a higher charge for a shorter distance than for a longer distance; and no special rates or drawbacks shall, either directly or indirectly, be allowed excepting excursion and commutation tickets."

Mr. T. H. B. PATTERSON. I desire to call the attention of the delegates to the fact that the only difference between my amendment and the amendment of the gentleman from Lycoming is—

Mr. BRODHEAD. I protest against discussion at this point. The gentleman from Allegheny has on several occasions, just after the yeas and nays have been ordered, taken the floor in this manner in order to have the last word. I protest against it. The yeas and nays have been ordered. Let them be called.

The PRESIDENT *pro tem.* The Chair will follow the rules of the House. The yeas and nays have been ordered and the Clerk will proceed with the call.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Addicks, Armstrong, Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Brown, Buckalew, Carter, Clark, Corbett, Cronmiller, Dallas, Edwards, Elliott, Fell, Fulton, Hall, Harvey, Hunsicker, Knight, Lamberton, Lilly, Littleton, MacConnell, Mann, Niles, Patton, Purman, Reed, Andrew, Simpson, Struthers, Turreil, Walker, Wetherill, J. M., Wetherill, John Price, Wherry and White, J. W. F—39.

NAYS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Calvin, Campbell, Cochran, Curry, De France, Ewing, Funck, Gilpin, Guthrie, Hemphill, Horton, Howard, Kaine, Landis, Lawrence, Lear, McCulloch, M'Murray, Mantor, Newlin, Patterson, D. W., Patterson, T. H. B., Purviance, Sam'l A., Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Temple, Van Reed, White, David N., White, Harry and Worrell—41.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Ainey, Andrews, Bannan, Barclay, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Collins, Corson, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Green, Hanna, Hay, Hazzard, Heverin, Long, MacVeagh, McCannant, McClean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Woodward, Wright and Meredith, *President*—53.

The *PRESIDENT pro tem.* The question recurs on the amendment of the delegate from Allegheny (Mr. T. H. B. Patterson.)

The amendment was agreed to.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. LILLY. I offer the following amendment, to come in at the end of the section:

"That no discrimination shall be made in favor of any party in carrying freight of the same class the same distance and same direction, by drawback or otherwise."

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Carbon (Mr. Lilly.)

Mr. COCHRAN. I merely wish to call attention to what I believe to be correct, that while I entirely agree with the object sought to be attained by the gentleman from Carbon in this amendment, I think it has already been attained in the amendment offered by the gentleman from Allegheny, (Mr. T. H. B. Patterson,) which prohibits the granting of drawbacks or special rates. I ask for the reading of the amendment of the gentleman from Allegheny as it has been adopted, as a substitute for the section.

The CLERK. The section as amended reads as follows:

SECTION —. "No corporation engaged in the transportation of freight or passengers in or through this State shall make any discrimination in charges for the carriage of either freight or passengers between or against the people thereof, nor make a higher charge for a shorter distance than for a longer distance including such shorter distance; and no special rates or drawbacks shall either directly or indirectly be allowed, excepting excursion and commutation tickets."

Mr. HARRY WHITE. Mr. President: I suppose we all sympathize, at least I do, with the purpose of the amendment of the delegate from Carbon, but I call his attention to the fact that the matter is provided for. I apprehend the object of his amendment is to meet this objection, that some citizens of Pennsylvania go outside of the State and purchase merchandise to bring into the State, and the companies may now discriminate in their favor. I am satisfied that the wording of the amendment offered by the delegate from Allegheny (Mr. T. H. B. Patterson) which has just been adopted meets that question exactly. It provides that no discrimination shall be made against or between the citizens of the State. As to the drawback matter, we have that provided for.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Carbon (Mr. Lilly.)

The amendment was rejected.

The *PRESIDENT pro tem.* The question recurs on the section as amended.

Mr. BUCKALEW. Mr. President: I understand that this is a substitute for the entire section.

The *PRESIDENT pro tem.* It is.

Mr. BUCKALEW. This amendment, if I remember correctly, has dropped the provision that extra charges may be made by railroads for distances under fifty miles. That is a very material and a very necessary provision, and without it we will find that the section will become extremely odious. It is impossible for large service to be done by a railroad company for short distance for the public generally or for other corporations under general rates of uniform charge. As for instance, in the county of Luzerne, I remember a case. There a railroad company erected a bridge across the Susquehanna river, and it is obliged under the general law to carry enormous masses of coal for other corporations, a distance of one, two or three miles only. The charge which this company makes under general and uniform provisions of law for that distance will not compensate them for one-fifth the actual cost, and the result is that they are obliged to charge beyond any general rule or rate, of course within the limits of their original character. It will be an absolute stop upon the transaction of all such local business, of all such business over short lines, because it will be extremely oppressive upon the company and they must resort

to some device to get rid of performing that service. Besides, it is grossly unjust.

There is another point to which I desire to call attention in this amendment. The gentleman from Allegheny says you shall not charge more for a shorter than a longer distance—the longer distance to include the shorter. Now, I want to know about the practical operation of that provision. You cannot charge more for transportation from Harrisburg to Lancaster than you charge from Harrisburg to Philadelphia; that is, the longer distance from Harrisburg to Philadelphia would include the shorter distance from Harrisburg to Lancaster, and therefore it is forbidden; but it does not follow that the limitation would apply to service running west from Harrisburg, between Harrisburg and Pittsburg. Your limitation would be confined to a case where the longer distance included the shorter one.

As to the first objection which I have mentioned—the omission of the provision that extra charges may be made under fifty miles—that could be corrected by amending the section, and I therefore move to amend by adding at the end of the section as it now stands the words to be found in the twelfth and thirteenth lines of the printed section: "And reasonable extra rates within the limits of the charter of a company may be made in charges for any distance not exceeding fifty miles."

The PRESIDENT *pro tem.* That amendment is before the Convention.

Mr. T. H. B. PATTERSON. The gentleman from Columbia objects to that exception being left out. I will merely state that the reason why it was left out in the substitute was because the substitute already provides for that emergency, in this: The substitute does not attempt to fix any *pro rata* rate whatever. It permits the company to fix their rate for fifty or sixty or seventy miles, as they choose, and the only limitation it imposes is that they shall not charge more for a shorter than a longer distance. So they may fix a rate for fifty miles, and then the shorter distances all get the benefit of that fixing. There could be no discrimination against shorter distances. Delegates will readily see how it provides for it fully.

Then the other objection raised by the gentleman from Columbia is that, for instance, the rate between two long points in the same direction would necessarily

include the distance to a shorter point, and he objects that that would not necessarily provide that they should charge less for one of those shorter points than they would for a longer distance in another direction. The object of the substitute was to leave that question open, because the great objection made to the section was that, for instance, there might be from Harrisburg to Philadelphia a rate of charge less than a railroad could afford to charge from Altoona to some point along the road, a shorter distance, where they had a precipitous route. Therefore the very object of inserting "including such shorter distance" was that the only effect of it should be over the same ground, in order to leave the questions of inequality for the road to adjust themselves. In other words, this section does not interfere with their *pro rata* rates over any portion of the road at all, but allows them to impose those fair rates according to the road, but at the same time it provides that when they fix a rate they shall not charge higher for a shorter than a longer distance. Therefore it is an adjustable arrangement in a very few words that will apply to all cases. Neither of the objections of the gentleman from Columbia applies to it, and therefore I think the delegates would do well to vote down the proposed amendment, because it is already included in the substitute.

Mr. PURMAN. It is the interest of the people that the amendment of the gentleman from Columbia (Mr. Buckalew) should prevail. The railroads might, without that amendment, get their full compensation for carrying over a very short distance, as for instance over the bridge referred to by the gentleman from Columbia, by making their charges so high for a long distance that the same rate for a short distance over the bridge would compensate them; but that would be imposing a burden upon the people. We should allow the railroads to carry for the longer distances at the lowest possible rate to accommodate the people. Then that which goes over a greater distance than fifty miles can be carried at the same proportion, and that within the fifty miles would be regulated according to the condition of the road. It is in the interest of the people that the amendment of the gentleman from Columbia should prevail.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Columbia.

The amendment was agreed to.

The PRESIDENT *pro tem.* The question now recurs on the section as amended.

The yeas and nays were required by Mr. Cochran and Mr. Campbell, and were as follow, viz :

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Bigler, Black, Charles A., Brown, Buckalew, Calvin, Campbell, Carter, Cochran, Corson, Dallas, De France, Edwards, Elliott, Ewing, Fell, Fulton, Funck, Gilpin, Guthrie, Harvey, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Lamberton, Landis, Lawrence, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Newlin, Niles, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Ross, Russell, Smith, H. G., Smith, Wm. H., Struthers, Temple, Turrell, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—62.

NAYS.

Messrs. Addicks, Barclay, Brodhead, Broomall, Corbett, Cronmiller, Curry, Knight, Lear, Lilly, Littleton, Patton, Rooke, Simpson, Smith, Henry W., Van Reed Walker and Wetherill, Jno. Price—18.

So the section was agreed to.

ABSENT.—Messrs. Ainey, Andrews, Baer, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Boyd, Bullitt, Carey, Cassidy, Church, Clark, Collins, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Green, Hall, Hanna, Hazzard, Heverin, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Woodward, Wright and Meredith, *President*—53.

The next section of the article was read as follows :

SECTION 8. All railroads and canals are declared public highways, and all individuals, partnerships, and corporations shall have equal right to have persons and property transported thereon, except officers and partnerships or corporations composed in whole or in part of officers of each respective railroad or canal, who are hereby prohibited from engaging in the business of forwarding or transport-

ing on the lines thereof; and all regulations adopted by the companies owning, controlling or managing such railroads or canals, having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted, in the transportation of property on such railroads and canals, shall be void; and no railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships, and companies shipping and transporting thereon, in furnishing cars or motive power.

Mr. FULTON. Mr. President: I move to amend the section by striking out all after the word "thereon" in the third line down to and including the word "thereof," in the sixth line, and also by striking out in the ninth line the words "except as above excepted."

This amendment, Mr. President, I propose just to make this section agree with section six as amended the other day. It is the same portion that was stricken out of that section.

Mr. COCHRAN. Mr. President: The Convention on Friday, I think, adopted the section which was presented by the gentleman from Philadelphia, (Mr. Bullitt,) who is not now present, which he contended covered the same ground as the matter which is here proposed to be stricken out. If this proposition to amend, offered by the gentleman from Westmoreland (Mr. Fulton) should succeed, it will have the effect, I apprehend, of making the two sections inconsistent with each other. Now, it will be observed, sir, that this section does not operate as a prohibition upon officers of companies engaged in mining or manufacturing. That was stricken out in the sixth section, I think it was, on the motion of the gentleman from Westmoreland, and, therefore, that being stricken out, this section refers simply to the matter of transportation. The object is to prevent inside companies who are connected with railroads, inside parties, officers and others, from undertaking to engage in the business of transporting over the lines of those roads. In other words, it is to prevent special freight lines, or fast freight lines, or whatever they are called, which are gotten up under objectionable circumstances.

Now, if you leave these words in the section, it will be in exact accordance and harmony with the section that was adopted on the motion of the gentleman from

Philadelphia (Mr. Bullitt.) If you strike these words out, the probability is you will have two sections conflicting with each other, because Mr. Bullitt's section which precedes this makes a prohibition and this section makes a positive grant to all parties to do a certain thing.

This section thus amended would in point of fact, I apprehend, overrule the section which was adopted on motion of the gentleman from Philadelphia; and that was one reason why we objected, or I did at least, to the introduction of that section at the time. But the Convention having adopted it, I think we ought to retain these words; they have no more scope than the section of the gentleman from Philadelphia, and the two will then be in accord. Otherwise they will be opposed to each other in their operation and effect.

Mr. T. H. B. PATTERSON. I want to call the attention of the Convention to the fact that although this amendment is all right in spirit, and although we ought to strike out these words, yet if we do strike out "except as before excepted," the courts might construe this to overrule the section offered by the gentleman from Philadelphia (Mr. Bullitt.) Perhaps these words ought to be stricken out here, but ought to be re-inserted in place of the third line, which it is now proposed to strike out. Otherwise this section may be construed to overrule or conflict with the former section. I suggest to the gentleman from Westmoreland that he so modify his amendment.

Mr. FULTON. I modify my amendment in that particular. I move to strike out the words, "except as above excepted," where they now occur, and to insert them in the place of the third line, proposed to be stricken out.

Mr. J. PRICE WETHERILL. Read the section entire, as it is proposed to amend it.

The CLERK read as follows:

"All railroads and canals are declared public highways, and all individuals, partnerships and corporations shall have equal right to have persons and property transported thereon, except as above excepted; and all regulations adopted by the companies owning, controlling or managing such railroads or canals having the effect of hindering or discriminating against individuals, partnerships or corporations, except as above excepted, and transportation of property on such railroads and canals shall be void; and no

railroad corporation, nor any lessee or manager of the works thereof, shall make any preference in their own favor or between individuals, partnerships or companies shipping and transporting thereon, in furnishing cars and motive power."

On the question of agreeing to the amendment proposed by Mr. Fulton, a division was called for, which resulted thirty-nine in the affirmative and eleven in the negative. So the amendment was agreed to.

The PRESIDENT *pro tem*. The section as amended is now before the Convention.

Mr. CAMPBELL. On that question I call for the yeas and nays.

Mr. RUSSELL. I second the call.

Mr. LANDIS. Before the vote is taken, I would suggest an alteration in the phraseology of the first portion that I think ought to be made. The section declares "all railroads and canals are declared public highways." I would therefore suggest to the chairman of the committee that some modification be made to meet that difficulty, because it is not contemplated here that private railroads shall be made public highways. "Railroads and canals of incorporated companies," I presume, would meet the difficulty.

The PRESIDENT *pro tem*. Does the gentleman move an amendment?

Mr. LANDIS. I do not move an amendment, but I make the suggestion to the chairman of the Committee on Railroads and Canals.

Mr. COCHRAN. I will make the amendment which the gentleman suggests, and will move to amend the section as amended, so that it shall read, "all railroads and canals owned and operated by incorporated companies."

Mr. CORBETT. That will not cover all cases. There may be private railroads owned by corporations, used for their own corporate purposes. The truth is that while I shall vote for this section, I see no benefit in it. It is simply declaratory of the common law, and I apprehend that there is no danger of the Legislature changing the duties of railroads. I shall vote for the section, but it suggests itself to me that the amendment now moved by the chairman of the Committee on Railroads will not cover every case. Incorporated companies may own railroads, and I presume there are hundreds of them so owned which are used for their own private purposes altogether and not as common carriers at all.

The PRESIDENT *pro tem.* The question is upon the amendment.

The amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the section as amended.

Mr. LANDIS. The Convention having declared that all railways shall be public highways, which would interfere with private railways, I shall vote against the section, although I am in entire sympathy with all the rest of it.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Bigler, Black, Charles A., Brown, Buckalew, Calvin, Campbell, Carter, Cochran, Corbett, Corson, Cronmiller, Curry, Dallas, De France, Edwards, Elliott, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Harvey, Hay, Hemphill, Horton, Howard, Hunsicker, Kaine, Lamberton, Lawrence, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Newlin, Niles, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Ross, Russell, Simpson, Smith, H. G., Smith, Wm. H., Temple, Turrell, Van Reed, Wetherill, J. M., Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—66.

NAYS.

Messrs. Barclay, Boyd, Brodhead, Broomall, Fell, Green, Knight, Landis, Lilly, Patton, Smith, Henry W., Struthers, Walker and Wetherill, Jno. Price—14.

So the section as amended was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Clark, Collins, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Hanna, Hazzard, Heverin, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Runk, Sharpe, Stanton, Stewart, Woodward, Wright and Meredith, President—53.

Mr. CORBETT. I move to reconsider the vote just taken for the purpose of inserting after the word "canals" the words "doing the business of common carriers."

Mr. HALL. I second the motion.

The motion to reconsider was agreed to, there being on a division ayes forty-eight, nays not counted.

Mr. CORBETT. Now I move to amend the section by inserting after the word "canals," in the first line, the words "doing business as common carriers."

Mr. LANDIS. That meets the difficulty suggested, and I hope the amendment will be agreed to.

Mr. BUCKALEW. I am opposed, for one, to this amendment. If we put it in I think we had better omit this first part of the section altogether, for it will amount to nothing. It will amount to about this: All railroads which are common carriers shall be common carriers! That will be exactly what it will mean. I understand that this whole article on railroads is applicable, and applicable only, to companies organized for general carrying purposes, and it does not relate to special or particular privileges which the Legislature have granted under the lateral railroad laws to the owners of private property or private persons. It is confined to those which are of a public nature or *quasi* public nature, in which all the people of the community are interested. In that point of view this section will not be at all useful. It says "all railroads and canals" shall be declared public highways. What railroads and canals? Those with which this article deals, these institutions of a public nature. Well, the Legislature of this State allows railroads for the improvement of private property, simply connected with public highways under special provisions and not at all affected by this article. If an individual wants to make a lateral railroad, he does not incorporate himself into a public company; he would not be subject to any of the regulations found in this article from one end to the other for the reason that he carries on a private enterprise.

The only effect of putting in this amendment would be to make that doubtful which is now perfectly clear. At present all railroads organized under the general laws of the State or under special laws of the State for carrying purposes are public highways, are treated as such by the people, and are treated as such in the courts; and to put into this section the words that railroads that are common carriers are public highways will mean one of two things: Either that the section shall be considered an absurdity and accepted as such, or that doubts shall be thrown upon the present legal principle, well established and unquestioned, that all railroads organized

under our general laws, or for carrying purposes, are public highways.

I think, therefore, we had best not put in this amendment at this point; and if, on revision, there be anything necessary to distinguish public railroads from private ones, let it be done in this article by some special clause or modification of the language of the first section.

Mr. ARMSTRONG. I cannot agree with the learned gentleman from Columbia in his construction of this clause in this article of the Constitution. By the first section we have used language, I think, as general as it is possible to express the power granted to "any individual, company or corporation," that is to say, any one person, any company, any corporation "organized for the purpose shall have the right to construct a railroad or canal between any two points in this State." Then follows a provision by which they may connect with other railroads, which seems to contemplate not only the construction of great through lines, but the right to construct lateral railroads which shall connect with other railroads. I do not know how this power could be made more broad than it is.

Then the section under consideration provides:

"All railroads and canals are declared public highways;" that is, all railroads and canals, as the gentleman from Columbia properly remarks, within the purview of this article, but the first section of it has made it as broad as language can make it, and I apprehend that when you come to construe it literally all railroads and canals are declared public highways.

I did not vote upon this section. There are parts of it I should like to vote for, but I cannot vote for it in the general phrase in which it stands, because if a company builds a lateral railroad through or along its own property and that of the adjoining owner, it might under this section use that road without at all contributing to its construction; and I think in that sense it is dangerous, extremely so. But with the amendment of the gentleman from Clarion as he proposes to insert it, it ceases to be dangerous and becomes in my judgment simply useless; but still I would prefer to vote for the section with that clause in to remove obscurity and doubt and prevent a great abuse of the power which is here conveyed.

Mr. COCHRAN. The general policy of our law is, as expressed in all the acts, I

believe, on the subject, that these railroads and canals, which have taken the place of our ordinary roads in old times, our turnpikes and public highways, should themselves be public highways; and I do not see why the incorporation into this Constitution of a provision which makes them public highways and leaves it out of the power of the Legislature to give them any other character should be objected to.

I concur with the gentleman from Columbia in part in what he has said here, and that is, that this article has no reference or allusion to private railroads whatever or private canals or private companies. It relates to the public institutions created under the laws of our State. But then if there is a doubt about it, if anybody thinks it has a different application, I am willing for one to accede to the proposition of the gentleman from Clarion; at the same time I am not willing to admit that the section is mere *brutum fulmen*, simply because it establishes in the Constitution a principle which has been recognized in our legislation. Let it be understood always and everywhere that in this Commonwealth of Pennsylvania a railroad company or a canal company incorporated for public uses is and shall be, and no Legislature shall make it otherwise than, a public highway.

Mr. BUCKALEW. I should like to ask the gentleman from York a question before he sits down. I am surprised at his willingness to accept this amendment. I want to understand his view of it. Take the case of a coal company that has a road for thirty miles in length, does he want to have it understood that it shall not come under classification as a public highway, because that company is not engaged in the business of common carriers for others? They cannot get the right of way except under the broad power of the Commonwealth under the head of eminent domain. They are enabled to make their road simply because they can seize private property on the ground that the road shall be for public use. They cannot go ten feet perhaps from their mine except on that principle, and yet the gentleman from Lycoming seems to suppose that unless you put in this amendment these companies are to be oppressed. I say under the Constitution now but few of the mining companies possess any road which is not a public highway, and if other corporations under proper laws enacted for the purpose con-

nect their road with such road the owners of such road are obliged to permit them to use it; they cannot get a private grant, except under the lateral railroad law; they cannot get a right to build their railroad except they dedicate it to public use.

Now, I am afraid of this amendment. Every one of these private corporations that are not engaged in the business of common carriers properly, that want to make their road a close monopoly for their own use, will insist that by these very words you are putting in here, they are taken out of the class of public highways, and that they can exclude any individual or any rival company from any possible use of the road upon the ground that as they themselves are not engaged in the business of public carriers, their road is not a public highway. So, sir, I desire to understand distinctly from the gentleman from York—I find I am changing my interrogatory into a speech without having intended it—if he is willing to throw open to doubt and difficulty this whole question of public right in all roads that are established under the power of public domain, whereas by the present Constitution there is no doubt or difficulty upon it.

Mr. ARMSTRONG. I ask the gentleman from Columbia whether or not any other road would have a right to run cars over a lateral railroad under the lateral railroad act? They have not, and yet they take their franchise under the right of eminent domain.

Mr. BAEK. As the section now stands all railroads and canals are declared public highways, and it is good English. If you insert the words proposed to be put in, it will not be English or anything else. It will then read that all railroads and canals may be public highways, but no railroad or canal can be a common carrier. Railroad and canal corporations are common carriers, but railroads and canals are not. Therefore I think we shall murder this section materially by adopting this amendment.

Mr. BIDDLE. I merely wish to say that I concur entirely with the gentleman from Columbia, for the reasons he has given, and I hope this amendment will not pass.

The PRESIDENT *pro tem*. The question is on the amendment.

The amendment was rejected.

The PRESIDENT *pro tem*. The question is on the section.

The section was agreed to.

Mr. S. A. PURVIANCE. I offer the following amendment as a new section, to be inserted at this point:

"All discriminations made by railroad companies, being common carriers, in their rates of freight or passage over their roads, in favor of transportation companies or others engaged in transportation, by abatement, drawback or otherwise, are hereby prohibited, and the company guilty of such unlawful discrimination shall be liable to forfeiture of charter; and all contracts made with any transportation company or others engaged in the business of transportation, for carrying freights or passengers over any railroad within the State at higher rates than those agreed upon by and between said railroad companies and transporters, are hereby declared void."

I desire to detain the Convention but a very few moments in reference to this amendment. All the propositions which have thus far been made in reference to discriminations relate to the prohibition against the officers of the company. Now, sir, I present to this Convention, in the proposition now before them, a total destruction of transportation companies; and as it is a new proposition, one involving immense considerations, I desire the attention of every member of the Convention to it.

The proposition of the gentleman from Philadelphia (Mr. Bullitt) strikes at a prohibition of the officers of the company from taking part in transportation. That does not reach the evil. The evil consists of these companies within the company forming "rings," and requiring by contract the transportation of their goods at rates greatly less than the maximum established by the charter of the company, and after they have thus made their contracts with the company they drive the shippers into the transportation companies and require them to pay the additional charge, whatever it may be. To illustrate: A transportation company makes an agreement with a railroad company by which they are to have goods carried for one and a half cents per mile per ton. I am driven to the shippers. I have one hundred tons of goods to send from Pittsburg to Philadelphia. I am told by these transportation companies that their rate is three cents per ton per mile. I am thus obliged to pay them one hundred per cent. more than they are paying the railroad companies. Now, sir, my idea in general is this: A railroad com-

pany, being a common carrier, is bound to take my goods at the same rate for which they will carry goods for anybody else, whether it be a company or not.

Sir, this is a growing evil in our Commonwealth. There is an aggregation of wealth growing up suddenly like Jonah's gourd, confined to a few men, who bask in the sunshine of these railroads. It is easily to be seen that if they are allowed to charge one hundred per cent. more than the railroads charge, they are making an immense profit; and from whom is that money taken? It is taken from the people in the first instance, and in the second place it is taken from the stockholders of the railroads. They are deprived of the benefits of the dividends which would otherwise be made by the adoption of a higher rate than is adopted between railroads and life transporters.

I am not unfriendly to the railroads; but, sir, I am here as a representative of the people whose business is with railroads, and of the stockholders in railroads, although I have no goods to transport over railroads and although I am not a stockholder in a single railroad company. I call the attention of the Convention to the fact that the rights of the people and the rights of the stockholders are invaded to such an extent as to call for the passage of just such a proposition as I have made.

I listened the other day with astonishment at the declarations of the honorable gentleman from Philadelphia, not now in his seat (Mr. Cuyler.) It struck me that if a stranger had entered the Convention then, not knowing what was going on, he would have supposed that Thomas A. Scott and John Edgar Thomson had been members of this Convention and had recently died. The eulogiums were strong, and I was going to say, but I will not say, fulsome; and in the midst of that eulogium I understood the honorable gentleman to say that these gentlemen and the officers of the Pennsylvania Central road never had committed a wrong against the people, that their course was a pure and upright one. I will only ask, when the Pennsylvania Legislature passed a law authorizing the sale of the public works for seven and a half millions with the tonnage tax on, and ten millions with the tax off, and that road stepped forward and took them at seven and a half millions with the tonnage tax on, was it right for them to go to the Legislature afterwards and ask for a repeal of that

tonnage tax, by which they would get the public works for two millions and a half less than their contract? Was that right? And yet these very officers were upon the ground and manipulated the Legislature in the passage of that infamous law. I will not allude to the mode or manner by which that law was passed. I desire to cover it up, to hide it from public view, for I have an entire loathing for it; and whenever I hear gentlemen on this floor talk about the purity of the Legislature in reference to that act I almost incline to put my hands upon my ears that I may not hear such a delusion attempted to be palmed upon an enlightened body of men such as I believe this Convention to be.

Now, Mr. President, this amendment strikes first at the railroad companies by declaring that they shall make no contract with a transportation company for carrying the goods of shippers for less than they will carry the goods of anybody else. It appends a punishment: It declares the contract void, and in addition to that it makes the company liable to a forfeiture of their charter, and until you append such a punishment as this, you will have this evil to continue. The second branch of the proposition provides that with regard to a contract made with the transportation companies, that such contract, if made at higher rates than the transportation company has agreed to carry for, under its contract with the railroad, that it shall be declared to be void; so that if the railroad company hereafter stipulates to carry goods for a transportation company for two cents per mile per ton the transportation company shall not charge me three cents per mile per ton. It strikes at the root of this evil, one which I think is very great, one which tends to the aggregation of sudden wealth in this Commonwealth amongst a few; for who cannot bear testimony to the fact that men who but to-day have been inaugurated as officers of a great railroad, like that of the Pennsylvania Central, worth nothing any one of them, become in the course of a few years possessed of an amount of wealth far beyond that of the aggregated wealth of the hundred lawyers of this Convention. Therefore I ask at the hands of every member of this body a careful consideration of this important proposition.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. S. A. Purviance.)

Mr. J. PRICE WETHERILL. I should like to ask the delegate from Allegheny one question. Incorporated companies, under the article now before us, have a right to place cars upon the road, the railroad company only furnishing the motive power and the road-bed. Certainly for the use of those cars there must be an agreement in regard to freight. I heartily agree with every word that the gentleman has said, and I am in favor of the amendment and believe if we can reach the transportation companies and keep them in check, we shall do good and accomplish a good purpose; and yet if they furnish the rolling stock they certainly ought to be entitled to something for that rolling stock, and they certainly ought to be entitled to a discrimination in favor of that stock as against freighters not furnishing rolling stock. I do not think the amendment as offered by the gentleman from Allegheny covers that ground.

Mr. S. A. PURVIANCE. In answer to the gentleman from Philadelphia, I will simply say that the railroad company, being a common carrier in the first instance, it is bound to carry my goods, and if it has the power under its charter to fluctuate between a maximum of three cents per ton per mile and a lower rate, all I ask is that it shall protect itself as far as necessary for furnishing cars, but that the rates shall be entirely uniform.

Mr. LILLY. I should like to ask the gentleman whether under the general railroad law the charge for freight covers the case of cars? The freight is a separate charge and does not cover the cars. The Reading railroad makes a contract with a mining company that is engaged in mining coal to carry its coal, but the rate of freight is a different thing from the use of the cars.

Mr. S. A. PURVIANCE. I answer the gentleman in this way: The railroad structure, the ground and the rolling stock of the railroad, constitute an entirety; it is but one railroad.

Mr. MANN. Mr. President: If I understand the section offered, we have already adopted all its principles, and the only thing now in it is imposing a penalty. Now, as the courts have abundant power to enforce the Constitution, it seems to me that it is hardly worth while to adopt a new section simply to put a penalty in. We have already adopted all the principles of this section, and I desire to record my vote against it, and call for the yeas and nays.

Mr. BOYD. I second the call.

The PRESIDENT *pro tem*. It requires ten delegates to second the call for the yeas and nays.

More than ten delegates rose.

Mr. BUCKALEW. I ask that the amendment be read again. Several gentlemen desire the reading.

The amendment was read.

Mr. BUCKALEW. I desire to inquire whether this is beyond the reach of amendment?

The PRESIDENT *pro tem*. It is not.

Mr. BUCKALEW. I move to strike out that part of the section which provides for the forfeiture of charter.

The PRESIDENT *pro tem*. The question is on that amendment to the amendment.

Mr. BUCKALEW. There ought always to be some proportion between offence and punishment. It would be very unreasonable that all the stockholders of the great corporations, many of them residing beyond the limits of the State, many of them widows, persons interested in estates, should be fined heavily in their property for the most minute misconduct of the officers of a company of which they were the stockholders. The slightest amount of discrimination—to the extent of five dollars—would throw all the immense property of the stockholders in railroad corporations into a condition of confiscation. If you make it illegal to make these contracts, they can be arrested at the instance of anybody by the courts in an equity proceeding. Besides that, the Legislature could pass any additional remedies in the way of punishment. I think this latter part of the section is so grievous that unless it is struck out I must vote against it.

Mr. S. A. PURVIANCE. I will say, in answer to the gentleman from Columbia, this: If a railroad company through its officer is guilty of a violation of a constitutional provision, such as several of those in the Constitution now, ought not the company to suffer? Why should they not suffer, because they are responsible for the election of their officers? Beside that, the language of this provision is "may be liable to forfeiture of charter." There may be cases in which a proper discrimination would be made. I hope, therefore, that this clause will not be stricken out.

Mr. HARRY WHITE. I sympathize entirely with the amendment offered by the delegate from Columbia (Mr. Buckalew.) I also sympathize with the spirit of the

amendment of the delegate from Allegheny (Mr. S. A. Purviance.) I regard this itself as an exceedingly important proposition; and the section of country which I more immediately represent is very largely affected by the evil at which this section aims. I recollect a few years ago when the Judiciary Committee of the Senate of Pennsylvania investigated this question of discrimination in freights; and this matter of fast freight lines, of "rings" within rings, was the subject of investigation more particularly, and I remember at that time the testimony of some of the most prominent business men in this Commonwealth, some of whom indeed are members of this Convention, who were large shippers, who detailed that their business was largely affected by the existence of these lines; and the report of that committee, together with the testimony as it stands, any gentleman who desires to be informed on the crying evil against the trade of Pennsylvania created by these transportation lines in which the officers of the roads are so largely interested, can find by reference to the proceedings of the session of 1869.

Whilst this is true, there is much wisdom in what the delegate from Columbia has said, that it is possible to make a penalty so severe, so out of proportion to the offence committed, that it will not be enforced, that its severity will prevent its enforcement. Therefore I am in favor of the amendment offered by the delegate from Columbia and am opposed to the forfeiture of the charter because of a malfeasance of this kind by the officers managing the road. It is a penalty out of proportion to the offence; but if it only affected the officers of the roads themselves we might not complain. But we must not understand that all corporations are presumed to be for the benefit of the stockholders; the rank and file of the people, persons who may have trust funds invested in the stock of this railroad will be largely affected.

For this and other reasons, which I could suggest if I desired to take the time of the Convention, I am in favor of striking out that provision and will vote for the amendment and then for the section.

Mr. KNIGHT. Mr. President: From the votes this morning it would seem that all these sections and perhaps many more will pass the Convention. If they do I think the railroads will require some

protection, and if in order, I want to offer this:

"No railroad company shall grant free passes or passes at a discount to any persons except officers or employees of the company."

The PRESIDENT *pro tem*. There is an amendment to the amendment of the delegate from Allegheny already pending.

Mr. KNIGHT. I will offer this when there is an opportunity.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Columbia to the amendment of the delegate from Allegheny.

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question recurs on the amendment of the delegate from Allegheny as amended.

Mr. MANN. The yeas and nays were called for on that.

Mr. KNIGHT. Is my amendment now in order?

The PRESIDENT *pro tem*. It is.

Mr. KNIGHT. I move to add to the amendment:

"No railroad company shall grant free passes or passes at a discount to any person except an officer or employee of the company."

The PRESIDENT *pro tem*. I do not think it will come in well to any part of this proposed section.

Mr. KNIGHT. Then I will offer it as a new section hereafter.

The PRESIDENT *pro tem*. The Clerk will call the roll on the amendment of the delegate from Allegheny.

Mr. HARRY WHITE. Do I understand that this is a new section offered by the delegate from Allegheny as amended on the motion of the delegate from Columbia?

The PRESIDENT *pro tem*. That is the question.

SEVERAL DELEGATES. Let it be read.

The CLERK read the amendment as amended as follows:

"All discriminations made by railroad companies, being common carriers, in their rates of freights or passage over their roads in favor of transportation companies or others engaged in transportation, by abatement, drawback or otherwise, are hereby prohibited; and all contracts made with any transportation company or others engaged in the business of transportation for carrying freights or passengers over any railroad within the State at

higher rates than those agreed upon by and between said railroad companies and transporters are hereby declared void."

Mr. KAINE. I call for a division of the question, the first division to end with the word "prohibited."

Mr. MANN. I rise to a question of order. The yeas and nays having been ordered, it is too late to call for a division.

The PRESIDENT *pro tem.* The Chair sustains the point of order, if insisted upon. The Clerk will call the yeas and nays on the amendment of the gentleman from Allegheny as amended.

The question was taken by yeas and nays with the following result :

Y E A S .

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Baker, Biddle, Black, Charles A., Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Cochran, Corbett, Corson, Cronmiller, De France, Elliott, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Harvey, Hay, Horton, Lamberton, MacConnell, McCulloch, McMurray, Mantor, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reynolds, Russell, Smith, H. G., Smith, Wm. H., Struthers, Turrell, Van Reed, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—60.

N A Y S .

Messrs. Barclay, Bigler, Boyd, Brodhead, Broomall, Edwards, Fell, Green, Howard, Kaine, Knight, Lear, Lilly, Mann, Niles, Patton, Reed, Andrew, Rooke, Simpson, Smith, Henry W., Walker and Wetherill, Jno. Price—22.

So the amendment as amended was agreed to.

ABSENT. — Messrs. Achenbach, Adicks, Ainey, Andrews, Armstrong, Bannan, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Curtin, Cuyler, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Finney, Gibson, Hanna, Hazzard, Hemphill, Heverin, Hunsicker, Landis, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Temple, Wetherill, J. M., Woodward, Wright and Meredith, *President*—51.

Mr. KNIGHT. I now offer the following amendment as a new section, to come in at this point :

"No railroad company shall grant free passes or passes at a discount to any person except officers and employees of the company."

Mr. COCHRAN. I am entirely in favor of the amendment offered by the gentleman from the city and hope it will be adopted, but I propose to amend it by adding the following, to come in at the end :

"Every ticket, except excursion tickets, issued to any passenger by any such company, shall entitle the holder of any such ticket to transportation over the works of such company from his place of departure to his place of destination either by continuous train or by any other train on which the same rate of fare is charged, without any additional charge or subjecting him to any inconvenience because of his stopping off at intermediate points."

I merely wish to say in regard to this amendment—I do not intend to detain the Convention long on this subject—that it is designed to prevent an evil which I think ought to be corrected and which it is probably necessary for us to correct here. A very great injury is done to parties by compelling them to pay double fare in case of their merely stopping off at an intermediate point. There seems to be no necessity why that should be done, and why a man should be compelled to go clear through to his destination on the train on which he starts. If he fails to do so, the punishment inflicted is the punishment of paying fare over again. I cannot see any justice in that, and the fact is that in very many cases these tickets are given in such a way that parties can stop off at particular points and use their tickets at any time.

I give this illustration : A man can get a ticket at some western point all the way through to the city of Baltimore cheaper than he can buy it to the town of York, sixty miles less distant. These tickets are so arranged that he can take off a coupon when he gets to York and have left a coupon from York to Baltimore, which he can sell to another party at any time. I know that this has been done, because I have had it from gentlemen who have done it more than once. Why, then, should any penalty be imposed upon a man merely for stopping off at an intervening point and getting on another train? It certainly cannot be because

the railroad company is inconvenienced by it, because if that were so the same argument would apply to the case which I have cited. There would be no inconvenience to the railroad company. It is useless to say that a railroad company gets up its trains to accommodate a certain number of passengers that are to go in any special train. That is not so. It is impracticable, because no company knows the number of passengers who are to go on any train, in advance of its starting; and there is no train that runs, unless it is a through train that does not stop, which will not take up a passenger at any point where it stops, provided he pays his fare. Why, then, should a man who has a ticket entitling him to ride from Philadelphia to Harrisburg, and who may desire from any business whatever to stop over two or three hours in Lancaster, be required to pay an additional fare from Lancaster to Harrisburg, as a penalty for his stopping off?

I know that it has been decided, very wrongfully in my judgment, in our courts that a man who takes a ticket of that kind without any notice on it that he is not permitted to stop off, if he does stop off may be made to pay additional fare. That has been a decision of the Supreme Court. They say that he is bound by a notice he never saw. The notice is not even printed in the smallest possible type on the back of his ticket, but it may be stuck up in some office where it has never attracted the attention of the purchaser of the ticket. I think it is nothing more than justice that passengers in this State should have a right of this kind to stop off at any point, and be carried on to their place of destination without additional charge being made. The company have actually no greater expense, and the argument that there might be any inconvenience to them arising from it seems to me to be without foundation.

Mr. KNIGHT. I trust that this amendment will not prevail. We, this morning, voted down a similar clause proposed by the gentleman from Lycoming (Mr. Armstrong.) The section that I have offered is short, plain and can be easily understood. If the gentleman's amendment is coupled with it it may embarrass it in such a way as probably to interfere with its passing. If the gentleman is desirous of having his views submitted to the Convention, I much prefer

that he would offer them in the form of a separate section.

Mr. BOYD. I rise to a point of order. Is the amendment to the amendment germane to the proposition to which it is offered?

Mr. COCHRAN. I think it is.

The PRESIDENT *pro tem*. It is not so ungermane that the Chair will not recognize it as an amendment.

Mr. KNIGHT. I hope the gentleman will withdraw it.

Mr. COCHRAN. I do not desire to embarrass the amendment of the gentleman from Philadelphia, and therefore I will withdraw my amendment for the present.

Mr. HARRY WHITE. I move to amend by striking out the words "except officers and employees."

Mr. KNIGHT. I hardly think that would be proper because the conductor and brakemen of trains are employees of the road and they must ride on the train.

Mr. BIDDLE. Let us take the vote on it.

Mr. HARRY WHITE. I merely want to explain my purpose. The word "employee" is a very large and comprehensive one. If we want to strike, as I have no doubt my friend from Philadelphia does, by this proposed new section, at what some regard as an evil—I do not know whether all the members of this Convention so view it or do not—let us make it effective. The word "employee" is a very comprehensive expression. It is customary for railroad officers to issue, as matters of courtesy, passes to members of the Legislature and members of Congress. I do not know that some people do not consider that they are actually employees of the railroad companies.

Mr. BOYD. I call for the orders of the day.

The PRESIDENT *pro tem*. The hour of one o'clock having arrived, the Convention will take a recess until three o'clock P. M.

AFTERNOON SESSION.

The Convention re-assembled at three o'clock P. M.

RAILROADS AND CANALS.

The Convention resumed the consideration on second reading of the article on railroads and canals.

The PRESIDENT *pro tem*. When the Convention took its recess the pending question was on the amendment of the delegate from Indiana (Mr. Harry

White) to the amendment of the delegate from the city, (Mr. Knight,) offered as a new section. The amendment and the amendment to the amendment will be read.

The CLERK. The amendment was to insert as an additional section:

"No railroad company shall grant free passes or passes at a discount to any person except officers or employees of the company."

The amendment to the amendment was to strike out the words "except officers or employees of the company."

Mr. HARRY WHITE. Mr. President: I desire to be heard upon that amendment. I am perfectly sincere in offering it. It is consistent entirely with the amendment offered by my friend, the delegate-at-large from the city of Philadelphia (Mr. Knight.) I am entirely sure that it is perfectly practicable to adopt this amendment. I recall the attention of the Convention to the fact—

Mr. BOYD. I rise to a point of order. The gentleman has already spoken on this amendment, and he is therefore out of order.

Mr. HARRY WHITE. When the Convention adjourned at noon I was on the floor.

The PRESIDENT *pro tem*. The delegate from Indiana had only spoken eight minutes. He has two minutes of his time remaining.

Mr. BOYD. I withdraw my point of order.

Mr. HARRY WHITE. I protest that I had not spoken eight minutes, but I desire to be brief in my remarks now.

The PRESIDENT *pro tem*. The Chair is so informed.

Mr. HARRY WHITE. I am perfectly sincere in offering the amendment, for if we are to adopt a proposition of this kind I submit it is entirely impracticable to insert the exception allowing passes to be issued to employees of the road. Delegates in this Convention who are business men can recall to their minds the ingenuity with which officials of railroad companies can imagine temporary employment upon the part of individuals applying for passes or persons whom they may desire to accommodate, to evade the letter of the law while they come within its spirit.

I am entirely sincere in the amendment I offer. If we are really to strike at this system, if there is abuse in the matter of issuing passes, which I am not prepared

here to say, desire this Convention to go the whole length, not to stop half way, not to allow a bartering with pretexts that will allow them to select their favorites for the purpose of giving them passes and exclude those who are actually entitled to them for charitable or indigent reasons.

I know that a great many railroad passes are issued. I do not think any man can be influenced in his vote or in his action by the privilege of a ride upon the road of any corporation of this Commonwealth by virtue of a free pass. I submit, if there is any corruption in our Legislature, if there is any corruption in any of our public assemblies, it is not to be attributed to the issuing of passes. Men who will sell themselves and sell their votes require a greater consideration than the mere privilege of riding upon these roads by themselves or their friends.

I submit that it is perfectly practicable to prevent the issuing of passes to anybody. It may be said that employees must have passes from time to time to transact the business of the company. Let the companies pay them their expenses, add to their salaries, and in that way reach the privilege of issuing passes. I know that members of the Legislature, I know that the members of Congress, I know that United States Senators and other officials in this Commonwealth receive passes, and I verily believe that fact has no influence whatever upon their official conduct; but I am not going to be a laggard in the march for reform in this regard, if the majority of this Convention think it is a reform; and if we do take this step I do not want to stop half-way, but desire to go the whole length, and for that reason I have offered the amendment which is now before the body.

Mr. CURTIN. I sincerely trust that the subject of issuing free passes on the railroads of the State will be treated by this body as a serious question, not only for the benefit of the railroads themselves, for surely they cannot ask that free passes shall be granted to any person, but also for those who are traveling.

Sir, the man who ought to have a free pass never gets it. The rich man gets the pass because he has influence. The member of the Legislature gets the pass because he has votes in that body and can pass bills. The members of this Convention get passes because they have influence in passing upon the Constitution. Whether

it affects the mind of the member of the Legislature or the member of this body is of no consequence at all; it is the fact that such persons get passes.

That a great public work should not be permitted to give passes to the persons employed on that public work is to me a most remarkable proposition, and I am surprised at the gentleman from Indiana offering such an amendment. That the officials of a railroad should not be permitted to pass over it at the pleasure of the company seems improper and unjust. While the gentleman says he is in sober seriousness, I think that he either has designs on this wholesome provision in the Constitution, or that his remarks are to be taken in a Pickwickian sense; and sometimes I think that the intelligent delegate from Indiana is slightly Pickwickian in this Convention. [Laughter.] To the exercise of charity by railroad companies to paupers and indigent people there can be no objection; but that passes shall be given by a railroad company to the few and the favored, and those who ought to have them shall not get them, is a distinction in society which is unjust, and it is a means of corruption which is well known.

If the railroad pass was confined to the member of the Legislature alone, it might be proper, and if we put into the Constitution a section that all members of the Legislature during their official terms should travel free on the railroads of the State, it might be a judicious provision; I think they have a provision of that kind in New Jersey; but when you suffer a railroad company not only to give the member of the Legislature his pass, but to as many of his constituents as he chooses to ask for or to give a defined number which he may sell at his pleasure, which is an indirect means of getting at the conscience of the member which your constitutional provision against bribery or the double-stitched oath of Judge Black might not fully reach.

I trust, therefore, Mr. President, that this question will be seriously treated by this Convention. I lived in a despotic government for three years and a half, where such a thing as a free ticket on a railroad is unknown. The Czar of Russia pays his fare when he travels on the railroads in his own empire, precisely as the humblest citizen of his empire. I do not think the system of giving passes prevails in Germany, or France, or to any large extent in England. It is only in

this country that the stockholders of railroads are taxed to pay for the official indulgence given by the controllers of their work to their favorites, to members of the Legislature, and to those in official station, to judges and others. It is one of the expectations of the people of Pennsylvania, that, fairly and honestly this Convention shall put into the Constitution an enactment which shall forever put a stop to the granting of such indulgences, and I trust that this Convention will meet that public expectation promptly.

Mr. HOWARD. Mr. President: I have no doubt that this Convention mean to treat this subject seriously, and no doubt they intend to adopt this amendment, and I hope it will be adopted unanimously. I do not agree altogether with the delegate-at-large, the gentleman from Centre, that the issuing of free passes comes off the stockholders. I believe it comes off the shippers and the men who have business on the road. Everybody has to be taxed a greater rate to make up for this loss, and so the community after all have to pay for these passes. It would be far better for the community, no doubt, and far better for the railroads in the end if we adopted some provision of this kind. If we adopt it, then the railroads are done with importunities from everybody. I think, however that they should have a right to pass without any objection whatever their officers, and I do not know why they should not pass their employees on the line of their roads.

The best law that ever was made can be evaded. We have a law that "thou shalt not kill, and yet men kill; we have a law that "thou shalt not steal" and yet men steal; we have a law that men shall not commit burglary, and yet they do it; they violate the ten commandments and all the statute laws now existing.

I can see no reason why the amendment of the delegate from Indiana should be accepted by this body. I should hope it would be voted down and that we would adopt the proposition presented by the delegate from Philadelphia unanimously and let the people of the Commonwealth understand that we mean earnestly to effect a reform upon this question.

Mr. KNIGHT. I trust the amendment of the gentleman from Indiana will be voted down. It would be impossible to manage a railroad if the conductor, brakemen, firemen, engineers and other

employees of a company could not travel on its trains to take them along. I offered this section in entire seriousness. In the early part of the sessions of this Convention I declared that if such a section was to be put in the Constitution it should be put in here. I know of a road of this State to which it costs half a million of dollars a year for free passes. I know further that those people who, as a general rule, ought to be entitled to free passes, if anybody, do not get them; and I know that it has a corrupting influence on parties in high position, because they can get passes whenever they want them.

If passes were done away with the public generally could travel at a lower rate, because there would not then be three traveling in a car on a free pass and two paying fare; all would travel on the same fare alike, and the company could take them at a lower rate. This section will not affect excursion tickets or coupon tickets, because it does not fix any rate on tickets; it only says that when a rate is fixed by the company it shall not be deviated from, but all persons, rich and poor, shall alike travel on the same terms.

A director is not an officer of a road, and under this section a director would have to pay his fare. Some of the best managed roads of this country do not issue any free passes. I am a director in three companies, the Pennsylvania railroad company, the North Pennsylvania railroad company, and the Philadelphia and Trenton railroad company, which connect directly with the Philadelphia, Wilmington and Baltimore railroad company, and when I go to Baltimore I always buy my ticket. There is no way of getting a free pass over it. If we were to adopt this section, it would save a great deal of trouble, a great deal of corruption, and the result in my judgment would do a great deal of good.

Mr. COCHRAN. I do not rise to discuss this matter. I merely wish to suggest to the consideration of the gentleman from Philadelphia whether it would be inexpedient to insert in his amendment, as the Committee on Railroads and Canals did in the section which was rejected in committee of the whole, to include among the excepted persons not only officers and employees, but poor and indigent persons who are objects of charity.

Mr. KNIGHT. I do not want to include that exception.

Mr. COCHRAN. It seem to me that railroad companies ought not to be prevented from doing acts of charity.

Mr. CORSON. It seems to me that it is utterly impossible to meet this case by a constitutional provision. If railroad companies are to derive any advantage from this, let them make it a general regulation of the company. If we undertake to go into these details, we shall never get through with our work, and we shall have a Constitution so long that it will fall to pieces of its own weight. The idea of our attempting to say here that no man, woman or child in the State of Pennsylvania shall have a free pass unless employed on a railroad is perfectly absurd. The man who works on a farm is as much entitled to a pass as a man who works for a railroad company; but that is a matter for the railroad companies to regulate. I think it is greatly to their credit that the Governor of Pennsylvania and the President of the United States do not have to pay for their tickets, and in that respect we are far ahead of Russia. I think it is too late in the day to turn us back to the dynasties and the despotisms of the old world. It is time for us to put a stop to all this special business. I believe that this section is about as wise as one-half of the sections that were proposed by this committee on the subject of railroads, and I believe when we come finally to vote upon it, it will share the fate of one half of these propositions and be voted down.

Mr. ALRICKS. Mr. President: We have all been anxious that this provision should be introduced into the Constitution. It comes from a source we have not expected. I feel my indebtedness to the gentleman for making the suggestion. The committee had reported it. Here is their own report:

"No railroad, canal or other corporations engaged in the business of a common carrier or transporter shall permit the gratuitous transportation over its road or canal of any person or persons, except its own officers or employees, or poor and indigent persons."

Now, I am obliged to the gentleman for it, because I believe as it was reported by the committee we should have adopted it.

I hope that the amendment offered by the gentleman from Indiana will not prevail, for the reasons that have been given by the distinguished delegate from Centre (Mr. Curtin.) It appears to me a frivolous objection, and therefore I trust that we will not think for one moment of

adopting it. We ought not to allow the directors of companies to be continually annoyed by persons for passes; just as the judge has gone upon the bench who was to try a cause in which the railroad company was a party, he has been tendered his pass, and after the jury were called to the bar and they were challenged four jurors had free passes in their pockets, and they had been called to sit upon a jury in which the railroad company was a party!

Now, Mr. President, I know the evil that this system is working. It is ruinous to shareholders; it is ruinous to the morals of the country. It has demoralized the Legislature, and I for one trust that this Convention will vote down the amendment and unanimously adopt the section that has been offered by the gentleman from Philadelphia.

Mr. CARTER. Mr. President: I hardly suppose that the gentleman from Montgomery (Mr. Corson) was in earnest in the expression he made of the hope that he had that this section would be voted down unanimously. I hope it will be voted *in* unanimously, and I think it would do the Convention vastly more credit than the other course. If this was a matter in which only the interests of the railroads were concerned, and not the public at large, it would be something, perhaps, not fit to introduce into the fundamental law, but we have reason to believe that it has had a deteriorating influence upon the public, and that it has been abused. The gentleman from Indiana says that free passes have had no bad effect, and never will have any such effect. I can scarcely believe that he is serious. I can scarcely believe it possible. So far as the money value of the pass goes it is an indirect bribe or inducement held out for favorable consideration.

The gentleman from Centre (Governor Curtin) mentioned to me, sometime back, that he had known as many as thirty passes given to each of the members of the Legislature and Senators. These were matters of familiar knowledge, and it is idle to attempt to justify the practice.

Mr. HARRY WHITE. Allow me to interrupt the gentleman. May I ask the delegate whether he, as a member of this Convention, has accepted and traveled on a free pass or not?

Mr. CARTER. You may ask that with perfect safety. I have not; nor have I used any; I thought it was proper for me to return my passes and I did so.

Mr. HARRY WHITE. I am satisfied.

Mr. CARTER. What I did or did not do does not matter. I only say it is a matter of notoriety that passes have been given and given extensively in cases where thought to be useful. As I was saying, the gentleman from Centre stated that he had known between thirty and forty passes given to each member. These possessed a certain market value and no doubt were supposed by the donors to be well applied. Will gentlemen say that there was nothing corrupt in that? I do not say that those individuals were corrupted by it, or at least influenced, or they were more than human, and it was unquestionably of a corrupting character. It could not be otherwise in the nature of things, and therefore it does concern us that if we wish to purify the legislative bodies, if we wish to keep pure the judiciary, that we remove this temptation. I think it is eminently proper this thing should be done.

The instance was referred to of the Emperor of Russia, and it was sneered at as taken from one of those despotic dynasties, as the gentleman from Montgomery termed them. I apprehend that we can copy what is good from any source with propriety.

Mr. BIDDLE. Certainly; "business is business."

Mr. CARTER. It is a good example; and the source from which this amendment came, the most excellent delegate from Philadelphia, who sits behind me, (Mr. Knight,) having known and seen the necessity of such an enactment, entitles it to consideration. It may not answer all the purposes intended, but unquestionably it is a movement in the right direction. I hope, therefore, that it will pass.

One word more. The late delegate from Philadelphia, (Mr. Gowen,) among certain reforms in reference to railroads which he said it was the duty of this body to pass, specified this matter of free passes as one of them. No doubt he had seen the abuses of the system, and was desirous to correct them.

Mr. SIMPSON. I shall vote for the amendment of the gentleman from Indiana, because if this inflexible rule is to be put in the Constitution it should bear alike upon every human being; there should be no exception to the rule. If the employees and officers of a railroad company are required to travel on the road, the company can furnish them with tick-

ets and charge them to expenses, and there should be no device and no means by which any human being could travel free of charge on the railroads. If it is to be put in the Constitution, let us make it so inflexible that it cannot be evaded or escaped from under any circumstances. Unless you adopt the amendment of the gentleman from Indiana, you will have railroad companies who want to avoid this provision employing thousands and tens of thousands of persons to do trivial work for the mere purpose of furnishing them the means of riding on their road free.

The PRESIDENT *pro tem.* The question is on the amendment of the delegate from Indiana (Mr. Harry White) to the amendment of the delegate from Philadelphia, (Mr. Knight,) to strike out the words, "except officers and employees."

Mr. BOYD. On that question I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken resulted as follows:

YEAS.

Messrs. Baer, Bailey, (Huntingdon,) Boyd, Broomall, Brown, Campbell, Corbett, Corson, Edwards, Fulton, Gilpin, Green, Guthrie, Hanna, Hunsicker, Lear, Lilly, MacConnell, M'Murray, Mann, Patterson, T. H. B., Purman, Purviance, Sam'l A., Russell, Simpson, White, Harry and White, J. W. F.—27.

NAYS.

Messrs. Alricks, Bally, (Perry,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Brodhead, Buckalew, Calvin, Carter, Cochran, Cronmiller, Curtin, Dallas, De France, Elliott, Ewing, Funck, Hall, Harvey, Hay, Horton, Howard, Kaine, Knight, Lamberton, Landis, M'Culloch, Mantor, Newlin, Niles, Patton, Read, John R., Reed, Andrew, Reynolds, Rooke, Smith, H. G., Smith, Henry W., Smith, Wm. H., Temple, Turrell, Van Reed, Walker, Wherry, White, David N. and Worrell—47.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Ad-dicks, Ainey, Andrews, Armstrong, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Bullitt, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson,

Hazzard, Hemphill, Heverin, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, Jno. Prieg, Woodward, Wright and Meredith, *President*—59.

Mr. HARRY WHITE. I move to amend the amendment, by adding after the word "company," the words "traveling on the business of such company," so as to read:

"No railroad company shall grant free passes or passes at a discount to any person, except officers or employees of the company traveling on the business of such company."

Mr. KAINE and others called for a division on agreeing to the amendment.

Mr. HARRY WHITE. Before a division is called or a vote is taken, I submit that if we are sincere in this matter and want to except officers and employees, this expression should be included. It is perfectly reasonable and proper. I submit that there are gentlemen, officers of railroad companies, traveling in palace cars and indulging in luxuries that the stockholders of such companies cannot indulge in.

Mr. KAINE. I have just a word to say in reply to the gentleman from Indiana. A pass is given by a railroad company to one of its employees. He proposes to insert an amendment there that the employee shall only use that pass when he is traveling on the business of the company. How are you to make that definition? Are you going to leave it to the employee to say "now I am going on business of the company and I will use this pass," and "now I am going on my own business, and I will pay my way." How is the officer or conductor of the road to know anything of that kind? The thing is utterly impossible.

SEVERAL DELEGATES. Swear him.

Mr. BUCKALEW. I desire to say a few words upon the main question, as I perceive we are to have debate pending amendments, and I may as well say what I desire now. I intended originally to vote against this proposition abolishing free passes; but I have changed my mind, and now, being one of those who intend to vote against this proposition—

Mr. M'MURRAY. I rise to a point of order. Is it in order to discuss the question

now while the vote is being taken and a division called for?

The PRESIDENT *pro tem.* A division was called for.

Mr. M'MURRAY. When the vote is being taken, I submit whether discussion is in order.

The PRESIDENT *pro tem.* The yeas and nays were not called for. The delegate from Columbia is in order.

Mr. BUCKALEW. I say, sir, that now, being classed among the supporters of this proposition, I appeal to its friends to keep all amendments off. It is obviously intended by putting amendments on this proposition to break it down. Of course, that will be the ultimate effect. By the section itself we have a simple rule, that railroad companies shall not issue free passes unless to their officers and employees, of course while they are in their employment or officers of the company; and if there is any abuse, we must leave it to the Legislature to correct it.

But I undertake to say that this amendment will be one of the most acceptable amendments that you can propose to the railroad companies themselves. The officers of railroad companies now are harassed, absolutely harassed with applications from all quarters for free passes, and so long as the fashion of issuing them is permitted to exist at all, the harassment of railroad companies will continue, and they will be obliged to do more than the interests of their own stockholders require, under this general system of favoritism. I believe that every well regulated railroad company in the State will rejoice in accepting, along with their fellow citizens, an amendment of this kind. It will not only relieve them from great abuses in the management of their own companies by ending the issuing these passes on the principle of favoritism, but it will also protect the interest of the stockholders and relieve the companies from a great deal of public odium which now attends upon the pass system; and while that is the aspect of the question as to the railroad companies themselves, it will be about the same as to the great mass of the community outside of those organizations.

The amendment will be very acceptable to the people, and they will accept it as a proclamation against the exercise of a species of illegitimate influence of railroad companies, not only upon members of the Legislature but upon the judges of our courts, upon the jurymen who are im-

pannelled in our courts; and upon men of high influence and position throughout the Commonwealth who apparently are subsidized to some extent by these corporations by the issuing of these passes to them.

Taking into account that these are the views that honorable railroad companies and the general public will hold upon this subject, I believe this to be one of the most popular amendments which we can place in the Constitution.

Yet I can perceive that it is an imperfect measure in itself, and that there will be various modes of evading it to some extent. You must permit the issuing of commutation tickets, and they may be issued at nominal rates if the railroads choose, and in other respects to some extent the operation of this amendment may be avoided. But as to that you can rely to some extent upon the interest of the railroad companies and their stockholders against the issuing of free passes. This will be to some considerable extent a security against attempted evasions.

Mr. TEMPLE. Mr. President: I have not uttered a word since the railroad report has been under consideration. I desire to say that I was in favor of this reform when this subject was before the Convention before; but, like the distinguished delegate from Columbia, I have changed my mind upon this subject; and it is for this reason that I desire to express my views in about a dozen words before the vote is taken.

The reason I shall vote against this proposition is that I believe it to be a blind only for the purpose of giving a railroad corporation an opportunity to refuse railroad passes to the citizens at large, whereas they can issue them to politicians and legislators and others in authority, without stint.

Now, Mr. President, I submit to the delegates upon this floor that it is a mere blind to undertake to place a thing like this in the Constitution. It is admitted here by delegates that members of the Legislature can become employees of a corporation temporarily. It has been admitted also by delegates upon this floor that legislators can buy commutation tickets for, if you please, five or ten cents apiece, and yet the great bug-bear will go out into the community, leaving the business interests and the business men of this State to believe that this Convention has effected a great re-

form in this respect, when it really has effected nothing.

I do not believe in such a reform, and I say to delegates upon this floor if this be an abuse at all, which I do not undertake to say here, so far as legislators are concerned, it is traceable directly to the corporations themselves.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Indiana (Mr. Harry White) to the amendment of the delegate from the city (Mr. Knight.)

Mr. HARRY WHITE. I call for the yeas and nays.

Ten members rose to second the call.

The *PRESIDENT pro tem.* The call is sustained.

The question was taken by yeas and nays with the following result :

Y E A S .

Messrs. Alricks, Baer, Bailly, (Perry,) Broomall, Campbell, Corbett, Corson, Cronmiller, Edwards, Fulton, Gilpin, Guthrie, Hanna, Howard, Hunsicker, Lilly, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Patterson, T. H. B., Patton, Purviance, Sam'l A., Read, John R., Russell, Simpson, Smith, Henry W., White, David N., White, Harry and White, J. W. F.—31.

N A Y S .

Messrs. Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Chas. A., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Carter, Cochran, Curtin, Dallas, De France, Elliott, Ewing, Funck, Green, Hall, Harvey, Hay, Horton, Kaine, Knight, Lambertson, Landis, Newlin, Niles, Purman, Reed, Andrew, Reynolds, Rooke, Smith, H. G., Smith, Wm. H., Temple, Turrell, Van Reed, Walker, Wherry and Worrell—43.

So the amendment to the amendment was rejected.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Armstrong, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazzard, Hemphill, Heverin, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsops, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, J.

Price, Woodward, Wright and Meredith, *President*—59.

The *PRESIDENT pro tem.* The question recurs on the amendment of the delegate from Philadelphia (Mr. Knight.)

Mr. CAMPBELL. I move to amend the amendment, by striking out all after the word "section" and inserting the following :

"No corporation engaged in the business of a common carrier shall permit the gratuitous transportation over the road or canal owned or controlled by it of any person except its own officers and employees."

That is stronger than the section offered by the gentleman from Philadelphia (Mr. Knight.) It is substantially the section reported by the Railroad Committee. I like the formation of it better, and it will prevent any possibility of the railroad company evading this prohibition. I propose to call for the yeas and nays upon it.

Mr. NILES. I should like to inquire if the amendment of the gentleman from Philadelphia will allow an employee to ride upon a gravel train? It seems to me it will not.

Mr. CAMPBELL. Yes, it will.

Mr. KNIGHT. I do not think the amendment is as strong as the proposition I offered. The language of my section is that there shall be no ticket issued at a discount. The amendment does not cover that point.

Mr. COCHRAN. The amendment offered by the gentleman from Philadelphia, (Mr. Campbell,) and which is now pending, was considered in the Committee on Railroads, and was reported in this form. I think it is probably better expressed than the one originally offered by the other gentleman from Philadelphia, (Mr. Knight,) and I certainly prefer the form of expression of that amendment to that of the original amendment. It differs from it in extending also to poor and indigent persons.

Mr. CAMPBELL. I call for the yeas and nays on the amendment to the amendment.

The yeas and nays were ordered, ten delegates rising to second the call.

Mr. CARTER. Let it be read.

The CLERK read the amendment to the amendment.

Mr. KNIGHT. Now, I should like to say one word. It will be observed that the language of that amendment is that no railroad shall permit of gratuitous

transportation. The language of my amendment is that the tickets shall not be free or sold at a discount. If a man can get a ticket for a five cent piece, it is not gratuitous; he pays something for it. I do not think the amendment is in any way a substitute for the one offered by myself.

The *PRESIDENT pro tem.* The yeas and nays have been ordered, and the Clerk will call the roll.

Mr. CAMPBELL. I withdraw my amendment and will vote for the amendment of the gentleman from Philadelphia, as there seems to be some difference of opinion on the subject.

The *PRESIDENT pro tem.* The question then recurs on the amendment of the delegate from the city (Mr. Knight.)

Mr. HANNA. I move to amend the amendment by adding the following:

"And shall provide every purchaser of a ticket with a seat in the cars of said company and with ice in the water coolers." [Laughter.]

Mr. CAMPBELL. I hope such nonsense as that will be voted down at once.

Mr. EWING. I submit that that is not in order.

The *PRESIDENT pro tem.* The amendment to the amendment is not in order. The question is on the amendment of the delegate from the city (Mr. Knight.)

Mr. CAMPBELL. On that question I call for the yeas and nays.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken resulted as follows:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Barclay, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Buckalew, Calvin, Campbell, Carter, Cochran, Cronmiller, Curtin, Dallas, De France, Edwards, Ewing, Fulton, Funk, Gulpin, Green, Guthrie, Hall, Heverin, Horton, Howard, Kalne, Knight, Lamberton, Landis, MacConnell, M'Clean, M'Culloch, M'Murray, Mann, Mantor, Newlin, Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Reynolds, Rooke, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, Van Reed, Walker, Wherry, White, David N., White, J. W. F. and Worrell—62.

NAYS.

Messrs. Armstrong, Bannan, Bullitt, Corbett, Corson, Elliott, Hanna, Harvey,

Hay, Hunsicker, Lilly, Niles, Simpson, Temple and White, Harry—15.

So the amendment was agreed to.

ABSENT—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Curry, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazzard, Hemphill, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, Jno. Price, Woodward, Wright and Meredith, *President*—56.

Mr. COCHRAN. I offer the following as a new section, to come in at this place:

"Every ticket except excursion tickets issued to any passenger by any railroad company shall entitle the holder of such ticket to transportation over the works of such company from his place of departure to his place of destination, either by continuous train or by any other train on which the same rate of fare is charged, without any additional charge or subjecting him to any inconvenience because of his stopping off at intermediate points."

I merely wish to say that this is the same form which I offered as an amendment to the section proposed by the gentleman from Philadelphia this morning, and I withdrew it in order that he might have his section voted on without any embarrassments. I ask that this may be considered and disposed of, and I ask for the yeas and nays on its passage.

Mr. BRODHEAD. I rise to a question of order. That having been already voted down, is out of order now.

The *PRESIDENT pro tem.* It was withdrawn, not voted down.

Mr. BRODHEAD. A similar section was voted on.

Mr. HOWARD. It was voted down in committee of the whole in connection with the same subject offered by the delegate from Philadelphia, (Mr. Knight,) but has not been considered at all at this stage.

Mr. CAMPBELL. I call for the yeas and nays.

Mr. CALVIN. I second the call.

The *PRESIDENT pro tem.* Do ten members rise to second the call?

More than ten members rose.

The PRESIDENT *pro tem.* The call is sustained, and the Clerk will proceed with the call.

Mr. LILLY. I offer the following as an amendment,

"Provided, That the conductor shall punch the ticket of every passenger on passing each station."

I simply have offered this amendment to show into what a ridiculous position we are getting. We are running this whole thing into the ground, and putting the smallest things possible into the article, probably leaving out, at the same time, some of the larger things that ought to go in; of course I was not serious in offering this amendment—and I now withdraw it.

Mr. CORBETT. I hope that the Convention will pause here. It will be perceived that we are running into very small details in this article. We are undertaking to control things that ought to be left to the Legislature. We can certainly trust that body with something. We are not making an article declaring general provisions that are to govern railroads, but we are descending to details. What is this proposition? What is it but a proposition to regulate tickets and the manner in which they shall be used by railroads. If a man purchases a ticket from one point to another, he understands the rule of the company. If the rule of the company be that he may upon that ticket ride continuously upon one train, he understands that fact distinctly. If he wants to drop off at a point in his journey, he can purchase his ticket to that point and drop off, and then he can purchase a ticket from that point to the end of his journey, and he is not in any sense compelled to pay two fares. It is all wrong for us to attempt to descend to regulate this matter by a constitutional provision. The fact is, I think, that we have enough of detail in this article now, when it comes up as an article before the people, to defeat it. There is enough to defeat it, and it ought to be defeated. I hope the Convention will pause. We cannot possibly put in this article provisions that are to regulate railroads for all time to come, and it is time I think that we stop.

Mr. HOWARD. Before the vote is taken, I should like very much myself, personally—of course I have no right to dictate terms to anybody else—to state that I would very much prefer that the offering of new sections should be stopped for the present, in order to allow us to

finish the work of the Committee on Railroads and Canals. I think the way we are going on is only calculated to embarrass the rest of our work, and I think it is due to the Committee on Railroads that the Convention should go forward with their report, and complete it first. We have now stopped here, in the middle of the report, and clogged up enough new sections for two railroad articles, after we had adopted several sections that preceded them, and while we have several sections still under consideration. I now propose that we go straight on and complete this report before any more new sections are introduced.

The PRESIDENT *pro tem.* The Chair would state that this section was offered by the chairman of the Committee on railroads, and as such the Chair certainly did not deem it his duty to interfere, although he believes that the suggestion of the gentleman from Allegheny is wise and proper.

Mr. COCHRAN. We have just passed a section which was reported by the Committee on Railroads and Canals and which was stricken out by the committee of the whole. This new section which I offered was also part of the same section which was originally reported along with that which we have just adopted. As far as this matter of going into detail is concerned, this is a question of as great public interest, and is as much due to the protection of the parties having charge of our public highways, as any other that we have adopted, because it has been determined by the highest judicial authority of this State that whether a man may have seen a notice or had a notice put on his ticket or not, he shall not be permitted to stop at any intermediate point and then go on in another train unless he pays full fare.

Mr. MANN. I think it would be wise to postpone the consideration of this section for a short time, so that we can have a full code of regulations by which the railroad companies shall be run. We seem to have come down to that now, and I do not think that we ought to stop at a little matter of issuing tickets. We ought to pass an entire set of rules for the management of the railroads in the State. We have undertaken to frame laws for the Legislature. Now we have commenced framing laws for the railroads. I believe next we shall commence to frame rules for school directors.

The PRESIDENT *pro tem.* The question is on the amendment. The yeas and nays

have been called on that question and the Clerk will proceed with the call.

The yeas and nays were taken, and were as follow, viz:

Y E A S .

Messrs. Alricks, Baer, Baily, (Perry,) Boyd, Calvin, Campbell, Carter, Cochran, Curtin, De France, Funck, Gilpin, Hanna, Howard, Landis, Lear, M'Culloch, Patterson, T. H. B., Reynolds, Russell and Turrell—21.

N A Y S .

Messrs. Achenbach, Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Brodhead, Broomall, Brown, Buckalew, Bullitt, Corbett, Corson, Cronmiller, Curry, Dallas, Edwards, Elliott, Ewing, Fulton, Green, Guthrie, Hall, Harvey, Hay, Heverin, Horton, Hunsicker, Kaine, Lamberton, Lilly, MacConnell, Mann, Mantor, Newlin, Niles, Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Simpson, Smith, H. G., Smith, Henry W., Smith, William H., Temple Van Reed Walker, Wherry, White, David N., White, Harry, White, J. W. F. and Worrell—55.

So the amendment was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazard, Hemphill, Knight, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Patterson, D. W., Porter, Pughe, Purviance, Jno. N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, John Price, Woodward, Wright and Meredith, *President*—57.

The **PRESIDING OFFICER** [Mr. Simpson in the chair.] The Clerk will read the next section of the article.

The **CLERK** read as follows:

SECTION 9. No railroad, canal, or transportation company shall issue any stock or bonds, except for money, labor, or property actually received and applied to the purposes for which such corporation was created, and all stock dividends and other fictitious increase of the capital stock or indebtedness of any such corporations shall be void. The capital stock and corporate indebtedness of railroad, canal, or other corporations engaged in

the business of common carriers or transporters shall not be increased, except in pursuance of a general law, nor without the consent of a majority in value of the stockholders of such corporation first obtained at a meeting to be held after sixty days' notice given in pursuance of law. All laws heretofore enacted by which an increase of the capital stock or of the bonds or other evidences of indebtedness of any corporation, railroad or canal has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts made and executed in accordance therewith.

Mr. BRODHEAD. I move to strike out in the fourth line the words "all stock dividends and other" and insert the word "any," so as to make the section read—

Mr. COCHRAN. I appeal to the gentleman from Northampton to let me offer a section as a substitute for this for the purpose of perfecting it, and then, if agreeable to him, he can move his amendment.

Mr. BRODHEAD. If the amendment is agreeable to good sense so that we can all vote for it, I will withdraw my amendment to let the gentleman from York offer his substitute.

Mr. COCHRAN. I move the following as a substitute for the entire section:

"No corporation shall issue stock or bonds except for money, labor or property actually received; and all stock dividends and fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations engaged in the business of common carriers or transporters shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law. Laws heretofore enacted by which an increase of stock or bonds or other indebtedness of any corporation has been authorized are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

I merely wish to say that the amendment which I have offered is intended to make the language of the section less verbose. It does not materially affect the provisions of the section. An expression in the original section provided that no increase of indebtedness in these cases should be made without the consent of a majority in value of the stockholders, which I think to be a very unfortunate form of expression. I have modified

that so as to read: "Without the consent of the persons holding the larger amount in value of the stock."

In all other respects, the amendment is the same in substance and effect with the printed section, except that it is made larger in applying not merely to railroad corporations and corporations doing the business of common carriers, but to all corporations, that no corporation shall issue stock or bonds, but the part with regard to the increase of capital is confined to railroad and canal companies only. "No corporation shall issue stock or any other indebtedness except for money or labor actually received; and all stock dividends and other fictitious increase of capital stock invested in any corporation shall be void." That is general, but the second clause is confined to railroad corporations.

MR. BRODHEAD. I move to amend the amendment by striking out the words "stock dividends and." All my observation and all my experience in corporations has been that as a general thing stock dividends are generally the most honest that are made, but this amendment classes them with fictitious increases of the capital stock. I am perfectly willing that a section shall be inserted which shall declare void all fictitious increase of stock or indebtedness; but stock dividends in ninety-nine cases out of a hundred are not fictitious. They are the result of earnings of the company which have been appropriated to improvements and extensions, and are, I am very free to say, the most honest dividends that are made. In the manner in which this section is framed it classes stock dividends with a fictitious increase of stock. Now, sir, when corporations have earned money and have put it into their improvements or into extensions, and the stock which is issued upon that is very frequently more genuine, more money goes in there, than any of the stock originally issued. The full intent and meaning of the committee will be attained by declaring that all fictitious increase of stock or indebtedness shall be void, striking out the words "stock dividends and," because, as I remarked before, the stock dividends nine times out of ten are the most genuine dividends made by any companies in this Commonwealth.

MR. BROOMALL. I have a suggestion to make which I hope will meet the approbation of the Convention. We are making no headway. We shall not get a railroad article that will suit the Rail-

road Committee and the people; at least I am very much afraid of it. All of us desire to get this business on second reading and let the people see what it is; and I propose that we let the opponents of railroads have their own way upon this article; that we offer no amendments and no objections, but permit them to get it up exactly to suit themselves, and that we fall back upon our opportunity of requiring a separate vote upon any article by a vote of forty-five of our number. If, then, there should be more people in the State in favor of stage coaches and Conestoga wagons than of railroads, they can adopt the article. If, on the other hand, a majority of the people of the State are opposed to running the civilization of the age back a century or so, they need not vote down our whole Constitution in order to get rid of this very singular production. I think if we had adopted a rule when we first met, requiring the Railroad Committee to ride a week in stage coaches before they attempted to prepare an article, we should have had an article that probably the people of the State would adopt.

MR. BULLITT. Before the vote is taken on this section, I desire to say a word or two.

THE PRESIDING OFFICER, [Mr. Simpson in the chair.] The question now is on the amendment of the gentleman from Northampton (Mr. Brodhead.)

MR. BULLITT. I so understand, but I understand it is a substitute for the section.

THE PRESIDING OFFICER. No; it is to strike out certain words in the proposed substitute.

MR. BULLITT. I will wait until that vote is taken.

THE PRESIDING OFFICER. The question is on the amendment of the gentleman from Northampton.

MR. BRODHEAD. On that I call for the yeas and nays.

MR. BOYD. That is a very important proposition, and I hope we shall have the yeas and nays upon it.

The yeas and nays were ordered, ten delegates rising to second the call, and being taken, resulted as follows:

YEAS.

Messrs. Armstrong, Baer, Bailey, (Huntingdon,) Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Carter, Corbett, Corson, Cronmiller, Curry, Curtin, Dallas, De France,

Edwards, Elliott, Ewing, Green, Guthrie, Hall, Harvey, Heverin, Hunsicker, Kaine, Lamberton, Lilly, Mann, Mantor, Newlin, Niles, Patton, Purman, Read, John R., Reed, Andrew, Russell, Simpson, Smith, Henry W., Smith, Wm. H., Van Reed, Walker, White, David N., White, Harry, White, J. W. F. and Worrell—49.

NA YS.

Messrs. Achenbach, Alricks, Baily, (Perry,) Bannan, Barclay, Biddle, Calvin, Campbell, Cochran, Funck, Gilpin, Hay, Howard, Landis, MacConnell, M'Culloch, Patterson, D. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Rooke, Temple, Turrell and Wherry—24.

So the amendment to the amendment was agreed to.

ABSENT. — Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bownan, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Fulton, Gibson, Hanna, Hazzard, Hemphill, Horton, Knight, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, M'Clean, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Smith, H. G., Stanton, Stewart, Struthers, Wetherill, J. M., Wetherill, John Price, Woodward, Wright and Meredith, *President*—60.

THE PRESIDING OFFICER. The question recurs on the substitute as amended.

Mr. BULLITT. Before the vote is taken on this section, I propose to call the attention of the Convention, and especially of the chairman of the Railroad Committee, to what appears to me to be rather remarkable language used in this section. I understand that the amendment offered substantially agrees with the section as we have it before us. Now, the first two lines of this section provide as follows:

"No railroad, canal, or transportation company shall issue any stock or bonds except for money, labor, or property actually received and applied to the purposes for which such corporation was created."

I believe the amendment is substantially the same.

SEVERAL DELEGATES. Oh, no; it has been changed.

Mr. BULLITT. I should like to hear the amendment read as it now stands.

THE PRESIDING OFFICER. It will be read for information.

THE CLERK read as follows:

"No corporation shall issue stock or bonds, except for money, labor, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations engaged in the business of common carriers or transporters shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days notice given in pursuance of law. Laws heretofore enacted by which an increase of stock or bonds or other evidences of indebtedness of any corporation has been authorized are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

Mr. BULLITT. The remarks which I intended to make were applicable particularly to the words "and applied," and therefore I have nothing to say now as they do not appear in the substitute.

Mr. ARMSTRONG. I desire to call the attention of the Convention to the fact as I believe it is under the construction of this section. It will read thus, leaving out all except that which applies to this point:

"No railroad company or transportation company shall issue any bonds except for money actually received."

Under this section they could not discount a bond. If they issued a bond for one hundred dollars and got ten cents less than one hundred dollars, it would be a violation of this Constitution. I say it is entirely wrong, in my judgment; and it cannot be carried out.

Then they are confined to six per cent. interest. How are railroads to get along? If they issue a bond for one hundred cents and only get ninety-nine they do not issue a bond for the money received; they issue it for more than the money received, and it is just as much a violation of this Constitution as though they only received one cent for a bond of \$100. It totally forbids discounts on bonds, and as it stands I certainly cannot vote for the section with that provision in it. That part of it which provides against fictitious stock and that the stock shall not be increased without the consent of the stockholders I approve of; but with this provision in it I do not see how I can vote for it. I will move to strike out—

The PRESIDING OFFICER. The Chair will suggest to the gentleman that if he calls for a division of the question terminating with the word "void," in the fifth line, he will accomplish his purpose.

Mr. ARMSTRONG. Well, sir, I was going to move an amendment but I suppose it would not be of any use, and I shall not do it.

Mr. EWING. I move to amend the amendment by striking out the words "engaged in the business of common carriers or transporters, so that that portion of the section will read: "The stock and indebtedness of corporations shall not be increased except in pursuance of a general law."

The effect of this amendment, if adopted, would be to make the provision applicable to all corporations. The amendment offered by the gentleman from York strikes out in the first part of the section the limitation to railroad, canal and transportation companies, and very properly I think; but when he comes to the second portion of it, which says that the stock of these corporations shall not be increased without the consent of the majority of the stockholders, he limits it to railroad and transportation companies. The section as offered is a kind of conglomerate. Now, if the provision requiring notice and requiring the consent of all the stockholders is a good one for railroad corporations. I cannot see why it is not a good one for all corporations. The evil intended to be corrected is one which prevails in other corporations, bridge companies, gas companies, and a great many others, just as much as it does in railroad corporations.

The PRESIDING OFFICER. The question is on the amendment of the delegate from Allegheny (Mr. Ewing) to the amendment.

The amendment to the amendment was agreed to.

Mr. BRODHEAD. I move to amend the amendment by striking out "sixty" and inserting "thirty." Thirty years ago sixty days notice would have been proper, but in these days of telegraphs and fast lines, a notice of thirty days is all that is necessary. I believe we have uniformly hertofore on all the other sections of the Constitution stricken out "sixty" and inserted "thirty," and I therefore move the same amendment here.

Mr. COCHRAN. I hope the limitation in point of time will not be reduced. There

ought to be an opportunity for the stockholders to have fair notice.

The amendment to the amendment was rejected.

The PRESIDING OFFICER. The question recurs on the amendment offered as a new section as amended.

Mr. BRODHEAD. I call for the yeas and nays.

Mr. EDWARDS. I second the call.

Mr. BOYD. I should like to know what we are to vote about.

The PRESIDENT *pro tem*. The question is on the amendment of the gentleman from York as amended.

Mr. BOYD. I should like to hear it read, because nobody understands what is going on here to-day.

The CLERK read as follows:

"No corporation shall issue stock or bonds except for money, labor or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days notice given in pursuance of law. Laws heretofore enacted, by which an increase of stock or bonds or other evidences of indebtedness of any corporation have been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

The PRESIDING OFFICER. The Clerk will proceed with the call.

Mr. HARRY WHITE. Mr. President: I wish to call for a division.

The PRESIDING OFFICER. The call will proceed.

Mr. BRODHEAD. I rise to a point of order. The yeas and nays have been ordered.

The PRESIDING OFFICER. The Clerk will proceed with the call of the roll. It is too late to call for a division. The amendment was read merely for information. The Clerk will proceed with the call of the roll on the amendment as amended.

Mr. HARRY WHITE. I should like to have a division of the section. ["Too late."]

The PRESIDING OFFICER. That cannot be done now. The call will proceed.

The question being taken by yeas and nays resulted as follows:

Y E A S.

Messrs. Achenbach, Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Black, J. S., Brown, Calvin, Campbell, Carter, Cochran, Dallas, De France, Ewing, Fulton, Funck, Gilpin, Guthrie, Hall, Hay, Horton, Howard, Landis, M'Culloch, M'Murray, Mantor, Newlin, Patterson, D. W., Patterson, T. H. B., Purviance, Samuel A., Reynolds, Rooke, Russell, Simpson, Smith, H. G., Smith, Wm. H., Turrell, White, David N., White, Harry and White, J. W. F.—40.

N A Y S.

Messrs. Armstrong, Bannan, Barclay, Bigler, Black, Chas. A., Brodhead, Broomall, Buckalew, Bullitt, Corbett, Corson, Cronmiller, Curry, Edwards, Elliott, Green, Harvey, Heverin, Hunsicker, Kaine, Knight, Lamberton, Lear, Lilly, MacConnell, Mann, Niles, Patton, Purman, Reed, Andrew, Smith, Henry W., Temple, Walker, Wetherill, J. M., Wherry and Worrell—36.

So the amendment was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baer, Baker, Bardsley, Bartholomew, Beebe, Bowman, Boyd, Carey, Cassidy, Church, Clark, Collins, Craig, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Hazzard, Hemphill, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Van Reed, Wetherill, Jno. Price, Woodward, Wright and Meredith, *President*—57.

The PRESIDING OFFICER. The question recurs on the section as amended.

Mr. HARRY WHITE. I presume now we shall have the yeas and nays on the section as amended, and before the vote is taken I wish the first part of the division divided at the word "law," in the eleventh line, preceding the words, "Laws heretofore enacted."

The PRESIDING OFFICER. The question is on the substitute as amended.

Mr. HARRY WHITE. Let that be divided as I have suggested at the word "law." The second division then will commence with the words, "Laws heretofore enacted," &c.

Now, Mr. President, my reason for asking for this division is this: I have voted for the report of the Railroad Committee

in the main; I design to do so still; but it is not my desire to do impracticable or unwise things if I know it; but if I voted for this entire section it seems to me I should be doing an unwise and imprudent thing. I desire and design to vote for the first clause of this section as amended; I design to vote against the second clause, which is as follows, in the print, though somewhat different in words in the amendment now pending:

"All laws heretofore enacted by which an increase of the capital stock or of the bonds or other evidences of indebtedness of any railroad or canal company has been authorized are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

Mr. President, for many years the Legislature has authorized the increase of the capital stock to a certain amount of large railroad corporations of this Commonwealth. A few years ago the Pennsylvania railroad asked for the increase of her capital stock, in the Legislature of 1867. I believe the then Executive of the Commonwealth vetoed the bill. There was an effort made to pass it over his veto which succeeded in one House but failed in the other, and a compromise was made between the parties who opposed and those who favored—

Mr. BOYD. I rise to a point of order. My point of order is that it is not in order for the gentleman to discuss what the Pennsylvania railroad company has done in the Legislature and the history of the legislation upon that subject.

The PRESIDING OFFICER (Mr. Simpson.) The point of order is not well taken.

Mr. BOYD. I am sorry that I must appeal from the decision of the Chair.

The PRESIDING OFFICER. The question now before the Convention is a matter upon which it may be very proper for gentlemen to refer to legislative proceedings by way of illustration.

Mr. BOYD. I understand that there is a distinct proposition at issue here, and the gentleman's remarks are in relation to specific legislation with regard to a particular railroad company and the course of the Legislature upon that subject.

The PRESIDING OFFICER. The reason why such a clause should be in the Constitution or not in the Constitution is proper to be discussed, and arguments may be advanced and illustrations used.

Mr. BOYD. I appeal from the decision of the Chair. I say the ruling of the Chair is incorrect, and he should decide

that the gentleman is not in order in discussing—

Mr. DALLAS. I rise to a point of order. Debate is not in order pending an appeal.

The PRESIDING OFFICER. Debate is not in order. The Chair will state the question to the Convention.

Mr. HARRY WHITE. May I proceed?

The PRESIDING OFFICER. The gentleman from Indiana will pause until the gentleman from Montgomery submits his appeal in writing.

Mr. NILES. What is the question on which he has appealed?

The PRESIDING OFFICER. The gentleman from Montgomery raised a point of order; the Chair made his decision; and the gentleman from Montgomery has been directed to reduce his appeal to writing, when it will be submitted to the Convention by the Chair.

The appeal having been reduced to writing was submitted and read as follows:

"Mr. Boyd appeals from the decision of the Chair that the gentleman from Indiana (Mr. Harry White) is in order in stating what the Legislature did in 1867, in relation to the passage of an act by the Legislature authorizing the Pennsylvania railroad company to borrow money, and the course of the members of the Legislature in relation to the passage of said act, which is, in the opinion of the undersigned, not relevant."

The PRESIDING OFFICER. Is the appeal seconded?

Mr. HEVERIN. I second the appeal.

The PRESIDING OFFICER. The question is, shall the decision of the Chair stand as the judgment of the Convention?

Mr. BOYD. On that I call for the yeas and nays.

Mr. HEVERIN. I second the call.

Mr. MANN. Mr. President: I rise to a question of order. The appeal must be signed by two members in writing.

Mr. BOYD and Mr. HEVERIN thereupon signed the appeal.

Mr. HUNSICKER. Now, I move an adjournment.

SEVERAL MEMBERS. No, no; let us settle this matter.

Mr. HUNSICKER. Very well.

Mr. WHERRY. I ask that the question be distinctly stated before the yeas and nays are called.

The PRESIDING OFFICER. The Chair will state the question. The gentleman from Indiana was discussing the pending

proposition and referred to some action of a railroad company in the Legislature. The gentleman from Montgomery objected to his proceeding as not being in order. The Chair ruled that he was in order, from which decision an appeal has been taken. The question is, shall the decision of the Chair stand as the judgment of the Convention, upon which question the yeas and nays have been called for.

Mr. BOYD. Mr. President: In addition to what you have stated, you omitted to state that the gentleman was discussing, or making remarks in relation to, the conduct of members of the Legislature. ["Question." "Question."]

The PRESIDING OFFICER. The yeas and nays have been called for and the call seconded. The Clerk will call the names of members.

The CLERK proceeded to call the roll.

Mr. SIMPSON, [when his name was called.] I ask leave of the House to be excused from voting upon this question, so that it shall not appear upon the Journal that I was absent when the vote was taken.

Unanimous leave was given.

The result was announced, as follows:

YEAS.

Messrs. Achenbach, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Charles A., Black, J. S., Brodhead, Brown, Buckalew, Bullitt, Calvin, Campbell, Carter, Cochran, Corbett, Cronmiller, Curry, Dallas, De France, Edwards, Elliott, Ewing, Fulton, Funck, Gilpin, Green, Guthrie, Hall, Harvey, Hay, Horton, Howard, Hunsicker, Kaine, Lamber-ton, Landis, Lilly, MacConnell, M'Clellan, M'Culloch, M'Murray, Mann, Mantor, Niles, Patterson, D. W., Patterson, T. H. B., Patton, Purman, Purviance, Samuel A., Read, John R., Reed, Andrew, Rooke, Russell, Smith, H. G., Smith, William H., Van Reed, Walker, Wetherill, J. M., Wherry, White, David N., White, Harry, and White, J. W. F.—67.

NAYS.

Messrs. Boyd, Heverin, Reynolds, and Smith, Henry W.—4.

So the decision of the Chair was sustained.

ABSENT.—Messrs. Addicks, Ainey, Alricks, Andrews, Baker, Bardsley, Bartholomew, Beebe, Bowman, Broomall, Carey, Cassidy, Church, Clark, Collins, Corson, Craig, Curtin, Cuyler, Darling-

ton, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Hazzard, Hemp-hill, Knight, Lawrence, Lear, Littleton, Long, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Simpson, Stanton, Stewart, Struthers, Temple, Turrell, Wetherill, J. Price, Woodward, Worrell, Wright and Meredith, *President*—62.

THE PRESIDING OFFICER. The gentleman from Indiana will proceed.

Mr. HARRY WHITE. The act of 1867 increasing the stock of the Pennsylvania railroad company became a law. At the same session an act was passed increasing the stock of the Allegheny Valley railroad company, and as the result of that law large improvements have been projected and are now being made in the construction of a low grade railroad in a region of country which previously had not been traversed by rail. The Lehigh Valley railroad company also had extended to it the privilege of increasing its capital stock, all of which has not been used. The Reading railroad company also had conferred upon it an increase of its capital stock, and acts were passed authorizing an increase of the capital stock of the Pittsburg, Charlestown and Virginia railroad company, and the Connells-ville railroad company. These corporations were all legitimate corporations, enterprises engaged in good faith in the development of the resources of the Commonwealth, and they will all be directly affected by the operation of this section and affected injuriously to the interests of their stockholders. They have never complained of the passage of these acts. Since the General Assembly passed them there have been meetings of these corporations; there have been meetings of the boards of directors and meetings of the stockholders, and no successful complaint has ever been made against the acts of Assembly increasing their stock. Therefore I am opposed to the latter part of this section.

Mr. HOWARD. I desire to say a few words in reply to the gentleman from Indiana. I understand that he is opposed to the latter clause of this section.

Mr. HARRY WHITE. Only.

Mr. HOWARD. Yes, "only;" and, Mr. President, that clause was introduced by the unanimous vote, if I remember aright, of this Convention, which in-

structed the Railroad Committee to report such a provision.

Mr. MANN. It was not unanimous.

Mr. HOWARD. If it was not unanimous it was nearly so. The instruction was given by a full vote of this Convention after deliberation, and there is no doubt that this concluding clause is a very valuable part of the section. Some of the corporations of this Commonwealth have wrung from the Legislature the right to increase their capital stock to any extent that they please. There is no limit to the power of some of them in this respect. They have the power to borrow money without limit, with which to buy up and monopolize all the coal and mineral land in this Commonwealth, and there is no way of reaching this monstrous abuse except by a provision of this kind, that so far as they have issued stock, and so far as innocent purchasers have taken it, so far they shall be protected. It would be monstrous to leave this matter in the position in which it is at present. We know perfectly well that there are corporations in this Commonwealth which have the right to issue stock and bonds without any limit whatever. This provision is intended to apply to corporations of that description, and it certainly ought to be adopted by this Convention.

There are three divisions of this section, and each division is valuable, valuable for the people of the Commonwealth, for the business interests of the State, and for its *individual* enterprises. We all know perfectly well that one of the great and wealthy corporations of this Commonwealth has already obtained a charter whereby it has the right to buy up all the coal lands and all the mineral lands of the State. It is wrong in principle, and I have no doubt that the people of this Commonwealth, especially the people on the seaboard, will find it so to their cost. That great monopoly now talks about putting up the price of coal, and it will do it. It will wring the necks of the people of the city of Philadelphia, and its manufacturers, before it gets done with them. It has laid its giant hand upon the coal interests of Pennsylvania, east of the mountains, to such an extent that it is bound to control them. It has the power to issue stock and bonds to an unlimited amount to enable it to do so, and if it is necessary that power will be backed by English capitalists to the amount of \$100,000,000 or more if necessary.

Is not the necessity for the adoption of this clause, that the delegate from Indiana is so anxious to strike out, apparent? He says that it will affect several railroad companies which have already received such unlimited power at the hands of the Legislature. Suppose these companies are arrested by this section in further issues of stock. It is easy to apply to the Legislature, and in a proper case they can have conferred upon them the right to increase their capital stock to any proper amount. But hereafter it should be known that stock will not be allowed to be increased without limit. We should know that the stock is to be used for a legitimate and a valuable purpose, that it is to build railways, that the issue of stock is necessary to build them, and that it is not the intention to water the stock or increase it unnecessarily. After this stock is increased it must be made to earn dividends. It must make its proper interest, and the people of the Commonwealth must be taxed in the price of transportation for the purpose of raising money to pay dividends on that stock, and therefore it is the right of the people to know that those issues of stock are necessary and that the proceeds are to be used for legitimate and proper improvements.

That is all this section contemplates. It is good in all its parts. It was considered by the Committee on Railroads and Canals long and laboriously, and I desire to say that while we did not happen to have upon that committee the president of any railroad, nor any of the very distinguished railroad lawyers of this Convention, we had the proper and the necessary information at our command to direct us in our work. I see that one of the Philadelphia papers, in reporting the proceedings of this Convention upon the consideration of this railroad article, states that the gentleman from Philadelphia (Mr. Cuyler) made the tremendous point against the Railroad Committee that it did not have upon it or before it a railroad officer to enlighten it. That Railroad Committee labored faithfully and honestly and they had all the knowledge which it was possible to obtain by honest industry. I talked with railroad men in order to ascertain their views, and all the idea that I could obtain from them was that they would like to cut each others' throats. [Laughter.]

Suppose we had called before the Committee on Railroads and Canals from the Pennsylvania railroad company Thomas

A. Scott, and then gone to Baltimore and called Mr. Garrett of the Baltimore and Ohio railroad company, then gone to New York and called upon Mr. Gould and Vanderbilt; do you suppose that they would have ever, upon the face of this earth, been able to agree as to what would be a proper provision to be put into the Constitution? No, sir; it would be simply a game of sharpers to see which could get ahead of the others, and we would have never been able to get a sensible and logical idea from any one, or all of them, as to what would be best for the interests of the country. The Railroad Committee had the benefit of the information of as good men as there are in the Commonwealth and far better than the newspapers of Philadelphia. I understand perfectly well that the people of the Commonwealth have got the idea into their heads that the delegates from Philadelphia are entirely running this Convention, because no matter what any other delegate may say, the Philadelphia papers only give half of his name, while everything, or the substance thereof, that is said by the delegates from Philadelphia gets into the papers, and anyone reading the newspapers of this city would naturally suppose that all the rest of the Convention sat here listening and voting in silence. That is what we got for coming to Philadelphia. Part of the contract was that if we came to this city the great city of Philadelphia had plenty of newspapers that would publish our proceedings so that the people of the Commonwealth would understand what we were doing.

The section is a good one. It is good in all its parts, and the last part is the best, and it is of the very utmost importance that this Convention shall place this part of that section in the Constitution. If this Convention desires to protect the citizens of the Commonwealth against some, at least, of the giant monopolies that have been created by the Legislature, either unguardedly or by some stupendous corruption, let them vote this section in entire; do not strike out its most important and vital part.

The PRESIDING OFFICER. The question is on the first division of the section as amended.

Mr. CORBETT. I think that the latter part of the section is very important.

Mr. ANDREW REED. The latter clause is not before the Convention.

Mr. CORBETT. Has a division been called?

The PRESIDING OFFICER. Yes, sir; the first division is to end with the word "law."

Mr. CORBETT. Then, as it is only the latter part of the clause to which I wish to allude, I believe I had better wait till that comes up.

Mr. BIDDLE. I should like to hear the first division of the section read.

The CLERK read as follows:

"No corporation shall issue stock or bonds except for money, labor, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding a larger amount in value of the stock first obtained at a meeting to be held after sixty days notice given in pursuance of law."

Mr. EDWARDS. On that question I call for the yeas and nays.

Mr. HUNSICKER. I second the call.

The PRESIDING OFFICER. The yeas and nays are called for upon the question of agreeing to the first division of the section, and the Clerk will proceed with the call.

The yeas and nays being taken, resulted as follows:

YEAS.

Messrs. Achenbach, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Black, J. S., Brown, Buckalew, Calvin, Campbell, Carter, Cochran, Cronmiller, Curtin, Dallas, De France, Ewing, Fulton, Funck, Gilpin, Guthrie, Harvey, Hay, Horton, Howard, Landis, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Read, John R., Reynolds, Rooke, Russell, Simpson, Smith, H. G., Smith, Wm. H., Turrell, Van Reed, Wetherill, J. M., White, David N. and White, Harry.—50.

NAYS.

Messrs. Barclay, Boyd, Brodhead, Bullitt, Corbett, Corson, Curry, Edwards, Elliott, Green, Hunsicker, Kaine, Knight, Lamberton, Lear, Lilly, Niles, Patton, Reed, Andrew, Smith, Henry W., Walker, and Worrell.—22.

So the first division of the section was agreed to.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew,

Beebe, Bigler, Black, Charles A., Bowman, Broomall, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hall, Hanna, Hazzard, Hemphill, Heverin, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Temple, Wetherill, John Price, Wherry, White, J. W. F., Woodward, Wright and Meredith, *President*—61.

The PRESIDING OFFICER. The question now is on the second branch of the section.

Mr. COCHRAN. Mr. President—

The PRESIDING OFFICER. If the gentleman rises to discuss the question it is too late. The question is on the second division.

Mr. COCHRAN. I call for the yeas and nays.

Mr. LILLY. I second the call.

SEVERAL DELEGATES. Let the division be read.

The CLERK read as follows:

"Laws heretofore enacted by which an increase of stock or bonds or other evidences of indebtedness of any corporation has been authorized, are hereby declared void, except so far as may be necessary to maintain the obligation of contracts."

The question was taken by yeas and nays, with the following result:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Campbell, Cochran, Ewing, Funck, Gilpin, Guthrie, Hall, Hay, Horton, Howard, M'Culloch, M'Murray and Patterson, T. H. B.—16.

NAYS.

Messrs. Achenbach, Armstrong, Baily, (Huntingdon,) Bannan, Barclay, Biddle, Black, J. S., Boyd, Brodhead, Brown, Buckalew, Bullitt, Calvin, Carter, Corbett, Corson, Cronmiller, Curry, Curtin, De France, Edwards, Elliott, Fulton, Green, Hunsicker, Kaine, Knight, Lamberton, Landis, Lear, Lilly, MacConnell, Mann, Mantor, Niles, Patterson, D. W., Patton, Purman, Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Runk, Russell, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, Van Reed, Walker, Wetherill, J. M., White, David N. and Worrell.—54.

So the second division of the section was rejected.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Bowman, Broomall, Carey, Cassidy, Church, Clark, Collins, Craig, Cuyler, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Harvey, Hazzard, Hemphill, Heverin, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'Clean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W. Palmer, H. W., Parsons, Porter, Pughe, Purviance, John N., Read, John R., Ross, Sharpe, Stanton, Stewart, Struthers, Temple, Wetherill, John Price, Wherry White, Harry, White, J. W. F. Woodward, Wright and Meredith, *President*—63.

The CLERK read the next section as follows:

SECTION 10. All municipal, railroad, canal and other corporations, and individuals, shall be liable for the payment of damages to property resulting from the construction and enlargement of their works, as well as to owners of property not actually occupied as to those whose property is taken, and said damages shall be paid or secured to be paid before the injury is done.

MR. BRODHEAD. Mr. President: This subject was fully discussed while we were on the second reading of the article on corporations, and we adopted the section, which I will take the liberty of reading:

SECTION 6. No corporation shall engage in any other business than that expressly authorized in its charter, nor shall it take or hold any real estate except what may be necessary and proper for its legitimate business; and the Legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against corporations made by viewers or otherwise. The amount of such damages in all cases of appeal shall on the demand of either party be determined by a jury.

This is on exactly the same point, and it fully covers all that is endeavored to be met here.

MR. KAINE. I move to amend the section in the fifth line by striking out the words "to be paid." They are unnecessary. It will then read: "And said damages shall be paid or secured before the injury is done." "Secured" is sufficient.

MR. COCHRAN. I hope that amendment will not be adopted. We have used the ordinary legal language in this case.

MR. FUNCK. I offer the following as a substitute for the section—

The PRESIDING OFFICER. It is not now in order and will not be until after the vote is taken on the pending amendment to strike out three words in the section. The question is on the amendment of the gentleman from Fayette (Mr. Kaine.)

The amendment was rejected.

MR. FUNCK. I move to amend by striking out all after the word "section" and inserting the following:

"No corporate or municipal body or individual shall take private property for public use or injuriously affect it by change of character of highway or otherwise, without being required to make compensation to the owner thereof for all damages, direct or consequential, resulting from such taking or injury, and such compensation shall be paid or secured before such property shall be taken or injured."

Mr. President, I have offered this substitute for the section because the section as adopted by the committee of the whole is too narrow and does not embrace several items of injury for which compensation should be made. A careful reading of the section as adopted will disclose the fact that it provides only for the payment of actual or direct damages. It makes no provision whatever for the payment of proximate consequential damage. For instance, if a railroad company in the construction of its railroad takes possession of the land of an individual and by means of a cut or the throwing up of a high embankment injures the property of an adjoining proprietor, that adjoining proprietor can recover no damages for the injury done him, no matter what the extent of the injury may be.

The damages provided for by the section are of this character: Suppose in the digging of a cut on the land of a proprietor, a house standing on the land of an adjoining proprietor should be injured by the caving in of its foundation. That is a case of direct injury and will be covered by the original section. Again, suppose in blasting rocks in making an excavation the house of the adjoining proprietor should be shivered. In that case damages could be recovered under the original section; but all other damages of a consequential character are not embraced in it.

Then, again, suppose a public highway has been laid out under the right of eminent domain—a public roadway for horses and teams to travel over. That may not be injurious to the property of the owners along the track; it may, on the contrary, be beneficial to them; but subsequently a railroad corporation acquires the right to construct a railroad over this public highway, and in doing it throws up an embankment or cuts a ditch by which the houses on both sides may be materially injured, there can be no recovery of damages under the original section. Nor does the original section apply at all to the case of a municipal corporation, for I should like to know what municipal corporation in anything that it may do properly comes within this section, unless it travels outside of what is usually done by municipal corporations—such as the construction of water works or the like “construction and enlargements of their work,” being the only term that applies to municipal corporations. Now, in the opening of streets, in the regulation of grades, in the construction of sewers and otherwise, the property of a citizen of the municipality may be very seriously injured, and yet the original section makes no provision for compensation. I submit to this Convention that whenever the property of an individual is injured by the exercise of the right of eminent domain, whether that injury be direct or consequential, the person should be compensated to the extent of his injury.

It may be said that if a railroad or any other public improvement is constructed over the land of A and the land of B is entirely untouched, the land of B is not injured, and consequently he should have no right to recover damages. In answer to that, I say that if, by the construction of this public highway, the land of B has been depreciated in value so that if it were put up at sale it would bring a thousand dollars less than it brought before the improvement was made, it is an injury to him to that extent, for which he should be compensated; it is just as clearly and manifestly a loss to him as if that much money had been taken out of his pocket. What difference can it make to him whether a portion of his property is appropriated to the construction of this public highway or whether his property is consequentially injured by reason of the work which has been done by the corporation? In either case, he has lost just as much as his property will bring

less if put up at public sale, and whatever that may be is the extent of the injury for which he should be compensated.

It has been said heretofore that if a railroad corporation or any other corporation shall be called upon to pay injuries of this kind no public improvement can be made. I answer that in this way: If people are to be injured to this extent in order to allow these public improvements to be made, it is levying a sort of compulsory contribution upon them to the extent to which their property has been injured to make the improvements. That certainly is unjust. But, as I said before, whether that property is injured or whether it is taken can make no difference to them. Whatever the amount that it will bring less if sold at public sale, to that extent they have suffered; and all these injuries should be paid for, because public highways, although of great public utility, are not built by the stockholders for the purpose of benefiting the public or developing the resources of the Commonwealth, but mainly with the intention of making money for those who have invested their capital in the enterprise. That a great benefit results to the public is incidental to the improvement, and assimilates itself to the case of an individual who resides in a town and expends \$20,000 or \$30,000 in erecting a magnificent mansion for himself. All the property around him is enhanced in value on that account, and yet he would never think of going to his neighbors and levying an assessment on them to assist him in paying for his building. They are consequentially benefited. He never contemplated that, but it is one of the incidents of the improvement which he made. Precisely so with these corporations. No; whenever any such improvements are made any citizen of the Commonwealth injured thereby, whatever the extent of the injury may be, should be paid; they are not made at his instance, but frequently against his will under the authority of the government. And in many instances the injury falls upon individuals who are little able to bear it.

THE PRESIDING OFFICER. The question is on the amendment of the gentleman from Lebanon.

MR. TURRELL. I wish to detain the Convention a moment to call to mind the fact that this section was very thoroughly considered on a former occasion and we had a great deal of declamation and argument upon it; and especially after a very

luminous speech by the President of the Convention, Mr. Meredith, the language seemed to be adapted to express the idea that the Convention wanted to put into the section; and I do not believe that at this time we shall benefit by changing it. I hope it will be adopted just as it came from the hands of the committee of the whole.

Mr. EWING. Mr. President: This is a very important section if we adopt it either as it stands or as the amendment proposes to make it. It is one that I do not think can be considered properly to-night, one that proposes a radical change in several respects, and in order that the amendment may be seen and examined, I move that the Convention do now adjourn.

The question was put, and the motion was declared not to be agreed to.

Mr. LAMBERTON and Mr. WORRELL called for the yeas and nays, and they were taken.

Mr. ALRICKS. I rise to a point of order. This House is in session after six o'clock.

The PRESIDING OFFICER. Nothing can interrupt the roll call. The result must be announced to the Convention.

The result was then announced as follows:

Y E A S .

Messrs. Alricks, Armstrong, Baer, Bailly, (Perry,) Biddle, Black, J. S., Buckalew, Cochran, Elliott, Ewing, Fulton, Funk, Hay, Kaine, Knight, Lamberton, Lear, Lilly, Niles, Patterson, T. H. B., Purviance, Samuel A., Smith, H. G.,

Smith, Henry W., Walker and White, Harry—25.

N A Y S .

Messrs. Achenbach, Bailey, (Huntingdon,) Bannan, Brodhead, Bullitt, Calvin, Campbell, Corbett, Corson, Cronmiller, Dallas, De France, Edwards, Gilpin, Green, Guthrie, Hall, Horton, Howard, Landis, MacConnell, M'Culloch, M'Murray, Mann, Mantor, Patterson, D. W., Patton, Reed, Andrew, Reynolds, Rooke, Russell, Simpson, Smith, Wm. H., Turrell, Van Reed, Wetherill, J. M., White, David N. and Worrell—38.

ABSENT.—Messrs. Addicks, Ainey, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bigler, Black, Charles A., Bowman, Boyd, Broomall, Brown, Carey, Carter, Cassidy, Church, Clark, Collins, Craig, Curry, Curtin, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hanna, Harvey, Hazzard, Hemphill, Heverin, Hunsicker, Lawrence, Littleton, Long, MacVeagh, M'Camant, M'CLean, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, G. W., Palmer, H. W., Parsons, Porter, Pughe, Purman, Purviance, John N., Read, John R., Ross, Runk, Sharpe, Stanton, Stewart, Struthers, Temple, Wetherill, John Price, Wherry, White, J. W. F., Woodward, Wright and Meredith, *President*—70.

The PRESIDING OFFICER. The motion to adjourn is not agreed to. The hour of six o'clock having arrived, however, the Convention stands adjourned until tomorrow morning at nine o'clock.

ONE HUNDRED AND FORTY-FIRST DAY.

TUESDAY, July 15, 1873.

Y E A S.

The Convention met at nine o'clock A. M., Hon. John H. Walker, President *pro tem.* in the Chair.

Prayer by Rev. J. W. Curry.

The Journal of yesterday's proceedings was read and approved.

LEAVES OF ABSENCE.

Mr. KAINE asked and obtained leave of absence for Mr. Hanna for a few days from to-day.

Mr. BRODHEAD asked and obtained leave of absence for himself for a few days from to-day.

Mr. BOYD asked and obtained leave of absence for himself for the residue of this week.

Mr. LAWRENCE asked and obtained leave of absence for Mr. J. N. Purviance for a few days from to-day on account of sickness.

SUBMISSION OF CONSTITUTION.

Mr. BUCKALEW. I move to take up the resolution which I offered a few days ago in relation to an adjournment and the submission of the Constitution.

Mr. TEMPLE. On that motion I call for the yeas and nays.

Mr. SIMPSON. I second the call.

Mr. D. N. WHITE. I understood a few days ago that that resolution came up and was rejected.

Mr. SIMPSON. I rise to a point of order. Is debate in order?

The PRESIDENT *pro tem.* It is not after the yeas and nays have been ordered.

Mr. D. N. WHITE. I just wish to say that I offered a resolution the other day very similar to this, and I hope this resolution will be voted down for the purpose of taking up the other.

Mr. H. W. SMITH. Debate is in order.

The PRESIDENT *pro tem.* The Clerk will call the roll of members on the motion of the gentleman from Columbia to proceed to the consideration of the resolution offered by him.

The yeas and nays were taken with the following result:

Messrs. Ainey, Alricks, Baer, Bannan, Black, J. S., Brodhead, Broomall, Brown, Buckalew, Calvin, Cronmiller, Curry, Curtin, Elliott, Ewing, Green, Hall, Hanna, Harvey, Hemphill, Kaine, Knight, Lamberton, Littleton, MacConnell, M' Murray, Mantor, Newlin, Palmer, G. W., Patton, Porter, Pughe, Read, John R., Reynolds, Rooke, Ross, Smith, H. G., Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., White, J. W. F. and Worrell—45.

N A Y S.

Messrs. Achenbach, Bailly, (Perry,) Bailey, (Huntingdon,) Biddle, Bigler, Black, Charles A., Boyd, Campbell, Carter, Clark, Cochran, Corbett, Dallas, De France, Edwards, Fulton, Funck, Gilpin, Guthrie, Hay, Horton, Howard, Lawrence, Lear, Lilly, Long, M'Clean, M'Culloch, Mann, Patterson, D. W., Patterson, T. H. B., Purman, Purviance, Samuel A., Reed, Andrew, Russell, Simpson, Smith Wm. H., Temple, Wetherill, Jno. Price, White, David N. and White, Harry—41.

So the resolution was ordered to be read a second time.

ABSENT.—Messrs. Addicks, Andrews, Armstrong, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Bullitt, Carey, Cassidy, Church, Collins, Corson, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Ellis, Fell, Finney, Gibson, Hazzard, Heverin, Hunsicker, Landis, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Purviance, John N., Runk, Sharpe, Stanton, Stewart, Wherry, Woodward, Wright and Meredith, *President*.—47.

The PRESIDENT *pro tem.* The resolution is before the Convention and will be read.

The resolution was read the second time, as follows:

Be it resolved as follows:

First, That when the article on railroads shall have passed second reading the Convention will adjourn to meet

again on the 15th of day of September, at ten o'clock A. M.

Second, That articles passed on second reading, including the legislative article, be re-printed as amended, and that three thousand copies thereof, in pamphlet form, be published for general distribution.

Third, That the Convention will submit the new or revised Constitution proposed by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next.

Mr. S. A. PURVIANCE. I move to amend, by inserting after the words, "article on railroads," the words, "and the article on the Legislature."

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Allegheny.

Mr. BIGLER. Mr. President: I desire to say a very few words on this subject generally. Like yourself, sir, I have stood out against this idea of a recess; but on looking for public reasons why we should struggle through this business in the hot weather, I have become satisfied that we may very wisely take a recess.

It seemed desirable to the Convention, as I am sure it did to right-minded men all over the State, that the proposed reforms should apply to the coming elections. I believe that has been decided to be impracticable; the coming election must be held under the old forms.

Then I see only one remaining public reason for attempting to get through without a recess; that is, that the reforms in legislation may operate upon the coming Legislature. I believe it is the understanding of those who favor the recess that that purpose shall be accomplished. It is to be understood that we are to assemble here in September and prosecute this work with that diligence which will secure its completion and submission some time in November, so that it may go into operation about the first of January next, so that the restrictions on legislation may operate upon the coming Legislature.

With that view I can see no public reason for holding out in the condition in which we are now. Indeed, sir, I think I can see reasons why a little more deliberation and better opportunities on these grave questions may prove useful to the people of the State. I confess that I am somewhat despondent and discouraged

about the work of the Convention for the last week or so. For one, I am willing to say that I would be better prepared to enter upon these questions after some rest and relaxation.

Why, sir, to those of us who are somewhat advanced in years this is rather a serious business. I found it absolutely necessary to leave the city for the purposes of health and comfort and go out to Chestnut Hill, a distance of ten miles. To get here, it is necessary for me to be ready for breakfast before seven o'clock, and take the train and come here in time for the sessions of the Convention. Then we sit until one o'clock. Then we go out in the midst of the heat, in the hottest hours of the day, to get a lunch, after which we sit until six o'clock. I must then take the train and between seven and eight o'clock get a meal called a dinner and a supper mixed up. Now, sir, ten days of that kind of labor has somewhat exhausted me, and I feel, for one at least, that I should be better able to perform my duties after some relaxation. This is only a private reason. Those of a public character I have given heretofore. I confess that I have come to this ground with great reluctance, for I had a great anxiety to meet the public expectation that the Convention would accomplish its work within this month.

Mr. MANN. I hope the amendment of the gentleman from Allegheny will prevail. I am sure the people will be sufficiently disappointed if this Convention adjourns without completing its work, without giving them the additional cause of disappointment of not completing upon second reading one of the most important articles of the entire Constitution. There will be very great disappointment if the Convention adjourns without passing to second reading the article upon the Legislature. All over the State the people have been asking for months, "What are you going to do in relation to the number of members and the manner of their distribution throughout the State?" Now it is proposed to adjourn without answering that question. I think it would be a very unfortunate movement. Now, here we are just prepared to enter upon that question. I have no doubt the mind of every delegate is made up upon it, and all that is needed is that we come to a vote. We are as ready to vote upon it to-day as we ever shall be. What earthly reason therefore can be given for attempting to adjourn this body without answering the

just expectations of the people on that question?

We have been told on various occasions that it was necessary to adjourn this body for some particular reason. I ask any gentleman here to say that he believes any single adjournment of this body has heretofore worked any good. In my judgment, the time wasted in efforts to adjourn this body would have completed our entire work before this time if it had been devoted to legitimate work rather than to these attempts to adjourn; and now this motion is sprung upon us right in the midst of the consideration of the article on railroads. We stop work upon that when our minds are all prepared to finish it, and talk about adjournment again.

It was said last November that it was necessary to adjourn in order that the committees might prepare work for the Convention. I assert that there was not a single preparation made during our adjournment, and that we came together in January precisely as we separated in November. If we adjourn now we shall come back at the end of the recess not as well prepared to finish our work as we are to-day. That will be the result. We shall spend weeks before we can get back to that condition in which we are now. Our minds are made up. We have thought over these subjects and we are ready to vote to-day intelligently, and complete our work.

But, sir, I foresee that an adjournment is a foregone conclusion. All that I ask then, all that I beg for, is that the amendment of the gentleman from Allegheny shall be adopted, so that we shall send out to the people a completed work, so far as the second reading is concerned. We can complete this work this week if we will stop talking and wasting time in reference to adjourning, and go to work. I therefore hope that the amendment will prevail.

MR. W. H. SMITH. Mr. President: This Convention met at Harrisburg in November last, and since then much of our time has been frittered and trifled away. As for myself, I am opposed to adjournment until this business is finished. I believe it can be done in three weeks and I think it ought to be done. These adjournments bear very hard upon those of us from the west who have subordinated our business to our duties here. One-sixth of our time was voted away for adjournments on Saturdays. Then we have had numerous other adjournments

for trivial reasons; we have had the yeas and nays constantly called upon the most unimportant questions. All these things have consumed the time, and now it is proposed that we shall adjourn again. We can finish in three weeks. If we adjourn now and come back again it will take us three months to get through. It is very hard, very unjust to us who come here from a long distance and are compelled to stay here over Saturdays and short adjournments. Other gentlemen who live within a hundred miles of this city can go home on Saturdays and attend to business and keep up the chain of what they have to do. It is not so with those of us who come from the extreme west, or even come two hundred miles to attend to their duties here. These adjournments are very hard and very unjust upon us. I trust that this resolution will be voted down finally, but if not I hope we shall certainly finish the legislative article before we adjourn.

MR. SIMPSON. I trust the amendment will be adopted and that the Convention will not vote for any recess at least until we have finished the whole of our work on second reading. I am opposed to all recesses and shall vote against the proposition, although I shall vote for the amendment. I think we ought to sit here and finish this work. It is my conviction that if we take a recess now and come back again next fall, we shall be three months in session where we can finish now in this present month of July. I can work in hot weather, and I suppose I am quite as susceptible as most of the delegates on this floor. To my mind a recess is an indefinite extension of the sessions of the Convention. Now, if the ideas of some delegates on this floor are to control our action, that there must three months elapse between the time of our promulgating the Constitution and before a vote can be taken upon it, and we take a recess, we cannot submit the Constitution and put it in force on the first of January next. It will take from two to three months to get through with it here, and there will not be time to give sixty or ninety days notice and have it voted upon by the people this year, and it will carry it into next year before the Constitution can be put in force. But if you go on with it now you can submit it to a vote and put it in force prior to the assembling of the Legislature on the first of January next. We can make this organic law begin on the first day of January; but if we now take a re-

cess, the result in my opinion will be that we shall not be able to complete our work until after that time; this will of course postpone the time of its taking effect until long after the first of the year.

Mr. AINEY. I simply rise to object to any attempt to make the Convention vote on this question under false impressions. When I submitted a few remarks to the Convention two weeks ago, it was said by the same gentlemen who opposed a recess now that we could finish this work in two weeks. That was the assertion that was made here by these gentlemen. Now we are told we can finish our work in *three* weeks if we go on with it. We have spent the two weeks in diligent work, and what progress have we made? We have made reasonable progress, but it does not warrant the belief—from what has been done in these last two weeks—that we can finish this work in three weeks, or in less time than was then predicted by those who favored a recess. It was then said it would take at least two months to finish up this work in any manner that will be acceptable to ourselves or to the people. I earnestly hope the Convention will decide the question understandingly and not under the belief that by remaining here we will be able to finish in three weeks. I, for one, do not believe it possible or at all practicable. I do not believe the people expect or desire us to continue this work during the heated term. On the contrary, several newspapers throughout the State have expressed the opinion that the Convention ought to adjourn over the hot weather. I hold one in my hand, published in Allentown, which has a long and sensible article on the subject, taking the position that if this Convention continues its sessions, in the nature of things our work will run great risk of being spoiled by hasty and inconsiderate action. Every lawyer knows—and we have upwards of a hundred in this Convention—that he cannot try a cause as well in hot weather as he can in cold; he knows he cannot do the same justice to it then. While every lawyer knows this, the people know it also.

Mr. CARTER. Permit me to ask the gentleman a question?

Mr. AINEY. Certainly.

Mr. CARTER. I ask whether he is responsible for that article himself?

Mr. AINEY. In no possible form. I never saw, heard or knew of it until I ad it in the newspaper. I never spoke

to the editor on the subject, to suggest, solicit or request its publication in any shape or form; but it is a very good article, very well written, and the best part of it is that it contains reasons why this Convention should adjourn that cannot be successfully answered or controverted, in my judgment.

Mr. LILLY. I believe this work could have been finished in two weeks from the time the gentleman speaks of. If gentlemen had staid here and attended to their business, if they had staid here from nine o'clock in the morning until six o'clock in the afternoon, if we had settled down to do our work as we ought to have done, it ought to have been through. Instead of taking six weeks, the whole matter can be put through in one week or less, if the Convention will make up their minds to do it; but if they will come here in the morning from ten to half-past ten, and stay until twelve, and then go away and come back at three, and then go away again at four, and go home two or three times a week, I should like to know how any work could be done in that kind of way. I dare say, if we all come here and put our minds to work, as we could do, it might have been done long ago. Now, I want to say that I have been in favor all the time—

Mr. AINEY. I rise to a point of order. Is it in order for the schoolmaster of this Convention to read a lecture to the Convention this morning? [Laughter.]

Mr. LILLY. The gentleman has not been here long enough to become a scholar even in this Convention. [Laughter.] Consequently I cannot give him a lecture on that subject. He is not here long enough. Now, sir, I have been opposed to this adjournment. I want to get through here and go home. I have enlisted for the service.

Mr. HAY. "For three years or the war."

Mr. LILLY. I have enlisted for the war until we complete this Constitution. I have tried to attend to it and mean to attend to it until we get done, and I have opposed adjournments or recesses because I think we can do more now than we can do hereafter if we will only settle down and do it; but such work as we have done for two or three days past when gentlemen say all the time we are going to adjourn, and they do not sit right down to business as they ought to do, will not have been well done. Some gentlemen may vote one way and want

the other way. Now, I say here in my place that I have never felt any other way than that this Convention should stay here until we get through.

Mr. AINEY. I desire to ask the gentleman a question with his permission.

Mr. LILLY. I am not on the witness stand, especially to answer any questions of the gentleman from Lehigh.

Mr. AINEY. I want to ask the gentleman from Carbon if he does not ask the Convention to adjourn whenever he wants to go home.

The PRESIDENT *pro tem*. The delegate cannot be interrupted.

Mr. LILLY. If I was like the gentleman I would ask for an adjournment every other hour in the day almost, because he always wants to go home during the intervening hours. But, sir, I do not wish to talk about my attendance here. I arrange my business in such a way that I can stay here. Some other gentlemen cannot do it. I do not blame them for going home to attend to their business, but I do not think it is in their mouths to come here and talk about this Convention and what they have done. Let them go home and stay if they want to. But, sir, what I want to say is that I am desirous to see the work done and done well, and then let us go about our business. I shall vote against all adjournments.

Mr. EWING. Mr. President: I have not as yet made any speech whatever on questions of adjournment. I have steadily voted against any long adjournment, and been very anxious to finish up this business entirely and go home and stay and submit the Constitution to a popular vote, but I have changed my mind and am satisfied we cannot do so, and I believe we are at this time doing no good here. A large portion of the Convention has become utterly demoralized, and I am satisfied we are not giving proper consideration to our work. Even the delegate from Carbon (Mr. Lilly) within the past week has failed to speak on three or four different motions that were up, which never happened before. [Laughter.] My friend from Potter (Mr. Mann) seems to be demoralized. He has not taken up more than half the time that he did formerly. [Laughter.]

I believe that instead of gaining time, every day we sit here we are adding about two days to the time we shall take when we meet again in September or October, and I am ready to adjourn to-day. I do not believe we shall

do any good by going on with the article on the Legislature, and I shall vote for the adjournment at any time.

Mr. BAER. Mr. President: Having the right to speak ten minutes, I will waive the ten minutes if the Convention will take a vote. ["Yes."] So I will make the effort by moving the previous question.

Mr. H. W. SMITH. I second the call.

Mr. BAER. If the vote can be taken, I will withdraw it; if not I will take my ten minutes.

Mr. BUCKALEW. The gentleman prevents me from making an explanation by the call for the previous question.

The PRESIDENT *pro tem*. The delegate from Somerset has the floor.

SEVERAL DELEGATES. But he yields for a vote.

The PRESIDENT *pro tem*. Then the Chair recognizes the gentleman from Columbia.

Mr. BUCKALEW. Mr. President: I desire to state the grounds upon which this resolution can fairly stand for the justification of those who vote for it.

Now, sir, we are opposed to running our amendments through with the idea of having them submitted to a vote at the October election. There can be no other sufficient motive for sitting here at this season of the year and performing our work as we are performing it, very hastily, than a desire to submit our work at the October election, along with the political issues of the year. I am for taking a recess and concluding our work at a favorable season of the year when we can do it well, and submitting it to a vote at a special election to be held in the month of November or December, and to secure the action of the people upon our amendments so that they shall take effect upon the next session of the Legislature.

Our former resolution of adjournment fixed too late a date, and public opinion was against it for that reason. It fixed the twenty-first day of October, and there was reason to apprehend that if we adjourned to so late a day as that, there would not be sufficient time to conclude our work and have it voted upon by the people, so that it would take effect on the next Legislature. I have selected the middle of September in my resolution, and that is a compromise date. It will accommodate perhaps as many gentlemen as any other which we can select. Some prefer the first of October or some other early day in that month and some

the first of September. I have selected the middle of that month, which will be at the close of the hot season; and if we meet at that time there will be no difficulty in concluding our work and giving a month and a half's notice if you please, and having a vote on that work in time to have it take effect before the Legislature shall meet in January.

Mr. President, the Convention of 1838 adjourned from the 14th day of July to the 17th of October. We have here a precedent by a body similarly constituted with ourselves and assigned to similar duties.

My resolution is that when we conclude the railroad article, which will probably take us a day or two longer, we shall adjourn until ten o'clock upon the 15th day of September next. The gentleman from Allegheny (Mr. S. A. Purviance) proposes to amend by saying that we shall go on and take up the subject of the organization of the Legislature. I am opposed to that on several grounds. I am opposed to it because the chairman of that committee is absent, as well as a large number of the leading members of the Convention whose judgment and aid we require in passing upon that article. I am opposed to it because confessedly this Convention is not now in a condition to act upon that important subject. I am opposed to it because when we meet in September under circumstances very different from those which now exist, we can give to that important subject such consideration as it deserves.

Now, one of the gentlemen who has spoken has said that we have not determined anything about the Legislature, and the people desire to know what we intend to do regarding it. That is not so. The most important question, to wit, the number of members of the two Houses of the Legislature, has been substantially decided upon. The section with regard to the constitution of the Senate has passed second reading fixing the number at fifty, and virtually fixing the number of the House also at one hundred and fifty; and there is nothing remaining except to pass upon the question of the manner in which apportionments shall be made of members of the House of Representatives. That is the only subject remaining. Members will observe that by my resolution I provide that this article on the Legislature shall be printed along with the other articles, of course so far as it has passed second reading. The nine-

teenth section will be printed along with the rest, and also the pending thereto amendment of the gentleman from Philadelphia, (Mr. J. Price Wetherill,) regarding the composition of the House, may be printed at the end, and the whole people as well as the members of the Convention during the recess will have before them our work as it now stands, and form their opinions upon it preparatory to our reassembling here.

Mr. BIDDLE. I am opposed to any adjournment, and I will state my reasons. I do not believe that we are doing our work more hastily and more crudely than at any other period of our session; certainly not more hastily, because if any fault be urged against us, it is the delaying too long by too much discussion, especially on the articles which we have had under consideration latterly. The article relating to Legislature has been over-discussed; the article relating to the judiciary has received a very large share of discussion; and the present article, so far from being passed over hastily, is consuming a great deal of time.

Whether the work be done duly or not is not for me or any other delegate to say. Whatever is done by a majority of this Convention we are bound to submit to. That we may have made some mistakes in introducing too much matter into the Constitution I, for one, do not deny; but by going away and returning, members will return surcharged with new ideas and with new speeches to express those ideas, and it is not likely that we shall save time or bring a great deal more enlightenment to the work.

In regard to the supposed slim attendance of the Convention at this time, I beg to say that this morning I casually picked up, when I heard that subject broached, the Journal of this Convention, and by turning it over in a few places I find that on the twenty-first of January, the first place where the yeas and nays were called, there were only one or two more members present than are present to-day. In the first place where we find them called, the yeas were forty and the nays fifty, making ninety; and again we find fourteen and twenty-four, which make eighty-eight; and turning to the first of February, when the yeas and nays were called again, I find fifty-one and twenty-one, in all seventy-two, whereas to-day, if I recollect aright—and I wish to be corrected if I am wrong—we had forty-one and forty-five, making eighty-six. We have

therefore, a full average quorum in attendance, and by going on continuously, when the mind is warmed up and alive to the work, in my judgment we shall do a great deal better, as well as proceed a great deal more rapidly.

What remains to be done? The sag end of this article and one or perhaps two sections of the article on the Legislature relating to apportionment. All that remains after that, is the arrangement of the schedule, the perfection of the style, and the third reading, which as a general rule I am told is a formal reading, because unless the House goes into committee of the whole for the purpose of amendment, the vote is simply yea and or nay upon the different sections of the different articles.

Mr. NILES. On the whole article.

Mr. BIDDLE. On the whole article. Still better.

Now, I put precedent against precedent. The gentleman from Columbia (Mr. Buckalew) has found a precedent for our action now in the action of the Convention of 1837 and 1838. The Convention which framed the Constitution of 1776, and I vouch for this upon the authority of my friend from Greene (Mr. Purman) who sits before me, assembled on the 15th of July and sat to the 28th of September, the very time during which we are now called upon to adjourn. I am amazed at gentlemen standing up here and saying that they cannot work at this season when they have only to step out into any street in Philadelphia and they will find hundreds of men under this blazing sun running up and down a ladder with a hod upon their shoulders. They will find the wharves and public marts swarming with people working in the open air; every man of business in his counting-house, and the courts of the whole State sitting almost universally throughout the month of August. It is the month in which the courts generally sit. It is idle to tell me that we cannot work. We can cut off one-fourth of the whole year under this pretext.

Such an objection was never urged before. Men who stay away now will always stay away. They have stayed away in winter; they have stayed away in spring; they will stay away in the autumn just as they are staying away in the summer. Let them go in relays if they choose to go, but when I find the most venerable member of this House (Mr. Carey) at his place ready to work on, I

appeal to the younger members of the House to do the same. I hope the resolution will not prevail.

Mr. S. A. PURVIANCE. Mr. President: Whilst I submitted the present amendment to insert the article on the Legislature, I am nevertheless unyielding in my opposition to any adjournment of this Convention until we have closed our labors entirely.

Now, in furtherance of what has been said by the honorable gentleman from Philadelphia, (Mr. Biddle,) is there any suffering in this body now? Why, sir, to my own knowledge the XXXVth Congress at Washington city, on a sand bank, the hottest place in the Union, sat through the months of July and August until the eleventh of September, and according to my recollection not a single man suffered. No one was delayed from the performance of his duties on account of sickness.

Sir, we are now here in the middle of July, and one month more brings us into the middle of August, when the days become cool and the nights sometimes exceedingly so.

Now, again, why not remain here until August? Sir, I am of the opinion, formed deliberately, that this Constitution, if it is to be carried by the people, must be submitted at the October election, and I invoke the aid of the friends of reform throughout this body to stand by that idea or otherwise they will put in jeopardy the Constitution.

At the October election all the people will be out, and, sir, you are aware, as well as I am, of the fact that there will be a serious opposition to the carrying of this Constitution by corporations, by railroad men, by those who desire a continuance of the mode of legislation at Harrisburg. They will be out whether you have a special election or a general election; whilst on the other hand if you have a special election many of the friends of reform may remain at home.

Now, can we prepare this Constitution and submit it at the October election? I say we can, because we can close our labors here before the latter end of next month at most, and then we have almost two months between that and the October election, which comes on the fourteenth of October. Why not, then, sit on?

Sir, as Mr. Biddle very properly observed, we are now at the sag end, we might say, of the last article except that of the Legislature, and that article we have

had under discussion for days and for weeks, and there is a plan by which we can in one single day close our labors in reference to the construction of the Legislature, and that is this: Some twenty gentlemen have submitted plans for the construction of your Legislature, and I would suggest, inasmuch as there has been full discussion upon all these plans, that they be permitted to be read from the Clerk's desk, one by one, and the gentlemen who submitted them be allowed ten minutes to explain them, and then the vote can be taken upon them, the one having the lowest vote from time to time to be dropped, until we arrive at the plan of construction.

That I say is a feasible plan because we have discussed the subject for probably ten days already.

Now, sir, I do hope that we shall go through with the labors of our Convention here and be soldiers in the cause of reform, sitting here until the end of August if it be necessary.

Mr. BROOMALL. Mr. President: The great argument in favor of an adjournment is not the hot weather nor the probable sickly season ahead of us—

Mr. S. A. PURVIANCE. On a hot day the question of adjournment is brought up; on a cool day it is not.

Mr. BROOMALL. Although it is a matter of some importance that just to the southwest of us is a district worse a good deal than any other in Philadelphia, a district over which all the southwest winds come, through which the gentleman from Allegheny will not walk without holding his breath—I say that is something, but the great argument in favor of an adjournment is not that. I have advocated before and I advocate now an adjournment

or this reason: In order that before we finally part with the Constitution we shall have an opportunity of seeing what our constituents are going to say about it. It is the publication and getting the document before the people for their criticism that I desire in this adjournment. Why, to talk about passing a Constitution without any reference whatever to the people until we have gone to a stage beyond which we cannot amend it seems to me to be nonsense. If I am rightly informed, the first Constitution that was adopted in Pennsylvania after the Revolution was required to be submitted to the people not in the way of voting, but that the people should have a chance to talk over it four months before the Convention finally parted with it, and it was a valua-

ble proposition. I would rather have that than the vote, if I must have one and not the other, but I want both. It is an important consideration with me that we are a single body. If we want a law passed it must pass first the House, then after a while the Senate, and the object of that is to give an opportunity for deliberation in order that things may not be hastily done, but we submit the highest order of legislation to a single body, and we ask them to put that through without even hearing what their constituents are going to say about it before it is too late to amend it.

Now, my word for it, if we finish this business now, or at any time, without having submitted it, before we finally part with what we have done, to the people, we shall regret it before we have been at home two weeks, and if it was in the middle of winter, or at any other time of the year, wholly without regard to health and hot weather, I would say, let us see what our constituents say about what we propose to do before it is too late to amend, for be sure our constituents know that all the wisdom of the State is not in this body.

Mr. CARTER. Mr. President: I want to speak only three minutes; one minute in reply to the gentleman from Delaware, and two minutes in reply to the gentleman from Columbia.

There is nothing practical, it appears to me, in the suggestion of the gentleman from Delaware at all. He appears to think it necessary that this work shall be submitted in some way to the people before we take final action upon it. Now, the gentleman did not indicate how this is to be done.

Mr. BROOMALL. By publication, according to the resolution.

Mr. CARTER. How is the opinion of the people to be had on it? That is what I mean. Does he propose to hold a series of township meetings? Does he propose merely to consult around among his constituents? So far from any good being done in that way, I hold that it will make confusion ten times worse confounded. Every member will come back here with the crude ideas of his constituents and think it is his duty to represent them on this floor, and we shall not be half as well prepared to come to a conclusion as we are now. I say there is nothing in the gentleman's suggestion, not a scintilla of anything for rational men to consider for a moment. He proposes no way in which this thing is to be got at. Does he pro-

pose a series of township meetings and to take a vote, or how is an expression of the people to be had, or merely to talk around among his constituents? The more he talks the worse they and he will be confounded. We were sent here supposed to have sufficient intelligence to perform this work.

Mr. BROOMALL. Will the gentleman allow me to explain? My constituents have no crude ideas. I cannot talk with them a week without knowing more than I do now. His may be different; I do not know. [Laughter.]

Mr. CARTER. No, sir; but my constituents are so intelligent probably that they do not believe in buncombe. Mine are sufficiently intelligent not to believe in it, whether the gentleman's do or not. Both they and I can tell buncombe when we hear it, whether from the gentleman from Delaware or others.

You see now, Mr. President, that there can be nothing whatever practical in the gentleman's view. Now, in regard to physical ability, &c., you, Mr. President, are next to the oldest man in this body, the senior by years of most of us, and I heard you, sir, the other day, say that you never felt better. I never felt better in my life, myself, and I have but very few seniors in this body. You can go to no healthier city. Only about one hundred and fifty adults died here last week, which is less mortality than most other places, and this room is the perfection of comfort, and we are here working and in good working order at this time—if we will only settle down to it.

Now, in regard to the remarks of the gentleman from Columbia, (Mr. Buckalew,) it seemed to me that his argument stultified itself before he concluded. It was to this effect: That we should adjourn because the body was not full, but the gentleman forgot that we have nearly ninety votes here to-day, which is more than we have had in times past. He then went on to argue that we should adjourn in deference to gentlemen who were absent. I am not disposed to defer to the wishes of the gentlemen who are absent. If they chose to desert their posts, that is no reason why we should, in deference to them, adjourn this Convention and the great work which I believe it is destined to perform. The gentleman then went on to say that he thought their counsel would be necessary, that we were not in proper condition to finish our work, and finally concluded by saying that

everything had been talked over and argued at length in reference to the legislative article. If that be the case, are we not prepared to vote? Are we to wait until these gentlemen who are now visiting and gallivanting about come back and assist us in voting upon it. If we have discussed the legislative article, and they assisted in that discussion, are we not now prepared to dispose of it? Have we not had the benefit of their wisdom? Are not their thoughts and arguments and our own thoughts fresh in our minds?

Sir, I do not believe that the discussion of this legislative article will take the time the gentleman seems to suppose. I think it cannot be talked about much longer without danger of running ourselves into idioy. We have repeated each other's thoughts and ideas so much that it is psychologically unsafe for us to keep repeating and grinding over the same thoughts and ideas.

I think the time has come when we must exhibit a spirit of compromise and concession. I have a most determined repugnance to having every little county in the State represented in the Legislature, but inasmuch as on a fair and square vote of this body, there was a majority of twenty in favor of that idea, I yield. I know that one hundred and thirty-three men cannot get together on a work of this kind and succeed without making some concessions to each other's opinions; and I shall oppose no article for the reason that it does not carry out my ideas in every particular when I have done my duty in opposing it. I believe if we will go to work and discuss the legislative article, we shall astonish ourselves at the rapidity with which we shall get through our work.

I believe we are in just as good working order now as we ever shall be. I am talking to sensible men of this Convention. If there be members here who have a kind of boyish, school-boy haste to get away from their duty, I do not address myself to them, but to the thinking men of this Convention. I believe the adjournment will be unpopular, notwithstanding the *Allentown Gazette*. That is only one paper among six hundred. I think the general tone of the press is averse to our adjournment, and that it does reflect public sentiments.

One word more and I am done. The gentleman from Allegheny (Mr. Ewing) stated that he thought we had better ad-

to make the regulations proper for ordinary corporations in connection with jourm, we were becoming demoralized, because the gentleman from Potter (Mr. Mann) and the gentleman from Carbon (Mr. Lilly) did not talk as much as they used to do. It strikes me that is rather a reason for our continuing in session. If they are nearly talked out, as I think we all are, that certainly is a reason why we should go on with our work. Now, gentleman, I implore you, go to work; cease this talk about adjournment, and in ten days time this work can be consummated and perfected.

Mr. KAINE. I do not believe that this Convention is any better nor composed of any better material than the Conventions that have preceded it, no better than the Convention of 1790 or the Convention of 1837-8. Now, sir, the act of Assembly under which the Constitutional Convention of 1790 assembled had this provision in it:

Resolved, That in the opinion of this House a Convention being chosen and met, it will be expedient, just, and reasonable that the Convention should publish their amendments and alterations for the consideration of the people and adjourn at least four months previous to said confirmation."

Under that they acted. They assembled here in the city of Philadelphia in November and they remained here until the last of February. They then adjourned until the eighth of August, and during that time they published in the newspapers of the State the Constitution as they had framed it. They met here on the eighth of August, and after four weeks consideration they finished the Constitution and adopted it. The Convention of 1837-8 met in Harrisburg on the second day of May and they remained in session until the fourteenth day of July of that year. They then took a recess until the fourteenth day of the following October. During that time the amendments that they had proposed to the Constitution were published and discussed by the people. I do not think we are so far in advance of those Conventions that our labors will lose anything by being submitted for a short time to the consideration of the people. I believe if we adjourn upon the completion of the article on railroads on second reading, to meet here in the middle of September, it will be an advantage to this Constitution and an advantage to ourselves.

I do not know that we are in such elegant working order. The gentleman from Lancaster (Mr. Carter) may be, but I confess that I am not. If there are enough gentlemen in this Convention, and a few of them would be sufficient to take up this Constitution and finish it so that one hundred and thirty-three men could sign it here within two or three or four weeks, I would say amen; but I must confess I do not want to be one of that number. I confess my inability to be one of that number. Therefore I hope the resolution offered by the gentleman from Columbia will prevail.

Mr. MANTOR. Mr. President: I have never spoken in favor of an adjournment. I believe on all occasions, save once or twice, and then for a temporary adjournment only. The other morning when this proposition was called up by the gentleman from Columbia (Mr. Buckalew) I voted against taking it up, and my reason for doing so was that I thought if we then adopted the proposition and we should meet here yesterday (Monday) morning, as we did, we should be unable to carry out the terms of the resolution; we should be left without a quorum. Now, I call upon the delegates here this morning to look around this Hall, and they will find there is absent about sixty members. Sir, why is it that sixty members are out of this Hall this morning?

SEVERAL DELEGATES. ["Forty." "Forty."]

Mr. MANTOR. I am told by the Clerk there are *sixty absent*, and I think my authority is good; but no matter whether the number be forty, fifty or sixty, what is the cause of their absence? Are the courts in session over this State? Not many that I know of. Gentlemen have got up on this floor and asked for leave of absence because of their inability to sit here, and this House has very kindly granted them leave of absence. Other gentlemen have got up here and asked leave of absence on the account of ill-health. I would not ask leave of absence because of ill-health; neither do I desire the Convention to adjourn because it is said we are sitting here in a malarious district. I am not afraid of the *cholera* or *small-pox* or *yellow fever*. I do not propose to die in Philadelphia at all. [Laughter.] I do not propose to be carried home in a box. *I may be, but such is my determination just now.* [Laughter.] I look over this body and I ask myself this morning the reason why I

shall vote for an adjournment. I voted for taking up the question this morning, and it is because there are from fifty to sixty members absent, and those men have gone home, and to *my certain knowledge* many of them with excellent health, and they will not return soon.

Now, we are told this morning that if this Convention adjourns we shall injure our work. There are men sitting in this body, and they are within the sound of my voice, who desire an adjournment, but yet *are afraid of their constituents*. God bless you, I say, and God bless our constituents. They do not, nor will not, make unreasonable demands on you or me. I believe a respite will work great good to every member, because "all work and no play makes Jack a dull boy." [Laughter.] Just eight months ago, on the twelfth of this month, this Convention assembled in the city of Harrisburg to do its work. What is the result? We have worked diligently, faithfully, and, I believe, honestly. I am going home if we adjourn, and if my constituency do not like it they can do the other thing. I must be the judge in some matters. The necessities of this Convention demand an adjournment just now, for to all appearance it is not in a condition to work. Delegates are tired and worn out with work.

MR. DE FRANCE. I should like to ask the gentleman a question. I ask, when there was these forty or sixty here, when was it that there were not that many members absent?

MR. MANTOR. I have never known so many absent at one time before. I have known there were always a great many men out of this Convention, but *it was for business purposes*. I understand the reason men are away now is for other purposes, some on the account of bad health, others because they cannot stand the heat of the city.

THE PRESIDENT *pro tem*. The delegate is under no obligation to answer the question.

MR. MANTOR. Certainly not, but I was doing it because I have the greatest respect for that gentleman, and his question is a civil one, and I cannot pass it by without a like answer. I shall vote for this proposition, because I think the time has come for a short adjournment, think that when we have consulted with our constituency, given them an idea of what we have done and what we propose to do, they will be prepared to sanction our

work by their ballots at an election called expressly to vote on this Constitution.

MR. ARMSTRONG. Mr. President: If I consulted my personal convenience and my personal interests, I would prefer to stay here until this Constitution is completed, for I suppose, in common with a great many others here, I have sacrificed a great deal of personal convenience as well as pecuniary interests in being here at all. It has been long evident that there is a large minority of this Convention decidedly in favor of an adjournment. Something is due to them. They have a right to be heard in a matter not touching any vital interest of the Constitution. It seems to me that the mere request, the expressed desire of so large a proportion of this Convention is entitled to such weight as that, from courtesy alone, we should adjourn if no evil is to befall our work by reason of it.

Now, sir, as to the question of the submission of this Constitution. After some reflection on this subject, I am satisfied that it is not practicable even if it would be judicious to submit it to the people at the October election, not only because if we attempted to do it we must hurry our work, but because we can at that time provide no guarantees against a fraudulent election. If we submit it in November at a special election we can provide in the schedule of the Constitution all necessary guarantees of a fair election. I do not mean to say that this Convention would have the right to pass an election law. I do not believe they could; but if we insert in the schedule of the Constitution certain limitations as to the mode of holding the election, as to the counting of votes and as to the returns of the election—by thus putting it into the Constitution itself to be passed upon by the people, we have, in this manner, the right to declare the forms and mode in which we will submit our work. We cannot provide such separate forms for the election in October, and the gentlemen who are best acquainted with Philadelphia, and I speak upon the authority of what has been said here, have no hesitation in saying as they have repeatedly done that if we submit this Constitution in October there will be counted against it just as many votes as the corrupt rings of both parties deem necessary to defeat it. In November we can provide our own machinery, without being at all complicated with the necessities of the ordinary elections for State officers. Therefore my

judgment is that we should be safer, as to the completion of our work, to submit it at a special election in November. If we continue to sit now, we cannot prevent these recurring discussions on the subject of adjournment; they spring up constantly; and we waste on an average about one-sixth of our time in these fruitless and dilatory discussions.

Now let us end this question by an adjournment which will be reasonable and will leave us time enough to consider all that remains to be considered and to come back with the question of adjournment entirely eliminated from our discussions, come back say in the middle of September, and with one solid month's work we can do all there is to be done. The ten minute rule will apply then as it does now; the debates will be limited, and the subjects of debate will be limited. We probably on third reading cannot go into the consideration of these articles section by section, but must vote upon the articles, going into committee of the whole for amendments occasionally when the Convention shall determine so to do.

We shall lose nothing by this recess. We shall come back refreshed, invigorated, and the people, having all our work before them, will have it thoroughly examined. There is probably not a paper in the State that would not be glad to publish the Constitution if it can be had in such a form that they can publish it in a connected and intelligible form; heretofore it has been in detached pieces, so that the members of the Convention themselves have not a very clear idea of what it is as a connected whole. Let us then have it published in pamphlet form for the use of the members; let it be circulated and published throughout the State, and we may derive some advantage from the comments of the press, from intercourse with individuals, and above all we shall have settled this question of adjournment and come back at a time when we have nothing to do but to go directly to work and finish it without interruption. We can complete it so as to leave at least one month for consideration by the people before the time we may fix for a November election. Under these circumstances, and voting, as I believe, both against my personal interests and my personal convenience, I shall vote to adjourn to the middle of September.

Mr. H. G. SMITH. After what has been so well said by the gentleman from Ly-

coming, I have very little to add. Two weeks ago, when contrary to what has been my course hitherto in this Convention, I voted for an adjournment, we were told that two weeks at the outside would finish the work of this Convention. We are here to-day confessedly a month at least from the end of our labors, if we sit on continuously.

The reasons for adjournment have been urged on this floor in such a manner as ought not to make this a doubtful question any longer. We can proceed, if we adopt the resolution now before this body, to the end of this article on railroads, then our work will be nearly completed, and it can be furnished to the entire press of the Commonwealth, and when you give to the newspapers of the Commonwealth a Constitution formed and finished up to that part on second reading, you will furnish them with other work to do than to carp and criticise the Convention. You will call their attention to the work so far formed as to be nearly complete, to the serious consideration of every newspaper editor in the Commonwealth, and you will have from the hour that this Convention adjourns until the time it re-assembles, from every honest and conscientious newspaper editor in this Commonwealth, the proper kind of criticism upon the work which you have done. If you will learn nothing from it, if the criticism will furnish you with no new ideas, you will at least know the opinions of the press upon your labors, and you will also be able to hear what your constituents think of the Constitution. They will read the Constitution as you have framed it, because it will be published in every newspaper in this Commonwealth without a dollar of cost, and you can learn from your constituents what their opinions are upon this question. Then you will return to your labors in the middle of September prepared to do your work well, with more enlightenment on the subject than you can possibly have at this time.

For these reasons, because I believe that the third reading of this article will be more important and should be more carefully attended to than any other stage of its creation, because I do not believe that this Convention is in proper condition to-day to finish its labors, I advocate the adjournment before it, and beg gentlemen to allow this recess, being assured that it will do more to secure the final passage of their work than anything that can be done.

Mr. CURTIN. If the Convention will indulge me, I desire to say a very few words on this question of adjournment.

It is not that we shall finish our work and submit it to the people that should be the important question for us to consider, but whether our work will be adopted by the people. The serious consideration is that the work will be well done so that it shall commend itself to the sound judgment and discretion of the public. In the beginning of this Convention it was decided to print the Debates in books of reports, and early in the session, after we had moved to this city, I offered a resolution to publish the Debates, with the amendments offered and adopted, in two papers of the city, every morning after the Debates occurred or the amendments were offered; but this was found to be too expensive, and the resolution fell.

The people know little of what we have done. Our work is in the volumes to be distributed to the members of this body, and very little has appeared in the public journals, and the people up to this time are not informed as to what we have done or what we propose to do. I cannot understand, therefore, that an eight weeks adjournment in this heated term can possibly effect the rejection or the adoption of our amendments to the Constitution; but I can well understand how that eight weeks may give the people an opportunity of discussion and examination.

I can understand how it is that the learned gentleman from Philadelphia (Mr. Biddle) desires to remain here. This is his home. It is not the season at which the courts wherein he has his large and lucrative practice are in session. I can well understand why other gentlemen of Philadelphia desire to remain here, and the gentleman from Lancaster, (Mr. Carter,) my excellent friend, has given us reasons for his desire to remain here from his robust and unimpaired constitution. I would that all the members of the Convention could boast of the good health and strong physical powers of that hale and hearty old man. We were not all cast in the same mould. We have not all enjoyed the pure invigorating air of Lancaster. It is impossible indeed to believe, from what he says of the morality of his constituents, that all the members of this Convention have not dwelt in that simplicity of high-toned and rigid morality which the gentleman so ably represents upon this floor. [Laughter.] I hope all

his constituents may live to his advanced age and enjoy his robust health and the confidence and respect with which he has inspired every member of this Convention for him personally.

But I beg my excellent friend to remember that some of us do not bear the heat quite as well as he does. We are not all salamanders. [Laughter.] Nor do I think all the people of Lancaster county are salamanders. [Laughter.] For I notice that while that gentleman retains the thick woolen clothing which he wore in the winter and sits in this heated period in a hall which he pronounces delightfully ventilated and beautifully cool, [laughter,] when the perspiration is rolling from many of the members that come from the interior of the State, I notice also that his colleague from Lancaster (Mr. H. G. Smith) is here in pure virgin white to-day, and he pleads in a most eloquent manner to be let out from this heated place that is so delightful and pleasant and healthful to the aged and robust gentleman. [Laughter.]

My friend from Potter (Mr. Mann) has said that we are now considering an article upon which we have all made up our minds. That is true, but unfortunately for the consumption of the time of this Convention, when we make up our minds we desire to express our reasons and conclusions, and I am quite sure that if my friend from Potter has made up his mind he will desire to express his reasons to us, which we always treat with respect. We all desire to express our views on all subjects considered because they go into a book, and in that book the members of this Convention find marked a highway to immortality. Will my friend from Potter now stifle debate at this very important period of our deliberations? When immortality is constantly approaching, and the highest measure we can get from our published Debates will be just at the end of the volume. Conscious that I have not consumed much of the time of this Convention—for I believe I have never spoken ten minutes at a time, and the volumes show but rarely—I do not go down to posterity in the books. [Laughter.] I wish I could get in a little more. It is a beautiful vehicle to go down to posterity in, and I think I will ask to go down as an outside passenger and have my name put on the fly-leaf. [Great laughter.] I suppose that if our opinions are made up, we must have the liberty of making speeches. Debate is free, and in this Hall certainly

as our long sessions fully attest. I voted against the adjournment from Harrisburg. That was the beginning of the error. I voted against the publication of these Debates. I desired that the people should be informed. But it has been truly said that it is impossible for us to submit these amendments before or at the time of the October election. And inasmuch as we cannot, let us publish what has occurred, what has been proposed, and what has been accomplished, and give it to the people to digest. Let the public journals discuss it. Let members learn from their constituents at home what their will is. We shall come back here refreshed, prepared by contact with the minds and judgment of the people, and better in all respects for the fulfillment of the remainder of the work which the people of Pennsylvania have assigned to us.

I am, therefore, in favor of taking this recess. I find personally that the heat is rather much for me, however it may be with other members, but I have worried it out until this time. I am painfully anxious that this Convention shall propose judicious reforms to the paramount laws of the Commonwealth, and I do not believe that this Convention is in a temper now to propose such reforms. I am equally sure that, whether we continue in session now or adjourn, no matter which, the question of comfort or privilege will not be considered by the people of Pennsylvania. When we submit our amendments, our adjournments, our protracted sessions, our debates will be forgotten, and the people of this State will sit down to a deliberate consideration of what we have done, and if our duty is well done and our work commends itself to them they will adopt it, and if not they will reject it, and the people of Pennsylvania do not care whether you sit on in this heated room or whether you adjourn and give your proceedings due consideration.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Allegheny (Mr. S. A. Purviance) to add the words "and Legislature" after the word "railroads."

Mr. D. N. WHITE and Mr. TEMPLE called for the yeas and nays, and they were taken with the following result:

Y E A S.

Messrs. Alricks, Baily, (Perry,) Biddle, Black, Chas. A., Carey, Carter, Clark, Cochran, Cronmiller, De France, Ed-

wards, Fulton, Funck, Gilpin, Guthrie, Hall, Hay, Howard, Landis, Lawrence, Lilly, MacConnell, M'Clellan, Mann, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Rooke, Simpson, Smith, Wm. H., Temple, Wetherill, John Price, White, David N. and White, Harry—36.

N A Y S.

Messrs. Addicks, Ainey, Baer, Bailey, (Huntingdon,) Bannan, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Cassidy, Corbett, Corson, Curry, Curtin, Elliott, Ewing, Fell, Finney, Gibson, Green, Harvey, Hemphill, Heverin, Hunsicker, Kaine, Knight, Lamberton, Littleton, Long, M'Culloch, Mantor, Newlin, Niles, Palmer, G. W., Patton, Pughe, Reed, Andrew, Reynolds, Ross, Russell, Smith, H. G., Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., White, J. W. F. and Worrell—55.

So the amendment was rejected.

ABSENT.—Messrs. Achenbach, Andrews, Armstrong, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Collins, Craig, Cuyler, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Hanna, Hazzard, Horton, Lear, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, Jno. N., Read, John R., Runk, Sharpe, Stanton, Stewart, Wherry, Woodward, Wright and Meredith, *President*—42.

The *PRESIDENT pro tem.* The question is on the resolution.

Mr. MACCONNELL. I move to amend by striking out "fifteenth" and inserting "sixteenth" before "September." The fifteenth comes on Monday, and some of us can hardly get here on that day.

Mr. BUCKALEW. I accept the amendment.

The amendment was agreed to.

The *PRESIDENT pro tem.* The question recurs on the resolution as amended.

Mr. CAMPBELL and Mr. Worrell called for the yeas and nays, and they were ordered.

Mr. HAY. I ask for a division of the question, so that a separate vote shall be taken on each proposition.

Mr. D. W. PATTERSON. I was just going to call for that division of the question; but before the question is taken, I desire to say that I am opposed to adjourning over until September.

SEVERAL DELEGATES. Let us vote.

Mr. D. W. PATTERSON. You have the majority manifestly now, and I trust I shall be allowed to make a remark. I have not said a word on these resolutions heretofore. If gentlemen who are so anxious to adjourn would only go through the remaining four sections of this railroad article and then take up the article on the Legislature, it could be disposed of in two days, and they could then adjourn for about two weeks, at the end of which time the Committee on Revision and Adjustment and Committee on Schedule would be ready to report, and the delegates would then come back here recruited and could finish this whole thing in ten days, yea in five days we could go through the third reading.

Now, this resolution contemplates a separate and distinct election for the ratification of the Constitution. Not only does the resolution so indicate, but the mover of it says so. In my opinion, that is a great mistake. If we expect any part of this Constitution to be ratified, we must expect it to be done by the voters of the rural districts; that is manifest. My experience is, and I submitted the proposition to a number of gentlemen in this Convention and they say it is their experience, that at a separate and distinct election on this Constitution you cannot get the rural voters out. You cannot, in many of the counties, get the half of the voters out unless they have some neighbor to vote for some office or other in the county. Therefore, while the gentlemen who thus contemplate submitting the Constitution at a separate election may be sincere, I tell you it will be fatal to the adoption of any article of this Constitution. Although the people are much interested in the articles which we have adopted in regard to preventing special legislation, throwing restraints about the pardoning power, and with regard to the article on corporations—the only three articles in which they do feel a deep interest—yet depend upon it, if the Constitution is submitted at a separate election, you cannot get the people of the rural districts out, and they are the element that will adopt and ratify this Constitution, if it is ratified at all. It is manifest that many gentlemen of both parties in the cities are averse to reform in any particular, are averse to the restraints we have put on legislation, &c., and they will most likely carry the cities against any part of this Constitution. As for my-

self, there is much of the Constitution which we have formed that I should like to see ratified by the people. I can't say my judgment approves of all we have done, but much of it I think would prove greatly advantageous to the body politic.

I hope for that reason that this resolution will not pass, because if we adjourn over to September it is virtually saying that we cannot submit our amendments at the regular October election, and depend upon it, it is a great mistake. Gentlemen here living in the rural districts know how hard it is to get the voters out. If they come out, they will vote for reform; but you cannot get them out at a special election, whereas in the cities the leaders of both parties will bring out their voters, and their votes will be adverse to almost every article in this Constitution. For this reason I trust the resolution will be voted down, especially as we are so near the end of our work that three days more will put us through the second reading of *all* the articles, and then the great mass of the Convention could adjourn for two weeks and the Committee on Schedule and the Committee on Revision and Adjustment can go to any cool place and perform their duty in the meanwhile—in two weeks could be ready to make their report to this Convention. The Convention can then meet and finish this Constitution and submit it to the people in October. I repeat that in two weeks the Committees on Schedule and on Revision and Adjustment can be ready to report. I am a member of both those committees, and we have advanced considerably already and will be ready to report back to this Convention by that time. Then the great mass of the members here would be recreated. They could go to the seaside or the mountains and get back, and have good tempers and sufficient physical constitution to do all the duty that would be required on third reading, which in my opinion could be done in ten days or two weeks at the furthest. Now, I protest against this long adjournment. I hope this resolution will not pass, but let us go on this week with our work and complete the second reading of all the articles, and then let the Committees on Schedule and on Revision and Adjustment go to work and make back their report for final action as I have stated. The people expect to vote on the Constitution in October, and it seems to me, sir, that every friend of reform should be willing to sacrifice their personal con-

venience in order to meet the public expectation. We can and should submit the new Constitution at the regular October election.

The *PRESIDENT pro tem.* The question is on the first division of the resolution, which will be read.

The *CLERK* read as follows:

"That when the article on railroads shall have passed second reading, the Convention will adjourn to meet again on the sixteenth day of September next, at ten o'clock A. M.

Mr. *ACHENBACH.* I desire to state that I am paired off on this question with the gentleman from Philadelphia (Mr. J. R. Read.)

The question being taken by yeas and nays resulted as follows:

Y E A S .

Messrs. Addicks, Ainey, Armstrong, Baer, Bannan, Bigler, Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Cassidy, Corson, Curry, Curtin, Cuyler, Elliott, Ewing, Fell, Green, Hall, Harvey, Hemphill, Heverin, Hunsicker, Kaine, Knight, Lamberton, Lear, Littleton, Long, MacConnell, Mantor, Newlin, Palmer, G. W., Patton, Pughe, Reynolds, Ross, Smith, H. G., Smith, Henry W., Struthers, Turrell, Van Reed, Walker, Wetherill, J. M., White, J. W. F. and Worrell—51.

N A Y S .

Messrs. Alricks, Baily, (Perry,) Bailey, (Huntingdon,) Biddle, Black, Charles A., Campbell, Carey, Carter, Clark, Cochran, Corbett, Cronmiller, De France, Edwards, Finney, Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Howard, Landis, Lawrence, Lilly, M'Clellan, M'Culloch, Mann, Niles, Patterson, D. W., Patterson, T. H. B., Porter, Purman, Purviance, Samuel A., Reed, Andrew, Rooke, Russell, Simpson, Smith, Wm. H., Temple, Wetherill, Jno. Price, White, David N. and White, Harry—43.

So the first division of the resolution was agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Collins, Craig, Dallas, Darlington, Davis, Dodd, Dunning, Ellis, Hanna, Hazzard, Horton, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Wherry, Woodward, Wright and Meredith, *President*—39.

The *PRESIDENT pro tem.* The second division will be read.

Mr. *TURRELL.* I move to reconsider the vote just taken, and to lay that motion on the table.

The *PRESIDENT pro tem.* It is moved to reconsider the vote just taken.

Mr. *HOWARD* and Mr. *DEFRANCE* called for the yeas and nays.

Mr. *TURRELL.* My motion was to reconsider and to lay the motion to reconsider on the table.

Mr. *LITTLETON.* Was the motion seconded?

Mr. *ADDICKS.* I second it.

Mr. *TURRELL.* To save time I withdraw the motion.

The second division of the resolution was read as follows:

"That articles passed on second reading, including the legislative article, be reprinted as amended and that three thousand copies thereof in pamphlet form be printed for general distribution."

Mr. *EDWARDS.* I call for the yeas and nays.

Mr. *D. W. PATTERSON.* I second the call.

Mr. *CLARK.* Mr. President: I rise to ask a question of the Chair. By this resolution is it proposed that the articles as they now are or as they are to come from the hands of the revising committee, when they pass that committee, are to be printed?

Mr. *BUCKALEW.* As they are now.

The *PRESIDENT pro tem.* As they are at the time we adjourn, the Chair supposes. The Clerk will call the names of delegates on the second division of the resolution.

The *CLERK* proceeded to read the roll.

Mr. *LILLY* [when his name was called.] If this printing is to be of the Constitution without revision or adjustment, I am opposed to it, but as I am assured by the gentleman from Columbia (Mr. Buckalew) that it will be revised, I vote yea.

The result was announced as follows:

Y E A S .

Messrs. Addicks, Ainey, Alricks, Armstrong, Baer, Baily, (Perry,) Bailey, (Huntingdon,) Bannan, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Carey, Cassidy, Clark, Corson, Cronmiller, Curry, Curtin, Cuyler, Dallas, Edwards, Elliott, Ewing, Fell, Finney, Funck, Gibson, Green, Hall, Har-

vey, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Knight, Lamberton, Lilly, Littleton, Long, MacConnell, M'Clean, Mantor, Niles, Palmer, G. W., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Ross, Smith, H. G., Smith, Henry W., Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F. and Worrell—68.

N A Y S .

Messrs. Biddle, Cochran, Corbett, De France, Fulton, Gilpin, Guthrie, Hay, Landis, Lawrence, Lear, M'Culloch, Mann, Newlin, Patterson, D. W. Patterson, T. H. B., Porter, Purviance, Samuel A., Rooke, Russell, Simpson, Smith, Wm. H., Struthers, White, David N. and White, Harry—25.

So the second division was agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Campbell, Carter, Church, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Hanna, Hazzard, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, John N., Read, John R., Runk, Sharpe, Stanton, Stewart, Temple, Wherry, Woodward, Wright and Meredith, *President*—40.

The third division of the resolution was read as follows:

"That this Convention will submit the revised Constitution proposed by it to a popular vote at such convenient time as will secure its taking effect, in case of adoption by the people, on or before the first day of January next."

Mr. T. H. B. PATTERSON. I call for for the yeas and nays on that.

Mr. D. W. PATTERSON. I second the call.

The *PRESIDENT pro tem.* The Clerk will call the names of delegates.

Mr. CUYLER. I do not know whether debate is in order, but I hope that resolution may not pass.

The *PRESIDENT pro tem.* Debate is not in order. The Clerk will proceed with the call.

Mr. ADDICKS answered to his name.

Mr. HARRY WHITE. Before the yeas and nays are called—

The *PRESIDENT pro tem.* They are called.

Mr. HARRY WHITE. I simply wish to call attention to—. ["Order." "Order.""]

The *PRESIDENT pro tem.* The Clerk will proceed with the call.

The yeas and nays were taken with the following result:

Y E A S .

Messrs. Addicks, Ainey, Alricks, Baer, Bally, (Perry,) Bailey, (Huntingdon,) Bannan, Biddle, Bigler, Black, Charles A., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Campbell, Carey, Carter, Cassidy, Clark, Corson, Cronmiller, Curry, Curtin, Dallas, De France, Elliott, Fell, Gibson, Green, Guthrie, Hall, Harvey, Hay, Hemphill, Heverin, Horton, Howard, Hunsicker, Kaine, Lamberton, Landis, Lawrence, Lear, Lilly, Littleton, Long, MacConnell, M'Clean, Mann, Mantor, Niles, Palmer G. W., Patterson, T. H. B., Patton, Pughe, Purman, Reed, Andrew, Reynolds, Rooke, Ross, Russell, Smith, H. G., Smith, Henry W., Smith, Wm. H., Turrell, Van Reed, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, J. W. F., and Worrell—74.

N A Y S .

Messrs. Black, J. S., Corbett, Cuyler, Edwards, Ewing, Finney, Fulton, Gilpin, Knight, M'Culloch, Newlin, Patterson, D. W., Porter, Simpson, Struthers and White, Harry—16.

So the third division was agreed to.

ABSENT.—Messrs. Achenbach, Andrews, Armstrong, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Church, Cochran, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Funck, Hanna, Hazzard, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Purviance, John N., Purviance, Samuel A., Read, John R., Runk, Sharpe, Stanton, Stewart, Temple, Wherry, White, David N., Woodward, Wright and Meredith, *President*—43.

PUBLICATION OF ARTICLES.

Mr. BROOMALL. I offer the following resolution:

Resolved, That the Committee on Revision and Adjustment are directed to prepare the articles for publication, making such verbal changes as shall be necessary, and designating the modifications they propose to make in italics.

The *PRESIDENT pro tem.* The question is on proceeding to the second reading and consideration of the resolution.

Mr. HARRY WHITE. On that question I call for the yeas and nays.

Mr. T. H. B. PATTERSON. I second the call.

Mr. COCHRAN. I hope that the resolution will not be adopted and that whatever is to be published will be published in the form in which it passes the Convention. I have no idea of putting into the hands of the Committee on Revision or any other committee the power to publish what this Convention has not acted upon, which may lead to confusion in the public mind. A verbal change may be a very significant change.

The PRESIDENT *pro tem*. The question is upon proceeding to the second reading and consideration of the resolution. Upon that question the yeas and nays have been ordered, and the Clerk will proceed with the call.

The yeas and nays were taken and were as follow, viz:

Y E A S .

Messrs. Ainey, Armstrong, Baer, Ban-
nan, Boyd, Brodhead, Broomall, Brown,
Buckalew, Corbett, Corson, Curry, Curtin,
Cuyler, Elliott, Green, Hunsicker, Lear,
Lilly, Littleton, M'CLean, M'Culloch,
Patton, Pughe, Purman and Walker—26.

N A Y S .

Messrs. Achenbach, Addicks, Alricks,
Baily, (Perry,) Bailey, (Huntingdon,) Biddle,
Bigler, Black, Charles A., Black, J. S., Calvin,
Campbell, Carter, Cassidy, Cochran, Cronmiller,
Dallas, De France, Edwards, Ewing, Fell, Finney,
Fulton, Funck, Gibson, Gilpin, Guthrie, Hay, Horton,
Howard, Kaine, Lamberton, Landis, Lawrence,
Long, MacConnell, Mann, Mantor, Newlin,
Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Porter,
Purviance, Samuel A., Reed, Andrew, Reynolds,
Rooke, Ross, Russell, Simpson, Smith, Henry W.,
Smith, Wm. H., Struthers, Turrell, Van Reed,
Wetherill, J. M., Wetherill, Jno. Price, White,
David N., White, Harry and White, J. W. F.—60.

So the Convention refused to read the resolution a second time.

ABSENT. — Messrs. Andrews, Baker, Barclay, Bardsley, Bartholomew, Beebe, Bowman, Bullitt, Carey, Church, Clark, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Hall, Hanna, Harvey, Hazzard, Hemphill, Heverin, Knight, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Niles, Palmer, H. W., Parsons, Purviance, John N., Read, John R., Runk, Sharpe, Smith,

H. G., Stanton, Stewart, Temple, Wherry, Woodward, Worrell, Wright and Meredith, *President*.—47.

TO-DAY'S SESSION.

Mr. BROOMALL. I offer the following resolution:

Resolved, That this morning's session be prolonged without recess until the article now pending shall have passed second reading.

On the question of proceeding to the second reading and consideration of the resolution, a division was called for and the ayes were thirty-seven.

Mr. HARY WHITE and Mr. DE FRANCE called for the yeas and nays, and they were taken with the following result:

Y E A S .

Messrs. Addicks, Ainey, Alricks, Armstrong, Baer, Bailey, (Huntingdon,) Bannan, Barclay, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Calvin, Cochran, Corbett, Corson, Curry, Curtin, Cuyler, Elliott, Finney, Funck, Hall, Harvey, Hemphill, Horton, Howard, Hunsicker, Knight, Lamberton, Littleton, Long, M'Culloch, M'Murray, Mantor, Newlin, Patton, Pughe, Purviance, Sam'l A., Reed, Andrew, Reynolds, Ross, Struthers, Turrell, Van Reed and Wetherill, J. M.—49.

N A Y S .

Messrs. Achenbach, Baily, (Perry,) Biddle, Bullitt, Campbell, Carey, Carter, Cassidy, Clark, Cronmiller, Dallas, De France, Edwards, Ewing, Fell, Fulton, Gibson, Gilpin, Green, Kaine, Landis, Lawrence, Lilly, MacConnell, M'CLean, Mann, Niles, Palmer, G. W., Patterson, D. W., Patterson, T. H. B., Rooke, Simpson, Smith, H. G., Smith, Henry W., Smith, Wm. H., Walker, Wetherill, Jno. Price, White, David N., White, Harry and White, J. W. F.—40.

So the resolution was ordered to a second reading, and it was read the second time and considered.

ABSENT. — Messrs. Andrews, Baker, Bardsley, Bartholomew, Beebe, Bowman, Brown, Church, Collins, Craig, Darlington, Davis, Dodd, Dunning, Ellis, Guthrie, Hanna, Hay, Hazzard, Heverin, Lear, MacVeagh, M'Camant, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Porter, Purman, Purviance, John N., Read, John R., Runk, Russell, Sharpe, Stanton, Stewart, Temple, Wherry, Woodward, Worrell, Wright and Meredith, *President*.—41.

Mr. BROOMALL. It is suggested that inasmuch as we are close to the hour of recess the resolution had better read "this afternoon's session." ["No." "No."] I do not propose to amend it; I only make that suggestion.

The resolution was agreed to.

COMMITTEE ON REVISION.

Mr. CALVIN submitted the following resolution, which was ordered to lie on the table:

Resolved, That the chairmen of each of the committees be added to the Committee on Revision and Adjustment.

PRINTING ACCOUNTS.

Mr. HAY. I desire at this time to ask that the resolution attached to the report of the Committee on Accounts and Expenditures, submitted yesterday, be taken up.

Mr. ADDICKS. I trust the gentleman will not press his motion now.

The PRESIDENT *pro tem*. The question is on the motion of the gentleman from Allegheny (Mr. Hay.)

The motion was not agreed to, the ayes being twenty-four, less than a majority of a quorum.

SALE OF DRAPING.

Mr. ADDICKS. The Committee on House have a small sum of money in their possession. They desire to make report upon it. There is a resolution annexed, and I trust they will be allowed to take up the resolution. It will not take any time.

Leave was granted, and the report was received and read as follows:

The Committee on House submit the following report:

That inasmuch as the material used for draping the Hall was not further required the committee ordered it to be disposed of, and now present to the Convention a check for the proceeds, seventy-five dollars, and suggest that the annexed resolution be adopted:

Resolved, That the Chief Clerk be directed to remit to the State Treasurer the annexed check for seventy-five dollars, to be placed in the Treasury of the State as received from this Convention.

The resolution was read twice and agreed

CARE OF HALL.

Mr. ADDICKS. I hold in my hand a resolution which it is necessary at this time should be adopted (because we may

adjourn almost at any moment) so that somebody may have authority to take charge of this House during the recess of the Convention. I may say that it is an identical copy of the resolution passed on the twenty-eighth day of March last. It is as follows:

Resolved, That during the recess of the Convention the Committee on House shall take entire charge of the Hall and the property therein, and they are hereby authorized at their discretion to engage such employees as may be required for such duty.

The resolution was read twice and agreed to.

COMMITTEE ON ACCOUNTS.

Mr. HAY submitted the following resolution, which was read twice and agreed to:

Resolved, That the Committee on Accounts and Expenditures of the Convention have leave to sit during its recess; and that all persons having claims against the Convention be required to promptly furnish to said committee their accounts up to the time of the adjournment, in order that the same may be audited.

PRINTING ACCOUNTS.

Mr. H. G. SMITH. I apprehend that the Convention voted inadvertently a moment ago in reference to the report of the chairman of the Committee on Accounts. He has rendered a carefully prepared statement of the accounts between this Convention and the State Printer, which ought certainly to be taken up and acted upon; and inasmuch as some business has intervened between the vote taken a little while ago and the present moment, I move that we now proceed to the second reading and consideration of the account as stated. This question ought certainly to be settled before we adjourn.

The motion was agreed to, and the following resolution reported by the Committee on Accounts and Expenditures was read the second time and considered:

Resolved, That there is due to Benjamin Singerly, Printer for the Convention, in full of all claims to the fifteenth day of May, 1873—excepting items in the account above mentioned yet to be fully audited, together amounting to the sum of \$2,060 45—the sum of \$9,333 27, on account of which has been heretofore paid the sum of \$5,000 00; and that a copy of this report and of the action of the Convention thereon, be forthwith transmitted by the

Chief Clerk to the Auditor General of the Commonwealth.

Mr. HAY. I desire now simply to state that the accounts of the State Printer up to the fifteenth of May, mentioned in this report, have been very carefully and thoroughly investigated by the Committee on Accounts, and they have reported this resolution believing that their action in the matter has been entirely correct, and in accordance with the requirements of the law. While I have no desire at this time to go into any explanation of the matter further than may be necessary, being reluctant to occupy the valuable time of this Convention, I am very anxious to give the members of the Convention any information they may desire on this subject, and will be very happy to answer any interrogatories that may be addressed to me upon it. There is a further unsettled account up to the first day of July yet in the hands of the committee.

Mr. HARRY WHITE. I have just one question to ask. I see an item here for Small's Hand-Book at \$1 25. I remember making a statement at the time that it would cost the Convention ninety cents. May I inquire of the chairman of the Committee on Accounts at what price they settled for that?

Mr. HAY. In reply to the interrogatory of the gentleman from Indiana, I desire to state that it was the understanding of the committee that these books were to be furnished to the Convention at the same price at which they were furnished to the Legislature—ninety cents, and that is the price accordingly allowed the State Printer for them.

The PRESIDENT *pro tem*. The question is on the resolution.

The resolution was adopted.

RAILROADS AND CANALS.

Mr. HALL. I move that the House proceed to the further consideration of the article on railroads and canals.

The motion was agreed to, and the Convention resumed on second reading the consideration of the article on railroads and canals.

The PRESIDENT *pro tem*. When the Convention adjourned last evening the pending question was on the amendment of the delegate from Lebanon (Mr. Funk) to the tenth section. The section and amendment will be read.

The CLERK. The tenth section as printed reads as follows:

SECTION 10. All municipal, railroad, canal and other corporations and individuals shall be liable for the payment of damages to property resulting from the construction and enlargement of their works, as well as to owners of property not actually occupied as to those whose property is taken, and said damages shall be paid or secured to be paid before the injury is done.

The amendment is to strike out all after the word "section" and insert:

"No corporate or municipal body or individual shall take private property for public use, or injuriously affect it by change of character of highway or otherwise, without being required to make compensation to the owner thereof for all damages, direct or consequential, resulting from such taking or injury. And such compensation shall be paid or secured before such property shall be taken or injured."

Mr. BIGLER. I desire the attention of the Convention for a very few minutes on this subject. It is one of very grave importance, and it ought to command the attention of the legal minds of this body.

Now, sir, neither the text of the section nor the amendment will answer the purpose, and it seems to me it would be quite out of the question to make the regulations proper for ordinary corporations in connection with those for railroad corporations. The damages are entirely different. Take, for instance, a corporation for mere manufacturing purposes. It may impose damages upon property in the neighborhood and it confers no incidental benefits or advantages. So it may be with regard to the works of municipal corporations. But a railroad corporation anywhere in the country, in any agricultural district, bestows great indirect benefits which are fairly matters of consideration when you come to inquire into the amount of damages inflicted.

There may be, I suppose there are, and yet I do not know that I could name a single instance in which property has been damaged by the construction of a railroad where the indirect benefits have not quite outweighed the damages. There may be cases where a very small property is injured and there is but little in a beneficial way to act upon. But, sir, go into a new country, and the indirect benefits of a railroad are wide-spread and general, far beyond all the indirect or consequential damages to which both these propositions refer.

I maintain that they should be separated, that the provisions which are proper for a railroad corporation would not meet the case of a local or private corporation intended for purposes of individual gain and profit. The railroad is a great public institution, and it comes with its blessings especially in an agricultural community. The usual effect is that land worth, before the railroad was constructed, five or six dollars an acre, commands immediately ten, fifteen or twenty dollars. You may take a small amount of land for the road-bed, and yet leave the owner of that property worth double or treble the money he was before the railroad was constructed. That is almost a universal rule in all new countries; and yet under this section there would be claims set up for incidental or consequential damages. I have no hesitation in saying that the use of the term "consequential damages" in regard to the construction of railroads would have a directly damaging influence upon enterprises of that character. There are timid capitalists who would not hazard their money in an enterprise because they could not see what this term "consequential damages" might fully signify.

Then there is another consideration. Up to this time railroads have been constructed simply upon the principle that the citizen shall be paid for his property or security given for the payment before it is taken. Consequential damages have not been imposed. Are we, at this day, to confess to all the world that, so far, our policy has been an unjust one? Are we to awaken expectation in the minds of thousands and thousands of men that they have suffered consequential damages at the hands of the State by her laws and policy, and that now they ought to have justice? Are we to get up a great contest of this character? We ought not to do so—not that I do not agree that any just claim of a citizen ought to be met by the government, but the wide-spread blessings of the government and the wide-spread blessings incident to these improvements have, I think, protected all our people. It is the rarest case; I do not know of a single one, but I can imagine a case of a town lot so seriously damaged, particularly in a region where railroads are plenty, that there would be a fair claim for damages that would be called incidental or consequential.

Now, sir, I offer, if I have a right to do it, and I believe I have, as an amendment to the amendment, to strike out all after the enacting clause of the pending amendment and insert the following:

"Railroad corporations shall not take or appropriate or damage private property without first making compensation or giving ample security for the same; but in ascertaining the value of the property and the amount of damages by a jury or any court, the direct and indirect benefits of the railroad to the owner or owners of the property taken or damaged shall be considered in mitigation of the amount to be paid."

Mr. BUCKALEW. I inquire if that is a substitute for the other proposition?

The PRESIDENT *pro tem.* It is.

Mr. BUCKALEW. The material difference, I observe, is that this amendment is confined to the mere taking of property. It does not cover at all the question of injury to property without taking it. Now, a canal might be made along the line of real estate, and by its construction land not actually taken by the canal company, but flooded and thereby ruined by it, would not be covered by the amendment. It would not be within the ordinary principle of appropriation of land, at least. Perhaps the word "taking" might receive such a liberal construction as would cover it.

Mr. BIGLER. The use of the word "construction" might meet the views of the delegate.

Mr. BUCKALEW. I think if we adopt a section on this subject at all, it ought to cover both the question of the taking of property and the damage to property without taking it.

Mr. ALRICKS. The amendment of the gentleman from Clearfield does not touch the question involved in this case. He has followed the provisions of an act of Assembly in relation to the assessment of damages done by the construction of railroads. Now, sir, the right of eminent domain is in the Commonwealth, and when the Commonwealth grants to a corporation the right to take the property of an individual, unless she especially provides for the payment of damages, the party can recover no damages unless his property is taken. If I understand the section as offered by my colleague, the gentleman from Lebanon, (Mr. Funck.) it provides that there shall be a provision for the payment of damages, notwith-

standing the right of eminent domain is in the Commonwealth, and no property is taken, but property is injured or destroyed.

Now, Mr. President, you cannot have a better case by way of illustration than that of *Shrunk vs. The Navigation Company*, to be found in 17 Sergeant and Rawle. There the Schuylkill navigation company were authorized to build certain dams in the Schuylkill. Shrunk, the person who was injured, owned a valuable fishery. I do not know whether it yielded him \$10,000 a year, or how much, but it yielded a large sum of money annually. They destroyed his fishery, and he wished to recover damages, and he would have been entitled to damages if the act of Assembly had said that the owner of all property injured by that company could recover damages; but it did not say so. It said that wherever property was taken, the party could recover damages. Here the property was not touched at all and the party could not recover a dollar's damages, because, as the Supreme Court said, it was *damnum absque injuria*;—the doctrine ought never to prevail in Pennsylvania, it should never be allowed in any free country, that there was such a thing as *damnum absque injuria*; it should be repudiated; but the right of eminent domain was in the Commonwealth, and the Commonwealth allowed the Schuylkill navigation company to make the improvement, and the Commonwealth said, "if you take any land, the owner of the land can recover damages;" but they took no land, they took no property, they only injured property consequentially or incidentally, and the party lost his damages. Since that time I suppose there have been a hundred like cases in Pennsylvania. There was one in Pittsburgh; one occurred in my own county; and they are occurring every day, where property is injured by a corporation in the exercise of a corporate right which they receive from the sovereign, and the sovereign having the right of eminent domain, what he does not say they shall be paid for, they lose.

Now, Mr. President, I greatly prefer the amendment which is offered to the section by my colleague from Lebanon, because it appears to me that it meets the precise wants of the case, and a party could recover damages even if his property was not taken. This question was very fully discussed before, and the able and the venerable President of this Convention gave

us his opinion at large on the subject, and then it was very fully understood. The gentleman from Allegheny (Mr. Purviance) presented it to this Convention in a very clear point of view, and the Convention, acting on those suggestions, adopted the section that we have before us. But the section we have before us is a little obscure in using the word "occupied." You do not know how to apply that word, whether it means occupied by the owner of the soil or occupied by the corporation; but the amendment offered by my colleague from Lebanon is entirely clear; there is no difficulty about it.

Mr. President, all that we ask in this case is that an artificial person shall be responsible for damages the same as a natural person. That is perfectly right, and that is all that ought to be done. The artificial person now is not responsible for damages the same as a natural person, simply because the law says that if the property is taken the corporation shall pay for it; but it does not say that if incidental damages are done to a property you can recover anything, and therefore you cannot recover. Now, if two persons be the owners of adjoining properties, and one of them chooses to run his wall down so deep so as to throw the wall of the adjoining property down, he is responsible for damages if he is guilty of any negligence in doing so; but if corporations do that, they cannot be held responsible simply because the law is not broad enough to cover the case.

I trust that this amendment which has been offered by my colleague, the gentleman from Lebanon, will prevail, or else the section as it passed the House before will be adopted. I trust the amendment of my friend from Clearfield will not be considered, as it does not cover the whole case.

Mr. BIDDLE. Mr. President: The printed section ten, as reported in this article, is designed to cover all bodies, municipal as well as private corporations and individuals, who may take property for public purposes, and is also intended to cover that injury which, technically, is called "consequential," resulting not from the taking of property but from its being injuriously affected by a proposed public improvement. Now, so far as my recollection goes, at the time the language of this tenth printed section was introduced, we were all of us of opinion that both of these views were proper views to express in adequate language in the Constitution; that is to say, we all thought

an indirect, substantial injury should be covered as well as the mere taking of property, the one injury being represented to the mind of a lawyer by an action on the case, and the other by an action of trespass.

The distinguished President of the Convention took exception to the use of the term "consequential damages" or "consequential injuries," but in my humble opinion without that reflection which he almost always brings to the subject before him, because the language used—"consequential"—is the language of the law, and every legal mind sees at once the distinction between a direct and consequential injury, from the form of action. He is reported to have said—and I believe did say—that the present section gave us in better language the thought desired to be reached by the Convention than the language formerly used. I respectfully differ from that proposition. I think a very slight examination of this section will show that it is defective, and I have been told—I do not say this on any authority, if other gentlemen who can speak choose to speak, they will speak; what I am about to say; I do not say upon any authority of my own, for I never heard him speak afterwards on the subject, but I am told that he has said that he was not satisfied with the present section. I say that from what has been told me, but not authoritatively at all.

On the second line we find "shall be liable for the payment of damages to the property." There are two thoughts involved there, but the phrase is inaccurate. The word "damages" there means the sum of money that is to be paid for injuries. It reads "for the payment of damages to the property." If the thought was written out properly it would be "for the payment of money for damage caused to property," or "for the payment of damages for injury to property." The very slightest examination will show that that is the fact. Therefore the amendment offered by the gentleman from Lebanon has the advantage of precision.

I am not certain that there is not an awkward assertion in the amendment offered by the gentleman from Lebanon, and I say it the more readily because I had something to do with it myself; but I am not certain that it is not a little awkward to talk of property being "injuriously affected by change of character of the highway or otherwise." The thought is

a good one, but the expression is a little rough.

I hold in my hand what has been written and I hope will be offered by the gentleman from Dauphin, (Mr. Lambertson,) which I think is very precise and accurate and covers all the views, and it has the very great merit of being taken almost literally from the language of the judge who pronounced the decision in the case of O'Connor vs. Pittsburg, which the Convention will recollect was the case of the church left upon a bluff by a change of the grade of a highway, where an ineffectual attempt was made to obtain redress for that injury and where the court said they had held the case under advisement for some time to see if they could not redress this grievous injury. The language written by the gentleman from Dauphin is this—it is very compact, and I think covers all the cases:

"Municipal and other corporations and individuals vested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction."

MR. BIGLER. I am willing to withdraw my amendment in order that that may be offered.

THE PRESIDENT *pro tem*. The amendment to the amendment is withdrawn.

MR. LAMBERTSON. Then I offer this amendment to the amendment:

"Municipal and other corporations and individuals vested with the privilege of taking private property for public use, shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction."

MR. BIDDLE. That, Mr. President, covers the case, in my judgment, very admirably. I prefer it very much to that which I had something to do with. It covers both thoughts; it reaches all corporate bodies, municipal and otherwise, as well as individuals, who take private property for public use, and it meets both classes of injury.

Now, I wish to say a word or two, within the limits of my time, as to this latter point, and that is, why should not such injury be paid for? An indirect injury,

or, as it has been called, a consequential injury, may be a great deal more fatal to property than the taking of a very small portion of it. For instance, it will occur to almost everybody that the casting of filth or of water upon the whole body of a man's land injures it, or may injure it, a great deal more than the actual deprivation of a small corner of it. The one may be a standing continual nuisance; the other is measured by the actual dollars which the piece of property taken cost or is worth.

So, again, it must occur to everybody that having a highway to which one has had access heretofore, suddenly closed or diverted, or so impeded as not to be rendered as valuable as it theretofore was, is a much greater injury than to take a little of the property.

Now, I want to put before the Convention a very flagrant case that is occurring in our midst in this community. The Union Passenger railway company obtained the right to lay down additional tracks in Market street, and after some contestation in court it prevailed in a certain way and it has actually laid them down, and it has laid one of its tracks so close to the curb-stone that the merchants and store-keepers using that street to bring to and send from their warehouses goods and merchandise are actually prevented having drays and carts and furniture-wagons stopping the proper time before their places of business, and it has gone so far as to reach this point, that a drayman in the fair exercise of his employment in either taking goods to a warehouse or receiving them from it—and it is not important which—has been fined four dollars by an alderman of this city for obstructing the highway, when the real obstruction has been caused by the laying down of this rigid iron track by the Union Passenger railway company, and a prosecution instituted by them has so resulted; and unless the court will review the merits on *certiorari*, (which perhaps they can do and perhaps they cannot, the sum being under five dollars and thirty-three cents,) the Union passenger railway company is master of the situation, and it actually will continue running its cars up and down this rigid track and to a great extent destroy the value of that most valuable property, put there at enormous expense, between Seventh and Ninth streets and Front street, on Market street. That property will be measurably injured to a very large extent.

It is to meet cases like that that the language introduced by the gentleman from Dauphin (Mr. Lamberton) is used, and it ought to be introduced to meet such cases. You may say that section eleven of this printed article provides for that case, because it prevents in the future the laying down of passenger railway companies' tracks in municipalities without the consent of the councils. To a certain extent, that does; but we want by this section to meet an actual case and to prevent a grant like this whereby a man shall be indirectly almost injured out of the value of his property. I can see no objection in the way of the argument that has been urged, and to some extent may be urged again, against the passage of this section, on the supposition that if it be adopted improvements will be checked. I do not believe that. The damages will not be indefinite; they are under the control of a court and jury just as much as all damages. In an action upon such a case it will be first for the jury and then for the court, reviewing the action of the jury, to say whether the damages are excessive or not, and necessarily they will do what the language of the amendment of the gentleman from Clearfield (Mr. Bigler) had in view, taking into consideration the supposed advantage, because the last rule laid down on the subject in one of the recently decided cases, in P. F. Smith's reports, is that the damage is the difference between what the property was worth just before the improvement was made and what it is worth afterward. Therefore necessarily the supposed benefit will enter into mitigation of the supposed damage.

Hence I trust that the section will be amended according to the language of the substitute which is now the only amendment before the House, offered by the gentleman from Dauphin, because, to sum up, it covers the case of all corporate bodies, municipal and private; it covers individuals; it covers all injury, as well the injury resulting from the direct taking as that resulting from injuriously affecting the property in the different ways which I have endeavored to point out.

Mr. MACCONNELL. I merely want to refer the delegates to one case that I think will show very clearly the necessity of having a change in the present law on this subject. I refer to the case of O'Connor against the city of Pittsburg. A congregation had built and extended a

church according to the grade of the street as it had then been established. Afterward the city altered the grade and cut it down some twelve feet, I think, and the result was that it involved the destruction of the church. For that injury Bishop O'Connor brought a suit against the city of Pittsburg. It was tried and there was no difficulty in proving that the injury had been done, and the only defence set up was that it was consequential damages, and that therefore there was no remedy. The court so held the law to be. The congregation lost its church, and afterward it built a new church, an immensely large structure, one of the finest in the State, according to the changed grade. Now I see by the newspapers (and I often heard of it when I was home last) that a project is agitating and likely to be carried into effect to lower the grade of that same street some seventeen feet, right by that church. I see by the papers that that congregation has held a congregational meeting on the subject, and on the report of experts came to the conclusion that the reduction of the street grade would involve the destruction of their church. Yet it is being insisted upon, and it is not very unlikely that it will be carried out, and if it is carried out under the law as established by the courts in the first case, the church congregation will not be able to get one dollar of compensation unless you put such a provision in the Constitution as this amendment contemplates. The court declared that it was a most monstrous hardship that the church could not be made whole for the injury it sustained in the first place. Now, will it not be a more monstrous hardship if their magnificent building is to be destroyed the second time and the law afford them no remedy?

Mr. J. W. F. WHITE. Will my colleague allow me to ask him a question?

Mr. MACCONNELL. Well, sir?

Mr. J. W. F. WHITE. In the act of 1863 with reference to the grading and re-grading of the streets of the city of Pittsburg, is there not a section providing that any person injured by the re-grading of the streets can apply for damages?

Mr. MACCONNELL. I do not know whether there is or not.

Mr. J. W. F. WHITE. I will say that there is.

Mr. MACCONNELL. I will not trust the Legislature to retain that act if there be such a law.

Mr. BIDDLE. That is a good point.

Mr. MACCONNELL. Besides that, that is a special act in relation to Pittsburg. It is not a general law, and the rule ought to be general.

Mr. BIDDLE. That is the point.

Mr. MACCONNELL. I could refer to a great number of cases if I so desired, all bearing upon this point; but I think that this is the most striking and ought to be convincing to every member of the Convention, and I do not believe it necessary for me to occupy time by referring to them. I hope the amendment will prevail.

Mr. J. W. F. WHITE. I only desire to say that what I have indicated as an act of Assembly for the city of Pittsburg has been the law since 1863. In fact it was the law before that, because the circumstance alluded to by my colleague (Mr. MacConnell) originated the act of Assembly providing a mode for ascertaining damages for an injury done to property by the grading or re-grading of streets in the city of Pittsburg, and that has been the law for fifteen or twenty years.

I merely refer to this because this clause is a proper subject for legislation. I was myself in favor of modifying one of the sections of the Bill of Rights, and I think that would have been the right place for this amendment. One word added there would have covered all proper cases, that is: "That no person's property shall be taken, appropriated or damaged for public purposes without just compensation." If the word "damaged" had been added to the Bill of Rights, I believe it would have covered the whole subject, leaving it for the Legislature to carry it out, or if they failed to pass the law, for the courts to enforce it.

Mr. COCHRAN. I merely wish to say that in my judgment, the amendment to the amendment is the best proposition on the subject, and I think it ought to be adopted. I will not enter into any discussion of the question, because it has been already discussed.

Mr. CORBETT. I will vote against this amendment and also against this section. You will perceive that we are doing the same thing that we have done heretofore in adopting other amendments and other sections. We are descending into details, into matters of legislation, and taking from the hands of the Legislature that

which ought to be left there. We leave all our other rights to the Legislature. Why not leave this question of consequential damages? When we undertake to control this question of eminent domain, we go far enough. When we provide that property taken shall be paid for or secured before it is taken, we have, I apprehend, gone as far as we ought to go. With reference to the question of consequential damages, we ought to leave it in the hands of the Legislature, and they ought to control it as they do all other questions of damages. You seek to provide by the amendment that these consequential damages must be secured before the road can do the injury. Suppose the road contends that there is no injury, and the other parties say that there is an injury, what is the result? The only way to test it would be on a bill for an injunction to stop the prosecution of the work. It may be proper that in certain cases there ought to be a remedy for consequential damages. I am not denying that, but the Legislature ought to make provision for instances of that kind, and I apprehend that no such amendment as this ought to be put in the organic law. There is no property taken. The person is divested of no right, more than any other person is injured by a nuisance committed by an individual or by a corporation; why should you descend to these details in this Constitution?

Why should you regulate this subject of damages? You are aware, Mr. President, that cases with reference to damages have occupied the judicial mind for the last century, and in some respects the judicial mind has been unsettled by them. The decisions have been varied, and why not leave the subject to the law-making power. The result of the adoption of this section of the amendment must be to discourage all new enterprises. It is not a stroke at any road now in existence, because I apprehend all these matters are settled as far as the old roads are concerned, unless it may possibly affect some new enterprises which have been lately undertaken; but these are few, if any, and the amendment is really a direct stroke at all new enterprises, and you are only enlarging this matter with reference to consequential damages when it ought to be left to the Legislature.

Gentlemen say that they cannot trust the Legislature. To that I only wish to say, that if you cannot trust them in such matters as this you had better abolish

them altogether. The truth is simply that we are descending to details in this matter by undertaking to regulate this matter of consequential damages. If we make a mistake, there is no remedy. We cannot undo that which we now do. More than that, after you have adopted the section, it is a matter of consideration for the courts, and any rule they adopt will be unbending. They might make some decision entirely different from what we want; and then what is the result?

There is no remedy, and it will remain the law of the land, engrafted in the law by the organic act. There is no change; it is like the laws of the Medes and Persians.

Mr. President, I shall vote against the amendment, and I shall vote against the section in the shape it is.

MR. ANDREW REED. Mr. President: I am opposed to this amendment, but I shall consume very little time upon it, as I expressed my views somewhat when this article was before the committee of the whole. There certainly are cases where consequential damages should be paid. The case referred to, of the church in Pittsburg, and various others, are cases in which any person would at first blush say that certainly damages should be paid; but when we come to provide for them, as in the case of a great many other provisions that we have been providing for, we may do more damage in another direction than the good we shall accomplish in that. For that reason I am opposed to putting this clause in the Constitution, but I am in favor of leaving it to the Legislature, in order that they may from time to time adopt such remedies as experience may prove to be proper.

Now, just see what may be the probable practical result of this section. I here take occasion to say that I have voted for several provisions of this article against my judgment; but among all the sections I think the first one, which gives perfect liberty to all men to build a road where and when they please, is the best one in the whole article. It will prove the best, because where any railroad company does not conduct itself properly or to the interests of the community, others can build another road, and if we perfect that section and make it as free as possible, we can get capital to build roads.

But now suppose after we adopt this section a certain railroad in existence

raises its rates and we think them oppressive, and the people desire to build a new road and they start out and survey their road, look at the obstructions that may be placed in their way. Here will be a man some five or six miles off who will come in and want damages, and although you may say that you owe naught, you must give him security before you can go on; and what under this section will prohibit even the other and existing railroad company from claiming damages? You endeavor to compensate for all damages. Why may not the railroad heretofore chartered say, "We are damaged and we want to be indemnified." I am told that in that case the road is not taken. That is true, but we put in this section that consequential damages must be paid; and are they not subject to damage in consequence of the building of a new railroad?

Mr. J. S. BLACK. It says "private property."

Mr. ANDREW REED. No, not "private," but "all damages." But you decide that there are a great many other cases, and I do think it will prohibit that which I believe to be the best thing in the article, the free exercise of building new railroads. The less obstructions we can put in the way of that, I believe the better. I believe that is better than all the other sections of this article put together, a good free railroad law; and, as I said before, there are cases which ought to be remedied; but if we put in an unbending rule here that they shall be remedied, I am afraid we shall go further than we intend to do.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Dauphin (Mr. Lamberton) to the amendment of the delegate from Lebanon (Mr. Funck.)

The amendment to the amendment was agreed to.

The PRESIDENT *pro tem*. The question now recurs on the amendment as amended, which will be read.

The amendment as amended was read as follows:

"Municipal and other corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for property taken, injured, or destroyed by the construction or enlargement of their works, highways, or improvements, which compensation shall be paid or secured before such taking, injury or destruction."

Mr. LEAR. Is this amendment now amendable? There is a word which I would suggest is not quite the word, and that is the word "individuals." We have "individuals" in the first section and "individual" runs through this article in a way that I do not want to go into a section which is a sort of legal section; and I think instead of the word "individuals" we ought to say "natural persons," because "individual" may mean a house, tree, county or city; anything is an individual which is a single object, whether a man, or horse, or a county; and I think the words "natural persons" would be better there, and I make the suggestion.

Mr. LAMBERTON. Mr. President: The language of the substitute which I have offered was thoughtfully considered. The term "individuals" was used designedly. By reference to the first section of this article it will be seen that to "any individual" is granted the right to construct a railroad or a canal. In our present Constitution the word "individual" is used in the same manner as it appears in this amendment. Permit me to call the attention of the Convention to section four of article seven: "The Legislature shall not invest any corporate body or individual with the privilege of taking private property for public use," &c. It is a term ordinarily used and well understood as designating natural persons. Its use in the Constitution was proper, I respectfully submit, and was required for cases where, by legislative grants, authority was given to individuals, in the construction of railways or making their improvements, to appropriate the private property of others.

My amendment embodies the principle recognized by a majority of the Convention as proper to form a part of the fundamental law. I think, upon examination, the phraseology will be found fully to cover the cases of peculiar hardship appearing in our books and instanced in the discussion upon this question, in which there was no remedy, because of the duty of the courts to construe, as they have done, the word "taken" in the Constitution. Add to this word "injured," "destroyed," the others which appear in the substitute, and the door will be thrown open for the redress of grievances which heretofore have been remediless. These two words I have taken from the opinion of the Supreme Court in the case of *O'Connor vs. Pittsburg*, referred to by the delegate from

Philadelphia (Mr. Biddle.) By a change in the grade of a street, a heavy loss was entailed upon St. Paul's church in that city, without taking any of its property. The judgment of the court below was in favor of the defendant. It was argued twice in the Supreme Court—the re-argument having been ordered, as stated by Chief Justice Gibson, to discover some way of relief for the plaintiff consistently with law. But none was found, because “the constitutional provision for the case of private property taken for public use, extends not to the case of property injured or destroyed.”

Make these words a part of our law, and compensation will be provided for a class of injuries to private property for which it is clear there is needed a remedy.

The PRESIDENT *pro tem*. The question is on the amendment as amended.

The amendment as amended was agreed to.

The PRESIDENT *pro tem*. The question now is on the section as amended.

The section as amended was agreed to.

The CLERK read the next section of the article as follows:

SECTION 11. No street passenger railway shall be constructed within the limits of any city, borough or township without the consent of its local authorities.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 12. No railroad, canal or other transportation company in existence at the time of the adoption of this article shall have any beneficial legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article.

The section was agreed to.

The CLERK read the next section as follows:

SECTION 13. The existing powers and duties of the Auditor General in regard to railroads, canals and other transportation companies are hereby transferred to the Secretary of Internal Affairs, subject to such regulations and alterations as shall be provided by law; and in addition to the annual reports now required to be made, said secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof; and it shall be his duty, on complaint made against said corporations by any citizen, person or company interested of a violation of law, or any infraction of the rules

of said corporation injurious to the rights or interests of such complainant, to investigate said complaint, and if it shall appear that any violation has taken place he shall proceed either against said corporations or the officers thereof, or both, and if on complaint made, or of his own knowledge, it shall appear that any railroad or part thereof is so insufficiently or carelessly constructed, supported, guarded, protected, or so out of repair, as to imperil life or property, he shall at once notify such delinquent corporation of the same, and specify and direct the remedy to be applied: and it shall be the duty of such corporation to repair, support, make safe from, or remove said cause of peril under such regulation not inconsistent herewith as shall be prescribed by the Legislature to carry this section into full effect.

Mr. J. PRICE WETHERILL. I move to amend by striking out all after the word “law,” on the fourth line. I think it must be apparent to every member of the Convention that the residue of the section is purely pertaining to legislation, and should be left to the Legislature. It seems to me a very strange thing that the Secretary of Internal Affairs shall, on a complaint “made against said corporation by any citizen, person or company, for any infraction of the rules of the company,” proceed “either against the said corporation or the officers thereof.” If the rules, which are purely matters to regulate the affairs of the company themselves, are not violations of law, then I should like to ask what right have we or the Legislature to interfere; and if they are violations of law, then why should this sentence be introduced, “or any infraction of the rules of said corporation.”

Then I think it very hard that in case any employees of a railroad company should break one of the rules, instead of going to the president or officers of the company and informing them and getting the remedy there, men should go to Harrisburg, to one of the State cabinet, and make complaint to him, and, on the making of that complaint, he should be directed to proceed, not against the company itself, but against the company or the officers, as he may see fit! The whole thing seems to be very crude, seems to be prepared without that good care which an article of this sort should receive; and I do hope that the amendment which I have offered will prevail, and that we shall vote down the rest of the section as

extremely crude in itself, and, independent of that, pertaining purely to matters of legislation, and belonging to the Legislature.

Mr. COCHRAN. I hope this amendment will not prevail, and that the section, notwithstanding the criticisms of the gentleman from Philadelphia, will be adopted. The section is not crude and was not introduced here without consideration. It is intended to provide a guard and protection to the public against not only violations of law, but also infractions of the rules of the companies themselves, upon which so often the rights of persons to transport over or have any connection with those roads depend. You can do as much injury to a party very often by infracting the rules of a railroad company as you can by violating any public law.

This section further provides for a public guardianship over and inspections of the condition of these public works, with a view of protecting the persons who travel or transport freight upon them, to see that these roads, upon which so much of life and property is dependent, are kept in a safe condition for the business for which they were intended, that they shall not be allowed to fall into dilapidation, that they shall not be allowed to go into such a condition that they shall be no longer safe for persons to use them in the transaction of their business or in traveling from one point to another.

Sir, this is a public interest; the public welfare is closely identified with it; and there ought to be some guard and protection provided by which the traveling and transporting public shall be as safe and secure as under all the circumstances of the case it is possible to make them; and this is a matter to be provided for by the State in behalf of the community. These institutions are public institutions. They are created for the purpose of providing for the convenience and accommodation of the public, and the government should see to it that they are kept in a condition of safety. That is all that this section provides for, that the rules of the companies and the laws of the Commonwealth and the condition of the railroads shall be so observed and made so secure that there shall be as little danger as in the nature of the case must be encountered in the employment and use of these railroads.

Mr. HOWARD. Mr. President: So far in this article on railroads we have been providing general rules and regulations,

and this section is intended to provide some means by which those rules and regulations may be enforced. The amendment, I understand, is to strike out all after the word "law," in the fourth line. That will strike out the power of the Secretary of Internal Affairs to require special reports on any subject relating to the business of the companies, &c., and also to investigate complaints made by citizens against corporations for a violation of the law or an infraction of the rules of the corporation.

Sir, some such provision as this is absolutely necessary, and why? Because shippers, persons having business with the roads, will submit to wrongs before they will venture the experiment of going into a court of justice and attempting to assert their rights. They submit to them because they are afraid of these companies; and it is absolutely necessary that there should be some State officer who should have authority, representing the people of the Commonwealth, to see to it when complaint is made that the Constitution and the rules of law are observed. That is the reason why this provision was inserted in the Constitution. The lawyers on this floor time and again have known that a sheriff or a prothonotary or some officer of the court was taking illegal fees and violating the law, and yet they could not afford to quarrel with an officer they were having communication with every day; and we understand perfectly well that a shipper, a person having business with railroads, might feel that his rights were violated, and yet he would know that if he went into a law suit with them, they could embarrass him in his business far more than he could recover by any personal controversy.

Then the amendment proposes to strike out the latter part of the section giving this officer some supervision over these railroads so far as concerns the life and safety of the public in their travel. It seems to me that the Commonwealth should have some officer of this description who should have the right, when complaint was made that certain portions of a railway over which thousands of people are being carried perhaps every day or every week were dangerous to life or property, to require that it should be put in a condition of safety.

Now, sir, what is this portion of the section that is proposed to be stricken out? It provides, first, that on the com-

plaint of any citizen that the rules and regulations have been violated, the Secretary of Internal Affairs shall investigate it. If the information is not sufficient, he may require a special report from the company. That power he ought to have. In many instances you cannot get at the facts in any other way than by requiring the special information desired from the company itself. Then the next provision is a provision for the safety of the lives of the traveling community, and it seems to me that that should be provided for as it is in this section, and we ought to adopt it, not simply down to the word "law," because that confers no more authority than is now conferred upon the Auditor General by act of Assembly. We ought to give this officer a greater authority. He should have the power to see to it that the rules we lay down in the Constitution are observed, and if a complaint is made by a citizen, it should be his duty to go into a court of justice and investigate it and see that the Constitution is carried out. Why make a Constitution, why prescribe rules, unless we create an authority to see that they are executed? As I said before, the citizen whose rights are trampled upon is afraid to do it, and I know it. I have had large shippers in my own city tell me so. I have said to them: "Gentlemen, why do you not go into court with these men; you can assert your rights by resorting to the law." Their reply was, "Oh, yes, perhaps \$500 or \$1,000 might be determined in that legal controversy, but we are shipping to the amount of hundreds of thousands of dollars, and they could embarrass us in a hundred ways that would injure us much more, and we are afraid to do it." Now, let us make the great Commonwealth of Pennsylvania stand up and protect her citizens and see that this Constitution is enforced.

MR. S. A. PURVIANCE. If it were possible to have the attention of the Convention for five minutes, I should be very thankful.

Mr. President, we have passed a railroad article thus far embracing eighteen sections, and those sections are all regulating the almighty dollar. This is the only section of the railroad article that relates to the preservation of life, and certainly it ought to claim the attention of this Convention for a few moments. What is it to which objection is now made? It is that the railroads of the State of Pennsylvania shall come under

what is termed, properly speaking, a police regulation, such as exists in other States of this Union. It is but recently since in New Hampshire they elected a board of railroad inspectors, charged with the duty of seeing that railroads were not neglected by the companies having their control. I submit to the Convention whether that is not an important consideration. You find that most of the accidents which occur on your railroads occur on defective bridges where the logs interlap a little over, but have become rotten, and thus life is sacrificed for the want of proper attention. When a railroad receives a charter from the State it is under an implied obligation that the company shall build their road not inartificially, not unsafely, but in such a way as not to imperil the lives of those who are to pass over it. Look at some of your railroads—built upon stilts high up in the air, some of them one hundred feet high, on trestle works. I undertake to say that that is not such a building of the road as comes within the obligation which a railroad company enters into when they receive their charter.

Allow me to say to the members of this Convention that on the great Pennsylvania road every man who travels over it is in danger of his life in passing along what is called the Pack-saddle. Why, sir, the track is laid there within a foot or a foot and a half of the verge of a precipice two hundred feet high, down into the Conemaugh river, and if at any time, and that time will not be far distant, a catastrophe should happen there, it will be one such as has never been heard of before. If a rail should break or a wheel should break and a car go over there, there would not be a single vestige of life left. Now, sir, what is this Pennsylvania road doing? Buying roads out in the far Pacific, forming connections thousands of miles distant, and why should they not be compelled to build an inside track at this dangerous point to which I have referred for the purpose of carrying passengers safely over their road? What is this section but putting a police power, the regulation of these roads, in the hands of competent authority for the purpose of making these proper regulations?

Sir, (and this is all I shall say,) after we have devoted weeks and months to the investigation of railroads and made regulations in eighteen sections about the dollar, for the preservation of stocks and dividends, &c., let it be said at least that

this Convention has devoted one single hour to a section which relates to the preservation of human life. I therefore sincerely hope that this section will be carried as it is.

The *PRESIDENT pro tem.* The question is on the amendment of the delegate from Philadelphia (Mr. J. Price Wetherill.)

The amendment was rejected, there being on a division fifteen ayes—less than a majority of a quorum.

The *PRESIDENT pro tem.* The question recurs on the section.

Mr. BIDDLE. Mr. President: I like the principle of this section, but I do not like the shape in which it stands. I think it is too long and goes too much into detail. I am quite willing to vote that these companies shall be placed under the supervision of the Secretary of Internal Affairs, who now takes the place of the Auditor General in this respect; but I do not like to vote for all that part of the section after the seventh line. I have no doubt of the entire accuracy of the statement made by the gentleman from Allegheny with regard to that dangerous part of the road of the Pennsylvania company near the Conemaugh river, and I have no doubt that wherever there is a high bridge there may be a good deal of danger; but I do not like putting those things in the Constitution. I think if we could so modify the section as to place these companies under the general supervision of the Secretary of Internal Affairs we should do all we are called upon to do by giving to a highly respectable officer who is to be elected by the votes of the people at large the control of this subject, and I would prefer leaving it to him entirely to say when and how and where he should move. By placing these companies under that supervision, we place them in effect under the supervision of the law authorities of the Commonwealth, because the moment the Secretary of Internal Affairs has reason to believe that a violation of the law in any particular has taken place or is about taking place he can bring it to the notice of the Attorney General and proceed in the proper way. I prefer leaving the details to the Legislature. I would therefore move to amend the section by inserting after the word "affairs," in the third line, the words "who shall have a general supervision over them," and striking out everything after the word "thereof" in the seventh line. I will read the section as it will stand if thus amended:

"The existing powers and duties of the Auditor General in regard to railroads, canals, and other transportation companies, are hereby transferred to the Secretary of Internal Affairs, who shall have a general supervision over them, subject to such regulations and alterations as shall be provided by law; and in addition to the annual reports now required to be made, said Secretary may require special reports at any time upon any subject relating to the business of said companies from any officer or officers thereof."

I propose to leave out the remainder of the section, because if you give this officer this supervision he has it in his power to apply the remedy wherever he thinks it fit to be applied.

The *PRESIDENT pro tem.* The question is on the amendment proposed by the delegate from the city (Mr. Biddle.)

Mr. HOWARD. I ask for a division of the question, so that the vote may first be taken on the insertion of the words, "who shall have a general supervision over them," and then the question be taken on striking out the residue of the section afterwards. It will be perfectly sensible to insert those words, and then we can decide the other question of striking out on a separate vote.

Mr. HOWARD. Do I understand the motion to be to strike out and insert?

The *PRESIDENT pro tem.* No, sir; the motion is to amend in the first place by the insertion after the word "affairs," in the third line, of the words "who shall have a general supervision over them." Then the motion further proposes to strike out all after the word "thereof" in the seventh line. Now the delegate from Allegheny (Mr. Howard) asks for a division of the question.

Mr. HARRY WHITE. A motion to strike out and insert is divisible.

The *PRESIDENT pro tem.* It is not a motion to strike out and insert. The motion to insert is a distinct amendment of itself.

Mr. HOWARD. And then the motion to strike out is another distinct amendment.

Mr. HARRY WHITE. By parliamentary law, which is universally recognized, a motion to strike out and insert is divisible; but the Legislature has a special rule on the subject, which limits the parliamentary rule in that regard.

The *PRESIDENT pro tem.* The Chair decides that the amendment is susceptible of the division asked for. The first

question is on inserting the words "who shall have a general supervision over them," after the word "affairs," in the third line.

The amendment was agreed to.

The *PRESIDENT pro tem.* The next division is to strike out all after the word "thereof," in the seventh line, to the end of the section.

Mr. HOWARD and Mr. D. W. PATTERSON called for the yeas and nays, and they were taken with the following result:

Y E A S .

Messrs. Armstrong, Baer, Bannan, Barclay, Biddle, Bigler, Black, Charles A., Black, J. S., Boyd, Brodhead, Broomall, Buckalew, Bullitt, Calvin, Carter, Corson, Cronmiller, Curry, Curtin, Edwards, Fell, Fulton, Gibson, Hall, Hay, Horton, Hunsicker, Lamberton, Lawrence, Lear, Lilly, Mann, Mantor, Niles, Patton, Porter, Pugbe, Purman, Simpson, Smith, Wm. H., Turrell, Walker, Wetherill, J. M., Wetherill, Jno. Price, White, Harry and Worrell—46.

N A Y S .

Messrs. Alricks, Bailly, (Perry,) Bailey, (Huntingdon,) Brown, Campbell, Clark, Cochran, Dallas, De France, Funck, Gilpin, Guthrie, Howard, Landis, MacConnell, McClean, McCulloch, Palmer, G. W., Patterson, T. H. B., Purviance, Samuel A., Reed, Andrew, Reynolds, Rooke, Russell, Smith, Henry W., Struthers and Van Reed—27.

So the amendment was agreed to.

ABSENT.—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Bowman, Carey, Cassidy, Church, Collins, Corbett, Craig, Cuyler, Darlington, Davis, Dodd, Dunning, Elliott, Ellis, Ewing, Finney Green, Hanna, Harvey, Hazzard, Hemphill, Heverin, Kaïne, Knight, Littleton, Long, MacVeagh, McCamant, McMurray, Metzger, Minor, Mitchell, Mott, Newlin, Palmer, H. W., Parsons, Patterson, D. W., Purviance, Jno. N., Read, John R., Ross, Runk, Sharpe, Smith, H. G., Stanton, Stewart, Temple, Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—60.

The section as amended was agreed to.

The next section was read as follows:

SECTION 14. Railroad companies shall have the right to connect their railroads by proper connections with the railroads of each other and shall have the right to

pass their cars, either empty or loaded, over each other's railroads free from discrimination in rates or charges, and without delay or hindrance in their movements.

Mr. HOWARD. The substance of section fourteen was incorporated in section one by an amendment.

Mr. COCHRAN. This section, as stated, has been already supplied by an amendment introduced in the first section. I move to amend it by striking out all after the word "section" and inserting the following:

Mr. CAMPBELL. I would suggest to the gentleman that the whole section be voted down, and that then he offer his amendment as a new section.

Mr. COCHRAN. It is immaterial. I withdraw the amendment.

The *PRESIDENT pro tem.* The question is on the fourteenth section.

The section was rejected.

Mr. COCHRAN. Now I offer the following as a new section:

"Every borough or city shall have power to regulate the grade of railroads and the rate of speed of railroad trains within its limits."

I wish to say, in regard to the section, that it was one which was reported by the Committee on Railroads, and met their unanimous approbation. It was voted down in committee of the whole in a flurry, in pretty much the same sort of a flurry that the Convention seems to be in just now.

It is simply a provision in favor of human life and human safety in the passing of railroad trains through thickly populated districts, boroughs and cities; and I hope that the Convention will go so far, at least, as to provide that municipal corporations shall have the right to prevent railroad trains passing through their limits at lightning speed, so the danger of human life and the destruction of property.

Mr. CAMPBELL. I hope that this section will prevail. It affects large cities like Philadelphia. As the chairman of the committee has said, the section met the unanimous approval of the Railroad Committee, and was reported here; but one afternoon, when the Convention was in a hurry to adjourn, they voted down several sections, hardly considering them, and this happened to be one of them. The people of Philadelphia especially want some provision of this kind in order to put a stop to the innumerable railroad

accidents that we read of in the papers. Every day we have an account of some child or man or woman run over by some railroad train passing through the settled portions of the city at a tremendous rate of speed. Now, by placing it within the power of the city authorities to regulate the matter, we shall prevent those accidents that are continually occurring. It will be no injustice to the railroad companies, because the city authorities will not change the grade of a railroad unless it be absolutely necessary for the protection of the people of the vicinity. Whenever the complaints of the people are so great that the city authorities will be compelled to change it, then we shall have the grade changed, and not before, so that the matter will, to a certain extent, regulate itself.

Now, as the gentleman from Pittsburg remarked on the last section, we have been putting in sections in reference to the rights of stockholders on many matters, and we have passed hardly any section in reference to the right of individuals to have their lives protected. This will provide that the lives of citizens in populous districts shall be to a certain extent protected, and therefore as representing in part the city of Philadelphia I hope this section will pass.

Mr. NILES. I have no doubt that the Convention see at a glance that the adoption of the proposed section would put every railroad in the State at the complete mercy of every town-council, and I undertake to say that there could be no greater source of corruption imagined than that every railroad in the State should have to make its peace with the borough authorities. Now, sir, in the little town in which I live, (and railroads are popular there to-day,) a railroad passes at a grade of about sixty feet to the mile. Suppose at some time in the future the council should become opposed to the railroad and they should prescribe by a borough ordinance that the road should pass through the entire corporation limits upon a dead level. It would be an entire impossibility; it never could be done; and I undertake to say that there are not three boroughs or cities in the State to-day where it would be practicable to build a road upon an entire level; and yet if this section is adopted as now before the Convention, this would have to be done. They may not only regulate the speed, but the grade of every railroad in the State. The proposition was voted down

almost unanimously before, and I hope it will be now.

Mr. CAMPBELL. I move an amendment striking out the word "borough" to accommodate some gentlemen.

Mr. HARRY WHITE. I hope this section will prevail. If there is any one thing we have been fighting for it is the right of local self-government, and I trust we shall adhere to it and never surrender it. By virtue of statutory provisions now, this power, so far as regulating the speed of trains and the regulation of the grades of railroads, is referred to the municipal authorities. Those statutes may be repealed, and I for one am in favor of placing the principle in the organic law.

Mr. NILES. I desire to amend the section by striking out the clause about "grade." I do not care anything about the speed. I move to strike out the words "the grade of railroads and."

Mr. CAMPBELL. I rise to a point of order, that this is not an amendment to the amendment. My amendment I offered at the suggestion of some gentleman back of me to strike out the word "borough," so as to make it apply to cities only. The amendment of the gentleman from Tioga is not an amendment to that.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia, (Mr. Campbell,) and the other proposition is out of order at this time. The question is on the amendment of the gentleman from Philadelphia to the amendment of the gentleman from York.

Mr. HOWARD. I hope the delegate from Philadelphia will withdraw that amendment, or the delegates from boroughs will vote against the section.

Mr. COKSON. No, the delegates from boroughs will vote for that amendment and then against the whole section.

Mr. TURRELL. If this section is passed at all, it should be passed just as it is presented. Every municipality ought to have the control of this matter within its limits, and this is in furtherance of protection to human life. It has come to that pass at this day that a few moments or seconds of time in speed to a railroad are considered of more consequence than any man's life. I say if we are to pass this at all, let us have it entire and have the benefit of it. Gentlemen here have said within the last three minutes that they have had their lives jeopardized within the limits of this city, and so it is

all over; and if it is worth anything and is good for one municipality, let us have it for all. I will not multiply words at this late hour.

Mr. BUCKALEW. I am in favor of this amendment striking out "boroughs." I have no objection to the councils and mayors of cities fixing the rate of speed, because they have a thoroughly organized local government that can attend to this subject. It is not so in all the little towns of the interior.

Now, with regard to the speed by which railroads can run in our interior towns, it ought to be regulated by a general law. I would not allow one town-council to fix the rate of one mile, and another the rate of ten. There would be no equality; the thing would fall into utter confusion, and I take it if we put this into the Constitution you cannot pass a general law regulating the speed of railroads in interior towns of the State. Therefore, if the amendment of the gentleman from Philadelphia is agreed to, confining it simply to a few large cities where they have local authorities that can control this subject, I will vote for it; if his amendment is rejected, I shall necessarily vote against the proposition.

The PRESIDENT *pro tem*. The question is on the amendment of the delegate from Philadelphia (Mr. Campbell) to the amendment of the delegate from York (Mr. Cochran.)

The amendment to the amendment was rejected, the ayes being twenty-four, less than a majority of a quorum.

Mr. NILES. Now I renew my amendment. I have no objection to letting the rate of speed be regulated; but I move to strike out the words "grade of railroads and."

Mr. CAMPBELL. That is one of the most valuable parts of this section. If you strike out that clause it will prevent the city authorities, say of Philadelphia, from declaring to a railroad company, "You shall change the grade of your track to suit the public convenience of the citizens in certain localities." The amendment would also have another bad effect. We have, for instance, in the city of Philadelphia, a magnificent street, like Broad street. We want to preserve that street forever free from having any railroad upon it—and this is the almost unanimous wish of the people of Philadelphia. There have been attempts made in the Legislature, and one attempt succeeded, to have a railroad track authorized to be

placed upon that street; but the wishes of the people were so decided that the parties who got the bill through actually became frightened, and they did not put the track down. Now, we want to have some provision of this kind, so that the city authorities can regulate the grade of railroads, and can have it within their power to say to all railroad companies: "You shall not run upon Broad street; and if you want to cross Broad street you shall either tunnel under the street or build a bridge over the street," so that we can keep that magnificent thoroughfare forever free from railroads. If this amendment prevails, it will prevent that; it will subject Broad street, and every other street in the city of Philadelphia, to the whims and caprices of the Legislature. I hope the amendment will not prevail, and that we shall adopt the section as it stands.

I only offered the amendment that I did a moment ago, because some gentlemen from the boroughs suggested that they did not wish to have the section applied to boroughs. I myself should like to see it applied all over the State; but now that that has been voted down, I appeal to the gentleman from the boroughs to vote in the section so as to give some protection to the people of the Commonwealth for their lives in passing these railroads in crowded localities.

Mr. LILLY. Mr. President: I hope these words will not be stricken out. If you give authority to municipalities to fix what grade they please, they will make you go down three or four feet below where you ought to go. I am opposed to the whole section. I think this matter ought to be left in the hands of the Legislature to be acted upon by a general railroad law. These details, as I remarked yesterday, we are getting down to too small a place in, and the next thing we shall want to put in will be a time-table to govern the running of the roads. I am opposed to the whole thing because I think it can be better taken care of by general law than by being in this way put into the Constitution. I hope the whole section will be voted down.

Mr. MANN. Mr. President: It does seem to me that this is the wildest proposition which has been submitted. The adoption of this section will convert every train into an accommodation train, and I suppose that is the purpose of it, because if it is adopted it will give the authorities

of every village in the State the compulsory power over the railroads to run at not more than the rate of half a mile an hour through their village. Of course, they will want every train to stop, and we shall have nothing but accommodation trains instead of express trains if this section prevails, for every village will want every train that runs through it to stop. Clearly it will give them the entire control over it, and there will be not only the objection of the gentleman from Columbia, but every conductor will have to have a schedule showing at what rate of speed he may run through every separate village. It will be utterly impossible to run trains under such a section as this except accommodation trains, requiring them to stop at every village through which a train runs.

The point of speed is as objectionable as that of grade, and it will be entirely ruinous to passenger travel in Pennsylvania to adopt such a section as this.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Tioga (Mr. Niles) to the amendment of the gentleman from York (Mr. Cochran.)

The amendment to the amendment was rejected.

The PRESIDENT *pro tem.* The question recurs on the amendment of the gentleman from York (Mr. Cochran.)

Mr. CAMPBELL. I call for the yeas and nays.

Mr. COCHRAN. I second the call.

The PRESIDENT *pro tem.* The Clerk will call the yeas and nays on the amendment of the gentleman from York.

The yeas and nays were taken with the following result:

YEAS.

Messrs. Alricks, Baer, Baily, (Perry,) Campbell, Cochran, Curtin, Finney, Funk, Gibson, Gilpin, Guthrie, Howard, M'Clellan, M'Culloch, Palmer, G. W., Patterson, T. H. B., Reynolds, Ross, Russell, Smith, Henry W., Smith, Wm. H., Turrell and White, Harry—23.

NAYS.

Messrs. Armstrong, Bailey, (Huntingdon,) Bannan, Barclay, Biddle, Bigler, Black, Chas. A., Boyd, Brodhead, Broomall, Brown, Buckalew, Bullitt, Calvin, Clark, Corson, Cronmiller, Cuyler, Dallas, Edwards, Fell, Fulton, Hall, Horton, Hunsicker, Lamberton, Landis, Law-

rence, Lear, Lilly, MacConnell, Mann, Mantor, Newlin, Niles, Patton, Porter, Pughe, Purman, Purviance, Samuel A., Reed, Andrew, Rooke, Simpson, Struthers, Van Reed, Walker, Wetherill, J. Price and Worrell—48.

So the amendment was rejected.

ABSENT—Messrs. Achenbach, Addicks, Ainey, Andrews, Baker, Bardsley, Bartholomew, Beebe, Black, J. S., Bowman, Carey, Carter, Cassidy, Church, Collins, Corbett, Craig, Curry, Darlington, Davis, DeFrance, Dodd, Dunning, Elliott, Ellis, Ewing, Green, Hanna, Harvey, Hay, Hazzard, Hemphill, Heverin, Kaine, Knight, Littleton, Long, MacVeagh, M'Camant, M'Murray, Metzger, Minor, Mitchell, Mott, Palmer, H. W., Parsons, Patterson, D. W., Purviance, John N., Read, John R., Runk, Sharpe, Smith, H. G., Stanton, Stewart, Temple, Wetherill, J. M., Wherry, White, David N., White, J. W. F., Woodward, Wright and Meredith, *President*—62.

Mr. NEWLIN. I offer the following amendment as a new section:

SECTION.—No transportation company nor any officer or employee thereof shall prohibit the sale or carriage of any news, paper or other publication upon the line of said company, unless the same shall be contrary to public morals.

Mr. President, I suppose the objection will be made to this proposed section that it is legislative. I suppose that that objection will be urged to this section.

Mr. LILLY. I should like to ask the gentleman a question.

Mr. NEWLIN. I am always very happy to answer the gentleman from Carbon; he very seldom speaks. [Laughter.]

Mr. LILLY. I want to know if he is interested in the *Inquirer*.

Mr. NEWLIN. No, sir, I believe I am not interested. I do not even subscribe to the paper and very seldom read it. I hope the gentleman is satisfied.

This proposition, I suppose, will be opposed on the ground that it is legislative. In answer to that, I have two things to say. In the first place, this proposition has been before the Legislature and has been defeated for reasons that will be obvious to every member. Again, various other propositions in this article are quite as liable to this objection as the one now pending. There are a number of instances where railroad companies have not simply prohibited the sale of particular newspapers along their line, but have failed to allow facilities for trans-

porting the papers to the different towns, boroughs and cities along the line, by reason of opposition on the part of those newspapers to the action of the corporation. Why, sir, only recently in the State of New York, *Harper's Weekly* was in this manner driven off a principal road, and on another road the *New York Times* was prohibited being either sold or transported.

I think for these reasons that the section I have proposed ought to be adopted.

Mr. DALLAS. I offer an amendment to the amendment, to come in at the end of it. The section provides for a meritorious class, our newsboys, and I propose to add:

"And that all bootblacks shall be admitted to the depots without distinction of race or color." [Laughter.]

The PRESIDENT *pro tem.* I suppose that is hardly offered seriously.

Mr. DALLAS. I withdraw it.

The PRESIDENT *pro tem.* The question is on the amendment of the gentleman from Philadelphia (Mr. Newlin.)

The amendment was rejected.

REPORTERS' ACCOUNTS.

Mr. HAY. I desire to make a report which I request leave to present at this

time. The Convention will probably soon adjourn; as this is a matter which should be attended to before we adjourn, I ask leave to present a report from the Committee on Accounts and Expenditures.

Leave was granted and the report submitted, as follows:

The Committee on Accounts and Expenditures respectfully report the following resolution:

Resolved, That a warrant be drawn in favor of D. F. Murphy, Official Reporter of the Convention, on account of his services as such Reporter, for the sum of \$3,000, to be accounted for by him in the settlement of his accounts.

The resolution was read twice and agreed to.

RAILROADS AND CANALS.

Mr. COCHRAN. I now move that the article on railroads and canals be referred to the Committee on Revision and Adjustment.

The motion was agreed to.

The PRESIDENT *pro tem.* The Convention having completed the second reading and consideration of the article on railroads and canals, the Convention stands adjourned until the sixteenth day of September, at ten o'clock A. M.

ONE HUNDRED AND FORTY-SECOND DAY.

TUESDAY, *September 16, 1873.*

The Convention met at ten o'clock A.M., pursuant to adjournment, Hon. John H. Walker, President *pro tempore*, in the chair.

PRAYER.

The following prayer was offered by Rev. J. W. Curry:

Almighty God, our Heavenly Father, we desire to come before Thee this morning with reverence and humility. We thank Thee for Thy mercies and protecting care over us during our brief vacation. We rejoice that through Thy goodness our health and lives have been preserved. Truly we can say, "goodness and mercy have followed us all the days of our lives." O, Lord, on our re-assembling in this Hall this morning, one of our number is missing. He who presided over the deliberations of this Convention with so much dignity and marked ability; he who was recognized among his fellow citizens as a faithful defender of truth and justice, and the acknowledged leader of the legal profession in this city; he whose voice was heard during the morning prayers in this Hall, to say "Amen, amen," has passed away, ripe in years. Truly a great man has died; his place among us is vacant. We shall never hear his voice in words of wisdom again. His eyes are closed in death. We followed his remains in sorrow to the grave. Yet, Lord, we rejoice, because Jesus was laid in the grave, and by the power of His divinity, rose again, and robbed death of its sting, and the grave of its victory. We praise Thee, O Father, for the precious and comforting words of Thine only Son, Jesus Christ, who said, "let not your hearts be troubled; ye believe in God; believe also in me, for in my Father's house are many mansions; if it were not so I would have told you. I go to prepare a place for you, that where I am there ye may be also." We ask Thy blessing, O God, upon the children of our departed brother. Help them to have living faith in Christ the Redeemer of the world. We invoke Thy blessing upon the members of this Convention, its

clerks, officers, reporters and attachees. O God, for the sake of Thy Son, who suffered, the just for the unjust, save us from sin in this world and from eternal death in the world to come, and we will praise Thee for ever and ever, world without end, amen.

WITHDRAWAL OF JUDGE WOODWARD'S RESIGNATION.

Mr. KAINE. I move that the roll be called.

Mr. WOODWARD. I rise to a personal explanation, which I think should precede the motion of the gentleman from Fayette. On the second of July I tendered my resignation as a member of this body, in perfect good faith and with great respect for the body, and in pursuance of notice previously given. I understand that the body, in the same spirit, declined to accept my resignation, and laid it on the table. I am now returned to Philadelphia, which I left immediately after resigning, willing, but not anxious, to resume my seat and duties in this body if it is the pleasure of this body that I should perform those duties. Therefore I say if it be the pleasure of the body that I should withdraw my resignation, it may be considered as withdrawn. ["Yes!" "Yes!"]

The PRESIDENT *pro tem.* put the question, and leave was unanimously given to withdraw the resignation.

MEMBERS PRESENT.

The PRESIDENT *pro tem.* The delegate from Fayette (Mr. Kaine) now moves that the roll be called.

The motion was agreed to, and the roll being called by the Clerk, ninety-two delegates answered to their names.

ELECTION OF PRESIDENT.

Mr. WOODWARD. Mr. President: At the instance of several gentlemen around me, I rise to move that the Convention proceed to the election of a permanent President.

Mr. DARLINGTON and OTHERS seconded the motion.

The PRESIDENT *pro tem.* It is moved and seconded that the Convention now

proceed to the election of a permanent President. That motion is before the Convention.

The motion was agreed to.

The PRESIDENT *pro tem.* The Chair, inasmuch as his name has been associated with the permanent Presidency, deems it his duty, in delicacy at all events, to retire and let the Clerk preside during the election. If that course is not considered improper it will be pursued. ["Yes." "Yes."]

Mr. STANTON. Mr. President: Would it not be better to have the death of our President officially announced before doing that?

Mr. BROOMALL and OTHERS. Not until afterwards.

The PRESIDENT *pro tem.* The Convention is organized. The fact of the death of our late President is well known, and the Convention is now, on motion made and agreed to, about to proceed to the election of a permanent President.

Mr. HAZZARD. I suggest, Mr. President, that some member be called to the chair temporarily.

The President *pro tem.* vacated the chair.

Mr. WOODWARD. I will move, (and ask that the Secretary put the motion,) if gentlemen consider it a proper motion, that the Hon. John H. Walker be elected by acclamation President of the Convention.

SEVERAL DELEGATES seconded the motion.

The CHIEF CLERK, (D. L. Imbrie, Esq.) It is moved and seconded that the Hon. John H. Walker be elected President of this Convention. [Putting the question.] The motion is unanimously agreed to, and Mr. Walker will take the chair as permanent President of the Convention.

Mr. WALKER, on taking the chair as President, said:

Fellow delegates: I tender you my sincere thanks for the honor you have conferred on me in placing me in the position occupied by our deceased friend, the Hon. Wm. M. Meredith. I do not expect to be able to discharge the duties of the Chair as satisfactorily as he did, but I will endeavor to the best of my ability to do it with impartiality and with all the intelligence I am possessed of.

DEATH OF MR. MEREDITH.

Mr. CAREY. Mr. President: As senior member of the Philadelphia delegation, as well as of the Convention itself, it has become, Mr. President, my duty to ask

my fellow members to suspend for a few minutes procedure with the work committed to their care, and to direct it to a solemn event which an act of divine Providence has commended to our consideration.

Since last we parted, but few weeks since, the painful anticipations of members have been realized in the death of our distinguished President, the Hon. William M. Meredith, who expired at his residence in this city, on the 17th day of August, in the seventy-fourth year of his age.

Mr. Meredith was a native of this city, and throughout his long life a resident therein, except when absent in the discharge of public duties. His father was a highly accomplished gentleman of great purity of character, occupying a distinguished place at the Philadelphia bar. His childhood was blest by the genial influences of association with a mother eminent for her mental, moral and social qualities, and his instruction, begun and long continued at home, was subsequently enlarged by collegiate education, to be perfected finally, as it was, by special studies and professional and official occupation. His attainments, though large, were less conspicuous than those of others not his equals, simply for the reason that as a consequence of early home discipline they had been thoroughly digested, and had become indivisible and inseparable portions of his mental character. His thoughts and their expression were tinged with the best sentiments of ancient and modern authors, yet were these latter never ostentatiously displayed.

Mr. Meredith's success in the profession of the law, and especially as a barrister, early attracted the attention of those whose party relations and party influence led them to select such as seemed likely to become candidates for the popular suffrage, and he soon therefore entered the Legislature of the State, almost at once achieving there a distinction closely correspondent with his rising influence at the bar. For many years he was a member of our city legislature and president of the select council. His parliamentary knowledge, and his civic devotion, there gave dignity to the place he occupied, and secured an amount of respect which, as there is too good reason for regretting, such positions do not everywhere command.

Mr. Meredith was elected a member of the Convention to which, in 1838, was re-

ferred for amendment the Constitution of the State. The records of the proceedings of that body, and the reminiscences of his few remaining colleagues, prove him to have been an active and influential member. Throughout its sittings he distinguished himself generally by an earnest advocacy of propositions tending, as he thought, to promotion of the public welfare, but most especially by his logical discussion of questions concerning that judiciary with whose interests his professional education and pursuits so closely identified him; and for the maintenance of whose permanent dignity he was always a zealous and able advocate.

In that Convention, as in the Legislature of the State, Mr. Meredith's eloquence was marked by a directness which left on the minds of his hearers no doubt of either his inclination or his object. He was grave, argumentative and convincing in the larger questions under discussion; interesting and pleasing in debates of lesser moment; and, though avoiding all aggression, was, when provoked, pungent in his satire and cutting in his rebuke. Few men in that body were so remarkable for their readiness as debaters, or their promptitude in repartee.

Mr. Meredith was called to the national councils, and, as Secretary of the Treasury in the short administration of President Taylor, there distinguished himself by his comprehensive views of the duties of his place and of the great interests of the people he represented.

It was at a trying moment in the experience of this Commonwealth that he subsequently accepted the office of Attorney General of the State, doing this at a personal and professional inconvenience which gave to his labors the merit of sound patriotism and great self-sacrifice. How serious was that sacrifice can scarcely be appreciated by any but those close friends with whom he consulted at the moment when acceptance was urged upon him by my friend and colleague, Governor Curtin, then Chief of the State. Most reluctantly was it accorded, the impression being full upon his mind that in his then physical condition compliance with the Governor's demand, for demand it really was, must be followed by speedy death. How important it had been that he should comply, was proved by the fact that from the hour of its becoming known that he had assumed the legal advisership of the Executive, the storm of vilification ceased. All knew that if there

had been any truth in the charges which before had been daily made, the Governor would not have dared to offer him the place. All felt that with our departed friend in office, they had a guarantee not only that there had been honesty in the past, but that there was to be honesty in the future. It is rare to find an individual exercising over the public mind so large an amount of influence as was then exhibited; rare to find a man in public life whose duties are so thoroughly performed, and with a success so perfect.

When the President was seeking for men of might, of personal, professional, and political distinction, to assist in the councils at Geneva touching questions then at issue between Great Britain and the United States, he almost necessarily selected Mr. Meredith. There were, however, reasons sufficient for warranting the recipient of the invitation in declining the proffered honor, and in thus avoiding the exposure and the labor which acceptance would necessarily have caused him.

These things had passed into history when the election of Mr. Meredith as President of this body, by an unanimous vote, gave expression to the perfect confidence had in his parliamentary skill and in his entire mastery of almost all subjects likely to be discussed, as well as in the soundness of his patriotism and the purity of his life; a confidence shared by all who knew him. It was a choice sanctioned and applauded by the whole people of our Commonwealth.

How fully our late President comprehended the duties of his place, and how ably they were discharged, it is not necessary for me to state. I stand in the presence of those who witnessed, and will testify to, the promptness and impartiality of his judgment; and who, if hesitating fully to assent to his decisions, never for a moment doubted his sincerity nor long withheld concurrence in his views.

The members of this Convention, when its labors shall have closed, will take to their homes a grateful recollection of their deceased President, and will do justice to the wisdom, integrity, and impartiality of his administration. They will have a melancholy gratification in associating his memory with the recollection of the dignity and usefulness of the body of which they had been members, and of William M. Meredith, its head.

The resolutions which I am about to offer, though partaking of the formalities

of such an occasion, are intended as an expression of the profound respect with which this body recognizes the sterling worth of Mr. Meredith as a man, a citizen, and a statesman; and especially are they to serve as testimony of a full appreciation of his great services as President of this Convention, and of the sympathy of its members with the bereaved family, and with a community which loses so much in the death of so eminent and so excellent a man.

I offer, Mr. President, the following resolutions:

Resolved, That this Convention has heard with profound regret the formal annunciation of the death of its President, the Hon. William M. Meredith, to whose eminent abilities and hearty devotion to the discharge of the duties of his office testimony is hereby borne.

Resolved, That this Convention, while expressing regret at the loss which it has itself incurred, feels it due to itself and to others to offer the expression of its deep sympathy to the bereaved family of Mr. Meredith, and to the community of which he had so long been a valued and honored member.

Resolved, That the President be and he hereby is requested to communicate these resolutions, properly attested by the officers of the Convention, to the family of our deceased President.

Resolved, That a committee of — be appointed to take order for the preparation of a memorial of the deceased.

Resolved, That this Convention, as a further token of respect for its late President, will refrain this day from any further labor, and will adjourn till to-morrow at — o'clock.

Mr. DARLINGTON. Mr. President: I cannot permit this occasion to pass without adding a few words to what has been already so appropriately said. Although I knew Mr. Meredith for some years previously, yet my acquaintance with him did not commence until we met at Harrisburg as members of the Constitutional Convention of 1837. That body contained many of the most distinguished men of the Commonwealth, some of whom were advanced in life, and had served many years as representatives in Congress, in the Legislature, and in other places of public trust. He was then in the full vigor of manhood, possessing a mind naturally strong, highly cultivated and stored with varied learning, and was gifted with powers of oratory of no common

order. He at once took rank as one of the ablest debaters of that Convention, and when he addressed the body he commanded its earnest and undivided attention. During the whole period of its sessions—which extended over many months—he was constant in his attendance and earnest in the discharge of his duties. His views were well known to be highly conservative. Strongly attached to the Constitution of 1789, and believing it, as we have heard him express in this Convention, to be the best frame of government possessed by any of the States—we were not surprised to learn that he doubted the wisdom of the proposed changes and innovations. When called, as he sometimes was, in the temporary absence of the President, to the chair, he displayed the same aptitude and readiness in the discharge of its duties as we have all seen him exhibit while presiding over this body.

My intercourse with him ever since our acquaintance began has been of the most agreeable character. We have been frequently brought together professionally, sometimes as antagonists, oftener as allies; and I am yet to hear the first intimation of word or deed on his part inconsistent with the highest standard of professional and personal honor.

He was one of the most genial companions I ever knew. His conversation, full of instruction, was at the same time free and easy, and interspersed with anecdote and pleasant remark which delighted all his listeners.

I make no reference to his public services in the Legislature, as Secretary of the Treasury of the United States, or as Attorney General of this Commonwealth. His memorial will doubtless be written, and will be the proper repository of the principal events of his public life.

Upon his election as a delegate to this Convention, almost every one instinctively looked to him as the proper person to preside over its deliberations. His unanimous choice was a deserved compliment to his high character and distinguished ability, and the manner in which he discharged his duty is alike honorable to him and satisfactory to us all.

During his illness, which was somewhat protracted, I frequently called to see him, and generally found him cheerful, and hopeful of recovery. He attributed his ill-health to over-work in this body, and naturally supposed that rest would restore him. On my last visit, two days after our

adjournment in July, it was impossible not to see that his strength was failing, and I had the greatest apprehension that we should never see him here again.

We are now assembled to mourn his loss, and pay appropriate tribute to his memory. His death is an admonition to us all that the sands of life are fast running out. He was less than six years my senior, and there are some older, and many younger here than I; yet by the wise provision of Providence we know not who next shall follow. Our duty is so to live as to be always ready.

Mr. BIDDLE. Mr. President: It is not because I expect to add anything to the comprehensive and eloquent eulogy that has been pronounced by the mover of the resolutions upon our deceased friend that I rise to speak; it is because I feel it a necessity to say something on this occasion of one whom I have known, whom I have honored, whom I have revered from early boyhood.

I may be permitted to say in the outset of these remarks, that I was allowed the great privilege of close personal intercourse with the distinguished deceased, that free interchange of mind with mind which enables us truly to form a just estimate of the character of a friend.

In a body like this, composed so largely of members of the same profession, it is not perhaps inappropriate to refer to the professional life of the distinguished dead. Indeed, so much of that professional life was, as it were, a public life, because in no question of great public interest was Mr. Meredith, for many, very many years of his active life at the bar absent from one side or the other, that in speaking of his professional life, we, in a measure, touch upon that other life which has been so well referred to in the resolutions and in the speech introductory of them.

Mr. Meredith, born the son of an eminent practitioner of the law, was so well educated in and imbued with the principles of jurisprudence, that at an early age he stepped forth as the thoroughly trained lawyer, the ready advocate, equal to any forensic encounter; yet his advance was a slow one, and his success but tardy, for he neither had, nor affected, the popular arts by which practice at the bar is early secured. He could not solicit business, business must solicit him; not because he thought it wrong to solicit business, but because he disdained it. Success did ultimately come, as we all well know, and first in a cause which involved not only

the interests of his native city, but, as it were, the interests of every citizen in this Commonwealth. The exhibition in this case of his great legal acumen, his profound knowledge of the early history of the Commonwealth, his wonderful mastery of all the weapons of advocacy, placed him at once in the front ranks of a profession then led by a Binney, a Sergeant, and a Chauncey. After the decision of the case I refer to, which occurred in the year 1837, a case involving the right of the people of this Commonwealth to the full enjoyment of one of the public squares of this city, his success was assured and his advance rapid; for I feel entirely safe in saying that until his call by President Taylor to the Secretaryship of the Treasury, no important cause was argued in the State in which he was not retained on one side or on the other.

How he conducted the business entrusted to his hands very many gentlemen on the floor of this House well know, and it requires no statement from me to call to recollection the brilliant and successful manner in which his abilities were displayed in the service of every client by whom he was employed.

In the office of Attorney General, which he filled at a comparatively recent date, his term of six years was marked by a singular devotion to the interests of the Commonwealth. It would be rendering but poor justice to his character to say that no temptation could ever for a moment induce him to swerve from the strict line of duty. It is not in that way that I wish to speak of him; but I desire to refer to his zeal, his devotion to the cause of the Commonwealth, his thorough personal identification with the interests of the State; all of which qualities were so eminently conspicuous as to impress, in a very marked manner, those who were brought into necessary opposition with him by the nature of their business. He retired from that office leaving upon it, in a striking degree, the impress of his great abilities and his high character.

In concluding this very slight sketch of his professional career, I feel that I am not overstepping the bounds of just eulogium if I apply to him what the master of Roman oratory said of a great contemporary when he characterized him as the most eloquent of the lawyers, the most lawyer-like in his eloquence, *eloquentissimus jurisperitorum, jurisperitissimus eloquentium*.

But here, in this Convention so lately presided over by him, it seems more appropriate to touch upon his public life, upon that side of his life which was dedicated to the public service, to public affairs. I wish to say a few words in regard to his political character.

Mr. Meredith was born a Federalist. He came into the world in perhaps the most exciting period of the politics of this country, certainly in as exciting a period as ever existed. He was born in the year 1799, in the presidency of the elder Adams; and intellectually precocious, he entered as a mere boy warmly and sympathetically into the political feelings and the political excitements of that day. His attachment to his own party leaders, or rather to the leaders of the party in which he was born and to which he adhered so long as it was a party, partook of the ardor of his temperament; yet it was not to the principles of the party as such, so much as to the men who led it, that he gave his thorough adhesion. He was a Federalist, without being strongly attached to any of the peculiar tenets of that most respectable party. He certainly was not what might be called a concentrationalist, a consolidationist. He was rather the reverse, rather a States-rights man. He was not a liberal constructionist; he was rigid in his views of the explication of the great charter which lies at the foundation of our government. It was to the Federal party as he conceived it ought to be, rather than to the principles which the existing Federal party enunciated, that he gave his full concurrence. While he worshipped the great men of the party, he never could have gone along thoroughly with all their political peculiarities. When he reached manhood he was undoubtedly strongly imbued with many of their views; but with his advent into active life that party had practically ceased to exist, for Mr. Meredith attained his majority just about the time of the second presidency of Mr. Monroe, when, as we all know, party opposition lay for the moment dormant, if not dead.

Mr. Meredith was formed to be a debater, and as has been very justly said by my distinguished colleague from Philadelphia, (Mr. Carey,) his fellow-citizens were not slow in discovering his great powers in that direction, and at least a decade of years before he had become distinguished at the bar, by the unsolicited suffrages of the voters of his native city he was elected to the Legisla-

ture of the Commonwealth, where he soon became eminent.

Let me say a few words here about what I believe to have been some of his characteristics as a debater. He certainly was in the very foremost ranks in this respect, if not the very first. I disparage no man when I say this. Strong, vigorous good sense, clothed in nervous language, rising as the subject rose to fervor, and often to passion; directness of purpose, singling out the strong points of attack and throwing overboard the little ones; wonderful power of repartee, biting sarcasm where he chose to resort to it, were only some of the parliamentary weapons which he had at ready command. His masterly treatment of any great political question has again and again impressed the listeners with admiration. How he seized, with instinctive rapidity, the weak points of his adversary; how cogently he drove home his own strong blows with sledge-hammer force, many gentlemen here have again and again witnessed with delight, and almost with approval even when they differed from the views of the speaker.

It has been said here, and truly said, there was nothing aggressive in his nature; but while he was not aggressive he held his honor in a wary distance, which made it dangerous to offer the slightest offence to it, and woe betide the man who incautiously or presumingly thought that in the way of attack he might safely measure his sword with Mr. Meredith's; his defeat was a foregone conclusion.

Mr. Meredith, without the most indirect solicitation on his part or even on the part of his friends, after presiding long and well over the local legislature of this city, and after conducting for a quarter of a century or so the leading business at the bar here, was called by President Taylor to one of the most important positions in his gift. That President did not live long enough (I think but little over a year) to enable him to develop anything like a fixed or settled policy, and therefore Mr. Meredith's great abilities were scarcely tested in the Treasury Department; but his truthness, his integrity of purpose, were shown there as everywhere else. His disdain of mere party intrigues, of mere partisanship, were conspicuous here, as they always had been throughout his whole life. He was too little, probably, of a politician to be very successful in public life. He dwelt too little upon that which is usually uppermost in the thoughts and

calculations of the mere politician, to cope very successfully with those who walked nearer the earth; but had he been permitted to hold the position to which he was called for its ordinary period, undoubtedly he would have greatly distinguished himself.

How he conducted himself as Attorney General of this great Commonwealth, to which post he was invited by our friend and colleague, Governor Curtin, has been so well spoken of by my colleague from Philadelphia that I am indisposed to add a single word upon that portion of his public life.

Every man in Pennsylvania, every man in the country, felt a sincere pleasure when it was announced that he was to represent the United States as one of its counsel before the tribunal at Geneva. While the fact that he did not finally accept this position was not unfortunate for himself, it was certainly so, in my estimation, for his country. Had he been present as one of its leading counsel, I believe, from my estimate of his character, that this country would have been spared the humiliation of advancing pretensions not only destitute of justice but even of the cover of plausibility, and which the good sense of the whole people, the moment they were announced, unhesitatingly rejected. Nor would our government have been placed in the dilemma from which it was, in part, curiously enough extricated by the pronouncement in advance, by the tribunal which might have been ultimately called upon to adjudicate them, of an adverse opinion as to claims which were withdrawn from its consideration without formal presentation and argument. Mr. Meredith would have been a party to no such procedure.

But the crowning event of his life, in my opinion, was the position to which he was called in this Convention, not only by its unanimous suffrage, but by the unanimous heartfelt selection of every man here. No mere party man, no man who had erected as the standard by which he was to govern his political life mere adherence to party, could have received this choice in such a way. It was because every one felt and knew that he never could and never did "give up to party what was meant for mankind," that Mr. Meredith stood in the estimation of this body not only as its foremost man, but as the man who was entitled to receive the unsolicited vote of every delegate present. No doubt, in the ordinary accepta-

tion of the term, he was a party man so far as to adhere to the general policy marked out by his party, subordinating to the success of this policy any petty or private differences of opinion on minor points; no doubt he was a party man to the extent of sinking unselfishly his real or supposed claims when the interests of his party seemed to demand it. But he never pre-pledged himself to follow the dictates of party or party leaders, without regard to whether in his judgment they were right or wrong. Much less would he have ever bound himself in advance, under the specious plea of adherence to party, to accept unhesitatingly mere party nominations for all offices, judicial and others, as they were cast before him by party dictators. Mr. Meredith was not that man; and the best authority entitles me to say that more than once he overlooked in this regard party considerations as altogether inferior to what he conceived to be his duty to himself and to his country.

Mr. Meredith's character was such, his public and his private character was so simple, so direct, so free from all affectation, he was so accessible in intercourse, that we scarcely knew how great a man he was until we found ourselves deprived of him. And this community in which he lived, perhaps a little cold in its external manifestations, a little too much averse to anything like demonstrativeness, only felt silently the worth and the value of the man who was dwelling in its midst. But when Philadelphia, with the whole country, was aroused by the intelligence of his decease to a full sense of her loss, she then keenly perceived and warmly and strongly expressed her sense of the bereavement. She has felt and she will long continue to feel, in the death of this distinguished man, her very great loss; and she will long continue to search for, without finding, another fit to replace him.

Mr. DALLAS. Mr. President: Mr. Meredith's brilliant intellect and extensive attainments were never employed ungenerously in his association with those less gifted, and to the close of his life he was always kindly considerate of younger men, and to the end retained, in his intercourse with them, an engaging, cheerful courtesy. This thought—impressed upon my heart by grateful remembrance of kindness to myself—prompts and emboldens me now to offer an humble tribute to his memory. Not that I can add anything to that which has already been so

well said of him, nor that anything which can be said could adequately depict the loss occasioned by his death, and our deep appreciation of the extent of that loss to us. But, sir, it is not fitting that this hour should be allowed to pass without special though brief mention of the warm affection with which Mr. Meredith was regarded by his junior associates, here and elsewhere, nor without at least a hurried recognition of that which I conceive to be the great lesson of his life for them.

It is, Mr. President, a melancholy truth and a sad misfortune to the State, that her young men seldom interest themselves in public affairs unless directly induced to do so by desire for public office, and hence mere seekers of place have, in great measure, become our substitutes for statesmen in the counsels of the Commonwealth, and venal demagogues usurp the honors due to patriots. Mr. Meredith was a statesman and a patriot in the highest sense, but he never sought for office. His time, from his youth upward, was better spent in the faithful prosecution of those studies which made him the foremost lawyer of his time, and so thoroughly fitted him for the performance of public labor that it became necessary, upon more than one occasion, to call upon him to serve the people in positions which, though beneath his deserts, he accepted in obedience to his duty to his native State. But, sir,

"Whom can honors, repute or trust,
Content or pleasure, but the good and just."

Mr. Meredith was, indeed, a thorough lawyer, an eloquent advocate, an accomplished scholar and a profound statesman, but a sense of honor the most keen, and a purity of purpose which rendered all other considerations subservient to his own conception of right, made him even more than all of these—a noble man. "Take him for all in all, we shall not look upon his like again!" And the teaching of his life, to which I have referred, is this: That better in the end than power or place, and all that power or place e'er gave, is the abiding glory of a life well spent.

Mr. President, men will always differ in opinion upon public questions, and many of us have not concurred in those views which constituted Mr. Meredith's political faith; but it has come to be of paramount importance that public men—be their opinions what they may—should be

pure beyond suspicion of ill doing, and hereafter that man's memory will be dearest to the State who, like Mr. Meredith, shall leave upon the pages of its history the inspiring record of an unblemished character and a spotless life. Let those of us who are beginning in this Convention as he commenced in that of nearly forty years ago, take this lesson to our hearts, and

"Let us then be up and doing,
With a heart for any fate,
Still achieving, still pursuing,
Learn to labor and to wait."

Mr. LANDIS. It must ever be a source of regret that the name of William M. Meredith cannot be appended to the instrument which this Convention is about to lay before a great Commonwealth for its approval. His name was subscribed to the Constitution of 1838, and as under that fundamental enactment the people have advanced to a degree of civilization and prosperity commensurate with the greatness of a nationality or an empire, it would have been well if the State could have had the stamp of his personal approval upon the paper which reforms the successful labor of 1838, in which he was so illustrious a workman. But whilst we have had the benefit of his counsel and presidency for more than half the session, it has pleased God, who gave him his great mind, to call him from his labors. And as we approach the conclusion of our deliberations, we can but pause in our task to deplore the loss which both we and the people have sustained, and complete, unaided by his great wisdom and experience, the high duties imposed upon us.

I never knew Mr. Meredith till I came into this Convention, and, though familiar with his fame, I met him when far on the downward walk in life—when his name was rich with his life's experience—when replete with the honor given him by the admiration of his fellow-citizens—when, as linking the present with the earlier days of the Commonwealth and its distinguished sons, he was about to leave the theatre of action—and when, in the fulness of years, life and usefulness were about to depart together; for soon

"The hand of the reaper
Took the ears that were hoary."

I shall not attempt to delineate the character of Mr. Meredith. Others have to-day more appropriately and fitly done so, and posterity will vindicate the justice of their eulogium. Indeed he needs no monument from us, his own deeds and his

own qualities are the stones in the shaft which will perpetuate his name. No man can, as he, appear among his fellow-men and labor with the fervor of his mind and the affluence of his intellectual resources, guided by his zeal, his probity of purpose and high and noble aim through all the years of his private and public activity, without stamping the good impress of his gifts and his qualities upon his race and generation—an impress that must outlive the day that witnessed the giving back the inanimate clay to the maternal earth from which it sprang.

It was pleasant in meeting Mr. Meredith to recall the triumphs of his earlier years; that he was the cotemporary of Sergeant, Hopkinson, Ingersoll and other luminaries of the past; his encounters with the rare intellects of his time; his reputation as among the first of American lawyers; and when in the vigor of his manhood, what must have been his tall and manly person—or is it too much to say—his majestic presence! But it was sad to see only too plainly in the attenuated form and tottering step, as he came daily to the discharge of his last duties, that life was ebbing, and the frail hulk must soon be stranded.

The life of Mr. Meredith we are told was a busy one. He possessed a vast store of learning, upon which his great mind made ample demands, and utilized for every purpose to which his attention and his energies were directed. This body has often witnessed the flashes of his wit, and in social intercourse his trenchant repartee and apposite allusion gave evidence to his brethren of later day acquaintance of what must have been in earlier years the attractive power of his companionship, or the quiver of his lighter weapons for his adversaries. With these and the many other recollections that cluster around the name of Mr. Meredith, I shall claim for myself one of the pleasantest of my memories, my meeting and acquaintance with the man whose death we here to-day lament. And whilst I here utter this brief and feeble tribute to his memory, I know I can add nothing to his fame. I cannot hope by any word of mine to exalt the high attributes of his character, but as one of the latest of his acquaintances and fellow-laborers, I may unobtrusively approach and lay a simple garland upon his grave.

Mr. Meredith is dead. But hope we are told perished not with the body. He found in the gospel of the Nazarene a faith

which bore his hope, and that faith and that hope outlast the fleeting breath. As we gather good from his life, so let us gather counsel from his dying. Thrice have we here mourned a dead brother; thrice let us be warned of our own responsibilities, and of that allegiance which we owe to Him who came into our midst, and took from the field of their latest usefulness Hopkins, M'Allister and Meredith; and in the ecstatic joy of a perfect hope, let us remember those "brighter worlds" to which they "led the way."

MR. STANTON. Mr. President: The 17th of August, 1873, will long be remembered by the citizens of Philadelphia as the dark day on which passed from their midst that most eminent scholar, jurist and statesman, William Morris Meredith.

When a great man dies a nation mourns, and the history of our country supplies numerous instances where the halls of legislation, national and State, have been draped in mourning for those who were honored and beloved by the people. They died and were buried with their fathers, but their names are engraved in our hearts, and their illustrious deeds and exalted virtues can never be lost so long as intelligence, patriotism and liberty shall have an existence.

To-day we mourn one with whom we were but recently associated; one who presided over our deliberations with rare ability and dignity. During our recess he passed away no more to meet with us in this Hall where often we have listened with such intense interest to his manly utterances and wise counsels. The gloom which Mr. Meredith's death cast over this city is not dispelled, but hangs about it still like a funeral pall. Philadelphia acknowledged him as one of her most eminent sons; eminent alike as a lawyer, a statesman, a citizen and a proper peer of her Sergeants, her Ingersolls, her Whartons, her Binneys and a long line of men who have made illustrious and famous her bench and bar.

Standing here this morning, we are especially reminded of our departed brother, and realize that each word

"Which he hath uttered; every varying tone, And even each change of feature, are consigned As gems to memory's casket."

In his death the bar has lost a luminary of the first magnitude; society an amiable gentleman; the church a shining light; literature and art a devotee; the State a pillar of strength, and the repub-

lic one of its most faithful and heroic champions. Few men combined a greater amount of talent in the respective fields of law, art or science than did Mr. Meredith. In politics he was firm and consistent, upholding all the fundamental principles of our government and constantly keeping in view the great truth that religion and virtue are necessary to the success and perpetuity of our free institutions. Mr. Meredith was not ambitious for popular honors, in the sense of the term obtaining in these times. He was not a man to bend to the dictation of corrupt political factions. Independent in spirit, he spurned the chicanery of men who sought to entrap him for the sake of using his name and influence in furthering their own nefarious schemes. He was emphatically an honest man. In his own heart there was no corruption, and he could not tolerate it in others, and this fact, known to the community, gave him its confidence without any reservation.

Singularly quiet and unobtrusive, he had struggled for years at the bar before his great abilities were fully recognized, but during that period his mind was stored with the wealth which, later, was developed in such plenitude and power. In 1824 he entered the arena of politics, and represented this city in the lower branch of the Legislature, where he distinguished himself in debate, and secured the esteem and confidence of his constituents by his unremitting attention to their interests. As a member of city councils, and of the Constitutional Convention of 1837-8, Mr. Meredith became more widely known, and his abilities were appreciated not alone within our local boundaries, but throughout the Commonwealth.

President Taylor, recognizing his great ability and sterling integrity, called him into his cabinet as Secretary of the Treasury, a post which he filled until the accession of Mr. Fillmore to the presidency. In 1861 Governor Curtin appointed him Attorney General of Pennsylvania at an hour in our country's history when an incorruptible patriot, with a cool head and a brave heart, was required to discharge the high duties of the office. President Grant, not unmindful of his talents and profound legal acquirements, tendered Mr. Meredith the position of senior counsel for the United States government before the Geneva Tribunal of Arbitration, but his advanced years and waning health

caused him to decline the imposing honor.

Last fall the people of Pennsylvania elected him a member to the Convention sitting in this Hall to revise their Constitution. They remembered his valuable services in the Convention of 1837-8, and were anxious again to invoke his counsel and secure the benefits of his ripe experience and practical wisdom. On the assembling of this body Mr. Meredith was elected its President, and how well he discharged the functions of that honorable, but onerous, office, you all know of your own observation.

I do not attempt to analyze the character and legal life of the deceased; others on this floor, who knew him better, through daily intercourse with him in the profession, can do him ampler justice. We knew him, however, as a man upon whose escutcheon there never fell a stain; a man whose virtues shone forth with resplendent glory; whose life was spotless and uncontaminated by contact with the corruptions of the times. He has passed from our midst; from the fields of his usefulness in this world, to that higher and more glorious realm, where the good shall live forever.

"Sure the last end
Of the good man is peace. How calm his exit!
Night dews fall not more gently to the ground,
Nor weary, worn-out minds expire so soft:
Behold him in the even tide of life!
A life well spent—whose early care it was
His ripper years should not upbraid his green;
By unperceived degrees he wears away,
Yet, like the sun, seems larger at his setting."

Mr. SHARPE. Mr. President: We are conscious once again of the presence of death in this chamber. Since we crossed its portals on the sixteenth of July last, his messenger has summoned hence the distinguished and venerable President of this Convention. A prince and a great man has fallen in our midst. It seems hard, indeed, to realize that William M. Meredith lives no longer upon earth; that he hath gone down to the grave and shall come up no more; that he shall return no more to his house, neither shall his place know him any more. But he hath gone to his rest, full of years and crowned with honor. After having scaled all the difficult ascents of professional success, after having attained the summit of professional distinction, after having shed the effulgence of his radiant intellect upon the jurisprudence of his country and his age, after having filled the ear of

the nation with his great fame, he now sleeps well, where the weary be at rest.

I purpose not to enlarge upon the character, virtues, and career of this most remarkable man. Tongues far more eloquent than mine have done all this. Voices that have a much better right than mine to be heard on this melancholy occasion have spoken in fitting terms of the illustrious dead. Hearts that were knit to his by the closest ties of friendship, and cemented with his by a life-long intimacy and companionship, have come up into the mouth, and given utterance to their uncontrollable emotions. I have no ambition at all to thrust myself unduly upon the sacred solemnities of this sad hour. I only desire to add my humble tribute to the volume of eulogy that has gone forth from the hearts of this august body. I only wish to say that the chambers of my heart are also draped in mourning, and that in them dwells too the same consciousness that pervades this entire assembly, of the irreparable loss which we have sustained in the death of Mr. Meredith. The temptation to do so much was irresistible, for "I did love the man and do honor his memory, this side idolatry, as much as any." It is certainly safe to assert that there is not one of us whose heart-strings do not tone themselves in harmony with the voice of praise, and whose judgment does not commend the encomiums that have been heard here to-day on behalf of Mr. Meredith.

It matters not in what light we gaze at him, he dazzles us. It matters not in what pursuit we follow him, he was in all alike unapproachable. As a lawyer, learned, profound, unequalled. As an advocate, transcendently persuasive and eloquent. As a statesman, broad-minded, catholic and deeply versed in the science and true principles of government. As a patriot, imbued with a zeal and love of country far surpassing the passion of a devotee. As a citizen, progressive, enterprising, public spirited, and a lover of order. As a gentleman, without stain and without reproach. As a man, big hearted, benevolent, charitable, of unimpeachable integrity, and with the most exquisite sense of honor. As a *pater familias*, a model of all the domestic virtues. There was met in him, such a combination of rich qualities, great faculties and rare traits, as is seldom found in one man. But with all, he had an unassuming modesty and gentleness of deportment that added

additional lustre to the glories that clustered about and adorned his character.

He possessed also in an eminent degree that crowning ornament of all mental stature, *good common sense*. Without this treasure, the most shining parts and most brilliant faculties can only achieve but temporary success. The meteor that flashes across the midnight firmament, and then goes out in darkness forever, is a fitting emblem of genius, without the ballast of a sound judgment. But the intellect of Mr. Meredith burst not in meteoric showers. It shone upon everything it touched, with the steadiness and fixedness of the rays that come down from the sun. For he was not simply brilliant; he was also cool-headed. He had not the flash of genius merely, but with it, the clear-sightedness, calm deliberation, and sound understanding of the philosopher.

Neither was he one "to split the ears of the groundlings." He had no ambition at all for this. He had a native dignity of character, and an intense self-respect which lifted him high above all the arts and tricks of the demagogue. He was a statesman, but not a politician, in the present popular and degraded sense of that term. He was a party man but not a partisan. He had faith in the utility of parties in a republic, and he believed his party was right. He rejoiced in its triumph—not for the sake of the spoils of victory—but for the sake of its principles. Loving his country as he did he could not help loving his party, for to him the welfare of the nation was bound up in the success of his party. He had no confidence, however, in the jesuitical dogma that the end justifies the means, and therefore he loathed with intense loathing the bribery, corruption and intimidation which are the crying evils and the burning shame of the politics of the present times. No earthly consideration could have induced him to countenance the employment of any sinister means or improper agencies, although they might have been demonstrated ever so clearly, to be absolutely necessary to party triumphs. He had an abiding confidence in the common sense and inborn integrity of the people, and he infinitely preferred honorable defeat to dishonorable victory. His whole aim was the happiness of his race and the prosperity of his country. His loyalty to his party was meant for this and this only. Who can help but admire him for it?

Mr. President, I feel that it would be presumptuous for me to undertake to weigh in my small balances the value of the life work of Mr. Meredith. I am wholly conscious that I have no capacity to take in the full measure of that great man. But I trust that indulgence will be granted to a brief allusion to one or two phases of his career that have enlisted my closest attention, and excited my highest admiration. Coming to the bar as I did at the immature age of twenty, I had of course no experience in the fierce conflicts of the forum, and no knowledge of the professional athletes that struggled for the prizes in that arena.

But he whose death we mourn to-day was then in the zenith of his great fame, and its effulgence reached even me in my quiet obscurity. The heart of the young professional aspirant must necessarily have some idol. Its altar must burn incense to some Deity. I could claim no exemption from this common frailty—if frailty it indeed be. Hence, Mr. Meredith became the object of my hero-worship, for he had won victories more highly to be prized than the conquest of kingdoms. His brows were wreathed with greener and more honorable laurels than those of the war-worn and blood-stained chieftain. It became my delight to glean from every source, and to garner up in the cells of memory every fact and circumstance that entered into his early professional life. With what interest I pondered and mused and wondered over the wild bursts of passion, that must have swept through the chambers of his heart, and the rough conflicts that must have torn the realms of his mind, while he patiently waited for public recognition and appreciation during his long *novitiate*.

Such a contemplation was consoling and somewhat flattering, for it proved that genius must sometimes at least temporarily wear the fetters of mediocrity.

But when my mental vision, passing beyond this contracted and unnatural orbit of such a brilliant luminary, followed his subsequent career, and grasped its magnitude and power; when I read and studied the great cases which his intellect had illumined; when I came to know and comprehend, imperfectly it is true, the mental sweep that could by a touch make the most abstruse principles luminous to the commonest understanding, when indeed I suffered the pangs of hope-

less despair, for I realized that his goal was as far beyond my reach as the sun in the firmament. It was by such mental processes that I came to fix the professional standard of Mr. Meredith, for I had very few of the opportunities which some of the gentlemen of this Convention almost daily enjoyed of hearing and seeing him in this, to me, by far the most interesting walk of his life. To me he was the epitome of all that was admirable and great and worthy of imitation in a lawyer. He would as soon have thought of violating the decalogue as of violating his professional word. He was one of that old-fashioned type of lawyers that stoutly doubted the professional ethics that would teach that a client's cause is to be gained at all hazards, and by any means. Whilst he was loyal to his client, he was equally loyal to truth and justice. If he did not always gain his case, he always saved his self-respect and honor.

For the passion that weds me to my profession, I do therefore the more honor him, because he, most of all his contemporaries, did exemplify its dignity and pre-eminence above all other temporal pursuits. And I am glad to hear upon this floor that my appreciation of him as a lawyer has been fully sustained by those who are so much more able than myself to form a correct and discriminating estimate of him in this regard.

Time will permit but a passing allusion to his duties and position as the President of this Convention. His unanimous election to that dignified office was not only hailed with delight here, but also throughout the Commonwealth, as the harbinger of that reformation in political and governmental affairs which the people so devoutly longed for, yet scarcely dared to hope for. It was a fitting seal to that popular judgment which had long since singled him out and commended him as the first citizen and great glory of his native city and State. His government here was characterized by urbanity, impartiality, promptness and dignity. Such was the weight of his character, and the sense of his intense honesty of purpose with us, that his decisions became the unquestioned law of this body. His administration has left behind it no private grievance to canker in any bosom, and no feeling of intentional slight or personal injustice dwells in any heart in this assembly. It seems to me that it is the experience of every one of us, that he was one of the

very few great men who grew greater the nearer you approached him.

It was, therefore, with melancholy forebodings and sad misgivings, that we observed day by day the clay tabernacle that anchored his great spirit to earth gradually yielding to the assaults of disease. But he refused to put off the harness of active life so long as his spent frame could endure its weight. But though dead he yet liveth, and will live whilst learning and virtue and genius and moral greatness shall command the homage and admiration of the sons of men.

Mr. CURTIN. Mr. President: I had an expectation that the formal ceremonies of this Convention would occur to-morrow, and I would thus have had an opportunity of putting in proper and formal language my reflections upon the occasion of the death of its President, fully aware that that would be more respectful to the body than to offer any remarks in the crude form in which I fear they will now be heard. However, I shall have accomplished all that seems to be necessary on my part as a member of this body and personal friend of our late President when the declaration is made that every word uttered by the venerable delegate who moved the resolutions in such fitting, eloquent and truthful words now before us meets my most sincere and hearty approbation, and Mr. Meredith's professional career has been so well portrayed and so forcibly and beautifully expressed by his other colleague from Philadelphia (Mr. Biddle) that further remarks on either phase of his life and character would seem to be scarcely necessary.

This is the third time since our sessions commenced that we have been summoned to mourn the death of a colleague. William Hopkins, a wise and useful man, was the first to fall, and then that earnest, sincere and eminently practical man, H. N. M'Allister, whose death left a void so painful in the community in which he lived that all feel it. And now we are called to pay a fitting tribute to the memory of our really eminent and distinguished President. Who knows how soon the portals of this Hall may open again and the grim monster enter for another victim? And we would not if we could know who of the living may be the next to fall. I do trust that the survivors may complete the great task committed to them by the people of the State

and that we will not be again called to such a sorrow.

We bow before the wisdom of Providence in the death of our fellow-citizen and colleague, and there is no mark of official respect which this body can pay to the eminent ability, learning and virtue of Mr. Meredith that is not deserved. The tribute of admiration, of gratitude and love, which wells up warm from the human heart when a bereavement so heavy is suffered will follow him to his grave, and it may be truly said that if the blessings of the people of this State were flowers the grave of Mr. Meredith would be clothed in perpetual bloom.

The fame of a great lawyer dies with him, or at least dies with the generation that surrounds him. It is for those who enter the military service, or fill official place and distribute patronage, to live perpetually in history. The most fervid eloquence, the clearest logic, the deepest learning of the lawyer is only held in remembrance during the lives of those who encountered him in the legal forum or associated with him. In the judicial office, the most useful but the most unostentatious of all the departments of government, requiring the first minds, the deepest learning and the highest integrity, men are soon forgotten, and the fame of the judge, however eminent in his life and character, are only known and remembered by the lawyers who practiced before him or who read the books which contain the beauty of his language, his profound learning and illustrate his unsullied integrity. The lawyer or the judge has little more than this to expect, although his learning may be superlatively great and his life blameless. But it is equally true that while credulity and ignorance may be imposed upon in other professions, while the most learned physician may scarcely earn his bread and the empiric grow rich by imposition; while it may be said without irreverence or disrespect, that the superstitious and illiterate may accept teachings that are not founded upon the sacred and everliving truths of our religion and are not made pleasant and acceptable by the beauties of thorough literary training, no man can be eminent as a lawyer unless he has gifts and preparation that are apparent and real, for his duties are performed in the public gaze, in the presence of courts learned in the law; he deals with the interests, the passions and the sympathies of humanity, and he encounters in his professional life antagon-

ists who draw from him all his learning and challenge to the front all his resources, and a pettifogger may have a measure of success in the devices which degrade the profession, but he never has, he never can, impose himself upon the confidence of the people.

Some men at the bar excel in keen, sharp wit; some by the graces of their eloquence and the magnetism of their personal presence; some have mastered our language, others are remarkable for deep, accurate learning; others have intense industry and ability for constant labor. Either one of these qualities may make the successful practitioner, but it takes them all to make the accomplished lawyer. Of all the men of this day, of the living and the eminent dead of the State, no man combined all these qualities in such perfect harmony as Mr. Meredith. And then with his great learning, his profound logic, his exalted qualities as a statesman, his keen wit, his force and brilliancy as an advocate and his appreciation of humor and a consciousness of power that could not be disturbed, and a memory which retained all that passed in it and waited like a generous hand-maid upon his great qualities, there was around and about him that glory of the human character—virtue and integrity. It takes them all to make an accomplished lawyer and a leader of the American bar, and our dead President possessed them all in a most eminent degree.

If Mr. Meredith had a fault it was that he was over-sensitive as to his own reputation and character. He could not bear to be suspected of doing wrong. The very soul of truth himself, he expected to be dealt with truthfully by all who surrounded him. Alive, constantly, tremblingly alive, to the sacredness of his own character and reputation, he gave his hours of leisure to the society of those in whom he recognized such qualities. It is anomalous and yet it is true that these qualities stood in the way of Mr. Meredith's occupying high official place. It is strange that a man thus gifted by nature, thus learned, with his known purity of character, should not have held the highest official positions in the nation. But there are arts and devices known in American politics to which Mr. Meredith could not from his nature and training descend, and he passed a long life of labor and professional success, admired and respected by his brethren at the bar

and by the community in which he lived, rarely holding any official position worthy of his own merits.

It is true he for a time filled the office of Secretary of the Treasury; but, as has been well said, not long enough to develop there his great qualities as a statesman. It is true that he was called to preside over one branch of the government of this city for many years, and that he served as a member of the Legislature, and twice in conventions called to reform the Constitution. It is equally true that he held the office of Attorney General of Pennsylvania during six years, four of which were days and nights of anxiety, of labor, and surrounded by the convulsive throbs of the most wonderful war of modern times, when his great qualities were given to the service of the country, and only those who were near him measure justly the value of the service. The distinguished and venerable gentlemen from Philadelphia (Mr. Carey) has said that he accepted with reluctance the office of Attorney General. That is true, and the Executive from whom he received that office is not ashamed to say to-day in this distinguished presence, that he did earnestly solicit Mr. Meredith to take a place near him as his chief adviser, and that his acceptance of the office of Attorney General dissipated a cloud which hung over the administration and renewed confidence and gave new vigor to executive power. For his services there if for no other act of his life, the people of the State are under grateful obligations to him and the Executive he served under a lasting debt of gratitude, which he will ever feel and acknowledge.

I would not speak of Mr. Meredith in his family relations. Those who knew him best, in this city, know how dear he was to those around him. Those who knew him best know his affection, his indulgence, his kindness, and with what degree of love his family always surrounded him. There it is too sacred for us to intrude. God will apply balsam and balm to wounds he made. But I desire to say to you, gentlemen, delegates from this city of Philadelphia, that you do not know what pride our late President had in your city. If there ever was a man born in Pennsylvania who understood the true interests of the State, and fully appreciated the virtues and the good qualities of her loyal and true people, that man was William M. Meredith. If ever there was a man in Philadelphia, distinguished amongst the living or the

dead, who had especial pride in your city, that man lies in his grave, and we are paying cold formal honors to his memory; for never, at any time, did he forget the city of his birth, the friends of his youth, or the pride he had in your prosperity and individual happiness. When away from the city its history and men, and its future, were amongst his favorite topics of conversation.

But, Mr. President, the great event has occurred, and for Mr. Meredith the end of earth! There is for us to venerate and remember the fame that he gathered in his great life, and learning and knowledge he garnered with so much care, and his racy, quick wit, and his fervid eloquence, and charming social qualities and wonderful powers of conversation, and to so live that when we are called from earth the living may think of us as in sincerity and sorrow we now speak of him. We will remember him, and all that is said of him, during our lives, and who will then remember the great and good man. Let us in this Convention do what we can by any ceremony, by speech or resolution, to perpetuate the memory of our most enlightened and distinguished colleague, who honored this city by his presence and dignified this Convention as its presiding officer.

MR. WRIGHT. Mr. President: It is proper that the district which I, in part, represent should have a voice in the pending proceedings. And I therefore claim the attention of the Convention a few moments, while I add the tribute of my commendation to the many excellencies of the distinguished man who lately occupied the chair you are now chosen to fill. It was not my privilege, sir, to be intimately acquainted with Mr. Meredith, as he and I resided in different parts of the State and practiced at different bars; still he was known to me for many years. Indeed, near thirty years ago, he paid me the honor, whilst I was a resident of Bucks, of being a guest at my board. It was the first time I had been introduced to him. He at then appeared at the bar of that county in the trial of a cause, and I call to mind at this hour the plain, courteous and dignified type of his demeanor at the bar. I remember the terse, pointed and earnest way in which he submitted his legal propositions to the court. But what an address was his to the jury! The state of facts in proof which other counsel had elaborated by the long hour, this man in the exercise of his as-

tonishing power of condensation, cramped into the narrow space of a few minutes. But the brevity of the speech detracted nothing from its force. The whole ground was covered, and the jury took in the case at a glance—their minds were not overburthened by a mass of verbosity. He impressed me as the true model for imitation on the part of young beginners. I noticed, on this occasion that he took no notes of testimony, yet on the tablet of the great advocate's memory, every particle of the evidence, documentary and oral, was indelibly imprinted. He had no trouble in calling from this storehouse of the brain any portion of it needed.

Again I had the pleasure of seeing this renowned lawyer, a few years ago, at the Wilkesbarre bar, where my distinguished friend from the city, (Mr. Woodward,) as Chief Justice of the Supreme Court, was holding a special session. Those masterly traits, of which the delegate from Philadelphia (Mr. Biddle) has made such truthful mention, were at this time grandly displayed. And allow me, sir, a reference to an instance of his incomparable humor which convulsed both court and audience. A question arose as to what was, in law, the *filing* of a certain paper in the office of the Secretary of State. The opposing counsel contended that suspending it on a string, in the Secretary's room, was a legal filing. Mr. Meredith retorted by saying, "if that was so, the murderer, Brobst, (who had slaughtered a whole family just below the city,) had a few days past been most effectually *filed*, as he had been suspended on a very strong string, by the sheriff of Philadelphia."

But, sir, on this occasion, where many may desire to speak, it is commendable to be brief. I therefore close by adding the expression of my deep regrets, to those of my fellows, in a Providence we all have occasion to deplore. As a public body, we are deprived of his wise teachings, his extended learning, his great experience, and that nervous oratory that fixed attention and produced good results.

MR. J. N. PURVIANCE. Mr. President: I do not feel fit on this occasion to speak, yet I would not be doing justice to my own feelings—the present promptings of my heart—if I were to remain silent.

Few men have lived in Pennsylvania that filled a larger space for brilliancy of intellectual power than our deceased brother member, Mr. Meredith. We scarcely feel competent to speak properly

of the great and good characteristics of the distinguished Meredith.

Eulogiums upon the life and character of the dead are often extravagant in expression, but it may be truthfully said that too much in honor of Wm. M. Meredith cannot be said, for he filled the full measure of greatness and goodness.

My first personal acquaintance with Mr. Meredith was when I met him some twenty-five years ago as a member of the convention of the Protestant Episcopal church of the diocese of this State. He was an active participant in the debates and one of its most honored and able members. No question seemed new to him, and in meeting in debate Binney and Sergeant and the late Chief Justice Lewis and other like distinguished laymen, Meredith on all occasions proved himself the equal, in clear and logical argument, of any of them. His greatness consisted not alone in his unsurpassed legal and literary attainments, his broad and comprehensive views as a statesman, his unselfish and devoted patriotism, but deeper and better than all, in his zeal, rational and pure, in the cause of the christian religion.

It is not my purpose to repeat the many marked and honorable events of his life. They have been well and ably referred to by the distinguished gentleman from Philadelphia (Mr. Carey) and others.

The most beautiful eulogium that we meet with anywhere is that pronounced by the Hon. Horace Binney on the life and character of Chief Justice Tilghman, and we have but to read it and see in it every grand sentiment therein uttered by Mr. Binney an appropriate application to our distinguished, honored and loved Meredith.

MR. CUYLER. Mr. President: Deeply as I feel the solemnity of this occasion, if I consulted my own feelings I should be silent, for I can add nothing to the admirable analysis of Mr. Meredith's character which has just been given by the gentleman from Franklin, (Mr. Sharpe), nor anything to the impressive beauty of the tribute which has been paid to his memory by the distinguished delegate from Centre, (Mr. Curtin,) whose long and close personal as well as official relations with him enable him to speak with so much of appreciative force and judgment of Mr. Meredith's character and of his eminent public services. But thirty years of professional life, which in its earlier struggles was cheered by the kind commenda-

tions of Mr. Meredith, and in which afterwards sometimes I felt his steel as an opponent and at others was grandly aided by his association as a colleague, forbid that I should be entirely silent on this occasion.

But sir, there are some events which are of their own nature so eloquent that no utterances of human lips can add to the impressive power with which they touch our hearts and move our sympathies; and death is one of these. Nothing can be more eloquent than that silence which the very presence of the King of Terrors himself inspires! Three times since this Convention first assembled has death entered through its open door into our very presence, and becoming to one of our number, has led him forth from our midst, never again to return to us from the silence and the solitude of the grave, whither he led him. We listen to the sound of their retreating steps till they fall no more upon our ear; we linger about the spot and long for their return and hope that they shall come again; but they return to us in this world no more forever! But, though they have gone from us, they do still abide with us; not indeed in the flesh. We miss the genial smile, the kindly pressure of the hand, the eye that sparkled at our approach, and the lip that bade us welcome. These are gone forever; but in a higher and a truer sense of the word, they do still live and abide with us always. They live with us in the pleasant memories of well spent lives. They live with us in the good they have achieved. They live with us in the impress they have left upon the world in which they lived and moved, and acted an important part. And now, sir, death has come again and has called from us the honored gentleman who graced the chair to which you have this morning been elected. He was full of years, and full of honors, although his unwearied shoulders still bore the harness of an active life. Such a death, though sad, is not melancholy, for Mr. Meredith had achieved all that life could give. Fame was his, and honor, and troops of friends, and crowned with the grand fruitage of a well spent life, he was gathered at last to his fathers, while the tears of a sorrowing Commonwealth bedewed his grave.

And now, sir, what can I say with regard to the character of this eminent and gifted man, after that which has been already so well said this morning? I need not speak of his public life. It has been so recent and is so fresh in all our

memories that it needs not to be recounted in this presence, and yet we cannot think of it without the sad reflection that with all those grand capacities for usefulness in public station which adorned the character of Mr. Meredith, the period of his public service was comparatively so small. Is it, sir, a fault, is it a defect in our institutions, is it a lack of appreciation in the American people, is it from any cause a lack of power in the American people to do that which they should do, which has robbed this Commonwealth and this nation of the inestimable services which the noble capacities of this man would have rendered to this State and to the country at large? Is there not somewhere a defect that while all intelligent minds confess and did confess while he lived that rarer gifts for public service had never been before garnered up in any man than in him, still that man failed to attain the highest honors of public position? It was no loss to him; his character would have been no grander with that sort of appreciation, but it was a loss to the people; it was a loss to the Commonwealth; it was a loss to the nation at large, that this man of grand abilities, found under the operation of our institutions so little opportunity to apply those abilities through a long life in public station for the public welfare and the public benefit. The true arena for Mr. Meredith was the Senate of the United States, where he would have been the peer of any of those brilliant statesmen who have illustrated and adorned that body in its most palmy days, or the bench of the Supreme Court, where his name would have been illustrious, and his fame as a jurist made a permanent inheritance of our country.

Sitting here to-day in the discharge of a statesmanlike duty let us inquire and consider is there anything we can do that shall in the future, when God shall gift the world with men of rare intellect such as his and rare adaptations for public usefulness may secure them to the public service.

But, sir, the grandest achievements of Mr. Meredith's life were professional; and, as has been most truly and most sadly remarked this morning by the gentleman from Centre, (Mr. Curtin,) they pass away; for the fame of a great advocate, no matter how great his fame may be, is written in the water. All those glorious gifts of intellect, that power of repartee, that wonderful irony, that

scathing use of sarcasm, that powerful heart that by its own emotions moved all other hearts with which it came in contact, these have left their impress, to be sure, in the results that have been achieved, but they have passed away and will soon be forgotten, for the material in which the advocate works is the air, and as one writes in vain upon the air so is it with the reputation of a great lawyer. It is a sad thought that it should be so, but it is a true thought, impressively true. His fame is as transient as the emotions which his eloquence inspired. Their memory extends not beyond the living generation, and with them it passes away and leaves no record to survive.

Mr. President, in this gentleman were garnered up the rarest and the most wonderful gifts of advocacy that I have ever known or probably any of us have known to be combined in any one individual, vast learning, wonderful logical power of mind, skillful analysis, powerful sarcasm, a fund of humor that moved your heart and your feelings so that you scarce knew whether to laugh or to cry; a power to mould other men's mind into sympathy with his own and to work out the persuasive results of the great advocate, surpassing those that I, at least, have ever known to exist in any one individual. But they are gone. When this generation shall have passed away, they will cease to be remembered. Even now their record abides chiefly in the homes that have been made happy, or with those whose rights have been vindicated, or whose interests have been protected; but beyond these scarce a memory abides. It was my fortune to be thrown into intercourse with Mr. Meredith, from the accident of professional relations, under circumstances that perhaps gave me peculiar opportunities of knowing how true it is that what I have said with regard to him this morning is a correct delineation of his character. I have seen Mr. Meredith in conflict with some of the most accomplished advocates in our profession, who, in my own time, have adorned the stage of action. All of us will recognize in Mr. Stanton a great, a learned, and an eminent lawyer, and yet I hesitate not to say that Mr. Meredith was immeasurably his superior in the accomplishments of a great advocate; for while Mr. Stanton had vast learning, powerful logic, and an earnest and forcible manner, he lacked the humor, the wit, the exquisitely fine power of analysis which so remarkably

characterized Mr. Meredith in his great professional efforts. He could not appeal to the imagination as Mr. Meredith could. He could not take strong hold upon the hearts of those whom he addressed, and move them to action, as Mr. Meredith was so capable of doing. He had not that same magical skill which Mr. Meredith possessed, when he played upon the heart strings of a jury as some skilful player upon an instrument sweeps its chords and renders them vocal with the sympathies which for the time move his own heart.

It is perhaps out of taste to allude to a gentleman now living and a member of this body, and I should hesitate to do so, but the gentleman from Luzerne (Mr. Wright) has this morning alluded to it—I mean our friend and colleague, Judge Black. Perhaps the grandest professional struggle that it was ever my fortune to witness was the very one which was referred to by the gentleman from Luzerne, the contest between the Commonwealth and the Atlantic and Great Western railway, Mr. Meredith being the Attorney General of the State, with regard to the consolidation of the three divisions of that road in three different States into one road. None who were present on that occasion—and there are some here, beside myself, who were present—will ever forget the wonderful powers of logic, the marvellous sarcasm, the tremendous struggle of those two legal giants on that occasion.

I might go on and multiply illustrations, but there are others doubtless desirous of speaking. I did not desire to speak, and I have been betrayed into the remarks I have uttered, because I felt that coming from the same bar and representing the same profession, a duty rested upon me which forbade me to be entirely silent.

MR. WOODWARD. Mr. President: Just returned from a long journey, I had no intention whatever of occupying any time in the Convention to-day, but I am told by friends around me, for whose judgment I have great respect, that it is my duty to say something; and if it be, it is a duty which I can perform with a good conscience and with great respect to the memory of Mr. Meredith as much so as in respect to any man of my acquaintance who could have been snatched from us by death.

Mr. President, in the old time the friends of Job mourned with him in

silence; but in our day we celebrate our grief with words. It is an American habit, and perhaps it is wise to express all we feel. The words that have been uttered this morning are things. They are "apples of gold set in pictures of silver." They have proved grateful to my feelings as the friend and admirer, life-long, of Mr. Meredith, and I trust they will prove a solace to his afflicted family.

Mr. Meredith's life and career have been so fully discussed by those who have preceded me, that it would ill become me to occupy the ground that has been so well cultivated. But having sustained two relations to Mr. Meredith in life of great importance, I may be pardoned for briefly alluding to them. The first was as a fellow-member of the Reform Convention of 1837, to which my friend from Chester (Mr. Darlington) has already alluded, and I entirely concur in the statement made by that gentleman as to the prominent, the commanding position of Mr. Meredith in that Convention as a public debater. Indeed, sir, in all the experience I have had in life, sometimes ambitious to listen to public orators, I have never witnessed a debate that could compare with that which occurred between Mr. Meredith and the late Mr. Stevens. I doubt if there be anything in the annals of our country which, if properly presented, would so impress the public mind as the scenes of that day. Why, sitting beside me was a coarse, uneducated, though honest and worthy man, who had been brought up to a business that was as well calculated to harden the human heart as any other, and as Mr. Meredith poured out the thunders of his sarcasm and invective upon the head of Mr. Stevens, that man was moved almost to tears. "My God," said he, "Mr. Woodward, this is too hard on him." And yet he was no admirer of Mr. Stevens. I cannot detain you by any further allusion to that scene. I cannot reproduce it. I wish I could. Mr. Stevens, as you know, was a man of great ability; he was a man of rare eloquence and a man of infinite sarcasm; but that day he found "a foeman worthy of his steel." That day his batteries were silenced utterly.

I want to allude to one other passage in Mr. Meredith's life, in which I bore relation to him. In 1852 the good people of this Commonwealth placed me upon the Supreme Bench. That brought me into direct and constant intercourse professionally with Mr. Meredith, for he was largely engaged in the business of that

court. I had known him slightly before the Reform Convention; I had known his reputation in the Legislature well; I knew him very well in the Reform Convention; and now I was not only to hear him but to feel him as a lawyer at the bar.

Mr. President, let me tell you that courts of justice composed of mere men of like passions and sensibilities with ourselves, are impressed by those sterling qualities of character which some counsel bring to the advocacy of their client's cause, and it is no uncommon thing to hear lawyers complain of judges that they have favorites at the bar; and if you analyze this complaint you will find that the favorites are men of learning, men of honor, men whom the judge has learned from experience that he can trust, and therefore they are favorites. If I were speaking in the presence of men who had had experience on the bench, they would recognize the truth of this remark. Judges have no favorites in any bad sense of that word, but it is a delight to a judge or a bench of judges to see before them a man who they know would not mislead them for any fee that might be paid him; to see before them a man whose object is not so much victory as truth; a man who has informed himself before he attempts to teach others; a man of integrity. And if to these sterling qualities he adds what our deceased friend possessed in an eminent degree, wit and humor and address, such a man is most acceptable to the court, and he is in great danger of falling under the invidious remarks of others as being a favorite of the court. Professional ethics, sir, are not studied as much as they ought to be. If a lawyer has a case before a judge and knows that the authority upon which he is asking the judge to rule that cause has been itself over-ruled, I hold he is bound by the highest consideration of truth and of the oath he has sworn to present the law to the judge as he knows it exists. He has no right to impose upon the court with a case which he himself knows, though the judge may not know, has been over-ruled. This man, sir, of whom we are speaking would have suffered martyrdom before he would have imposed upon a judge a case as evidential of the law when it was within his knowledge that that case had been over-ruled. He would distinguish that which was distinguishable, but be the consequences to his argument what they might, he would exhibit the mind of the law to the

judge just as he found it; and therefore the judge would trust the advocate. That is the way that Mr. Meredith grew in the confidence of the Supreme Court and of all the courts before which he practiced. That is the way that any lawyer may acquire the confidence of a court; it is the only way. Trick, falsehood, suppression of the truth belong to another class of practitioners. Mr. Meredith was incapable of either.

Mr. President, had Mr. Meredith's lot been cast in Rome in the best days of the republic or of the empire, amongst those orators who thundered in the Senate, he would have won the highest civic honors and been accounted "the noblest Roman of them all." Had Mr. Meredith's lot been cast in England, where from the lowest point in the profession to the wool-sack itself the profession has gradations, genius like his would have passed through all these stages to the highest with rapidity. I undertake to say that there has been no man in our day who has occupied the wool-sack or any other exalted position in the judiciary of Great Britain as worthy of the place, and who has illustrated it with so great a variety of elegant learning as Mr. Meredith would have done had he been bred at the English bar.

But, sir, he was born a Philadelphian. He lived here. He was an honor to this city and to this State. Some gentleman remarked this morning—I believe it was Mr. Biddle—that while Mr. Meredith belonged to the old Federal party he nevertheless was a sort of States' rights federalist. That is true. I do not believe that there ever lived in Pennsylvania a citizen who loved Pennsylvania better than he; who was truer to her true interests and her true honor. No politics; no inherited maxims, nothing that he had been taught in the old federal school would ever have induced Mr. Meredith to surrender one jot or tittle of the honor or the interests of his native State. Like other thoughtful men, he understood how the relations of the State to the federal government could be as harmonious as the planets of our solar system, how each could revolve around its own centre whilst it occupied its orbit. He would keep the State in its own orbit; he would keep the federal government in its centre. As to the modern idea that I have seen in print over the signatures of responsible public men, that the federal government made the States, that the States were indebted

to the federal government for their existence, Mr. Meredith was incapable of being misled or imposed upon by such a solecism, such an absurd inversion of our political history. No, sir, he was a Pennsylvanian. His heart was too large for this city, great as this city is; it embraced the whole Commonwealth; and if you want to see how he vindicated his own relations to the internal improvement system of Pennsylvania, go to the volume of Debates which contains that controversy between him and Mr. Stevens. No man in the Legislature occupied a more prominent or influential position in behalf of the system of internal improvements of Pennsylvania that pervaded every part of the State than did Mr. Meredith, and the accusation which Mr. Stevens brought against him, that the city of Philadelphia was unfriendly to the interior portions of the State, was met and answered from the journals and from the current history of the country in the most triumphant manner, so much so that it has never made its appearance in public since.

Mr. President, allusion has been made to a scene which I remember with great interest. Gentlemen have alluded to a debate at Wilkesbarre before the Supreme Court in the year 1865 or 1866. It was summer. We were in the habit of meeting in July to finish up the work of the year. The other judges of the court insisted upon accepting an invitation to hold that term of the court at Wilkesbarre. I was opposed to it myself for reasons that were personal, but I was over-ruled. The court met at Wilkesbarre. A number of important cases, among which was the one alluded to by Mr. Cuyler, were to be argued there, and, sir, it was a rare collection of rare men. Mr. Meredith, Judge Black, Mr. Cuyler, Mr. Porter, Mr. Wharton, Judge Church, Mr. Biddle, Mr. Walker, and others like them were in attendance. The case was an important one. These counsel were divided upon the one side or the other. The Supreme Court had never sat in that interior town before and has not since. It excited great interest. Not only all the young lawyers went to the court house, but the ladies went, the people generally went; the court house was filled with beauty and intelligence that day.

Well now, sir, what impression was produced by the struggle between Mr. Meredith and Judge Black, over that case, you may infer, when a lawyer of great respectability told me afterwards

that he was going to take down his sign and shut up his shop. Said he: "I find I am wrong; if this is the way to practice law, I am no lawyer." I said in reply: "that is nonsense, sir, you are a young man. Mr. Meredith told me that he waited twelve years for a case after he was admitted to the bar, and that he employed those twelve years in studying the old entries and pleadings, the State trials, which he read, not for the dramatic interest of the State trials, but for the pleadings." He studied law, in other words, and here were the fruits; and, I added, "this man has made himself what he is by labor; there is no royal road to success in our profession more than any other; it is labor. *Improbis labor omnia vincit.*" Instead of tearing down your sign, go to work afresh, read the old entries, as Mr. Meredith did, read the State trials, read the history of the common law; get imbued with it, and by and by you will be able to wield such a lance as you witnessed in the hands of this giant." It was a grand spectacle, that! I would not have alluded to it if other gentlemen had not done so, but they have stirred up a memory which you will excuse me for enlarging upon in the way I have done. I would like to mention other instances of Mr. Meredith's professional relations. I cannot see that there would be impropriety in my alluding to one of them.

I think the first time I was called on to hold the court of *nisi prius* in this city after I came upon the bench, a case was on my list which was a replevin, but upon opening the record I found it to be a case in admiralty which involved the title to the ship "Royal Saxon," an Irish vessel lying at Walnut street wharf, which had been libelled in the federal courts for seamen's wages, had been attached by a foreign attachment by a creditor of the owner; and here was a conflict between the Federal and State jurisdiction as to the ship, involving as it necessarily did on one side much of the admiralty law. Well, sir, I was alarmed, for while I had read somewhat about admiralty law in my younger days, I never had tried a case in admiralty in my life, nor seen one tried. But there was no escape. The case must be tried. Mr. Meredith was counsel on one side and Judge Cadwalader and some other gentleman on the other. The cause was tried. Mr. Meredith came up to the bench after the jury retired, with the remark that he was not in the habit of complimenting judges, but said he, "you

have got all the admiralty law into your charge." I said: "Mr. Meredith, we have no admiralty law up in Luzerne county. I never saw any before; and I was alarmed at the prospect of administering it in this case." He was kind enough to say that the case had been well tried. The jury rendered a verdict in his favor. It went to our Supreme Court, and they affirmed it. It went from there to the Supreme Court of the United States. It was argued before a bench lacking one judge. The eight judges differed equally, four and four. It was ordered to a reargument. It was argued again before a full bench, and was affirmed by a single casting vote. If gentlemen choose to read the case of the "Royal Saxon" in the reports, they will find that I state it correctly. Of course it was a close case.

Now, sir, what I want to say is this: That in the kindest way Mr. Meredith guided me in that first admiralty case that I ever tried, and he guided me right, as it turned out in the end, by a single casting vote of the Supreme Court of the United States. Chief Justice Taney dissented and delivered a dissenting opinion, but a majority affirmed our judgment.

Why, sir, a professional life is full of such reminiscences. Somebody has said that a great man has departed. A great man, indeed, sir! We did not appreciate him. It is the habit of the American mind not to appreciate their great men. The American people seem not to discover the good qualities of a man until he is dead. The old Romans treated their public men differently. If a general achieved a victory for the Roman arms, a triumphal arch was erected, he was welcomed home with wreaths and banners and music, and orations were pronounced upon him, and he was permitted to know what his fellow countrymen thought of him. And so were men of genius, whether orators or poets, honored with public ovals. But, in our day, the case is very different. The living man is continually belittled. He is regarded as in the way of somebody; he is slighted; he is neglected; and yet, when we look at his works, when we listen to his thoughts, after death has set its great seal upon him, we all discover that our fellow-citizen was indeed a great and good man. We withheld the meed of praise during his life, but we hasten to bestrew his grave with flowers, now that he is gone.

Mr. President, in that inimitable form of prayer that is used at the grave prescribed by the Church of England we are directed to "render hearty thanks for the good examples of all those who having finished their course in faith do now rest from their labors." Hearty thanks, sir! "Hearty thanks" are due only for great blessings; and is it not a great blessing that we have such an example, the example of such a life as Mr. Meredith's; his learning, his acquisitions of knowledge, his use of that knowledge in illustrating his profession, his high-toned honor that never knew a stain, though he would have felt a stain worse than a wound. Yes, sir, let us be thankful for the good example of this man, especially now that his work is finished. There is no more danger to him. There is no mis-step that he can take. His labor is done; his work is finished; his record is made up forever. And, sir, allow me to add in conclusion that he died as he had lived, in the faith of Christ, because without a touch of fanaticism about him, with no ostentation in his religion, Mr. Meredith was an humble and faithful believer in Christ and a member of Christ church in this city and for many years an honored representative in the Diocesan Conventions, as we all know.

Sir, I rejoice to honor such a man. I would our land were full of such men. I know he was a man of honor and integrity. I know he was a man of learning and ability. I rejoiced to see him occupy the chair which you, sir, so honor. I mourn his removal from us, but bow in humble submission to the Divine will.

Mr. ARMSTRONG. Mr. President: Were I to follow the dictates of my mere inclination, I should be silent, and yet I have so profound a regard for the memory of that great man whose place death has made vacant in our midst, that I feel impelled to lay my tribute of respect upon this monument which we are rearing to his memory.

It often happens that on occasions like this eulogy runs riot and many things are said which calm reflection might not justify, but I believe it would be difficult to say anything of Mr. Meredith, either in eulogy of his personal character or of his high attainments which the facts would not amply justify.

My first acquaintance with Mr. Meredith was as junior counsel in an important cause some eighteen years ago. I am proud to believe that from that time till

his death I enjoyed his personal friendship. Nothing in the intercourse which occasionally I was permitted to enjoy with him so impressed my mind as the genial kindness, the courtesy, the forbearance, and the consideration which he always manifested for the opinions of those who in his presence could not fail to be conscious of their great inferiority. He was doubtless fully aware of his own great powers, but they never led him to any vain display of learning or any offensive assertion of superiority.

I do not rise, sir, for the purpose of adding anything of fact to what has been already so well and so fully expressed, nor to attempt any analysis whatever of his character. All this has been far more aptly and ably done than I could do. I will only add there has been no commendation expressed in which I do not most heartily concur.

His great learning was manifest in a thousand ways. In a case only two years ago in which I had the satisfaction to be associated with him, involving the relations of the clergy to the church and involving also the correlative rights of the clergy as citizens, and requiring an exhaustive examination and consideration of the canon law of the church from its earliest date, Mr. Meredith not only brought to its consideration his accustomed discrimination and profound learning, but I know that he examined with untiring care the canons of the church in the original language, and verified every translation we had occasion to make by his own personal examination and reading in the original Latin.

It has impressed me strongly as conspicuously characteristic that he was always equal to the occasion. It is one of the clearest indications of men of great genius that placed in whatever situation they may be, they are always equal to the demands which are made upon their learning and their ability. This striking feature of Mr. Meredith's character was always apparent, whether as member of the Legislature, as member of both the Constitutional Conventions of the State, as Secretary of the Treasury, as Attorney General of the Commonwealth, or in the

distinguished course which marked his professional career. He never was found wanting in any position he ever occupied, and I believe no higher indication of true genius can be found.

He was a man of rare observation of men, of manners and of things. He gathered information from all sources, and his judgment and reflection made them all his own.

He was one of those rare men who found

"Tongues in trees, books in the running brooks,
Sermons in stones, and good in everything."

It was characteristic of his life. Nothing escaped his observation, and upon all occasions the information he possessed was ready to his hand.

Mr. President, I forbear to speak further. I have said this much simply because in my ardent admiration of the man, in my deep respect for his memory, and in the friendship which I am proud to feel that I enjoyed while he lived, I could not allow the occasion to pass without this brief tribute of respect to his memory.

THE PRESIDENT. There is a blank to be filled with a number before the vote is taken on the resolutions. Will some gentleman move to fill the blank?

MR. STANTON. I move to fill it with "nine" as the number of the committee.

The motion was agreed to.

THE PRESIDENT. There is another blank as to the hour of meeting to-morrow.

MR. LILLY. I move to fill that blank with ten o'clock.

The motion was agreed to.

THE PRESIDENT. The question now is on the resolutions which have been read.

The resolutions were unanimously agreed to.

MR. FELL. I move that the question of filling the vacancy be referred to the delegates at large elected on the same ticket with Mr. Meredith.

The motion was agreed to.

THE PRESIDENT. The Convention, under the resolutions adopted, stands adjourned until to-morrow morning at ten o'clock.

ERRATA.

On page 14, first column, twenty-ninth line from top, for "inconsiderable" read "unconscionable."

On page 198, second column, fourth line from bottom, for "officers" read "auditors."

On page 203, second column, second line from top, for "motion" read "section."

On page 247, second column, fourth line from bottom, for "engage" read "enlarge."

On page 250, first column, nineteenth line from bottom, for "rejected" read "agreed to."

On page 260, second column, twenty-first and twenty-second lines from top, for "regulating" read "relegating."

On page 382, first column, twenty-seventh line from top, for "of *flat*" read "*flat* of."

On same page and column, twenty-ninth line from top, for "expurged" read "expunged."

On same page, second column, third line from bottom, for "county" read "country."

On page 574, second column, eleventh line from top, for "vast" read "fast."

On page 602, second column, sixteenth line, the name of Mr. ARMSTRONG should precede the words, "I will not encroach," &c.

On page 606, first column, twenty-first line from bottom, for "question" read "custom," and the word "and" before the word "until" in the following line should be omitted.

On page 664, first column, twenty-eighth line from top, for "surmounting" read "surrounding."

On page 724, second column, eighth line from bottom, for "twenty-four" read "seventy-four."

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