PROCEEDINGS AND DEBATES

OF THE

CONVENTION

OF THE COMMONWEALTH OF PENNSYLVANIA,

TO PROPOSE

AMENDMENTS TO THE CONSTITUTION,

COMMENCED AT HARRISBURG MAY 2, 1838.

VOL. V.

Reported by JOHN AGG, Stenographer to the Convention:

ASSISTED BY MESSRS. WHEELER, KINGMAN, DRAKE, AND M'KINLEY.

HARRISBURG:

PRINTED BY PACKER, BARRETT, AND PARKE.

1838.

PROCEEDINGS AND DEBATES

OF THE

CONVENTION HELD AT HARRISBURG.

SATURDAY, NOVEMBER 4, 1837.

Mr. MARTIN submitted the following motion, which was agreed to, viz:

"That the Convention will to day dispense with the daily recess, and when it adjourns, will adjourn to meet again at nine o'clock on Monday morning."

Mr. COCHRAN, from the committee appointed for the purpose of ascertaining and reporting to the Convention the most eligible place for the sessions of the Convention during the sessions of the state legislature, made the following report, viz:

That they have given the subject due deliberation; and notwithstanding their earnest desire to bring the labours of the Convention to a speedy close, are unanimously of opinion, that it is impracticable to do so prior to the time of the meeting of the legislature. Many of the important questions which have been agitated, have not yet been acted upon; and it would be an ill return for the confidence reposed in this body by the people of Pennsylvania, to pass upon any of the important principles contained in the fundamental law of the government, without a reasonable time for reflection and discussion.

That the people of this commonwealth will look to this body for full and satisfactory reasons for all the changes proposed to the existing Constitution, and are therefore not anxious that the Convention should act unadvisedly and rashly, for the purpose of making a speedy disposition of so momentous a subject as is now submitted to their deliberation.

That your committee are unanimously of opinion, that it would greatly retard the business of the Convention, as well as of the legislature, to remain in Harrisburg after the meeting of that body, and that the most eligible place for the Convention to assemble to finish their labors, will

be in the city of Philadelphia. Your committee, therefore, offer the following resolution, viz:

Resolved, That this Convention do adjourn on Saturday, the 18th instant, to meet in the city of Philadelphia, on Wednesday, the 22d inst.

The question being taken on the second reading of the resolution, it was decided in the affirmative; yeas 58, nays 19.

Mr. HIESTER, of Lancaster, moved to amend as follows:

"That inasmuch as an adjournment of this Convention to meet at Philadelphia, or any other place, would be attended with great delay and detention in the progress of its business, and a consequent increase of expense to the commonwealth: and that therefore the adoption of such a measure would be inexpedient and improper:

"*Resolved*, That as it is not likely that the business of the Convention will be brought to a close before the time of meeting of the legislature, when this body deems it right to leave this hall; and in order that a place may be prepared for the holding of its sessions after that time, the secretary of this Convention is hereby directed (under the supervision and advice of the president,) to have the partition between the supreme court and the east committtee rooms, in this capitol removed, and have the same, or some other suitable room in this place, furnished in a plain and cheap manner, for the temporary occupation of this body.

Mr. FULLER, of Fayettee, moved to postpone the further consideration of the amendment, together with the resolution until Monday week.

Mr. M'CALL called for the yeas and nays on the motion to postpone, which were ordered, and were yeas 36, nays 71, as follows:

YEAS—Messrs. Banks, Barndollar, Brown of Northampton, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickerson, Fuller, Gearhart, Gilmore, Hayhurst, Hiester, Keim, Kerr, Maclay, Magee, M'Call, M'Sherry, Miller, Montgomery, Nevin, Read, Rogers, Royer, Seltzer Shellito, Sill, Sterigere, Stevens, Stickel—36.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Bedford, Biddle, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cline, Coates, Cochran, Cope, Cox, Craig, Cunningham, Denny, Dickey, Dillinger, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Grenell, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Konigmacher, Krebs, Long, Lyons, Mann, Martin, M'Dowell, Meredith, Merkel, Overfield, Pollock, Purviance, Reigart, Riter, Russell, Saeger, Scheetz, Scott, Sellers, Serrill, Smyth, Sturdevant, Taggart, Thomas, Todd, Weaver, White, Woodward, Young, Sergeant, *President*—71.

So the motion to postpone was determined in the negative.

Mr. SMYTH of Centre, then moved to postpone the further consideration of the resolution until Wednesday next, and called for the yeas and nays on this motion, which were ordered.

Mr. BROWN, of Philadelphia county, thought the Convention was as well prepared to settle this question now, as they would be at any future time, and as a matter of economy, he thought the sooner it was settled the better.

Mr. SMYTH, of Centre, was as much in favor of economizing as any gentleman, and if it should turn out between this and Wednesday next, that the authorities of Harrisburg would provide a room for the Convention, he could see no reason for going to the expense of moving to Philadelphia.

Mr. SHELLITO was authorized, he said, to say that the people of Harrisburg would fit up a place for the meeting of the Convention at their own expense.

Mr. STEVENS hoped the gentleman would withdraw the motion to postpone. The authorities of Harrisburg had offered to fit up a room at their own expense. He called for the reading of the communications of the commissioners of Dauphin county, and the council of Harrisburg, which being read by the secretary,

Mr. SMYTH withdrew his motion.

Mr. HIESTER then modified his amendment, by omitting the last sentence, which related to the adjournment of the Convention *sine die*, on the 22d of December next.

Mr. REIGART said, that the communications of the authorities of Harrisburg, were not explicit as to whether they would fit up a room at their own expense. It might turn out that after the room was fitted up, the bill would be presented to the Convention for payment, as had been done on a former occasion. The legislature having to pay the expense of fitting up a room for the supreme court, which it was understood the commissioners of Dauphin county would fit up. The communication of the council of Philadelphia, however, were clear on this point, that they would fit up a room at their own expense. He, therefore, called for the reading of this communication, and it was read to the Convention.

Mr. M'DOWELL made a few remarks as to the propriety of finding accommodations elsewhere than in Harrisburg, for the Convention.

Mr. HIESTER made some explanations in reply to the remarks of Mr. M'DOWELL, and then called for the yeas and nays on his amendment which were ordered.

The question then recurring on the amendment of Mr. HIESTER, the debate was further continued by Messrs. BROWN, of Philadelphia, and READ, of Susquehanna.

When Mr. STEVENS suggested to Mr. Hiester, to withdraw his amendment, and to substitute therefor a resolution to the effect "that this Convention will continue its sessions at Harrisburg, provided the town council of Harrisburg, and the commissioners of the county of Dauphin, will fit up a proper place at their own expense, and notify the Convention of their determination within one week from this time."

Mr. HIESTER declining to accept this modification, the question was taken on his amendment which was decided in the negative, by the following vote:

YEAS—Messrs. Banks, Barndollar, Bedford, Bigelow, Brown, of Northampton, Chambers, Clarke, of Indiana, Cleavinger, Craig, Crain, Crawford, Cummin, Curll, Darrah, Dickerson, Gearhart, Hayhurst, Hiester, Keim, Kerr, Magee, M'Call, Merkel, Miller, Montgomery, Nevin, Read, Royer, Sellers, Seltzer, Shellito, Sill, Smyth, Sterigere, Stickel, Taggart—36.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Biddle, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cochran, Cope, Cox, Crum, Cunningham, Denny, Dickey, Dillinger, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gilmore, Grenell, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt,

Hyde, Ingersoll, Jenks, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Mann, Martin, M'Dowell, M'Sherry, Meredith, Overfield, Pollock, Purviance, Reigart, Riter, Russell, Seager, Scheetz, Scott, Serrill, Stevens, Sturdevant, Thomas, Todd, Weaver, White, Woodward, Young, Sergeant, *President*—71.

So the amendment was rejected.

Mr. STEVENS then moved to amend the resolution, by striking therefrom all after the word "Resolved," and inserting in lieu thereof the following, viz:

"That the Convention will continue its sessions at Harrisburg, provided that the town council of Harrisburg, or the commissioners of Dauphin county, will agree to provide, at their own expense, a suitable place therefor, and notify the Convention thereof in one week."

On which amendment the yeas and nays were required by Mr. KERR and Mr. STEVENS.

Mr. CLARK, of Indiana, objected to the words "at their own expense," and suggested to Mr. S. to strike them out; which Mr. S. declined to do.

And the question was then taken on the said amendment, and was decided in the negative by the following vote, viz:

YEAS—Messrs. Banks, Barndollar, Bedford, Bigelow, Brown, of Northampton, Chambers, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Craig, Crain, Crawford, Cram, Curll, Darragh, Denny, Dickey, Dickerson, Fuller, Gearhart, Hastings, Hayhurst, Hays, Hiester, Keim, Kerr, Maclay, Magee, M'Call, M'Sherry, Merkel, Miller, Montgomery, Nevin, Read, Rogers, Royer, Sellers, Seltzer, Shellito, Sill, Smyth, Steriger, Stevens, Stickel, Taggart, Weaver—47.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Biddle, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cline, Coates, Cochran, Cope, Cummin, Cunningham, Dillinger, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Gilmore, Grenell, Harris, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Konigmacher, Krebs, Long, Lyons, Mann, Martin, M'Dowell, Meredith, Overfield, Pollock, Purviance, Reigart, Riter, Russell, Saegar, Scheetz, Scott, Serrill, Sturdevant, Thomas, Todd, White, Woodward, Young, Sergeant, *President*—60.

So the amendment was rejected.

Mr. SMYTH, of Centre, then renewed the motion previously made by him (but which he had withdrawn to enable Mr. Stevens to have a vote taken on the proposition last decided) to amend the resolution of the committee, by adding to the end thereof the following proviso:

"Provided that the corporation or citizens of said city of Philadelphia, furnish for the use of the Convention a convenient hall every way furnished for the accommodation of the members, free of expense to the commonwealth."

Which amendment was debated by Messrs. CHANDLER, of Philadelphia, SMYTH, of Centre, MEREDITH, FORWARD and BANKS.

After some incidental discussion on a point of order,

Mr. SMYTH and Mr. BUTLER, required the yeas and nays on the amendment; and the section was farther debated by Messrs. CLARKE, of Indiana, MEREDITH, SMYTH and SCOTT.

The question was then taken and decided in the negative; yeas 32, nays 70, as follows:

YEAS—Messrs. Banks, Barndollar, Bigelow, Cunningham, Darrah, Denny, Dickerson, Earle, Fry, Fuller, Gearhart, Hastings, Hiester, Ingersoll, Keim, Krebs, Maclay, Magee, Mann, M'Call, M'Sherry, Merkel, Merrill, Montgomery, Nevin, Overfield, Read, Rogers, Sellers, Seltzer, Smyth, Stickel—32.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Biddle, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Craig, Crain, Crawford, Crum, Cummin, Curll, Dickey, Dunlop, Farrelly, Fleming, Forward, Foulkrod, Grenell, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Long, Lyons, Martin, M'Dowell, Meredith, Pollock, Purviance, Reigart, Riter, Royer, Russell, Saeger, Scheetz, Scott, Serrill, Shellito, Sill, Sterigere, Stevens, Sturdevant, Taggart, Thomas, Weaver, White, Woodward, Young, Sergeant, *President*—70.

Mr. READ, of Susquehanna, moved to amend by striking out "eighteenth November," and inserting "thirteenth of November," and also, striking out "twenty-second of November," and inserting the words "fourth of December next."

Mr. HIESTER, of Lancaster, moved to amend the amendment, by striking out all after the word "adjourn," and inserting "on the 30th inst. *sine die*.

The CHAIR said that the motion was not in order.

The question was then taken on Mr. READ's amendment, and it was negatived; yeas 44, nays 50.

Mr. HIESTER then renewed his motion to amend, by striking out all after the word "adjourn," and inserting "on the 30th instant *sine die*."

Mr. H. asked for the yeas and nays, which being taken, the amendment was negatived; yeas 21, nays 83.

YEAS—Messrs. Crum, Curll, Denny, Dillinger, Dunlop, Harris, Hays, Hiester, Kerr, Konigmacher, Long, M'Call, M'Sherry, Meredith, Merkel, Reigart, Royer, Seltzer, Stevens, Todd, Young—21.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Bedford, Biddle, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Craig, Crain, Crawford, Cummin, Cunningham, Darrah, Dickey, Dickerson, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Krebs, Lyons, Maclay, Magee, Mann, Martin, M'Dowell, Miller, Montgomery, Overfield, Pollock, Purviance, Read, Riter, Rogers, Russell, Saeger, Scheetz, Scott, Sellers, Serrill, Shellito, Sill, Smyth, Sterigere, Stickel, Sturdevant, Taggart, Weaver, Weidman, White, Woodward, Sergeant, *President*—83.

Mr. STERIGERE, of Montgomery, moved to amend the resolution by striking out the "eighteenth," and inserting the "sixteenth," and also the "twenty-second," and inserting in lieu thereof the words, "twenty-third."

Mr. S. then asked for a division of the question.

And the question being taken on the first and second divisions, they were negatived.

Mr. DICKEY, of Beaver, moved to amend, so as to make the resolution read, that the Convention shall adjourn on the 23d, to meet on Tuesday the 28th.

Mr. EARLE, of Philadelphia county, asked for the yeas and nays, which being taken, the amendment was negatived; yeas 47, nays 59.

YEAS—Messrs. Agnew, Ayres, Barclay, Biddle, Chambers, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Craig, Crain, Crawford, Crum, Cunningham, Curll, Darrah, Denny, Dickey, Dickerson, Farrelly, Gearhart, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Kennedy, Krebs, Long, Mann, M'Call, M'Sherry, Merkel, Montgomery, Overfield, Pollock, Purviance, Reigart, Read, Russell, Saeger, Scheetz, Sill, Smyth, Thomas, Todd, White—47.

NAYS—Messrs. Baldwin, Banks, Barndollar, Bedford, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Cleavinger, Coates, Cochran, Cope, Cummin, Dillinger, Dunlop, Earle, Fleming, Foulkrod, Fry, Fuller, Gilmore, Grenell, Harris, Hiester, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Kerr, Konigmacher, Lyons, Maclay, Magee, Martin, M'Dowell, Meredith, Miller, Riter, Rogers, Royer, Scott, Sellers, Seltzer, Serrill, Shellito, Sterigere, Stevens, Stickel, Sturdevant, Taggart, Weaver, Weidman, Woodward, Young, Sergeant, *President*—59.

Mr. BANKS, of Mifflin, moved to amend, by striking out "twenty-second," and inserting "twenty-first."

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

The question was then taken on the resolution as reported by the committee, and decided in the negative; yeas 53, nays 55, as follows:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Biddle, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Cline, Coates, Cochran, Cope, Cox, Cunningham, Dillinger, Dunlop, Farrelly, Fleming, Forward, Foulkrod, Fry, Grenell, Harris, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt, Ingersoll, Jenks, Kennedy, Konigmacher, Long, Lyons, Mann, Martin, M'Dowell, Meredith, Overfield, Purviance, Reigart, Riter, Russell, Saeger, Scheetz, Scott, Serrill, Sturdevant, Todd, White, Woodward, Young, Sergeant, *President*—53.

NAYS—Messrs. Banks, Barndollar, Bedford, Bigelow, Brown, of Northampton, Chambers, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Craig, Crain, Crawford, Crum, Cummin, Curll, Darrah, Denny, Dickey, Dickerson, Earle, Fuller, Gearhart, Gilmore, Hastings, Hayhurst, Hiester, Hyde, Keim, Kerr, Krebs, Maclay, Magee, M'Call, M'Sherry, Merkel, Miller, Montgomery, Nevin, Pollock, Read, Rogers, Royer, Sellers, Seltzer, Shellito, Sill, Smyth, Sterigere, Stevens, Stickel, Taggart, Thomas, Weaver, Weidman—55.

Mr. MARTIN then moved that the Convention do now adjourn—lost by a vote of 40 to 42.

Mr. EARLE said, his colleague was preparing a resolution for adjournment to Philadelphia, if a hall could there be procured free of expense. In the mean time, he would take occasion to offer for the consideration of the Convention the following resolution, viz:

Resolved, That the secretary of this Convention be directed to cause to be prepared for the use of this Convention, a statement showing the number of members of the house of representatives which would have been established under each septennial enumeration, if the same had been based on a constitutional provision in the words following, viz:

"The number of representatives, shall, at the several periods of enumeration of taxable inhabitants, be apportioned in the following manner, viz: One hundredth part of the whole taxable population of the [redacted] shall be taken as the ratio of representation; each representative district shall be entitled to as many representatives as it shall contain number of times the representative ratio, together with an additional representative for any surplus or fraction exceeding one-half such ratio; not more than three counties shall be united to form a representative district: no two counties shall be united to form such district, unless one of them shall contain less than one-half of the representative ratio; and no three counties shall be united unless two of them combined shall contain

less than one-half of such ratio, in which case, such county or counties shall be united to such adjoining county, as will by such union render the representation most equal.

The resolution was received by general consent, read, and laid on the table.

Mr. EARLE asked its second reading and consideration now, but it was lost.

Mr. BROWN, of the county of Philadelphia, then offered a resolution providing that the Convention shall adjourn on the 20th, and meet in Philadelphia on the 24th, provided a suitable place should there be found free of expense.

The PRESIDENT said the resolution could only be received by general consent.

Mr. BROWN moved to dispense with the order of the day, for the purpose of enabling him to offer the resolution.

Mr. STEVENS moved an adjournment. Lost.

Mr. BROWN withdrew the resolution for the present.

Mr. FLEMING moved that the Convention do now proceed to the second reading and consideration of the resolution offered by him on the 1st instant, in the following words, viz:

Resolved, That this Convention will adjourn on the 20th inst., to meet in the city of Philadelphia on Monday the 4th of December next.

Mr. READ asked the yeas and nays on the question and they were ordered.

The question being then taken, it was decided in the negative, yeas 52, nays 53, as follows:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Biddle, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Cline, Coates, Cochran, Cope, Cunningham, Dickey, Earle, Fleming, Forward, Foulkrod, Grenell, Harris, Hays, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt, Ingersoll, Jenks, Kennedy, Konigmacher, Long, Lyons, Mann, Martin, M'Dowell, Meredith, Overfield, Pollock, Purviance, Riter, Russell, Scheetz, Scott, Sellers, Serrill, Sturdevant, Weaver, White, Woodward, Young, Sergeant, *President*—52.

NAYS—Messrs. Banks, Barndollar, Bedford, Bigelow, Brown, of Northampon, Chambers, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Craig, Crain Crawford, Crum, Cummin, Curll, Darrah, Denny, Dickerson, Dillinger, Dunlop, Fry, Fuller, Gearhart, Gilmore, Hastings, Hayhurst, Hiester, Hyde, Keim, Kerr, Krebs Maclay, Magee, M'Call, M'Sherry, Merkel, Miller, Montgomery, Nevin, Reigart, Read, Royer, Saeger, Seltzer, Shellito, Sill, Smyth, Sterigere, Stevens, Stickel, Thomas, Todd, Weidman—53.

On motion of Mr. MARTIN,

The Convention then adjourned.

MONDAY NOVEMBER 6, 1837.

Mr. WOODWARD, presented a petition, accompanied by a document, from certain citizens of Luzerne county, praying relief from the operation of the act relating to lateral rail-roads, by which authority was given to any rail road company to go across the intervening lands, within three miles of any rail road, which law the petitioners believed to be unconstitutional. If not, they prayed to have a clause inserted in the bill of rights, to restrict the legislature from the passage of any such law hereafter.

The petition was read and referred to the committee to whom was referred the ninth article of the constitution, and ordered to be printed.

The PRESIDENT laid before the Convention the following communication, which was read and ordered to be laid on the table,

SMETHPORT, 17th October, 1837.

Sir:—Having been in a very feeble state of health, ever since I left the Convention in July last, I am not yet able to return to Harrisburg and assume the duties of a delegate: my health is slightly improving, and I hope in a few weeks to be able to take my seat in the Convention. Through the medium of this communication, please inform the members of the reason of my non-attendance.

Very respectfully,
O. J. HAMLIN

Hon. JOHN SERGEANT,
President of the Convention.

Mr. CRAWFORD, of Westmoreland, submitted the following resolution, which was laid on the table for further consideration.

Resolved, That the following additional rule be adopted:

That no delegate shall speak more than one hour on the same question, either in committee of the whole, or in Convention, without leave of all the delegates present.

Mr. PORTER, of Northampton, submitted the following resolution, which lies over for consideration.

Resolved, That the Convention will adjourn on the 23d instant, to meet in the borough of Easton on the 28th instant.

Mr. FORWARD submitted the following resolution, which lies over for consideration.

Resolved, That the seventh article of the constitution should be so amended as to embrace the following principles:

First. That the dividends of all banks which may be hereafter created, shall be restricted to seven per cent. per annum, upon the amount of capital stock actually paid.

Secondly. That this restriction shall be incorporated in all bank charters which may hereafter be renewed.

Thirdly. That no bank which may be hereafter created, shall make loans or issue its notes, until one-third of its capital stock shall have been actually paid.

Mr. PORTER, of Northampton, moved that the Convention proceed to the second reading and consideration of the following resolution, offered by him this morning, viz :

Resolved, That this Convention will adjourn on the 23d instant, to meet in the borough of Easton, on the 28th instant.

Mr. READ, asked for the yeas and nays on this question, and they were ordered?

The question was then taken, and decided in the affirmative, as follows :

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Biddle, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Cline, Coates, Cochran, Cope, Denny, Dickey, Dillinger, Doran, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Grenell, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Hopkinson, Hyde, Jenks, Kennedy, Konigmacher, Long, Lyons, Mann, M'Dowell, M'Sherry, Meredith, Merrill, Overfield, Pollock, Porter, of Northampton, Purviance, Reigart, Ritter, Saeger, Scheetz, Scott, Sellers, Serrill, Sill, Sturdevant, Sergeant, *President*—58.

NAYS—Messrs. Barndollar, Bedford, Bigelow, Clarke, of Beaver, Clarke, of Indiana, Cleavenger, Cox, Craig, Crain, Crawford, Crum, Cunningham, Curll, Darrah, Dickerson, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Hiester, High, Houpt, Ingersoll, Keim, Kerr, Krebs, Maclay, Martin, M'Call, Merkel, Miller, Montgomery, Nevin, Read, Rogers, Royer, Russell, Seltzer, Shellito, Smyth, Sterigere, Stevens, Stickel, Taggart, Todd, White, Woodward—48.

The resolution was then read the second time, and being under consideration,

Mr. COCHRAN moved to amend the resolution, by striking out "Easton" and inserting "Columbia," and the question being taken on this motion, it was decided in the negative.

Mr. BANKS, moved to amend the resolution, by striking out the word "Easton," and inserting in lieu thereof, the word "Lewistown," and asked for the yeas and nays, which were ordered.

The question was then taken on this motion, and decided in the negative, as follows :—

YEAS—Messrs. Banks, Bedford, Clarke, of Indiana, Crain, Crawford Crum, Cummin, Cunningham, Curll, Darrah, Gearhart, Hastings, Hayhurst, Helffenstein, Hyde, Maclay, Martin, M'Dowell, Merrill, Montgomery, Read, Royer, Shellito, Smyth, Stickel, Taggart, Woodward—27.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Biddle, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Denny, Dickey, Dickerson, Dillinger, Doran, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gilmore, Harris, Hays, Henderson, of Allegheny, High, Hopkinson, Houpt, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Mann, M'Call, M'Sherry, Meredith, Merkel, Miller, Nevin, Overfield, Pollock, Porter, of Northampton, Purviance, Reigart, Riter, Rogers, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Sill, Sterigere, Stevens, Sturdevant, Thomas, Todd, White, Young, Sergeant, *President*—80.

Mr. PORTER, then modified his resolution, by striking therefrom the words "borough of Easton," and inserting in lieu thereof the words, "city of Philadelphia."

Mr. REIGART moved to amend the resolution by striking out the word "Philadelphia," and inserting in lieu thereof the word "Lancaster."

Mr. CURLL called for the yeas and nays on this motion, and they were ordered.

The question was then taken on the motion of Mr. REIGART, and decided in the negative as follows:

YEAS—Messrs. Bedford, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cochran, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Denny, Fry, Gearhart, Hayhurst, Helffenstein, Henderson of Allegheny, Hiester, High, Keim, Kerr, Konigmacher, Krebs, Long, Mann, M'Call, M'Dowell, Montgomery, Overfield, Reigart, Read, Riter, Rogers, Royer, Scheetz, Sellers, Seltzer, Shellito, Smyth, Sterigere, Stevens, Stickel, Taggart, Todd, Woodward, Young—46.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Biddle, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Philadephila, Chauncey, Cleavinger, Cline, Coates, Cope, Cox, Craig, Crain, Dickey, Dickerson, Dillinger, Doran, Earle, Farrelly Fleming, Forward, Foulkrod, Fuller, Gilmore, Grenell, Harris, Hastings, Hays, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Kennedy, Lyons, Maclay, Martin, M'Sherry, Meredith, Merrill, Merkel, Miller, Nevin, Pollock, Porter, of Northampton, Purviance, Russell, Saeger, Scott, Serrill, Sill, Sturdevant, Thomas, White, Sergeant, *President*—63.

Mr. BARNDOLLAR moved to amend the resolution by striking out the words "city of Philadelphia," and inserting in lieu thereof the words, "borough of Bedford."

Mr. STEVENS moved the indefinite postponement of the resolution, and therefore asked the yeas and nays. He trusted, he said, we should after spending so much time on this question, and after the discussion had upon it on Saturday, be permitted to go about something else. It would be time enough to agitate this matter a week hence. Some of those who voted against this movement on Saturday, were now absent, and some who were in favor of it had since returned.

Mr. KERR was, he said, in favor of postponing the subject indefinitely. If we must go away from here, he was in favor of going to Lancaster. But he saw no necessity for leaving this place. Some gentlemen had said a great deal about the difficulty of getting accommodations here, after the meeting of the legislature; but he did not think there would be the least difficulty either in procuring personal accommodations or a place convenient for the Convention to hold their session in. The probability is, that if we leave this question, and go on with our business, if we dont get through with our business before the meeting of the legislature, we might do so in two or three weeks after. If we took this course, there would be no difficulty, for the legislature, he had no doubt, would very courteously offer this hall to the Convention, and take the senate chamber for themselves, while the senate took the supreme court room, It was true that some gentlemen were alarmed at the idea of legislative interference with their duties, and others expressed a horror of the *borers* who accompany them.

But he did not think that there would be any difficulty in obtaining personal accommodarions for the members of the Convention, as well as of the legislature at Harrisburg. Some gentlemen, it was true, were much alarmed at the idea of sitting here while the legislature was also in session, and were very fearful that the two bodies would so

much interfere with each other, as to obstruct and prejudice the business of both. But there was very little ground for the apprehension that the legislature were coming here to interfere with us, and our business. They would have no wish nor motive to do it, and could exercise but little or no influence if they attempted to do it. Gentlemen must have but very little confidence in themselves, if they suppose that they would be thus influenced. If we went to Philadelphia, we should greatly increase the already too great amount of our expenses. This was a strong objection in itself, to remove. It will add at least twenty or thirty thousand dollars to our expenses. The reason was this, that we should lose from six to eight days by adjourning to meet at Philadelphia, and should prolong the session then from three to five weeks beyond what would suffice for concluding our business here. Calculating their additional expenses, thus incurred, it would be fair to estimate the additional expense attending the adjournment to Philadelphia, not less than thirty thousand dollars. He was of opinion that the Convention had better drop the subject of adjournment, and go on with their business, till the legislature assembled. When they came, they would either give us up this hall, or we could be accommodated in some other place for a few weeks.

Mr. COCHRAN said the Convention was tired of the subject, and to reach the question in the shortest way, he would now move the previous question.

Mr. STEVENS asked the yeas and nays on the previous question, and the motion was carried, yeas 58, nays 48, as follows:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Clapp, Cleavinger, Cline, Coates, Cochran, Cope, Craig, Crain, Dillinger, Doran, Fleming, Foulkrod, Fry, Gilmore, Grenell, Hastings, Helffenstein, Hopkinson, Hyde, Jenks, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Mann, Martin, M'Dowell, Merrill, Miller, Overfield, Pollock, Porter, of Northampton, Purviance, Riter, Russell, Saeger, Scheetz, Sellers, Serrill, Sill, Stickel, Sturdevant, Thomas, White, Woodward, Young, Sergeant, *President*—58.

NAYS—Messrs. Banks, Bedford, Bigelow, Brown, of Northampton, Chambers, Clarke, of Beaver, Clarke, of Indiana, Cox, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Denny, Dickey, Dickerson, Earle, Fuller, Gearhart, Harris, Hayhurst, Hays, Henderson, of Allegheny, Hiester, Houpt, Ingersoll, Keim, Kerr, M'Call, M'Shrry, Meredith, Merkel, Montgomery, Nevin, Reigart, Read, Rogers, Royer, Scott, Seltzer, Shellito, Smyth, Sterigere, Stevens, Taggart, Todd—48.

The question was then taken on the resolution, as modified, and it was agreed to, yeas 55, nays 53, as follows:

YEAS—Messrs. Agnew, Ayres, Barclay, Baldwin, Biddle, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Chauncey, Clapp, Cline, Coates, Cochran, Cope, Cox, Cunningham, Dickey, Dillinger, Doran, Farra'ly, Fleming, Forward, Foulkrod, Fry, Grenell, Hays, Helffenstein, Henderson, of Allegheny, Hopkinson, Houpt, Hyde, Jenks, Kennedy, Konigmacher, Lyons, Mann, Martin, M'Dowell, Meredith, Merrill, Overfield, Pollock, Porter, of Northampton, Purviance, Riter, Russell, Saeger, Scheetz, Scott, Serrill, Sturdevant, Woodward, Young, Sergeant, *President*—55.

NAYS—Banks, Barndollar, Bedford, Bigelow, Brown, of Northampton, Chambers, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Craig, Crain, Crawford, Crum, Cummin, Curll, Darrah, Denny, Dickerson, Earle, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Hiester, High, Ingersoll, Keim, Kerr, Krebs, Maclay, M'Call, M'Sherry, Merkel, Miller, Montgomery, Nevin, Reigart, Read, Rogers, Royer, Sellers, Seltzer, Shellito, Sill, Smyth, Sterigere, Stevens, Stickel, Taggart, Thomas, Todd, White—53.

FIFTH ARTICLE.

The orders of the day were then taken up, and the Convention resolved itself into a committee of the whole, upon the report on the fifth article of the constitution, Mr. M'SHERRY in the chair.

The question being on the report of the committee as amended,

Mr. FORWARD moved to add to the amendment the following: "nor shall any judge of the supreme court be reappointed, after the expiration of his commission."

Mr. FORWARD said he was aware that some inconvenience would result from the non-renewal of the commissions of able and upright judges, but this was not, in his opinion, to be put in competition with the great evil which would attend the struggle for reappointments, under the system now proposed. He believed that the public interest would require this provision, in order to secure the independence of the judges. They should be ineligible for a second term, or their independence would not be secure. The inferior courts might be kept stable, in case the decisions of the supreme court were uniform, and influenced by extraneous considerations.

Mr. INGERSOLL asked the yeas and nays on the motion. He should, he said, vote against it; for it was evident, that any judge appointed, at the age when Justice and Chancellor Kent were appointed, would, under this rule, become ineligible at the very meridian of his life, about forty-five years.

Mr. MANN moved to amend the amendment, by striking out all after the word "reappointed," and adding the following: "after he shall arrive at the age of sixty-five years;" so as to read as follows: "nor shall any judge of the supreme court be reappointed after he shall arrive at the age of sixty-five years."

Mr. FLEMING felt, he said, exceedingly loth to offer any crude notions of his, on this important subject; but two very important propositions, in addition to those heretofore under consideration, were now thrown before this body for decision. The first question placed before us was, whether the judges should be reappointed, and the next, whether they should be eligible after the age of sixty-five years. He was opposed to any limitation, whatever, to the eligibility of the judges, either as to the number of times which they should be reappointed, or their age; for he believed that any restriction of that kind, took away so much of the inherent rights of the people. He did not believe that the genius of our republican institutions required any such restriction as this. It was a restriction of the people, and went on the ground of incapacity on their part, or that of their representatives, to make a proper selection of public officers. He was himself willing to trust the people, for he believed them to be fully capable of managing their own interests in this matter. If they were pleased with the conduct of an officer, and had continued confidence in his ability and fidelity, there was no reason why that officer, contrary to the public wish, should be made ineligible to office. It was due to the people, in his opinion, to leave them unrestricted in all these matters. The proposed limitation was a proposition to deprive the peo-

ple of a portion of their rights, without any adequate object; and he considered it as beyond the sphere of the power of this body. We had no right to enforce any such restriction on the people.

He had, he said, been debating this subject in his own mind, for many years, and he was convinced that if the system proposed in the report was carried into effect, it would work well. Most of the appointments would be those of men at the age of forty-five; for a man ought to have twenty-five years experience at the bar, before his appointment. If, then, he was appointed at the age of forty-five, and for the term of fifteen years, there would be very little chance of his reappointment. He would be considered too old, no matter what his ability might be at the time, for a reappointment, which would carry him to the age of seventy-five.

Now sir, what would be the effect of agreeing to the provision as contained in the report of the minority of the committee on the fifth article of the Constitution. That committee proposes ten years as the term of service of a judge of the supreme court. Then under the operation of that provision, an individual appointed at the age of thirty-five or forty years, might have a chance of being called upon to serve three terms of ten years each. It appeared to him then, that if we incorporated into the Constitution, a provision fixing the term of service at fifteen years, that we would be doing injustice to the persons who would receive these appointments, because it would at least take from many of them ten years of service as judges. If we fix it at ten years we may not only have many of our judges in the service of the commonwealth two terms, but a portion of them three terms; whereas, if we fix it at fifteen years they can scarcely ever expect to be reappointed. He took it for granted, that this body had resolved to limit the tenure of the judges of this commonwealth, and the important and only question now to be determined was, the fixing the proper number of years which would be most proper to adopt in lieu of the tenure of good behaviour, now existing. It was not worth his while to say any thing about the tenure of good behaviour, because, he believed the question to be settled, that the tenure of office should be limited, but in fixing upon this limitation, he would ask this body whether it would not be doing injustice to these officers, to fix the period of their service at fifteen years. He would say nothing now about the independence of the judiciary, because, he took it for granted, they would all be faithful and honest, at least he would believe so, until the contrary was proven; but if we should happen to get a man who was not a proper man to fill the office, fifteen years was too long for him to hold it; and if we get a man who is competent, able, useful to the people and punctual in the discharge of his duties, it would not be too long to have him serve three terms of ten years each. He was not disposed now to go into an argument on this subject—there seemed to be some difficulty in fixing the number of years which will do ample justice to the judges, and give the people an opportunity of having them reappointed or discharged. What number of years we should finally fix upon, he was at a loss to determine in his own mind, but at present he must oppose the proposition of the gentleman from Beaver, as adopted by the committee, as well as the proposition submitted this morning by the gentleman from Allegheny.

Mr. MANN then modified his proposition so as to make it read, "the judges shall be ineligible after they are sixty-seven years of age;" and thus modified, his amendment was then disagreed to.

Mr. INGERSOLL was fearful, the remark he had made a few minutes ago had not been heard. He was opposed to the amendment of the gentleman from Allegheny, for the reason that such men as Judge Story or Chancellor Kent, who might be appointed at the age of thirty years, would be cut off from holding their office at the age of forty-five years; and just at the time too, when they would be more competent to fill the office, than they had been at any former period of their lives. This would be telling a man that there was no use of preparing himself to fill the office with great ability, because, just when he would become most fit to discharge his duties, he must leave. This was by far the most radical proposition which we have had presented to our consideration; and if the gentleman had any reasons to give in its favor, he should like to hear them.

Mr. INGERSOLL then called for the yeas and nays, which were ordered.

Mr. FORWARD did not object, he said, that the judges of our supreme court should be appointed in the same manner that Judge Story and Chancellor Kent were appointed, namely, during good behaviour. He would vote for that proposition which would put the judges of our supreme court on an equal footing with them. He was sure that we might obtain the services of excellent men in this way, and he hoped that those who took exception to the tenure for good behaviour, would take to heart the remarks made by the gentleman from the county of Philadelphia. His reasons for offering this amendment, he had given to the Convention when he submitted it. He had submitted it, so that no political and sinister influence might be brought to operate upon the judges of the supreme court, at times, when they would be expecting a re-appointment. He wished to give the people the benefit of an independent, free and firm judiciary, and that, which would please him best, would be the tenure under which Judges Story and Kent held their offices.

He was pleased with the proposition of the gentleman from the county of Philadelphia, (Mr. Ingersoll) which had been brought to the notice of the committee at the conclusion of that gentleman's speech, because, it gave the judges their offices for good behaviour. He was desirous, however, of bringing them within the reach of the people, by giving them leave to take depositions at home and bring them before the legislature, but he did not agree that a simple majority should remove one of these officers. If the tenure of good behaviour in the supreme court, was not to be endured by the Convention, and the laws of the land were about to be revolutionized, he was willing to forego the advantage which might be desired from the experience of judges, in order to escape those evils which would far over-balance them, by having a supreme court entirely dependent on the executive of the commonwealth.

Mr. EARLE hoped, that the amendment of the gentleman from Beaver, proposing a term of fifteen years for the supreme judges, might not prevail. At present he was not going to speak on this subject generally, because, he was not disposed to debate it, while those who held oppo-

site principles refrained from doing so. If we were to have the term of fifteen years established as a proper tenure, he hoped it might not be encumbered with the amendment of the gentleman from Allegheny. The great object which they had in view, in limiting the tenure of judges, was to make them responsible to the people for their acts, but the proposition of the gentleman from Allegheny goes entirely to destroy that. If you appoint a judge for fifteen years, and tell him that he can never expect to be appointed again, no matter what his conduct may be, what kind of responsibility have you? You have no responsibility at all—the influence of public approbation or disapprobation weighs nothing on his mind. The people of the commonwealth complain, that four years for your state senators even with the re-eligibility does not establish sufficient responsibility, and that the senator frequently does not shape his actions rightly. Then, if you appoint judges for fifteen years without being re-eligible, you cannot expect to have any thing to prevent them from giving away to those private influences, which the gentleman from the city (Judge Hopkinson) had said were so liable to operate upon every body. Our aim and object should be, to check and restrain those influences, instead of giving them free scope. We have heard of a few independent judges. A gentleman has cited us the case of the Roman decemvirs, and we all know the course they pursued. Then there was another set of independent judges. The judges of Israel, the sons of Samuel, who were dependent on nobody; and the independence of the judges in both these cases produced political commotions and revolutions.

The amendment of the gentleman from Allegheny, was objectionable on another ground. It goes to deprive us of the services of a valuable class of men. If a judge should perform his duty uprightly, improve himself by study and experience, and make himself more capable than other citizens to discharge the duties of his office, he should be sorry to lose the services of such a man, at the age of forty-five or fifty years; yet the amendment of the gentleman from Allegheny, would forever deprive us of the benefit of the services of such men. If the amendment of the gentleman from Allegheny should fail, he would move an amendment which he thought would improve the amendment pending, which was, that no judge of any court in the commonwealth, should continue to hold his office after he shall have attained to age of —— years. He would leave the age to be fixed upon by the good sense of the committee, but he was firmly convinced, that some such proposition as this should be adopted. He hoped we were not going to have this term of fifteen years fixed upon us, which was a term that never had been heard of as an appropriate time for a judge to serve from the days of Noah down to the present time. If these new improvements in political science were to prevail, it was desirable that they should be so modified, that we might have the services of capable judges until they were somewhere about the age of seventy years. Reserving the right however, to remove them at stated times, for neglect of duty or other just cause.

Mr. PORTER was somewhat surprised the other day, when he heard the gentleman from the county of Philadelphia, (Mr. Ingersoll) doubt his assertion, that an unlearned judiciary was the greatest curse which could be visited on any country. As, however, he understood that gentleman this morning, his remark the other day must have been a *lapsus linguæ*. He had intended to reply to the gentleman on a proper occa-

sion, but his remarks this morning made it unnecessary, as it was evident now, that the gentleman did consider an unlearned judiciary as one of the greatest curses which could befal a country. He had therefore nothing further to say on the subject.

Mr. REIGART, of Lancaster, rose to call the attention of the committee to the subject now immediately pending. It must be apparent to every mind that there was a majority in the committee of some ten or fifteen, in favor of limiting the tenure of the judges of our courts in the manner proposed by the amendment of the gentleman from Beaver, namely, ten years for the president judges, fifteen years for the supreme judges, and five years for the associate judges. Now it seemed to him it was time that we should be done with this matter. It had been said by some that the people were becoming tired of the protracted sitting of this convention. He had no doubt of this, and thought they would still become more tired of our proceedings, if we go on discussing this subject for three or four weeks longer. Let us then try to get through with the article before us as soon as possible. He was in favor of the tenure for good behaviour, but he had gone for the pending amendment as a matter of compromise, and he thought it was the duty of gentlemen here to yield up their own opinions in a matter of this kind for the sake of compromise. He was opposed to the amendment of the gentleman from Allegheny. As he had said before, he conceived that there was a majority of some ten or fifteen in favor of the amendment of the gentleman from Beaver, but this amendment of the gentleman from Allegheny proposes to lay down a constitutional principle, that no judge, however pure, honest and upright he may be, and no matter how valuable his services to the community, that he shall not be re-appointed. Now for the reason stated by the gentleman from the county of Philadelphia, and others which occurred to his mind, he thought it entirely improper that this should become a part of the constitution. If a judge is appointed at thirty or thirty-five years, under the operation of this principle, at the age of forty-five or fifty years, when his experience and learning would make him most capable of discharging the duties of his office, he would have to give way to some other person without experience, and perhaps with not half his learning. It might be proper enough not to re-appoint men at the age of seventy years; but when they have only arrived at the age of forty-five or fifty when their first term of service expires, he thought it highly important that the governor should have the power to re-appoint them. He therefore hoped that the amendment of the gentleman from Allegheny might not prevail, but that the committee would adhere to the amendment which we have hitherto voted upon, and which he felt persuaded a majority of the committee were favorable to.

Mr. DICKEY, of Beaver, thought that the amendment of the gentleman from Allegheny deserved the consideration not only of those persons who were favorable to a tenure for good behaviour, but also of those who were in favor of abolishing life offices, and he must say that he was astonished when the father of reform in the constitution of Pennsylvania, urged upon the convention the necessity for the re-appointment of judges of the supreme court, in order that they might hold office during life because if they are made re-eligible after serving a term of fifteen years, they will certainly hold the office for life, for the next fifteen years, will

in all probability, terminate their existence. He himself was in favor of abolishing life offices, and he desired to have a provision in the constitution that the judges of the supreme court might be ineligible after their first term, so that they might be entirely free from all influence of any description whatever.

Now he thought the amendment of the gentleman from Allegheny would go to secure the independence of the judges of the supreme court, and to guard them against those political influences which we had heard so eloquently portrayed the other day. If it was known at the time these judges were appointed, that they were only to hold their offices for the term of fifteen years, and that they cannot be reappointed, their hopes and their fears cannot be operated upon. This he believed would secure the independence of the judiciary for the benefit of the people, and the fifteen years tenure cut off the life tenure which had been so much complained of; but after a man serves that time, if you again re-appoint him, then indeed you make him a life officer, and then indeed will you have these officers, using every influence in their power to obtain a re-appointment from the governor and senate. Then will you have judges electioneering with the governor and senate, and then may you have good ground for suspecting that improper influences may be brought to bear on the minds of the judges of your country. He believed a majority of the Convention were in favor of abolishing life offices, and in favor of fixing their term of office at fifteen years for the supreme judges, and ten years for the president judges of county courts. He therefore hoped that the amendment of the gentleman from Allegheny, which was an amendment that went to secure the independence of the supreme judges, would be adopted.

Mr. STERIGERE thought, as the amendment now stood, it would go to ensure to the people of this commonwealth one of the greatest of those curses, which have been deprecated so much by gentlemen on both sides of the house, that is, the curse of having the superior court of this commonwealth in such a situation, that it will be one of the most vacillating courts in the state.

We have all heard of that change of principle in the supreme court, which has been a matter of so much inconvenience to the people of the western part of this state, which took place upon a change of officers of that court. We all know that changes in that court are calculated to unsettle the laws of the state, by which all the inferior courts are controlled. He was, therefore, astonished to see such an amendment as this introduced here, and by a gentleman too who knew so well what the effect of it must be. He was surprised to see an amendment introduced and advocated here, that said to the officers of the highest and most important judicial tribunal in the state, just when they became scholars as it were, and qualified to fill their situations with distinguished ability, that they are to be turned off the bench for a new set of men. The motive and the incentive to good behaviour in office is entirely taken away by this amendment. When a man is appointed for a term of years subject to be re-appointed, he has some motive for conducting himself properly, and for fitting himself to discharge the duties of his office with great ability; but by this amendment the officer is told when he is appointed, that no matter what his conduct may be, no matter, he may

discharge the duties of his office faithfully, and no matter what pains he takes in qualifying himself to discharge the duties of that office, still he was not to look to re appointment, because it was expressly forbidden. This was a most extraordinary amendment considering the quarter from whence it came.

We have been told by certain gentlemen that in order to get the best men in the state to fill the offices of judges of our courts, we should hold out the tenure of good behaviour, or a very long period of years as an inducement, but this was entirely taken away by this amendment, and the whole of gentlemen's arguments on this subject entirely destroyed by it. He undertook to say that no man who had a good practice at the bar would take the office of judge of the supreme court, if he knew at the time that he would have to go back to the bar at the end of fifteen years. He had no idea that his opinions would be looked upon as of as much weight in the committee, as the opinions of those who had proposed and advocated this amendment, but he must say that he should consider it as one of the greatest curses which could be inflicted upon the judiciary of the state.

Mr. STEVENS, of Adams, said it seemed to him that those who believed that the independence and impartiality of the judges of our courts, depended upon the tenure for good behaviour, could not consistently with their own opinions, vote against this proposition. Entertaining that opinion himself, he felt bound to vote for it, because it removed the judges from all possibility of being improperly influenced by the appointing power; and he could not see how those who were in favor of so short a tenure as had been advocated by the reformers on this floor, could vote against it either. How can we who hold that the tenure of good behaviour makes the officers more impartial, than the judge who is depending for his appointment on the governor, vote against this amendment? We hold that appointing men for a term of years, takes away the impartiality of the judge, because it tempts him to depart from the rules of justice, and from that upright conduct which is so essential to a good judge, to subserve the interest of the individual who appoints him for the purpose of obtaining a re-appointment. This was the reason why they opposed a tenure for a term of years, and why they held to the tenure of good behaviour.

If then the term of years be fifteen, and the officers be re-eligible, the same objections lay against it as if it were ten years; but, if the amendment of the gentleman from Allegheny prevailed, we would have independent judges, because they would have no motive for bowing to the ruling party, or the ruling demagogues, for the purpose of securing their re-appointment.

We, therefore, have but one alternative left now, if there be, as there certainly is, a majority in this convention, determined upon destroying the tenure of good behaviour, and that alternative which was calculated to secure the independence of the judiciary, was the amendment of the gentleman from Allegheny; and when gentlemen say that, by adopting this, we are depriving the people of the benefit of the experience of the old judges, we say we counterbalance that by removing them from the deplorable consequences, which would inevitably attend the expiration of the commissions of these judges at a time when they would be using

every influence in their power to obtain a re-appointment. But why do gentlemen, who go for a limited tenure, object to this. They object to life offices and say that they want a term of years, for the purpose of making the judges independent. But if they give them a term of years renewable forever, are they not life officers. He could not see the distinction, between the present life officers as they were termed, and those which gentlemen propose to substitute, unless it is this. That if you hold out the idea to them that their term is to be renewed so long as they behave well, you only change the present tenure of good behaviour for one which is admitted to be good in the eyes of the dominant party, the party which sustains the executive and senate, which are in power. This was the only distinction which he could see, between the two cases, and the only object in making the change, would be to give the governor the chance of making such appointments as would suit best his political friends. He could not see, therefore, how those who were conservative on the subject of having impartial judges, could go against this amendment, because it would secure equal impartiality with the tenure for good behaviour; as in fact it is a tenure for good behaviour for fifteen years; because nothing can remove them for that time, except such violations of duty, as would at present remove a judge, and there would be no sinister influence to operate upon them; and on the other hand, he could not see how those who advocated a limited tenure, and who believed the people had ten times less malignant feeling, ten times less disposition to revenge, and ten times more virtue than any individual or any selected body, could vote against it. He confessed, however, that he thought the proposition was submitted at an unpropitious moment; and he would ask the gentleman who moved it, whether it would not be better to withdraw it, until this question came up on second reading. There were some other things connected with this question to be settled now, and he would submit whether it would not be proper to disembarrass the question, and allow the tenure for good behaviour to be tested as it stands.

Mr. FORWARD said, as he understood that this proposition would not be so acceptable to some of the members of the committee at present, as it would at a future time, after the question shall have been tested, he would withdraw it for the present, intending, however, to offer it again, when we came to second reading.

Mr. CHAUNCEY, of Philadelphia, then rose and addressed the chair to the following effect:

Mr. Chairman: The question before the committee is of peculiar importance, and deserves to receive, and is justly receiving, the most faithful attention. I think it is one which should be settled by the fairest exercise of the judgment, and with the least possible influence from any extraneous consideration. Upon the decision of it depends, in some degree, the happiness of our people, and perhaps the security or stability of our free institutions. The party feelings, which now exist in the commonwealth will have subsided, long ere the effect of this decision shall cease to be felt, either for good or ill.

It is a question, which should not be narrowed down to a point of local interest or of personal feeling; but should be regarded, as it is, as one fraught with principles, which must bear, now and hereafter, upon all

parts of the state, and upon all the citizens of the state. The local interest, or the personal feeling, which may come into this question, will be lost in oblivion, before the principles to be settled here shall have had their full operation, either for good or ill.

It is not a question of speculation or experiment, but it is one of practical wisdom, in which it behooves us to take our departure upon sound principles, and commit ourselves to the guidance of the best lights of reason and experience. I do not know that I can aid the convention, by any argument of mine, in forming its judgment; but, I will endeavour to put before them, in as brief a space as possible, the fruits of years and of some study and reflection. I will not tax the patience of the committee for a longer time than may be indispensibly necessary; because the state of my health, and my habits of discussion, alike forbid me going over a large defence.

The wisdom which marks the distribution of the powers of our government is denied by no one. It forms an essential feature in this plan of distribution, that the different branches or departments, to which the powers are allotted, are co-ordinate and independent. If this were not so, it is evident, that the distribution would be a senseless form.

It may be useful, in the discussion, to consider the practical operation or bearing of these different departments upon the people. For, although I assent to the doctrine of the sovereignty of the people, and to the theory, that they are the source of power; yet the exercise of the powers which they bring into existence for government, is upon themselves.

It is a truth worthy of careful observation, that the judicial department is the most felt by the people. Nay, it may be said to be the only one, which is felt directly by the people. The executive exercises no powers which bear with any general force upon the mass of the people. The legislative by its action affects them as little. The judicial is felt, and felt directly, by individuals, by many individuals, either as a protection from wrong, or a vindication of rights, and this very uniformly, to the satisfaction of one party and the grief of another. Hence it is, that a spirit of hostility towards the judiciary is engendered, which is never produced towards either of the two other departments.

It is the part of wisdom to regard this state of things; and, keeping this peculiar fact as to this department always in view, to make due provision for it. The *desideratum* is, so to frame our constitutional provision, that it shall be best calculated to attain the great object in view; and that object is, or should be, a pure and enlightened administration of the laws for the purpopse of justice; and I take it that this is one great aim, which every man looking to the interests of the commonwealth, is solicitous to accomplish.

How shall this object be best secured by the provisions of our constitution?

The great, the important office of the judiciary, in these commonwealths of ours, is, to administer the law between man and man, to deal with private and individual rights and wrongs.

We have no royalty, against whose prerogative, power, and influence, it is necessary to guard.

We have no state policy, from which we need protection.

We want justice, according to law, in all matters of private controversy, whether relating to property or personal rights; and we want of the judiciary little else.

How shall we be most likely to secure this desirable end?

There are two principal matters to be regarded in the settlement of this question.

1. What provisions are best calculated to secure the services of the best and ablest *men*?

2. What, to preserve these men pure and able, when placed in office?

I suppose it is conceded on all sides that, for the judiciary, you want the most enlightened, able, and pure men that can be got in the republic to serve you. On this point, at least, there is no difference among us. Nor is there any doubt that we are all anxious to preserve men in a state of purity—that they may continue to exercise that diligence which is necessary to the attainment of knowledge, and to the enlightened discharge of their own duties—thus maintaining unimpaired, as well their own reputation as the dignity of the tribunal over which they preside.

And, happily, it seems to me, both these points will be likely to be obtained by the same provisions.

I think, sir, that it is agreed by this whole assembly, perhaps with a single exception, that the quality, which we denominate *independence*, and which I am willing to take as integrity, is to be regarded as essential for the judicial office. We differ widely as to the best means of securing this quality. But, we all agree in desiring it.

What do we mean by judicial independence?

I answer, a freedom, from the sense of dependence upon the will of man, or upon any earthly power. Let those who differ from me state their meaning of the term. I like the notion of the ancients. Justice should be blind to the world about her. She should know no man, no set of men. She should neither court the influence, nor fear the frown, of a mortal. Before such a tribunal, all, all, may look for justice.

Is not this so? If you admit any exception, any qualification, do you not endanger the system? If you allow any external influence, or any internal sense save that of conscience, to operate upon the judge, do yon not put in jeopardy the interests dependent on his administration? If you generate in him the fear of losing his office, if you put before him a standing temptation to seduce him, is it not plain, that you are preparing impediments to the free course of justice?

Those who argue in favor of a limited tenure do it upon a single principle, and this I propose to examine with great care; because if this principle is infirm, their argument will be seen to be without support.

The principle is, that the judicial department, like the other departments, should be responsible to the people. The argument, and the measures proposed, profess to carry it out, so as to make the judiciary to a certain extent, *subject to the will of the people.*

This principle is supposed to have the sanction of Mr. Jefferson and

Mr. Giles; and we have had quoted to us here, the language in which they have been understood to advocate it. It is this: "Responsibility is the characteristic principle of your government throughout: and why should there not be such a thing as judicial responsibility?"

I have not learned my notions of government in this school; and I am not willing to adopt the doctrine presented here, without a careful examination.

The advocates for limited tenure profess to base their argument upon the principle of responsibility. Mr. Giles says: "I would make all the judges responsible, not to God and their own consciences alone, but to a human tribunal." Those who profess to adopt the principle go a step, and a large step, farther; they would make them responsible, not to a *tribunal*, but *to the will of the people.*

Let us consider this doctrine as it is urged upon the committee.

If the measure of change proposed indicates the principle, it is, to place the judge, at stated periods, at the disposal of the people, through their representatives, the constituted authorities; or, more accurately speaking, to place him at the disposal of the executive, or the appointing power.

It is not, in truth, to make him *responsible* to a tribunal. It is not to bring him before any authority for trial, or to *answer* for his judicial conduct; and there is something in this which, it seems to me, the advocates of the limited tenure have been desirous to avoid. It is not, I repeat, to make him responsible to a tribunal, or to bring him to trial to answer for his deeds.

It is, to subject him to the loss of office, with dishonor, with disgrace, without a known accusation against him. This is called *responsibility.* I think that it is miscalled; that there is no responsibility about it. The judge is not called on *to answer* for any thing; but, at the end of his term, he is absolutely out of office, he is defunct, whatever may have been the ability and integrity, which have marked his administration.

This, sir, is the limited tenure. But, say the gentlemen, he shall have the hope of re-appointment before him—we will place that incentive before his eye. In this view of the matter, the situation in which the judge is placed, is precisely this; he is at the will of the appointing power, and that will is to be exercised without trial, or investigation of any description.

Now, sir, I advocate the independence of the judiciary, as I have already stated my understanding of it: a freedom from dependence upon the will of man, or upon any earthly power. My objection to the limited tenure, in the form proposed, is, that it is at war with this independence; that it is fatally at war with it. I can imagine nothing more so. I do not now speak of long or short terms; I speak of the principle. Let us look for an instant at the situation of the incumbent. The expiration of his term is always before his eyes.

If the appointment is but for a short period, he can never be far from this influence; if it is for a longer period, the prospect is indeed more distant, but the appointing power is still, constantly before his mind. And what does he know in reference to his own situation?

The appointing power, whatever it may be, is perpetually in his mind. He knows, that the ear of the executive may be like the lion's mouth in Venice, the receptacle of a secret, false, malicious accusation. And he must be more or less than a man, to escape entirely from the influence of such a state of things. I know of nothing worse: I can conceive of nothing worse.

Sir, I am no believer in the creed of some, that all men are swayed or governed by interest; or, in other words, that men are men of principle, according to their interest.

I do believe in the depravity of our race by nature; but, I also believe, that a portion of that race is elevated above the undue influence of interested motives. I think it to be a sound principle, however, in dealing with men, to guard as much as possible against temptation; and in making such a provision as that under consideration, to furnish those who are to be placed in office, with the highest and holiest motives for the performance of their duty.

This very object is effected, according to my humble judgment, by the provisions of the present constitution; it would not be effected by the change proposed; and this I will endeavor to show.

The present constitution confers the office *during good behaviour*: and this is a tenure which, both technically and in fact, is supposed to be understood by those who are conversant with legal instruments, or legal language. I have very little familiarity with political warfare, never having learned even the duty of a common soldier in that strife. I sometimes saw, amidst the drivellings of the press, before the meeting of this Convention, an appeal to popular prejudice, as I supposed, by the attempt to give an obnoxious name to this species of tenure of office: I heard the sound of life offices ringing through the commonwealth. But I never supposed for an instant, it never entered my imagination, that any lawyer in this body would offer an argument in support of this popular appeal. Of those legal gentlemen who advocate the correctness of the name given to this tenure, I would ask, do your law books, does your legal learning, justify this appellative? If an estate were holden on the same tenure, would you denominate it for life? Is it not the *condition* which characterizes the estate, and not the *incident?* Because an estate for years may endure beyond the life of the tenant, is he tenant for *life;* or would you hazard your reputation before a learned judge by an assertion, that such is a *tenancy for life?*

Now, sir, though it be true, that "a rose by any other name would smell as sweet," I affirm, that that is not a rose which wants the essential character of a rose: it must have the form, the fashion and the fragrance of a rose, to make it a rose.

Let me test the accuracy of this language farther. It is said, that virtually, in substance, in fact, this is a tenure for life. What do my learned opponents, in point of fact, do with the condition—the characteristic of the estate?—this is substance as well as name. If this be in fact, a tenure for life, I again ask, by what authority do you now undertake to legislate it out of life? If your answer be—by the sovereign power of this convention;—my reply is—then there are two conditions to characterize and defeat the estate instead of one; and the impropriety of the appellative is doubly apparent.

Let this pass, however, for what it is worth. I fondly trust that this honest and enlightened convention, will be in no danger from what appears to me to be so small a device in this warfare upon the constitution.

I return to my position:—the present constitution confers the office during good behaviour. It farther provides for the amenability of the officer—for his responsibility;—in a legal form, for his behaviour in office. He may be called on to answer, if he break the condition on which he holds his office—if he misbehave in office. Now, sir, although I do not admire this provision for the trial of a judge before one branch of the legislature, on the accusation of the other branch; it seems to be the offspring of necessity; and certain it is, that it is a provision sufficiently severe upon the judge. The advantage, however, of this provision is, that it is calculated to do justice, by explicit accusation and open trial.

But, in addition to this, the constitution provide for the removal of a judge, for cause not impeachable, on the address of two-thirds of the legislature.

Do not these provisons, in the wisest manner, free the judges from temptation, at the same time that he is subjected, in a legal form, both to the justice and expediency which may require his removal.

The beauty and the excellence of these provisions are, that they offer reasonable, legal, proper security to the judge against the assaults or machinations of malice; at the same time, that they afford a plain and adequate relief from the burden of an unsuitable incumbent.

As regards the *judge*. Here is *responsibility* in its proper sense; not to a man—not to a party—not to the executive—but to the law. He is here to answer the charges against him—he is to have all the securities of fair and open trial: and these securities are, what every considerate man would desire for himself, what every just man should be willing to afford to others. Open and public trial is one of the surest and safest guards of liberty and right.

As regards the *community*. The door is open for complete redress: if the amendment offered by my learned friend from Allegheny is adopted, I may say it is open wide, and not a ground of exception is left. What is objected to this provision? It is said, that the remedy offered is inefficacious—that the people will not prosecute—and that the sympathies of the senate, in the case of impeachment, will not allow them to convict; and the sympathies of both houses, in case of complaint, will not allow them to address.

This is an argument for more summary proceedings; but it is an argument pregnant with much material.

It imputes to the people, a willingness to suffer, rather than complain. They are, perhaps, more prone to complain than to endure.

It imputes unfaithfulness to the legislature: And this imputation is made without proper support, in point of past experience, or the reason of the case.

The remedy has been used, and effectually. It has been sometimes resorted to, as I am bound to believe, improperly; and it has failed. Thus stands the fact. There is no just reason for the supposition, that

sympathy will be more likely to have unbecoming influence here, than in any other of our tribunals.

Can honorable and just men undertake to pronounce, with the imperfect light they must have, that the judgment of the senate has been warped, because it did not convict? Can any man, upon the partial knowledge he must have, or even upon the fullest knowledge that can be had, undertake to say more in any given case, than that he would have given different judgment.

He may, indeed, suppose them to have erred in judgment; but, will he say that the senate of the commonwealth, in any case of impeachment, have gone astray from the path of their duty—that they have forgotten or violated their oaths of office—or that they have done any thing but justice to the state?

The common principles which guide the opinions of just men, forbid the belief, that the judgments of the senate are wrong.

If there be any truth in this argument, it shows, that your people are inattentive to, or regardless of, their duty to themselves, and their own interests; and that your legislative department stands in need of *radical reform*. It proves nothing against the wisdom and efficacy of the existing provisions: Because, if the people will not use the remedy, or the legislative body, from false sympathy, are unfaithful to their trust, the provision is not to be discarded as unwise and inefficacious.

But, sir, the evidence before this committee shows, that the remedy has been used, and used effectually.

Is then our constitution without a proper provision to secure the responsibility of the judges?

It provides, not only for the trial and dismissal of the judge, if he be guilty of misbehaviour in office, but also for his removal, at the will of two-thirds of the legislature and executive.

I will now inquire—whether the desired object of securing the independence of the judge is attainable by the proposed change in the constitution?

Let us seek for the principles, on which the advocates of limited tenure found themselves.

They do not mean, as the gentleman from Allegheny, (Mr. Forward) has conclusively shewn, that the judge shall necessarily retire at the end of his term; they agree, that he may be re-appointed. They do not apply, what I think is called the principle of rotation in office. They bring him before the appointing power for judgment; to be re-appointed, or to be dismissed, at pleasure. The theory supposes that he will be re-appointed, unless sufficient cause to the contrary appears to the appointing power: and this is necessary to the argument, to save the scheme from universal reprobation.

My objections to such a plan as this are, that it is *unjust* and *unwise*.

It is *unjust* to the judge; because it condemns, disgraces and stigmatizes him without charge or accusation, without trial or hearing. Such may be, such often will be the case. I agree, that the judge has no legal property in his office. I agree, that his term of office having

legally expired, he has no legal claim to a re-appointment. But the contemplated provison of the constitution is understood to imply, both upon the ground of the public good and private justice, that he will be re-appointed, if there be no good reason against it; and if he be not re-appointed, though there be no charge, accusation or trial, it is to be inferred, that cause existed, and that the stigma is justly fixed upon him.

Far better would it be, that the constitution should provide against any re-appointment; because, then, the feelings and character of the judge would not lie at the mercy of the appointing power. From this, in my judgment, shocking injustice, I would save the judge, even by the pension system, if there be no other mode by which it can be done.

But, it is *unwise.* There is no point upon which honorable men are so sensitive as that of reputation. Can you expect that such men will accept of such office at such an awful risk as this is? It is said, that honest, upright and faithful judges run no risk—that they need not fear that injustice will be done them—nay, that this very provision will prove an incentive to the best exertions.

Sir, honest and faithful judges have nothing to fear from public and open trial. There they may be expected to be sustained by their integrity and fidelity. But, what have they not to fear from the power of secret malice, or arbitrary will? No man who is fit for the office, would or could take it at such a peril as this.

Besides, this kind of responsibility is corrupting in itself. If the judge be liable to seduction from duty by his interest, he will look with unbecoming favor to the appointing power, and court the influences which surround it.

How can you expect it to be otherwise? When the hopes, and it may be, the means of existence of a judge are dependent on his re-appointment, is it reasonable to suppose otherwise than that he will always keep his eye fixed on the re-appointing power, and study so to discharge the duties of his office as to conciliate the favor of that power?

It is upon these grounds that I consider that the constitution contains all necessary provisions to secure a proper responsibility, and that the change proposed is utterly inadequate to that end.

To make the plan of a term of years, or limited tenure, efficacious, on the principles avowed by the advocates for it, or consistent in itself, the appointment should be from year to year.

What is wanted, what is contemplated by the plan before us? It is to bring your judges before the people, before the appointing power wherever that may be; it is that the judgment of the people may be passed upon them. Can you do this efficaciously by the plan proposed, even if you adopt, as the limit, the period of seven years? I feel satisfied that you cannot. Should the people be compelled to bear with evils and oppressions, which are reachable neither by impeachment, nor by address? To make the plan efficacious, must you not take away the probability of re-appointment? Undoubtedly you must. You must appoint your judges from year to year—and, if it be for a longer term, you must take away all possibility of re-appointment—because you will

thus take away all dependence on the appointing power, and the consequent humiliation, with which that power is looked up to, in order to obtain a re-appointment. That, and that only, is calculated to effect the object, of keeping the judge always under surveillance; that, and that only can save the people from the afflictions which our opponents suppose to flow from a different tenure. I have heard no delegate go to this extreme, though it has been approached, perhaps, by some.

I have now laid before the committee the views of this subject, which lead me to the conclusion, that the tenure for good behaviour, with the powers of impeachment and removal on address, is best calculated to obtain and to preserve the services of the best and ablest men.

It behooves me now to notice the reasons which have been assiged for a change.

1. The first reason assigned is, that the people desire it.

This is the prominent reason for all the proposed changes of the constitution. On a former occasion, I expressed my sentiments in relation to this reason for change. It appears to me, that this is an assumption. I have seen no evidence of the fact, that the people desire a change of the judicial tenure, which carries conviction to my mind.

If the people desire a change, that desire must be apprehensible in its character: it is capable of being exhibited, and specifically too.

What are the proofs of the people desiring a change? They have their representatives here to speak for them. Their representatives utter discordant sounds—they do not agree, except in one sound, and that a most uncertain one—*change*.

I profess no homage to the people. I am one of them. Before I can pronounce upon their wishes, I must hear their voice in some intelligible form. How is it brought to us here? By delegates who profess to know what they want, and to be able to tell us what it is. I think, that upon the topic under discussion, there are at least four, perhaps five, different plans or schemes for settling the judiciary—all of them wanted by the people.

1. The abolition of the independence of the judiciary. This we have from the delegate who has been called the father of the convention. I take his meaning from his own lips, and not from the readings of the commentators.

2. Tenure for the shortest *possible* term of years.

3. Fifteen judges of the supreme court, with large salaries, and the pension system.

4. Tenure for long periods, with removal from office on address, or by impeachment.

I think that there are others; but it is not material to notice them.

There is scarcely a point of agreement in these various expressions of the wants and wishes of the people, unless it be to change the tenure during good behaviour to something else; and as to this, they are not agreed, in regard to all the judges.

As to this evidence, it is unsatisfactory. I am unable to see how it comes from the people, that they desire a change, or what change it is that they do desire.

I have no instructions—nothing to guide or enlighten me as to my constituents immediately; they have not imparted to me their wishes. Is there any other source from which we are to ascertain the wishes of the people?

2. Petitions to the legislature, asking for a convention to amend the constitution, are considered as evidence of the desire of the people to have a change in the particular under discussion, and in various others. There is a very large assumption made on this point. It is stated, that these petitions have flowed in upon the legislature for two and thirty years, in an uninterrupted stream. To sustain so strong an assertion, the evidence before the committee appears to me to be of a slight and feeble character. It begins with a petition in 1805, and I call the attention of the committee to it particularly. This petition affirms, that the supreme court have assumed the powers of the courts of exchequers king's bench and common pleas in England. I do not know the signers of this petition. I can, therefore, intend no offence to any one by my remarks. It is a happy illustration of the character of these petitions generally, and the committee may judge from this how far they express popular opinion. The assertion of the fact I have mentioned was certainly an inconsiderate one. The petition must have been signed by some, who knew nothing of the fact affirmed, whether it were true or not; who knew nothing on earth of the courts mentioned in the petition, or of their powers, or of any action of the supreme court to warrant the assertion. Such petitions are light matter in a rational mind. On this petition, resolutions were reported and laid on the table. Did the legislature consider this as the voice of the people?

In 1810, another petition, or other petitions were treated in the same manner.

And at the session of 1821–2, similar petitions were also disregarded by the legislature.

At the session of 1823–4, resolutions for calling a convention, passed the house of representatives; but the bill to provide for it was not called up.

At the session of 1824–5, an act was passed for submitting the question to the people. The decision of the people was against the call of a convention.

Those who profess to interpret the action of the people, say, that the reason of this decision was, that the law contained no provision for submitting the doings of the convention to the people. How do they know this to be the reason? I for one voted against it; that was not my reason—nor, so far as I know, was it the reason of my constituents who voted against it. No man can safely say, that that was the reason of the majority, for their votes.

In 1832–3, there were again presented petitions and remonstrances. And, finally, this convention was called into being.

Great stress is laid upon this popular perseverance. How much the people had to do with it, neither you, sir, nor I know. But I except to the evidence. It proves but one thing, that is a restless spirit somewhere, a determination to work up a convention for some cause or other.

No man, who looks with a cool and dispassionate eye upon the people of this commonwealth, and regards their unexampled prosperity and happiness for the last fifty years, can conscientiously believe, that they have known civil or political distress. I am one of those who think, that they might have been better governed than they have been; and that the unequalled resources of this great commonwealth might have been sooner and better developed; but they have had their own rulers, and if they have not grown as rapidly as they might, they have still grown and been happy.

No man, who looks without bias upon our past history, can fail to see, that this restlessness and inquietude respecting the constitution, belongs not to the people, but to the politics of the state. It is a most happy theme for the demagogue; the oppression of government, and the misrule of those in authority. It is always, it has ever been from the days of Absalom, the rebellious son of David, to the present hour, the topic of declamation, by which discontent and revolution are excited "You are oppressed and distressed," is the language—"oh! that I were a judge in the land."

If there were, in reality, serious evil flowing from the constitution, it would be so apparent, that no man would, in the face of a suffering community call for proof. It is only when proof is demanded of the existence of the evil, as in the present case, that the apostle of discontent is brought to his straits.

It is alleged by the advocates of reform, that mischiefs of a serious character flow from the present constitution. We, who do not see or feel the evil, naturally demand specification. The advocates of change have partially undertaken to give it to us. When this is done, we have some means of forming a judgment: and it delights me, that they have entered this field as valiantly as they have.

The history of the administration of justice in Pennsylvania is open to all. If there have been signal aggression upon private right, gross departure from duty, burdensome incapacity for office, and these the fruits of the existing system, surely, surely, the delegates here from all parts of the commonwealth can make it known to us. It is not unreasonable to demand it.

An effort has been made, to bring before this body a view of the evils supposed to have arisen from the tenure during good behaviour; and the cases to exhibit the form and pressure of these evils are so few, that they may be easily noticed.

1. The first case mentioned is that of Thomas Passmore.

This was a case of punishment, by fine and imprisonment, for contempt of court, by a publication respecting a cause depending in court. It is referred to, I presume, as a case of the exercise of arbitrary power by judges, who held office, during good behaviour.

Has any man undertaken to say, or will any man, any lawer, undertake to say, that the judgment of the court was wrong in point of law? And if it were wrong, will any man impute any thing but error of judgment to the venerable men who filled the bench? The judgment was according to existing law. It was the law of the land on the subject of contempts. And the judges would have disregarded their oaths of office,

if they had pronounced it differently. The legislature changed the law, most unwisely in the opinion of many.

Sir, gentlemen must seek for some other fruit of the tenure than this, to show evil.

2. The case of Judge Cooper, and his tyrannical conduct on the bench, are next referred to, to illustrate the evils of the existing system.

After describing this gentleman as an English Jacobin, who came over here, and got upon the bench, a report is read of a case before him, when president of the eighth judicial district, in 1807. This account purports to be a statement of the case of David Dall, a boy of fifteen years of age, who was charged with horse stealing, *pleaded guilty*, and was sentenced, in the first instance, to *one* year's imprisonment. On farther consideration of the case, the court changed the sentence to *three* years imprisonment.

This case is said here, in debate, to be "a disgrace to the whole judiciary of Pennsylvania!!" This boy is transformed into a martyr; and a revolutionary father is, by the power of imagination, brought into the perspective of the picture. The question is asked, with emphasis, "what must that lad have thought of your judiciary, of your laws?"

I cannot say, I cannot tell what the fruit of his experience would be. But if he formed a correct opinion, of our judiciary and laws, so far as his experience went, it would be, that the eye of justice is too vigilant and the arm of the law too strong to suffer such precocious villainy to ripen, without seeking to prevent it. Perhaps, this is not the answer that was expected. I may be wrong. It may be otherwise. It may be, that as he was younger than the youngest of this convention, he was wiser as to the constitution; and that having had three years study under the immediate pressure of the law, he came forth from the penitentiary, fully imbued with notions of reform, and is now an *ultra radical reformer;* expressing the sentiments of the people, that the judiciary so inconvenient should be destroyed, and these laws, discountenancing early adventure, should be annihilated.

I think, that against that part of the judiciary of this state, which for a time reposed in the person of this same Judge Cooper, it was farther alleged, that he sent a Friend to prison, for wearing his hat in court.

3. Another case of mischief, resulting from the tenure during good behaviour, is an act of Judge Baird, who struck half the bar of one of the counties off the roll.

This deep commiseration for the distress produced by judicial tyranny becomes almost amusing. And I really know not how to treat seriously an argument which resorts to such support.

4. Another case is that of two of my friends and colleagues in this Convention.

They are living men, and uncomplaining men. I believe, that they, the immediate sufferers, never imputed their sufferings to the judicial tenure. Poor ignorant men! not to know their oppression, and the rod which was laid upon them.

I believe, that I have gone through this dark array of evidence, this specification of evil and misery, alleged to have resulted from the tenure during good behaviour, with perhaps one exception. The delegate recently elected from Luzerne, mentioned another case of judicial misconduct, although he did not name the offender. That was the case of a judge, who was prevented by a snow storm from attending a court, whereby the county suffered loss by reason of great expense, and the attendants were put to great inconvenience!! I need not remark upon this case.

At this point of his argument, Mr. CHAUNCEY yielded the floor, and the committee rose and reported progress; and,

The Convention then adjourned.

MONDAY AFTERNOON, NOVEMBER 6, 1837.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the committee to whom was referred the fifth article of the constitution.

The question being on the amendment moved by Mr. WOODWARD, as amended on motion of Mr. DICKEY,

Mr. CHAUNCEY resumed his remarks to the following effect:

When the committee rose, this morning, I closed my remarks by dwelling on the specific cases of complaint presented to the committee, for the purpose of shewing the misdeeds, at least the misfortunes, attending the judicial tenure for good behaviour. I was happy to deal with them, because they are cases presented specifically, which the Convention could examine in detail; and, after ascertaining their true character, would be able to decide if they were such evils as called for the very large remedy now presented to us. There have been other grounds of complaint which it becomes me to notice. These are mere *general* character, and are therefore not susceptible of so complete an answer.

They are:

1. The character of the decisions of the supreme court. It is said, in relation to them,

1. That numberless acts of the legislature have been necessary to put them right.

I know, that there has been some vicious legislation on this point, that some acts of the legislature have been passed, with a view to rectify the law, or to make it different from what the supreme court had pronounced it to be.

Is this a charge against the judiciary, and is there an evil here, which is the fruit of the tenure during good behaviour?

Do gentlemen say, that the decisions were wrong in point of law; or do they mean to impute corruption to the judges?

If the first—it should be shown that they were wrong. Let him who asserts it, put his finger on the cases. We may disagree about the law.

But suppose they satisfy this committee that the judges have erred in their decisions. Have not all human judges, from the days of Pontius Pilate to the present hour, been subject to mistake or error?

It would be to some purpose, if gentlemen came here prepared to show a case, and this is within their own province, in which the judges have pronounced the law to be what it was not: and then let them show, if they can, that the erroneous decision was the fruit of ignorance, indolence or corruption. They have not done the judges the justice to take the first step, to show their decisions to be wrong. If there have been erroneous decisions, I think that no man could show that they were the offspring of ignorance, neglect of duty, or corruption: and no delegate should or can expect, that such an allegation as this will avail, to disturb the judicial system without something more.

2. Another matter is stated in relation to the decisions of the supreme court, which is, that our books of reports are so lightly esteemed, that they are neither sold nor cited abroad.

In the first place, as to the fact, we differ. They are sold, and are cited abroad, and with approbation. In the next place, if the fact were as it is alleged to be, it would prove very little. The truth is, that few men, comparatively of the profession, can purchase the vast number of books of reports of other states; they are of little comparative value. And on the same ground as this you may condemn the decisions of any court in the union, even of the supreme court of the United States.

But, sir, I cannot refrain on such an occasion as this, from yielding my humble tribute to the supreme court and its decisions. That court has decided many causes against my clients, upon my arguments, and some of them, as I have thought, erroneously. But, sir, I have not been led to doubt the integrity of the judges, their intelligence, their learning, or their devotion to business.

The reports of the decisions of the supreme court of Pennsylvania, are entitled to the admiration of lawyers at home and abroad; and, if they are read carefully and understandingly, will receive it. They contain decisions, which have led the way upon some very interesting subjects, and which have been followed both here and in England.

2. "Constitutional instability." This is the head of some judicial prodigy—some offence against the majesty of the people.

I believe the specification is, that the present chief justice once entertained the opinion, that the courts of Pennsylvania could not pronounce an act of the legislature unconstitutional: and that there has been no decision since Chief Justice Tilghman's time, declaring an act unconstitutional.

It may be, that the chief justice holds the same opinion. But, there are two things not appearing:

1. That the rest of the court hold the same opinion.

2. That they have had occasion to pronounce it in any case. When these matters are shown, the committee will be prepared to weigh the argument on the point.

3. The trial by jury, it is said, has been in effect done away.

This is an assertion of a very general and sweeping character. We differ entirely about the fact. My own observation and experience are the other way. The error, if any, is, that too much is left to the jury, and their province too much extended. If I were to find fault with the judges, it would be on the ground, that they do not sufficiently keep the decision of the law to themselves.

When this position is properly sustained in point of fact, we may deal with it in argument.

Now, sir, I have gone through with the specific and the general grounds of exception to the judicial department of our government, as organized by the existing constitution. These are the reasons, the grounds, on which it is claimed, that the tenure during good behaviour works mischief to the people of Pennsylvania.

Sir, if we have reached the bottom of the well, where truth is said to lie; if these "elegant extracts," as they are styled, are the strongest specimens of our wrongs; we are, perhaps, able to pronounce upon the case; and I think we may most solemnly and conscientiously assure the good people of the commonwealth, that if these are the only sources of grief which they know, and these the only supposed causes of their suffering, all the changes of the constitution which this Convention can devise, will not deliver them from the evil. I despair of the case: not so much, I confess, from the enormity of the grievances, as because the counsellors who are to work out our deliverance, have not a just sense of the disease which is supposed to exist, or of the remedies, which they propose to apply for its cure. They despise and reject the wisdom of the wise: they set up our own unfledged knowledge and limited experience, above the learning and judgment of those who have enlightened and adorned the race of man: they demand experiment for experiment's sake: that which is called *common sense*, is exalted above all sense and learning: and I fear, that cunning and craft are mistaken for common sense; and that vulgar prejudice is also mistaken for common sense. Common sense is a sterling gift, most uncommon, but it has an accompaniment, a never failing accompaniment, by which you may know it, and that is *common honesty*.

These are our experiences. What have we from abroad?

The constitution of the United States, it is said, contains the tenure of good behaviour, and the delegate from Luzerne approves of it there. Why? Because the judges have political power. What is meant by this? They are to decide upon treaties. This is the only reason assigned; and it is unsatisfactory, in fact, and on principle. In point of fact, not half a dozen cases under treaties have arisen since the formation of the constitution. In point of principle, the argument would lead to a different conclusion.

A case in a sister and adjoining state, has been referred to as having a bearing upon the question of judicial tenure—that was a case in New

Jersey. This case was cited by my learned friend and colleague, the chairman of the judiciary committee, and noticed again particularly by the delegate from Northampton. It seemed to be a strong one to show the imperfection of the tenure for years.

It was a case, so far as my information goes, of most flagrant and high-handed wrong, inflicted upon an upright and independent judge, for the fearless performance of his duty.

It furnishes a strong illustration of the morality of the system contended for. A mere intrigue of party, availing itself of the disappointment and irritation of an unsuccessful litigant, changed the character of the legislature, and left the judge out of office. What can be said of this?

The delegate from Luzerne, thanks my learned friend for this case; and why? Because it proves—

1. That you can get upright and able men to take the office on such a tenure.

2. That the judges will decide according to conscience against the most powerful party, although their term of office is about to expire.

I apprehend that the case proves no such thing. It is a beacon to warn upright and able men not to take office on such terms; because here is the *sacrifice* to which they are exposed. It is the one case of fearless independence—but, all men see the sequel; and who will follow in the track?

It is further said, that the judge had no right to the office—that the people had the right to choose their own judges—and that the public interest did not suffer by the change.

This vindication illustrates the character of this tenure, and shows, that the argument to sustain it is wanting in sound moral principle.

The judge had no right to the office—no legal right. But, he had a right, morally, and upon the theory of the opposite argument, drawn out into the strongest expression, this very morning, to be re-appointed, if there were not good cause against it. There was not only not good cause, but he was sacrificed unjustly, and stigmatised, for the worst of reasons, because he had fearlessly done his duty. Is this a principle to be vindicated?

But the people had a right to choose their own judges.

The people had no right to do *wrong*. This is my position. The fallacy of the whole argument is, that *our* king can do no wrong. The people act according to their sovereign will and pleasure—and whatever they do is right. With a case of such barbarous injustice and wrong before my eyes, I cannot subscribe to the doctrine. It supposes the infallibility of the people. I believe in the infallibility of neither king nor people.

It is said, that the public interest did not suffer by the change; that a successor equally good was appointed.

Can this justify the wrong?

The learned delegate from Luzerne, says—this was but the application or operation of a great republican principle.

I cannot assent to it. No truly republican principle can work and sanction such an outrage upon justice as this is. I think it is no republican principle. It is will—arbitrary, unregulated will of the despot. It is the same principle, which appears in the laconic mandate put into the mouth of the tyrant Richard, by that man, who seems to have known more of what was in man, than almost any other mere man—"Off with his head!—so much for Buckingham."

We have had our attention called to the constitutions of other states. What do we gather from them?

That eighteen states provide for the tenure during good behaviour, by their constitutions.

The delegate from Luzerne says, that there are fifteen states, which have limited the tenure in some way, and then he says, that fifteen states have rejected the principle of good behaviour tenure. Several of these states have limited the tenure to sixty, sixty-five, or seventy years. But they have held to the principle.

Has the delegate shown, that any state, having enjoyed the tenure during good behaviour, has relinqnished it for a tenure for years. I think he has not. I believe he cannot. And, if the change takes place, Pennsylvania has the honor to take the lead.

I will not detain the committee by recurring to the history of judicial tenure, farther than to say, that my learned friend and colleague's remark, that the principle of good behaviour tenure had its birth in Pennsylvania, has been suffered to remain without contradiction. Its introduction was earnestly sought for during our provincial existence, and effected when our independence was achieved. It was established in England, as in furtherance of popular right. And upon the same principle, it was adopted here. The framers of our constitution meant to shield the judiciary against the arbitrary will of the sovereign, and this provision affords that security.

The delegate from the county of Philadelphia, gathers argument against the tenure during good behaviour, from the fact, that it was unknown and unused before its introduction into England, in 1701; that it is unknown to the civil law, the law of continental Europe, which he eulogises above all other systems of law, and that it was not engrafted upon the civil code of France.

I admit, that the civil law, and the code of France are great products of human wisdom; but, not specially calculated for the protection of popular rights. The delegate no doubt bears in mind, that the trial by jury, which he also justly applauds, is unknown to the civil law; and that the civil law has been, and still is, the code of those states in Europe, which have manifested the least regard for the rights of the people.

We shall not, perhaps, derive much light on this subject from abroad. We have a good and safe experience of our own. We have no need of trying an experiment. And as I am abundantly satisfied with the protection which the constitution affords to my fellow citizens, by its provision for a wholesome judiciary, I think it wise to suffer it to remain undisturbed. The restless spirit which excites and agitates a peaceful and happy people, I trust, will be laid for a time. But it is incidental to

popular government; and we may expect, that, in this or some other form, it will raise its hydra head, hereafter; and seek to effect some removal of land marks; some change in the fabric; something which shall afford better prospects for ambition, than is offered by the slow, sullen and steady march of honest, honorable and efficient labor for the common good.

My hopes and my wishes are, that this happy commonwealth may long endure, and long enjoy the blessings of a constitution, formed by men of the highest order, and whose praise is in this:—That it has, for nearly fifty years, without alteration or change, contributed largely to the prosperity and enjoyment of all classes of people.

Mr. BANKS rose, he said, under some embarrassment, to take a part in the debate, on this important subject, in immediate succession to the gentleman from the city of Philadelphia, (Mr. Chauncey.) He had not turned his mind to the subject, in such a manner as he would have done, had he supposed that he was to follow that intelligent gentleman. He would, however, endeavor to give his views as briefly as possible.

The subject required anxious reflection, cool deliberation, and firmness of purpose, on the part of the delegates to this body, to whom the people have committed the revisal of this constitution. He apprehended the question before the committee to be, whether the people of Pennsylvania should agree to continue the life tenure of judicial officers, as was established by the existing constitution. The tenure of good behaviour, it was said, was not exactly a life tenure, and this was true in theory; but the difference between the two was found to be very little in practice. In Pennsylvania, no person ever resigned his office of judge, on account of complaints against him, unless he was pressed into the measure; and removal was seldom if ever resorted to. The tenure, under the present constitution, was therefore in effect a life tenure.

There are times, and places, and circumstances, which call upon all men to act out their principles, let who will gainsay; and when he looked about on this committee, and saw men who have served their country in almost every situation which a man can enjoy under our government: men possessing intellect of the highest order; men of refined education, and men who have had the best opportunities, and who have made the best use of them, in improving that intellect, which was conferred upon them by their Creator—taking the opposite side from that which he was about to take, and discussing it with distinguished ability—he confessed that it might become him to sit still in his place, and say nothing. It was to him like attempting to give counsel to friends who were as capable of judging as he was; and whose patriotism was equal to any who had gone before them; and in attempting to do which, he was fearful of breaking that social, that kind, that friendly intercourse, which had for a long time existed. It caused solicitude in his breast, when even, in the discharge of duty, he might by word or action, interrupt that friendly feeling which had long existed. And for him to controvert questions of this kind, with such men as had spoken on the other side of this question, was somewhat painful. But although the learned and the patriotic may have taken the other side on this question—they are but what we all are in one respect; that is, they are but the delegates of a free people. They are but delegated to do what they believe to be right, in reference to the rights,

privileges and welfare of the people of this great commonwealth. That being the case, he stood here, on equal ground with any and every member of this committee. His constituents had committed to his charge certain duties, and it was not for him to shrink from the performance of them. They had sent him here to speak and to act, in support of what they believed to be their interests, and that fearlessly; and knowing that he had received that trust on these conditions, he must discharge his duty to the best of his ability. Whatever of political party feeling we may have had on other questions—the question of the right of suffrage, if you please—the question of executive patronage, or the question of senatorial tenure, there should be as little as possible of such feeling brought into this controversy. Every delegate, in this committee, on this subject, should as much as in him lies, divest himself of every prejudice which would have any undue influence, and which might in any way be brought to bear upon his mind. He should divest himself of every kind of prejudice, and every feeling of a political nature, which might enter into his mind, and have a tendency to bias it. He, so far as he knew himself, had no desire nor inclination to drag political feelings into this question. He had no desire to point to this man or that man, to this judicial tribunal or that judicial tribunal, and say they were political partisans. He said he had no desire to do this, but if it became necessary in the discharge of his duty to point them out, he would do so fearlessly, and take the consequences. He did not know that it would become necessary, and he should avoid every thing of the kind, that he could consistently with his duty.

It was becoming in him to say, that he believed every delegate on this floor was saying and doing what he believed to be right on this subject; but we may honestly differ, and it was to be tolerated when each party were aiming at the procurement of the same rights and the same privileges for the people. We should agree as much as possible, to disagree. It was impossible, according to the constitution of our natures, that we should all see alike, that we should all feel alike, or that we should all act alike, on any subject. There were no two blades of grass alike; there were no two trees alike, and you will find no two human beings alike, either in face, in person, or in mind. That being the case, is it not fair to presume, is it not right to admit, is it not our duty to avow, that others act as honestly, as purely and as uprightly, in providing those means which they believe for the benefit of the country as we do. Surely it is, and surely if that is the case, and one party are as honest in their opinions as the other, we will not quarrel because others entertain different sentiments from us. To be sure we believe they entertain sentiments contrary to the spirit of our free institutions, and contrary to the rights and welfare of our fellow men; but do they not believe the same thing of us. Then we should cultivate a spirit of toleration, and not permit our differences of opinion to lead us away into exciting and irritating discussions. His desire was, to see the institutions of our country as permanent, and on as safe a footing as the gentleman from Philadelphia, who had just taken his seat, or any other, and he would never be found advocating any principle which he believed would have a tendency to break them down.

When he reflected on the able arguments, and the interesting manner

in which they were given to the committee, by the chairman of the judiciary committee, (Judge Hopkinson) and by others who have followed him on that side, he had reason to lay his hand on his mouth and be silent; and if duty did not call upon him to do it, he should not now be addressing this committee. It might be supposed too, that those who had preceded him on the side on which he ranged himself, had covered the ground so fully and perfectly, that there was nothing left to be said or done by any one on this side of the question, he should, however, in the best manner which he could, bring to the view of the committee, some matters which he had been revolving in his mind. He was satisfied that governments should not be changed for light and trivial causes. That was a sentiment which we all knew stood forth in the declaration of independence, as a warning to all innovators. That instrument said that, "Prudence would dictate that governments long established, should not be changed for light and transient causes, and accordingly all experience hath shown, that mankind are more disposed to suffer while evils are sufferable, than to right themselves, by abolishing the forms to which they are accustomed"

Now, with relation to the judiciary tenure, we are more disposed to follow in the footsteps of those who have gone before us, than to make changes. We are more disposed to regard it as a thing that must be cherished and maintained, than to vilify it and to break it down. We have grown up with the system as it is, and it is not natural to suppose that we would be disposed to dispense with it. It has been said that we, who here claim to be christains, would, if we had been born in Asia, have been Turks. There was some truth in this remark, he had no doubt, for we know that going to a certain church with our parents in youth, and receiving a particular kind of instruction, makes an impression on our minds that never can be effaced. It was to be supposed that instruction had its influence in politics as well as in religion. He who has been educated a federalist, will hold to federal doctrine; and he who has been educated in the principles of democracy, stands by those principles, and holds to that school in which he has been instructed. Therefore, he who has been educated in a particular way, relating to any religion, is not easily induced to change in opinion; and if he does change, it requires an almost superhuman effort to accomplish it, and to divest himself of those daily partialities and prejudices which he has imbibed and practised under.

That being the case, we find that all of us have a deep feeling of reverence for the present constitution, and most of us would prefer it as it is to any change in it; and prefer following in the footsteps of those who have gone before us, from the adoption of the constitution to the present time, if it were not for other and higher considerations. But when we reflect on the nature of our government, and the rise and progress of the improvements of man under that government, in relation to his civil and political, to say nothing of his religious principles, we at once come to the conclusion that a change is necessary, and in fact indispensable; and that without a change there can be no advance in any of the great improvements made by the people of this commonwealth. What would become of all the improvements of the age, and the advancement of civilization, if we were not to change from that in which we have been instructed?

Where would have been all our improvements, in science and the arts, if our fathers had not attempted and effected changes in government? We would not now have advanced beyond a given point, and improvements would have been entirely neglected. It was folly then, to say that we must follow in those footsteps, which have been marked out to us, and must not turn out to the one side or the other.

This is an age of improvement as well in the science of government as of any of the other sciences. On this subject of government, we all know that government is divided into three kinds; monarchy or despotism, aristocracy, and democracy. In a monarchy or despotism, the will of the despot is the rule of action for all his subjects. He raises up all whom he will, and puts down and destroys whom he will. He says to one "go and he goeth, and to another come, and he cometh." In an aristocracy as in England, France, and Spain, the government is of a mixed character, being composed of king, lords and commons, and a government of this kind is considered the most splendid and most imposing, of any form of government. In a democracy, where the people are the strength of the government, they put forward whom they will; they permit what they prefer; they raise up one, if you please, and they put down another. It is to be supposed that they should have more freedom of thought and freedom of action, than in other forms of government; and they must and will have it. And they moreover will not be content without some say in the judicial as well as the other departments.

Judges were first known in the Jewish theocracy, the moral law together with their ritual, formed their constitution, and the Supreme Ruler of the world was its head. That being the case, if the Israelites had conducted themselves according to this law or ritual, they would have been in a different condition at the present day, from what they are; they would not have been scattered through the world, and found in situations, governments and places on earth, not of choice, but of necessity. The instance that was referred to this morning, in relation to the sons of Samuel, showed, that even in that age of the world, and in that early day, men might be corrupted. Even then, there were circumstances which would induce men to go aside from the path of rectitude, and become the instruments of great wrong and injustice. It was in consequence of dishonest practices in judges and people, that they had brought upon them the predictions of the prophets, that their government should be broken down, and that they should be carried away captives by the Babylonians, and that they were to become hewers of wood and drawers of water, for those who were to lord it over them. There was a curious fact connected with the Jewish history, in relation to the first judges. As we all well remember, Moses was the first law-giver, and the first judges under that law, were recommended to him to be selected from among his people, by a man who was not of the Jewish people—by Jethed, the father-in-law of Moses. When on their way to Egypt, Moses' father-in-law visited him, and he ascertained from what he saw, that it was exceedingly burdensome for Moses to examine all the cases which came before him for abjudication, and he said to Moses, that it was not right that this should be so, and that if it was continued, it would destroy him and his usefulness among his people; and recommended to him to relieve himself of this burden by the appointment of judges from among his people, to

perform this duty, holding them responsible to him for the faithful performance of it.

A recommendation was made to him to select persons who were wise and learned in the manners and customs of the people, and to set them apart as judges. This he did—and seventy persons were selected and were so set apart as judges of certain matters—but all the more important matters were brought before him. This is an important part of the Jewish history, and it is, at the same time, instructing and interesting.

After the fate of the Israelitish people, after they were carried away captive to Babylon—after the history of the Romans, the Grecians and the Carthagenians, the next thing that we learn about judges, courts and juries, was in the time of Alfred the Great, of England. If my recollection serves me right, Alfred the Great, in the ninth century, established courts of justice in the manner in which they now exist in England and in America. He assembled the whole people once a year by their hundreds; "not only to inquire into and correct crimes, but also, all abuses of power in the magistrates, and, at the same time, to do military duty. Alfred framed also, a body of laws, which was the basis of English jurisprudence."

The government, the laws and the jurisprudence of the country, remained pretty much in the same condition as that in which they were placed by Alfred, until the time of William the Third. Previous to the reign of William, the king of England had possessed the power of appointing, as well as of removing all the judges. In the reign of William the Third, it was alleged to be important to the interests and happiness of the people, that this power should be taken away from the monarch, and an act of parliament was passed, by which he was prevented from removing, at his mere will and pleasure, persons holding the commissions of judges. It was provided by that act of parliament, that the judges should, from that time forward, hold their offices by the tenure of good behaviour; subject, however, to removal at any time, by both houses of parliament. And from that time to the present, the king has had no power, or control, over the judges.

It has been alleged, Mr. Chairman, that the lord chancellor of England is still appointed, and disposed of by the king, whenever a change in the ministry of that country may happen to take place. This certainly is the case in reference to the lord chancellor. He comes into office with one ministry, and he goes out with the same. In that country it is regarded, I believe, as much a matter of honor, as any thing else, to resign and go out of office with the ministry that a man comes in with. I do not know that this is a matter of absolute necessity, or that any positive injunction is laid upon the chancellor by the laws of the country. But he comes into office, and goes out of office with the same ministry, and in accordance with a rule of action prevailing there, and which is never disregarded. So also it is with the prime minister of England, and with other important personages under that government. From the time of William the Third, then, as I have before stated, until the time of the introduction of the judicial system into this country, the judges held their offices by the tenure of good behaviour. That tenure, under the system established by William Penn, was changed—although he had been educated in that country which acknowledged the tenure of good behaviour.

And although he had himself enjoyed all the advantages and blessings to be derived from that government, yet, according to his notions of right and wrong—according to the belief which he possessed, that a different tenure was best suited to promote the interests and happiness of the people, he changed that tenure. It was first changed, as the gentleman from Union, (Mr. Merrill) has correctly stated, in the year 1682. In the year 1683, there was a confirmation of that change, allowing the judges to hold their offices for the term of two years. This was the existing tenure at the time of the declaration of independence; but whether that tenure prevailed in all the intermediate time between the year 1683, and the year of the declaration of our independence, I do not now precisely recollect. In the year 1776, just after the declaration of independence, a Convention was held in the commonwealth of Pennsylvania, which fixed the period of the judicial tenure at seven years, and that continued to be the term for which the judges held their office in this state, until the adoption, or rather the formation of the existing constitution of 1790. And, Mr. Chairman, it is a very curious feature connected with that term of seven years, that the people of the state of New Jersey formed their constitution—and which is now the existing constitution of that state—in this particular of the judicial tenure, only two days before the declaration of independence, went forth to the world; and that, in the state of Pennsylvania, that convention which formed the constitution of 1776, was held in the month of November. They then—that is to say, our forefathers—must have had a knowledge of what was done, in relation to a form of government by the state of New Jersey in their Convention, the two states being contiguous to each other; and it is fairly to be presumed that they would copy from the constitutions of adjoining states, as we do in the present day, the particular features which they believed to be advantageous and palatable to the people. The people of the state of New Jersey, being satisfied that the tenure for a term of years was the best and safest tenure—and that which, above all others, was calculated to protect and guard their rights and liberties, have never yet changed it; and although they have had light thrown upon them from every other state of the Union, as well as from the constitution of the United States in that particular, still they have never changed it, and, in my opinion, they never will. Gentlemen may inveigh as they will against the tenure for the term of seven years; they may cry it down as they please; they may say that under such a tenure every thing is fluctuating and uncertain in the administration of justice. If our neighbours of the state of New Jersey, enjoying all the lights which they possess, and as well informed as they are, in all the principles of free government—a people, too, who are as anxious to perpetuate our happy institutions, as we or any other men can be, are still unwilling to change this feature in their constitution, would it not be right, or, at least, does it not come as a strong argument upon us in favor of incorporating a similar provision into the constitution of our own state? It certainly does; and, from the first moment I have paid any attention to the subject, this has presented itself to my mind as one of the most cogent arguments which could be advanced on the side of agency to a limited period of years.

It is a matter of no moment to me, Mr. Chairman, whether or not Chief Justice Ewing, who came into office under that same Constitution —and who, therefore, was fully informed that there was such a feature as

that of the limited tenure in the state of New Jersey, was turned out of office after he had enjoyed it according to the will of the people; that tenure being, according to their belief, best adopted to the perpetuation of free, and tolerant, and, if you please, democratic principle, on which our government is formed. If Chief Justice Ewing had not been satisfied with that feature of the constitution, would he have accepted the station? Certainly he never would have accepted it. But did he not accept the office, in the full knowledge that he might be thus disposed of? Certainly he did. So it was with Judge Drake. And was any injustice done to either of these gentlemen? Surely not. If they acted a mistaken part in any particular transaction, and were injured in the end by means of their own mistake in that particular, is that sufficient to impair this great feature in the constitution of that state? Is there any argument in this which should induce us to conclude that it would be wrong for us to incorporate such a feature into the constitution of Pennsylvania? Certainly not.

I concur entirely with the gentleman from the county of Philadelphia, (Mr. Earle) who stated, that all the sound argument is in favor of the tenure for a limited term of years, let the gentlemen who are opposed to that tenure, argue as they may. If the members of the society of Friends in the state of New Jersey, had sufficient influence in the elections of that state to dispose of Judge Ewing, by knocking away the "shoes" from under him, and on which he relied for support, had they not clearly the right to do so? It comes to this at last—that they who look at the other side of the question are unwilling to trust the people with the management of their own affairs. They are unwilling to let the people—to whom alone all power rightfully belongs—to raise up, and put down as they choose, men with whom they may, or may not be satisfied. From the year 1776, just after the declaration of our independence, this provision was incorporated into the constitution of New Jersey, and the period of seven years was fixed upon as the time during which the judges of that state should hold their commissions. In the same year, a similar provision was incorporated into the constitution of this state. This continued up to the establishment of the constitution of 1790. In the meantime, the convention which framed the constitution of the United States, sat in the year 1787; and, in the midst of that august, patriotic and enlightened assembly of men, the like of which never has been looked upon in this country; this feature of the judicial tenure during good behaviour, was incorporated into the constitution of the United States, and it is a very singular matter connected with that provision, that it does not appear to have excited much discussion, or controversy. Why this was so, we have no means of knowing at this day. Why, it was not seriously disputed—and why we do not see motion after motion, and speech after speech made on one side and the other, in reference to that great question of controversy is, I repeat, a matter of surprise, of the causes of which we can procure no information at this distant time.

But, Mr. Chairman, the learned judge from the city of Philadelphia, (Mr. Hopkinson) notices the fact—which is indeed an imposing one—that the father of his country gave the sanction of his high name and authority, to this important feature in the constitution of the United States; and infers from that fact that we should bow to it submissively.

Mr. Chairman, no man can have deeper feelings of reverence for the name and opinions of that departed patriot than I entertain. No man who reflects on his character—no man who reflects on the peculiar times in which he lived, and the many peculiar circumstances by which at different periods of his life he found himself surrounded—no man who reflects on the fixed integrity of his heart and purpose—as illustrated in every action of his life, whether while fighting the battles of his country in the tented field—or, in his conduct in the convention which framed the constitution of the United States—or in the presidential chair—can regard him in any other light than with feelings of deep respect and veneration. The learned gentleman, (Mr. Hopkinson) may have had the delightful pleasure—for delightful it must have been—to look upon and have intercourse with George Washington—to hear his voice—and to see him going forth as the chief magistrate of this nation, imposing and able in mind and manner; and the gentleman has also the advantage over me, as well as over other members of this convention, in that he lived at a time when the people of the United States were receiving from that great man, instructions and monitions in reference to free government and free institutions. But, Mr. Chairman, while I live, and think, and speak, and act under those very free institutions, it would be unbecoming in me to dispose of my own opinions and my own judgment, in order that I might adopt the opinions of other men—let the reasoning powers of those men be what they may. I was struck, forcibly struck, during the remarks which fell from the learned judge, on this subject, with the recollection of a passage, which, if I mistake not, is to be found in the last chapter of the book of Revelations, when John, to whom the revelations had been made, offered to fall down and worship at the feet of the angel who had given the revelation;—The angel replied "see *thou* do it not; for I am thy fellow servant, and of thy brethren the prophets, and of them which keep the sayings of this book; worship *God*." I say, I was forcibly struck with this passage of holy writ; for although I go as far as any man in reverencing the name of Washington, still I can not bow submissively to every thing he said; I can not bow submissively to every thing he wrote; I can not bow submissively to every thing he did. I must act, and think, and speak for myself. It is said that "a man's mind is his kingdom;" and, this being the case, it becomes me to enjoy my own judgment, and to promulgate the opinions and sentiments which I entertain in relation to government or any thing else, free from the interference or dictation of others, be they whom they may, or whatever may be the opinions which they themselves may entertain in opposition to mine. Therefore, Mr. Chairman, although that august man may have sanctioned this feature in the constitution of the United States, I declare my opinion to be that, it is aristocratic and anti-republican. And so believing, and so alleging, I will act on the dictate of my own judgment, at least until I shall be satisfied that my judgment is wrong.

We come now, Mr. Chairman, down to the time of the sitting of the convention in the commonwealth of Pennsylvania, in the year 1790. The constitution of the United States being for all the states of the union, and operating upon the whole, it was natural for the framers of the constitution of 1790, to endeavor to make the constitution of this state conform, as nearly as might be practicable, to the constitution of the United States. It was reasonable, natural and right that they should do

so—and that they should incorporate into our constitution—which was framed at a period only some two or three years subsequent to the constitution of the United States, this feature of good behaviour, in relation to the judicial tenure. I find no fault with them for so doing; nor am I disposed to deny that, at that time—now nearly fifty years ago—that very feature might have been as salutary and as valuable as any that could have been incorporated into our constitution. The country was just coming out of a great revolutionary struggle; things were in an unsettled—almost, indeed, in a chaotic state; and they required the wisdom and energy of Washington and his coadjutors, to impart to the government something like steadiness—something like a form—surrounded as we were on every side by anarchy and confusion. And I say, therefore, that this was probably a right and salutary provision at that time. I do not complain that it was put into the constitution of 1790. I do not say that the men who framed that constitution were not wise, patriotic and prudent when they inserted it. I hold the very contrary opinion. I say that they *were* wise, patriotic and prudent, and that our forefathers, and we ourselves, have lived peacefully and happily under the form of government which they gave to us. But I say also, that this is not an absolutely binding reason upon us why we may not make a change for the better, if we can ascertain what is better, and can come to any satisfactory conclusion as to what will subserve in a more eminent degree, the interests, and wants and wishes of the community in which we live.

He would ask whether we had not changed, in many things connected with our courts of justice, as in the laying aside of ancient customs and dress, and the introduction of simplicity for formality? Was it not true that there had been, for many years past, a progressive change going on, tending to simplicity in the proceedings of the courts, and the garb and bearing of those who administer the law, or are otherwise connected with it? The learned judge (Mr. Hopkinson) who opened this debate, recollected perfectly well, when the judges of the supreme court of Pennsylvania, and of the other courts, wore wigs and gowns, and had the sheriffs to go before them with white wands in their hands, to and from their lodgings to the court houses, as if this had something to do with justice. He, (Mr. B.) when he first witnessed that spectacle, thought there was a very aristocratic air about it. He would ask gentlemen here, if we had not now got rid of that, although old, yet ridiculous aristocratic custom? Had there not, then, been a change with respect to the judiciary in this respect? Gentlemen might say there had been a change in form, but that the substance still remained. It might be so. Had not judges and counsellors, under the influence of public opinion, laid aside their wigs and gowns? And, do they not appear, whether at home or abroad, in court or out of court, as other men do? And is not justice as stern, inflexible and imposing as it used to be? It was admitted that these articles had been dispensed with at the instance of an expression of public opinion; then why, he would be glad to learn, could not and should not something else, equally unnecessary and useless, be also dispensed with, when it could be done without destroying the judiciary, as some gentlemen imagined would be the result? He thought there ought to be, and that no ground of apprehension existed in regard to the safety of our free institutions. It had been said that an attempt was made, either to destroy the present judiciary, or to drive the present incumbents, in

judicial stations, from the bench, not on account of misconduct, but for some other cause; and that public opinion might have been brought against them by those who had some political purpose to answer. Such a course as this was condemned as being very injurious, if persisted in, and calculated to overthrow the government itself. Mr. B. maintained that there was no danger to be feared from public opinion—if that opinion were rightly formed. If a judge, or any other officer under the government, so conducts himself as to become odious to the people, was it to be expected that they would close their mouths and not express their opinion of him? It was not in the nature of the people of this state, or country to do so. In the county where he resided, some forty years ago, one of the associate judges of the court of common pleas, who was likewise a county lieutenant, appointed by the governor, for the collection of militia fines, having practised to the annoyance of the people, and become extremely odious to them, they went to the court house and drove him from the bench.

What were men to do when they had no other mode of obtaining redress of their grievances? This was the course pursued by our fathers in the revolution. They were called rebels because they would not conform to tyrannical and oppressive laws, imposed upon them by a foreign monarch.

Who was there that would now say they were not perfectly right, in refusing to submit to laws that were unjust, oppressive and injurious to their interests and welfare? If, then, our forefathers could not and would not endure any longer, the evils under which they had labored—why should their descendants in this great commonwealth of Pennsylvania, continue longer to bear those evils of which they now so loudly complain? He thought there could be no more propitious period than the present, for making the amendments desired by the people, and which could be made without prejudice to their interests, on the subject of dividing the power which the people, and the people only, possess. The government is divided into three departments. They are the executive, the legislative, and the judicial. And all agree that it is right they should be so divided, to prevent abuses, conflicts and confusion between the various powers of the government. He would ask if it was not right that the patronage which the executive had enjoyed under the existing constitution, should be diminished? Was it not right—was it not our duty so to organize our judicial department as to give more satisfaction to the people than it at present did? He maintained that not a particle of the efficiency of the department would be taken away by reducing the patronage connected with it. It had been contended by gentlemen, that if the time of the commissions of the supreme court judges should be shortened, the decisions of that tribunal would be rendered uncertain! They had expressed their fears that by limiting the periods for which the judges shall hold their offices, we should render every thing relative to the judiciary insecure and unstable. He wished to know of gentlemen whether we, by limiting the tenure of the judges, would necessarily change the constitution and character of the supreme court? In his opinion, the character of the court would not be in any respect changed, by shortening the periods for which the judges shall hold their seats. Nor, would those officers be less independent than they were at present.

The gentleman from Northampton, (Mr. Porter) said that men would come on the bench with their own partialities, prejudices, passions and fears; and that if this new tenure should be adopted, they might incorporate into their decisions, something that might render them unstable and of a character conflicting with the opinions and decisions previously laid down by the supreme court. The law was to be their rule of action, and they would, doubtless, be governed by it. He saw no ground for the indulgence of any such gloomy forebodings, as to the consequence of adopting a limited tenure. He did not conceive that such a result would necessarily follow.

On the same principle, urged in relation to the probability of the decisions of the judges being affected by a change of tenure, it might be asked, and with equal propriety, whether the ideas or sentiments, entertained by any member of this convention, in regard to the character of the several departments of the government, had undergone any alteration from the simple fact of his being made a member of this body? Do you necessarily change a man's conscientious convictions and opinions on constitutional law, or any other subject, by placing him in a new position? Not in the least, he apprehended. He would say, then, it did not follow that, because the judicial tenure was to be limited, the character of the courts would be changed, or the rules of law which now prevailed, be affected. If not, what harm—what destructive practice could grow out of a change from the tenure of good behaviour to a short term of years? But gentlemen say, if you change the tenure, you will prevent men who are capable, who are learned, who are wise, who are prudent, from taking judicial stations. Now, he (Mr. B.) would deny it, and could prove that such would not be the consequence. What, he asked, had been the case under the existing constitution of the commonwealth of Pennsylvania? Whenever a station had become vacant, either on the supreme court bench, or in the court of common pleas, had there not been a dozen applicants for it?—men who were well qualified, and possessed the public confidence to as great an extent as they who had obtained the office? It had been remarked by the learned judge, (Mr. Hopkinson) that he knew an individual abundantly qualified, who declined an appointment as one of the associate judges of the supreme court, on account of the inadequacy of the salary. Perhaps (said Mr. B.) the person referred to, might have been more profitably engaged, and it would probably have been unwise in him to accept such an appointment under the circumstances in which he found himself situated. We had no evidence brought before us that the individual was as capable of holding the office, as the one who now fills it. He (Mr. B.) did not know to whom the gentleman from Philadelphia alluded, but he might suppose the present incumbent gave as much satisfaction as the other could have done. Gentlemen on the other side had said that all judges of the supreme court were honorable, honest, faithful and industrious men—devoted to the transaction of the public business. That might be the case.

Mr. B. without concluding, gave way to,

Mr. MERRILL, of Union, who moved that the committee rise—which was agreed to.

The committee then rose and reported progress.

Mr. STERIGERE, of Montgomery, moved that a committee be appointed by the President of the convention, to make arrangements for the accommodation of the convention, on their meeting in Philadelphia; which was agreed to.

And the committee was ordered to consist of five members.

The convention then adjourned.

TUESDAY NOVEMBER 7, 1837.

Mr. BIDDLE presented petitions from citizens of Philadelphia, praying that the right of trial by jury should be extended to every human being, which was laid on the table.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the committee, to whom was referred the fifth article of the constitution.

The question being on the amendment offered by Mr. WOODWARD, as amended on motion of Mr. DICKEY.

Mr. BANKS resumed. When the committee rose last evening, he was remarking on the judicial constitution and action; and among other things, on the limited tenure. He would here say that he did not require any change which would take away from the department of the judiciary any of the power which it possessed, or which would lessen its independence, or impair its efficiency. He especially addressed this remark to the gentlemen who had last spoken, who seemed to think that the friends of reform would weaken the judiciary, and make it subordinate to the other branches of the government; that they desired to destroy its weight and character, and to leave it a feeble instrument in the hands of the government. He would say for himself, and for the friends of reform generally, that they would go as far to support the judicial character, in all its efficiency, as any on the other side. Gentlemen might remember the couplet in the address of Burns to the Earle of Glencairn, which runs thus—

> "But I'll remember thee, Glencairn,
> "And all thou 'st done for me."

Who that remembers the services of the judiciary would not be always ready to sustain that institution, which was always prepared to step in for the protection of the people, whenever its services were needed? It was not necessary for him to go into a justification of the people for complaining against a judge who, at some time or another, had been arraign-

ed before the legislature. He knew not why that should be taken into the account. He knew not that the people should be condemned for arraigning the judges who convicted Thomas Passmore and William Duane, for publishing libels. He knew no necessity for bringing before us, Judge Jackson, Judge Cooper, and others, who had persecuted persons brought before them for contempt of the judicial authority. These things had nothing to do with the question. We do not allege that they were not judges of law and facts, and that they did not do that which was right in their view. Some of us may believe, and it is a matter of opinion, that they, in exercising their authority, bore down with severe and unrelenting hands on those who were brought before them. The treatment of Passmore, by Shippen, Yates, and Smith, is in our recollection, and will any one say the people have not a right to complain. In our zeal to protect the judges, shall we prevent the people from complaining? Certainly not. The gentleman from Philadelphia, would not, when he called on us to tell where these judges were wrong on matters of law. It was not necessary to argue this question. The occasion did not require it. As to the notice which the gentleman from Philadelphia (Mr. Chauncey) had been pleased to take of the account given by the gentlemen from Luzerne, (Mr. Woodward and Mr. Sturdevant) who had so ably expounded and advocated the sentiments of the friends of reform. He thought that the gentleman did not treat his friends from Luzerne with that amenity which generally characterizes his course: but that he threw into his tone and matter something of harshness and satire, as if he considered himself better than those he was assailing, when he was ridiculing the attempt to expose to just censure the judges who had the poor outcast boy brought before them, and more severely sentenced for an offence for which he had not been convicted, or even tried. That was the position of the gentlemen from Luzerne. They did not complain that the boy was taken up for horse-stealing, and sentenced. They did not complain of this. This was right, and so they said. But when, in no better testimony, than mere out-of-doors hearsay, the boy was again taken up and punished, without either trial or conviction, it was of that they complained. And was there not cruelty in this? He did not know, and the people now could not tell why they did not rise up and drive that judge from the bench of the court as had been done in Mifflin. If the government was instituted for the protection of persons and property, should it not be for the protection of the weak as well as the strong. Had any one been thus treated who had friends and character and standing, what would have been the result? Would not the people have risen up in their majesty, and driven the judge into an obscurity from which he could never have returned? We had nothing to do with the judges of England, or with the United States courts, or the courts in the other states. It is a matter of practical utility at which we are endeavoring to arrive. From the time of Bratton in the beginning of the thirteenth century, those judges who have conducted themselves according to the spirit of the laws, and extended to individuals as well as communities, the protection which duty demanded, had always been admired, lauded and upheld. The popular will was not so much to be feared as gentlemen supposed. The man who conducts himself properly, and administers the laws firmly and impartially, will never be cast down and destroyed by an intelligent people. The judges in England, now applauded for wisdom and learning,

were mistaken as to some things which are discarded in the present day. Lord Mansfield held that jurors in libel cases are only judges of the facts —not of the law and the fact. That heresy has been discarded in our day: and the honorable chairman of the committee, (Mr. Hopkinson) and the gentleman from Philadelphia, (Mr. Chauncey) would be willing to accord to him what he alleged in that respect. This was one of Mansfield's errors, and there were other judicial errors into which he fell. Sir Mathew Hale, so justly celebrated and regarded as the wisest man of his time, notwithstanding his goodness of heart and unimpeached life, was the last judge before whom trials for witchcraft took place, and this great and good man tolerated and countenanced prosecutions for witchcraft, and punished those who were convicted. This was a singular feature of his life and times. The celebrated Sir William Blackstone was proud of what he called high maxims of government, and he did not attempt to give any judicial system to the country, but was a mere expositor of the laws. His historian says: "By what he wrote he did little to advance the nation," &c. Now, if these great judges, Mansfield, Hale, and Blackstone, could be excepted to, in the manner he had noticed, was it to be supposed that judges of the present day, not better protected by government, and who had no better opportunity of doing their duty, should once in a while fall into error? He had noticed these personages, and these particular acts relating to their history in order to satisfy the committee that we are not to rely on any particular tenure of office, any capacity of mind, any extent of learning, or any feeling of independence, with which we might surround and encircle the judiciary, for their exemption from the frailties of human nature. It would be useless. We cannot make men perfect. And now to reply to the questions which had been eloquently asked by the gentlemen who addressed the committee, on the subject of procuring the ablest men, and as to the means of keeping them pure, so that they should be men of integrity. His question was—what could secure the best, and purest, and ablest men? The answer may be given in the words of Franklin: "immediate accountability to the people and moderate salaries." He asked again "what provisions are best calculated to preserve these men pure and able, when placed in office?" To this it may be answered—*limited tenures, short periods in office, immediate accountability to the people, and moderate salaries.*" It is agreed by all, that a judge should be wise, learned and prudent. The gentleman from Union, (Mr. Merrill) had given a full and clear view of what a judge should be. All the friends of reform accord to that description. He said a good judge should be of sound mind, good heart, practical skill and legal acquirements. I go all that length with the gentleman. But the gentleman from Union went on, saying—to support such in the estimate of the people, the tenure of good behaviour must be continued. The judges must be above the people, so far that they could not reach them.

The gentleman who spoke last, used almost the language of Mr. Rutledge on the repeal of the midnight law concerning judges, the very night it was ascertained that Jefferson and Burr were elected president and vice president. The next session of congress in 1802, Mr. Brackenridge, of Kentucky, offered a resolution relating to the repeal of this act. The constitutional position was taken by those opposed to the repeal, and they alleged that act was passed pursuant to the constitution, and that the

judges were *constitutional judges and could not be put out.* The tenure question was discussed in that great controversy, great as to the principles involved, great as to the consequences flowing from the repeal of that odious act, and great as to the ability displayed in the discussion.

The remark of the gentleman from the city, (Mr. Chauncey) was the same in character and nearly the same in words as the sentiments of Mr. Rutledge. He (Mr. B.) would like much that a judge should enjoy for the tenure of good behaviour. Every body desired that a judge should be of good behaviour, correct deportment, accountable to his maker, and his country for his conduct; and responsible to the people for his situation, as well as accountable to his maker. This responsibility must be somewhere. We say it shall not be to the governor, or the legislature, but to the people, through their representatives. The gentleman from Allegheny, (Mr. Forward) ridiculed the idea, and repelled the notion that the popular will should be brought to bear upon judges. He alleged that this would be imprudent, and would go to sap the foundation of government. Make the judge responsible to the governor! he exclaimed. The gentleman alleged that at the end of his periodical time, whether seven or ten years, the judge would be placed in the power of the governor for nomination: in other words, if he differed in politics from the governor, he would be degraded, not on account of his judicial character, but for his political life, character and conduct. Such might be the case with any judge, but for the check of the senate. If nominated by the governor would not the senate approve or disapprove? *But once in office, always in office*, was the doctrine of the other side, and therefore they wished that the judges should be placed in a situation where a finger could not be placed upon them. But if a judge were cut off, set aside, and another, equally anxious for the just administration of the law should be provided by the governor, the state would receive no injury, the judiciary would not be injured, and no injury would be done on account of it. The person who takes the situation takes it with the knowledge that he will be made responsible, and will, in his time, be set aside. And if he is set aside, it is no more than he is led to expect, especially if he has not conducted himself as he should. Was there any danger if he conducted himself properly? He believed not. Let the judge steer clear of politics, and not interfere with the executive or legislative elections, and he will not be set aside. If he be a careful, judicious, learned man; avoids politics, and does not interfere with the district in which he has to administer justice, you may rest assured, he will not be removed. It is not in our nature to set aside age and experience. The gentleman had asked if we would discharge our physician, or our mechanics? I say we do not if they act faithfully. Do you ever dismiss your physician who is devoted to your interests and the interests of your family, and to your happiness? No, sir, you do not. So with your lawyer, if you have occasion for one, and you find one who is faithful to your interests, you do not dismiss him.

Allow me, (said Mr. B.) in the farther prosecution of the subject, to allude to one singular matter which has not been touched upon. It was alleged that the people had not thought of this matter; that their minds were not prepared on the subject; that they had not been called on to examine the question, which had never been brought before them, of a

limited period for the judicial tenure. How do I prove the contrary? Do we see on this floor any judge from any part of the commonwealth, high or low? And are not there among the judges of this state, men as learned, as wise and as good as any man on this floor? Are they not as good judges of the constitution in all its features, and as able and patriotic as any gentlemen on this floor? Why then, let me ask, are they not here? There were judges in the New York and Virginia conventions to revise the constitutions of those states.

It is because the people desire some change in this feature of the constitution—because the people who are jealous of their rights, and who desire improvements in this particular, have said, nay, I might almost say proclaimed from the house tops—"We cannot trust you, wise and good as you are in your judicial character, with revising this article of our constitution. You have an interest in it, and therefore, we set you aside as an interested witness would be set aside in court."

The honorable judge from the city of Philadelphia, (Mr. Hopkinson) has no connexion with the state courts, and therefore, when he took the oath of office, it was to support the constitution of the United States. Being a judge of a United States court, it was not necessary that he should take the oath to support the constitution of Pennsylvania. In connexion with this matter, Mr. B. hoped he might be permitted to remark that he had heard it talked of, (and where the learned judge, (Mr. Hopkinson) was present too,) that the president judge in the district where he (Mr. B.) resided, and who was as worthy a man as any in it, or out of it, and indefatigable in his efforts to administer justice fairly and equally to all, would have came to this convention if the people had said—"You shall go." This fact came within the range of his own knowledge. But, the people fearing that some undue prejudice, some partial, or other influence might be brought to bear upon him, wise and good as he was—they preferred another. All the evidence which we have heard and seen say gentlemen, does not go to prove that the people desire a change in this particular. He would ask, were these facts not to be taken into account in making up a verdict—in coming to a just conclusion in regard to this matter? Why, certainly they were. They well deserved to be taken into account.

Mr. Madison, in a speech delivered by him in the Virginia convention, says, that the rights of persons and property are objects, which government was instituted to protect. He wished to learn whether it was really true, that the rights of persons, as well as of property, were now as well secured—as abundantly protected, under the existing constitution, as they would be if the changes desired by the reformers of this convention were carried into effect? He maintained, that to make the proposed changes, would not lessen the ability of the judiciary, to protect the persons and property of the people of the state, as some gentlemen might be inclined to imagine. They would not prevent the exercise of those salutary influences, which the judiciary of the commonwealth of Pennsylvania does possess, when wisely administered in all its lengths and breadths. The reformers were equally anxious with the anti-reformers, as respected the protection of persons and property. Surely they had the same stake at hazard—the same interest in the welfare of Pennsylvania as those opposed to them in this work of refor-

mation. Those here who advocated reform, were as much concerned as gentlemen who took the other side of the question. Why, then, should we join issue with them? Because we believe that an independent judiciary does not consist in the good behaviour tenure? Not at all; but in integrity of heart and life. This being admitted, what danger was there to be apprehended in respect to the people? As he had already remarked, we never dismiss a physician from our confidence whose services we approve, and who acts skilfully and faithfully. The cry of the people not being immediately connected with affairs of this kind, and this inveighing against the people, was not new—had not been heard yesterday for the first time. No: "Society" according to the sentiment of a popular writer, "as a mass, seeks the best government, and the best administrations of that government; and, if the mass be not informed, and allowed, by the shortest and simplest methods, to manifest their sentiments by word and action, insinuating demagogues will drive them to one extreme, while property is driven to the other; consequently, both will be destroyed."

Deprive the people of any participation in the administration of their government in any department—prevent them from exercising control over their officers—whether executive, legislative, or judicial, and say that the tenure of their respective offices, shall not be such as to bring them, their office holders, periodically within the control of the people, then the people will surely become dissatisfied, complain loudly, and finally bring about a change in their government in this respect, and make their officers more immediately responsible, than they had been. The experience of the world had fully shown, that although, a people might submit for a long period to wrongs and injustice, they would eventually obtain redress. The many revolutions that had taken place in the world, were principally brought about for the purpose of effecting an amelioration in the condition of the people. We had frequently heard it proclaimed, that the people do not understand what is for their own interest, and that they are not to be entrusted with the management of their own affairs. From the formation of the Saxon heptarchy, down to the revolution of 1688—our own revolution of 1776, nay even to this day—the cry had been, the people cannot govern themselves. The people, however, have, more or less, kept an eye on their own affairs, and when their complaints have been disregarded, and they have suffered almost beyond human endurance, they have overthrown their government, and made the reformation they desired. He regarded the fears and apprehensions professed to be entertained by some gentlemen, lest the people might do any thing adverse to the welfare of the country, to be attributed to that exclusive spirit which is inherent, probably, in the nature of man, and which is cherished by those who move in the higher circles of society. "Every day's experience," said George Mann, of Virginia, "as we have to do with it, confirms this position in our minds—that men of the same standing, education, wealth, and pursuits in life, will associate together." They become classified by such associations, and the mass of the people on whom the government relies, and upon whom those who hold different relations in it, must rely for its steadiness and continuance.

If they are not allowed to choose their rulers—if they are not allowed

to have a say in their government—if they are not allowed to bring their action to bear upon the judicial department and every other, they will become dissatisfied, will complain, and will pull it down—peaceably, if they can—forcibly, if they must,—and take the consequences. You cannot divest men in a free country, of the right of thinking, speaking, and acting for themselves. We know, that, according to law, they are held responsible for speaking and writing what is not true; and so they should be while there is law. Now suppose, that the people had not reflected much on making amendments to their constitution, and a voice should go out of this hall in favor of the necessity, and another against it, would they not, he (Mr. B.) asked, reflect the more, and compare the sentiments of this and that man, and after all act as they should think best? And, was it not right that they should do so? All admitted it was right that they should be the privileged to speak, to write, and to act; but, then, say some, they must do these things in confirmity with that rule which we have precribed, because, we understand their interest better than they themselves can! Preposterous sentiment! (exclaimed Mr. B.) He had no doubt that delegates here had met with the anecdote he was about to relate, in the course of their reading. About the commencement of the revolutionary war, Dr. Ewing was in England, and being one day invited to dine at the house of a friend, he met the celebrated Dr. Johnson. Being seated at the dining table, Dr. Ewing and a gentleman near him entered into conversation about the condition of the colonies. Some gentlemen inquired what was their strength, as they had threatened to separate from Great Britain, provided the difficulties then existing, should not be settled. Dr. Ewing gave such information as he deemed it prudent to give. And, in the course of his remarks, he noticed something in Dr. Johnson's manner which indicated rather strangely his feelings, and his thoughts, which might be interpreted to read—"these Americans think themselves quite as wise as they should be." All at once, however, he abruptly broke out with "what do you Americans know of government? you never read any thing." "Pardon me, sir," said Dr. Ewing "we have read the Rambler." The Doctor was astounded at the remark, and smiled upon Dr. Ewing. When the cloth was removed, Dr. Johnson requested Dr. E. to take wine with him, he did so; they spent a very pleasent evening together, and were friends ever afterwards. He wished gentlemen to know that none of the people are indifferent or ignorant of their own affairs. The people naturally give their attention to that in which they feel the greatest interest, and believe to be right. They will carry out that which will secure them the greatest amount of happiness. And, should they not do so? Was it not their province to examine, and pass upon the action of the members of this convention? Undoubtedly it was. When, too, they shall have an opportunity of examining the amendment proposed by the gentleman from Beaver, (Mr. Dickey) in regard to the supreme court judges, they will do so. It was rather singular that they who set out, at the commencement of the proceedings of this convention, by declaring themselves opposed to any change in the constitution, should now be found voting for a limited tenure. Gentlemen, he supposed, who had pursued this apparently inconsistent course, could satisfy themselves why they had done so. How their words and their actions between the last session of the convention and the present, agree, remained for

them to show. The constitution was then called a "matchless instrument;" it was the very thing it should be, and ought not to be touched either in articles or sections. It could not be improved. And now, forsooth, the gentleman who indulged in these laudatory terms, have actually voted for limiting the tenure of the judiciary, to a term of years, instead of sustaining the good behaviour tenure. They have abandoned it. They were now willing to reduce the tenure of the supreme judges to fifteen years; the judges of the common pleas, to ten; and the associate judges to five years, notwithstanding, all that they had said against making any alteration! He knew, that according to the Indian mode of warfare, you may decoy into ambuscade an enemy, and cut him off. Alexander the Great, treated many of his enemies in the same manner. His drawing Darius by stratagem into the defiles of the mountains of Cilisia, is evidence of this. When the Russians decoyed Napoleon into the capital of Moscow, the greater part of his army was destroyed by the orders of Count Rostopschen, the governor of the city, who secretly directed his spies to set fire to it in various places. This mode of warfare had since been frequently practiced, and in all probability will be again. The doctrine laid down by Mr. Jefferson was—"the price of liberty is eternal vigilance." They who had voted on this amendment affirmatively, when the time came for determining between it and the existing constitution, might reject the amendment and take the constitution, and then justify themselves to the world. This might be regarded as a sort of reservation vote. But, he warned those who were the friends of reform, to shun this rock. He cautioned them to be on the look-out, for there were breakers ahead. Or, to use the beautiful figure of the learned gentleman from Philadelphia, (Mr. Hopkinson) "sternlights did not shew ahead." "Coming events cast their shadows before" (said Mr. B.)

Let us look at the limited tenure, as contained in the amendment of the gentleman from Beaver, (Mr. Dickey.) Why should the supreme court judges hold their offices for fifteen years? Did that term at all meet the wishes of the moderate reformers? No, it did not. Look at the supreme court bench, and see how long the judges have been in commission. He knew that the gentlemen who was now chief justice of that court, was an associate judge in 1816, or thereabouts, and held the office until 1824–5. The elder associate judge was commissioned by Governor Shultz, in 1826; the next in seniority was commissioned about the same time; and the others since. The chief justice has been in office about twelve years; and every one who had had any business before the supreme tribunal, would most willingly accord to that officer and his associates, ability, learning, and honesty. Yet, after all, he would ask, were they not liable to be sometimes mistaken in their decisions? Had they not been? Was not the opinion of the chief justice on record, that he did not feel himself at liberty to declare an act of assembly unconstitutional. If that were so, then, he (Mr. Banks) would say that the supreme court was not what it should be. The associate judges had not endorsed the declaration; though, perhaps, they had not been called on to do so. But if they should be, would they do so? He ventured to say that they would not. He asked if the decisions in relation to costs, are what they always have been? For years, before a late act of assembly was passed, no lawyer could inform

his client, before the cause was taken to the supreme court, what would be the decision upon questions of costs. Let the lawyers of this convention turn to their judgments, and see what they are.

Now, as to the justices of the peace, he would, in the first place, beg leave to notice what had fallen from the gentleman from Franklin, (Mr. Chambers) because he thought that gentleman was not altogether correct. He alleged that justices of the peace, who had causes before them for $5 33, were to be regarded only as ministerial officers. So far as he (Mr. C.) had understood, and considered, they were to be looked upon as we look on prothonotaries,—not as judicial officers. This might be the case in Franklin county, but it was not in Mifflin. Mr. C. said he agreed with him, (Mr. Banks) that a less sum than $5 33, would confer upon them the character of judicial officers. They do hear and determine causes for a less amount than that which he had named; and they could enter up judgment for F or A, for the sum of one hundred dollars. They were regarded as judicial officers, not as ministerial. And they could not be separated from the judiciary. According to the extent which they have jurisdiction given them, they are as much judicial officers as any other in the county; and they are to be protected with as much anxiety as the judicial officers of a higher tribunal. They ought to have extended to them the kind, upholding hand of this convention, and of the people of this great commonwealth, as much so as the judges of the supreme court, common pleas, or any of the other courts. They have more to do for and with the people than the supreme court, and the courts of common pleas, district courts, and all the rest combined.

The experience and observation of every gentlemen who heard him, doubtless satisfied him of the truth of the remark. The justices of the peace had many more suits brought before them, and were more likely to be influenced. Nothing was more common than for a merchant, physician, mechanic or farmer, to give his bills for collection to a justice of the peace, living in the ward or district where the parties live. And should judgment be given in favor of one of the debtors, he would take it from him and give it to another. Such is the conduct of men.

The justices were likely to have an influence operating upon them which the judges were not subject to. It was right, then, that the public should be protected against it. If any influence could be brought to bear on any one branch of the judiciary, it was on the justices of the peace. Gentlemen seemed to look on them as of small account. The honorable chairman of the committee on the article now before the committee, made rather a severe remark on these officers—whether intentional or not, Mr. B. did not know. He said that the justices of the peace were a kind of small change, given to satisfy small politicians, or something to that effect. Now, he (Mr. B.) asked, if it was to be supposed that the justices of the peace were to be diverted from doing what was fair, and just, and honorable, by being talked of in this way? Were they to be driven from their duty by any language that might be used in regard to them? Were they to be treated as the "off-scourings of all things," because they had taken office? They might, like other classes of men, sometimes do things which were not exactly right. There were some, perhaps, who were not as well qualified as they should be. But,

to inveigh against them as a class, was very unjust; for there were men in it, who were as high minded, as intelligent, as devoted to the public welfare, as any other class in the community. Why they should be held up to odium—to have the finger of scorn pointed at them, he knew not. Why should these men be treated so—merely because they had received their commissions from the governor of the state, whom they had aided in raising to the station he now held, as though it were a crime in him to confer favors upon his friends; and a crime in them to receive?

Some gentlemen here were for treating the justices differently from the judges, whom they considered as not so important. There must be something exclusive somewhere!

Now, as to the associate judges: it seemed to be conceded, even by those who came here as reformers, that the associate judges should not have the same advantages extended to them as the president judges.

It was supposed, by those desirous of a reform in the judiciary, that the court of common pleas, or the supreme court, needed reform. It had been said here, however, that the courts of common pleas required much less than the supreme courts. Now, in his opinion, if the hands of any man or any body of men in office, were to be upheld and strengthened in the discharge of their duty, it was the judges of the courts of common pleas. They required our aid and support in a remarkable degree, because they were more likely to have an improper and extraneous influence brought to bear upon them, than the judges of the supreme court. They required more protection than any class of the judicial officers.

It was not long ago, that a president of the court of common pleas, in one of the counties of this state, hearing and determining some causes, and one of the lawyers, engaged in a case before the court, gave offence to the judge by some remark. The judge told him to "*sit down.*" The lawyer hesitated, for a moment, and the judge exclaimed: "If you do not sit down, I will send you where you will not enjoy daylight as you do now." The lawyer kept his place. The sheriff, it so happened, was a devoted friend to the lawyer, and, if the judge had ordered him to take the lawyer to the county jail, he would not have obeyed it. He would as soon have thought of cutting off his right hand. Fortunately, the matter was not carried any farther; if it had, the consequence would have been, that the judge would have been driven from the bench. But the judge gave way before the matter came to a crisis, and the consequence was that he had ever since been looked upon as deficient in that degree of firmness which a judge ought to possess. He was regarded by that same lawyer as a man who might threaten, but who would not carry his menaces into execution.

So it was with many judges. Their situation was delicate and critical, and required moderation as well as firmness. But they should be firm enough to discharge all their duties, and maintain their authority fully and entirely, and to send a lawyer, if need be, to prison for misconduct. If the lawyer was in the wrong, the judge would always be supported by the people. Therefore, he said that if any branch of the judiciary required support and protection, it was the common pleas.

But some gentlemen thought very differently, and were anxious to place the supreme court above the common pleas, in the duration of the official commissions—to place it higher in power and respect, and farther from the people. And why? Because, it is, as is said, the court of the last resort. But, for that very reason, the people know less of it, and are less likely to interfere with it or the judges—and, for that reason it requires less of the support which the people are willing it should have. That court had little to do with juries and witnesses, and was not placed so immediately before the people as the common pleas court. In fact, the people saw no more of the supreme court judges, than they did of the supreme court of the United States, except their travelling to and fro.

Well, now, if they are not brought so immediately into view as the judges of the inferior courts, nor so much in danger of improper influences, why should their term of service be so long as fifteen years? Some men, who reach that elevated position, live so long as fifteen years in commission. Chief Justice Tilghman did; but there is scarcely another instance of it. But if we allow them a tenure of fifteen years, they would not, after that, be fit for re-appointment. It was very seldom that a man reached the bench of the supreme court before the age of forty-five; and if they remain there but fifteen years, they must go off at a time of life when they are unable to support themselves by their profession; and, unless we adopt the British system of pensions, they may almost become paupers.

The gentleman from Allegheny, would cut them off at the end of fifteen years, from all claims of re-appointmant; but why cut them off at the end of so long a period, when they are less able to support themselves and their families? If the reformers in this body should so avow, they would be charged with cruelty. If they are cut off at the age of sixty, after fifteen years service, some of them will be fitted completely for the poor house. Better subjects for the charge of the overseers of the poor, would not any where be found. A fifteen years term of office is, generally speaking, sufficient for life, and indeed will carry a man to that period of life, when his energy of mind is lessened, and his devotion to official duty relaxed. In that case, the judiciary would not be at all improved by appointing judges who have so passed the meridian of life.

At the advanced age of sixty, what man could hope, no matter what be his physical and mental energy at the time, to serve through a new term of fifteen years, with unabated devotion to the business of his station. Let the term be shortened, and there will be much stronger hope of re-appointment, or for an original appointment. In every case, the age of an individual, compared with the term for which he is to serve, must enter into the estimate of his capacity for the discharge of the functions assigned to him. Should it then turn out that the individual, at the end of one term, is abundantly capable of discharging the duties of his office, is faithful in their performance, and is careful to keep himself out of the vortex of politics, he will never be cut off from a second term, unless by the destructive project of the gentleman from Allegheny. I think, said Mr. Banks, that, for these reasons, the short term of seven or ten years is preferable to the longer term of fifteen years. The reasons which have brought me to this conclusion, I have briefly endeavored to give. They

are satisfactory to my own mind, and I hope will be so to that of many others.

If we go back to the people, with this feature of a long term of judicial office, and they are compelled, as they will be, to take the whole or reject the whole of the proposed amendments, the whole work, come from whom it may—from conservatives or radicals—will be looked upon as a solemn mockery. Gentleman who assume that fifteen years will be acceptable to the people, as the term of office, will find that they have mistaken public opinion. There have been many instances in which men have been driven in disgrace from high places, in consequence of placing themselves in opposition to the will of the people, and it is our duty, as well as interest, to avoid that rock. The gentleman from Northampton, (Mr. Porter) asks "where is the politician who can keep in favor with the people longer than eight or ten years?" There are, in truth, but few such men. But, what is the reason? It is because they set themselves up as dictators to the public—the people who have warmed them into life. It is because they fall into the error of supposing that they can lead public opinion wherever they will. But where, let me ask the gentleman, is the man who is obedient to the public will, having the capacity requisite to do that will, who was ever abandoned by the people?

Mr. Porter of Northampton, here remarked, that it was because they might keep in favor of those in power, but not of the people.

Mr. Banks continued. But those who are in power, are the people's representatives. They are placed in power by the people, and are alone responsible to them for the exercise of their power. I have endeavored, Mr. Chairman, said Mr. Banks, to show that this term of fifteen years, is not the tenure of judicial office which the people desire. That the people expect a shorter term from the friends of reform, is certain, and they will not receive the proposed tenure from our hands with any favor. They may be compelled to take it, but, if so, they will not think kindly of those who force it upon them.

I shall be compelled, said Mr. B. to vote against it in my place here, trusting that I shall be able, in conjunction with the friends of reform, to get someting better on second reading. He cherished the expectation, very confidently, that, on second reading, the friends of reform would secure a more favorable adjustment of this very important question. And now, sir, in conclusion, what I had to say on this subject—a subject which I may say must be embarrassing to every gentleman who undertakes to speak upon it—after having endeavored to throw into my remarks some things which others have omitted, and which it had occurred to him were necessary to be said; he would remark that, in all that he had said, and in every thing that he had done, he had carefully avoided any thing that would bring into disrepute or discredit, our judiciary tribunals, in the opinion of our constituents and the country. It was the absolute conviction that it was not necessary to keep engrafted in our judicial tenure, the principle of good behaviour, that induced him to speak on the question. When we reflected on the institutions of the country from which our fathers came, and from which they derived much of their information and experience; when we reflect that they were instructed and deeply imbued with the institutions and laws of the British government, and incorporated them into the constitution which they formed;

when we reflect too, that the constitution of 1790, the work of their hands, is so perfect in symmetry in all its parts, it becomes us to lay our hands tenderly upon it. But, sir, the circumstances of the commonwealth have so much changed since the framing of this constitution—changed too, without destroying or injuring any thing of virtue in our institutions; that it now was requisite to make a corresponding change in the constitution of our government—to adapt it more closely to the habits, feelinigs, and principles of the people, in their circumstances at the present time. I wish it, said Mr Banks, to be distinctly understood that, in taking this course on this subject, I have no personal or professional feelings to gratify—no public or private griefs to assuage—no wrongs to redress. On the contrary, I am, and long have been, on the terms of friendly intercourse with every judge with whom I am acquainted in the state, and many of them are my best and most intimate friends; and here I would remark in passing, along that one of the best president judges in the state, before he took the office, was solicited by me to accept it. He hesitated and objected. He said, "I think I had better not; at my age and with my practice, I had better go on with my profession; you know how it is; men in judicial commissions, work well for a while and do their duty, but the time comes when, by going round and round in one limited sphere, like a horse in an apple mill, they lose all inducement and spur to study and execution; they lose all the ardor of the profession, and all zeal to obtain more legal information than will suit their immediate purposes."

The fact is, sir, said Mr. Banks, that those holding office for a short term, are more efficient than those who are in for life. There is no falling behind hand with business or with study in their course. All experience shows, that a man with physical vigor can do more in a short time, than he can in years after he loses that energy. A man makes a much more efficient and devoted judge for the first five or seven years, than afterwards.

I may here say, sir, that among the judges of this commonwealth, I can mention some of my best friends, and many whom it would grieve me to injure or disappoint; and here let me add, that many of those with whom I am most familiar, agree with me that short terms of judicial office, are most consistent with our institutions, and best adopted for the proper administration of justice and inspiring public confidence. Yes, sir, some of these judges think and say, that short terms are better than life tenures to secure the due administration of justice between man and man. They have not hesitated to admit, that short terms are more congenial with the spirit of our institutions, than the tenure of good behaviour, or the life tenure. I know others who hold exactly the contrary, and believe the contrary, and they certainly have a right to enjoy their opinions. All I say is, that it should be permitted for the people to decide whether they will have long terms or short terms. Those who have advocated reform on this floor, have been likened to goths, vandals, and barbarians, and some have affected to mourn and shed tears over the mutilated remains of the constitution! Affectation is disgusting, either in man or woman. Cowper says "in man or woman, but far more in man, in my soul I hate all affectation;" and this sort of talk is sheer affectation. There are other animals which mourn and shed tears as well as man,

while alluring to entrap and destroy; but being known, they are avoided and generally harmless. He would say to gentlemen, that such rodomontade will pass with the people for no more than it is worth. To hold up the reformers as murderers of the harmless and confiding victim placed within their power, (meaning the constitution) will not much help the arguments of the gentlemen when they come before the people. The public have no sympathy in such sentiments, and do not attach any importance to them, let them come from whom they may. We shall no doubt hear and witness much more of panic, distress, and many more groans, sighs, and tears before we have done with amending this constitution. If the reformers do their duty to each other on this constitution, they have nothing to fear. The people will always support faithful, honest, and efficient public servants. They soon see through the hollowness of delusive professions, and detect the false pretences of those who seek to trick them of their rights.

Reform, sir, is the word, and in the language of Colonel Benton, relating to the word expunge: "Let the aged sire, give it to his heir; let the aged matron enjoin it upon her manly son; and let the young mother teach it to her lovely boy, whilst he draws the life sustaining milk from her bosom."

Mr. PORTER, of Northampton, felt called upon, he said, to make some explanations, in reply to the gentleman last up, who had evidently misunderstood the tenor of some of his remarks. I desired to be understood, at the outset of my former remarks, that I gave credit of honest intentions and motives, to all men of all parties, and that I claim the same courtesy for myself from others. I shall not be led away from my path by any more party terms, nor whipped into the traces by those who choose to consider me as refractory, nor driven by any denunciation from my course. If I should be driven from my course, it must be by the conviction that I am wrong, and not by any force, nor by any motives of mere party policy. The whole argument against the good behaviour tenure followed through all its different guizes, is that a judge cannot be trusted in office during good behaviour, because he is not then responsible. Now if the positions are disproven, the whole argument falls to the ground. Are not the judges responsible, first, to the moral sense of the community? Have they no regard to their character and reputation? They are responsible, as all men are, in this way. Character, reputation, the good opinion of mankind, is the strong inducement to all men to conduct themselves properly in their stations; but these may not always be sufficient to keep them in the right path. Owing to the depravity of mankind, good conduct is not always secured by mere social and moral obligations. Thus it is that government is established to protect the weak from the strong, the minority from the majority—and to protect the privileges and rights of the people.

Well sir, if this is not sufficient, and it has been found in practice not to have answered the purpose, the framers of the constitution of Pennsylvania have provided two other modes. The first, is that the judge may be removed upon the address of two-thirds of each branch of the legislature, for any misdemeanors which may not be sufficiently criminal to lead to an impeachment, and the other is by impeachment. Now, this first mode is resorted to, in cases when judges or other officers are

inefficient, incompetent, and not qualified to fill the situation which has been entrusted to their care, by want of learning or other cause. As to this matter of learning, he did not know upon what principle gentlemen could prefer an unlearned to a learned judge, unless it was that which would induce a man to take a dull axe to cut his wood, for fear a sharp one might cut his foot; gentlemen could only prefer unlearned judges because that they might know too much if they were learned. Now he had held that unlearned judges were a curse to the community in which they resided; but he had not at any time held that, because a man had acquired by a very long practice at the bar, such a legal knowledge as every man would acquire who devoted himself to it, that such men would always make the best judges. He had for some time entertained the opinion, that a man who had been for a long time a successful advocate at the bar, who had been for years and years devoted to that profession as an advocate, was not the most likely to make an impartial judge, and it arose from this circumstance. That he acquired the habit of an advocate, and looks only to one side of a question. This was the reason why men who have been long in practice at the bar do not always make the best judges. He would ask gentlemen, if they had not known instances where old men who had been brought to the bench after a long practice, took sides on a question so soon as it was presented to them without hearing the evidence; and he would farther ask, whether this had not been a geater subject of complaint againt judges of courts, and more especially such as he had mentioned, than any other. Well, then, if your young men who have strong minds and industrious habits, are appointed to judicial situations, and instead of becoming drones, as was said by the gentleman from Mifflin, they become learned judges, do they not improve with their years. He submitted to the judgment and experience of members of this body, whether Joseph Story, when he was appointed to the bench, was Joseph Story as we know him now. Was he so versed in that legal knowledge which has distinguished him in this country, when he received the appointment of a judgeship? Or did he then possess any thing like the information which he now possesses? No, sir, we know he did not. Well, sir, what was your present chief justice of Pennsylvania, when he was first appointed. We all know he was a man of strong mind, clear judgment, wrote with great energy, and had the capacity within him of making a sound judge, but will any man say that he has not since improved and vastly improved. Why, sir, we of the legal profession who have had the opportunity of observing the man, know that he is this day better fitted to fill the situation he now holds, than he was the day he first came upon the bench; and in regard to Chancellor Kent, the same observation will apply to him. He (Mr. P.) was not aware that Judge Kent came to the bench at so early an age as that named by the gentleman from the county of Philadelphia, but be that as it may, would any man pretend to say, that when he left the bench at the age of sixty years, he was not eminently better qualified to discharge the duties of the office, than he was when he came to the bench; and was he not now a living example of the folly of that rule, which prohibited him from holding his office beyond the age of sixty years; because he was now perhaps better qualified to fill that situation than any man they could obtain in the state. Well, if a judge is incompetent from want of learning, from want of industry, or from other cause, to fill

the situation of judge, the remedy of address is the proper one to be resorted to. As to neglect of the duties of his office. If he be careless in regard to his moral character, if he be a man who disregards those rules of morality, which will shock the moral sense of the community, and make him unfit to preside over and administer the laws, for a man who administers the laws should be of a pure and unsullied character, in order to give force to the principles of morality he inculcates on the bench, then he may be impeached. Here then are two modes in which judges were responsible to the people. The first mode—the removal by address—was peculiar to the constitution of Pennsylvania, as contra-distinguished with the constitution of the United States. In the constitution of the United States, there was no mode provided for the removal of these offices, or any other except by impeachment. If this had been the case with our constitution, we would not have had so many cases of impeachments in our legislatures, and it was in his opinion in consequence of a mistake in relation to the two systems, that we had fallen into so many errors in Pennsylvania. When men have been complained of in this commonwealth, in consequence of the prosecutions being entrusted in the hands of men, who had mistaken the law on the subject, we have had articles of impeachment reported, when the means of address should only have been resorted to. This was the reason perhaps, why impeachments had so often failed to be sustained, because you cannot impeach a man rightfully—he meant, as he believed a man might be impeached wrongfully—unless he has been guilty of such misconduct as would warrant his impeachment; where, he has been guilty of some misconduct, such as bribery, corruption, or such other misconduct as will prevent the stream of justice from flowing in its purity, and in these cases the judges must be broken on articles of impeachment. Well, it has been said, by gentlemen on the other side, that these modes of removal have become a dead letter, and that there is no responsibility to the people; But what does this argue? Are not those who try the judges, the representatives of the people? Do they not come fresh from the ranks of the people; and are they not the people assembled in their representative capacity. Well then, is it not a libel on the people to say that they are unable and incapable to perform the duties committed to them. Is it not saying that the people are incapable of self-government, to say that they have failed in bringing to justice judges who were incompetent, corrupt, or venal, and that in the mode provided for in the constitution. Now, he asked gentleman, if they were not carrying the argument too far, and if they were not making war upon that very people, whose advocates they profess to be. He admitted, and it was all he asked to be admitted on the other side, and when he made concessions on the one hand, he thought he had the right to claim concessions on the other, that no system could be devised which would amount to perfection. No system which humanity can devise, can remedy every evil, and meet every exigency. It was in vain to hope for it. He admitted that there might be some suffering, and he knew that many of his friends might have some cause in their own eyes, to complain in consequence of judges continuing in office, men who may not be competent to discharge the duties of the office with great ability, or men who were over-rated by those who recommended, and those who appointed them; yet he could not believe that so much evil had resulted from this system, and would result from

making changes in your judiciary, and putting these high trusts into the hands of weak and inefficient men. These were his honest convictions, and entertaining them, he was not willing to give up a certainty for an uncertainty; a system which has worked well in practice, for one which we know not how it may answer. He felt desirous of holding on to what we have, rather than launching out into the wide ocean of theory without rudder or compass. He found the judiciary system of Pennsylvania working well in practice, and he was rather willing to trust the present mode of responsibility of judges, even if we had some incompetent men, to one which would remove them without trial. Under the present system, they cannot be put out unless by persons legally constituted, and this was the system of responsibility which he preferred. Now, if much evil has ever resulted to the people of Pennsylvania, in consequence of the incompetency of judges, either from old age, indolence, or immorality, the power has always been in the hands of the people, through their representatives to remove them. They have had the remedy in their hands, in practice, as well as in theory, and if the delinquent officers have not been removed, it was because the remedy was not resorted to, or that the evil did not exist to a sufficient extent, to justify a resort to it.

Now, a great deal has been said about the sovereignty of the people, and the responsibility of judges to the people. Well, was there not a responsibility of judges to the people? Certainly there was, because the people were the depositories and source of all power. The principle of responsibility is conceded, and that there should be a responsibility to the people through their representatives, no one doubts; but this very responsibility, which is asked for exists now, and can be of course applied to all necessary cases. Now, he believed it was conceded by all at this day, that the government of the people was the rightful government of all nations, but it does not follow that every nation was capable of self-government. We have had woful examples to the contrary. In order then, to make the people capable of self-government, they must be enlightened—and thus the principles of democracy were advancing step by step, in this country, until they were consummated by the declaration of independence in 1776. This right of self-government, then, was admitted, and the only difficulty was as to the manner in which it should be exercised to produce the greatest good to the community at large. He believed, we were all in pursuit of this object, but we differed, as to the mode of accomplishing it. Now, as he had said before, every government grows out of the necessity of protecting the weak against the strong, or in other words, out of the infirmities of human nature. But you cannot carry out this doctrine of a democracy to the full extent, you cannot carry it out in this country in consequence of the extent of our territory. In the primary democracies, all powers were exercised by the assembled people, but this cannot be done now, because not more than one man in five thousand could attend, and if they could they would be a very disorderly body. We then resort to that plan of government which may be designated a representative democracy, and when the representatives assembled together, they are the people assembled in their representative capacity. Here, then, we have a representative democracy in principle, and all responsibility is to the people, but it is not always directed to the whole mass of the people. In many

cases, in fact in most cases, as that of judges and other public officers, the responsibility is to the people, through their representatives. The responsibility exists therefore, and if the officers have not been called to account, if they were such officers as ought to have been called to account, it is because the people through their representatives are not faithful to themselves. This was the dilemma, which gentlemen got into in their argument. Now the necessity of protecting minorities from the oppression of majorities, has been found as essential in republics as in monarchial governments. It is just as essential to protect a minority against the oppressions of a majority in a republican government as to protect the citizen against the crown in a monarchy. If he was asked for proof of this, he would point you to the twenty-six states of this union to which a republican form of government is guarantied. Now, sir, look at these states, and you will find that each one has formed a constitution. How were they at first introducad, and what is their object. Our constitutions are all essentially bills of rights; the constitutions of all the United States are essentially declarations of rights; because they limit the powers of the government, and when gentlemen say you must not limit the people they say the people are wrong in sending us here to make a constitution for the government of this state.

Sir, the very assembling of this Convention, together with the fact, that it was directed by a majority of the people of the state is a declarations by them, that such a thing as this bill of rights which he had alluded to, was necessary to protect the weak against the strong, and the minority against the majority; and when he said this, he was but speaking the voice of a majority of the people of Pennsylvania, expressed by over ten thousand.

Now, this bill of rights was first recognized in England in 1688, when the Prince of Orange succeeded to the British throne, and as an authority for this he would refer gentlemen to the handiest book which he could get hold of. In the Encyclopedia Americana, volume 2, page 106, would be found the following remarks on this subject:

"*Bill of rights or declaration of rights*, is the assertion by a people or recognition by its rules," of that residuum of natural liberty, which is not required by the laws of society to be sacrificed to public convenience; or else those civil privileges which society has engaged to provide in lieu of those natural liberties so given up by individuals." The houses of lords and commons delivered to the Prince of Orange a list of such rights and privileges, February 13, 1688, at the time of his succession to the British throne, concluding with the words, "and they do claim, demand and insist upon all, and singular the premises, as their undoubted rights and privileges. The declaration is usually called the bill of rights. A similar declaration was made in the act of settlement, whereby the crown was limited to the house of Hanover. Similar bills of rights are prefixed to some of the state constitutions in the United States. *But the constitutions of all the states as well as that of the United States, virtually include in themselves declarations of rights, since they expressly limit the powers of government.* The same is true of the constitutional charters of those European governments which have adopted constitutions. One of the objects of these being to guarantee certain rights and liberties to the people."

Now, sir, Magna Charta was a bill of rights also extorted from tyranny by the Barons bold of England, which served to a great extent, to secure liberty to the people. In a monarchy, a bill of rights is so much restraint imposed upon the monarch; which has either been extorted from him, by fear or granted from policy, more surely to retain the balance of the power, he may exercise. In a representative democracy, the constitutions are bills of rights, since they expressly limit the powers of government. They are imposed by the people on themselves, voluntarily imposed, in order to prevent abuse of authority, which is tyranny in whoever administers the government, whether it be administered by the people or by a monarch. Now, we have a recent publication which he presumed would be taken as pretty good authority by some gentlemen here. In the United States Magazine and Democratic Review, the following doctrine is laid down in page three:

"The great question here occurs, which is of vast importance to this country of the relative rights of majorities and minorities. Though we go for the republican principle of the supremacy of the will of the majority, we acknowledge, in general, a strong sympathy with minorities and consider that their rights have a high moral claim on the respect and justice of majorities. A claim not always fairly recognized in practice by the latter in the full sway of power, when flushed by triumph, and impelled by strong interests. This has ever been the point of the democratic cause, most open to assault and most difficult to defend."

Again in page five, this writer says, "on the one side it has only been shown, that the absolute government of the majority does not always afford a perfect guarantee against the misuse of its numerical power over the weakness of the minority."

Now you can apply this principle to the various departments of your government. It is said, and with great truth, that your judiciary is one of the weakest departments of your government, and those who wish to pursue this doctrine farther, will see it argued with great power in some of the numbers of the Federalist, written by Alexander Hamilton. Your judiciary, therefore, because it does not excite the sympathies of the people, in consequence of its not interfering in the business of men generally, needs protection from the government, and general support from the people. He had said before, that he did not consider the present system as perfect; and he doubted whether he would ever see perfection this side of the grave; still he believed it had worked pretty well in practice, and he could not agree with gentlemen who wished to abandon the system because evils had existed under it. Let us first take up the argument that it has not worked well because we have not always had good judges under it, and they have not always decided right. If gentlemen would prove to him, that this argument was correct, he would prove to them, by the same kind of argument, that the trial by jury ought to be suppressed. Why, about the year 1799, in a certain county in this state, which shall be nameless, when politics ran very high, there was a certain tavern keeper who was an honest and independent democrat, and certain tories of that day, who were pretty numerous in that quarter, hired an Irish ruffian to flog this tavern keeper in his own house. The Irishman went there, knocked the man down and fractured his skull. The tavern keeper bound him over, but when the matter came before the

grand jury who were packed for the occasion, they ignored the bill, and no redress could be obtained. In another case, two parties were sitting at a table, when one rose and threw a wine decanter in the face of the other, and mangled him in such a horrible manner that he nearly died of the wound, and when he attempted to bring a suit, this same packed grand jury ignored his bill. According to the doctrine of gentlemen, then the trial by jury ought to be dispensed with, because of the improper practices of jurors. He had heard more in relation to these practices of juries. He had heard it said in a certain county, when politics run high, not long since, that the sheriff, when he drew the names of jurors to serve in certain cases, who were of opposite politics from himself, tore up the name and let it fall under the table, and only produced such names as were of the right politics.

Then, here was outrageous practices, but who would think of abolishing the trial by jury because of them. Why, sir, by this same sort of argument the very religion we profess might be put down, because, we do not always see good men preaching it and professing it. But because we may have some vicious men professing to be teachers in our holy religion, who would think of abandoning and denouncing it. But we may go a little farther in this argument, and if it is a good one the doctrine of reform can be put down by it; because we know some reformers were very bad men.

He held in his hand a pamphlet, entitled "Sampson against the Philistines, or the reformation of law suits; and justice made cheap, speedy, and brought home to every man's door; agreeably to the principles of the ancient trial by jury, before the same was innovated by judges and lawyers. Compiled for the use of the honest citizens of the United States, to whom it is dedicated." This work was published many years ago, and he recollected having read it when he was a boy, and it made such an impression on his mind, and gave him such a horrible idea of judges and lawyers, that he was almost ready to become a Don Quixotte, and enter upon the study of the subject, for the purpose of reforming the law; but he soon found that all was not gold which glittered. Now, this same Jesse Higgins, for that is the name of the author of this work, was a great reformer, and perhaps was the father of the fathers of reform in this Convention: and he used the same means of effecting his object, as that used by the reformers of the present day, namely, perseverance.

He would recommend to the attention of gentlemen the following extract from the preface to this work: "But when you read this pamphlet over and over again, sew it to your almanac, and keep it safe and handy for rainy days, or long winter nights; and when it is well read and remembered, you may attack the best of them boldly; if you are beat once, look over your book again, and you will discover how you lost the day, and be prepared against the next attack; persevere until you triumph."

This recommendation must have been adopted by some of the friends of reform of the present day; for they have persevered until they have got a convention.

The same doctrines which are entertained by gentlemen now, were promulgated by this writer in 1805; only, that he had gone farther

in some things than gentlemen now went. It was a matter of wonder to him that our great reformers had not got hold of Sampson against the Philistines, to support them in their views, and it could only be accounted for in this way: that they either did not exist then, or did not exist in Pennsylvania. Here were all the arguments in relation to the Passmore case, and the remedies proposed to correct the evils growing out of such transactions. Now it so happened that this Jesse Higgins was one of the greatest rascals that ever resided in the state of Delaware. According to the argument of gentlemen, then, reform must be put down, because the grand father of reform was a rascal. You need only go to that part of the state of Delaware in which this individual resided, to hear his character. During the last war, he (Mr. P.) happened to be stationed near where this great reformer had resided, and had learned something of his character, and he was then convinced that men were more capable of making a great sensation abroad, than they were at home.

One word more, and he was done. The gentleman from Mifflin had said that a judge does a great deal more the first year after his appointment, than he ever did afterwards.

Mr. BANKS explained. What he said, was, that a judge did more the first year, or the first three or five years, than he did in the same space of time afterwards.

Mr. PORTER resumed. Well, all that he could say was, that his experience did not bring him to the same conclusion with the gentleman. He had known judges, he believed, to decide more cases the first year after their appointment; but there was a great many more of them to be reversed by the higher court; and this exemplified the old adage, "the more haste, the worse speed." He was aware it was the case with some judges, when they were first appointed, to go to work full tilt; and he had seen more injustice done by these speedy decisions of causes, than he had ever seen by the delay of justice. He admitted that some men were slothful by nature, and if you did not give them enough to do, they would become lazy. Well, then, they ought to be made more industrious, by giving them more to do; because, it was with mind as it was with water—the stagnant pool soon became putrescent. The mind which has not sufficient exercise, will become sluggish. Employment was what made great judges; and he believed no judge would be a great judge, who had not much to do. This was what made the English judges so celebrated. But lawyers were like other men; they would not do more work than they could help. But these were merely evils in the details, which can be remedied without altering the constitution.

This whole evil could be remedied by the rotatory principle. Let the judges go from one district to another, and his word for it, the evil would be corrected. We never heard a word of complaint, while the circuit court system was in operation. There were evils, he admitted, growing out of the judges residing and presiding in one district all the time; because he comes to have acquaintances and friends; and if he happens to decide a case rightfully in favor of one of these, it was looked upon with suspicion. Instead of having a provision, then, that a presi-

dent judge should reside in a district, he would have one that he should not reside in the district in which he presided.

But he objected to having these evils of detail brought up as evidence against a system which, in the main, works well.

He believed he had now said all he intended to say on this subject; and he did not think he should again trouble the Convention in relation to it. He felt satisfied in his own mind, and so feeling he could not help expressing himself on the subject, that there were fewer evils sustained by the good behaviour tenure, than could be, if judges were appointed for short terms, and would have, as a matter of course, to court executive favor in order to secure a re-appointment. Judges ought to stand as independent as possible between the accused and the accusers. But, if in cases of a prosecution, got up by those in power against some humble individual, his word for it, a judge appointed for a tenure of years, would be found on that side which would bring most influence to his aid on the day of his re-appointment.

He wished the judges removed, then, from all such influences; and he hoped never to see a power over a judge which could say to him: "If you decide in this way, you shall continue in office; but if you do not, you shall be removed."

Mr. BANKS said there were a couple of matters which he had neglected to notice when he addressed the Convention, which he hoped he might have the opportunity now of laying before the Convention.

The first was, that our district courts, which had judges of the highest character to preside over them, were appointed for seven and ten years. These courts we had under the existing constitution, by means of acts of the legislature. The judges were appointed for seven and ten years, and the offices were filled with men of distinguished ability.

Another matter, which he wished to notice, was, that all the constitutions which were framed and adopted in the United States, since the year 1830, had this feature of a limited tenure in them. As, for instance, the state of Mississippi; the constitution of which was adopted or revised in 1832. The judges of the high court of error and appeals were appointed for six years; and the circuit court judges were elected for four years by the people: and the judges of the other inferior courts were elected by the people for two years.

In the state of Michigan, the constitution of which state was agreed to in convention in 1835, the judges of the supreme court are appointed by the governor, by and with the advice and consent of the senate, for the period of seven years; while the county court judges are elected by the people for the term of four years.

In the state of Arkansas, the constitution of which state was agreed to in convention in the year 1836, the judges of the supreme court are elected by the legislature for the period of eight years; while the justices of the peace are elected by the people for the term of two years. And the justices of the peace so elected, are to choose a presiding judge, to preside at the county courts, also for the term of two years.

These facts I bring to the notice of the committee, in connection

with what I have said before. The judges of the district courts are, under the constitution and laws, appointed and commissioned for the period of seven and ten years; and the states which have held conventions since the year 1830,—to wit, the states of Mississippi, Michigan, and Arkansas, have all adopted this feature of the limited tenure for their judicial officers.

Mr. M'CAHEN rose, and inquired if the amendment was susceptible of a division? To which interrogatory the CHAIR replied in the negative.

Mr. READ could not, he said, see any reason why the amendment was not susceptible of being divided, so as to take the question first on the tenure of the judges of the supreme court; secondly, on the tenure of the president judges; and, thirdly, on the tenure of the associate judges. They were three distinct and separate questions; and, as such, so far as he could discover, they were susceptible of division.

Mr. MANN asked for the reading of the amendment; which having been read,

Mr. FULLER rose to inquire of the Chair, whether, if the proposition now before the committee should be negatived, it would be in the power of any gentlemen to offer an amendment to the constitution of 1790. The question, as he understood it, was between the amendment of the gentlemen from Beaver, (Mr. Dickey) and the constitution of 1790. If the amendment of the gentleman from Beaver was negatived, Mr. F. supposed that it would be in the power of any member to offer an amendment to the provision in the old constitution.

The CHAIR gave his opinion that, if the amendment now before the committee was negatived, the question would then recur on the adoption of the article of the old constitution.

Mr. FULLER. Which article, I suppose, will be open to amendment.

Mr. STEVENS submitted that that could hardly be the case. The committee would take the question on the report of the committee. If the amendment was rejected, it could not be brought up again until second reading.

Mr. FULLER said, that he felt himself bound to vote against the amendment of the gentleman from Beaver, (Mr. Dickey) because he did not believe that it contemplated that kind of reform which was desired by the people of Pennsylvania. On the face of it, to be sure, it was reform; it was the limited tenure of the judicial office; but, practically, he did not believe it would answer that end. He should vote against the amendment, in the belief, that, before the question was finally disposed of, the Convention would be able to secure that limit which the people of the commonwealth desired to have.

Mr. SERGEANT rose and addressed the committee as follows:

Mr. Chairman: If the proposition submitted by the gentleman from Beaver, (Mr. Dickey) shall be adopted, then when it comes up again in Convention, we shall have fairly before us the question between a tenure for a term of years and a tenure during good behaviour, and we shall all have an opportunity of voting directly on that question. In the meantime, the question is not between a tenure for a term of years and a tenure during good behaviour, but between a tenure of fifteen and ten years, as

applied to the judges of the supreme court, and a tenure of ten and seven years, as applied to the president judges of the court of common pleas, and in like manner of the associates. It is simply a question of more or less time, and it is the only question on which we can vote, in the manner in which the subject has now come before us. When I vote, as I intend to do, in favor of the proposition of the gentleman from Beaver, I shall vote for it because it contemplates the longest time; and although, in my judgment, the tenure should not be for any limited term of years, but during good behaviour; yet the proposition for the longest time, to accompanied with the condition of good behaviour, approaches nearer the tenure which I think the most perfect, and which I wish to have continued. Therefore, I shall vote in favor of it. But when the question between the tenure for a term of years and the tenure for good behaviour shall come before us, as it will do on second reading, I shall have the opportunity of voting in favour of that principle which I believe to be right.

Mr. Chairman, no opportunity has yet been presented of taking the sense of this Convention directly on the question of tenure during good behaviour—I mean, of testing how many members of this body are in favor of that principle. The opportunity, nevertheless, will hereafter arise, as I have already intimated, and I am myself satisfied to have an opportunity of voting on the question at a future time; voting, in the meantime, in the manner I have stated. As it is probable, however, that I shall not have another opportunity of submitting the reasons why I entertain the views at which I have just hinted—I mean, that the tenure of good behaviour is the best possible judicial tenure—but that if it must be limited to a term of years, accompanied with the condition of good behaviour, the longer term is best calculated to attain the desired purpose, I will, with the permission of the committee, avail myself of the present occasion to offer my views. I am aware, Mr. Chairman, how much this committee has been fatigued, by its long attention to the discussion of this question; and that I am probably about to do a thing not very acceptable to them, in offering, at this time of day, any remarks on the subject. And, sir, probably it is not necessary that I should offer any remarks: necessary I mean, with reference to the discussion on either side, for I have no hope that I shall be able to add to the arguments which have been already presented to the Convention in favor of the tenure of good behaviour, nor to remove any of the doubts or objections of those gentlemen who are arrayed against us on the other side. But, sir, if the members of the Convention feel themselves fatigued by the discussion they have heard on this question, let me ask them whether the severity of the exercise which their minds have undergone, has not been ascribable as much to the importance as to the length of the debate? If this had been an ordinary question, of little moment, during the discussion of which the members of this body could have been quiet in their places, pursuing the other avocations which claim their attention, independently of the business of the Convention—if they had been able to read, write, or otherwise occupy or amuse themselves, without giving constant attention to the arguments which were going on at the time, there would have been, comparatively, little labor in this discussion. But I do this Convention the justice to believe—I do sincerely believe—that, throughout the whole of this discussion, they have felt the importance of the question on which they

were called to decide, and that it has not only rested on their minds here, but that it has accompanied them wherever they have gone, and has engrossed their deepest and most anxious consideration. If such is the case, I would again say to them that, whatever the length of this discussion may have been, and it has not yet been as long as the discussion on several other articles of the constitution, nor even as long as we had anticipated it might be—whatever fatigue the members of this Convention may feel, must be attributed to the fact, that they know and feel this to be a question of vast interest and magnitude.

I do verily believe, Mr. Chairman, that upon the right settlement of these questions in relation to the judiciary, the maintenance and support of republican government entirely depend. Yes, sir, I go the whole length of this. Sir, there are successive questions, which must be separately stated, and, in some degree, separately considered. The first is, Do you, in a republican government, require a judiciary as a part of the government? If not, you can dispense with it altogether. If you are to have a judiciary, then the next question is, What is the nature of the functions which that judiciary has to perform? And, having ascertained these two points, then comes the inquiry, which is now occupying our attention—In what way can we best secure the right performance of those functions? I have not, as yet, heard any one deny that, in a republican government, as well as in all others, a judiciary is indispensable. You cannot do without a tribunal to expound and administer your laws. Without such a tribunal, your government is good for nothing. Keep your legislature! your executive! retain them, but cut off your judiciary, and what is your government? What is it with reference to the thousands (hereafter to become millions,) who constitute the body of your citizens? How are their purposes of peace, protection and security to be attained, if you have not an administration of justice? Sir, it is the end of all government. Yes, and, by and by, I may probably take occasion to show to you, that every argument used, here or elsewhere, that has gone to prove that the judiciary is to be placed in subordination to any power in the republic, is contrary to reason—because the administration of justice is the first end of all government. And if you can ascertain in what manner justice can be administered, you have then ascertained in what manner the whole end of government can be answered. If you can obtain a perfect administration of justice by means of a monarchy, then, so far as that goes, a monarchy would be a superior form of government; and if you can obtain it by means of a republican government, as no doubt you can, then a republican government achieves its title, in this respect, to an equality with a monarchial government in the particular I have mentioned, and its superiority over such a government in a vast many other respects. But if you can have a republican government, as in my conscience I believe you can, and now have, in which this great end of all government is accomplished, you have then a government of the most perfect kind, and one in which you attain, in the most perfect way, the end of all government. Sir, do I exagerate in this? Let me put you a case. Conceive, for a moment, if you can so conceive! the condition of a government without an administration of justice! It is a despotism, whatever may be its form. Suppose the case of our own government without the administration of justice! Your people can overthrow it; undoubtedly they can, and they would do so, and they would

give you only one single reason for so doing—and what is that? They would tell you that the great want of civilized and social man is not attended to and provided for in this government of yours. Gentlemen have spoken here as if this were a question, whether the judge was to be made subordinate to the power of the government—whether the judge was to be made subordinate to the power of the legislature—whether the judge was to be made subordinate to any one, or to any number of ones that we can estimate. But, sir, it is not so. The judge is the man through whom the administration of the law is to be effectuated; he is the man to whom we must look whenever we are wronged; he is the man to whom we are to appeal for the exposition of the law, and for the application of its power when our lives are in danger; when there is an attempt to take from us our liberty or our property; when our reputation is assailed. And when we have put together life, liberty, property and reputation, what have we got but the mass of all that an individual can possess on earth? Is there any exaggeration in this? What is the value of a legislature—what is the value of an executive, in comparison with a judiciary in this point of view? It is the very motive for entering into society; it is the very object of all law; it is the final purpose, the ultimate end that all government has to accomplish. Sir, government is free, government is good, exactly in the proportion in which it does accomplish this great end; and it is bad exactly in the proportion in which it leaves it undone. What do you mean by a despotism—no matter what form it may assume? What, I ask, do you mean by despotic authority? Is it legislative authority? Yes! Is it executive authority? Yes! Legislative authority and executive authority, unchecked and uncontrolled are arbitrary and despotic, and do not deserve the name of government. Sir, when God made man, in the order of his good providence, he established a paternal government; but when he established it, he planted with the power, the security for its exercise in the natural kindness of the parent for the offspring, equalling that for himself, and being, indeed, an extended selfishness. But when you pass from the paternal government of the household to the government of mankind, what do you find to supply the place of that check which thus exists in individuals? Your judiciary does not supply the feeling, but it supplies the judgment—and an invariable standard of judgment according to law, is that which will mete out justice to all. A government without it, would be like the head of a family without affection for his children, destitute of the natural, even animal feeling, existing throughout all animal creation, to guide, control, and prevent the inordinate indulgence of selfishness; I mean selfishness as applied to his own gratification, and so as to comprehend himself alone. Let any man imagine, if he can, the existence of a family in which there is no paternal feeling! We see it sometimes. We see an alienation of mind befallen a man, debasing his faculties, and destroying his understanding. Habits of vice and dissipation may produce the same unhappy effects, and, in some instances, they do so. And what do we then see? We see in a family precisely that which we should see in a government without a judiciary; disorder, cruelty, suffering—the greatest inhumanity. We see a despotism established, and the order of Providence overturned. I not only maintain that this administration of justice is the proper end of all government, but, contrary to the idea which seems to have taken possession of the minds of many gentlemen here, I say it is not only the end

of all government, but that it is to be attained in all governments precisely by the same means. Nay, I feel myself warranted in going still farther, and in saying, as I shall hereafter be able to establish, if it should be necessary to establish it, that in every from of government, no matter what it is, the evils to be guarded against, and the good to be accomplished, by means of a judiciary, are precisely the same.

But now, to be able to present this view more distinctly, let me ask the attention of the committee to the second of these questions. What is the nature of the functions which the judiciary has to perform? Are they in a popular government, popular functions? Are they in a monarchial government, monarchial functions? Are they in a representative government, representative functions? Just as much as justice which comes from Heaven, is popular, is monarchial, is republican—it is one—it is an emanation of the Deity! Forms of government are but the contrivances of man—I deem it right to make this remark here, because it furnishes at once an answer to a great deal of what we have heard on the subject of our judiciary as distinguished from the judiciary of England, or the judiciary of the different states of the continent of Europe, as, for example, of France, Spain, or Holland. If we look into the codes of jurisprudence of the different nations of the world, we shall be surprised to find that like the proverbs of nations they are nearly the same. We shall be surprised at first view; but we shall be still, still more surprised to find, that the very best codes are to be found in nations where it is notorious that the administration of justice is imperfect and venal. But with this resemblance in the jurisprudence of nations, I do not agree that the administration of justice is the same. The administration of justice in the commonwealth of Pennsylvania is one thing—the administration of justice in Spain is another; and the administration of justice in France is still another. Yet their laws are, as remarked, in essentials the same. Does any one inquire how it happens that their civil laws are nearly the same? The answer is obvious—it is because justice is the same. As nations advance in civilization, they collect together—either from the wisdom of past times, from the changes which are continually going on, either by the application of new principles, or new application of old principles—what the natural sense and justice of man knew to be right and proper—accumulated until they became maxims—laws—a system—a science. And a republican government is precisely that form of government which cannot dispense even with the science of the law, however complicated and inconvenient it may seem to be. A despotism may dispense with it. An absolute monarchy, like that of Spain, where all authority, executive, legislative, and judicial, is finally in the hands of the king—where the king is the judge in the last resort, to whom the final appeal is to be made; there, too, it may be dispensed with. But can a republic dispense with it? Can a free monarchy dispense with it? No, neither of them, because this system of law, however complicated or scientific it may be, is the security to all for the peaceable enjoyment of those rights intended to be protected by law. Conceive, then, of an administration of justice—I care not in what age or country, or under what form of government—it is necessarily one—you cannot make two of it,—it may be bad, owing to the influence of bad government upon it,—it may be imperfect—but your conception of justice, and what its administration

ought to be, is necessarily one thought, and is incapable of any division or diversity whatever.

In the book which I hold in my hand, I find what I consider to be a common error, set out by a traveller through the United States—a female traveller of respectability, who had acquired some literary, as well as scientific reputation, before she came to this country. And although she has fallen into an egregious error, yet I would not indulge that sort of remark, in reference to her, which has been employed in some of the reviews. Listen to her observations in relation to the judiciary. Speaking of the judiciary of the United States, she says:

"The appointment of the judges for life, is another departure from the absolute republican principles. There is no actual control over them. Theirs is a virtually irresponsible office. Much can be and is said in defence of this arrangement; and what ever is said, is most powerfully enforced by the weight of character possessed by the judiciary, up to this day. But all this does not alter the fact, that irresponsible officers are an inconsistency in a republic. With regard to all this compromise, no plea of expediency can alter the fact that while the house of representatives is mainly republican, the senate is only partially so, being anomalous in its character, and its members not being elected immediately by the people; and that the judiciary is not republican at all, since the judges are independent of the nation, from the time of their appointment." —*Miss Martineau's Society in America.* Vol. I., pp. 41, 42.

Not republican! continued Mr. Sergeant. Now, as this same idea of the want of republican character—the want of popular control and restraint has been dwelt upon here, I ask those who argue it, and I would appeal to Miss Martineau herself, if she where present,—to say, what is the difference between republican justice and any other justice? Sir, they would be compelled to answer, that it is one and the same thing. What then are the functions of a judge in a republican government? Why, to administer that justice which is one and the same thing throughout. Besides, let any man follow this thing to a conclusion, and what an absurdity he would be led into. If it be true that, in a republican government, there must be a republican administration of justice!—then it follows that, in a monarchial government, there must be a monarchial administration of justice! and that, in a despotic government, there must be a despotic administration of justice! Sir, is not this (I speak with great respect, nevertheless, for Miss Martineau and those who seem to adopt such notions,) is not this a palpable absurdity? Try it:—if we must go back to first principles, let us go to them strictly and carefully. What are those rights that are to be preserved and protected by the judiciary? They are rights which are anterior to the formation of society. Yes, sir, *anterior to the formation of society.* They are prior in existence to the establishment of amy form of government; and they are the same through all changes which the forms of government can undergo. Take the Isrealites, for example (as their history has been referred to,) under their first leader, Moses. Take them under his successor Joshua! Take them under their government of judges. Take them when, Samuel's sons, associated with him in his old age, having violated their duty, they were cursed with a king, and a royal form of government was established. Follow them until the twelve tribes were divided—two

under Rohoboam—and the ten rebelling tribes under Jeroboam. If I am mistaken in any part of my statement here, my friend on my right, (Mr. Cummin,) who is much more familiar with this history than I am, will, no doubt, have the kindness to correct me. Was not right the same? Was not justice the same, and was not the object of the administration of justice the same? And ought not its administration to be the same? Yes sir, with this difference only—that wherever despotic authority is established, it seeks not to promote the administration of justice, but to bend it to its own will; in which it unhappily too often succeeds. Such, then, is the principle—invariable in its application.

The hour of one o'clock having arrived, Mr. Sergeant yielded the floor to Mr, Cox, on whose motion the committee rose, and reported progress; and,

The Convention adjourned.

TUESDAY EVENING, November 7, 1837.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the fifth article of the constitution.

The question being on the amendment offered by Mr. Woodward, as amended on motion of Mr. Dickey.

Mr. Sergeant resumed and continued his remarks, as follows:

Mr. Chairman:—The commonwealth of Pennsylvania is a state of great power, from her position, from her resources, from her strength of every kind, physical, moral and intellectual; and her example will have great influence, not only in relation to the other states of the Union, but even in relation to the United States themselves. It would be a matter deeply to be lamented, if this great commonwealth were to furnish the first instance of such a change as that now proposed for the action of this Convention; for if I do not misunderstand the history that we have had of the progress made in the science of government, and more especially in the United States and England, we find that this plan of a judiciary, which is established in Pennsylvania under the existing constitution, has been considered as the final perfection of the administration of justice. England, for a century and a half, has continued to maintain it, and among all the plans of reform, of which, as we well know, there have been multitudes, no proposition, I believe, has ever been made to go back to the tenure, during pleasure, or to establish the tenure for a term of years. In the United States, I know there has been one instance of a state that has changed the tenure of her judges, from being a tenure for a term of years,

to be a tenure during good behaviour. There may have been others. I know not of any instance in which a change has been made in a contrary direction. Rhode Island still maintains her ancient form of government under the royal charter; she has never yet made a constitution for herself. The state of Vermont continues her elective judiciary, and some of the new states of the Union have also a judiciary for a term of years. The state of New Jersey retains the tenure of a judiciary for a term of years; and, as I have said, some of the new states, in forming their constitutions, have adopted the same plan; but, so far as my recollection goes, there has been no instance in which a state, after having established the tenure of good behaviour, has gone back again to the tenure for a term of years. If, however, the commonwealth of Pennsylvania should furnish an instance of a voluntary departure, after mature and careful delibereation, from this plan of a judiciary to that of re-appointment after a term of years, I know not but that it may have a powerful and a deleterious influence, even upon that constitution which is universally admitted to be right, I mean the constitution of the United States. It is not only with reference to itself, therefore, but with reference to republican government generally throughout the Union—to the perpetuity of republican government, and even to the perpetuity of the Union itself, that this question is one of vast importance; inculcating great caution, and enjoining upon us not lightly to make a change, and not to make a change at all, unless on good and sufficient grounds. This, however, I mention, not with the intention of departing from the line of argument which I had laid down for myself, and which would soonest lead me to the end of my journey, but with a view to draw some portion of the attention of the committee to the subject, and as a renewed apology for trespassing so long upon your time.

I was speaking, Mr. Chairman, of the functions of a judiciary, or a judge. I have endeavored to show, what I believe no one has undertaken to controvert, that in every form of government professing to be civilized, and having any regard to the liberties and rights of individuals, there must be judges. This is not all. Connected with this, presents itself a point which I earnestly beg every member of this committee, and every man who shall ever have occasion to turn his thoughts to the judiciary, to bear constantly in mind—and that is, that the judge *must* decide. What is the oath of office of a judge in the commonwealth of Pennsylvania? It is, to decide according to law and justice; and he not only must decide when the case is presented to him, but he must decide it according to law and justice, regardless of any thing else, to the best of his knowledge. Here, then, are two necessities created, which place your judiciary in a different attitude, in some degree, from that of any other persons of whom you can conceive. Your judiciary has not a particle of voluntary action about it; it has not a particle of power to withhold its action, whenever its action is demanded. Is this so with the legislature, individually or collectively? It is not; it acts on its own volition. Is it so in relation to the executive in many of his acts? Has he not volition? If he be obliged to act, he has at least the choice of the manner, by exercising all the discretion which the laws have conferred upon him. But how is it with your judges? They *must* act when called upon; and they *must* decide, without the exercise of any discretion, according to law and justice. If there is one form of government in which this necessity is more

rigorously exacted than in any other, it is in a republican form of government. What is its essence? What is its sovereignty properly speaking? Is it the sovereignty of a majority? Is it the sovereignty of the legislature? Is it the sovereignty of an executive? No, sir, it is not; it is the *sovereignty of the law*; and that which constitutes a free government, as distinguished from a government that is not free, consists exactly, and entirely, and exclusively, in the establishment of the principle which your judiciary is to carry into effect. How is it that the government of Pennsylvania is a free government to every individual in the state? Is it not in this—that we all live under her law? What is that law? Our constitution—our natural rights excepted by that constitution from the power of the government; a legislature with limited authority; an executive and a judiciary, to secure to every man the peaceful enjoyment of his rights. In what does the difference between a free and a despotic government consist, but in this? If this be the character of the government, and its freedom consists in this, is it not essential to it—demonstrably so—has it not flashed upon the mind of every member of this committee, that an independent judiciary is essential to freedem, and essential to those rights which constitute freedom in government? Sir, I put this question to every member of this committee. We talk, in general terms, about dependence and independence in a government; just as we talk of sovereignty and freedom—very loosely. But if any man, or any set of men, can have power to remove a judge who is to decide a case—involving my property, my liberties and my rights, he has power over my property, my liberties, and my rights, and I am no longer free. Sir, is it not so? When Charles the Second, took away the charters of the corporations in England, for the purpose of establishing his own arbitrary power, what did he do? After consulting his counsel as to the mode of preparing pleadings, and getting every thing in order, when the trial came on, he made that counsel his chief justice. When, in the time of Lord Bacon, a royal object was to be accomplished, Bacon—to his shame be it spoken—went privately to the judges for the purpose of influencing them to make a decision conformably to the will of the crown. He found but little difficulty in overcoming three out of the four. One of them, Sir Edward Coke, more stubborn than the rest, resisted for a time, but bent himself at last to the royal will. Whoever might be the party engaged in that case, was he, I would ask, living in a free government? No, sir! and why was he not? Because the judge who decided his case, was dependent on another who had a feeling or an interest hostile to him. I know, and shall hereafter speak, of the distinctions that have been attempted to be drawn between that form of government and our own. They are undoubtedly very different, but in this particular point, the difference amounts to nothing at all. I have alluded to a case—and my friend from the city of Philadelphia, (Mr. Hopkinson) who opened this discussion, has referred to a case which occurred in the time of Oliver Cromwell. But these, sir, it will be said, are extreme cases. Be it so, they are extreme in degree. Suppose, however, that something of the same kind, in a less degree, were to operate on a case. Is this not an impediment to the enjoyment of freedom, so far as freedom consists in the enjoyment of all our just rights? Let me put a case of a common, popular, inflamed opinion prevailing in a community, directly adverse to the rights of one of the parties engaged. Sir, have you never known of such instances?

Do they not bear down the law, even in spite of all your judges can do? I have even now such a case before me; the account, of which, I cut from a newspaper, a day or two since. It is a case of a trial about property, between several individuals on the one side, and several individuals, constituting commercial firms, on the other. There was a question of property and a question of law—as to which, I will venture to say, there is not one out of the forty lawyers, who are members of this body, who will not concur with me in saying, that it was a case in which the decision was to be left to the judge. The judge laid down the law to the jury, to be in favor of the defendants, to the whole extent of deciding the case. The jury, however, brought in a verdict for the plaintiffs, which was received by the spectators with the most tumultuous expressions of approbation.

The case is thus related in the newspapers:

"The action was brought by John B. Delaunay and others, to recover from Manice, Gould, & Co. the amount of a promisary note, and the defence set up was usury. It appeared that the defendants purchased from the plaintiff's, their bills on France for $15,000, and gave in payment, their own notes at sixty days. The then rate of exchange, as proved in evidence, was five francs twenty centimes, and the plaintiff's allowed the defendants only five francs five centimes, and charged them six per cent. interest on their notes, which made the amount of interest charged, between sixteen and twenty per cent. After two day's patient investigation of the facts, listening to the witnesses and lawyers, Judge Tallmadge, charged that the transaction was *per se* usurious, or in other words, that in point of law, it was not a question on which a jury had any discretionary right in giving their verdict, but must, as a matter of course, find for the defendants. The jury, however, in spite of the judge's charge, on Friday morning, brought in a sealed verdict for the plaintiff's, $15,705 and costs.

"*The announcement of it drew forth a loud and animated cheering from the audience, which the officers of the court were for a few minutes unable to suppress.*"

This case, continued Mr. Sergeant, occurred before the superior court, in the city of New York, within a fortnight past. Here, then is an instance of an audience in a court house, who had made up their opinion in favor of one of the parties, and who became so inflamed as to forget what was due to decorum—pressing on the jury, in spite of themselves, the sympathy they felt with one of the parties—the judge holding his tenure during good behaviour, and firmly laying down the law of the land, yet unable to carry it into effect. Under such circumstances, sir, what is the duty of the judge? Is it not to set aside the verdict of that jury? Suppose, then, that the judge, instead of being made independent, by the tenure of his office, had been dependent on any sovereignty whatever for his continuance in it:—what must have been his course? Shall he fall in with the popular clamour, and sacrifice the just rights of one of the parties? In the case I have referred to, property only was at issue; but in another case it may be life itself. It may be that which, in the estimation of many good men, is more valuable than life—it may be reputation. And shall the judge yield to popular clamour? Shall he decide according to the popular voice? If he resist it, what is to be his

fate? Gentlemen have talked here, as if it were only the judge that was overthrown—"the mere operation," it is said "of a republican principle." Sir, they have overlooked the most material fact; they have forgotten that there is a triumph achieved a million times more important than this—a triumph over the law. It is the law that is trampled upon—it is the law that is laid prostrate and bleeding in the dust—never again to command respect. How is it to be restored to life and vigor?

The judge may take his seat with his confidence somewhat diminished, or a new judge may be appointed; but the same scene is to be renewed. And, what is to be the permanent sufferer? Why, the law. What is to be the effect of the destruction of the law? The loss of every man's security, and consequently the loss of every man's freedom. Now, sir, when we look at these things, do we find in them any thing which will justify us in the distinction I have before alluded to, between one form of government and another form of government? Sir, we have heard much said of the sovereignty of the people. What is sovereignty? What, I repeat, is sovereignty? Sovereignty is power; neither more nor less, all the world over. When a man is under the influence of passion—passion is sovereign, and for the time has entire command over him. Is it not so? Shall I affirm that a man is always under the dominion of passion? By no means. When this sovereignty yields, reason may resume her influence; but, until it does, while passion is raging and overpowering reason, it is rage that is sovereign. Why? It has the power over the man and his faculties, and exercises that power for the time it continues. Ignorance may be sovereign. It often is so. Sir, if without any knowledge of a case, you or I should undertake to decide it—we should decide it ignorantly; then would ignorance be the sovereign judge. Now, when we speak of the sovereignty of a nation—whether it reside in one part or another part, we speak of what, in masses, is of the same nature as in an individual human being—it is fitful, capricious, subject to temptation, subject to the influence of passion, and to every kind of error. It may be influenced by want of knowledge—by hasty and inaccurate prepossessions—by want of qualification, as well as by positive disqualification. And where these things exist, for the time, they are sovereign. Their power is sovereign, and they bear down all before them. What is it that is to secure you and me, and the rest of the individuals of this commonwealth, against occasions of error, ignorance, passion—ten thousand things which may tend to the destruction of our rights? It is the judiciary, and nothing else; for there you can appeal, and they are obliged to hear you. You can make them decide your case—they *must* deliver their opinion, and the law they administer is omnipotent over all sovereignties—I care not what they are. Yes, over all sovereignties whatever. If the whole people of this commonwealth were to be under the influence of one feeling and one error, and they were prejudicial to an individual, he has a right to appeal to the judicial tribunal, to demand that he be heard, that he have the benefit of the law, and that every other consideration or influence be disregarded. There can be no doubt of the sovereign power of the people. Their sovereignty, sir, has been exercised in making this constitution. Their sovereignty is still exercised—in the exercise of the powers granted by it, as well as of those which the people have reserved to themselves under this constitution; the

election of their representatives—of the governor—of all their officers who are elective—the changing them when they think proper to do so, and changing the constitution also. But what rightful sovereignty—I put the question guardedly, but advisedly and confidently—what rightful sovereignty has ever been claimed, or ever can be claimed, to be exercised over the administration of justice or the rights of man. I do not ask what a despot may do—I do not ask what may be or has been done under a monarchy; I do not go back to inquire what is recorded in British history. But I ask if rightful sovereignty in a free republic can do this, or can even desire to do it, if properly enlightened? Sir, let us never forget that this matter of the administration of justice deals, as you will presently see, entirely with individual rights; that its decision is final, and that it concerns no one on earth but the parties to the controversy—whatever its decisions may be, it is nothing to any man living but those parties. No other can have any interest—no other can have any concern in it, unless you change the nature of your judiciary, and make it a legislature. But, as to an individual dispute, I would say that no one on earth, but the parties, has any thing to do with it. Sir, government of every sort has desired, at all times, to get rid of independent judiciaries. I do not mean republican governments—for I do not believe that it is the deliberate wish of any such government, or ever will be. But all governments we have been acquainted with, in the history of the world, have entertained this desire. You have seen what was done in England down to the revolution. Here is a very recent work, published by Baron Pelet, a member of the chamber of deputies, and late minister of public instruction.

It consists of opinions delivered by Napoleon in his council of state. I will read a few extracts from the book; it is deemed to be genuine, and therein differs from many works published of late in France, under the denomination of "Memoirs." You will hear something as to what Napoleon in his power wished in regard to a judiciary:

Speaking of a sort of circuit judges, the author says, "He thought, also, that the government would by this means *exercise a just share of influence in these matters, by possessing the right of sending one judge rather than another*, according to the nature of the case."—P. 215, 216. Again, "*I grieve daily* over the numerous *arbitrary* acts which I am now *obliged* to perform, and my wish is, that the state should be governed by *legal* means generally," p. 228; that is, he wished these *arbitrary* acts to be done by the courts, and thus to relieve himself from the odium. For this purpose he wished to establish a *special* tribunal, to *be named by himself*, and removable at his pleasure; and then adds, "Such acts (that is, arbitrary acts) would come more appropriately from the tribunal I have been speaking of." "I shall let them decide the dispute between the superintendent of *my* civil list and *my* upholsterer, who wishes to make me pay 100,000 crowns (£12,000) for *my* throne and six arm chairs, a sum so exorbitant that *I* have refused to pay it;" that is, he would name judges to decide his own case, which he had himself already prejudged. Again, he says: "The gendarmerie requires the protection of exceptional tribunals against the partialities of juries—but until we can establish special courts to protect the gendarmerie, might we not establish that, in every case where a gendarme is implicated, the jury might be composed

of gendarmies? He wished to appoint the judges, and that they should hold during his pleasure—that they should do what he desired, however odious and arbitrary; and that the jury should be gensdarmies.

Such were the plans of a military emperor for administering justice. I suppose they would fulfil the duties of military imperial tribunals. They would do *military imperial justice*, as distinguished from *republican justice*. One more extract will give us a notion, somewhat more precise, of his views of justice. "Shall I tell you," he says, "what I did in the last Italian campaign, when a small town proved faithless to us, and declared for the Austrians? I degraded the inhabitants, by taking from them the title of Italian citizens, and had their disgrace engraved on a marble slab, placed at the gate of the town. An officer of the gendarmies was then put in command, with orders that when any of the inhabitants incurred the penalty of imprisonment, that punishment should be commuted for a certain number of stripes."

Here, then, sir, is an exemplification of what I have just now said—of the continual effort of power to break down this barrier of an independent judiciary, and to have a judiciary which will be subservient to its own purposes. Sir, I have said that justice is one, and is it not true, I would ask, that power is also one, in every part of the world? I mean as to its essential qualities, its appetites, its passions, and its indulgences; whether it be the power of a single man, or the power of many, or whatever it may be—has it not precisely the same aspirations? And what are they? To accomplish its own object, as Napoleon, in the plenitude of his power, desired to have a special court, dependent upon his pleasure, and genid'armes for jurors; as power of other kind will seek to accomplish its purposes, by obtaining instruments calculated to promote its own views and wishes. I will not, at this time, advert to the manner in which this may now operate here. I have given you an instance, and I might cite others. Now, I say that the functions of the judiciary are one and the same every where, and every where government will strive to interfere with it. To make this view plainer, if necessary, let me ask the committee, a little more precisely and specifically, what are the functions of a judiciary? After having examined them, we shall be prepared to weigh the allegation as to the exercise of popular sovereignty, and the expediency of the exercise of its power over a judiciary in the manner which has here been contended for. The first and greatest office of a judiciary, as already intimated, is to protect private rights—against whom? Against all assailants,—all, without exception. In favour of whom? The feeblest creature in the community. Sir, I do not mean to limit myself to merely the feeblest, in the ordinary acceptation of the word. I will take for the exhibition of it, in its most striking form, an individual who is unpopular, if you please, hated by his neighborhood. Such a man is feeble, because he is obnoxious. But is this to make any difference in judgment? Is he not entitled to justice? I care not for the disesteem in which he is held, he is still a human being; he is still a citizen of the state. If he come to the door of justice, he is entitled to be admitted. If he have a just claim, he is entitled to have it allowed. And, if the world be in arms against him, he can demand, as a right, of the judge who sits on the bench, to decide, and if justice be on his side—to decide in his favour. Can any but an independent judiciary

do this? You have heard of the blind leading the blind, and how it fares with them. Set one cripple to support another cripple, and their fate will not be very different. The judiciary must be independent and strong, that it may be able to support the feeble. Else the judiciary will fail, and, with it, the administration and power of the law. If a judge cannot sustain himself, how shall he sustain him who comes to ask for justice? I know what answer is here attempted. If the judge is an honest man, he will do what is right; he will do his duty. Sir, if it be so easy a thing to do one's duty in the face of danger, and at such a risk, I would be glad to know why a crown has been awarded to martyrdom? If every man is capable of being a martyr, what peculiar merit was there in those who have suffered in the fire and at the stake for their faith, that they should have been so highly distinguished? Tell me that such heroic integrity is of every day occurrence! Every one knows it is not true.

There may be those who are capable of it; who would sacrifice themselves rather than see another wronged. But how few are they? Else, why does it happen that in the only authoritative prayer—strictly the only authoritative one that there is in the world—we are instructed by Infinite Wisdom to ask, that we may not be led into temptation? Put this case—a case which must unavoidably arise, unless the independent tenure be continued. A judge knows that if his decisions be one way, he will lose his office, and be disgraced. What can you expect from him?

But farther—the judge, I have said, is to redress private wrong. He is also to punish public transgression. These are specific duties. But let me remark, there is an incident connected with the performance of these duties, which, in a free government, is not of less value. How is it that your law is kept up, and made known throughout your commonwealth? Sir, gentlemen will talk of judges as not doing all that might be done—not disposing of as many causes as they ought, about which it is difficult to come to any accurate estimate. But when they do decide, they decide right. They thereby establish a principle—a standard by which to regulate the conduct of thousands, who never were in a court nor engaged in a suit. As you make the law known, not only in criminal, but in civil cases, in that proportion you prevent crime—you settle controversies—keep peace, and preserve tranquility throughout the country. And, sir, precisely in proportion as you introduce capricious judges and obtain capricious judgments, so will you have disorder and disunion. If the law be sovereign, this natural mode of acquaintance with that sovereign, is of vast importance. Sir, that is not all—your courts, and especially your higher courts, make the law for all the inferior tribunals. When I say they make the law, I do not mean to say that they legislate. Their business is to expound; they declare what the law is by their decision. When you call together an arbitration to decide between two individuals, and they are informed what has been the decision of your high tribunals—if they be held in respect—in a like case, the matter is at once decided. If a controversy arise between two neighbours, they inquire, and are informed that the point has been settled by your legal tribunals. The dispute is at an end: no law suit takes place. Farther: every man, in the same way, acquires the knowledge he has of

his own rights—of the extent to which he may insist upon them, and how he may obtain justice,—just as the people of this state have become better acquainted with the constitution of the state in consequence of the information they have received from the convention, and of their attention being continually and closely drawn to it. Such, sir, is an imperfect sketch of what the judge has to do. Let me invite the attention of the committee again to a leading circumstance, before referred to, that the judge *must* decide—that it is his duty to do so—that he must decide, to the best of his ability, according to law and justice. I would now ask, whether this judge has, by his office, any political power? Not a fragment. Has he any voluntary power? Not a particle. Has he any authority, unless called upon, to decide a controversy between you and me? No. Can he declare, beforehand, the law by which you and I are to be regulated? Not at all. Dare he open his mouth as a judge to you, unless in the course of his appointed duty? No. He never acts upon his own impulse, and cannot refuse to act when he is lawfully required to exercise his functions: and then it is only to declare the law.

If a citizen goes into court with a complaint, he is heard with respect and attention: the judge is then compelled to act, whether he be reluctant or not reluctant. If the legislature pass an unconstitutional law, no judge has the power to declare it unconsitutional; that power was never conferred on any tribunal except the council of censors; and they could not annul the act, but only give their opinion upon it. What I have just stated, may appear to be a paradox; but it is nevertheless true, and can be made plain. Let us see how the matter stands—I go into court, with the constitution in my hand, founding my right upon it. My antagonist claims adversely to me, under an act of the legislature: in support of my right I plead the constitution; if the act of assembly be contrary to the constitution, it is not in the power of any man to deprive me of my right; because the constitution is paramount to an act of the legislature. What is the judge, in that case, to do? Declare the constitution a dead letter, and place the act of assembly above it, in order merely to flatter the legislature, and by so doing, deprive me of my clear right? Take a case, for example: the bill of rights declares, that private property shall not be taken, except for public uses; nor then, without a just compensation. Suppose the legislature should pass an act depriving me of my property and giving it to another, who, under this authority, should attempt to take it from me. Something of this kind is alleged to have happened in Luzerne county, according to the statements of a petition recently presented. What am I to do? give up my property, because it is so decreed by the legislature, or hold to my right under the constitution? The judiciary must decide this question of right, and, in deciding it, must determine that the right under the constitution is superior to the right under the act of assembly. Is there in this any exercise of power over the legislature? No, sir, it is no exercise of power. It is simply a decision upon a question of right to property, and he would be set down as a madman who would say that the judge in this case could decide otherwise than according to the constitution, as the paramount law. It may be said, that this is an extreme and impossible case—so palpable an infraction of the constitution, it is true, is not likely to happen, but the

legislature may, in a thousand ways, through inadvertence or error, pass acts which would deprive individuals of their just rights, and woe befal the judiciary which would say that these rights must be surrendered and destroyed, because there is a legislative act to authorize their violation. When I say that the courts have no power to declare laws unconstitutional and void, I mean that it is only an incident to their duty to decide questions of right. If a thousand unconstitutional laws were passed, no judge can meddle with them, unless a case come before him for judgment in which the question is necessarily presented. Then it is the right of the suiter to have a decision. The judge cannot deny it to him. He is bound by his oath to decide that the constitution is above all legislative acts; and that a right founded upon it, cannot be taken away by the legislature. It is only in this way that he pronounces an unconstitutional act to be void. Surely the security of the citizen requires this.

We have been told that the courts of the United States have political power, and, therefore, that the good behaviour tenure is very properly applied to them. But, sir, this is a mistake. It is true, as alleged, that the courts of the United States have power to decide controversies arising under treaties, acts of congress, and the constitution of the United States. But it is true, also, that the state courts have the same power. If political power belong, on this account, to the federal courts, it belongs, for the same reason, to the state courts. The supposed distinction therefore fails, and if this be a sufficient reason for establishing the tenure of good behaviour in the courts of the United States, it is equally so in the state courts. The courts of the states not only have the right to decide all such controversies, when judicially brought before them, but to decide finally and without appeal. Every lawyer in the commonwealth knows this. Suppose a case should come before your supreme court, involving a question of individual right under a treaty—and this is the only way in which a controversy, in respect to a treaty, can come before the courts, whether federal or of the states—your supreme court can decide upon the claim set up under the treaty; and if the decision be in favour of the claim, it is final and without appeal. Again, suppose the claim to arise under an act of congress, or a provision in the constitution of the United States; the judgment, if in favour of the claim, is final. It is only when your supreme court decides against a claim brought under a treaty, or the constitution of the United States, or an act of congress, that their decision is subject to revision by the supreme court of the United States. So far as their action is in favour of the claim, their jurisdiction is just as conclusive as that of the supreme federal judiciary, and involves as much political and judicial power. I would not be understood, however, to concede that either the state courts, or the courts of the United States, exercise any political power in the instances referred to. To make a treaty, is an exertion of political power. But to expound and apply it, when it comes in judgment before a court, in questions of right, is no more a political power, than to expound and apply an act of assembly is the exercise of the law making power. It is purely a judicial act, indispensable to the peformance of judicial duty. Sir, I must farther remark, that your judiciary is the organ through which you speak upon questions of right and justice, not only to our own citizens, but to the people of

every part of the world. You say, and as a civilized country are bound to say, that no matter from what quarter of the world a man may come—though he be a stranger, friendless and poor—you will protect him in all his rights, and will afford him the means of obtaining justice. Should we not, then, be careful to avoid making our judiciary, in this respect, different from what it is—and avoid giving any ground for the suspicion that our tribunals will not afford equal justice to all men, whether citizens or strangers? What was the representation of the letter brought to our notice some time ago, by the gentleman from Indiana, (Mr. Clarke) in respect to a portion of the judiciary of Ohio? It stated, that there it was a difficult thing for a person, not a resident of the same district with the magistrate, to get justice in his court against an inhabitant of the district. Why? Because the magistrate depended for his continuance in office upon the votes of the citizens of his district, and would therefore be solicitous not to give any of them offence. Is it not to be apprehended that, by adopting a similar system—by making your tribunals dependent—you will violate the pledge which every civilized nation gives of equal justice to all men? Would there not be danger that your courts, if thus constituted, would refuse justice to foreigners?

It is no answer to this objection to say, that other nations violate their obligations in the same manner. During the late wars among the nations of Europe, when our property was assailed and depredated upon by all the parties to the conflicts, did we not hear from our citizens the loudest complaints against the dependent judicial tribunals of foreign nations? Our commerce was at the mercy of all their cruizers, and from their courts our citizens could obtain no justice. The courts of admiralty in England, are dependent on the crown, as the delegate from Philadelphia county, (Mr. Ingersoll) told us some days ago. Yes, sir, and I tell you farther, that in the British vice-admiralty courts in the West Indies, the judge received ten pounds for every condemnation. What was the effect of this? Their decisions were always in conformity with the policy of the British government; and, notwithstanding all Sir William Scott may endeavour to say to the contrary, the orders of the king, in council, were the law of the courts. Our fellow citizens found much cause to complain that justice was refused by their tribunals. It has been confessed by the nations themselves, and tardy justice obtained by treaties. The British, Spanish, French, Dutch, and Neapolitan treaties of indemnity, all acknowledge the wrongs done by their tribunals—that unjust decisions had been given, contrary to the law of nations, for which they were bound to make compensation. Shall we, then, so constitute our courts, as to expose ourselves to the same complaints from foreigners?

But, sir, there is still more to be said of your judiciary which is worthy of remark and reflection. In the court of final resort—the supreme court—the decision, whatever it may be, is final, as to rights, in civil cases. In criminal cases, too, the decision is final, and the life of the person condemned may be forfeited, unless the clemency of the executive be interposed to save it. Think of this. Ponder upon it. Weigh it deliberately, as it deserves to be weighed. The acts of the legislature, unless they amount to contracts, may be changed. So may the acts of the executive. And, farther, if they adopt any measures contrary to the rights of an individual, they are answerable for it, and the grievance may be

redressed. But, with regard to the individual whose case is decided by a judicial tribunal, there is no possibility of change, and no hope of redress. The decision, once made, is made forever. There is no power on earth by which the decision can be adverted or retracted. Would the impeachment and removal of the judges redress the injury? No. It may prevent occurrence of similar wrong to others. But whatever may be the decision, it is final and forever—except only in cases of ejectment, where, as limited by our acts of assembly, there may be a second suit. Can you, then, on any ground of speculation, on any general principle of popular sovereignty, on any vague notion of amenability to the people—can you deny to the citizen the most independent and impartial tribunal that can be established, when its decree is to be thus final and irrevocable? Will you send him to a tribunal which is dependent, which is thus amenable, which is liable thus to be called to account?—and to account to whom?—To those who will calmly sit down and listen to the facts of the case, and decide it, after a patient investigation? No. To another court, where the cause may be re-heard? No. To the legislative body, where the defence of the judge will be listened to? No. Not at all. But to common fame. The courts are to be dependent upon what the gentleman from Indiana called their popularity—upon the opinion of persons who cannot be informed, and who will not be informed, of the merits of the judge, nor of his official conduct. And what are the people to decide? That the judge has done wrong? No. It is not even the popular judgment that is to be brought into action—it is the popular will. The sole object is to make the judge dependent—to deprive the individual suiter of his right to a trial by an independent court—and this is to be done, in order that you may have a popular judiciary. I know, sir, that you cannot have a perfect judge, because a judge is only a man. The gentleman from Mifflin, (Mr. Banks) mentions, as a proof, that the judges are not in esteem, that no state judge has been elected by the people to this convention. According to this rule of judgment they are all bad judges alike, from A to Z, which is more than any of the opponents of the judiciary have ever yet pretended. But there is a good reason why the state judges have not been chosen to this body. They are interested in the result of our deliberations. Their own case is to be decided upon. This is a sufficient explanation of the fact, without going farther.

The reason does not apply to a judge of a federal court as a member of this body—such a judge is a very desirable member—he can assist us with his counsel, and his knowledge and experience, uninfluenced by any personal interest. But, admit that the judges are not popular, or even that they are unpopular. Is that any proof that they have not faithfully discharged their duty to the commonwealth? The judges are cut off from many offices, and that is what I hope will ever be the case, as the judicial office ought thus to be kept distinct. They cannot be elected to congress, nor to the state legislature, without giving up their judicial office. But does it follow that, because they cannot be elected to office, they are bad judges? No. They may be very good judges, and yet not popular. Their very unpopularity may be a proof that they are not, what they should not be—popularity-seeking judges. The question of popularity may have relation to the fitness for things other than their judicial

duties, and may be consistent with utter judicial unfitness. This is exactly the system which it is proposed to substitute for the present judiciary. The judges are to be estimated, not by their fitness for their official duties, in their very nature stern and offensive, but by their fitness for other things. The unpopularity of a judge ought not to weigh a feather against him if he discharge faithfully his duty. What is the oath of a judge? Is it to make himself popular? Is it his duty to be, as the gentleman from Indiana says, always a new man? To be all smiles and graces, and to flatter and cajole the people? Ought he to affect the arts of a demagogue? Is it by the supple arts of a popularity-hunter that he is to become able to hold the scales of justice with steady firmness? Is he to let them fall on the one side or the other, or to lay them down, in order that he may make a winning bow from the bench? Is his eye to wander, in courteous glances, with the devotion of man-worship? All this is the very opposite of what a judge ought to be, and is a prostitution of his high office. He is unfit to minister in the temple of justice, if he be not blind and deaf to all but her demands.

Is there any rule or method that can be suggested, by which, according to this theory, the judge can so conduct himself as to perform the duty of his office with singleness and fidelity, and have any chance of continuing in it? And yet sir, this is a man that, so far as concerns the law, is to decide finally. Now, sir, I repeat my question—What is the nature of the functions to be performed by this judge? You may see something of it in the bill of rights, which has already been alluded to here. The whole bill of rights is under the protection of your judiciary, and of no other power. I beg gentlemen of this convention, then, to read over that bill of rights; to examine it carefully, with all the additions that may be made to it—and when they have done so, let them read over the rest of the constitution. In the other parts of the constitution, they will find it provided, that there shall be a government; that there shall be an executive; that there shall be a legislature; that there shall be judges, and that there shall be various officers to carry on the operations of the government. These things concern the citizen but remotely, and that part of the constitution is of comparitively little value to him. But, when he comes to the bill of rights, in every word, and every line, he finds his own property; that which the constitution has not given to the citizens, and cannot give to them, but which they had before the constitution was made—those sacred, reserved rights, which they have not given up, and cannot give up—which are declared to be inalienable and indefeasible. And how are all these sacred reserved rights—these indefeasible attributes of a freeman, secured to him? By your judiciary. Where is his appeal to be made, when these rights are invaded? To the judge. It is an appeal of right, and to whom is it to be made? To one who knows how to do right, and nothing else. Then, is it requisite that a judge should be popular? Is it not questionable, sir, whether it be any great recommendation of a judge, considering the functions he is to perform, to say, that he is popular in the same sense you would say so of many other persons?

It is impossible adequately to express the magnitude of the functions of your judiciary, and their infinite importance to the citizen. When you think of them, and when you think that it is but man at least that

you trust with the performance of these high duties, even with all the selection you can make; with all the guards that can be placed around him; with all the strength you can give to the hands to which you commit the custody of the laws—it almost makes one tremble to think of it. But if, by the tenure, or mode of appointment, you make the person entrusted with all this duty a trembling slave, a watcher of the countenances of the people and the working of parties, an observer of popular signs—when a case is brought before him to decide, you will have him looking around to see who will be able to aid in keeping him in and who may have an influence in turning him out, before his decision is rendered. If you place a man in this position, you will have him, instead of keeping an eye single to justice and truth, wandering about, reeling after popularity where it was to be found. Sir, it makes a thinking man shudder to reflect on this. A quiet, retired citizen, who does not take much part in public business, would stand no chance before such a tribunal. One who does not make himself known and felt in the political struggles of the day, would have no inducement to hold out to the judge to aid his cause; and he would have nothing to offer him in the shape of a security for the tenure of his office. He might as well be before a jury of gend'armies—or a special court of Napoleon. Sir, unless a judge be a most uncommon man indeed, such an individual might as well give up his rights, and submit to a violation of what is declared to be reserved and secured to him in the constitution.

You have mingled in the discharge of these functions one thing more, which this tenure of good behaviour is especially calculated to protect:—that is, the settlement, and permanency, and stability of the laws—that they shall be uniform—that they shall be continued—that they shall be the same—that they shall not be fluctuating, according to the dictates of any body—that they shall not be fluctuating by frequent changes of the person who administers the laws, and that they shall not be fluctuating by frequent appointments to office, and, worst of all, the appointment of weak and incompetent men, which is likely to ensue. What is so well calculated to preserve this stability and uniformity in the administration of the laws, as the tenure for good behaviour, now existing; and what is so certain to destroy it, as any other tenure?

Those who look to the administration of justice in any other view than that which has now been attempted, have no conception of its value. What is your law without the administration of it? I mean, of what use are laws, unless, every one has a tribunal to which he can appeal to have the law applied in his case? Of what use is the bill of rights, if there be no remedy or redress for its violation? It is a dead letter. It is the knowledge that there is a law, and the knowledge that there is a tribunal to which every one can appeal, to have the law applied, which is our great security, and often saves us the trouble of appealing, when, otherwise, we should be wronged and injured. Hundreds and thousands pass through life without ever being in a court of justice. Hundreds and thousands pass through life, without having their houses broken, or their families endangered, or wrong or violence of any sort done to them. Why is this so? It is, because the law is every where present. But how is the law actively and virtually present? Not by its being in the statute book, or in the written constitution, but by its living deposita-

ries, the tribunals of justice. It is, that every man knows that there are laws, and knows that there are tribunals to administer them—to redress wrongs and to punish crimes. Perhaps if the boy we have heard of in Luzerne county had known that he would be punished for horse-stealing, the man might not have had his stable broken and his horse stolen. It is the universal presence of the law, and the universal presence of the tribunal for administering the law, which gives us security. It is our only security. If there were no tribunals for administering the law, there would be no security. So it is, at last, these tribunals which secure to us all our rights; and without them, it would be in vain to make constitutions or laws, or to reserve rights, for they would have no living efficacy. Sir, the laws administered by these judges claim to protect us all, and against all,; yes all, without exception—high and low, rich and poor, strong and weak, popular and unpopular, in office and out of office—no matter whom it may be. These judges are to measure out justice with one measure to all of them, without regard to their circumstances, condition or power. To whom does it offer this protection? I repeat, to all the people of the state of Pennsylvania; to each and every of them; whether they have political power, or whether they have not.

There is not in this commonwealth more than one in five of the people who have any political power—that is, the power of voting, and interfering in any manner in politics. What are the rest? Strangers, females and children—those who pay no tax—those, in short, who want the qualification which entitles a person to be a voter. These are four-fifths—the remainder of our inhabitants, the voters, are one-fifth. Sir, your bill of rights, although it gives no votes to these four-fifths, is made for them, as well as for the voters. The gentleman from Allegheny has said, and said correctly, that the constitution was made, and the tribunals under it established, for the purpose of protecting you against majorities. I agree with him fully—but I carry the view still more into detail—the bill of rights extends to all persons under the constitution. The rights there reserved belong to all the people of the state, and so does the obligation to maintain the tribunals of justice to protect them. These rights belong to the whole people, whether with or without the right to vote. Shall we be told that a female, because she has no vote, has no right of conscience? that a child, who has no vote, has no right of property or protection? or that a stranger, who has no vote, has not a right to come into our tribunals of justice to vindicate his reputation? Not at all. This would be rejected, at first sight, as savage. Well, sir, how are the rights of these four-fifths to be protected—they having no vote, no political power, and no means whatever of aiding in the appointment or removal of a judge? Political power cannot belong to the whole people. The four-fifths have no share in it. The popular sovereignty, then, is to be exercised over them, and by whom? By the one-fifth, or a majority of the one-fifth, in whose hands all the rest are to place their rights. Can this be a sound principle? Would you insert such a principle as this in a new constitution which you were forming? If it would not be wise to insert it in a new constitution, can it be wise so to alter an existing constitution, as to make it work out such a result? There may be those who think these matters have been too much dwelt upon. Perhaps they have; because, after all, they will strike every body who hears then as being very plain,

and, perhaps minute. But, in the establishment or change of a constitution for our government, it seemed to be a duty to go back to first principles, and carefully explore the ground. We might easily, perhaps, establish a form of government under which we could scramble along pretty well for the remainder of our lives; but we must recollect that we are framing a constitution for our children, and our children's children, who, it is to be hoped, will live as happily under it as we have been living under the existing constitution. In such an inquiry as this, then, it was well to look back, to examine the foundations, and see what it is that we are to build upon. If it do nothing more, it will at least keep us in mind of correct principles of government. It will help to fix them more firmly in us.

Now, how is the right performance of these functions to be best secured? This is the remaining, and not the least important question. And here he would begin by saying, that it was the easiest thing in the world to find fault. Sir, it is, too, an easy thing to pull down. There is nothing in the works of man that is free from imperfections: and if you continually dwell upon the imperfections of an institution, and lose sight entirely of its beauties and benefits, then he would agree that you might, in time, persuade yourself to consider it as a mass of deformity, and, seen only in this light, as a very fit thing to be pulled down. But, after you have done so, and come to build it up again, it is, perhaps, found to be a very different thing to restore,—entirely different to what you expected. Is it not well, therefore, to examine carefully the foundations to their depths, and begin the inquiry with plain, simple, practical questions? What is there, then, he would ask, in the existing administration of justice in Pennsylvania, in which it has been found wanting; and if there be defect, is it of such a nature that you can remedy it? He did not claim for the administration of justice in Pennsylvania, complete perfection. Not at all. What are your materials to make judges of? The same that you make a convention or a legislature of. They are men. When we know this fact, are we to fall to quarrelling with the judiciary, and denouncing it, because the bench of justice is not occupied by beings of a superior order—because your judges are men who are not free from the infirmities of other men. Had we not better at once go to war with our whole race? Where is the righteous man? There is a book that tells us, and he believed it told us nothing but what was true, that there is no such thing in the world—no, not one. Then, sir, in every human constitution, he meant constitutions made by men, you must expect to find a certain portion of human infirmity. He did not look for monsters of perfection, so to speak, any where, and all conventions, legislatures or governments, whenever and wherever assembled, will fail to find even an individual of that description in their whole numbers. The gentleman from Indiana, (Mr. Clarke) has asserted, that judges are more complaisant and pleasing in their manners, in the first year or years of their appointment, than they are afterwards. On this account he would have them often changed—have new men. Has he never observed this to be the case with all of us, every day of our lives? We come into this hall in the morning, after breathing the fresh and invigorating air which a good Providence has graciously given us, and we sit down here in the most perfect state of gentleness, and mildness, and self-

satisfaction. By-and-bye the air becomes heated and oppressive—lassitude overtakes us, and we have a long debate, and in the course of our proceedings, something does not work to our mind—we are crossed and vexed. By the time that the hand of that clock reaches the hour at which we take our recess, instead of being the fresh and almost joyous creatures we were in the morning, we are jaded, tired, irritated, perplexed and out of humour. But who would say that we were different or less worthy men in the evening than in the morning? It might be said that a man was less free from infirmity, but it could not be said that he was less worthy. This only shows the human infirmities which we are subject to, and so it may be, and must be, with the judge. Those who advocate the doctrine of the gentleman from Indiana, (Mr. Clarke) would have us all turned out into the fresh air every half hour, so as to keep us in better temper and with better looks. How would this answer, and what would be the progress of business upon such a plan? It may be that a judge will alter a little after he is in office some time. He (Mr. S.) did not expect to find perfection in any of them, and he did not expect to find any of them free from ordinary infirmity. What then did he expect? The first great quality he looked for, was integrity, and, with it, a competent knowledge of the laws of the commonwealth and of the practice under them. We all believe it is not right to have men appointed judges who are destitute of integrity and knowledge. Appealing, then. to the history of the judiciary from the adoption of the constitution to the present time, he would ask gentlemen, whether it had ever failed, either in integrity or knowledge? You may have judges who have physical infirmities; you may have judges who have not the rare endowment of intellects of the very highest order; you may have judges who have unpleasant manners—and you may have judges like other men, who have some particular infirmity. If these be of such a nature as to destroy their integrity or their capacity to transact judicial business, then they may become a ground of removal by the legislature, which is wisely provided for in, the present constitution. But he believed our judiciary to be honest, upright and faithful in the discharge of its duties. Nay, he had no doubt of it—for otherwise, the judges would have been removed by the proper tribunal. If, then, the character of our judiciary was what he had stated it to be—if you have a judiciary honest and learned to the extent of what is required in the administration of justice—especially if it be true, as he believed it to be, that the judiciary of Pennsylvania is now as good, if not better, than it has ever been before; and if it be farther true that the judiciary of Pennsylvania is at this moment higher in the estimation of lawyers than any other judiciary in this Union—if it be true that every man's rights have been secured to him—if it be true that the laws have been so administered, as that we have all felt the benefit of this system, then, in the name of all that is good, what have we in our judiciary system, under the present constitution, which needs to be subjected to a new and untried experiment, of which we know nothing that is good, and from which we have to fear all that is evil? Are we to risk so great an experiment, that the judicial relation may, according to the fancy of the gentleman from Indiana, (Mr. Clarke) be a sort of perpetual honey-moon?

If our present judiciary be what I suppose it to be, it is a pearl above

all price; although there may be, and probably are, some blemishes in it. I know, indeed, that there are some things in relation to the conduct of particular judges of which I disapprove, and to which, as a member of the legislature, I should feel inclined to apply the corrective of an address under the constitution. I allude to those who occupy a portion of their time in an improperly active interference in party politics, and the strife of party—who are party leaders, the framers and signers of inflammatory and proscriptive resolutions and addresses against portions of their fellow citizens. I would remove them for cause, and this should be the cause: No violent partisans on the bench. But, with all this, has the administration of justice, in our land, as yet, been what it ought to be? That is the question, when we speak of the judiciary. If it has been what it ought to be, then the judiciary rises above this particular complaint, unless it be made the subject of application to the legislature. In the general declamation against the judiciary, or in relation to the judiciary, or whatever it may be, which has been indulged in here, we are in very great danger of being led entirely astray. I never will condemn a judge without a hearing. And what judge has been heard? I even never would form an opinion, in the slightest degree injurious to the character of a judge, without allowing him an opportunity to defend himself. What opportunity has been given? I would not even believe that the legislature had been wanting in its duty, as seems to have been alleged here, unless there were specific evidence of the fact. Yet, without any evidence before us against a single judge, and with the fact staring us in the face that there has been a satisfactory administration of justice, we are, nevertheless, called upon to condemn the judiciary, and to change its tenure—upon what ground of evidence? Upon vague statement, applying to individuals who have not been heard, and in relation to whom, therefore, we cannot possibly form a judgment!—whom, by the commonest maxim of justice, we are bound to believe innocent.

What we shall get in lieu of that with which it is now proposed to part, is another question deserving our anxious consideration. Shall we get something better? Shall we get something that will secure to us greater integrity—more knowledge—more freedom—more of that martyr-like devotion that seems to be thought so common—which induces a man to stand up in defence of another, even at the risk of his own character and his own fortune? What do you want to secure the proper performance of these functions? The first indispensable quality is, independence.

Now, independence, absolute independence, belongs to no man as an individual; I know of none. It is in the order of Providence that, as mere individuals, all should feel their dependence on each other. It is right that we should. The member of the legislature feels his dependence on his constituents. It is right that he should do so. The governor feels his dependence on his constituents. This is right also. But a judge, according to the confession of all the members of this committee, with only, I believe, one exception, in order to be qualified for the performance of his duties, must feel his entire and complete independence. If it does not belong to the individual, where is it to come from? The greatest discovery of modern times, that which has wrought a change

in the judicial character, amounting to a measurable, judicial perfection, has been accomplished by means of the office—by constituting the judge, while in his office, that which, as a single individual, he rarely or never is—to make him a new man—to give him new attributes—to create him in his office, and in every thing relating to his office, a being different from others occupying any other posts in the government.

And how has this been accomplished? Look at the history of British judicature, down to the period when the independence of judges was established, in 1701;—and when you have done that, look at the history of British judicature—I mean the administration of justice, from 1701 down to the present day, and I will leave it to every man, saying to him, here choose ye between them! Will you have good, or will you have evil? Prior to the period alluded to, without exception, there was a dependant judiciary. The consequence was that the will of the monarch was done—the will of the favorite was done—the will of the individual who had power was done—but justice was not done. You can trace it, notwithstanding the even current with which the administration of mere questions of *meum and tuum* between individuals glided on, to the time when this last discovery was made of judicial independence, by means of the office. From that time the history of the administration of justice in England, where the office was held during good behaviour, is without stain and without reproach. I do not now speak of the lord chancellor: for his is an office which would require more time than I shall occupy, in addressing this committee, to examine the character of its various duties, which, as we all know, are partly political, and partly judicial, and which have at length become so onerous and complicated, as to render it impossible for any one man living to go through with them all. But take the administration of justice, not in the courts of admiralty, by ten pound judge's courts, as they once were in the West Indies, but in courts where officers are appointed during good behaviour, and the history is one. It is in perfect contrast to the antecedent period. I repeat, it is without stain and without reproach.

What is the history of Pennsylvania? I have appealed to it, from the adoption of the constitution up to the present time. Let me go back a little. Prior to the revolution in England, the commissions of the judges were sometimes, it would seem, held by the tenure of good behaviour, and sometimes for a term of years; but the king had always power over the judges. William Penn chose to have power over the judges in Pennsylvania. He granted a form of government, and, at one period, promised in it that the judges should be appointed during good behaviour. This was in 1683. The people required it. Under what circumstances did they require it? They required it after the experiment, and during the experiment of the judges being appointed for a term of years—and that term not a very long one. What they required was not granted. They went on with the tenure for a term of years, and year after year they continued to ask for the tenure during good behaviour. They passed acts of the legislature, but these were repealed in England. They never could get what they required, and they continued with their two year's judges, or judges during pleasure, in spite of all their entreaties, up to the revolution. I will not detain you

with the particulars. They have been precisely stated, with ample illustration, by the gentleman from Union, (Mr. Merrill.) We are much indebted to him for the labor of the research, and the very able manner in which he has presented its results. We are all of us better informed than we were before his speech. I thank him for my portion of the benefit of the light he has thrown upon the subject.

Now, mark! The first thing which the convention, assembled in 1776, hastily to build up the form of a temporary constitution, did, was to extend the term of office of the judges from two to seven years. Mark this! It was a considerable step—almost as great indeed as it would be for the state that now appoints judges with an annual tenure, to direct that tenure to be changed from one to seven years. This experiment was tried from 1776 until 1790. Was it satisfactory? The present constitution proves that it was not. It was abandoned; and the voice of the freemen of Pennsylvania, which had been crying aloud from the first coming of Penn, in 1681, or 1682, or 1683, down to the period of our revolution, when the proprietary government was terminated, that voice, I say, was listened to and obeyed, as soon as freemen were at liberty to act for themselves. Almost at the very moment when they were liberated from the severe pressure of their revolutionary struggles—in the midst of which the first constitution was formed—the voice of the freemen of 1790 was the same as the voice of the freemen of 1683, and the voice of the whole body of freemen who had lived in the century which elapsed from the one to the other—with this difference only—that, having got rid of the proprietary government, the freemen were left at liberty to do for themselves that which the crown of England and the proprietary government of Pennsylvania had refused to do. That constitution of 1790, was the exercise of the free born power of freemen, which would have been exercised a century before, but that oppressive power was arrayed against it, and prevented its exercise. Therefore, with the small exception of the time which elapsed between 1776 and 1790, during seven years of which the country was engaged in war, with an enemy invading her soil, and the remaining seven years of which were barely sufficient to enable her so far to recover her energies as to frame a deliberate constitution—with this exception, I say, the freemen of Pennsylvania have always thought that the independent tenure of the judiciary was essential to the enjoyment of freedom, and that one could not exist without the other.

To proceed with this view of the matter. What was it that stood between them and the accomplishment of that which they believed to be beneficial? I answer, arbitrary power. If you have the concurrent testimony for a century (and you have it for more) of the voice of all the freemen of Pennsylvania, in favor of this tenure during good behaviour—if you have the testimony of your own constitution, from 1790 to the present time, speaking in favor of that tenure, what have you against it? The crown of England! The proprietary government of Pennsylvania! The freemen were cheated out of it. The promises made to them were broken. And for what? Why did the crown and the proprietary object? Because limited appointments, or appointments during pleasure, were better for the freemen of Pennsylvania? No. Because it was better for themselves.

And are we, a tthis time of day, to be called upon to renounce, not only the proofs of our own experience, but the proofs from the testimony which our ancestors have borne for a century, in order that we may reestablish doctrines carriedi nto effect, against their wishes, by the crown of England, and the proprietary government of Pennsylvania? Are we, upon their authority, to adopt what they did to support their own power, and to depress the rights of freemen;—making part of that struggle of which you may find the history in a book called a Historical Review of the Constitution of Pennsylvania, said to have been written by Franklin, although I doubt whether he was its author—a perpetual struggle going on between the government and the people? And if the principle was right to be maintained by freemen then, is it wrong now? Gentlemen say that, in a monarchial government, the independence of the judiciary is necessary for the protection of individuals against the power of the crown. On this ground they think they may justify it, in reference to England, as right; but they think it is wrong and unnecessary here. In conceding that it is good for England, and good in the constitntion of the United States, and especially the latter, it strikes me that the whole argument is ceded, or rather conceded away. But, in such discussions as these, I never wish to rest my case upon concession. It is an advantage in argument, but that is all; except as it furnishes the testimony of respectable gentlemen, of good understanding, who have investigated the subject, and for whom I entertain respect. And if gentlemen who are opposed to us have come to the conclusion that this principle is right in England, and right in the constitution of the United States, I shall find myself fortified by their concurrence, and shall feel myself justified in drawing my inference accordingly. But, still, I will not put my case on the concession. I will endeavor to do more. I will endeavor to examine the distinction, and to show that there is no ground for it.

Mr. Chairman, there are many mistakes in this position; and the first is, in supposing that there is any difference in the government of England and our own, in relation to the character of the changes which are made. It is true that the English monarchy is one of a very extraordinary kind; and amongst its other extraordinary accompaniments is this—that the life or death of the monarch makes no sort of difference.

Mr. Reigart here rose, and stated that as the usual hour of adjournment had arrived, he would, if the floor was yielded for that purpose, move that the committee rise.

Mr. Sergeant said he would yield the floor for that motion; expressing, at the same time, his extreme regret that, after having occupied so much of the time of the committee, he had not been able to conclude his remarks.

The committee then rose, reported progress, and obtained leave to sit again; and,

The Convention adjourned.

WEDNESDAY, NOVEMBER 8, 1837.

Mr. COATES, of Lancaster, presented two petitions from citizens of Lancaster county, praying that the right of trial by jury shall be extended to every human being; and,

Mr. THOMAS, of Chester, presented a petition of similar import from citizens of Chester county.

These petitions were then laid on the table.

Mr. EARLE moved that the Convention proceed to the second reading and consideration of the following resolution, submitted by him on the 4th instant, viz:

Resolved, That the secretary of this Convention be directed to cause to be prepared for the use of this Convention, a statement showing the number of members of the house of representatives which would have been established under each septennial enumeration, if the same had been based on a constitutional provision in the words following, viz:

"The number of representatives, shall, at the several periods of enumeration of taxable inhabitants, be apportioned in the following manner, viz: One hundredth part of the whole taxable population of the state shall be taken as the ratio of representation; each representative district shall be entitled to as many representatives as it shall contain number of times the representative ratio, together with an additional representative for any surplus or fraction exceeding one-half such ratio; not more than three counties shall be united to form a representative district: no two counties shall be united to form such district, unless one of them shall contain less than one-half of the representative ratio; and no three counties shall be united unless two of them combined shall contain less than one-half of such ratio, in which case, such county or counties shall be united to such adjoining county, as will by such union render the representation most equal.

Mr. EARLE explained his object in a few words. The amendment contained in this resolution, varied slightly from one offered by him on the first reading of the first article of the constitution. The proposition was then lost by one or two majority. A difference of opinion existed as to what would be the result, and that was the only objection urged against it. He wished the secretaries to prepare a statement, with a view to ascertain if the result would vary the number of representatives from one hundred, which seemed to be the only objection. He hoped there would be no opposition to the second reading and adoption of the resolution at this time.

The question was then put, and decided in the affirmative, and the resolution was read the second time, and considered, and agreed to.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the committee to whom was referred the fifth article of the constitution.

The question being on the amendment offered by Mr. WOODWARD, as amended on motion of Mr. DICKEY.

Mr. SERGEANT resumed his remarks as follows:

Mr. Chairman—I have already stated why this tenure of good behaviour was established. I have said that it was necessary to the construction of an independent judiciary. It is now my purpose to state to the committee a further, and what I think they will not consider a less decisive recommendation of this tenure; and that is, that, precisely as the principles of free government have advanced, this great principle, in regard to the judiciary, has gone along with them. It has never been seen in operation, but in connexion with free governments; and I think I might say its growth may always be traced where free principles have been established as their natural and spontaneous production. Where did this great principle originate? In Pennsylvania. Yes, sir, in Pennsylvania; when Pennsylvania was free from the restraint of any power over her, except the power of the proprietor, and a slight power in the crown. It was introduced here for the benefit and at the instance of freemen, It was promised to them; it was put on paper for them, and if they had not been cheated out of it, it would have been the law of Pennsylvania for the last century and a half.

I say they were cheated out of that charter which established the tenure of good behaviour; the form of government was, in some way or other, taken from them—they were promised an independent judiciary, but the promise was never fulfilled. They made their own acts of assembly to establish it, and these acts were repealed by the royal authority in England, which had control over their legislature; and thus it continued from the period of the first establishment of freedom in the province of Pennsylvania, to the time of the formation of the constitution in 1776, during which time the tenure of the judiciary was either for a short term of years, or during pleasure, and always dependent on the will of the proprietary.

In the mean time, this tenure was established in England—when? in the year 1701, but as part and parcel of the revolution of 1688. And what was the revolution of 1688? It was to establish the principles of freedom. How? By getting rid of the oppression which had been practised on the people, by means of an ill-constituted judiciary, which enabled the executive government to disregard the rights of individuals, and to have the law declared by the judges just as they desired it should be declared.

We come to more modern times, and again we find, that, exactly as free principles have been established, just so this tenure of good behaviour in the judiciary has been established, also, as inseparably connected with them. What does Chancellor Kent tell us, in a passage quoted the other day by the gentleman from Franklin county, (Mr. Chambers?) He says:

"The excellence of this provision has recommended the adoption of it by other nations of Europe. It was incorporated into one of the modern reforms of the constitution of Sweden, and it was an article in the French constitution of 1791, and in the French constitution of 1795, and it is inserted in the constitutional charter of Louis XVIII. The same stable tenure of the judges is contained in a provision in the Dutch constitution of 1814, and it is a principle which prevails in most of our state constitu-

tions, and, in some of them, under modifications more or less extensive and injurious."

Now, sir, continued Mr. S., apart from the experience which we have had in our own states, some few of which (principally the new states) still retain the tenure for a term of years, how is the world divided? We have freedom on one side, with an independent judiciary, holding its tenure during good behaviour, and tyranny on the other, with a dependent judiciary. Thus is the world marshalled. The state of Pennsylvania, thank God, to this moment, is in the ranks of freedom, and yet bears aloft that standard which is the standard of freedom and free constitutions throughout the civilized world, with the exceptions I have named, so far as they go.

Look at those states where they have no constitution—where there is despotic power, kingly power without a charter. What do you find? An independent judiciary, holding office by the tenure of good behaviour? Not an instance! Do you find it in the history of England, up to the time of the establishment of the principles of freedom under the revolution of 1688? No! Tyranny and an independent judiciary cannot coexist. They never did, and they never will. Then look at the converse! Wherever constitutions, and charters, and freedom are to be found, there this principle is to be found also. It is the soul of free constitutions; they are a dead letter without it. And yet we now propose to deprive ourselves of that form of judiciary which has been established by the wisdom of mankind, as the indispensable safeguard of constitutional liberty, by voluntarily separating ourselves from the great body of those who cherish the principles of freedom throughout the world. Sir, is it not so? Are we, then, going traitorously to join the opposite ranks? Are we going to form this great republican commonwealth of Pennsylvania into the line of tyranny and oppression? If, with one voice throughout the whole world, wherever the principles of freedom have been established, and so soon as they have been established, the tenure of good behaviour has been established also, and to this day is deemed essential to their support—if the first great revolutionary burst in France was accompanied with the cry for an independent judiciary and the tenure of good behaviour,—if under the milder, but far more efficacious revolution in England of 1688, the same principle was asserted and acknowledged, —if Louis XVIII., in the charter for securing the freedom of the people of France, inserted the same provision,—if it was incorporated into the constitution of Sweden, and if the same principle was acknowledged in the Dutch constitution of 1814,—if our ancestors have cherished and acted up to it, so far as they were able, from the first moment when they trod the free soil of Pennsylvania: is all this no evidence that the independent tenure of the judiciary is itself the child, and the champion, too, of freedom? What higher authority can you have? Gentlemen talk about Rome and Greece—words which convey no definite idea; for Rome passed through as many changes as any nation under the sun; always, however, distinguished by one great characteristic, which, I trust, will never belong to us—the military spirit of her institutions, overbearing and trampling down every thing else. And as to Greece, there is no definite idea in the word; because the denomination is not confined to one, but

embraces several states, all differing from each other; some having one tendency and some another.

Would any man be so insane, at this time of day, as to wish that we should adopt an example like that of Sparta? That we should teach our children that it was a virtue to steal, and that the only crime lay in suffering ourselves to be detected in the theft? Would any parent desire that his children should be taught to lie and to cheat, as well as to steal? And yet this was the fashion of the morals of Sparta; Sparta was a military government.

As to the Israelites, whose history has been alluded to, I must be allowed to inquire, is there any man here who does not know that a judge in Israel was not what we, in these days, mean, when we speak of a judge? What was a judge in Israel? A governor; not a man entrusted merely with the administration of justice, but one comprehending all powers within the scope of his authority. I have not, recently, investigated these historical matters myself; but the latest writer on the subject says, that these judges were a sort of military dictators. We all know what a dictator is, and what a *military* dictator is; and if a judge in Israel was a military dictator, he is not at all the sort of judge that we ought to desire. The governing power among the people of Israel was in the judges for a period of nearly five hundred years. They had their changes. The judges continued, as I have said, nearly five hundred years, and then the people had kings to rule over them for a short time. I do not want a judge in Israel here! There was an attempt made a short time ago to establish a Jewish empire on an island in, or near, the Niagara river, in the state of New York; there was a great assemblage of people congregated together. The person who took the lead declared himself to be a judge in Israel; meaning thereby, I presume, that he was to be the head and supreme authority in this new establishment. I speak not, however, of these things now. I come down to modern times, and I have shown that the principle of an independent judiciary has been adopted wherever free principles have been established. I go farther, and state, that it has been continued with them. And I go still farther, and say, that just as long as the independence of the judiciary could be maintained, just so long have the principles of free government been maintained—have grown and flourished. And I will go yet one step farther, and assert, that wherever there has been a design to overthrow the liberties of the people, to destroy the principles of free government, and to take away from the people their charters, their constitutions and their rights, the first assault has been made on the judiciary. And why? Because, at last, the liberties and rights of the people are under the protection of the judiciary, and you never can destroy those liberties so long as you have an independent judiciary. I defy the most ambitious man in the world—nay, there never has been, and, I do not hesitate to say, that there never will be, an instance in the history of the world, of the destruction of the liberties of the people, so long as they have an independent judiciary, acting fairly up to its character as such. What is it, I would ask, that is at last your resort, if your liberty and rights are in danger? Do you appeal to the executive? Do you appeal to the legislature? Do you appeal to the people? No, You appeal to the law, and where is the law to be found but in your courts of justice? Suppose it were the policy o

our government to establish the *lettres de cachet* of the old French government, and that a citizen should be taken from his home privately, clandestinely, at any hour of the day or the night, and carried to prison. How is he to be released? A little piece of paper, signed with the name of a judge, unbars the prison doors, brings forth the prisoner, and gives him a fair, public hearing; and if there is no just cause of complaint against him, restores him to liberty. If his property is taken wrongfully from him, on what must he rely for redress? On the executive? On the legislature? No. He must rely on the law; and that law is deposited for him in the courts of justice, and there he may go in the full confidence that he can obtain the relief that is due to him. Suppose his reputation is assailed, or his life menaced, by individuals or otherwise. Nay, suppose the highest functionary in the government oppresses him—where does he go for redress? To the law in the court of justice, whose door is always open to him, and where he is certain of finding a response according to the merits of his case, and not according to any man's will. Can you enslave a people where there is an independent judiciary? Impossible. What is slavery? What is it but to deprive a man of his rights, more or less? Can a man be deprived of his rights where there is an independent judiciary, forming an integral part of the government, and exercising its authority independently of all men? How is it to be accomplished? Who can enslave him? Who can take his property? Who can injure his reputaion? No man—high or low—rich or poor—many or few—from the governor down to the humblest individual in your land. And why? Because he finds himself amenable to a court of justice, into which he may be compelled to come, as well as any other man. Can any man be a slave while such a state of things exists? No. And hence, as I before stated, from the moment the revolution burst out in France, as appears from the authority of Chancellor Kent;—from the moment our ancestors touched the soil of Pennsylvania, and felt that they ought to be free—from the moment that the English people were relieved from the dynasty of the Stuarts, which had prostrated the liberties of the people under the deleterious influence of absolute monarchial power;—from the moment that a free charter was to be granted on the approach of freedom, in any state or nation, this condition of an independent judiciary was insisted upon and adopted. I sum it all up in one word, and say, that an independent judiciary *is freedom*. The words are equivalent, and whatever assails an independent judiciary, assails freedom. Do I exaggerate? Instead of dealing in general principles, let every man bring it down to its details, and ask himself what that is in which freedom consists? If he does not find that it begins and ends where I say, then I am egregiously deceived.

But, sir, I would ask, have gentlemen reflected, independently of this positive security, how great a value your independent judiciary has in a more enlarged, though not less efficient point of view? Why is it that our freedom is our principal, or, at least, a serious part of our every day's thought? How is it that it cannot be separated from us,—that it belongs to us almost as a part of our existence and that every man, woman, and child in the state of Pennsylvania, lives under the certainty of the enjoyment of freedom? It is by the manifestion of their rights, continually exhibited to them, through the medium of the judiciary. Do they learn

any thing of it from the legislature? Do they learn any thing of it from the executive—farther than as the legislature and executive are themselves influenced by the same pure atmosphere in which we all live? Where then, do they learn it? By every day's experience, which teaches a man that this belongs to him—by seeing it extended to every one who stands in need of aid to resist oppression or wrong; until at last it becomes an instinct, a part of his nature—but only to be kept alive by being constantly kept in action.

But, Mr. Chairman, an attempt has been made to distinguish between the judiciary under a monarchial government, and the judiciary of a republican government. How can they be distinguished? I answer, by the tenure of good behaviour, and responsibility only upon a fair investigation. And I will show you that there is no other mode in which a judge can be free. Yes, sir, free. Instead of dealing in generals, let us come down to the simple elementary principle of this thing. With the tenure of good behaviour a man is sure of continuing in office, if he does his duty. Some one will say, this is a mere truism. None will contend against it, and all will admit that a man who holds his office by the tenure of good behaviour, is sure of continuing in office if he does his duty, so far as you can make him sure. Is not this an independent judge? Is not this exactly the sort of judge you want? When you come to this plain exhibition of the principle, you there find, so far as human agency can produce it, the very thing you want. But again; without this provision, the judge is not sure of being retained, even if he do his duty. Nay, he is not sure that doing his duty may not actually become the cause of his removal. What is the case to which reference has been made, in the state of New Jersey: I mean the case of Judge Drake. Did not he do his duty? Yes, sir; for he decided according to his conscience and his best judgment;—whether he decided right or wrong, I am not about to judge. I say nothing about it. He did his duty; but notwithstanding he did it, he was turned out of office—he was turned out because he did his duty. Is that man an independent judge, who may be turned out of office, although he does his duty, and even for the very act of doing his duty? Look at his extraordinary condition! Here are two parties in the state, each of them zealous, not to say inflamed, on the subject of their respective rights, and both being sufficiently powerful to have a great influence on an election. And what is the consequence to the judge? Decide as he will, in favor of one party or of the other, he must be turned out of office, if both parties be equally violent and determined. Yes, sir; and the case of Judge Drake is even stronger than has been stated. He is bound to decide, and if he does not, he ought to be turned out. If he does decide, he is sure to be turned out; for, decide as he will, he must decide against one powerful party, and if that one should be as jealous on the score of its claims as the other, it will use all its power and influence to have him turned out. Well, gentlemen say very coolly (especially the gentleman from Luzerne has said) that the judge has no *right* to his office, and then comes to the conclusion, that this is only the fair operation of a republican principle. Sir, I am aware that no man has a right to his office. I concede that point; and for this reason, that no office is established for the sake of the officer, but for the sake of the people. But the question under discussion is, not whether a

judge has a right to be a judge. You want a judge, you must have a judge, and the question which you have to determine is, how will you make a judge who will be able, humanly speaking, to fulfil the duties of that office?

Now, Mr. Chairman, if the operation of a principle be, that a man shall be turned out of office for doing his duty, then, I say, it is falsely called a republican principle, and that it is in fact no republican principle at all. Why? Because the answer does not apply to the question. The question is, how shall we make an independent judiciary? and the answer is, no man has a right to his office. This, as an answer, is irrational and absurd. But, sir, let the judge know behorehand, that if he do his duty, he will be turned out; and that to have a chance of retaining his office, he must violate his duty—and what will be the effect on your judiciary? Is it in accordance with a republican principle, so to constitute your judiciary, as that the judge shall have a motive for *not* doing his duty, or for deciding contrary to right and justice—for deciding contrary to the very terms of his oath? Have you, sir, any right to put such a temptation in the way of a fellow citizen to violate his oath, and to tamper with the liberty, the property, and the reputation of individuals in society? Have you a right to keep for ever hanging in the sight of a judge a bait to draw him off from the path of justice, and make him do that which is wrong? What has arbitrary power done? It has given you the bitter fruits of arbitrary principles. And what are the fruits? When the monarch desires the accomplishment of any particular object, no regard is had to the rights of individuals, but the judge is bid to do the will of his master. If he hesitates, he is asked, as Oliver Cromwell once asked a judge, "who made you a judge?" This is the action in an arbitrary government; it is the application of arbitrary and lawless principles—and how can that ever be the operation of a republican principle? It is no republican principle. It is unjust, immoral, sinful and tyrannical, and its offspring must be anti-republican and hideous. Of the distinction alluded to, between governments, I will speak hereafter, but in the meantime I invite the attention of the committee again to a simple exposition of the nature of this tenure of a judiciary, and I ask if it is not the most perfect security that can be found in the world—such as Providence has been pleased to make the world—that a man is sure to be continued in office if he do his duty,—and if you give him any other tenure, he is not sure of that, but, on the contrary, is sure that, in certain cases, the very act of doing his duty may be the means of depriving him alike of his office, his character, and perhaps his bread. This principle is, itself, based upon another, which I also hold to be sound. Sir, I do not believe in the perfectibility of man. I do not believe that any man who walks the earth, is raised above the ordinary standard of humanity—I mean the moral standard. Kings and princes can be flattered. All who approach them would persuade them that they are giants. I have no faith in such things. Every man who is successful in life, has those around him who will flatter and fool him. He will often become foolish and self-deceived, because he is flattered. Let a man become rich, he will find himself surrounded by toad-eaters; let him become powerful, he will find flatterers. They may make him inflated, but they never will persuade any other mortal man that his powers are above the ordinary capacity of

mankind. Such flatteries do nothing but debase his intellect, injure his morals, and make him a worse man than he otherwise would be. So, sir, power in the hands of multitudes will always have flatterers and parasites—these are the demagogues. While I say this, I am not speaking of the effect of religion, and the degree of perfection which may be attained by means of its holy influence; I do not wish to deal with such questions here. But, even religion, although it may change a man in one, and that a most essential point, will not change him in all respects; it will not change the whole character of the man. It leaves human infirmity still clinging to us, and leaves, too, distinguishing infirmities. It does not make all men alike. But, while I believe this, I believe that mankind in general are good—probably, as I grow older in the world, I entertain a more favorable opinion of it—and that they will endeavor to do what is right, if there is no temptation to do what is wrong. I speak of mankind in general. There are, undoubtedly, many exceptions, as there are to every general principle. I believe, that a man will tell the truth, if you place before him no motive to say that which is not true. If, then, you want to be assured of the good conduct of men in a given station, you are first to lay down clearly, in what good conduct consists. This you do with your judge, by taking his oath of office to decide according to law and justice. You lay down no such a rule to a member of the legislature. He has a wide range of discretion. But your judge has but one plain path of duty before him. This is the fairest thing. What is the next? Take care, as far as you can, that there are no temptations to seduce him from his path. When you have done this, you have accomplished all that man can accomplish. But suppose—weak and fallible as our nature is, and yet good as it is—blended—mixed—imperfect—undergoing trials, for which *we* shall be hereafter judged—with this nature, you throw in the way of a man temptations too wrong. This is the question. If you do so, the history of mankind proves that it cannot be resisted; and proves it farther in all governments of all descriptions, from the beginning of the world down to the present time. If the tenure of good behaviour be accompanied by a knowledge of the precise character of the duty to be performed; if it will leave a man free to do his duty, with a certainty that he will be continued in office if he perform it; and if you put in his way nothing to counteract or disturb it, have you not as much security as you possibly can have? Are you content with less? Are you willing to destroy any part of it? Gentlemen have admitted, that in a monarchial government like that of England, the judicial tenure must be an independent tenure, and during good behaviour, and they admit it, also, as to the government of the United States. Sir, I desire to achieve no triumph in any argument which I may urge as such—I want no trophies of victory; —I would persuade, if I could; I would conciliate, if I could. But I am not here to catch at the concessions of any man, with a view to build upon them a triumphant argument for my own cause. I am here to sustain, uphold and defend those principles which I believe to be most conducive to the liberties, interests and the happiness of the people, and not merely to get the better of an antagonist. Therefore, I would sustain them on their own proper grounds, and ask, where is the foundation for this distinctian? The government of England has been taken, for example. Now, I venture to say, and I think I shall be able to convince any

man who is not already convinced, that an independent judiciary, holding its tenure during good behaviour, is of infinitely more importance in our own government, than it is even in such a monarchial government. If I look to that government, I find that it has one great feature in common with ours: and that is, that there are three branches, intended to be entirely independent of each other. So far, then, the analogy is complete. They have their king—an hereditary monarch. We have a chief magistrate, elected by the people, every three years. They have an aristocracy. We have no such thing. Still, however, their government consists of three branches, intended to be entirely independent of each other. This independence is more important to you, than probably it is under such a government as that of England. How, then, are these three branches to be independent of each other, if one is placed under the power of the other? I care not which of them it may be; but the first principle of a true republican government being, that its branches are to be kept separate and independent, I desire to know, how that object is to be accomplished, if one branch is placed under the dominion of another? As to the appointment, that must be made in some way; but this once done, no occasion can exist for any farther connexion. Is the executive dependent on the legislature? No. Is the legislsture dependent on the executive? No. Is either dependent on the judiciary? No. They are individually amenable to any one to whom they may do wrong, but are they in any manner under the power of the judiciary? Can the judiciary punish or remove them? No. Then, is it not clearly a violation of the free principles of your government to make this branch—the judiciary—dependant on either of the other branches, or upon both of them? And yet, do you not make the judiciary pependent on the other branch of the government, if you give the power of removal without cause, and at the mere will of another? Are you taking away power from the judiciary? I will show you that you are not. You are destroying the independence, not diminishing the power. You leave the whole power, but you corrupt its exercise. On the other hand, you are accumulating power in the hands of that department of the government to which you give this authority to remove the judges. Look at the executive! The cry which has been heard throughout the state has been against the increase of executive patronage; that too much power has been allowed to lodge in the hands of the governor! And what are we about to do? To increase it to an infinite extent. How? by placing within his reach the control of another department—that is to say, the judiciary—thus doing the double mischief, of increasing executive patronage, and placing one branch of the government under the power of another. I speak of this matter practically; I care little about theory. And I will put to you the case of a judge whose commission is about to expire within a month—nay, within a year, or within two or three years. Upon whom is he dependent for re-appointment, according to this extraordinary plan? Upon the governor! And how is he dependent upon the governor? Is he to come before the governor, as before a tribunal, to have his conduct investigated, in order that it may be ascertained whether he has done his duty or not? Not at all. Is there to be any inquiry whether he is a man fit or unfit for his office? Not at all. No reasons are to be given. *Sic volo! sic jubeo!* says the governor, and then you know the result;—"my will," stands in the place of the law. Sir, is it not ridiculous—I speak with perfect respec,

to every gentleman who hears me—but is it not absurd and ridiculous, a downright mockery, to say, that there is any independence in this? Sir, the judge—if he be no better than mortal man—driven to desperation by the circumstances which surround him, is much in danger of becoming reckless; of forgetting his duty—of disregarding his duty—of suppressing the voice of his conscience—and of converting himself into the mere instrument of that power which is nearest to him, and which can either make or destroy him by the single expression of its will. I say, sir, he is in danger. I do not mean to say that he will, or he will not, do this. But I say that, in such a state of things, it is the *will* of the governor, and not the *conduct* of the judge, which is to decide. Is this an independent judge? What do you mean by an independent judge? I mean a man who is sure to be continued in office if he does his duty. But is there any such meaning here? No. It makes no difference whether the judge has done his duty or not—if the governor choose to displace him, he will be displaced. And whom will he appoint in his stead? I do not know who the individual may be, but, according to the course of government, I believe I can say of what political party he will be. This is undoubtedly a very great evil.

But, Mr. Chairman, let us examine this matter a little more closely, and let us see whether we are not entirely mistaken in this point. It will be found that, in this respect, the analogy between our government and the government of Great Britain is far greater than gentlemen seem to imagine. What is it which works a change of government in England? The change of the ministry, not the change of the king. And how is a change of ministry wrought? By a change in the house of commons. And how is a change in the house of commons brought about? By the people—who have a right to vote—more extensively and more powerful since the late reform in parliament. In modern times it makes little difference who is the king, unless he should chance to be a man of very decided character, or of vast popularity. What have we seen within a few short years? George IV. dies, and is succeeded by William IV., the sailor king, as he was commonly designated. William IV. dies, and is succeeded by a young lady of eighteen years of age—a soldier's daughter. The ministers still go on with the government, and the same ministers who held office under William IV. continue to administer the government under the reign of Queen Victoria. The movement of the government is the same. It is true, then, that in the British government, as in our own, the change in the government is a popular change, made by the influence of the popular voice in the election of members of parliament—it being fixed, as a principle of that government, that when the ministers are no longer able to command a majority in the house of commons, they are unfit to conduct the government. They must go out, and thus the change in the government is effected.

Now, in this point of view, the change of the judiciary in England ought to be placed on the same basis as the change here; because a change in the government of England belongs to the popular part of the constitution in England, and if the judiciary is to be of the character of the government, it ought to be as much so there as here. It ought equally to follow the popular movement.

But why is independence admitted to be necessary in a monarchial

government? Because all history tells us that, if the monarch has power over the judge, he bends the judge to his own will, and is not satisfied with the just execution of the law. Sir, this is true. Be it so. Then, is it not most obvious that the argument applies, *a fortiori*, to a republican government; and for this plain reason, that the influence of sovereignty in a republic is more pervading, more searching, and more able, as well as more disposed to act against individual rights, than it is in a monarchy? What can a monarch do, or what is he inclined to do? He can employ his judges to legalize unconstitutional acts; to take away charters—to bring about illegal condemnations of men, as in the case of Sydney, which has been already brought to the notice of this committee. There, his power and his inclination terminate. But what can your sovereignty in this country do—speaking practically, and not theoretically? In whom does it reside? In the whole people of the commonwealth; but remember, it is in very different proportions. Look at it as a matter of fact. Examine it closely, and in detail, not in vague generalities. I say, and every one must know, that this sovereignty, thus belonging to all, is actually divided among them in very unequal portions. One man may have a share equal to a thousand, such being the extent of his popular influence. Another man, in the same section of country, has a share but as one. These two men constitute parts of the sovereignty of the country—although there is this prodigious inequality between them. One man, therefore, if the popular sovereignty is to avail, would have power over the judge to the extent of one thousand—and the other only to the extent of one. Suppose, then, that a controversy should take place between these two persons. Here is a man having the influence of one thousand, holding out all the menaces and all the blandishments within his power to turn the judge aside from his duty. Is not this exactly what has occurred in reference to the magistrates in the state of Ohio, who are elected for a term of years? One man says to the judge, if you do not behave yourself, if you do not decide this case as I wish it should be decided, I will make a popular appeal against you—I will set the people against you. Suppose the governor himself to be a party. Will he not be likely to succeed? Sir, is not this kind of influence to be as much avoided as the more direct influence of the monarch? But it does not rest here. In a monarchial government the judge has a support against the influence which is most likely to beset him, in the opinion of the people, which every where weighs for something, and which, in a free monarchy, weighs for a great deal. There the judge, when he resists the monarch, falls back upon the opinion of the people, and if they cannot retain him in his office, they will, at least, award him their esteem, and will find means to testify their respect for his love of popular rights when invaded by the crown. But, sir, where is the judge to meet with support in a popular government like ours, where public opinion and the whole sovereignty of the people run in one channel—generally, I grant, mildly, equably, peaceably; but at times, violently and irresistibly? Where shall he go for protection, if this current shall turn against him? In England there is a continual struggle between the crown and the popular part of the government—or between the aristocracy and the popular part of the government; and he who offends one, is sure of support from the other. But here, he who offends, has no protection, no support, except that which he may derive from a minority of

the people, and *that* cannot help him. It is, therefore, more necessary that a judge here, in order properly to perform his duties, should be independent, to the extent of the tenure during good behaviour, than it is in a monarchial government like that of England.

I have said, Mr. Chairman, that, in general, men will do that which is right, where there is no temptation placed before them to do wrong. Your legislation has carefully sought to remove temptation from the judge. Look at your statute book. It has incorporated this principle into its enactments with the most minute and scrupulous caution. What is the first principle laid down in regard to him? He shall not be a judge in his own cause. It is said, and truly said, to be contrary to common justice to allow him to be his own judge. What is next provided? That he shall not be a judge in any case in which his relatives are interested or engaged. And, again, that he shall not be judge in any case in which he has been counsel on either side—but that some other judge, not exposed to such temptation as the law supposses here to exist, shall try the cause. And why? Because the judge must not have this temptation before him. Sir, is it not as easy to appeal to the nature of man, and to say that if he is just he will decide, even although the decision be against himself or against his relatives—that if he is just, he will forget every other consideration, and that he will take no counsel of his wishes or his impressions; is it not just as easy, and quite as true, to say this, as it is to say that a man will stare beggary and degradation in the face, and that he will expose himself to a sort of infamy (if I may be allowed the expression) in relation to his judicial character? Is it not more likely that he will yield in the latter case than the former ones? In all the cases enumerated, you have prevented the judge from deciding, that he may not be exposed to temptation; and yet it is now proposed to place in the constitution a much stronger temptation, arising from his dependence on the mere will of man. It appears to me that the case is too plain to admit of any question.

But again: I believe that, in the constitution of a judiciary, the mere fact, that when a man receives his appointment, he is separated, as it were for life from all the concerns of this world, and is to be devoted to the service in the temple of justice, will have a powerful influence upon the judge, as well as a salutary influence on the people. But, sir, I do not call this a life office. This phrase, I am aware, implies something reproachful to the judiciary, and it is for this cause alone that I do not call the office by that name. But it is a serious thing to make a man feel that, if he conducts himself properly in his office, this is the last step between him and the grave—that this is the last step between him and where he, after all his judging, shall himself be judged—that here is all which he can hope for, or which life can probably give him. Such convictions must exercise a benign influence not only on the man himself, but upon all those who are concerned in the administration of public justice. They see the judge set apart, for the performance of duties, than which none can be more sacred—they see him devoted to that which is probably to constitute his occupation for the remainder of his sojourn on earth—they see him raised above the sordid excitement, irritation and strife, producing injustice and enmity, which every where surround him; and they behold him placed where, in serenity and calmness, he is as a

man who has almost passed away from this life, into a sphere where he can look upon others with an impartial eye, and can decide between them uninfluenced and unawed. It cannot be otherwise, and, with some exceptions, the fact is so. And here let me say, Mr. Chairman, that I disapprove, as much as any man, of the conduct of those judges who enter into the strife and conflict of political parties. The judge who does this, in the point of view in which I am now speaking of him, injures his character to that extent. How this abuse is to be corrected, I have already mentioned. But, sir, is there not something in this too—that you give the judge employment for his whole life, which, whilst it makes him independent of the will of others, makes him at the same time consider more carefully what that life is to be, when he finds that it is all concentrated in a single point. The principle of independence in its whole extent is, that a judge is to be no man's slave. And here, I would ask, to what, according to the plan now proposed to us, is a judge to appeal? Is a judge the only solitary being in our whole country who is to have no appeal from the injustice and wrong which may be done him? Under the existing constitution of our state, he may be heard by the legislature, in case of complaint, and by the senate, in case of impeachment. But, according to the theory here presented to us, where is he to be heard? By whom is he to be heard? I cannot conceive of a man being reduced to a state of degradation greater than that proposed to be brought upon him by engrafting such a provision as this in the constitution of Pennsylvania.

Now, sir, it is supposed—and this, coupled with the principle laid down by Miss Martineau, to which I have before referred, seems to constitute the great objection to the tenure of good behaviour—that the independence of the judge is power. Sir, if it be power that is given, and power that is unnecessarily given to the judge, I shall readily agree that it ought to be taken away; for no power should be unnecessarily given to any one. But independence is *not* power—neither is independence given to the judge so given for the sake of the judge—the power is in the functions he has to perform, and that power being given to the judge, the independence is given for your sake and for mine. It is given in order that, in the exercise of that power (if so his duty may be called), the judge may do right, and that he may have no inducement to do wrong. It is given to secure to us the exercise of his judgment—and not the judgment or the will of others. It is not given that the judge may be continued in his office for life; it is not given that he may set at defience that popular opinion which he must sometimes necessarily defy; it is not given that he may set right and justice at defiance. It is not given for the judge. It is given for the people—it is given for the citizen—it is given for him whose cause is to be decided by the judge—not exactly as a restraint upon the power of the judge, but as a security against that power being turned aside from its legitimate channel by improper bias. Let us return for a moment to the very case I have mentioned, where two suitors are engaged in a controversy—one of whom has political influence to the amount of one thousand, and the other only of one. What is the independence of the judge given for in such a case as this? And here it ought to be remarked that, from the very nature of our government, and from the division of sovereignty among the people, it reaches

to every case, however private if may be. Every suitor is a part of the sovereign. But in the case which I mention—of the influence of one thousand against one—what is the independence of the judge given for? It is given to enable him to protect the one against the thousand—that the one may neutralize the power of the thousand; that the political influence of the thousand, in other words, may be thrown out of the scale, and that judgment may be given according to right and justice. It is not, I repeat, the power of the judge; this is proved in England, it is proved here—it is proved wherever a judiciary exists. How does the judge stand under the existing constitution? He is amenable to the law, and he is therefore, in this respect, placed on the same footing with every other citizen. And what is that you wish to make him amenable to? The will of man. That is what the citizen should not be amenable to, and what the constitution of this commonwealth declares he shall not be amenable to. Well, sir, in making a judge amenable to *any will*, no matter whose, instead of making him amenable to the law alone, what do you put into the power of that will? Not the judge—but the right of the suiter; so that, in the person of the judge, you violate the first principle of the constitution, which declares that no man shall be subject to the will of another, but that all men shall be subject to the law. At the present time a judge is amenable to the law in the shape of impeachment, by means of which he may be removed from office if he has committed a misdemeanor. If he has been guilty of any misbehaviour, or of conduct which renders him useless in his office, he may be removed by address. This, sir, is true; and so far the provision in the constitution meets the case. Two-thirds of the legislature can remove any judge in Pennsylvania, but they will not remove him without cause and without a hearing. Are you not satisfied with this? If so, what would you have? Do you desire to have the opposite of that constitution which says that the judge is amenable to the law, that he is amenable to the legislature; do you wish so to fashion your constitution as to say, that he shall be removed without law, without an appeal to the legislature, and without a hearing? This, sir, I admit, is the result of what is now aimed at; but I ask those who maintain this doctrine of limited tenure, whether they are willing, as a principle, to adopt it, and to say that, whereas the constitution, in its present form, makes a judge amenable to the law—amenable to the legislature—provides that for any reasonable cause, which shall not be sufficient ground of impeachment, the governor, on the address of two thirds of the legislature, may remove him, and that he shall be liable to impeachment for misdemeanor in office; they are not content with this—they demand a constitution under which he shall be removed without law, without appeal to the legislature, and without hearing. Put such a provision into the constitution in terms, and let me see the man who can read that as a free constitution. No, sir; the constitution of Pennsylvania is safe and right in its principle, and as to any failures which have been alluded to here, the constitution is adequate to redress them all. If there be a failure, the failure is not owing to the constitution. It is owing to the appointing power in making bad appointments—or to the removing power, that is, the legislature, in refusing, on proper occasions of address, to remove an unworthy incumbent.

By taking away the tenure of good behaviour, will you correct the

appointing power? Will its exercise be better? No, sir, it will be worse—because, by so doing, you degrade the official character of a judge, and less attention will be paid to the selection of those to be appointed. Will you correct the removing power? Just the reverse; because, the answer in every case will be, it is not worth while to remove him—his time will soon be out, and, in the meantime, let the people have such justice as he will give to them. Instead, then, of creating a motive for greater vigilance in the appointing and removing powers, you do exactly the opposite, and at the same time you destroy the cardinal quality of the judiciary, by destroying the independence of the judge. If I were to admit that the appointing power was not properly exercised, and not safely exercised, it would furnish no argument. The answer would be, that the governor must do better, and that the legislature must act otherwise.

But, sir, how do we know that the legislature has failed, or that the governor has failed, in the discharge of their duty. It is to be presumed, *prima facia*, that they have not; but every member of the Convention has his own view of every case that has arisen. He presents it, believing it to be correct, and upon that he founds his opinion. But, can we form any adequate opinion of any given case, when we have no particulars of it, when there has been no hearing—no examination? And are we to declare, on each case, that the legislature has done wrong, in not removing—and are we finally to pronounce a wholesale condemnation on the judiciary, because of this assumed, but unproved failure? Sir, I will venture to say, that the legislature has not failed. I say this, because, I feel confident that the legislature, in the main, have done right. I do not think that, in every case, where the legislature has been applied to, they have removed the judge—nor even in every case where a judge has been impeached, that they have convicted him; nor do I think that this is a necessary test of the efficiency of the constitution, that every man complained of should be removed, or, that every man impeached should be convicted. Does any man ever hear it said, that a criminal court is good for nothing, because it does not convict every man who is brought before it? Sir, I had thought that all tribunals, and especially the criminal tribunals, were for the purpose, not of condemnation, but of trial—and of condemnation only if guilty. The legislature, when it is acting in reference to an address—and the senate, when it is acting on an impeachment, are both performing a kind of judicial duty—in a criminal matter—exercising judgment in a sort of criminal case—and their duty is not to condemn, because complaint is made, but to condemn in case there is proof of guilt. I suppose that the legislature has condemned in case of guilt, and acquitted where the party has proved innocent. Would any man go further, and require condemnation, even if innocence is proved? Try this with your other criminal courts, and see where it will end. But I need not comment further on this point. It is too plain. The duty to acquit the innocent, is not less than to condemn the guilty.

Having spoken, Mr. Chairman, in reference to the general government, and the character and efficiency of its judiciary, I beg leave to state, in reply to another branch of the argument, that the commonwealth's judiciary—the judiciary of Pennsylvania—is a more important judiciary, in relation to the individual rights of our own citizens, than the judiciary of

the United States. There is not one in ten thousand who feels the influence of the judiciary of the United States. It is occasionally, though very rarely, that the exercise of its functions is felt; it has very little to do with the individual rights of the citizens of Pennsylvania. It is only in the instances where they have controversies with aliens or with citizens of another state, or where a state law is carried up to the supreme court of the U. S. for the purpose of testing its constitutionality, that they know any thing at all of the judiciary of the United States. But it is your state judiciary—in its aggregate, I mean—your justices of the peace—your president judges—your associate judges—and the judges of your supreme court—all these are of daily consequence; operating, as they do, upon the security of every citizen of Pennsylvania, and acting upon it every moment, efficiently and powerfully, even where not felt—presiding at all times over our peace and security.

It is there that his rights might be in danger; and it is precisely there, because it belongs to his daily life, that it is most important to him that all the security which can be given should be provided for. He would say, without hesitation, that the citizens of Pennsylvania could get along perfectly well, in all probability, through life, without even knowing of the existence of a federal tribunal. But it was not so as to the courts of the state. He would not take up much more of the time of the committee —for he had already detained them too long.

There was a great deal to be said, and perhaps it might be right on another occasion to say more—but he had already trespassed too long, and would limit what he had farther to say to a very few words.

It was admitted, he presumed, that the judge was to uphold justice against every assailant. He ought to be strong enough to do so, else justice must be beaten down. Consider, then, what it is that the judge has to contend for, and what it is that he has to contend against? He has to contend for the law, not in the abstract, because every man looking at it in that way, will admit that it must be upheld. But the judge was to uphold it in all its application to individual cases, where, as sure as the law was in favour of one, it was against the other; and where as sure as it decided in favour of the one, it disappointed the other. The judge had to stand between the two eager and excited combatants; when he had made his award in favour of the one, that one did not thank him, and ought not, because he has only obtained his right. The other, always dissatisfied with the decision, often embittered. That was not all he had to contend against. He had to contend with the members of an eager, active, ardent, zealous profession, who frequently entered deeply, feelingly, into the cause of their clients, and who were liable to the same perversion of judgment as the client himself, and were apt to persuade themselves that the judge who decided against them was therefore wrong. If heated, they were apt also to suspect that there was some false motive, some undue bias at the bottom, which led to the decision. And if the judge, in a moment of irritation, happened to let a single sharp word escape him, though naturally provoked by offence, he perhaps made a permanent enemy—inflicted a wound which time could not heal.

Yes, the very best men at the bar are liable to such excitements. He (Mr. S.) had never been on the bench. He never should be. His feelings were all on the side of the honorable profession he had so long

been connected with. But he must say that the members of the bar were like other men, and were subject to these influences. Sometimes they were hard to please or manage. The judge had to contend against them too. He had still farther to contend against the popular judgment and the popular will. Does any one deny this? Will not every man at once admit its truth? He was sure that no member of this body would differ from him when he said, that if a cause should arise in which the popular will and opinion were arrayed in opposition to the demands of justice—however plain in their manifestation—however forcible in their expression—the judge was not to conform his judgment to that will—he was not to place the law at the feet of popular opinion. He was to disregard it—if necessary, to defy it. Was it not his duty to decide according to the dictates of his conscience and judgment, in defiance of all considerations whatever? Though the whole people should rush to the court house, and with acclamation should declare that he must pronounce in favour of one of the parties, whom they named—though they filled the court house, as in New York, and evinced the feeling so shamefully exhibited there. Could it be said that the judge could justify himself in the sight of God, and of his fellow-beings, if he yielded to popular clamour, and thereby sacrificed the liberty, the property, or the life of an individual? Suppose that the whole people of Pennsylvania, knowing nothing of the case, should determine that an accused must be convicted and executed. He (Mr. S.) would ask, if gentlemen meant to say that, in that case, the judge should bow to the will of the people—to popular opinion, and, without law, and against justice, sentence an unfortunate fellow creature to the gallows? Those who had been in the habit of attending courts, and had seen the popular will as it was sometimes exhibited there, could duly appreciate the feelings which a judge had to contend against. He himself had seen much disappointment exhibited among a large number of the people, because a man was not convicted of murder in the first degree, and sentenced to the gallows. Was the judge in that case to yield? Every one would say—"No." Then, he had to contend against popular opinion; he had to struggle against the popular will. He was bound in duty to disregard and defy it. And how could he discharge this solemn duty if he were made subject to the popular will?

Mr. Chairman, he said, in conclusion, I cannot express to you my feeling of the deep importance of this question, in all its aspects, but especially that which I have last touched upon. I hope every member of the convention will earnestly dwell upon it—will carry it out into all its realities—and, in coming to a conclusion, will purify his mind from all considerations that do not belong to the question. So sacred and so important do I hold the right to an independent judiciary and fair administration of justice to be, that there is scarcely any thing I would not yield, rather than go home with the slightest apprehension, that any human being should be tried for his life, his liberty, his property, or his reputation, by popular clamour or the popular will.

NOTE.

During the discussion, the constitution of Michigan was frequently referred to, as an example of limited tenure. The day that this speech was concluded, there appeared in the papers the following report of a

case in that state, which shows something of the working of her judiciary, and is therefore here inserted:—

"*A court in Michigan.*—The papers give an account of a very strange proceeding in a late trial before a court in Pontiac, Michigan. Benjamin Irish had sued George W. Wisner for the recovery of a bet made upon the result of the election. Among other witnesses in favour of the plaintiff, was Samuel N. Gantt, editor of the administration paper in Pontiac, and a candidate for the statel egislature. Being asked by the defendant whether he was interested in the event of the suit, he replied that he had promised the plaintiff to help him to pay the expenses of the suit—had also promised to help five others to tar and feather the defendant, and carry him out of the village—knew the ballot-box had been robbed, and he did not care who said it had'nt.

The defendant objected to receive Gantt's evidence, and commenced making remarks to the court in support of the objections. Gantt rose, drew up his chair, and said: "If he (meaning Mr. Wisner) says any thing that insinuates against me, by —— I'll knock him down."

The defendant to the court:—"I do not intend to insinuate any thing against any body. I only wish to show the court the impropriety of receiving Mr. Gantt's testimony, and I trust the court will protect me. It is a strange state of things, indeed, if I must be openly assaulted with a chair in a court of justice." [The defendant re-commenced his remarks, and Gantt again rose, drew his chair, and swore he would knock him down if he insinuated any thing against him.]

The defendant to the court:—"Will the court protect me by ordering an officer to take the fellow in custody?"

Esquire Henderson:—"No, I shan't" [winking to Gantt.]

The defendant to the court:—"Very good, sir, then I shall protect myself."

Here the defendant drew from his pocket a pair of small pistols, cocked them, held one in each hand, and proceeded with his remarks to the court. Gantt turned pale, and his lips quivered; he dropped his chair, and retreated to the back part of the court-room. Esquire Henderson then said that the farther consideration of the objection would be postponed at that time, upon which the defendant coolly replaced his pistols in his pocket, and took his seat.

The cause was at last committed to the jury, who could not agree; and Mr. Justice Henderson is accused of having *forged a verdict* in favour of the plaintiff. On this accusation he has been arrested."

Mr. EARLE, of the county of Philadelphia, said, we are told that the question which the convention had now to decide, is not whether it will amend the constitution of Pennsylvania, by striking out the clause providing that the judges shall hold their offices during good behaviour, and inserting another, providing that they shall retain their offices during a limited term of years, but whether they will give the preference to a term of ten, or to one of fifteen years. The question of continuing the provision of the old constitution, or exchanging it, some gentlemen had said, would not come up for decision, until after second reading. He confessed that he took a very different view of the state of the question.

The question appeared to him to be this:—shall the life tenure be abolished or shall it not? The committee on the fifth article of the present constitution, reported that it was inexpedient to make any alteration in that part of it which relates to judges. It provides that the judges shall hold their offices during good behaviour. When the report was taken up, a motion was made to amend it, by providing that the judges of the supreme court, shall hold their offices for the term of fifteen years—the president judges of the court of common pleas, for ten years, and the associate judges, for five. Now, when the question came up as to whether the report of the committee, declaring that it was inexpedient to make any alteration, should be adopted, or the amendment to the report, which amendment declared that it was inexpedient to alter the article, and to establish a limited tenure, he thought that was a question between the good behaviour tenure and limited terms. Some gentlemen, however, did not seem to think it was; and they said that that question would hereafter arise on the vote upon adopting the report as amended. Now, to-day the question is on adopting the report as amended; yet gentleman again declared that the question between the good behaviour tenure, and limited terms, is not yet reached. He desired to see the present life tenure abolished, and a democratic one introduced in its stead; and he wished at a proper time to give his reasons for this desire. He was contented to wait until the convention should have found out that that really was the question pending. He, nevertheless, trusted that it would be discovered before long,—and when it should be discovered, he would then trouble this body with his views, and the reasons why he was in favour of a limited tenure. He did not, at present, choose to argue against members giving a vote, which they said they were determined not to give. He saw no use in endeavoring to dissuade them from that which they had already resolved against. He would not, at this time, discuss the main question; but when it should be acknowledged that it properly came up, he trusted that, (notwithstanding the insinuation which had been thrown out by a gentleman on this floor, that those opposed to the permanent tenure, are not good lawyers—that they are governed by factious and selfish matters, and even destitute of the little virtue which may be found among a set of convicts,) humble as he was, he would be able to demonstrate with as much clearness as can pertain to a moral demonstration, that the tenure he advocated was infinitely more free from improper influences, than the life, or good behaviour tenure. He hoped to be able to show them, that the judges, under the tenure proposed by the friends of reform, would necessarily be more faithful and diligent in the performance of their duties, than they would if they held their commissions according to the constitution as it now stands. He entertained no apprehension but that he should be able to demonstrate all that he had said, nothwithstanding the great talents and profound learning he had to contend with. It was no new, or extraordinary circumstance, to see talent ranged on the wrong side. Among the framers of the constitution of the United States, two of the most learned and able debaters, Alexander Hamilton and Govineur Morris, were the advocates of aristocracy. But, their sentiments and doctrines did not prevail there, nor did he believe that they would prevail here. When the founder of the christian religion came upon earth, and promulgated the true doctrine of faith and practice, did he find the learned, as a class, ready to support him?

No; indeed, every page of the New Testament shewed the contrary, and that his word was disseminated through the instrumentality of the humble and unpretending. They were the men who spread the belief in the truths that he taught. Galileo promulgated the true theory of the earth; but the great and the learned did not at that time assent to it, and he was proscribed and persecuted in various ways. When Harvey, too, the discoverer of the circulation of the blood, first made known his theory, the powerful, the talented, and the learned, did not sustain him. They turned their backs upon him, and persecuted him; and he lost his practice among them as a medical man, on account of the theory which he made known to the world. But, that very persecution was the means of establishing it, as had been the case in other instances. He believed, too, that the objections now sought to be made against the adoption of a limited tenure, would only tend to establish it.—so, that in a few years hence, the independent and irresponsible judiciary of the constitution of 1790, would be regarded as the relic of a dark and barbarous age.

His object, in rising at the present time, was not to go into a discussion of the general question, but to correct errors in mere matters of fact, which it was better to do now, than at any other time. It was no consequence whatever to him, how great the talent and learning were, with which he would have to contend, as, provided he based his conclusions on facts, he had nothing to fear. And, this he intended to do. The great and the learned, sometimes condemn, without accurate examination. Had those who abused and ridiculed the founder of christianity, examined all the facts, so as to know surely what was the precise doctrines which he proclaimed? Had they looked into all the circumstances in reference to his pure and blameless life? Not at all. Had those who proscribed and imprisoned the celebrated Galileo, carefully investigated his system, they would probably have come to the same conclusions respecting it, as himself:—they would not have treated him in the manner they did. Men of great talents and standing, are frequently under the influence of strong prejudices, and have not the patience to examine into facts, so thoroughly as to enable them to arrive at just conclusions. Hence it was, that many great and good men, had been made the victims of condemnation and persecution.

Before proceeding farther, he wished to make a correcton or two. The gentleman from Luzerne, (Mr. Woodward) in the course of the speech he delivered, in regard to the judiciary, took occasion to make an allusion, which, however, he (Mr. Earle) was not bound to take to himself; but, having given the vote he did, it was impossible that he could imagine the delegate to have referred to any one else. The gentleman alluded to some one gentleman who had stood alone in voting against the election of the county officers, by the people. He said that I, or the individual to whom he alluded, stood alone. Now, I beg to correct the gentleman,—not only in justice to myself, but in justice likewise to those who compose the conservative party in this convention. The delegate, in charging the conservatives with gross and flagrant inconsistency, has also included me in a like charge. On the occasion to which the gentleman has referred, I spoke in *favor* of electing the justices and county officers, by the people, while several of the conservative members of the convention

made forcible and ingenious speeches against it. The learned President made a speech, which struck me with as much force as any that was delivered on that side of the question. By referring to the journal of the committee of the whole, (Mr. E. said) pages 104–5, it would be found that the subject was taken up for consideration on the 28th of June, and was disposed of in the manner recorded at page 115. The committee reported a section, section 2, which provided for the election of certain officers by the people, but did not provide for the appointment of any officer, in any other manner. The gentleman from Montgomery, (Mr. Sterigere) moved an amendment, and the gentleman from Adams, (Mr. Stevens) moved an amendment to the amendment, which was accepted, by the gentleman from Montgomery,—thus making the amendment of the gentleman from Adams, his own.

The amendment, thus modified, provided that the judges of the supreme court should elect their own clerks. The patronage of the courts was the worst kind of patronage, and one to which he was most opposed. He, (Mr E.) therefore, could not give his vote for a proposition of that character. He had to choose between the report of the committee, which provided for popular elections, and the amendment, which provided for a portion of judicial patronage; and he voted, in consequence, as he always would vote, in future, against the amendment. In this he was consistent, and the conservatives were consistent in voting for the amendment. Subsequently, however, when the question came up between that amendment and the old constitution, he voted for the amendment, because it was more popular in its features, than the old constitution. As the yeas and nays were not taken on the final question of amending the constitution in that clause, it was impossible to to discover, from looking at the journal, how far the conservatives had been consistent, on the final vote. So much for that matter.

Two members of the convention had made more than one allusion to the alleged fact, that there was but one member of this body opposed to the independence of the judiciary. One of the gentlemen expressed himself in this way:—that there was but one member who had *avowed* himself opposed to it; while the other, had stated that there was but one actually opposed to it. Now, he (Mr. E.) thought he could shew that every member, (taking the meaning attached to the word 'independence' by the chairman of the committee, (Judge Hopkinson) and the gentleman who spoke after him, and which he (Mr. E.) said was the true meaning,) every member of the committee was opposed to it. He defined it as those two gentlemen defined it. They had said, in so many words, that he judged correctly of the meaning of the term, and that he also judged correctly of the means of overthrowing the independence of the judiciary. But, they wished to throw discredit upon those who acted with him, in their votes, though not in their expressions. They said, in substance, that while two-thirds of the reformers are avowedly in favor of the independence of the judiciary, yet they are not wise enough to obtain that independence. The whole difference between him and those who voted with him, was a difference in the definition of a term. All who thought with him on the substantial question of reform, which was a majority, went wisely about obtaining the object they had in view. The same remark might be made in respect to the conservatives. They

consistently oppose that change, which will most surely make the judiciary more dependent on the people at large. We knew that in our language there were thousands of words, to which there were two significations. He had heard many disputes respecting the meaning of the words, 'trinity' and 'unity.' He regarded the debate here about 'independence,' as involving a dispute about the meaning of the term, while the ideas actually entertained by the minds of those who voted together, were the same. The chairman of the judiciary committee defined the meaning of 'independence,' to be—'irresponsibility of every external power and force"; while the gentleman from Philadelphia, (Mr. Chauncey) defined it to mean, independence of the will of man, or of any earthly power. Such independence is not found, even in our present form of government. Under our present constitution, our judges are dependent, inasmuch as they may be removed by the executive, on the address of two-thirds of the legislature. The President of the convention had said that if the power of removal were placed in the legislature, they might bring the judges to account, who interfered with politics. It is now placed in the legislature and executive. The judges, then, are not now absolutely independent, according to the definition given in some dictionaries, of the word 'independent.' He would now read from Noah Webster's Lexicon:

"*Independent*,—a state of being not dependent; complete exemption from control, or the power of man; as the independence of the Supreme Being. A station in which a person does not rely on others for sustenance; ability to support one's self. A state of mind, in which a person acts without bias, or influence from others; exemption from undue influence; self-direction. Independence of mind, is an important qualification in a judge.

Independent—not dependent; not subject to the control of others; not subordinate. God is the only being who is perfectly independent. Not subject to bias, or influence; not obsequious; self-directing; as a man of an independent mind."

Then, there is no perfect independence on earth; and, in saying that he (Mr. E.) was opposed to the absolute independence of the judiciary, he only said that which all the members of the committee admitted to be true themselves. He was opposed to an independent tenure, and to the permanency of it. He was in favor of independence of mind—independence from all improper motives. A judge may have an independent tenure, and at the same time may not have an independent mind. When he spoke of 'independence,' he meant not to allude to the mind, but to the tenure.

He now came to look into some errors into which gentlemen had fallen, in the course of their argument. An attempt had been made, to shew that the people of this state, were the first to originate an independent judiciary, and that the progress of public opinion in this country, and throughout the world, was favorable to that independence. Now, he confessed himself at a loss to perceive that the colonists themselves were the first to propose it in Pennsylvania. We found in Shunk's Collection of Documents, at page 24, sec. XVIII., the following, relative to this subject:

"But forasmuch as the present condition of the province requires some

immediate settlement, and admits not of so quick a revolution of officers; and to the end that the said province may, with all convenient speed, be well ordered and settled, I, William Penn, do therefore think fit to nominate and appoint such persons for judges, treasurers, masters of the rolls, sheriff's, justices of the peace, and coroners, as are most fitly qualified for those employments; to whom I shall make and grant commissions for the said offices, respectively, to hold to them, to whom the same shall be granted, for so long time as every such person shall well behave himself in the office, or place to him respectively granted, and no longer."

There was the first judiciary, as set forth in the first charter of William Penn, a judiciary for the tenure of good behaviour; and what was the result of Penn's experience? Why, that it did not work well; and he altered it, and directed the commissioners to turn all the idle and incompetent judges out of office.* It had been said that the progress of public sentiment in the Union, generally, had been in favor of an independent judiciary, and if we destroyed it, it would be the first instance of such a change ever having been effected in this, or in any other country on the face of the globe. Now, he would ask, was that really the fact? Was the fact not directly the reverse? We were told that eighteen or nineteen states of the Union have an irresponsible judiciary. Was that the fact? Was the reality not quite the reverse? All the time when the settlement of North America was in progress, charters granted by the British king, giving to the people of two of the colonies the privilege of electing their own judges. In the two provinces of Connecticut and Rhode Island, the people had the privilege of electing their judges annually, through their representatives. This the first, had now had for two hundred years, and the last, for one hundred and fifty years. These were the only two colonies in wich the annual tenure had been originally established; and they even to this day, adhered to it. But, in the early history of the provinces generally, the judges were either appointed by the crown, or the governor, was vested with that power. In some of the countries of Switzerland, the same tenure that was established a thousand years ago, that is the annual tenure, was still adhered to, as was the case with Connecticut and Rhode Island. The same tenure was established in Vermont, in the year 1793, and it has not yet been abandoned. There was not an instance to be found on record of a people voluntarily abandoning a limited and short judicial tenure. Some good reason must exist before they would do it. Now, he wished to know whether those states that had formed new constitutions, had been in the practice of changing their judicial tenure, to one of greater permanency. At the first establishment of our independence, two of the states formed no constitutions; Rhode Island and Connecticut. It was because they had democratic constitutions before the revolution. So that there were eleven out of the thirteen original states, that made constitutions, and of these eleven there were only two, Pennsylvania and New Jersey, that established a limited and fixed term of years as the tenure of their judges. Since that period, the progress of change has been the reverse of what gentlemen have supposed. It has been toward the distruction of the permanent and the establishment of the limited tenure. At the present moment, out of the twenty-six states which compose the Union, there are but six that now retain the

*Mr. Earle here read an extract from a letter of William Penn, on this subject.

tenure of good behaviour, as applied to the entire judiciary—for, it was admitted by the President of the convention himself, that the justices of the peace were a part of the judiciary: and there are but six states, viz: Pennsylvania, Virginia, North Carolina, South Carolina, Louisiana and Kentucky, which now give them a tenure for good behaviour.

With regard to the judges of courts of record, thirteen of the states limit the term of office of all their inferior judges, and eleven of them have limited the terms of the judges of their supreme courts. Those states which have limited the terms of their judges in general, are Rhode Island, Vermont, Connecticut, New York, New Jersey, Georgia, Mississippi, Tennessee, Missouri, Arkansas, Michigan, Ohio and Indiana. Two of them have attained a permanent tenure to their courts, of the best merit, viz: Connecticut and Missouri. But why has this been done? Because the people would have it so? No: this tenure has been retained in dispite of the will of the people. In the state of Connecticut, in 1818, on account of some religious controversy, there was a convention called, no one had then asked for a change in the judiciary which was then annually chosen. The convention was assembled with a different view. But when it was assembled, it provided to do what the people had not demanded. It introduced into the supreme court alone a tenure limited to seventy years of age, leaving the annual tenure as before, for the rest of the judiciary. What was the result of their experience? They lost a judiciary of superior talent, which they had previously enjoyed. The supreme court sunk into comparative disrepute, losing its high character for capacity, learning and efficiency. A gentleman of high legal character and attainments formerly a resident of that state, told me that, when the appointments were made annually, the judiciary was highly reputable, and the business was well and promptly done. The people soon became dissatisfied with what the convention had done, and the legislature, in conformity to the popular will, passed a vote of two to one against the permanent tenure, and in favor of a term not more than five years; but there was some imperfection found by the next legislature in the wording of the article adopted, and it was deferred for a time of necessity. But the legislature again passed a law authorizing the change, and again the people resolved to go back to the short term, but again, only a few days since, there was found some defect in the provisions of the article. The practical result however is, the people of that state by a majority of two-thirds of their representatives, have twice declared themselves hostile to the permanent tenure, and in favor of returning to short terms. Another effort was to be made to effect the change, which the public voice thus imperatively demanded, and there was no doubt that it would be successful.

The other state, where the law is in part contrary to the wishes and expressed sentiments of the people, is Missouri. The constitution of that state requires a majority of two-thirds of two successive legislatures to carry through an amendment. Not long since, two thirds of both houses agreed on an amendment—limiting the tenure of the judges of all the courts of that state. The next succeeding legislature adopted the amendment by the requisite vote of two-thirds, in relation to all except the supreme court: In relation to that, the amendment failed by two or three votes less than two-thirds. The will of the people of that state,

however, had been unequivocally manifested in its favor; and the reform which has gone into operation in the inferior courts, will probably ere long be extended to the supreme court.

The states which had changed from a permanent to a limited tenure, were Tennessee, Missouri and Mississippi. He believed Georgia had changed in the same way, from a permanent to a limited tenure, though he had not a copy of its first constitution. These changes were made by the people, not in defiance of them. The whole progress of public opinion throughout the United States, on this subject, was all one way, with the exception of its alleged change in Pennsylvania. It is alleged that the people of Pennsylvania did of their own will, change their judicial system from a term of years, to a permanent tenure, by their constitution of 1790. He (Mr. E.) did not admit it to be the work of the people. The gentleman from Philadelphia, (Mr. Chauncey) had read an opinion from the council of censors, in favor of the change which was made, but the people were never in favor of it. Possibly they might have been a majority of the council of censors in 1783, in favor of the tenure of good behaviour; but they misrepresented the will of the people, and afterwards retraced their steps. They knew, as they admitted themselves, that their proposition was adverse to the general will of the people of the state of Pennsylvania. The people had forwarded remonstrances in great numbers against the life tenure as aristocratic and inconsistent with the principles of liberty, and free and republican government. The council of censors yielded and adopted a report conformably, by a majority of four. That party which believed that the people must be managed and controlled, feared to give them an opportunity to express their sentiments on the subject. They never had an opportunity to do it. But these men who assumed to act for the people, resorted in 1790, to the plan of calling a convention, taking care to give the people no opportunity to express their sentiments on the subjects which were to come before the convention. The people were not allowed time to ascertain the sentiments of those whom they chose as delegates to the convention.

The principles of the delegates who were selected, to settle the fundamental law of the land, were not known to the people; for the day of election was fixed so early after the convention was resolved upon, that they had not time to ascertain them. Besides this, the real objects of the convention were kept out of view, while the people were led to believe, that the only, or the main objects were, first, to reduce the taxes which were said to be too high; and, second, to make some changes which it was said were necessary, in order to adapt the constitution of the state to the then recently adopted constitution of the United States. It was not openly pretended that it was necessary to change the judiciary system of the state. Time was not afforded, to take the sense of the people on the subject, and the paltry excuse given for this precipitancy, was, that it would not do to wait one year, until the counsel of censors should be chosen by the people, with legitimate powers to act on the subject. The legislature usurped the power, and gave but four weeks notice of the election of the delegates to the convention. The voters went to the election, blindfolded, and in distant parts of the state, they did not know that they were to vote for delegates to this important convention, before they came to the polls. The party that was always

opposed to popular rights, succeeded at the election of delegates. The people did not know the men elected: they did not know their sentiments on the subject of the judiciary; and they were kept in ignorance of the fact, that the judiciary system was to be changed by this convention.

The whole progress of public opinion since that time, when, without the foreknowledge, and without the consent of the people, this life tenure was forced upon us, has been decidedly favorable to short terms of judicial office. There seems no reasonable cause of doubt, that it is the prevailing opinion in Pennsylvania, at this time, that life tenure ought to be abolished.

But this tenure is defended by some gentlemen, on the ground, not that it is American and conformable to the institutions of a republic, but because it is the British tenure. Now, he doubted the correctness, even of this fact. He did not believe that such a judicial tenure as ours existed in Great Britain. He admitted that the British tenure was nominally that of good behaviour, but still the judges were virtually dependent. When they became unpopular, they were pensioned off, and a successor was appointed, who would discharge the duties with ability and fidelity, and in a manner generally acceptable to the people. No judge could there long withstand the current of public opinion; as soon as he became justly unpopular in his ordinary administration, he must go out. But in relation to political offices, the people of England do not control the judiciary; but that portion of the people being an aristocratic minority, which elects the majority of the parliament has the actual control of the judges. The yeomanry who cut down and trampled upon the people at Manchester, escaped, because the ministry wished it, and the parliament wished it.

They agreed to oppress the people, and the ministry and the parliament and the judiciary, combined together, to release the murderers, and they escaped punishment. But, about the same time, a poor man in Ireland, for being out of doors after sunset, was sentenced to transportation for seven years, under a law passed by the government, held up to us as a model. Now, this was the sort of justice, and this the kind of liberty, which gentlemen boasted of, as being received by the tenure of good behaviour, as it exists in England. He therefore, again said that, in the first place, the tenure of good behaviour in Great Britain did not exist, to the full extent that it did in this state; and, in the next place, that this tenure, as it exists there, does not secure the ends of justice, and does not render the judge independent in the exercise of his judgment, and in the administration of the laws.

There was, in his opinion, no foundation for the assertion, which had been made on this floor, that ability prevailed wheresoever the tenure of good behaviour was reserved to the judiciary. He denied that the people of England, could with propriety, be designated as free and independent, more than could those of Turkey. The oppressions are of different kinds, but oppression is found in both countries. The subjects of the Sultan were robbed and plundered at his pleasure; but, in England, the people had an aristocracy to support, that cost them more than the Turks paid to their rulers. The people were ground to the dust, by the exclusive and existing aristocratic institutions of England. Thousands annually perish for want of food, in that land of boasted liberty, but of actual

slavery, while a luxurious, corrupt, and idle nobility and clergy rioted upon the spoils of the people. In France, which has been proposed for our imitation, there was not one man in forty, who had a right to vote. It was only the rich man who had that privilege—so in Holland, and in Sweden, which have been vaunted here. Would any one assert that there was liberty in France? There was, perhaps, not so much there as there was in Spain, or in Portugal, or in Turkey. The people are in chains in each country: the question is, which have the best masters?

The chief oppression felt by the mass of the people in any country, is of a pecuniary character. Where the exactions are least, the oppression is generally least. It is less burdensome to support one tyrant, than a hundred, and one will generally have more sympathy for the people, than the hundred. There could not be liberty in any country where there was a grasping and privileged aristocracy. If it were a fact that liberty and justice prevailed in England, then we should imitate her example in other things, as well as in that of adopting the tenure of good behaviour. Then, instead of limiting the executive to two years, we ought to make it hereditary. We should make an hereditary senate, according to the same model, instead of limiting the term, to three years. Instead of extending the right of suffrage to poor men, we should confine it to those who are worth five hundred pounds; under which system not one in twenty could vote. If the argument of gentlemen proved any thing, it proved that we want a monarchial and aristocratic system of government, in the place of our republican institutions.

There was one argument which had been much dwelt upon here, and which was very erroneous. It was said that the judges who gave opinions unpalatable to the appointing power, however just and faithful, would be left out, at the end of their term of service, and that the community, through the temporary and unreasonable pique of a legislative body, might thus be deprived of the services of its most valuable and upright judges. The New Jersey case was relied upon to sustain this allegation. But, if it was true that the judges in that case were left out on account of a correct, but an unpopular decision, it was no sufficient argument against the system. It would simply show that no system worked perfectly in every instance. But it might be that there was no impropriety in the course of the legislature on this occasion. Even granting, however, that there was, it was a thing that would not probably occur once in sixty years, and the evil and inconvenience of it was slight, in comparison with the manifold and aggravated mischiefs of the system of life tenure. The evils which are yearly and daily complained of in Pennsylvania, as arising from this system, are vastly greater than any which could result from the occasional omission, on the part of the appointing power, to re-appoint a good judge. But, I have, said Mr. Earle, been led, upon inquiry, to doubt whether the fact was as stated. I do not think that the decision made by the judges in the case alluded to, was the reason why the legislature of New Jersey refused to re-appoint this judge. It was stated, in some of the newspapers, that he was removed on account of that decision; but the Trenton Emporium came out and denied it, in the most positive manner; and stated that the judge was removed for other causes—the state of his health—which, it was believed, rendered him unable longer to attend to the duties of his office. A grand improvement was certainly

made by the change; a better, though not a more honest, judge was appointed in his place. The reason now assigned in this hall for his non-appointment, could not be the true one, because many of his own party voted against his re-appointment. Then, even this argument, weak as it is, which was based on this fact, fails with the failure of the fact itself.

Mr. E. said he had now noticed three matters of fact which it was his intention to correct before the committee. He would not now go into the general argument. That he reserved for another occasion. But, in this connexion, he would beg leave to notice one of the arguments which had been much relied upon on the other side. We had been told that where there is an independent judiciary, there can never be an enslaved people. Granting this to be true, it was no argument in favor of the life tenure; because it can just as well, and, without danger of dispute or denial, be said that a dependent judiciary—a judiciary responsible to the *people* or their representatives—can never enslave the people. But, in point of fact, the assertion was not correct. He thought it couldbe clearly demonstrated to the contrary.

Take England, take any country, and see whether an independent judiciary, taken from the aristocracy of wealth or birth, and from a class naturally disposed to oppress the mass of the people, will make the condition of the people at large, more free, or, on the contrary, more slavish. Would such judges ever go against their own friends, and the privileges of the class to which they belong? Would they do any thing to promote and increase the liberty of the mass of the people? In what way, can an independent judiciary make the people free?

By way of illustration, suppose we come into our own country—into Virginia and South Corolina. Will any one say that the whole population in those states, must be free, because they have an independent judiciary. Give the judges in those states all the independence which can be imagined, and will it make their slaves free? According to the argument of gentlemen, domestic slavery, whether of Africans or Russian serfs, could not co-exist with their favorite judicial tenure of good behaviour. If the judges were selected from a class which was adverse to the liberties and rights of the mass of the people, their independence would have a tendency to prolong and aggravate slavery; and that was the case in England.

It has been said here, that Miss Martineau was wrong in supposing that a judiciary for a republic ought to be differently constituted, from that which was intended for a monarchy. It appears to me that her opinion is correct. What was the root and essence of monarchy? The subjugation and oppression of the people; and, if the independent judiciary was made to depend upon the people, it was in effect to destroy the monarchy. So, in regard to South Carolina. Suppose you made the judges and the government dependent upon the *whole* people, how long do you suppose slavery would last? The judiciary, wherever it is, must be dependent on the ruling power of the country for its appointment, for its emolument, for its reputation and honor; and in Great Britain, France, and Spain, the judges are dependent, in fact, on the ruling power of each state. Here, the people are the ruling power, and here the judiciary ought to be dependent upon them. It appears to me, continued Mr. Earle, that it is almost as essential to the existence of republican govern-

ments, that the judiciary should be dependent upon the people, as that the legislature should be dependent upon them. The objection to giving independence to either, is the same, that it will aggrandize the few at the expense of the many, without making our judges dependent on the ruling power. We would not claim to have carried into practice, the true principles of free popular government.

The question then being on the report of the committee as amended.

Mr. WOODWARD asked the effect of the vote on this question. His own vote, he said, on the amendment of the gentleman from Fayette, would be regulated by the answer. He wished to know whether it would be competent to move an amendment after the adoption of the proposition. If so, he should vote for it, but if not, he should not vote for it.

Mr. FULLER said, if the committee decided against the amendment, it would then be in the power of any member to move an amendment to the constitution of 1790.

The CHAIR would say as to the question proposed, that the first rule of the convention was left in some doubt, as to the true construction, and a committee was instructed to report a rule instead of it. That rule allowed amendments to be made either in committee of the whole or on second reading; agreeably to this rule if the motion was negatived, the clause would be open to amendment. The report could be amended.

Mr. STEVENS would, he said, if the question was now before the Chair. take an appeal from this division, for he believedt hat it was totally erroneous; under that construction of the rule, there could never be an end to the consideration of an amendment. Unless there was some limitation to the power of amendment, we should never get to the second reading. We go on *ad infinitum*. Such was the decision of the gentlemen from Allegheny, (Mr. Denny) one of the gentleman from Northampton, (Mr. Porter) and such was the true constitution.

The CHAIR, (Mr. M'Sherry) stated his opinion, and said he would like to know the opinion of gentlemen upon it.

Mr. MANN remarked, that it was not in order to discuss this question as there was no appeal.

Mr. FULLER agreed with the Chair, that it was not in order to offer an amendment, heretofore voted down. But if ten years was negatived, and fifteen years, it would be in order to move another period.

Mr. CHAMBERS said, he was entirely satisfied with the decision of the Chair.

Mr. BROWN, of the county of Philadelphia, asked whether the present amendment offered by the committee, decided the question, or whether it would take another vote. If this amendment was lost, would the question then be between the report and the old constitution. He was aware that there was a difference of opinion on the subject.

The CHAIR said, if the amendment was agreed to, as amended, it would be the first decision upon the section, and the committee would go to the next section.

Mr. BROWN, of the county of Philadelphia, said, those who were not satisfied with the motion as it stood, could offer something better. He

should vote against, but he was willing that it should be made as perfect as possible. An amendment may be discussed and amended till the previous question, which is the only stopping place, is resorted to.

Mr. MANN, then submitted the following amendment, to come in at the close of the amendment pending: "Nor shall any person hold any of the said offices, after he shall have attained the age of ——— years."

He had left the blank, because of the difference of opinion in the convention, in relation to the proper age, at which a judge should cease to hold his office. He had heretofore offered an amendment, restricting them to sixty-five years, and afterwards he modified it by making it sixty-seven years. He was of the opinion that such an amendment ought to be adopted, and he would leave the blank to be filled by the committee, with such number of years as it, in its good sense, should determine.

When the question was about being taken, Mr. MANN modified his amendment, by filling the blank with "sixty-eight years," and thus modified, the amendment was rejected.

Mr. DICKEY wished to say a word, in consequence of what had fallen from the gentleman from Fayette, (Mr. Fuller) the gentleman from the county of Philadelphia, (Mr. Brown) and the gentleman from Luzerne, (Mr. Woodward.) It appears now to be the disposition of those gentleman, who call themselves reformers, to vote for that section in the old constitution which they were sent here to reform. These gentlemen, after all their professions of reform, are now about giving a vote, which declares that they prefer the old constitution, with a tenure for good behaviour, a life, tenure as it has been called, to a limited tenure, of fifteen years; and gentlemen do this, they say, with the hope that, after they have spent two weeks, on this subject, they shall be able to get a shorter period by going back to the old constitution and spending two more. If reformers are anxious to take the responsibility of wasting the time of this convention, in this way, let them show it by recording their votes against this amendment. He would give them notice however, that if this amendment was voted down; and if the amendment of the gentleman from Luzerne, or any other amendment, was proposed to the constitution, that he would again ride it with this proposition of fifteen and ten years, so that they would find themselves in the same predicament which they were now in. Now for the vote, which will show gentlemen's anxiety about saving the time of the convention, and money of the people.

Mr. BROWN, of the county of Philadelphia, said, that so far as he was concerned, he would take the responsibility, after spending two weeks in debating this question, of spending a few hours more in getting it in that form which would make it most acceptable to a majority of the convention. If, after this amendment should be voted down, by a solemn vote of this convention, as he hoped it would be, and the amendment of the gentleman from Luzerne or some other amendment proposed, the gentleman from Beaver shall again propose his amendment of fifteen years, and urge it on the convention, it will be that gentleman who will be taking up the time of the convention, and that will be a matter which he himself will have to be answerable for to his constituents. He will then be the person who will be obstructing the business of this convention, and not

the reformers who are desirious of getting a shorter term than fifteen years. We are here to amend the constitution, and not to hold out opposition to the will of the majority of the convention or the people. If the amendment pending, is carried by the conservatives, why, it will be an amendment of that instrument without the votes of those who desired a shorter term, and if it is not carried, then we may be able to get a shorter term, so that there is nothing to fear on this subject. But he had no doubt, that it was not the desire of the gentleman from Beaver, to prolong the discussion of this question, and waste the time of the convention. He had no doubt, if that gentleman honestly believed that the tenure of the judges should be limited, when he found that he could not get the time he preferred, that he would yield his predilections and go with the majority of the reformers of this convention, in such time as would suit their views. He could not think that the gentleman would desire to force some fifty or sixty in this convention, to come over to that time which some ten or twelve of the body thought to be the best, after he found that it was not approved by the remainder of the convention. If a compromise was proposed between those who held to the tenure of good behaviour, and those who preferred the shortest period which has been named, then that would be a new question, but no such compromise was asked for. The speech of the learned President of the convention, shows that they still hold to their favorite doctrine, and that there is no disposition with the conservatives to yield to any compromise. They will neither yield their opinions, to vote for the amendment of the gentleman from Beaver, for twenty years, for thirty years, or even for forty years, the term proposed by the gentleman from the city, the other day. They will yield to nothing, and ask for the whole or none. Then as we were not called upon to consult with the friends of a life tenure, he would appeal to the gentleman from Beaver, and inquire of him whether he was ready to take upon himself the responsibility of running counter to the views of a large majority of the friends of a limited tenure, after his term of years should be rejected by the convention.

Mr. Dickey said, the delegate from Beaver, never had at any time been afraid to take upon himself responsibility, when it was necessary for him to do so, and he should not now be afraid to take upon himself this responsibility, and answer to his constituents for it. He had now only to say, that after two distinct and powerful votes in favour of his proposition, he was not going to abandon it to suit the views of a small number of gentlemen who called themselves reformers. We have now had two distinct and conclusives votes, in favor of the tenure of fifteen years for the supreme judges, and ten years for the president judges, and if this amendment, together with the large vote in its favor does not suit the reformers, let them now take the responsibility of saying to their constituents, that they prefer the tenure of good behaviour in the old constitution, to a tenure of ten and fifteen years, because the majority of the convention will not let them have ten and seven years. Let them answer, to their constituents for this vote. He was at all times prepared to answer to his, and he should hold himself unworthy a seat on this floor if—after an amendment which he believed was the best calculated to do the people of the state a service, had received the approbation of the

majority of the convention, he should fail to press it on the convention and renew it, if it was now disagreed to. He would merely remark now, that he thought it would look strange, to see those gentlemen who have been such strenuous advocates of a limited tenure, voting for the old constitution with all its defects, instead of going for a term of ten and fifteen years. What would gentlemen think hereafter, when they found their names recorded in favor of the old constitution, while the tenure of ten and fifteen years was carried by the conservatives, and those who have not been so strenuous in favor of reform. But now to the vote, and let the record show how gentlemen voted.

Mr. WOODWARD said, he must confess that he felt very much intimidated by the remarks of the gentleman from Beaver, but still he was not so frightened as to prevent him from giving one or two reasons for voting against the pending amendment. He had no idea, that his remarks would have any weight with the convention, but still he felt it due to himself, that he should give some of the reasons which should govern his vote. In the remarks which he had made some days ago, on the general subject of a limited tenure, he had taken occasion to say, that he felt an indifference about the period of years to be fixed upon; it was the principle that he was anxious about, and he felt then precisely as he had spoken. But at the same time, he had his mind fixed upon a period of years which he would prefer, which period, was five years for the associate judges, seven for the president judges, and ten years for the judges of the supreme court. This was the number of years he had subscribed to in the report of the committee, and he meant now to say, that if the matter had been left entirely to him, he would have fixed upon this same number of years. The first vote taken in this committee, was on the amendment of the gentleman from Beaver, which was carried by a considerable majority, and the five, seven, and ten years were struck out, and five, ten, and fifteen substituted in their stead. Still the principle was the same, life offices were to be abolished by that vote, just as perfect as if the period had been shorter. He therefore felt perfectly satisfied with that vote, so far as the principle was concerned, and he would have been perfectly willing to have faced his constituents with that number of years, if he could have got no better. The next vote taken, was on agreeing to the amendment as amended; and on that occasion, he voted with the majority under the same indifference, as to time which he had all along felt. But in both these votes, he observed one fact which could not have escaped the notice even of the gentleman from Beaver. That is, that all those gentlemen on this floor, who had indicated a preference for the tenure for good behaviour, had voted for this proposition of ten and fifteen years; and he presumed, a period would come when these gentlemen would vote againt all amendments, and would hold to the old constitution, as being preferable to any tenure of years. Another fact which he had observed, was, that all those who were in favor of a limited tenure of seven and ten years, had voted against the amendment of the gentleman from Beaver, and he presumed a time would come, when we would all arraage ourselves with reference to our principles, but such time has not yet arrived. He did not know how those who were in favour of the tenure for good behaviour, were going to vote on the question just about to be taken, but this he knew, that if the conservatives went in favor of

this amendment now, and it was carried, that life offices were abolished, so far as the committee of the whole was concerned, that the limited tenure is introduced, and the great principle is attained that we have been struggling for. If on the other hand, however, this amendment should be negatived by the friends of a shorter number of years, then he was told by the Chairman of the committee, that it will be competent for us to introduce the proposition which he had agreed to in committee, or introduce the proposition of compromise proposed by the gentleman from Fayette, which differed from his amendment, and differed from the amendment of the gentleman from Beaver, and which, he had no doubt, all the friends of reform might unite on. Now, in this state of the question, he preferred giving his vote against this amendment, and if possible voting it down, so that we might have the opportunity of getting at the compromise which he had alluded to. And in that case he wished to be permitted to say to the gentleman from Beaver, that he (Mr. Dickey) was not animated by that spirit which had formed every constitution, which had been framed in these United States, if he was still unwilling to yield any thing, or take one step with a view to compromise. If you look to the conventions which have formed every constitution in this country, you will see compromises, concessions and yielding, by majorities, and by minorities, and this was the way in which results of this kind were always attained. He recollected prefectly, of having read a letter of General Hamilton's, in relation to the concessions made in the convention which framed the constitution of the United States, in which that gentleman had stated, that such were the compromises made, that not a single member of that body was entirely satisfied with the constitution; that it did not entirely and perfectly meet the views of a single member, and that every member had to yield some of those views which he carried into the convention with him; that every member had to give up something, and he apprehended that this would be the case here. If gentlemen are serious with regard to this matter of a limited tenure, and some hold to fifteen, and some to ten years, it is evident there must be some compromise between these two classes of persons, because no compromise can be effected with those who go for a tenure for good behaviour. There is not a man of them who can compromise any, and when the gentleman from Beaver, talks about majorities, he must remember, that those gentlemen who believe the tenure for good behaviour the best, will ultimately neither yield to his amendment, to the amendment proposed by the minority of the committee, nor to any other amendment. Then, if reform, in relation to this matter, is to be accomplished at all, it is to be accomplished by those who are in favor of a limited tenure, and unless there is some other spirit of compromise than that indicated by the remaks of the gentleman from Beaver, he could not see how we could ever agree upon any period of years. These were the principles he was desirous of seeing carried out, and for these reasons he should vote against the pending amendment, hoping that it might be negatived; and as to responsibility to his constituents, he could tell the gentleman that he had made no pledges, and no promises to his constituents, and had no instructions from them, more than those derived from the knowledge which he had of what they desired to see incorporated in the constitution. He had nothing to do on this floor but his duty, according to the lights he had received. He

should prefer a shorter period of years, than that contained in the amendment of the gentleman from Beaver, but if the majority of the convention should ultimately agree upon that, he would be satisfied with it. He should however endeavor to get a shorter period, and consequently he would vote against this amendment.

Before he sat down he wished to be permitted to say that he did not regret that this discussion was coming to a close, nor should he have regretted its continuance longer. He was pleased to see with what ability, it had been discussed, and with what a commendable spirit it had been conducted. If it had been continued longer, he had designed when better prepared than he was at present, to have replied to several gentlemen, on the other side, who had said, that in remarks he made on this subject, he had conceded the whole ground.

Now, it would not be strange if a person of but humble abilities, and little experience in discussions of this kind, had blundered a little. It would not be very strange, he said, if such a thing had occurred, and it could not be considered any very great triumph to those learned gentlemen, if he had made this error. But he should now contend with all due humility that he not only did not concede the whole ground, but that the principles he had laid down were correct. And when an opportunity occurred, which would permit of his giving to the convention, the reasons for his making the concession, which he did in relation to the judiciary of the United States, he believed gentlemen would not say that he had conceded the whole ground. When he gave those reasons, the gentlemen who had said that he had conceded the ground, should be his judge, and if he did not show by good reasons that there was a distinction and a great distinction between the two cases, then he was willing that gentlemen should say he had conceded the whole ground. He was not prepared now to go into this discussion, nor did he design to do so, but he merely wished to say that when an opportunity occurred, on second reading, he would endeavor to clear up the fact; and in conclusion he sincerely hoped that no friend of a limited tenure would be driven from a support of that principle, by any blundering of his, in the argument which he had submitted.

Mr. MEREDITH merely wished to say that he should give his vote in favor of the pending amendment, limiting the term of the judges of the supreme court, to fifteen years, believing that it is the best thing under existing circumstances, which we can obtain. At the same time, however, it was not his intention to yield up the principle of good behaviour. That was the principle which he would eventually maintain, and he trusted when we came to second reading, that we would be able to rally sufficient conservative strengh to uphold this long established principle of our constitution. At present we know there are not a sufficient number of conservatives in the convention for the preservation of the old tenure, and as we believe that the term of fifteen years will be better than a lower term, which would certainly prevail, if this was negatived, he would give his vote for this amendment, and when we came to second reading, unless he changed his opinion from the arguments which might be adduced, he would vote for the tenure of good behaviour. Under the present circumstances, and because there was an evident disposition to take the question now, he would not offer his own poor views to the con-

sideration of the committee, but would reserve them until second reading, when he would take occasion to make some remarks on the subject. As to this matter of compromise, he hoped that that class of persons here who styled themselves conservatives, would not be excluded entirely from all compromise, if any was to be made. If any compromise was to be made between those who were in favor of a tenure for good behaviour, and those in favor of a term of years, he should prefer making it in the manner suggested by the gentleman from the county of Philadelphia, (Mr. Ingersoll) that is, that the judges be appointed during good behaviour, and to be made more responsible to the people, by making them removable by a majority of the legislature. This was the only means which he knew by which the friends of a tenure for good behaviour could compromise, and in this he thought they might compromise, because it would secure to the judges a tenure for good behaviour, only that it made them more responsible to the people; but if compromises were to be made, he did not think that these gentlemen should sit here and be excluded from partaking in it.

He should, therefore, vote in favor of the term of fifteen years at present with the hope that between this and second reading, the majority of the convention might settle down in favor of the old tenure for good behaviour, with an easier mode for the removal of judicial officers, if that should be thought best.

Mr. Biddle remarked that his colleague, (Mr. Meredith) had said nearly all that he intended saying to the committee. He felt it right in giving his vote in favor of a term of ten years for the president judges, and fifteen years for the supreme judges, to say distinctly that there can be no individual in this convention more strongly impressed with the importance of the tenure for good behaviour than the humble individual now addressing you. He felt, however, at present, that the great object which we all have in view, the public good, would be best promoted by giving his vote in favor of the amendment which had been submitted by the gentleman from Beaver. The time however would come, when he would have the opportunity of recording his vote in favor of the tenure for good behaviour; and at that time he should ask the indulgence of the convention, while he gave the reasons which should influence him in giving that vote. If, however, after due reflection and consideration, a majority of the convention shall decide against the tenure for good behaviour, then will be the time for the convention to determine as to the other propositions which have been brought to its notice. Then, in case, we find this tenure cannot be sustained, we will have a choice between a longer and shorter time, and then we will have the opportunity of looking around and seeing what other propositions we can agree upon. He now desired to say that the proposition suggested by the gentleman from the county of Philadelphia, (Mr. Ingersoll) was a ground of compromise which perhaps might turn out to be satisfactory to a majority of this convention. It gives us the the tenure of good behaviour, if we give up something else.

It seemed to him, then, that a compromise might be effected on this ground, in case the tenure for good behaviour, could not be carried as it existed in the constitution. In voting upon the amendment of the gentleman from Beaver, in case it was agreed to, the discussion was closed,

for the present on this subject, which would give us the opportunity of reflecting on the many able arguments which we have heard, and of considering the matter in all its bearings by the time we come to second reading, when with all the light on the subject which one can obtain from reflection and discussion, we can make up our minds and give our votes on this all important question. For the present, therefore, he should give his vote in favor of the pending amendment.

Mr. MERRILL said that for the first time in this convention, he must say, that he felt in a somewhat awkward position. He never had thought that it would have been necessary for him to make an explanation of this kind, in relation to a vote he was going to give, but he believed it would be necessary for him now to do so.

The gentleman from the county of Philadelphia, has thrown out some remarks about those who supported this amendment, having to answer at another tribunal. Now, for his own part, he desired the right to vote in such manner as his judgment dictated, without regard to any other tribunal.

In relation to the pending amendment, he should vote in favor of it, and take the chance of getting something better hereafter. He believed fifteen was better than ten, and so believing, and believing that we would hereafter have the opportunity of taking a vote directly between this amendment and the existing constitution, he should at present vote for this amendment, reserving to himself the right to vote as he should think best hereafter, when this report of the committee, as amended, shall be brought up in contradistinction to the present constitution. Although he had argued throughout, in favor of the tenure for good behaviour, he had stated that he was ready to make some concession, in case he could get any thing like the good behaviour principle to come to. He did believe, therefore, that the suggestion of the gentleman from the county of Philadelphia, would go farther towards meeting the views of those gentlemen who had acted with him in this matter, than any thing else which had been brought to the notice of the committee, in case the present good behaviour tenure could not be sustained. As, however, this proposition was not now before the committee, it could not be discussed, and he would say nothing farther in relation to it.

For the present he was satisfied with the amendment pending. Then, when we come to second reading, each of the gentlemen's propositions can be brought up in succession, and votes can be taken between them and the present amendment, and then will come the question between this amendment and the existing constitution. Then every man would have the opportunity of introducing his propositions in such form as he sees proper; but now we know they are restrained by the rules, and the peculiar position in which the question now stands.

He should now conclude by saying that what inconsistency there might seem to be between the vote he was about to give, and any remarks which he had formerly made, would be fully explained in the vote he should give hereafter, when the proper occasion arose.

Mr. STEVENS said it appeared to him, that those gentlemen who have been telling us that they would be prepared to say something on this subject when it came to second reading, would have ample time to pre-

pare themselves, if the present amendment was negatived, before it got to second reading, because if this amendment was negatived, the Lord only knew when we would ever get to second reading. If this amendment was rejected, then the whole floodgates of amendment and discussion, will be thrown wide open, and no earthly power could stop them. Then there would be no report of a committee to having an amendment to, as we have now, when an amendment to that would preclude farther amendment; but the whole field would be open for all the amendments which any gentleman might desire to offer, and in this way there would be no end to amendments, and it would be out of the question, to call the previous question, because that would cut off the amendment which you propose to make. Thus we will have an eternity of debate, to which there would be no end. He hoped then that every gentleman who was opposed to seeing the convention thrown into this situation, and the whole discussion opened up, would vote for this amendment, because this was not the final question, which was to be taken in relation to this tenure for good behaviour. Some gentlemen may suppose that if this question goes to second reading in it present position, that it will not be in so good a condition to be acted on as it might otherwise be. Now, this was not the case, because if it went to second reading in the way in which it now stands, then the gentlemen from the county of Philadelphia, can offer his amendment, and in case it fails, the gentleman from Fayette, can offer his amendment, and if it fails, we can take the vote between the present constitution and the pending amendmet and if the good behaviour tenure then fails, as it unquestionable will fail, from every indication which we have in this committee—why, then, you have the term of fifteen years. The gentlemen need not be alarmed, because the question is now in the best situation which it can be in to go to second reading. But negative this amendment and you have the whole ocean of debate open on which every gentleman can embark his skiff, and sail round the whole world, without check or restraint; and if this should be the case instead of adjourning to Philadelphia, for the winter, we might adjourn there for the next two or three years to come.

Mr. CLARKE, of Indiana, said he believed this discussion was about coming to a close, and he could not say that he was sorry for it, although it was not his opinion that it had been too long continued. Now, he merely wished to say that thunder generally brought rain. He did not believe, however, that that which we heard a short time ago from the far west, (from Mr. Dickey) would make any of the members of this convention shed tears.

We had got into a singular situation in this convention, each of the two parties being brought to vote against that principle which they believed was right, and each doing so for the purpose of effecting the great object they were aiming at. Although he had no doubt that in other places we should be ready enough to accuse each other of inconsistency; still he believed each party understood the other very well here.

The two parties have been marching and countermarching on this question, until each has got the enemy between them and their own country. Now, although he was in favor of a limited tenure he would not vote for this amendment, let gentlemen charge him with whatever of

inconsistency they pleased, because he could get it without voting for it. Then, being certain of this, whether he voted for it or not, he would vote against it, with the hope of getting more, and if he could not get more, he would content himself with this. He did not like fifteen years, because it was too long a term—too near a life tenure. In fact, he was told that there had never been more than two of our supreme judges who had held their offices for fifteen years. He hoped then to obtain something more liberal and substantial than this, which would be but very little better than the old life tenure; and he should, therefore, make every exertion in his power to have the term reduced somewhat from that contained in the amendment.

We had all got into a false position, and he had no doubt each would be accusing the other with inconsistency. For himself, however, he believed his constituents were intelligent enough to know how we got into this position, and to know what he was aiming at, when he was endeavoring to get out of it.

Mr. FORWARD was exceedingly happy to hear this word compromise, used here, and to witness the spirit of compromise which existed on the other side of the house, and he hoped it would be continued, because he did not believe that any good results were to be arrived at here without cultivating the spirit of compromise.

With regard to the proposition of the gentleman from the county of Philadelphia, (Mr. Ingersoll) he looked upon it, if it should meet the views of majority of the conventton, as the best compromise that can be effected. That would be giving us the tenure for good behaviour, while we yielded all the responsibility to the people, which any gentlemen could desire. This seemed to him to be something like a proper compromise to make, and he hoped gentlemen would take it into their consideration, and perhaps, some good may result. He desired this the more, because he believed if the matter went out to the people, in its present shape, a storm would be raised against it which might, perhaps, overwhelm and destroy all that we have done. He hoped that this amendment might now be agreed to, and that the matter should lie over till we come to second reading when some compromise can be agreed upon which will meet the views of gentlemen, and be acceptable to the people. He had an insuperable objection to the appointing power, as at present constituted. He could not think of having a governor making his appointments of judges with a view to his re-election, and he hoped if the tenure of years for judges was agreed upon, that when we come to second reading, we would so amend the article in relation to the executive, as to only make him eligible for one term of four years. This might remedy many of the evils to be apprehended from a limited tenure for judges. He therefore hoped, as there appeared to be a spirit of compromise prevailing, that it would be cultivated by both parties.

On motion of Mr. MCDOWELL, the committee then arose, reported progress, and obtained leave to sit again, this afternoon; when,

The Convention adjourned.

WEDNESDAY AFTERNOON, November 8, 1837.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the fifth article of the constitution.

The question being on the amendment offered by Mr. Woodward, as amended on motion of Mr. Dickey.

Mr. M'Cahen, of the county of Philadelphia, asked leave to say a very few words. He was fearful that an act of disobedience on his part might be productive of some ill consequences. He wished to explain why he had not obeyed the marshal, who marshalled the forces. The reason was, he had lost confidence in that gentleman, early in the contest, and he was not now disposed to obey his orders to wheel and fire. He would now look out for a new commander, since he had seen the old one command on both sides. He (Mr. M'C.) would vote against this proposition, in the hope that they might obtain something better; and if they could not, in a spirit of compromise, they could afterwards take this. He would not obey the mandate which had been issued. His intentions were known, and he would attempt to get an opportunity to record his vote in favor of the most liberal proposition.

Mr. Fuller, of Fayette, expressed his gratitude to the gentleman from Beaver, for the caution which he had given him, to be careful how he voted, lest he should incur the censure of his constituents. He (Mr. F.) believed that the intelligence of the people of Fayette would lead them to justify his vote on this question, if it did not on any other. He believed the reform party had wrought such a change on the middle conservatives as to convince them that the life tenure is improper. His constituents were too well informed on the subject of his opinions for him to entertain a single doubt of their approbation of his course, whenever they should think proper to pass upon it.

Mr. M'Dowell, of Bucks, apologized for rising, and assured the committee that he had no intention to make a speech at this time. He hoped to have that opportunity hereafter. A word only as to the immediate question. It appears (said Mr. M'D.) from all I hear that there are two generals in the field, one from Beaver, and one from Philadelphia county. I wish to say that I do not march under either of them. I am a friend of reform. Standing in a singular position, and not being a radical reformer, the party will not take me into their ranks. I have, therefore, no other way to give myself a name but to say I am a conservative reformer.

The question now before the committee is, if we shall establish the judiciary tenure for good behaviour, or for a term of years. There is a feeling on the minds of the reformers which I do not understand. I do not understand that by this vote, we are to settle the principle. But

this is a sort of test vote, and I shall be glad to get all the aid I can, even from the radical reformers, although they may see fit to back out afterwards. It would seem from the radicals that they are disposed to vote against this because it comes from a particular quarter. I supposed that we were contending for a principle. If the conservatives come to the rescue of that principle, I do no see why we should not settle it at once. It would afford me high gratification to see this important principle settled. Where lies the difficulty? One class of gentlemen insist that the good behaviour tenure is the best, but others contend for the limited tenure. The best way to shorten the business is, to effect a compromise between the two parties. Let those who go for the limited tenure agree to take the longest term as the best they can now get, because the advocates of the good behaviour tenure can never be expected to vote for short terms. There is but little matter of detail involved. Any thing in the way of reform, the reformers should be content with. In a short time, they will get all they want. Much has been said about a spirit of compromise. I am willing to go as far as any one, so that we make no compromise of principle. But I wish it to be distinctly understood, that I disavow all connexion with the proposition of the gentleman from the county of Philadelphia, to yield the term of years, and accept the proposition of the gentleman from Allegheny, and make judges more easy to be convicted by the legislature. I go for the principle of the term of years. I go for that principle. If I obtain ten years, it will be the same as five years. All seem to be disputing about the number of years. If a majority of the committee shall not be satisfied with the shorter term, I will go for the longer. If they will not agree to take the longer, I will go for the shorter. I am anxious about establishing the principle, and that is all. I make these remarks with a view to get rid of the question now; for I understand from those acquainted with the subject, that if this proposition be negatived, it will involve us in difficulties in which we are not prepared to be involved. I think the convention is now sufficiently enlightened to take the vote on the question—not a final vote—but for the purpose of settling the question for the present. If it should be carried, we shall have thus far done well, and may watch for future opportunity of more fully carrying out our principle.

Mr. READ, of Susquehanna, said he took a different view of the matter from that of the gentleman who had just taken his seat. The gentleman asks the reformers—for what? To vote for this proposition, and for what purpose? For the purpose of putting off the final vote. Why? Because he thinks it better not to dispose of the question now. Why not? Are not our minds turned upon it? Are we not fresh upon it? And if we postpone it, will it not be supposed we have forgotten the arguments concerning it, and shall we not have the whole ground to travel over again? Will we not save time by settling the question now? Are we not in that state of mind which is most fit for that purpose? Why not? I never saw a body more calm, more acquainted with the subject to be decided on, more fitted for decision.

As to the matter of principle. I, in this case, will vote, and on principle, against the amendment of the gentleman from Beaver, (Mr. Dickey.) Why? Is there any difference between a life tenure, and

a tenure of fifteen years? Not a particle. There is indeed a difference in words, but the principle is the same. Fifteen years, and good behaviour. What is the difference? Few judges in our supreme court hold their office longer than fifteen years: and I apprehend, notwithstanding the argument of the gentleman from Bucks, that we are not prepared to give up the substance of the principle for a mere shadow. Something has been gained, I admit, as to the inferior courts, but nothing as to the supreme court. I contend that a term of fifteen years is equivalent to a life tenure. I am, therefore, against the present amendment. Not that I prefer the good behaviour tenure to this; not that I wish to throw difficulty in the way, but I wish now to incorporate the principle which the majority has determined to sustain. I am against the amendment because the term is too long, because it is precisely an equivalent for the tenure in the existing constitution. I would as soon have the one as the other.

The Chair has decided that there can be no division of the amendment. I think the decision wrong, but, as I am very indifferent about it, I will not take an appeal from it. I think both branches of the amendment wrong, and I would as soon vote against both together, as both separately, which I should. I call on those who are opposed to the life tenure, to which this term of fifteen years is an equivalent, to vote against the amendment. This is the most proper time to settle that question. For these reasons I shall vote against the amendment. I will not now go into the general question; but at the proper time, on the second reading, or, if there is any previous opportunity, I will go into the matter, to show the reasons urged on this floor, in favor of fifteen years and good behaviour tenure, are convertible terms. I do not wish to go farther now, but hope, at a future time, to go fully into the question.

The question was then taken on the report of the committee as amended, and was decided in the affirmative, as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Biddle, Carey, Chambers, Chandler, of Philadephila. Chauncey, Clarke, of Beaver, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crum, Cunningham, Denny, Dickey, Dickerson, Dillinger, Doran, Farrelly, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Jenks, Kerr, Konigmacher, Long, Lyons, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Purviance, Reigart, Royer, Russell, Saeger, Seltzer, Serrill, Sill, Stevens, Thomas, Todd, Young, Sergeant, *President*—60.

NAYS—Messrs. Banks, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Clarke, of Indiana, Crawford, Cummin, Curll, Darrah, Donagan, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Krebs, Mann, Martin, M'Cahen, Miller, Nevin, Overfield, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smyth, Stickel, Taggart, White, Woodward—48.

So the report of the committee as amended was agreed to.

So much of the report of the committee as relates to the third section of the constitution as follows, viz:

SECT. 3. The jurisdiction of the supreme court shall extend over the state; and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties;"

Was considered and agreed to.

So much of the report of the committee as declares it inexpedient to make any alteration in the fourth section of the said article, which is as follows, viz:

SECT. 4. Until it shall be otherwise directed by law, the several courts of common pleas shall be established in the following manner: The governor shall appoint, in each county, not fewer than three, nor more than four judges, who, during their continuance in office, shall reside in such county. The state shall be, by law, divided into circuits none of which shall include more than six, nor fewer than three counties. A president shall be appointed of the courts in each circuit, who, during his continuance in office, shall reside therein. The president and judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas; being under consideration:

Mr. WOODWARD moved to amend the report of the majority of the said committee, by striking out the said fourth section, and inserting in lieu threof the report of the minority of the said committee, which is as follows, viz:

SECT. 4. Until it shall be otherwise directed by law, the several courts of common pleas shall be established in the following manner: This commonwealth shall be divided into convenient judicial districts; a president judge shall be appointed for each district, and two associate judges for each county. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas.

Mr. INGERSOLL rose to inquire of the Chair, if it would be in order at this time, to move to strike out the whole of the substitute?

The CHAIR said, it would not now be in order, there being an amendment pending.

Mr. WOODWARD rose and said, that for the purpose of accommodating his friend from the county of Philadelphia, (Mr. Ingersoll) he (Mr. W.) would, for the present, withdraw his amendment.

Mr. INGERSOLL then moved to amend the report of the committee, by substituting therefor the following new sections, viz:

"SECT. 4. The judicial powers shall be vested in one supreme court of fifteen judges, county courts of one judge for every ——— thousand neighboring people, and a justice of the peace for every ——— neighboring people, with all such authority, legal and equitable, as the legislature may grant; and such other courts, judges or justices of the peace, as may be created by law; but no law altering otherwise than by enlarging the judicial system fixed by this constitution, shall be valid without the concurrent votes of two-thirds of the legislature and the governor's approval.

"SECT. 5. The supreme court shall have jurisdiction over all suits and crimes. Three of the judges thereof shall, in rotation of the whole fifteen, hold two sessions annually at Philadelphia, Harrisburg and Pittsburg, each for determining matters of law; while the other twelve judges, in like rotation, shall hold circuit courts twice a year in each county of the state, for trying all matters of fact, according to particular provisions by law; but no law shall abolish the circuits.

"SECT. 6. County judges shall hold courts of common pleas, quarter sessions, orphan's, register's, and all other courts necessary for taking cognizance of all crimes, misdemeanors and suits, for more than fifty and not more than one thousand dollars. Provision shall be made by law, for assigning all crimes of the most dangerous kind, and all suits for a thousand dollars or more, to the jurisdiction of the supreme court for trial, together with appellate and revisary recognizance of all crimes and suits.

"SECT. 7. Justices of the peace shall have recognizance to institute all prosecutions for all offences, and exclusive original jurisdiction of suits, for not more than fifty dollars; and all judges shall have power to institute prosecutions.

"SECT. 8. There shall be a reporter of the proceedings of the supreme court, who shall hold no other office, nor practice law, while reporter; who shall attend all the sessions of that court in banc, and write down all their proceedings, which he shall publish in print, within three months after the close of each session, and within that time deposit, free of expense, with the secretary of the commonwaleth, as many copies of his printed reports as will furnish the executive with six copies, the legislature with twenty, and each judge of the state with one.

"SECT. 9. The chief judge shall be paid quarterly four thousand dollars; and each of the other judges of the supreme court, three thousand five hundred dollars a year; and the reporter not less than two thousand dollars a year. But no judge shall receive any other perquisite, allowance or emolument, than the said salaries. Justices of the peace shall be compensated by fees fixed by law; and no judge or justice of the peace shall hold any other civil office."

The CHAIR said, the question would be taken on each of these sections.

Mr. INGERSOLL rose and said, that his object in offering this amendment, was to substitute a complete judicial system; to establish the jurisdiction of the supreme court—the jurisdiction of the county courts, and the jurisdiction of the justices of the peace; and to superadd to all this, a constitutional provision for the employment of a reporter to take down the proceedings of the supreme court. How far this substitute interfered with the section reported by the minority of the committee on the judiciary, he was not yet able to see, inasmuch as the matter had come up rather more suddenly than he had anticipated. His object, in submitting the amendment at this time, was to take the sense of the convention on a question of far more vast importance than any question of tenure, and to introduce what he deemed a better system as a substitute for several other propositions which he supposed would be offered. He moved this as an amendment to the whole.

Mr. FORWARD said, he would detain the committee but a moment. He certainly could not concur in this amendment, so far as related to the supreme court consisting of fifteen judges. The idea as to the circuit court struck his (Mr. F's.) mind as being of considerable importance. This branch, he thought, would be useful. A circuit court system by which judges might travel from one place to another, without being called upon to adjudicate the cases of those in their immediate neighborhood.

There is another feature in this amendment, said Mr. F., which strikes my mind as deserving of consideration. I have never been able to discover why the same judges should hold four or five different commissions—why they should be, at one and the same time, judges of the court of common pleas—judges of oyer and terminer—and judges of the quarter sessions and register's court. Why their duties are thus subdivided, I do not know. The better plan, in my opinion, would be to consolidate them all under one head—to be called, say, the circuit court. Every thing would then be intelligible, and every man would know what was meant. I am in favor of striking out these ambiguous and unintelligible names, and substituting something which the people will be able to understand. I am not now, however, prepared to act in this matter. It has come before us by surprise, and I do say that this circuit court system —this plan of consolidating all these jurisdictions under one, is deserving of consideration.

Mr. SERGEANT, of Philadelphia, said, that this was undoubtedly a subject of very great consequence. So far as the two gentlemen, who had just spoken, had gone, he confessed that he agreed with them. He thought that consideration was due to the subject on account of its importance. His opinion was, that when a delegate had taken the trouble to propose a system, it was but fair in regard to himself and to it, that it should receive some attention. Now, it had so happened that we had been engaged for some time past in the consideration of another subject when up come this one very suddenly, and before the minds of members were prepared to act on it. For one, he could say with the gentleman from Allegheny, that he was not at all prepared. He would move, therefore, that the committee should now rise, so that we might be able to turn our minds to the subject, and then, perhaps, by to-morrow morning we would be ready to act on it. It ought not certainly to be adopted, or rejected, without some reflection and consideration being bestowed upon the proposition. There might be something of value in it.

Mr. EARLE, of Philadelphia county, intimated to his colleague (Mr. Ingersoll) that he would be glad if he would go on, and save time, and thus endeavor to render the expenses of this convention as small as possible.

Mr. INGERSOLL, of Philadelphia county, replied that he was not then prepared either intellectually or physically to proceed.

Mr. EARLE said, it struck him that we might as well take the question on the amendment of the gentleman from Luzerne, (Mr. Woodward) at this time.

The CHAIR said that it was not before the committee.

Mr. BROWN, of Philadelphia county, remarked that this was an important subject, and although he did not sufficiently understand it as to be able to suggest a remedy for the evil complained of, he would move that the committee now rise; and if his motion should be agreed to, he would then move for the appointment of a select committee, to whom should be referred the various propositions before the Convention, in order that they might examine and consider them, and then bring in a project which would be likely to meet the approval of the Convention.

Mr. DICKEY, of Beaver, said that he had no objection to the motion of the delegate from the county of Philadelphia, but begged to suggest to him whether it would not be better first to have a vote taken on the first section.

Mr. BROWN not accepting the suggestion,

The committee rose and reported progress.

Mr. BROWN then asked and obtained leave to make a motion to refer the various resolutions, relative to the organization of the judiciary, to a select committee.

Mr. M'SHERRY, of Adams, said that the committee of the whole must be discharged first from the consideration of the subject.

Mr. BROWN accordingly moved to discharge the committee of the whole from the farther consideration of the fifth article.

Mr. MERRILL, of Union, would suggest to the gentleman from the county of Philadelphia, whether it would not be advisable that we should look over the article for the purpose of seeing whether there was not some amendment to be made to it. If a committee were to be raised, it would be very uncertain when they would report. The gentleman might bring forward his amendment to morrow, and have a vote taken on it. He hoped the gentleman would consent to waive his motion for the present.

Mr. CHAMBERS, of Franklin, remarked that it appeared to him the motion of the delegate from the county of Philadelphia was unprecedented. The fifth article was now before the committee of the whole, and some progress had been made in it. All the amendments must be submitted—for what? The committee of the whole must be discharged from the farther consideration of the subject, on which it had been engaged for months, in order to send it back to the committee. He asked whether the Convention could advance with their labors by pursuing this course. If we should divide on the judicial tenure and the arrangement of the courts, much time would be lost before we should be able to come to any definite conclusion. It appeared to him that, inasmuch as we were now in committee of the whole, the better way would be to go on. Every thing that was required to be done, could be as well accomplished in committee of the whole now, as at any other time. Delay would be the consequence of the adoption of any other course, and nothing beneficial would result from it.

Mr. BROWN, of Philadelphia county, withdrew his motion; and, on motion,

The Convention adjourned.

THURSDAY, NOVEMRER 9, 1837.

The PRESIDENT laid before the Convention a letter from Levi Hollingsworth, clerk of the common council of the city of Philadelphia, enclosing a resolution from the select and common councils of the city of Philadelphia, as follows, viz:

NOVEMBER 7, 1837,

Hon. JOHN SERGEANT:

SIR—In compliance with a resolution of councils, I have great pleasure in transmitting you the enclosed.

I am, very respectfully,

LEVI HOLLINGSWORTH.

Extract from journal of the select and common councils of the city of Philadelphia, of November 7, 1837.

Resolved, That the select and common councils will most cheerfully furnish the Convention with accommodations, in conformity with the resolution of July 10, 1837, in the event of their adjourning to meet in the city of Philadelphia.

WILLIAM RAWLE,
President Common Council.
LAWRENCE LEWIS,
President Select Council pro tem.

Attest—
LEVI HOLLINGSWORTH,
Clerk of Common Council.

These communications were laid on the table.

Mr. INGERSOLL submitted the following resolution:

Resolved, That the committee of the whole be discharged from the farther consideration of the fifth article, and that the same, except so much as relates to the tenure of the judicial office, together with the several projects of judicial system which have been printed by order of the convention, be referred to a select committee, to report with such amendments as may appear to them to be necessary.

Mr. INGERSOLL moved that the convention proceed to the second reading and consideration of the resolution, which motion was agreed to, ayes 51—noes 26.

Mr. INGERSOLL rose and said, that he would add a few words to the remarks he had already made in explanation of the object contemplated by him in offering his amendment. He would premise that his own preference would be to refer the whole matter to the committee on the judiciary. Such, it appeared to him, would be the appropriate course to be taken. A resolution which he held in his hand had that referernce in view; and if his friend from the county of Luzerne, (Mr. Woodward) had given him an opportunity, it was his (Mr. I's.) intention to have moved an amendment, by substituting the judiciary committee, for a select committee. The reasons why this course should be preferred were obvious. The committee on the judiciary was composed of the oldest and the most unexceptionable gentlemen, that could be placed at the head of a com-

mittee, on which such a serious responsibility rested. But his friend on the right, (Mr. Woodward) to whom he (Mr. I.) yielded in drafting, had thought proper to require him to put it in such a shape as would please every body.

But, said Mr. I., let the proposition go to what committee it may, my views in regard to it are these:

In every convention which has heretofore sat, any gentleman who will take the trouble to read the journals or reports of proceedings of those conventions, will see that, after progressing to a certain stage in the consideration of a subject, it has been necessary to refer it to some committee out of doors, composed of a few, and sitting in private by themselves, for the purpose of arranging the phraseology—thus methodising that which has to be matured in the house. By adopting this plan, we save weeks of protracted discussion as a committee, by sending it to a similar committee elsewhere. This, then, is my main object. Every gentleman will perceive that the substitute which I have offered, does not affect, in the remotest degree, the question of the judicial tenure; and to whatever committee it may be sent, that committee is furnished with no instructions to meddle in any way with the question of tenure, but only with the one main question of jurisdiction.

And, Mr. President, as I shall never hereafter seek an opportunity of explaining my own views to the convention, I will say a few words at the present time in illustration of this subject. My project I admit to be very radical. It goes to the whole system, top and bottom—root and branch; it pervades them all. It takes away from the justices of the peace jurisdiction over all cases exceeding the sum of fifty dollars—and, in return for what it takes away, it gives them a universal jurisdiction, where, at present they have none: it gives them jurisdiction in cases of ejectment—jurisdiction in cases of replevin—jurisdiction in cases of damages. It gives them, in short, recognizance to institute all prosecutions for all offences, and exclusive original jurisdiction of suits, for all sums of money not exceeding fifty dollars. It thus bestows upon them a universal jurisdiction with which, under the system as it now exists, they have nothing to do; but it reduces their jurisdiction from one hundred dollars to fifty dollars.

In reference to the intermediate court, that is, the court of common pleas, my amendment proposes to do away with the whole system, and to substitute for them county courts of one or more magistrates, as may be thought proper. I do not know whether these magistrates should be professional men, or not. I would leave that point to be determined by the convention; and I have reduced the entire jurisdiction of these county courts to the sum of one thousand dollars. Within that sum I propose to give them universal jurisdiction; it gives them orphans' court jurisdiction, which at present require two judges.

And, in reference to this court, I will here state as a fact that, in the part of the commonwealth in which I reside, it is a matter of every days experience for a judge to sit by himself, whilst the other judge, who may be a hundred miles off, is considered as actually present. It brings their jurisdiction up to the sum of one thousand dollars, and gives them jurisdiction over all civil and criminal matters, register's court jurisdiction, &c.; and their jurisdiction should be extremely localised, and

confined to a small neighborhood of a few people; in some instances to a county; in others to less than a county. Then, over the whole, the system places the supreme court with fifteen judges, instead of five only, as at present constituted; and the supreme court, instead of sitting at Sunbury and Lancaster, which are places more adapted to the accommodation of the bar than of the people, (and I mean not to infer any thing wrong by this remark,) is to be required to sit as follows; three of the judges, in rotation of the whole fifteen, are to sit almost constantly, at least twice a year, in Philadelphia, Harrisburg and Pittsburg, while the other twelve associate judges, in the like rotation, are going through the state, at least twice in every year, trying all matters of fact, provided the amount exceeds the sum of one thousand dollars, and all crimes of a certain magnitude—leaving it to the legislature to draw the line of demarcation as to all crimes, &c., as they may think proper.

This, Mr. President, is the system which I offer to the consideration of this Convention.

I have also super-added a very important office which has been established in many other states of the union, and not in this—though we should have had such an officer long since. I mean the office of reporter; an office of such importance as to be worthy in my opinion, of a constitutional provision for his appointment and salary. By a reporter, I do not mean some young lawyer, who is to be engaged simply for the purpose of registering the opinions of the court; but a man who is to be select ed by the appointing power—wherever that appointing power is to rest—and who is to be qualified as a supervisor over the court—that is to say, to enable the public to revise their proceedings. He is not to be the humble servant of the court—to do their bidding, and to register such things as they please, and no more. But he is to keep a record of the proceedings of the court, and he is to publish these proceedings once in a given time. He is to furnish copies of all these proceedings to the secretary of the commonwealth, to the legislature, to the executive, and to the several judges of the state.

This is my entire system. I have added, although this is a point on which I do not feel very tenacious, the amount of salary which is to be settled by constitutional provision. This I think, is not going very far. The law, as it exists at present, is that the judges, salary shall not be reduced during their continuance in office. I have provided that no judge shall receive any other perquisite, allowance or emolument, than the said salary. A *per diem* travelling allowance is a fee, and it is directly in the face of the constitution. Give your judges neither a mean nor an extravagant sum. Let every body know what that sum is, and let it be known that in this sum is comprehended all the pay and emolument of every kind which a judge is to receive. This is the whole scope and object of my amendment. I shall leave it in the hands of the convention; having said all I have to say on a subject which I have had very much at heart.

I think that a protracted discussion of two weeks, in reference to the tenure of office, has nearly ripened every mind and prepared it to act promptly and efficiently. And although, when the subject shall come up in convention on second reading, I shall hope still to have the benefit of

hearing other arguments from gentlemen, both on my right and left, still I suppose that the minds of members are settled upon certain principles, if not on the application of those principles.

If, therefore, the subject of tenure and the subject of system can be brought up under a report of a committee—which can be done as well to-morrow, or the next day as at any other time—we should then have the question of jurisdiction and thequestion of tenure—in short, we should have the entire system moving on together—and this, the most difficult point in all our labors, would be in a fair way to be settled.

Mr. Chambers, of Franklin, rose and said, that he could not vote in favor of the resolution which had been presented to the convention, because he thought to adopt it would be to make a retrograde movement in their proceedings. At the commencement of the sittings of the convention, the subject of the judiciary had been referred to the appropriate committee. That committee, after a careful investigation, had made a report; and the convention had now before them not only the fifth article of the constitution, which had reference to the judicial system, and the report of the judiciary committee, but also every amendment that had been offered; and it was still in the power of gentlemen to submit farther amendments, if they thought proper to so do.

We have made, (said Mr. C.) considerable progress in the consideration of this report, and have passed in committee on two very important principles—the one being, as to the particular courts in which the judicial power of the commonwealth should be vested. The best principle that has been passed upon is that which relates to the particular terms for which that power shall be vested. This constitutional principle has been adopted almost by a unanimous vote. And yet it is now proposed to refer the whole subject again to a committee, with the exception of that part which relates to the tenure of the office. We are now about to go to sea again on the whole subject with the single exception of the tenure —although we have, by an almost unanimous vote, agreed that we would adopt the constitutional provision which existed in relation to the different courts. I, for one, am disposed to give to the amendment which has been offered by the gentleman from the county of Philadelphia, (Mr. Ingersoll) every attention and every consideration to which it is entitled; and I trust that there is a like disposition prevailing in the minds of all the other members of this convention. Yet, sir, that consideration is to be given to it in committee of the whole. What object is it proposed to accomplish in raising another committee? The gentleman says, that this course is in conformity with the practice in other places; that the subject should be sent to a committee, in order that they may mature the system for our action. That is well enough when the convention has passed on the different subjects. Then it would be convenient, and proper to appoint a committee whose duty it should be to arrange and revise what we have done, and to exhibit it to us as a whole. But when we refer the subject to a committee before we have passed upon it in convention, how is it possible for us to make any progress. We do not know what may be the opinion of the committee.

We do not know but that there may be a report from the majority, and a report from the minority of that committee; and then the whole subject must, of necessity, come up again for discussion and decision. Gentle-

men who have offered amendments, or who may yet propose to do so, will expect to have these amendments acted on in convention. They will not, I should suppose, be content to have these amendments disposed of by any committee, but will desire to have the opinion of the convention upon them. If this is the case, we do not advance a single step in our labors by the appointment of a committee at this stage of the business.

I hope, therefore, Mr. President, that the Convention will again resolve itself into committee of the whole, and proceed with the consideration of the amendment of the gentleman from the county of Philadelphia, and also of such other amendments as have been, or may yet be proposed; and when we have passed upon all the propositions which may come before us in committee, it will then be time enough to appoint a committee to reduce them to proper form and substance. I am satisfied that we shall save much time and labor by the adoption of this course. If, however, it should be the opinion of the Convention that the subject should be referred at all, I think it should be referred to the committee on the judiciary, as the most appropriate committee, and as the one which has had charge of the whole matter from the commencement of our business.

I do not mean by this to indicate a wish that the subject should be referred at all. I should prefer, as I have said, that such a direction should not be given to it. But, if it is to be referred, I see no good reason why, when we have a standing committee, we should appoint a select committee. I repeat, however, that I am opposed to any reference at all; and that I hope the Convention will again resolve itself into committee of the whole, and proceed in the regular way, with the consideration of its business.

Mr. Brown, of Philadelphia county, said that if the Convention were desirous to have twenty different projects submitted to them in committee of the whole, and which would consume at least a month of their time, he was content to sit and listen. If, however, gentlemen were desirous that all these plans should be examined, and sifted, and should be brought before them in some intelligible and comprehensive form, then they would agree to the motion to send the whole subject to a committee, and would thus, he had no doubt, save full three weeks of precious time. He did not himself feel any great confidence in the results of the deliberations of the committee, yet he thought that this was a subject which could best be settled in a committee. The object of a reference was merely to save the convention a long intermediate debate on the judiciary, and it was with this view, that he proposed last evening, that this committee should be oppointed. He still entertained the opinion that this would be the most satisfactory course for the Convention to pursue.

Mr. Woodward said, that he did not think it would be possible to do justice to the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) if the Convention should adopt the suggestion of the gentleman from Franklin, (Mr. Chambers.) When the fifth article of the constitution was first taken up, it would be remembered that the first section was adopted with very little opposition. The tenure of office was now established by the vote of the committee of the whole, and that had therefore been disposed of, at least until it should come up again on

second reading. The main feature of the amendment of the gentleman from the county of Philadelphia, was in direct opposition to that first section; and he (Mr. W.) could not perceive how the Convention could get along in the position in which it was now placed, unless it commenced *de novo*. It seemed to him that it was proper and necesssary, that this subject should again be referred to a committee. He believed that the resolution of the gentleman from the county of Philadelphia, (in which resolution the amendment now proposed was originally embodied,) had not been introduced to the notice of the Convention, until after the committee on the judiciary had made their report. He (Mr. W.) was not able to state whether that committee had, or had not, been discharged from the farther consideration of the subject, so soon as they had signed their report; but, if his recollection served him correctly, it would be found that the resolution of the gentleman from the county of Philadelphia, had never been passed upon, or in any way brought before the notice of the committee on the judiciary. It seemed, therefore, to be only right and proper that the amendment should be referred, either to a select committee, or to the committee on the judiciary. He thought it was due to the gentleman from the county of Philadelphia, (Mr. Ingersoll) that such a direction should be given to it; and as the opinion of the committee on the judiciary had already been given on the subject generally, he thought it would be more proper that the amendment should be sent to a select committee, in preference to any other. For these reasons, he was in favor of a reference to a select committee.

Mr. FLEMING said, that as a member of the committee on the judiciary, he should not feel disposed to go into an examination of the different systems which might be suggested by different gentlemen, for the purpose of submitting to the consideration of this body, any new system of jurisprudence for the state of Pennsylvania. If any reference at all was to be given to the amendment of the gentleman from the county of Philadelphia, he (Mr. F.) would much prefer that that reference should be to a select committee, rather than to any one of the standing committees of the Convention. And he would prefer also, if such an arrangement were possible, that the select committee should be made to consist of the gentlemen who have these various new projects to offer. He was of opinion, however, that but little, if any, practical advantage was to be derived from a reference of these matters to a select committee at the present time. If he could have an assurance that no other project than that which might be reported from a select committee, would be offered to the consideration of the Convention, he would at once go for the resolution, and vote for the appointment of such a committee.

But, from what he had seen heretofore, he felt strongly inclined to the opinion that every gentleman who had any new project in view, in regard to the judicial system of Pennsylvania, would still insist on presenting his project, in the shape of amendments to the report of the select committee, or in some other way, so that the Convention would eventually be compelled to pass on each project separately in the committee of the whole, whatever course they might now pursue, or however desirous they might be to come to some final decision at as early a period as possible.

The resolution of the gentleman from the county of Philadelphia, (embodying his amendment) had been offered, he (Mr. F.) believed, so far back as the 29th day of last May. The committee on the judiciary made their report on the 23d day of the same month; and this resolution, with this proposed alteration or change in the judicial system, had been upon the files of the Convention from the 29th day of May last, down to the present time, together with all other resolutions which related to this particular matter; and all of which had been examined, in their turns by the members of the Convention. And now, after the lapse of this long period of time—after the minds of the members of the Convention being in a great measure settled and in a condition to act, he did not think that any thing was to be gained by again sending the subject to a committee. The project of the gentleman from the county of Philadelphia, as well as the projects of other gentlemen, were now before the committee of the whole;—the minds of the members were no doubt open to receive any new impressions which might be offered, and he believed that the proceedings of the Convention would advance more rapidly, and that those new impressions would be quite as well received in committee of the whole as if they came through the medium of a select committee. If the committee of the whole were to be discharged from the farther consideration of the fifth article of the Constitution, and the debate was to be arrested, in order that time might be given to a select committee to form a new judicial system, some two or three days would be lost, in the course of which time, if the consideration of the subject was resumed in committee of the whole, one, or two, or even more, of the proposed amendments might, in all probability, be discussed and disposed of.

Mr. INGERSOLL rose to make a suggestion to the gentleman from Lycoming, (Mr. Fleming.) The committee on the article of education were perfectly ready to make their report—and it was not necessary, therefore, that a day or an hour should be lost. The Convention could proceed immediately to the consideration of that article, and could probably dispose of it while the committtee were preparing their report.

Mr. FLEMING resumed. He thanked the gentleman from the county of Philadelphia, for his suggestions; still he did not think that this second reference of the fifth article of the constitution, could in any way facilitate the business of the Convention, but that it would rather retard it. It appeared to him that the whole subject must eventually be considered and discussed in committee of the whole, and he thought that it would be better that the Convention should proceed at once to consider it in that way.

Mr. FULLER, of Fayette, said that he was opposed to the appointment of any committee. Nothing would be gained by the reference. If any gentleman wished to offer an amendment, he would have ample opportunity to do so in committee of the whole. Some embarrassment had been experienced in the proceedings of the Convention, and he thought it would now be conceded on all sides that, if the Convention had, in the first instance, taken up the constitution by the first article, and gone regularly through the whole, the labors of the body would have been closed before this time. It was now proposed to raise a committee to report a judicial system to the Convention. The report of that com-

mittee would have to go to the committee of the whole, there to be acted upon—and it was impossible to tell how much time might yet be consumed. The best plan would be for gentlemen to arrange their propositions, so that they might be acted on when this article came up in Convention on its second reading. He hoped that the proposition to refer the subject would not be acceded to.

Mr. REIGART said, that he was entirely opposed to the resolution of the gentleman from the county of Philadelphia, (Mr. Ingersoll;) and he thought that, instead of saving time, much time would be lost if the subject should be again sent to a committee. What was the state of the whole matter at the present time? The minds of the members of the Convention, were turned to the subject of the judiciary; they had been discussing the question of the judicial tenure for a week, or more, and they had come to the conclusion that they would adopt the limited tenure for a term of years. He (Mr. R.) should probably have voted in favor of the resolution to refer, but when the gentleman from the county of Philadelphia, (Mr. Ingersoll) came to disclose his grounds, he (Mr. R.) was compelled to differ from him, and to oppose it. No good end could be attained by raising a select committee. If there was any thing at all in the gentleman's proposed system, which should recommend it to the favorable notice of the Convention, the members were as well prepared to discuss it in committee of the whole at this time, as they would be at any future period.

But was there in fact any thing in the system proposed by the gentleman? There were, in the first place, to be fifteen judges of the supreme court, with a salary of $4,000 per annum, to the chief judge—and of $3,500 to each of the other judges.

This would greatly increase the expenses of judicial proceedings in this commonwealth. Those expenses amounted now to nearly one hundred thousand dollars; and, under the system of the gentleman from the county of Philadelphia, they would be raised at once to nearly two hundred thousand. Was this no consideration? And what ultimate good was to be attained? Would such a system secure uniformity in judicial decisions?

The CHAIR reminded the gentleman from the county of Lancaster, that the merits of the system were not, at this time, open to discussion.

Mr. REIGART said, it was true that the merits of the system were not now open to debate. But the gentleman from the county of Philadelphia had stated what he intended to do, if a special committee was raised, and he (Mr. R.) had, therefore, supposed that it was in order to discuss that matter now. It was, however, enough to know, that the circuit court system had been twice in existence in the commonwealth of Pennsylvania, and that it had been twice abolished. He did not see what advantages were to be derived from this new system. It could not, in his opinion, beget uniformity of decision. He was, therefore, opposed to sending the subject to a select committee, or to any committee at all; for he believed that the Convention was as well prepared to act now as they would be at any other time. He hoped the resolution would be rejected.

The question on the resolution was then taken, and decided in the negative.

So the resolution was rejected.

Mr. PURVIANCE offered the following resolution:

Resolved, That a new article of the constitution be added, so as to provide, that all banks hereafter to be chartered, or bank charters hereafter to be renewed, shall be subject to the following restrictions:

I. At least one-third of the capital stock shall be reserved for the state.

II. A proportion of power in the direction of said banks shall be reserved to the state, equal at least to its proportion of stock therein.

III. The state and the individual stockholders shall be liable respectively for the debts of the bank, in proportion to their stock holden therein.

IV. No bank shall commence operations until half of the capital stock subscribed for, be actually paid in gold or silver.

V. In case any bank shall neglect or refuse to pay on demand, any bill, note or obligation issued by the corporation, the holder thereof shall be entitled to receive and recover interest thereon, until the same shall be paid, or specie payments are resumed, at the rate of twelve per cent. per annum, from the date of such demand, unless the general assembly shall sanction such suspension of specie payments.

Which resolution was laid on the table, and ordered to be printed.

ORDERS OF THE DAY.

The Convention again resolved itself into a committee of the whole, Mr. M'SHERRY in the chair, on the report of the committee, to whom was referred the fifth article of the constitution;—

The pending question being on the amendment of Mr. INGERSOLL, to the report of the committee, so far as related to the fourth section.

Mr. INGERSOLL said that, as he had no desire to embarrass the proceedings of the committee, he would, if in order, withdraw his amendment.

So the amendment was withdrawn.

Mr. WOODWARD then renewed the motion, made by him on yesterday and subsequently withdrawn, to amend the report of the majority of the committee, by striking out the fourth section, and inserting in lieu thereof, the following, being the report of the minority, viz:

"SECT. 4. Until it shall be otherwise directed by law, the several courts of common pleas shall be established in the following manner: This commonwealth shall be divided into convenient judicial districts; a president judge shall be appointed for each district, and two associate judges for each county. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas."

Mr. CHAMBERS did not approve of the proposed amendment submitted by the gentleman from Luzerne. The majority of the committee on the judiciary were of opinion, that the fourth section of the existing constitution was no longer necessary. It was a section providing merely for the organization of the courts, until the legislature should think proper to change the organization of those courts, which have been changed, and legislation has been had on the subject. It will be recollected that at the

time of the adoption of our present constitution, our judiciary consisted of a supreme court and county courts, holden by the justices of the peace. Those who established that constitution thought proper to abolish this system of justices holding courts, and provided that the courts of common pleas should consist of a certain number of judges. This fourth section then was for the purpose of providing a system until one should be established by law. The legislature shortly after did establish such a system, and, under the power vested in them, have gone on to change it from time to time. He was therefore disposed to leave this whole matter with the legislature. The system that was adopted, shortly after the adoption of the constitution, in relation to the judicial districts of the state, is one that has been maintained ever since, and it is one which is quite familiar to the people, and suits their convenience as well as perhaps any other which could be adopted. If, however, there should be any reason for changing it, the whole matter ought to be left with the legislature, and this object would be obtained by striking out this fourth section. The amendment of the gentleman from Luzerne, however, would take away from the legislature the discretion which they now have under the existing constitution, for it was provided by the fourth section, that *until otherwise directed by law*, the several courts shall be established in the following manner. The amendment, however, proposed by the gentleman from Luzerne, did not contain this provision, but went on to point out the manner in the constitution in which these courts shall be organized, as follows:

"This commonwealth shall be by law divided into convenient judicial districts. A president judge shall be appointed for each district, and two associate judges for each county. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas."

Well, he believed, he should be satisfied with the system here referred for the present, but he was unwilling to tie up the hands of the legislature, because he considered that if circumstances should arise which would require a change, they should have it in their power to make that change, and this discretionary power he was willing to trust to the representatives of the people.

There was a farther difference between the amendment of the gentleman from Luzerne and the existing constitution. The gentleman's amendment provides, that "the president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas." Now, it seemed to him that, in many cases, the president judge, alone should be competent to hold a court. He had found it often in the course of his practice, convenient and necessary that this should be done. The associate judges might live in a distant part of the county from the seat of justice, and it would be very inconvenient to have their attendance on many occasions, when it might be desirable to hold a court for the purpose of making progress in some legal proceedings, and the proceedings may be of such a nature as to make it wholly unnecessary for the associate judges to attend. He would allow the president judges therefore, in many cases, to hold a court. No one, he imagined, could suffer by this, and the public convenience would be greatly promoted thereby. Now, under the existing constitution, it is to be sure, declared,

that it shall take two judges to form a quorum, but under the provision that this form shall be established until otherwise provided by law, the legislature has since authorized the president judges to hold courts, in certain cases. The gentleman has adopted the language of the old constitution in this matter, but he has not inserted the clause; leaving it discretionary with the legislature to alter it. For these reasons he preferred either leaving the old constitution as it is in this respect, or to strike out the whole of the fourth section, and let the legislature have the discretion to organize these courts in such manner as to them shall seem fit.

Mr. WOODWARD then modified his amendment in the second line by inserting after the word "district" the words "and until otherwise directed by law."

Mr. W. said it seemed to him that this amendment was indispensably necessary from the amendment which preceded it. That amendment provided that the president and associate judges shall be appointed for a certain term of years, but the constitution no where provides for the establishment of those judges, the organization of their courts, and the number required to be appointed. He thought there ought to be some provision of this kind, and he knew of no better one than the one he had presented, which merely embodied the substance of the old section, except such parts as were entirely unnecessary. This proposition which he submitted, provided, that the state should be divided into convenient judicial districts, leaving the matter of regulating the districts entirely to the legislature. The old section provided, it should be divided into judicial districts, not to consist of more than six counties. Now, we all know that a provision of this kind was unnecessary, because we have some counties which make a district, without being connected with another or other counties, in which it is necessary to connect two or three of them together. This matter, however, he intended to leave entirely to the legislature.

Mr. CHAMBERS then suggested to the gentleman from Luzerne, whether it would not be better to prefix to his amendment the words "until otherwise ordered by law," instead of inserting them in the body of the amendment as was proposed.

Mr. WOODWARD accepted of this suggestion and so modified his amendment.

Mr. CHAUNCEY then suggested to the gentleman from Luzerne the propriety of modifying his amendment so as to make it read as follows:

"SECT. 4. Until it shall be otherwise directed by law, the several courts of common pleas, shall be established in the following manner: This commonwealth shall be divided into convenient judicial districts. A president judge shall be appointed for each district, and two associate judges for each county. The president and associate judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas."

Mr. WOODWARD accepted of this suggestion also, and modified his amendment in the manner proposed above.

Mr. STEVENS could hardly see the necessity for this amendment. It would seem to him to impose on the legislature the necessity of creating new districts and of reorganizing the whole of the judicial districts of the

state. Now he did not know that this was necessary as it had not been long since the state was organized into proper judicial districts. He believed the legislature should have the power to do this, which power they have by the existing constitution, but he could not see the necessity for compelling the legislature to reorganize the whole state anew. Another matter which he objected to, was, that he could not see the necessity of requiring two judges to form a quorum in all cases.

Mr. AGNEW believed the amendment of the gentleman from Luzerne, to be entirely unnecessary. It instead of leaving the matter discretionary with the legislature, imposes on them the duty of reorganizing the state. Now as late as the year 1834, this whole matter was revived and thrown into proper form. The state was divided into convenient districts, and the whole subject is now under the proper direction of the laws. He would ask then, what use there could be of imposing on the legislature the performance of a duty which there was no necessity for, and the opening up and deranging of a system which they had only got permanently settled three years ago. Commissioners were appointed to revise the civil code, they performed that duty, made report to the legislature, and so late as the year 1834, the whole matter was settled on a permanent basis. The laws of the state under the existing constitution, had provided that the president judge, in certain cases, should be competent to hold courts, and this was frequently proved to be very convenient. As the gentleman therefore, intended to leave this whole matter with the legislature ultimately, he could not see the necessity for his amendment. The matter was now entirely regulated by law, and in such manner that every judge and every lawyer in the commonwealth, perfectly understood it; but if your legislature was directed to tear down this system and go on passing new laws, he would ask where was the man who would understand it. He hoped, therefore, that the amendment might not prevail.

Mr. FORWARD was opposed to this amendment as going farther in providing in the constitution for the keeping up of the institution of associate judges. He did not know but we had them already engrafted on the system by the amendment of the gentlemen from Beaver, as it provides that associate judges should hold their offices for five years, but he hoped that hereafter we might get rid of them. He was opposed entirely to the institution of associate judges as a part of the judiciary system of Pennsylvania, and he would therefore prefer not having any provision adopted which would go farther to reorganize them as a part of the system, so, that it might hereafter be competent for the legislature, if it shall in its wisdom deem it expedient, to abolish this part of the system; as he thought Pennsylvania had advanced far enough to dispense with this part of our judiciary system. The amendment of the gentleman from Luzerne, then went farther to nail this defective system upon us, and for that reason he was opposed to it.

Mr. WOODWARD thought the gentleman from Allegheny was somewhat mistaken in relation to the effect of his amendment. The amendment of the gentleman from Beaver provides, that the associate judges shall hold their offices for five years, and therefore he believed, if we made no other provision on the subject in this article, that the legislature would be bound to provide that the institution of associate judges should continue to exist.

Now the amendment which he had just presented contained a provision that, until otherwise provided by law, associate judges shall be appointed in each county.

Then taking these two amendments together, the gentleman from Allegheny might attain his object of having this institution of associate judges abolished; but if this power was not left discretionary with the legislature, in the manner proposed in this amendment, he would ask the gentleman if the legislature would not feel itself bound to continue these officers, and prohibited from dispensing with them.

In reply to the remarks of the gentleman from Beaver, (Mr. Agnew) he would say it was true that the legislature had already provided by law for the establishment of proper judicial districts, and this amendment of his did not propose to take that power from them, nor was it designed by it to take from the president judge the power of holding courts in certain cases; but it was to provide by the constitution for the establishment of certain judges, and the organization of certain courts, leaving it to the legislature, from time to time, to make such alterations in relation to the number of judges to be appointed, and all the circumstances connected therewith, as the circumstances of the case shall demand. The first section of this article provides that certain courts shall be established; another section provides that the judges shall hold their offices for a certain number of years, and, therefore, ought not the constitution somewhere to provide for the mode of establishing these courts. The old constitution did make such provision, and it seemed to him that the new constitution would be incomplete, unless such a provision is contained in it; and, so far as it may be necessary hereafter to dispense with associate judges, it occured to him that the amendment was absolutely indispensable. If we do not adopt some such provision as this, the legislature will feel themselves obliged to continue the institution of associate judges, and will not feel themselves at liberty to dispense with them.

Mr. Agnew apprehended that the gentleman had not understood him in the remarks he had made a few minutes ago. He had contended that, without this fourth section, the legislature had the power to reorganize the courts in any manner they pleased. The only object in the fourth section of the constitution of 1790, was to provide an organization of the courts until the legislature should have time to take the matter into consideration and organize them in a better manner. Then there was a necessity for it, because new courts were established and had to go into operation immediately before the legislature could make any provision on the subject, but that was not the case now. All the courts were organized, and the proper districts established, and he could see no necessity for this provision, when, at last, it left the matter discretionary with the legislature. This provision would merely have the effect of calling upon the legislature to act on a subject three years after it is all settled and determined in a manner satisfactory to the whole people of Pennsylvania. It is calling for legislative action where no legislative action is necessary. The system was now as perfect as was required at the present time, and had been brought to this state of perfection after much experience and much time had been spent in its regulation. The courts in different districts were differently constituted. In Philadelphia the court was composed of three law judges, and it frequently happened that one was

holding a court in one room while another was holding a different court in another room. In fact, the whole three judges might be holding courts at one time in different places at the same time, and this arose out of the necessity of the case and was provided for by legislation. In other counties they were differently constituted. Well then, was all this system to be broken up by this amendment, and the whole ground again to be trodden, in arranging the different district and courts. He objected to this, in *toto*, as being entirely unnecessary, uncalled for, and of no use whatever.

If the gentleman thought that some provision was necessary for the establishment of those courts, why not say that the courts of this commonwealth, as at present organized, shall be continued until otherwise provided by law. He looked upon it as only tending to confine the subject, and he therefore hoped it would not be adopted.

Mr. Meredith said it appeared to him that the whole amendment, at present, was only calculated to produce embarrassments to the subject. He presumed the only object the gentleman had in view was to preserve the existing system until the legislature could provide another. That being the case, he would suggest to the gentleman from Luzerne, that this matter could be provided for in the schedule which would have to be provided for, carrying the new constitution into operation? That would meet the whole object of the gentleman, and it appeared to him that that would be the proper place to insert this provision, if any such provision was necessary.

The amendment of Mr. Woodward was then disagreed to, ayes 41, noes 45.

Mr. Forward would now state to the convention that he had offered a resolution in the early part of the session of the convention, embracing certain matters which he desired to see incorporated in this article of the constitution; but inasmuch as the tenure of the judges had some bearing upon the matter, and that being undetermined by the convention, he should not offer it at this time for the consideration of the committee. This question of tenure he did not look upon as being finally settled by the convention, therefore, when it was taken up on second reading, and finally disposed of, he should then offer the amendment which he had alluded to.

The report of the committee on the judiciary, so far as it related to the fourth section, was agreed to, and the fourth section of the fifth article of the constitution was struck out.

The committee of the whole then took up so much of the report of the committee on the judiciary as declares that it is inexpedient to make any amendment to the fifth section of the fifth article, as follows:

"Section 5. The judges of the court of common pleas, in each county, shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery, for the trial of capital and other offenders therein; any two of said judges, the president being one, shall be a quorum, but they shall not hold a court of oyer and terminer or general jail delivery, in any county, when the judges of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the

commonwealth, may, under such regulations as may be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court."

Mr. READ moved to amend the report of the committee by striking out the above section.

Mr. R. said, it would be perceived that this section related solely to the court of oyer and terminer. Now, it had been suggested by some gentlemen, and especially by the gentleman from Allegheny, (Mr. Forward) and he thought with a great deal of reason and propriety, that before we get through with our amendments to the constitution, we should throw aside all this medley of names, and establish one court to be called the county court, to be composed of one set of judges, as our courts are now composed; but not have the county courts divided into a half dozen of benches.

There was, in this state, no reason for dividing up our courts, composed of the same set of judges, into so many divisions, with distinct records, distinct commissions, and distinct duties, and for no other purpose on earth, that he could see, than putting it in such form that the people could not understand the operation of these courts.

Now, if the first section of this article was finally to pass, in the shape in which it passed through the committee of the whole, then he could not see much impropriety in leaving this section remain in the constitution; but as the first section of this article had been passed over without much attention, and with all this rigmarole of oyer and terminer, general jail delivery, court of common pleas, orphan's court, register's court, and court of quarter sessions, remaining in it, he apprehended, when we came to second reading, we would so amend it as to dispense with all these long names, and make the provision read, that the judicial power of this commonwealth shall be vested in a supreme court and such other courts as the legislature may, from time to time, establish; leaving all, except the supreme court, as a matter of discretion, with the legislature; so that they might have the opportunity of simplifying the system, and providing that a county court shall perform all the functions of all these courts.

But there was another objection to this section, and that is, that it goes to perpetuate the principle in our criminal code, that capital punishments shall be continued in all time to come. Now he asked gentlemen to reflect, and consider, and see whether they were prepared to fix it, as a constitutional principle, that capital punishments are not to be abolished. He apprehended that gentlemen were not prepared to do this, and he could see no reason for retaining the section. He supposed we should make the amendment in the first section which he had indicated, on second reading, and if so, it will be clearly improper to retain this section. At any rate, it went too much into detail to remain in the constitution. Why it even goes so much into detail, as to give the mode and manner of removing cases from one court to another.

He had not cast a thought on this subject until the section was read, and he did not seem to be likely to get others to think of it now; but really it seemed to him that there was no occasion for it. At all events, we should have nothing in the constitution which is useless. A

matter which may just as well, and better, be regulated by the legislature, from time to time, as circumstances shall demand. He had no particular feeling on this subject, and did not know that it was a matter of very great importance, but it seemed to him that it would be an improvement in the constitution to strike out this section.

Mr. BIDDLE rose and said, it is admitted, I believe, Mr. Chairman, by all the members of this Convention, that no change should be made in the existing constitution of the land, unless very good reasons can be assigned in favor of that change. I will ask whether any gentleman has, so far, attempted to show us, that the present section of the fifth article of the constitution has been, in any respect, productive of mischief—that it has not worked for the good of the people; or that, during the last fifty years, there has been any complaint made of its practical operation? I know of none—I have heard of none.

The gentleman from the county of Susquehanna, (Mr. Read) has said, that he cannot see why it is necessary to give distinct commissions to judges, as judges, in so many different courts. If the gentleman has reflected at all on the subject, he must be aware that such is not the case. The constitution of Pennsylvania provides no such thing. It only provides that the judges of the court of common pleas for each county should, by virtue of their offices, be judges of the court of oyer and terminer for the trial of criminal cases. But it does not require that any other commission should issue, excepting only that of a judge of the court of common pleas, in a certain judicial district. This objection, then, has no existence in fact. Has any objection been raised from the provision in the constitution that they should be the judges of this particular court? I know of none. Are we then to change, merely for the purpose of gratifying the spirit of change; and of ministering to the caprices of those who are anxious to go on rash experiments, utterly reckless of consequences? I trust not. I trust that we should not change that which has been so far satisfactory to us, unless it can be shown that we gain something better by the change.

The other part of the gentleman's argument strikes my mind with great force, so far as it relates to "capital and other offences." Why only strike out the words "capital and other offences?" Why not strike out all? This would answer every purpose which the gentleman has in view. Strike out from our constitution the words capital, and leave the matter to the future legislation of the commonwealth. Let us strike out all.

I go with the gentleman, because, I trust, that at some future and not distant day, a capital punishment will be altogether obliterated from the penal code of the state of Pennsylvania. This change may be safely made—but not farther as yet—as I have not seen enough to satisfy my mind that any other change should be made.

Believing that the present constitution has operated well, and being strongly attached to that which has been found good, and under which we have lived in peace, prosperity, and happiness—I feel reluctant to make any change; nor will I consent to do so, unless I can furnish myself with reasons which will leave no doubt on my mind that benefit, and not injury, is to result from that change.

Mr. HOPKINSON said that, if he understood the amendment correctly, there was to be no constitutional court but a supreme court. It appeared to him that this was wholly irreconcilable with the first section; and that its effect would be to put all the courts of the state, except the supreme court, at the will of the legislature every year.

Mr. READ said he would explain: he did not intend to propose an amendment which should have any such effect or tendency as had been attributed to this by the gentleman from the city of Philadelphia, (Mr. Hopkinson.) He was aware that the amendment which he had proposed was inconsistent with the first section of the article, but he had supposed that that section was to be altered. His proposition was, that the judicial power of this state shall be vested in a supreme court, and in such other courts as the legislature may, from time to time, by law establish; and it also fixes the tenure of the judges of the supreme court, and all other judges, for a term of years. He did not feel disposed to countenance any project to throw the courts into the power of the legislature, farther than to place in the hands of the legislature, the power of organizing these courts; that was to say, in reference to the tenure of their office. He had never contemplated such an idea.

Mr. FORWARD said, that he did not regret to see the attention of the committee turned to this point, by the proposition of the gentleman from Susquehanna, (Mr. Read.)

He (Mr. F.) believed that the amendment was not exactly consistent with the first section of the article that has been agreed to, and, in his opinion, it might require re-modelling—although he had no doubt that the principle involved in the amendment, ought to be tested by the vote of the Convention. He had listened, also, with pleasure to the remarks which had fallen from the gentleman from the city of Philadelphia, (Mr. Biddle.) In many things, said Mr. F., I value that gentleman's judgment, but in this matter, I feel constrained to differ from him entirely. This is not a question of substance, but of form only. It amounts simply to this—and no more. Will you continue in the constitution these riddles, which may be well dispensed with—and that, without injuring the face of the constitution, or the substance of it. I wish to see them all obliterated—they are but the relics of the barbarous ages—nothing more. You send in a petition, say, for a tavern license, to the court of quarter sessions—and they tell you that the court of quarter sessions is not open. Or, you send in a petition to the court of common pleas; and they tell you that the court of common pleas is not open. The legislature, by giving this power, provides that you may petition for a road or a license, to the court of common pleas, or quarter sessions. Why should not all these puzzling matters be done away with at once? As they are now, a man is compelled to go to the law books in order that he may ascertain what title he shall assign to those judges who are to give him relief. It is time there should be an end of this. Look at your orphan's court! What species of court is that? Is it a court to redress the grievances, or to vindicate the rights of orphans? No such thing. It is called the orphan's court, without any meaning. But why do you call it by that name? A man wants to have a guardian appointed, and he goes there. He must give the right name, and study the law for a month, in order that he may be enabled to procure that justice which ought to be accessible to him with-

out any difficulty. There is no reason why this should be—it is unnecesssry—it is absurd. I would abolish the whole system, and I would have county courts, having within themselves the jurisdiction of all these courts, so that a man need not study law for a month to know what he has got to do.

Mr. DICKEY said that if a layman might be allowed to speak on a subject with which lawyers alone were supposed to be familiar, he would observe that his friend from the county of Allegheny, (Mr. Forward) did not properly understand the nature of these courts, which were familiar to the people at large. There was no one member of the Convention, and scarcely a citizen in the commonwealth, who had any concern at all with these courts, who was not perfectly well aware of the fact, that the judges of the court of common pleas are the judges of the orphan's court, and that they held the court of quarter sessions. And it was equally well known to the people, that the business of the orphan's court must be done on the first day of the term. Every man, said Mr. D., is fully aware of this fact. And would you do away with this, and compel a man to attend at the court for a week?

Such, also, is the case with the court of quarter sessions. It is well known that the first four days are devoted to the quarter sessions, and to petitions for roads and tavern licenses. And it is now proposed to alter this convenient arrangement, and to compel a man to attend at court, day after day, before he can obtain his object. This arrangement was so well understood among the people, that every man, having business with the court, knew the very day he must attend. Nothing could be more convenient—nothing could be more simple; and I am sorry to hear gentlemen on this floor declare, that they do not understand these matters. I do not wish that any change should be made in this respect, for I do not believe that it would be attended with any practical good.

Mr. FORWARD said he had risen to say a few words, and only a few words, in reply to the remarks of the gentleman from Beaver, (Mr. Dickey.)

I am not, said Mr. F., so well instructed in these matters, as the gentleman from Beaver seems to be. I did not know that the orphan's court was open only on a Monday. I never heard it before; and the merit of the discovery I award to my worthy friend. Such, however, is not the fact in the county in which I reside.

As to tavern licenses, they constitute a part of my objections to the present system. Why not apply on Friday, as well as on any other day? Why not present a petition on Friday or Saturday, as well as on Wednesday or Thursday? All these matters may be regulated by the rules of court, but the truth is, that there ought to be no regulation in the case. It is attendant with great inconvenience to the people, and it ought to be put an end to.

They go to court for the transaction of their business, and they are told you are too early, or you are too late—this is the day for the business of the orphan's court. This is not as it should be, and the very argument of the gentleman from Beaver, furnishes conclusive evidence to my mind, why these distinctions should no longer be permitted to exist.

Mr. M'DOWELL said that he, like the gentleman from Allegheny, (Mr. Forward) felt gratified that this question had been brought to the consideration of the Convention. I had myself intended, said Mr. M'D. to bring this matter to the notice of the Convention on another occasion; but for a gentleman from Northampton, who has been reputed very conservative by his party, for presuming merely to suggest, when the judiciary system came up, that the names of the courts should be simplified—and in consequence, I was frightened from the ground. Since, however, the matter has been brought up, I will now say a few words in explanation of my own views upon it; and also in reply to the remarks which have fallen from my friend from the city of Philadelphia, (Mr. Biddle.) He has stated that he deprecates any amendment to the constitution, of whatever kind or character, unless there is an urgent necessity to make the change.

Some gentlemen in this body really seem disposed to infuse a sort of fear into the minds of the Convention, as to touching the constitution at all. For myself, I believe that this Convention is as fit an organ to form a new government, out and out, as was that convention which framed the constitution of 1790. I do not believe that generation after generation is progressing in ignorance. I do not believe that we of the present day, are less wise, less pure, or less patriotic, than those who have gone before us; and I do not think it is right that gentlemen, who have been sent here by the independent freemen of this commonwealth, in the fulfilment of a high and responsible trust, should be terrified by such doctrine. I concur with the gentleman from the city of Philadelphia, (Mr. Biddle) in the opinion he expressed, that we should not expunge from the constitution any of its substance, unless the change shall be attended with absolute benefit to the people of the commonwealth. But, in laying down this principle, we meet with this difficulty. Here is a clause found in the existing constitution, which is absolutely insensible, and may be useless; but, according to the theory of the gentleman from the city of Philadelphia, it must be retained, for fear of laying violent hands upon the constitution. I cannot hold to any such doctrine. I believe that there may exist in the constitution of 1790, a clause which is entirely useless, and I cannot give my assent that we do violence to our forefathers, if we expunge that clause.

There may be nothing offensive in it, farther than that it is useless; but are we to be told that, because it is in the constitution, and notwithstanding that, it is useless, we are not to interfere with it, for the simple reason, that our forefathers put it there. I am glad to learn wisdon from any source; from our forefathers—or from the members of this convention, and, more especially from laymen, who are kind enough to enlighten us on the subject of the courts; but I confess that, in the present instance, the views of one of the laymen who have addressed us, are new to me, although, I do profess to know something about the rules of court. The virtue of our fundamental law, in my opinion, lies in its simplicity; and I appeal to the gentleman from the city of Philadelphia, (Mr. Biddle) to say, whether it can be made too simple. It can not be. There should be no circumlocution—no ambiguity—no perplexity—nothing that involves a principle in any difficulty of interpretation. We

have the court of common pleas. That is well enough. We have the orphan's court, and that is well enough too. Still they are district courts. We have the court of oyer and terminer—that is one court. We have the court of quarter sessions—that is another.

Will the gentleman from the city of Philadelphia, explain to me what is the urgent necessity of retaining all these courts? Now, look at the court of quarter sessions, and the court of oyer and terminer—will the layman from the county of Beaver, (Mr. Dickey) have the goodness to explain to me, what is the difference between them? Under the former law, I believe there was one difference—and that was—although the prisoner was tried before the same judges, there must be an additional jury of twelve men, in order that the man who is to be tried by them, may choose his triers out of them. No one ever believed that there was any substance in all this—it was a mere matter of form, and I believe it has been abolished. But even that matter of form, has arisen from what I consider an undue and senseless attachment to old things What are our proceedings in the court of oyer and terminer? We have that law from England. If a man is tried in the court of oyer and terminer, he is compelled to go through certain forms and ceremonies which have always disgusted me. In the first place, the prisoner is to be arraigned. How? He is told to hold up his right hand, and then to take it down again; and he has to go through three other ceremonies of an equally unmeaning character. I do not, however, ascribe the fault in this matter to the constitution. There is another ceremony to be gone through. The prothonotary of the court of session is also the prothonotary of the court of oyer and terminer, and he must say, "prisoner look upon the jury"—and the prisoner, and the clerk, and court, and all must look upon the jury. This seems to me to be very unintelligible, and very useless in a republican form of government; and again, the poor prisoner is to be asked in a very solemn manner, a question which it seems hardly worth while to trouble him with—and that is, "prisoner how will you be tried?" By counsel, the prisoner would naturally say; but no, he is compelled to answer, by God and my country. Now, it is certainly true, that every man is to be tried by God and his country—but where is the use of all this ridiculous and idle ceremony? It is a farce—nothing better than a farce. There is not that simplicity about these things which I am anxious to see, and which I think ought to pervade all our institutions. I wish to see all this English trumpery done away. Let us have true republican simplicity in every thing. And it is no argument in favor of the continuance of these idle ceremonies, to say that they were instituted by the wisdom of our forefathers.

One word as to another matter. The gentleman from the county of Beaver, (Mr. Dickey) is of opinion, that no difficulty is experienced on the subject of these courts; that the people are familiar with them—and that every man knows what they are. How does the gentleman know that the people are aware of all this? It often happens that there are many matters of business transacted in our courts, which could be as well done without calling in the aid of any lawyer—but the people have to employ lawyers, in order that they may know what they have got to do. The gentleman from the county of Beaver, although he does speak of himself as a layman, must, I should suppose, have much to do

with matters of law, because he seems to have such an entire familiarity with it, in all its ramifications. I would ask him to tell me, if he was interested in an estate, and wanted to enter a complaint against a trustee, what court would he go into? I declare I scarcely know myself. I remember that, some two or three years ago, we used to approach the court of common pleas for that purpose, but at the present time, I believe, we must go to the orphan's court. I know that grave and learned men at the bar say, that we have a right to go into both those courts. I know also, there are men who say that we have no right to go any where, except into the orphan's court; while others, equally learned, say that we have no right to go any where, except into the court of common pleas. Is there any necessity for all this doubt and difficulty? Why should this ambiguity exist? I never have been able to see the necessity for it, and I do not believe that there is any, although I submit these remarks with great respect, to men who have more experience in these matters than I have. But, as it seems to me, the only effect of all this is to produce prolixity and ambiguity—and to render your courts of justice so much a matter of mystery, that the people can not even approach the threshold, except it be in the company, and under the guidance and protection of a lawyer; and that, upon many subjects which are extremely simple in their nature, the people do not know into what court they ought to go. But, if we had no court but the county court, there would be no sort of danger that the people could go astray. I have myself a strong desire to see all these matters simplified as much as possible. I do not know, nor do I say, that it can be safely done. I think, however, that it can. I repeat my conviction, that there is no necessity for all this perplexity and doubt. Whether it will be possible for us to place all these courts under our general county court, I leave it to other gentlemen to determine. But, in any event, there are several matters which I desire to see simplified, and I believe it is our duty to see that this is done. I hope we shall accomplish it.

Mr. Biddle said, that he listened, at all times, with pleasure, to the good-humoured, and, he would add, the able speeches of the gentleman from the county of Bucks, (Mr. M'Dowell;) and he (Mr. B.) was aware of the fact that, in attempting to answer the arguments of that gentleman, he undertook a very arduous task. But, said Mr. B. I must be permitted to say, that, in any thing which I have ever said on this floor, I never expected so to terrify either that gentleman, or any other member of this convention, as to turn them from the upright and fearless discharge of those duties, which we are all sent here to perform. I am fully conscious of the timidity which I myself feel about change. The whole thing is confined to a limited number of voices—and I confess that I would proceed with extreme caution. I have a reverence even for old names;—I reverence things to which I have been accustomed, and which, by the course of time, have become, as it were, my familiar companion; and the operation of which we feel to be harmless, if not actually beneficial. All such things have a value in my estimation, and I would not sanction a change unless some good reason could be assigned. I am not one among the number of those, who believe that a flood of light has been poured forth upon this generation, such as has not been known before. I am not one of those, who believe that the book of knowledge

has been suddenly thrown open for our especial use and benefit, and that it has made us ten times more wise, and more capable of judicious action than the sages who framed the constitution of 1790, under which we have lived for a period of nearly fifty years, in unexampled prosperity and happiness. The gentleman from the county of Bucks, (Mr. M'Dowell) seems to desire, that every man in the community should understand the constitution—and my friend from the county of Allegheny, (Mr. Forward,) for whose opinions and judgment I hold a very high regard, seems to desire, that every man should understand the constitution of our courts, and should be able to be his own lawyer. I look upon this, as one of those chimeras which may amuse the fancy, but which we can never hope to realize, and the man who attempts to be his own lawyer will, in all probability, verify the old adage, by finding that he has had a fool for his client. I consider this to be a delusion, and I cannot therefore give my sanction to it.

In reference to the court of oyer and terminer, and the court of quarter sessions, the gentleman from the the county of Bucks, (Mr. M'Dowell) omitted one important distinction, which is calculated to set at rest all doubt, as to the propriety of their being separated. It is this. The court of oyer and terminer tries those cases exclusively, which, under our former system of laws, were punishable capitally; while the court of quarter session tries only the minor offences. In relation to the court of oyer and terminer, the law now requires that the president of the court shall decide upon all these greater trials which, although they do not, under our present system, involve a capital punishment, are still of a graver character than the minor offences; and hence there is an obvious propriety in saying, that on the trial of such important cases, the president judge, and not merely the associate judge, shall be present. Under the present organization of our system, when, in all the counties of the state, with one exception, the president judge is a lawyer, and the associate judges are not lawyers, this is a very important matter. These facts will be enough, I think, to show that the framers of the constitution of 1790, did not intend these to be mere verbal distinctions; and will, at the same time, teach us that we are not to jump to the conclusion, that, while we of the present day, are all enlightened, and all wise, they were carried away by heedless folly. I repeat, I have an attachment—an affection for old things. No gentleman here has been more entertained than I was, by the description with which the gentleman from Bucks (Mr. M'Dowell) has favored the convention, of the manner in which the trial of a prisoner is conducted. But what does all this amount to, as regards the constitution of Pennsylvania? Let me ask the gentleman from Bucks, whether he finds all this form of ceremony provided for in the constitution? It is merely a relic of old things. It may strike the mind of the gentleman from Bucks, as ludicrous and absurd—but sometimes it may be of great importance, that the prisoner should be told to look upon the man who is to pass upon him and his liberty or life, and then to say whether he is willing to commit his fate to the hands of that man.

We know that instances have occurred, where important results have followed from this very ceremony, absurd and ridiculous as it appears to be, in the estimation of the gentleman from Bucks. The object is, merely

to say, will you be tried by me, or will you not—and the prisoner has a right to say that he will not. These are words, but are they unmeaning? fit only for the scorn of the jester, having nothing of substance in them? Sir, there is a substance in them which I trust will not be taken away by any act of this body; I trust that we shall not deprive a prisoner, whose life or liberty may depend on the issue, to challenge peremptorily the man whose countenance he may not like, or who may scowl upon him, as if with a pre-determination to convict him of the crime with which he may be charged. Some form of this kind is requisite, and I do not know of any more simple than to bid the prisoner and his trier look upon each other. So, notwithstsnding the argument of the gentleman from Bucks, it seems that these forms are not always mere idle ceremonies, calculated only to excite mirth and laughter, but that they are of some value, and are sometimes productive of good results.

But, sir, I did not take the floor for the purpose of making a speech. When I endeavoured to catch your eye, it was for the purpose of asking a question; and I have travelled thus far in my objections, in order to reply to such portions of the remarks of the gentleman from Bucks, as were directed more especially to myself. I ask the Chair, whether, if the amendment now pending should be negatived, it will be in order to move to strike out the words "capital and other." I must vote against the motion to strike out the whole section. My reason for desiring to omit these words is, that I would blot out from the constitution of our state, every thing which seemed to demand that our code of laws should be stained by provisions which requires the shedding of one drop of human blood.

The Chair, in answer to the inquiry of the gentleman from the city of Philadelphia, (Mr. Biddle) stated, that when the present amendment had been dispensed of, the subject would be open to farther amendment.

Mr. Merrill, of Union county, said that we had been told by a distinguished senator, only a short time ago, that the people of the United States were in the midst of a revolution—although hitherto a bloodless one—and what that senator had said was emphatically true. I think, said Mr. M. we may say, that if we are not actually in the midst of a revolution in the state of Pennsylvania, we are at least here to make a revolution. There seems to be a disposition in some members of this body, to make every thing new—to sweep away all old things so as to enable us to enjoy our rights.

It has been admitted by the gentleman from the county of Susquehanna, (Mr. Read) that the amendment proposed by him is inconsistent with the provision which we have already adopted, and it will not therefore, I should suppose, require much argument to induce us to reject the amendment. We have solemnly adopted the first section of this article, and why should we now throw out that which would leave the article incomplete and imperfect. I can not see the propriety of so doing. I listened with pleasure to the remarks of the gentleman from Bucks, (Mr. M'Dowell) and the gentleman from Allegheny, (Mr. Forward.) I concur with them in their opinions, that we should simplify these matters, so far as we can do it with safety; but as to these being any mockery in the ceremony which has been referred to by the gentleman from Bucks,

where the prisoner is told to look upon the jury, I submit to the good sense of this convention, whether there is any thing of mockery about it. What is the ceremony? It is an evidence, that he is the man against whom the charge is brought—that he submits himself to the court—and acknowledges himself to be under its jurisdiction. Must not the court ascertain whether the prisoner submits himself to their jurisdiction? And whether he is, or is not the man? There must be some method of identifying the man, and of ascertaining whether he submits himself to the jurisdiction of the court; and I can see no more simple way than that of holding up the hand, in the manner we are accustomed to see.

As to the ceremony of looking upon the prisoner, the gentleman from the city of Philadelphia, (Mr. Biddle) has ably answered the objection against that. And, let me remark, that in one case at least, the life of a prisoner has been saved by looking upon a juryman. [Mr. M. here alluded, inaudibly to the reporter, to the circumstances of a case in which the prisoner, by the act of looking on the juryman, had elicited a discovery which was the means of saving his own life.] Is there, then, any thing ridiculous, any thing absurd, in such forms as these? I think not. And it is no argument to say, that cases such as that which I have referred to, occur only once in a great number of years. If, but one solitary life is saved, how can we speak of this as an absurd and ridiculous ceremony? But when we look farther, and ascertain what serious evils, what positive danger, may be incurred from disregarding these ceremonies, they become all important.

As to the courts: the difference between the courts of oyer and terminer and the other courts, have been made manifest; and I think that we ought still to retain such a court. It has come down to us from our ancestors—it has worked well in practice—and yet gentlemen ask us to strike it out, but do not offer any thing as a substitute for it. If they prefer to make a system by which our courts shall be re-organized, let us know what it is. Let them bring it forward, and I pledge myself that if it is better than that which we now have, I will give it my support. But I will not consent to strike out any thing, simply because it is old, or simply, that we may be enabled to embrace a novelty, for the sake of novelty. And I am opposed to this amendment. It will leave the article defective.

Mr. Read rose to explain. He did not, he said, intend to express the opinion, that this amendment would be inconsistent with the first section of this article, if that section should finally stand; but he intended to say, that not to strike out that section, would be inconsistent with his own project. The fifth section was a matter of detail, and was unnecessary, even if the first section should remain.

Mr. Merrill resumed. He understood the gentleman now. He wished to strike out, in the first place, by which means he hoped to obtain a modification, or the introduction of some provision hereafter, relative to making the organization of our courts, more simple, and the administration of justice more easily and better rendered, than it was at the present time. Now, when such an amendment should have been adopted, he would have no hesitation in voting for the proposed alteration. But, he conceived, that inasmuch, as that had not been done, no necessity existed for striking out the article. The gentleman had said it

was surplusage. The question, in his (Mr. M's.) opinion resolved itself into this: shall the organization—the creation of that court, depend upon the legislative will alone? He believed that no gentleman had advanced such an argument.

The gentleman from Susquehanna, (Mr. Read,) himself even admitted, that the organization of our courts should rest on some constitutional provision, and not depend upon legislative action at all. The existing section set forth the courts in which certain offences should be tried. This was all right and proper enough. If, then, the section were to be stricken out, as the gentleman desired, there would remain no constitutional requisition for the existence of these judiciary tribunals. How, he wished to know, were courts to be brought into existence? Why, the administration of justice must depend entirely upon legislative action. The legislature would have to create courts. Their existence would rest solely on the legislative enactment. He really was astonished to hear it said that the article should be laid aside—that it was merely surplusage to make a provision in reference to the constitutional existence of our courts of justice. The argument was of a novel and extraordinary character. Indeed, he was utterly at a loss to comprehend it. He had supposed that this body had been convened for the purpose of settling the great principles of human rights; and now, it seemed, that we were to strike out as many constitutional and organic restrictions as we possibly could. For the reasons which he had already given, at such length, he was decidedly and unequivocally opposed to striking out the section. Gentlemen were at perfect liberty to laugh and talk as they might, but he could assure them that neither course of proceeding, would prevent him from advocating and contending for that which he felt convinced had worked well. It was in vain for them to attempt any such thing. He knew very well that the most solemn thing might be turned into ridicule; but it did not necessarily follow that it was ridiculous, unwise, or absurd. As he had just observed, he was opposed to striking out. If, however, the first section should be changed, this might be done. He did not see how we could part with any of these sections which he deemed so important to defend life and liberty. None could laugh him out of his respect for old forms, merely because their abandonment would save ourselves some little trouble. If the convention were determined not to adhere to them, he trusted that they would, at least, pursue such a course of proceeding as would give security to life and liberty, and the rights and privileges, we had already obtained. He hoped that the section would not be stricken out, as it ought not to be, unless we change the whole form of our judiciary.

Mr. Dunlop, of Franklin, said it seemed to him that there was more real foundation for the objections urged by the delegate from Susquehanna, against the section in question, than many gentlemen, who had spoken in reference to it, seemed to imagine. One strong objection to it, was that "the judges of the court of common pleas, in each county, shall, by virtue of their office, be justices of oyer and terminer, and general jail delivery, for the trial of capital and other offenders therein; any two of said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer, or jail delivery, in any county, when the judges of the supreme court, or any of them, shall be sitting in

the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceeding, or a transcript thereof, into the supreme court."

Now, (continued Mr. D.) at the time when this clause of the constitution was adopted, the judges held their sittings at *nisi prius*, and tried offenders in oyer and terminer, and rode through the country for that purpose. But now they do not hold oyer and terminer, except in the city of Philadelphia. Under the existing constitution, it would be found that the judges of the courts of common pleas are forbidden from holding a court of oyer and teminer in any county, when the supreme court is in session. A serious question now presented itself for consideration, and that was, whether one court sitting *in banco*, was a valid objection against the other courts sitting? Formally, there might be a very good reason for a provision of this sort, when the judges of the court of common pleas, held their court of oyer and terminer in each county, for the trial of capital and other offenders. But, when that jurisdiction was almost entirely withdrawn, the objection raised by the delegate from Susquehanna, (Mr. Read,) was certainly entitled to some weight. It was, indeed, deserving of grave and serious consideration. It appeared to his mind a very doubtful question whether a court of oyer and terminer could be held, when the supreme court was sitting *in banco*. The decision of the question, however, would depend upon what was the meaning of the word "sitting." The language of the section was not "when sitting as a court of oyer and terminer," but "when the judges are sitting, or any of them." Now, supposing the two courts to be sitting at the same time, and in the same county, the consequence would necessarily follow, that the trials of criminals would have to be postponed until the judges of the supreme court should be sitting elsewhere. The language of the section was—"but they shall not hold a court of oyer and terminer, or jail delivery in any county, when the judges of the supreme court, or any of them, shall be sitting in the same county." Sitting—for what? Why, sitting for any thing: there was no restriction. No court of oyer and terminer can be held in the county where they are. He understood it was so ruled at Pittsburg, after the subject had undergone full consideration. Now, this fact was sufficient to make gentlemen pause as to whether or not they would strike out the provision, or not. The reason which existed at the formation of the constitution for the insertion of this provision in it did not now hold. The necessity for it was done away with, as the practice had changed. He regarded this, then, as a strong reason why the section should be negatived. Why, he asked, should they retain a section which was exceptionable? Was there any thing to redeem it? Was there one particle of merit in it? What was the language of the section?

"The judges of the court of common pleas, in each county, shall, by virtue of their office, be justices of oyer and terminer and general jail delivery." &c.

Now, this was as much as to say, in the language of the gentleman from Bucks, (Mr. McDowell,) that the county courts, shall try criminal cases. It might be necessary to insert some phrase of that kind in the amended constitution, and if so, it would be as well to put it in intel-

ligible language. The delegate from Bucks, said that he could not understand what was meant by "oyer and terminer." He, (Mr. D.) thought he could define the meaning for him, if he were to attempt it; but the necessity for courts of this character was done away with. It had been deemed important that great offences, involving a man's life, should be tried in courts of oyer and terminer, because in them there was always present, an additional number of judges, and the right of challenge existed. But, the system was now changed: and no offences, but those of treason and murder, were punishable with death. When a man was placed at the bar, to be tried for his life, it was but just and humane, that he should have thrown around him those guards which would secure to him a fair and impartial trial. The change which had been wrought in our judicial system, however, rendered all this paraphernalia unnecessary. He saw no reason why we should say that the judges of the court of common pleas should be also justices of oyer and terminer. Nothing more was required than to use plain language, and to say that county courts may be held, or some language of that kind. He was surprised and regretted to have heard, in the course of this debate, (for it was by no means essential to it,) the delegate from Bucks, (Mr. McDowell) a trained and practiced lawyer, and who ought to be wedded to the forms of the law, condemn one of the most beautiful relics of the law—the arraignment of a prisoner for a capital offence. For himself, he regarded it as one of the most beautiful ceremonies which was to be found in any human tribunal. Did the gentleman from Bucks supposes, that when a man was placed at the bar to answer for his life, there should be no form of arraignment?—that he should not stand up, and be asked to hold up his hand, and plead to the indictment, and acknowledge his guilt, and to say that he would be tried by God and his country? It was a little more than a ceremony, and there was certainly nothing about it deserving of ridicule. For a man arraigned, to be tried, to look on the jurors and the jurors on him, did not admit of sarcasm or ridicule. On the contrary, these forms were worthy of respect and regard. And, if the gentleman from Bucks had ever seen the trial for life, conducted according to the forms of trial in England, he would not have been disposed to ridicule these ancient, solemn, and impressive forms. As managed in the English courts of justice, the arraignment of a prisoner, was one of the most solemn and impressive scenes in any human tribunal. But that, however, was a subject which had nothing to do with the present question. The striking out, as proposed, of the section under consideration, would have nothing to do with the capital punishment, any more than the discovery made by the gentleman from Beaver, (Mr. Dickey) that the orphan's court always sits on a Monday. The gentleman reminded him of a person who said he always knew the difference between the co-plaintiff and the co-defendant, because the co-plaintiff's counsel spoke last. The delegate from Beaver's discovery was something like it.

Mr. Meredith, of the city, said that he had listened attentively to all that had fallen from gentlemen on both sides, and had not yet heard any sufficient reason given why the convention should strike out the section under consideration. He had heard many reasons alleged, and pretences given for it, all of which only went to show that many parts of our legislation had not been brought into active operation. We knew that the judges of the supreme court were not in the habit of holding courts of

oyer and terminer, but we knew not that the time might not arrive when the legislature might make it their duty to hold courts at stated periods. We had heard numerous complaints as to the constitution of the county courts in many parts of the state, and they had now become general. It was said that they had failed in their operation. He did not know but the time would arrive when the public might have more confidence in the judges of the supreme court holding courts of oyer and terminer, than the other judges. There were other parts of the section, besides those already mentioned, which were not in active operation. His friend from Franklin county, (Mr. Dunlop) had stated one instance—that was as to the holding of a court of oyer and terminer—even when the judges of the supreme court were sitting at the same time. The gentleman was mistaken in supposing that the section was liable to a construction susceptible of any inconvenience. The construction that he had put on it relative to a court of common pleas, and the court of oyer and terminer, had been long repudiated. The court of oyer and terminer sat in Philadelphia at the same time with the supreme court. In 1821–22, this matter became a subject of inquiry. The president of the court of common pleas wrote to the supreme court, to ascertain their opinion on this important point, (and the letter was published at the time in all the newspapers,) and he received an answer, stating that there was no difficulty about it—that the supreme court understood, and would act, according to the uniform construction which had been given to the section ever since the adoption of the constitution, and that was, that the court of common pleas could not sit as a court of oyer and terminer, at the same time that the supreme court was acting in that character. If the clause in question was ambiguous at that time, it had since obtained a clear construction, and was now perfectly well understood. Now, he would ask gentlemen of the committee what they imagined the delegate from Susquehanna proposed that we should do? He (Mr. M.) did not think it a proper question to put, whether or not we should establish a district court of oyer and terminer. He did not conceive that the time had yet arrived when it would be necessary to make such a decision. He should be sorry to do any thing that would impair or detract from the solemnity of the various forms observed in our courts of justice. But, the question upon which we were to decide was of far greater consequence than the mere question of continuing the courts of oyer and terminer. The gentleman from Allegheny, (Mr. Forward) Susquehanna, (Mr. Read) and Bucks, (Mr. M'Dowell) based their arguments on the ground that it was intended to make a change in the different functions of the county courts. The only reason which he had heard alleged against the section, was, that if a man wished to present a petition against a road, or any thing else, on Wednesday, Thursday, or Friday, and does not choose to employ counsel who goes to court on Wednesdays, he is debarred from presenting it in person, as they are not quarter sessions' days, as every lawyer knew. Now, he asked, was it not a hardship upon the individual that he could not present his petition without employing counsel? He could not be admitted into the court without employing counsel. Now, if the rejection of the section was asked, on the ground alone that the laymen, that was, the people of the commonwealth, as contradistinguished from the bar, should be entitled to open appearances, without being under the necessity of employing counsel, he would freely declare it to

be his opinion that they had better take counsel. They might go into court easily, but they could not come out of it so easily. It was a benefit to a man not to go into court, without first asking advice. A man, in the first place, ought to know to what court he should go; and by obtaining advice, on that point, he might escape a long and tedious litigation. The judges feel the necessity of keeping their judicial business totally distinct. Why, he asked, was the ground taken by the gentleman from Allegheny, (Mr. Forward) regarded as so difficult? Would gentlemen remove one difficulty to beget another, which he should presently notice? The difficulty was, that the courts were composed of the same individuals, and they found the necessity, (as he had before remarked) and the convenience, also, of transacting their different business distinctly. The objection now raised, was, to not finding the quarter sessions open. Supposing the judges thought proper to open all the courts on the same day, (and he could see no reason why it should not be done,) then any and every man might go in with his petition. If, by the mere fiat of a judge, he could declare that such and such business shall be done in this court to-day, and in that to-morrow, quarter sessions' business being assigned for one day, and a different kind for another,—abolish all these distinctions, he would say, and the county courts would be virtually abolished. For, in the barbarous ages, a court of quarter sessions was known in England, and the whole reason why this and other names of that kind should be abandoned, was on that account. It had been argued that it conveyed to the mind no ideas whatever. He maintained that to permit of the presentation of petitions on any and every day of the sitting of the court of sessions, would be seriously to interrupt the business of the orphan's court. Who was it that could not foresee that such must be the necessary consequence? Owing to the interruptions, the court would, in all probability, be occupied one part of the week with one kind of business, and another, with another. It was not to be supposed that the jurisdiction of the court could be suffered to be interfered with in this manner. Numerous orphans and their guardians, and lawyers, had often to come into court, and commune, face to face, in the presence of the judge, on business of much importance to the orphans. He insisted that they ought not to be permitted to be disturbed by petitioners, and that they should be allowed to transact their business in peace and quiet. Gentlemen, in their eagerness to allow petitions to be presented every day, would, it seemed, now go to work, and abolish all the good arrangements which now exist. One delegate would go so far as to do it for the reason that, when a prisoner was called upon and tried for his life, he had to hold up his hand. Now, if this was such an evil as it was said to be, could not the legislature get rid of it? Next:—The question was asked, "how is he to be tried?" And, he (Mr. Meredith) must admit that he could not help laughing, owing to the ludicrous manner in which the delegate from Bucks. (Mr. McDowell) answered that question. But, if that was the question here, he, for one, would not give up, let gentlemen laugh and ridicule as they pleased. It surely could not be necessary that he should remind delegates that there was a time when the trial by jury was regarded as the greatest safeguard of liberty and rights. Without becoming antiquarians, and looking at what was the law, in former and barbarian ages, when there were various modes of trial, it was sufficient, and gratifying to know, that trial by jury

was now the regular mode, or course of proceeding, in all cases. He was glad it was so. Now, if we were to abolish all the proceedings of the court of quarter sessions, and let the county court carry them out, what, he asked, was to be done with all our legislation? He could see no object to be attained by throwing all the business of the courts into absolute confusion. In 1836, an act of the legislature was passed, appointing a commissioner to revise the code of laws of the commonwealth of Pennsylvania, and it was provided that the jurisdiction of these courts should continue limited. What, he inquired, had become of it? It seemed that we were to destroy the whole of that code, in order that they might go to work again. Did some delegates want us to return to the barbarous ages? Must we go back, and inquire into the hidden parts of the law, for the purpose of seeing what was the jurisdiction of those courts? Were gentlemen going, instead of referring to the other courts by name, to say, by legislation, what precise crimes shall be tried by one tribunal, and what by the other? By such a course of proceeding, they would impose upon the legislature the arduous duty of passing over again almost all the acts which they had already passed; so that, in the end, we might have a system as good as we have at present. All this was to be done, because some men might go to court on a Friday morning, and their petition be not received, on account of the court being engaged in the transaction of other business. The different courts had particular days assigned for the transaction of certain business; and yet this arrangement was to be overturned in order that petitioners might not be disappointed in presenting their petitions! What, he desired to know, was the convention going to do with the records of these courts? He knew that in some parts of the state, all the records were kept in one county. In the greater portion of the larger counties, it was found impossible to keep all the records in one office. The labor was found too great. What was to be done with the records of the orphan's court, and which, in thirty years, would involve all the estates, real and personal, in each county? Why, they were to be turned over to the justices of the peace, as if they involved no greater sum than ten, twelve, or fifteen dollars. They were all to be kept together in a mass, without order or regulation. He presumed that a part of the system was, that one or more clerks were to be appointed, and doubtles they would be as much puzzled to find the papers that might be wanted, as it was possible for men to be. The whole of the real and personal estate in each county, for thirty years past, would pass through the orphan's court; and the papers in it were better preserved than in any other. All the papers relating to real and personal estate, besides all the papers and accounts of the administrators and guardians, might there be found; or, if they should happen to be mislaid, could be seen in the registers's court. And, why was all this caution observed? In order to secure the safe keeping of documents relating to estates, that they might be owned—that men claiming them might prove their right to them. Were delegates here, then, disposed to do that which would have the effect of defeating the end which was now attained, of preventing a loss of original papers, and of depositing a probate with the register, so as to rebut any allegation that the will was not that of the testator? Would they throw all these highly important and valuable documents among the ordinary mass of papers? If not, let them

refrain from adopting a step so pregnant with evil consequences to all those holding property in the state of Pennsylvania.

He (Mr. M.) was afraid that the committee was moving too fast, without due reflection and deliberation. He did not think that a matter of such great and grave importance as this undoubtedly was, should be presented in the collateral mode proposed, and treated as a mere question of oyer and terminer, and coming under the forms pursued in courts of that kind. It was a subject which touched every thing that was vital in the administration of justice in the commonwealth. If the committee should carry out the principle, which they had introduced, to the extent now contemplated, it would be impossible to foresee to what dangerous and fatal results it might lead. He regretted that the gentleman from Allegheny, (Mr. Forward) should have agitated the subject here, for he (Mr. M.) had hoped that some conference would have taken place, in regard to it, before the discussion had been entered into. He had wished to ascertain from the committee whether they were going to sanction this principle; if they intended to prohibit the county courts from assigning particular days for the hearing of petitions and the transaction of particular business; if they were going to facilitate the progress of their labors —to give an opportunity to the judges to exercise more ability and agility; and also, to allow the important papers of the orphans court to be thrown into one mass, and prevent the courts from ever separating them. If these were not the objects the committee had in view, then he was entirely at a loss to discover what practical purpose could be reached by this amendment. Or, were the committee even disposed to go farther, and to throw all the records into one office? And he had endeavored to show a few of the results to which it would lead. If these were not to be the results, then where, he asked, was the difficulty? What was the difficulty after all? Was there a man in the commonwealth who did not know that cases of assault and battery are tried in the courts of quarter sessions—that petitions are there received concerning roads, and other business of a like character? Or, was there a man who did not know that an appeal from a justice of the peace went to the court of common pleas? And, that the court to which the executors and administrators of wills should go, was the orphans' court? He admitted that the difficulty, as connected with these matters, was not attributable to the constitution, but had arisen in consequence of the clashing of certain acts of assembly, which had been passed without taking the necessary care to prevent the collision which had since arisen between the two courts—it being a matter of doubt which has jurisdiction. He repeated that the difficulty arose from hasty legislation, and not from any defect in the constitution.

If the evil complained of was not already removed, it could be by the same body. It was no reason with him to say that it was left in doubt whether they possessed the jurisdiction. The same reason might apply to the supreme court. There might be persons who did not know that common pleas were not decided upon in the superior courts, but would this be a good reason for saying to a citizen who came to the superior court, you have came to the wrong court, you have been disappointed, and, therefore, both courts shall have the same power? We had better come back at once to the plan of the early provincial courts, which decided upon all causes of whatever kind. He hoped that the proposition of the gentleman

from Susquehanna, would be rejected, and that, in the mean time, some system would be framed which would answer every purpose, which the gentleman would have in view. He would be gratified if the gentleman from Allegheny, (Mr. Forward) would give us his scheme on this subject. In regard to the cognizance of capital offences, he hoped that would not be interfered with. He understood the proposition not as saying that the legislature shall abolish capital punishments, but that they may do it. In the clause we included burglary and murder in the second degree, because they were both punished capitally under the common law, formerly, but not now. So with treason, that was not now punished with death, but there are crimes which still go under the name of capital offences. If we preserve our courts of oyer and terminer at all, they will show little of their ancient form. But if the convention thought fit to preserve this course at all, there might be a clause adopted, prohibiting the legislature from putting these cases into the courts of quarter sessions, and giving to the court exclusive jurisdiction in these cases. The proposition of the gentleman would create confusion in our courts.

Mr. DUNLOP could not concur with the gentleman from the city, and did not see his reasons for his views. The man who goes into court without the advice and aid of a competent person, must certainly expect to get more kicks than coppers. Whoever went to law should do it with good counsel, in whatever manner the courts should be constructed. We could not make every man his own lawyer. We could not, by any arrangement, confer upon any man a knowledge of the law, nor prevent the necessity of learning the whole history of law, changes and all. But he saw no objection to admitting different cases before the same court. It was said that it would create confusion, to strike out this provision. The gentleman said it would embrrass and confuse our courts. But what was to create the confusion?

Mr. MEREDITH said he would explain. The first question brought before us, was argued on the ground that we could abolish several of these courts and make a new county court. He did not apply his remarks to striking out this provision.

Mr. DUNLOP said, he had understood the gentleman from Philadelphia, to argue that it was necessary to keep the courts distinct, by giving them different appellations. He did not see how this object could be thus effected. To the uninitiated eye, there appeared great confusion in the proceedings, when, in the midst of the trial of a capital case, a motion is made in relation to a county road. The reason is, that both are held the same week, and that all were going on together. There was no confusion in this. If a pause takes place in the court, it can be filled up by an application for a county road, during the most solemn proceedings of the court, in order to avoid delay. He had no objection to preserving the names of the courts, and the order of their proceedings; but, as to the mode of proceeding, the court must regulate that itself. Each court has a right to regulate the mode of its proceedings, and no confusion has arisen from admitting other business before the court. Somtimes one man is employed in different offices. One, and the same man, might be the clerk of the court of oyer and terminer, the orphans' court, and the quarter sessions. But what complaint has ever arisen from this arrangement? None that I ever heard of. Gentlemen had got it into their heads

that the county lawyers could not carry on their business. But our courts are all well arranged, and it was a matter of little importance by what names they were called. The names might all be preserved The legislature, by an act, can provide that the courts of oyer and terminer shall be held just in the manner in which they are now proposed to be; but if we strike out this clause, it will not be necessary to make any alterations in the courts. He did hope that the gentleman would not be too rapid in hurrying through the committee, this important subject of the organization of our courts. There was too much disposition to leave the organization of the courts to the second reading. If this should be done, we should be forced back into the committee, and he would greatly prefer, therefore, to take more time now. The only part of our constitution which, as it appeared to him, was not drawn with a strict regard to logical language, was that part which relates to the structure of our courts. He could see no argument against striking out the whole section, inasmuch as it had become entirely useless. Gentlemen must admit that the practical changes which have been made under this section, are, in a great measure, useless. One great objection made to the organization, was, that the courts did not sit together. It had been settled by construction, that they had not a right to sit together. He (Mr. D.) understood the rule of construction to be this. Where there is an ambiguous phrase in a law, it must be so construed as to give it a practical effect. But in a constitution which affects public liberty, the rule of construction is more strict. The judges of the courts had been written to on the subject, and they have written a letter giving an opinion upon it. But no letter of a judge of the supreme court could settle the meaning of an ambiguous clause. The constitution says, that the courts of oyer and terminer or jail delivery, shall not be held in any county, when the judges of the supreme court, or any of them, shall be setting in the same county. There seemed to him to be no reason to retain the clause. As to the word "capital," the gentleman would find that, if we adopted the section, we could not change it.

Mr. DICKEY, of Beaver, said the committee had decided that they would not dispense with the names of the courts, and he supposed, for that reason, that they intended to retain the courts. The jurisdiction of all the courts was defined by acts of assembly; and these acts had continued for years, though it was now said that it was a matter of doubt. If we undertook to make these changes in the constitution, we should find ourselves involved in difficulty. These things the people now well understood, and he was in favor of preserving for them all the landmarks of jurisdiction, the days and times of holding the courts, and their reasons and mode of doing business. All these he hoped would be retained.

The question being on striking out the fifth section as follows:

SECT. V. The judges of the court of common pleas in each county shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery for the trial of capital and other offenders therein; any two of the said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer or jail delivery in any county when the judges of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove

the indictment and proceedings or a transcript thereof, into the supreme court.

The question was taken and the motion was lost—twenty-seven only voting in the affirmative.

The committee then passed to the sixth, to which no amendment was reported, and it was read as follows:

SECT. VI. The supreme court and the several courts of common pleas shall, beside the powers heretofore usually exercised by them, have the powers of a court of chancery so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the state, and the care of the persons and estates of those who are *non compotes mentis*; and the legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice.

So much of the report of the committee as declares it to be inexpedient to make any alteration in this section, was agreed to.

The committee passed to the seventh section, which was read as follows:

SECT. VII. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace, and orphans' court thereof, and the register of wills, together with the said judges, or any two of them, shall compose the register's court of each county.

So much of the report of the committee as recommends that no amendment be made to this section, being under consideration.

Mr. BANKS moved to amend the report, by adding thereto the following, viz:

"In case of the absence of the associate judges of the court of common pleas, or either of them, the president of the said courts may hear and determine the causes and questions pending in said courts, with like effect as if two of the judges were present."

Mr. BANKS offered this amendment, he said, to obviate what may often occur in the organization of the court. He knew that great inconvenience had occurred to persons having cases in the orphans' court, because the president could not determine a cause by himself alone. It was absolutely necessary by the constitution, that two of them should be present. He had witnessed one case of inconvenience under this rule which he could never forget. A man whose business he had done for a number of years, came in and settled an administrator's account in Mifflin county. The persons interested filed objections. Some of these persons were brought from Armstrong county to have their objections passed on. There were six from different parts of the country. When the time of hearing came, the president only was present, and he could not act. The president of the court told the parties that he could do nothing. It was such a hardship that relief ought to be given, but the legislature could not give it, because the constitution required the presence of two judges of the court, in order to form a quorum for the court of quarter sessions and the orphans' court. Therefore, it seemed proper to alter the provision of the

constitution in this respect, in order to save time, inconvenience, and expense to persons having business with the orphans' court. It often happened that many of these persons came from a distance to transact their business with this court, and the delay was to them very inconvenient.

Mr. READ, of Susquehanna, said, the gentleman's amendment would be equivalent to the rejection of the section. It would evade the whole power and effect of it. He could, therefore, get at his object much better by rejecting the whole section. Several of these sections consisted of details which were equally useless.

Mr. DUNLOP said, the gentleman from Mifflin would not reach his object in the way proposed by the gentleman from Susquehanna, because the section would not be rejected. Every one must see the propriety of the alteration proposed in the amendment. When the judge is ten miles off from the place where the court is to be held, it is not easy for him, at all times, to get there. Great inconvenience, to his knowledge, often arose from the provision requiring the attendance of two judges. He moved to strike out the word "two" and "shall," and insert "may," thus leaving to the legislature to say whether one or two should compose the court. In this way of amending the section, fewer words would be employed, than in the manner proposed by the gentleman from Mifflin.

Mr. MERRILL said it was true that every possible inconvenience to those who sought justice, should be removed and guarded against. The way to obtain justice ought to be clear and unobstructed. But here, in this section of the constitution, we have provided means to secure justice to the widows and orphans—to those who cannot attend to their own causes, and who seldom appear in the courts, and to protect the rights of whom it is the duty of the legislature. He would ask whether it was safe and proper to abandon the rules formed for the protection of this class of persons, in order to suit some case of temporary and casual inconvenience in Mifflin county. Are we prepared to leave the facts and the law in cases of this kind, to the decision of one man? Would we thus deprive the widows and orphans of the security and protection hitherto afforded them, by committing their cause to the decision of two judges? Why should we not have a chancellor at once, if this course should be adopted? We were unwilling to create a court of chancery, because we would not leave to one man the decision of cases, which involved personal liberty and property. The witnesses brought before the judge of the orphans' court in these cases, might be persons with whose credibility he was unacquainted. Should it be said that, in this uncertainty, he should go on to decide upon facts involving the estates of widows and orphans? The provision that there should be two judges, was required for these very cases. But the amendment of the gentleman from Mifflin, would put it in the power, and make it the duty, of one associate judge, to decide finally on all these cases, just as he pleased. He could open the cause at any time, and close it when he chose, and administer justice just as it pleased him. He submitted whether this was not opening a door to the destruction of rights, which it was the object of the constitution to secure. It was very true that one witness might live a hundred miles off. And it might be very inconvenient to him, as, when he came, he could not be certain of finding the two associate judges. But what was that inconvenience, in comparison with the security, which the law ought to afford to

the great interests involved in cases which came under the cognizance of the orphans' court. He would ask whether we should not lessen the security which was afforded to justice, by adopting this amendment? In cases, too, where the court sat as the quarter sessions of the peace, there might be many trials for petty offences, in which one judge would not know so much of all the persons who were brought in as witnesses, as two judges would know. Should one judge, then, decide upon such cases? Such a course would render the courts unsafe. If we must leave facts to the decision of courts, then surely we ought to have more than one man to act as the court. We must not suffer injustice to be done, in order to prevent inconvenience to one man.

The hour of one o'clock having arrived, the committee then rose; and,

The Convention adjourned.

THURSDAY AFTERNOON, November 9, 1837.

FIFTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. M'Sherry in the chair, on the report of the committee to whom was referred the fifth article of the constitution.

The question being on the motion of Mr. Banks, of Mifflin, to amend the seventh section, by adding to the end thereof the following words, viz:

"But in case of the absence of the associate judges, or either of them, the president of the said courts may hear and determine causes and questions pending in the said courts, with like effect as if two of the judges were present."

Mr. Fuller, of Fayette, expressed his hope that the amendment would not prevail. He was more disposed to increase the business security for the public, than diminish it. He would rather have three judges on the bench than one judge. The views of the gentleman from Union, (Mr. Merrill) on this subject were very clear. He had set the matter in a right light, and must have satisfied every one. There had been no complaint from the people on this subject: and amendments, which were not generally called for by public opinion, ought not to be made.

Mr. Banks, of Mifflin, said he had already stated to the committee the reasons which had operated on his mind, when he offered this amendment. It must be obvious to all that there may be delays in the course of justice, in relation to the settlement of accounts of trustees, guardians &c. in which the interests of a class of innocent and helpless persons were involved. While others, who could give personal attention to their business

in court, disposed of it quickly, those were compelled frequently to suffer from delay. The amendment was intended to be added to the section. He wished the section to stand as it now is, whether the amendment was attached to it or not. Then the committee could judge of the propriety of rejecting or accepting the proposition. As to security, the president and judges of the court of common pleas, have now the power of sitting in the court of common pleas, and persons are prosecuted there to trial and judgment, without any of the associates being present, as was known to gentlemen conversant with the business of the courts. In such case, if injustice be committed it is without relief or remedy. But the president judge, sitting as chancellor, passing on creditors or guardianship accounts, if he should prejudice any one, an appeal can be made to the supreme court, where the error will be corrected. So that there is no security taken away. He did not wish to be tedious in giving his views. Although he was desirous of making improvements, he was unwilling to interpose his amendments against the sense of the convention. He only wished to introduce such amendments, as he believed might be of service. He was as unwilling to interfere, and to trample under foot the rights of persons, as any could be, or to do any act which could have a tendency to prejudice the interests of the commonwealth. The organization of our courts, he regarded as a valuable one, and he was unwilling to disturb it. The supreme court, he stood up for as one; so also the courts of common pleas, and every other court in this commonwealth. In reference to them, he would adopt the language of Randolph in relation to the convention in Virginia.

In the matter of the organization of our courts, the framers of our constitution hit on a happy expedient. One of these fortunate contrivances the ramers of the constitution hit upon, which enabled them to snatch a grace beyond the reach of art. To prevent injustice, and to assist in administering justice, it is the duty of every man to do all he can. If the gentleman from Fayette was not satisfied with this amendment, let him offer any thing more advantageous. I (said Mr. B.) am not tenacious of my own composition, but would be ready to accept any modification which would not injure the spirit of the proposition.

Mr. Reigart, of Lancaster, asked what would be the effect of the amendment of the gentleman from Mifflin, in practice. It would be to create a court of chancery. It would be to confer on the president judge alone a tremendous power of adjudication over the property of the state and community, to the amount of millions. To be sure his decisions would be subject to an appeal, but that was a tedious and expensive process. There was, to be sure, some inconvenince in the present system in the case put by the gentleman from Mifflin, but there would be no loss. No loss could occur. He (Mr. R.) would not agree to the amendment, because there should be a connecting link between the court and the people. Sparsely populated districts ought to feel some connecting link. The associate judges form that link. What would be the consequence of its destruction. The president judge is unacquainted with a county. A recognizance of bail is required. The president judge is not acquainted with the recognizer or the recognizee, for the associate judge will stay away when not obliged to attend. The president judge, a stranger, without the means of forming a correct judgment, would be entirely at a loss how

to act. At the orphans' court, the accounts of administrators and executors can be presented at any time, and no injurious delays are likely to occur. The gentleman from Mifflin says, we trust a tremendous power in the hands of the judges. They try causes, administer the law, instruct the jury. But here he would confer a power ten times as tremendous, because without the medium of any jury, they could exercise their own will, and do what they think proper. It was scarcely to be expected that, because some such inconvenience may have occured, as was stated by the gentleman from Mifflin, we are to make an alteration in the constitutional law. There is the orphans' court, which may at all times be resorted to, and there are always two or three judges there. Believing the adoption of the amendment would be productive of great evil and injury, he should feel himself constrained to vote against it.

Mr. Fleming, of Lycoming, said, if the committee would agree to dispose of the associate judges altogether, and not have any, he would willingly go for the proposition. But he could not receive the arguments of the gentleman from Lancaster, as evidence of the injurious tendency of the amendment. The gentleman had put his opposition on the ground that the president judges have to pass on the rights of individuals, and would have no means of making up a correct judgment. He never wished to see the time when a court, without council or parties at hand, could make up a judgment on any litigated question. He thought courts should not have any such power. But he did not understand how associate judges could be more competent to come to a correct judgment on facts relating to the settlement of the accounts of administrators and guardians, than the president judge. Is the legal acquirement of the associates able to bring a question to a more proper conclusion than the learning of the president judge? No. The whole evidence being with the president judge, he ought, at any time, to be able to form his decision. If not satisfied with the testimony, he has the means at hand to obtain such material as will enable him to determine on his own responsibility, without taking the opinion of the associate judges, which the parties interested may have no means of counteracting. For much information was given in this way. All parties ought at all times, to know on what evidence a court, as well as a jury, makes up its opinion. He wanted the whole evidence before a jury. The parties could then be able to know that no other opinion, was made up, but that which was authorized by the evidence adduced before the jury. So courts should bring before the parties every thing within their knowledge, all the facts on which they form their opinions, and as to any advantage derived from the presence of the associate judges, he was willing to forego it, and to go for the amendment, because it leaves us a place to creep out at, and a hope that we shall one day get rid of the associate judges altogether.

Mr. Agnew of Beaver, did not agree with what had fallen from the gentleman, who had just spoken.

These associate judges had a more extensive knowledge of local matters in their counties, than the president judges could have, and for this reason, he was opposed to the amendment. Will any man pretend to say that a president judge who does not reside in a county, is a proper person to judge, in relation to a tavern license, when the petition has been got up perhaps by some agent employed for the purpose, and we all know

how easy it is to get the names of respectable men, to such petitions. No, sir, he is not the proper person to judge in such case, and the associate judges who are acquainted in the county, are the only and proper persons to judge of such matters. Again: application is made for the appointment of a guardian. The president judge is unacquainted with the person or the persons who may be offered for security, and then you commit into that man's hands the interests of a minor, who may be defrauded, in consequence of the want of knowledge of the president judge of the court, which would have been prevented, if the associate judges had been present. Perhaps the application was made without the knowledge of the minor or his friends.

Again, you have the estates of decedents divided, their sons come forward, and some of them propose to take the property and give security for the payment of that portion of the proceeds of the property, to the other heirs, which belongs to them, the president judge knows nothing of the parties, or nothing of the proposed securities.

Again, some person presents a petition for the sale of the estate of an intestate. Well, there may be facts in relation to the property, which if known to the president judge, would prevent the petition from being granted; or again, there are facts connected with it which would require that the prayer of the petition should be granted. Well, was the president judge to take the evidence of interested partisans, or of their counsel in such cases as this? No, sir, these were matters, in relation to which, the associate judges were more competent to judge than the president, and they should always be on the bench on such occasions. An individual, too, may want a road laid out for his own private purposes, which may be an injury to many persons in the county, and in this way he may obtain the leave of the court to have it surveyed and laid out. He had no idea of trusting the interests of individuals and of the county, to the hands of a man who knew nothing about the local matters of that county, without having any consultation with the associate judges, who reside in the county. If, however, the associate judges are on the bench, on such occasions as these, they can consult with the president judge, and the whole of these matters can be settled satisfactorily and safely for the interests of all concerned. With regard to the president judge of the common pleas, it might be well enough for him to sit alone, because we all know that his only duty is to lay down the principles of the law, to the jury, which abstract principles of law, the associate judges have no concern with; but when you come to commit the great interests of a county, into the hands of any one, they should go into the hands of those who have an interest in the county, and have a knowledge of its affairs also. He hoped therefore, that this amendment would not prevail.

Mr. Banks said, that the gentleman seemed to be laboring under an entire misapprehension of his views, in relation to associate judges. He had no desire to drive our associate judges out of court. His amendment did not in any way reflect on associate judges, nor did it say that the president should preside and, do business in the absence of the associate judges, when they can be present. His provision was, that they might do business in the quarter sessions and orphan's court, in the absence of the associate judges. His only desire was, that the business of the people might not in any way be kept back, by the absence of the

associate judges, from indisposition or other cause. He would be as unwilling to dispense with the associate judges, as any person; nay, he had always been the strenuous advocate of the associate judges, and only was anxious that the business of the people might not be delayed when it was not in their power to attend.

Mr. BANKS's amendment was then disagreed to without a division.

The committee of the whole then took up so much of the report of the committee on the judiciary, as declared that it is inexpedient to make any amendment in the eighth and ninth sections of the fifth article as follows:

"SECTION. 8. The judges of the court of common pleas shall, within their respective counties, have like powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done."

"SECTION 9. The president of the court in each circuit within such circuit, and the judges of the court of common pleas, within their respective counties, shall be justices of the peace, so far as relates to criminal matters."

No amendment being proposed to either of these sections, they were passed over by the committee.

The committee of the whole then took up the tenth section, as follows:

"SECTION 10. The governor shall appoint a competent number of justices of the peace, in such convenient districts in each county, as are, or shall be directed by law. They shall be commissioned during good behaviour; but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of both houses of the legislature."

The committee on the judiciary had reported an amendment to this section, proposing to strike it out and insert the following:

"The justices of the peace shall be chosen by the qualified voters in such convenient districts in each county, at such time and in such manner, as by law may be provided, and that there shall be one justice of the peace in every such district, containing not less than fifty taxable inhabitants, and that there may be chosen as aforesiad an additional justice in every such district for every one hundred and fifty taxable inhabitants in said district, exceeding one hundred, and said justices shall hold their offices for the term of five years from the time of their choice as aforesaid, except those first chosen under this amendment, who shall be classed as by law may be provided, and in such manner that one equal fifth part of the said justices in the several counties, shall go out of office annually thereafter. The said justices shall be commissioned by the governor, and may be removed by the governor on conviction of misbehaviour in office, or of any infamous crime, or on the address of the senate, and the said justices shall give security to the commonwealth, for the faithful discharge of the duties of their office, in such form and manner as the legislature may direct."

Mr. CLARKE of Indiana, said that provision had already been made,

in another section, for the election of justices of the peace. He therefore moved to strike out the section; which was agreed to.

The committee of the whole then took up so much of the report of the committee on the judiciary, as declares that it is inexpedient to make any amendment to the eleventh and twelfth sections of the fifth article, as follows:

SECTION 11. A register's office for the probate of wills, and granting letters of administration, and an office for the recording of deeds, shall be kept in each county."

"SECTION 12. The style of all process shall be *The commonwealth of Pennsylvania.* All prosecutions shall be carried on in the name and by the authority of the commonwealth of Pennsylvania, and conclude, *against the peace and dignity of the same.*"

No amendment having been proposed to either of the above sections:—

On motion of Mr. WOODWARD, the committee rose, and reported the fifth article to the convention, as amended, when it was laid on the table.

The President of the convention then asked and obtained leave of absence for himself, for two or three days from to-morrow, and appointed Mr. CHAMBERS of Franklin, president, *pro tem*, during his absence.

Mr. WOODWARD then moved that the convention go into committee of the whole, and proceed to the consideration of the seventh article of the constitution.

Mr. MEREDITH moved that the convention adjourn, which motion was disagreed to, ayes 42—noes 47.

SEVENTH ARTICLE.

The convention then went into committee of the whole, Mr. REIGART, in the chair, and took up the seventh article of the constitution.

The first section of the seventh article reads as follows:

"SECTION 1. The legislature, shall as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."

To this section, the committee on the seventh article had reported the following amendment:

"SECTION 1. The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that all children may be taught at public expense."

This amendment was agreed to without a division.

So much of the report of the committee as relates to the second section of the second article, being under consideration, as follows, to wit:

"SECTION 2. The arts and sciences shall be promoted in *such institutions of learning as may be alike open to all the children of the commonwealth;*"

Mr. DICKEY rose and said, that he should like to have some explanation from the chairman of the committee, who had reported this section, or from some member of that committee, as to the object to be attained by

it. The language of the constitution of 1790, was as follows; "The arts and sciences shall be promoted in one or more seminaries of learning." At present, our colleges were chartered, and in granting the charter, the legislature provided that a certain number of children should be taught *gratis*. After that, they were open to all who were able to pay. Now, he would be glad to know whether it was the intention of the gentlemen who reported this amendment, that these seminaries of learning should be open to all the children in the commonwealth, at the expense of the commonwealth?

Mr. STEVENS moved that the committee rise. He hoped this motion would prevail; because, he thought this a very important subject, and one deserving of the best consideration of that body. He thought that an amendment to the constitution, in this particular, might be submitted to the people, which would be alike honorable to the convention and creditable to the state. He intended to offer a slight amendment, if no other gentleman should anticipate him. He was not prepared to offer it now, and he hoped either that the committee would rise and give him an opportunity of examining this matter a little more closely, or that they would consent that the farther consideration of this section should be postponed until the committee had gone through the residue of the report.

The motion that the committee rise having prevailed, the committee rose, reported progress, and had leave to sit again; and,

On motion of Mr. FLEMING,

The Convention adjourned.

FRIDAY, NOVEMBER 10, 1837.

Mr. KEIM of Berks, submitted the following resolution, which was laid on the table under the rule, for future consideration:

Resolved, That the auditor general be respectfully requested to furnish this convention with the last statements of the affairs of the several banks of this commonwealth, as deposited in his office.

The report of the committee of the whole, to whom was referred the fifth article of the constitution, was read a second time.

Mr. JENKS of Bucks, moved to postpone the farther consideration of the report, for the present, and the motion was agreed to.

SEVENTH ARTICLE.

The committee again resolved itself into a committee of the whole, on the report of the committee to whom was referred the seventh article of the constitution.

The question being on the report of the committee so far as relates to the second section, which is as follows:

SECT. 2. The arts and sciences shall be promoted in such institutions of learning, as may be alike open to all the children of the commonwealth.

Mr. INGERSOLL moved to postpone the farther consideration of the subject for the present, and this motion being under consideration.

Mr. INGERSOLL moved that the committee of the whole reconsider the vote of yesterday, on that part of the said report, which is called section first, in the following words, viz:

SECT 1. The legislature shall as soon as conveniently may be, provide by law for the establishment of schools throughout the state, in such manner that all children may be taught at the public expense.

Mr. INGERSOLL explained. He thought that this section had been adopted without reflection, and it appeared to be the general wish, on all sides, that the vote should be reconsidered.

Mr. MARTIN of the county of Philadelphia, expressed a hope that the motion would not prevail. He was not sure that it was quite in order to resist it at this time, but it was the only opportunity of doing so. The second section was but a portion of the first. He thought the committee would have done better, if they had reported both sections as one. He hoped the progsess of the report would not now be retarded, but that we should go on and complete its consideration? Why were we to postpone the second section, and what were the merits of the first? The report only struck out the words which were so exceptionable as to the education of the poor, in the old constitution. In 1790, the whole difficulty turned on that phrascology; and during the half a century that had since elapsed, it had remained in the constitution, operating as a check and hindrance of all legislation. Notwithstanding the provision to educate children at the public expense, but little or no progress had been made for fifty years, owing to the difficulty which lay in the way. That difficulty we are now about to remove, by substituting the word "commonwealth," for the word "poor." We shall do wrong if we go back one inch from that ground. We shall do wrong if we prevent the general education of children, by changing this expression in the constitution of 1790. The idea that the system was intended only for the education of the children of indigent parents, had caused a stigma to be cast on those who availed themselves of its provisions, and thus had prevented a large class of our citizens from sending their children. The first school district went into operation in 1790, in the city of Philadelphia. It was then thought that none but the children of the poor were to be educated at the public expense, and hence arose a great prejudice against it. But the first school district in Philadelphia had waded on through this odium. He hoped that the consideration of the second section would not be postponed, and that we should proceed regularly.

Mr. INGERSOLL said he had not expected this opposition. Having received the assurances of four members of the committee on this article, he did not suppose there would be any difficulty in obtaining a reconsideration. But, as his motion was strenuously opposed, and there were many who wished to know what he meant to offer as a substitute, he

desired to occupy the attention of the committee for a moment. He thought this a far more important subject than that of the judiciary, and he contemplated an extensive operation. The section he proposed to substitute for the present first section, was in these words—"The legislature shall provide by law for the immediate establishment of common schools, in school districts of every county of the state, wherein all persons may receive instruction at the public expense, at least three months in every year, in the English and German language, as may be by law directed." It would be seen, that he had inserted a clause, striking and new—"in the English and German language." The provision, therefore, embraced all persons, for at least three months, who might be educated in either the English or German.

Mr. FORWARD, of Allegheny, hoped the committee would reconsider this vote without hesitation. He confessed that he himself was not prepared, yesterday, to give this section a proper consideration. This is the most important subject that has been, or can be, brought before the convention; and, for the sake of appearances, if for no other reason, he hoped the vote would be reconsidered. He did not know that he should vote for the proposition of the gentlemen from Philadelphia, but others might be offered. If any subject was worthy of our serious consideration, it was this. He did not know what part he might take in the debate which would probably spring up. But to hurry over the whole of the important matter of the education of the children of the commonwealth, without a word, was wrong. He hoped, therefore, that the motion would be agreed to.

Mr. CHANDLER, of Philadelphia, said he should be gratified if his friend from the county, (Mr. Martin) would withdraw his opposition to the motion. He Mr. C. was ready to stand forward as earnest a defender of the section, although he would not pretend to be as capable of defending it, as his friend. But we shall not acquit ourselves of our duty to our country and our constituents, if we pass over this great question so hastily. He could not pledge himself to go the length of the proposition offered by the gentleman from the county. He did not know that he should. But it was due to that gentleman, and to the country more especially, to reconsider the vote of yesterday. He believed that we ought to insert some provision in the constitution, which would have a more binding operation on the legislature.

Mr. MARTIN replied. He saw nothing which could be possibly obtained by such a measure. The view which his colleague, (Mr. Ingersoll) had presented to the committee, might be very learned and of great importance, but it was altogether irrelevant here. It was intended for the legislature, and was not suited to a constitutional provision. If we were to go to work, to carry out in detail what the legislature are to do, we should be detained here for weeks, before we should be prepared to vote. The question was a very simple one, and was very easy to be understood. The section had been unanimously agreed to, as reported by the committee who had the subject in charge. Not that some gentlemen did not entertain views, differing from those of the committee, but no one was disposed to produce confusion and delay, by urging his own distinct views. He (Mr. M.) might not, perhaps, be able to give his views very clearly, but every member must see, at once, that the article as reported,

contemplates leaving the legislature free and unfettered in their action on this subject. He was not going to oppose very strenuously, the postponement of this section, and the reconsideration of the vote of yesterday, but he saw no good reason for either.

The question on the motion to postpone the second section, was then put and agreed to. And the question being on the motion to reconsider the vote on the first section,

Mr. HOPKINSON, of Philadelphia, said that the subject of education had almost severed the dividing line between parties. He had, for years past, read pieces in the papers on the subject, and he had come here, expecting a grave and able discussion of the subject, from which much light would be diffused over it. He was, therefore, not a little surprised to see the vote of yesterday. On that account, he wished the committee to rise, in order that more time should be given to the discussion. He did not know how he should vote on this new proposition, but he was sorry to see gentlemen disposed to pass so vast a subject by so lightly. For the purpose, merely, of cutting off a discussion of a week or too, he would not pass by this subject.

Mr. INGERSOLL asked for the yeas and nays on this question, and they were ordered.

Mr. BIDDLE, of Philadelphia, said if there was any thing of importance which demanded our consideration above every other subject, it was education, for on that must depend the capacity of the people to promote the good of the country and their own happiness. Knowledge is power, and as we increase the knowledge of each individual, we increase the aggregate of power. Ought we then to refuse to deliberate on this most important subject. He hoped the vote in favor of reconsideration, would be so large, as to convince the people that there was no subject before the convention, which had excited so lively an interest.

The question was then taken on the motion to reconsider, and decided in the affirmative, as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barclay, Barndollar, Barnitz, Bedford Biddle, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler Carey, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Cline, Coates, Cochran, Cope, Cox, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darragh, Denny, Dickey, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hamlin, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Cahen, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Nevin, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Read, Riter, Ritter, Rogers, Russell, Saegar, Scheetz, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, Smyth, Snively, Stevens, Sturdevant, Taggart, Thomas, Todd, White, Woodward, Chambers, *President pro tem.*—117.

NAYS—None.

Mr. INGERSOLL then moved to amend the entire by striking therefrom, all after the words "Section 1," and inserting, in lieu thereof, the words as follows, viz:

"The legislature shall provide by law for the immediate establishment of common schools in school districts of every county of the state, wherein

all persons may receive instruction at public expense, at least three months in every year, in the English or German language, as may be by law directed."

Mr. INGERSOLL said, the respect he felt for this highly respectable and intelligent body, induced him to offer a few explanations of the proposition he now brought forward. One of his propositions, as he was aware, was new, and might be considered extraordinary. The amendment also provided that the legislature should act immediately upon the subject; whereas, the clause, as it stood, left the time of action to the convenience and discretion of that body. There were, fortunately, in this body, several gentlemen well acquainted with this subject—the member from the city and others—by whose lights he expected to be guided; but he would state that his great object was to lay a broad and deep and permanent basis of compulsory education. He wished to make provision for the education of "all persons," of whatever age, or complexion, or language, or class, at the public expense. As to the details of a system, he did not profess to be very well acquainted with them. They would be carried out by others, and there were some gentlemen well versed in them. We had also in our state government, a gentleman, who, by the earnestness and ability which he had devoted to this subject, had highly distinguished himself, and founded his public character upon a rock, and we would, therefore, go forward, with good lights, towards the object of increasing the means of education to every inhabitant of the commonwealth, at the expense of every other inhabitant. One part of his proposition, in reference to the German language, was, as he had remarked, novel and extraordinary. It was first suggested to him by the memorial from the citizens of the county of Lehigh, asking that the records, &c. should be kept in German as well as in English, and by persons educated in the German language for that purpose. He had no objection to this proposition, but he prefered to begin at the foundation. He held in his hand a letter from a gentleman who was a great admirer of the German language, and to whom he was indebted for one idea on this subject, which seemed to give it great importance. The letter to which he referred, was from Mr. Duponceau, and stated that there were in the county of Philadelphia, from fifteen to twenty thousand Germans; in Pittsburg, fifteen thousand; in New York, thirty thousand: a great number in Virginia; and also a great and increasing number in Cincinnati, and other parts of Ohio, in Kentucky, and in Illinois.

A German convention was lately held at Pittsburg, in regard to which, some gentlemen here had expressed apprehensions, though he felt none whatever. He had seen and conversed with the president of that body, and found him a very intelligent and respectable man. He would be gratified if we should admit this large class of our fellow citizens to share in the benefits of our common schools; and enable them there to learn to read and write their own vernacular, instead of dictating to them our own tongue. By this means we should overcome their aversion to the school system in an acceptable way, and induce them cheerfully to accept of its provisions and pay its expenses. He would leave the details to the discretion of the legislature. The only question before us was, so to speak, the political question, whether it would be well or not, to have two tongues taught in our schools, and generally used. On that subject,

he had the honor to receive a letter from Mr. Duponceau, and though it was not intended for publication, yet as that gentleman would have no objection to it, and as the subject matter was of public interest, he would read it. This letter was written on the 2nd day of October last. It was from a man now eighty years of age—of great experience, wisdom and learning. He complains that the German language in this state is degenerating into a sort of *patois*, and expresses a wish that it might be raised to as high a level here, as in Europe. The two languages, in his opinion, would very well exist together, and he remarks that the German language is too noble to be lost, and that German science belongs to all the world.

[Mr. INGERSOLL read the letter in full, and remarked that this was a view of the subject, much more able and satisfactory, than he could give.]

He would remark, that there was no country in the world where there were not two or more languages co-existing. In England, there were a dozen languages spoken. In France, there were as many. It was so too, throughout Germany itself. It was the opinion of a gentleman highly skilled in the two languages, that they would not interfere with each other, and that both might be cultivated with great advantage to the service of the country. Another great object would be to attract from Germany a large share of its population. There was no fear but that we should have room for it. Even if paupers come, they will render us great service, if they come with arms, hands and legs, and are able to work. The proposition, he thought, was in perfect conformity with the principles of our institutions. It had but recently occurred to him as an object of importance, and he had never conversed with a single individual on the subject, except the president of the convention at Pittsburg, who promised to write to him, but had not done so.

Mr. MARTIN, of the county of Philadelphia, said he would not say, in the usual phraseology, that he did not rise to make a speech, for he intended to make a speech—whether it would turn out to be a failure or not, remained to be seen. He was opposed to the amendment now offered, and he was of the opinion that the section should remain unaltered. He should, therefore, oppose any amendment that might be offered to it. He preferred the present provisions of the section as reported, because they were plain and simple. He professed to know something of this question, for he had long been conversant with it as a member of the board of school commissioners in Philadelphia county. He would, therefore, proceed to state his views upon it. The words of the old constitution on this subject, are plain and easy to understand, and the provision would be a very wise and sufficient one, but for the unfortunate and invidious distinction it makes between the poor and the rich. That part was the only one which it was necessary to alter. Many gentlemen, here, adhered with great obstinacy to most of the provisions of the constitution of '90, and he would ask, why they were not equally disposed to adhere to this provision? It was the doctrine of many here, that no amendment should be adopted that was not clearly necessary, and surely there can be no necessity shown for any alteration such as had been proposed in regard to this part of the constitution. If his colleague's amendment, providing that the German language be taught in our common

schools, should be adopted, for the benefit of our German population, others might, with the same reason, require that the Scotch, the Irish, the Spanish and French tongues should also be taught in them, in order that all parts of our diversified population should learn to read and write their own vernacular.

If we proceeded in this way, the subject would soon be involved in great difficulty. When this part of the seventh article was before the committee on the subject, they were unanimous, to a man, in the opinion, that nothing was wanting to perfect the seventh article of the constitution of 1790, but the eradication of the word *poor* therefrom. Why did they believe so? Because they understood and had well examined the subject. That provision that "*the poor*" shall be taught *gratis*, hampered the legislature and obstructed the progress of school education. It made it necessary, that, in any law establishing a school system, it should be made the duty of the commissioners to require and ascertain, who is a pauper, within the constitution, and who is not; and unless the condition of poverty can be found, the applicant is not entitled to be taught gratis. It made it necessary to establish an invidious and marked distinction between the poor and those who were not poor, greatly to the mortification and disadvantage of the poorer. If the legislature had been left at liberty in the matter, they would have framed such a law; but they had no discretion; they were obliged to conform to the provision of the constitution, by which it was necessary to ascertain who were "the poor," before they could be "taught gratis." The school law of 1817 was enacted by the legislature with an eye to this constitutional provision. The system lingered along till 1835–'36, when the legislature struck out that part of the act which created a distinction. That legislature of 1835–'36, he would remark, by the way, did a great many queer things. Much was recorded against them, but it could not be denied that their course, in relation to this subject, was wise and patriotic and highly beneficial to the interests of the commonwealth. When that legislature struck out this odious distinction, education in the first district and elsewhere was established at the public expense. The system sprung up at once from its lethargy, and began to extend and flourish He wished this body could examine one of the schools established under the new system, in the city and county of Philadelphia. They would see, at once, if he was not correct in his view of this matter.

Yes, sir, said Mr. Martin, as soon as that legislature, by eradicating from the school law, this unfortunate and unwise provision, making a discrimination in favor of the poor, removed the great obstacle to the success of the free school system, the Philadelphia public schools became a model for any state or city to copy after. Those schools were now not at all behind those of any state in New England or of the state of New York. They have nine or ten spacious buildings, not inferior, in point of elegance, and convenience, to the hall wherein we are assembled, and the whole of which were built, and they are still supported at the public expense. When a gentleman goes there to show his friends the schools, he feels proud to be able to point to this and that child as his son or daughter. No parent feels any disgrace in sending his children to be educated at those free schools. The clause in the present constitution, rendering it imperative on the legislature to provide a common school system, to

frame it in such a manner that the poor should be taught gratis, only served to fetter and embarrass the article and defeat its object. No law framed according to that clause could ever be carried into practical and beneficial effect. Suppose we adopt this amendment of my colleague, (Mr. Ingersoll) of what benefit would it be to the school system? It would complicate the scheme, and bring us into difficulty and embarrassment. The opinion of Mr. Duponcean, that it would be well to encourage and preserve the German, might be perfectly correct, but our object was to take some effectual course to disembarrass the great subject of education from all its trammels. The amendment would lead us into we know not what difficulties, whereas, the report of the committee would answer every good and practical object which the friends of popular education had in view. He hoped that the committee would adhere to what had been found by experience to be the very system which we wanted. If every gentleman here should insist upon bringing forward and carrying out his visionary and impracticable theories, the result would be that we should remain in session as long as the Bristish parliament and not do any more, nor half as much. We had not come here to provide for the education of German, Dutch, Rhenish or French people, but to amend our constitution in those particulars wherein it is defective. It was not our business to legislate upon these matters. We only lay down a rule to govern the legislature. It is not our province to make any special provision in regard to the languages which shall be taught in our public schools. We should give up this hall to a body whose business it was to carry out all the details of the present constitution. No amendment, on this subject, would be framed by the committee, which the people of this commonwealth would adopt. The amendment now proposed would be unpopular, and it assumed a power for the Convention which it had no right to exercise. It would be better to agree to the constitution of 1790, with all its other imperfections on its head, than to adopt this clause with the word "*poor*" in it.

Some gentlemen, he was aware, maintained that the clause was right and proper, because it required us to put our hands into our pockets, for the education of the poor. But these gentlemen insisted that we had no right to tax the rich, except for the benefit of the poor;—that we had no right to educate any but the poor at the public expense. But why not? It is as necessary, under our system, and under any other system of government, that the rich should be educated, as that the poor should be. Without the benefit of the system of education at the public expense, the instruction of many children who have property, might be neglected. All ought to be educated, and on such terms that no one should feel disgraced by receiving his education. If the poor alone were educated at the public expense, the distinction would carry with it a feeling of degradation. Why should we send to a school the son of a mechanic, —a boy full of promise and talent,—as a beggar for education, with a mark of poverty set upon him, and creating in his bosom a feeling of mortification? When I made these remarks, said Mr. Martin, I made them, thinking that every gentleman here will concur with me in the facts which I have stated. The present constitution requires that the poor shall be educated *gratis:* and the proposed amendment says that all children shall be educated at the public expense. There was nothing

in the amendment to prevent the legislature from acting on the subject, whenever it might be required, and in such a way as to extend the school system, now in such successful operation in Philadelphia, into every part of the commonwealth. The schools which are in operation in Philadelphia, claim the attention of every one. It had been agreed there to extend the system so as to establish a high school. Then, all children, without distinction, could, if they pleased, be educated in the higher branches of English education, and in the learned languages if they pleased. The same system could, with the co-operation of the legislature, be carried into every part of the state. He was confident that those gentlemen who adhered to the old constitution in this respect, would abandon it, when they became convinced of its mischievous effects. If they wish to be convinced of the superiority of the system of educating all alike, and on equal terms, let them go with him through the schools in Philadelphia. They would see then how much could be done for the cause of education, when the distinction in respect to the "poor," was eradicated from the school system. For a great many years, under the present constitution, has our system been worse than almost any one in the Union. We dragged behind New England and New York for the space of half a century, wholly on account of this very clause in the constitution of 1790. Now, until we had settled this important point, he hoped we should not embarrass ourselves with any of these learned amendments, which would perplex and confuse. He wanted to have this important question settled before we went any farther; that is, whether the new constitution shall be rendered more favorable to the objects of education or not:—whether this odious clause making a distinction in regard to the poor, shall be eradicated or not. He hoped the amendment offered by his colleague, and every other amendment, would be promptly rejected. The proposition of the committee would give us all we asked,—education for all. All would be taught at the public expense; and the legislature might, at its discretion, carry out the system of education, in such manner as might be thought most proper. It could embrace in the system instruction in any languages or sciences that might be considered desirable. Suppose we were to engraft amendments in our constitution, similar to that now proposed by his colleague from the county; suppose we should go into detail, and settle the different branches of education that should be taught in our common schools,—would not the people say that it was very absurd? Would they not say that the ordinary legislative body, looking to all the local and other circumstances, could better regulate this matter than we could? The subject proposed for our consideration by the gentleman from the county of Philadelphia, would do very well to be submitted to a committee of the legislature; but to bring it before the Convention, and to make a provision in regard to it in the constitution, would be highly improper, and altogether unnecessary. The constitution was defective only in regard to one word on this subject; and that was the distinction in regard to the poor;—the provision introduced from good intentions, requiring the poor to be taught gratis. Had that unfortunate clause never existed, education, in Pennsylvania, would never have lingered and languished as it has done for the last half a century. Even now, as experience had proved, no other amend-

ment was wanted to the instrument, in this respect, but the abolition of this odious, and, in fact, anti-republican distinction.

He hoped those who were friendly to the cause of education, would unite with him in endeavoring to carry through the proposition of the committee. Let us test the question, and send it to the people; and it may be relied upon, that the proposition will be maintained through the state, by the almost unanimous voice of the people.

Mr. READ said he had but two objections to the proposition of the gentleman from the county, (Mr. Ingersoll) and these he would state to the committee. They were, in his opinion, very serious objections, and worthy of an attentive consideration. The amendment seemed to countenance the idea that there was a necessity that three months should be the term. He did not wish to see any excuse afforded for the neglect of the important subject of education. It might be construed into a restriction upon the power of the legislature in framing a proper school system.

His second objection was, that the amendment required the instruction given at these schools, should be in the English and German languages. This restriction seemed, by implication, to prevent the legislature from directing that any thing else but these two languages shall be taught in these schools. It appeared to require, indeed, that these languages shall be taught, and that all other languages and sciences shall be excluded.

He was in favor of the establishment of schools for teaching the German language, and he saw no reason why, under the present school law, education should not be extended in the German language to every part of the state. There was no reason why that language should be excluded, if the people of the school district, or the school commissioners, wished to have it taught. So in any district where a majority should be in favor of having the French or Spanish languages taught in the public schools, there could be no objection to it. Why ought we not to leave it to a majority of the people of each school district to determine what branches of education shall be taught in their schools? It appeared to him that the adoption of this clause would prevent the people from exercising the right of having other languages taught in their public schools. Those who are taxed for the maintenance of the system, and who avail themselves of it for the education of their children, are entitled to the privilege of saying what languages and sciences they shall learn; and it would be very unjust and impolitic for us to restrict them in the choice of the different branches of instruction.

The school fund might lie idle in some counties, if education was thus to be restricted. So far from restricting instruction to particular languages, we should leave it to the option of the people, to have other languages, and any they please. It might, in the course of time, become, in some districts, very proper and desirable to have the French, or Spanish, or learned languages taught.

He thought it improper, also, to leave it to the discretion of the legislature to say when the system proposed should be established. He had prepared an amendment, therefore, which would remove the discretion as to the time when the duty imposed on the legislature should be discharged.

He would also leave it to the school directors in each district to determine what should be taught in each school, without restricting them as to one or two languages. These directors should be elected annually by the people of each district, and should regulate the schools as they saw fit. That is:—after the legislature have provided a school system, and the manner in which it should be maintained, they should leave it to the people to fix the mode in which it should be conducted. Suppose a district to be settled by French people, they are desirous of preserving and cultivating their own language; why should their language be excluded from the schools any more than the German or English?

He moved, as a substitute for the amendment of the gentleman from the county, (Mr. Ingersoll) the following, to come in after the words section first, viz:

"The legislature shall provide by law for the education of all the children and youth of this commonwealth."

Mr. MANN asked for the yeas and nays on the motion, and they were ordered.

Mr. CHANDLER, of the city of Philadelphia, said he objected to the amendment, because there was not enough of it, and to the amendment of the gentleman from the county of Philadelphia, because it attempted too much. He did not agree with his zealous friend from the county, (Mr. Martin) in his objection to every provision which might be offered, simply because it went into detail. He (Mr. C.) at least ought not to make such an objection, as he himself intended to offer an amendment having in view some details. He did not intend, on this occasion, as the gentleman said he did, to make a speech; but to object to the amendment, and to the amendment offered to it, on several grounds, which, in his opinion, were entirely sufficient.

He objected to the provision, on the ground that it contained the word German, and he would oppose the introduction of any other specified language. He certainly did believe, however, that it was competent for the people of the district to establish any sort of a school they pleased, and to prescribe what should be taught in it. In Berks county, for instance, where the language is German, and where the people read their political scripture in that language, they might wish that language to be taught in their schools. To support an English school there, the people would look upon as a burden as great as the Irish Catholics regarded the tax for the support of the Protestant religion.

If German means any thing, it means to be coercive, and that he believed to be entirely unnecessary. He would leave this matter to be regulated as it was now regulated, and not make it coercive upon the school directors to establish German schools. He had not a very extensive knowledge on this subject, in any other part of the state than in that in which he resided, but he believed the cause of education had been very much retarded, and its progress checked, by an impression among the citizens of some districts of the state, that they could obtain teachers who were competent to teach both these languages, and that they ought both to be taught in one school. Now, such teachers are seldom to be found, and when they are found, they seldom either teach the German or the English in such manner as any person would desire to have their

children taught. It was a great error to think of introducing this kind of mongrel education any where; and he feared the amendment of the gentleman from the county of Philadelphia, would tend to encourage this erroneous practice, and to perpetuate it. He had no objection to having all the children in Berks county, or any other county, where the German language was the prevailing language, taught in that language; but do not let us fix upon any portion of the commonwealth, the evil of living within a language.

He would have the rich and the poor, the learned and the unlearned, taught in our language. The Saxon, the Russian, the French and the Irish, when they come among us, should come into our language, as well as into our country. It was their duty to themselves and to the state, that they should make themselves acquainted with that language. He was opposed to the insertion of the word German there, because of its making it coercive, and the objects, no doubt, intended to be attained by it, were now attained, under the present constitution. He agreed perfectly with the other gentleman from the county of Philadelphia, (Mr. Martin) that this word "poor," which has been a blot in our constitution, should be struck out. Sir, there are no such persons in Pennsylvania. They are not to be seen any where, unless you hunt them up at your alms houses, and drive them out to public gaze. We have nothing to do with any such people. We have no right to legislate for "poor people." A man who has around him a family of children, a kind and smiling wife, and has the free exercise of his hands and his arms, although he may not be blessed with many of the luxuries, which fall to the lot of many, yet he is not poor. No man is poor in this country, who is able to work, as there is work for all; and this work is a capital which all have, who have health and strength. But there were some persons, he must say, who were poor in spirit; some persons of contemptibly debased minds, who, though they may be possessed of wealth, shove their children into any corner, to get rid of the expense of their education. As much as twenty-two years ago, we had this system brought to our notice, and from it we can read a lesson, to beware of poor school systems. The legislature provided for the education of the children of the poor, and how did it operate in Philadelphia? Why, the children of the poor were bundled up in some little school-house, in a dirty alley, at the commencement of a quarter, and all their names taken down on the school roll, after which they were sent out to run the streets for the succeeding two months, and participate in all the vices which come in their way. Near the close of the school quarter, it was necessary that all those children should appear in school again; and they were again brought up with washed faces, into the little school houses, in the dirty alleys, so that the teachers might obtain their pay of the commonwealth, for educating these poor children. The next quarter went off in the same way. This is the way in which the poor were taught, and this is the way in which our young republicans were brought forward to fill high places in the government, and to instruct those who do fill high places. We have, to be sure, made great improvements, and great improvements in education, in Pennsylvania, but we have done it in spite of your laws, and in spite of your constitution. Our systems of education have not been handed down by your government and your lawgivers, but have

sprung up from among your people, your poor people, if you please to call them. Your poor school system drew distinctions in society—drove many of your citizens in corners where they became the very offscourings of the earth, and many of them are now inhabiting places which shall here be nameless. He appealed to gentlemen who were acquainted with the matter, whether he had not drawn a correct picture of the evils which existed under that system. He had lived long enough to have seen the system of education in its lowest stages in the city of Philadelphia, and to have seen its rise and progress there. He had seen the improvements which have been made in it, and with the gentleman of the county of Philadelphia, (Mr. Martin) he would only invite gentlemen to examine the present school system there, to be satisfied of the perfection to which it had been brought. Before he sat down, he wished to notice another matter, to show the odious distinctions which the poor school system had engendered.

A few years ago, some six or seven years, perhaps, there was a teacher in the city of Philadelphia, who introduced into his school a young lady, the daughter of a person in the neighborhood, who had been depressed in the world, and who had been compelled to send his child to one of these poor schools; but although she had been compelled to attend poor schools, her mind was by no means poverty stricken. It was not long, however, before the teacher found that there was a frown and a scowl upon the brows of almost the whole school. An inquiry was instituted in relation to it, and it was at once explained, that it was because he had introduced into the school, a child from one of the poor schools. This was a fine beginning for young republicans: But this was the truth, and it was also true that these children, taught in this way, would be looked upon as paupers, put them where you will, and treat them as you will. And it was never, till the school directors of Philadelphia violated the constitution, and disregarded your laws, that this feeling was eradicated, and what was once called poor schools are now called high schools, and what once only turned out vagabonds and vagrants, now turned out men and women who make good members of society, aye, and men capable of filling high places in your government, and men capable of standing on this floor to dictate laws to their fellow citizens. This then, was the beginning of that system, which members of the committee on the seventh article, desired anxiously to see carried through to the greatest perfection. He also asked to have struck from the constitution this word poor, because he desired to see no poor schools, in the sense in which they once had been looked upon in Philadelphia. We have none such now, and he desired to see none such. The only poor school which they had in this county, (Dauphin) stood beyond the borough, and he believed it was called a poor house; and the only poor schools which they had in Philadelphia, stood beyond the Schuylkill, and were called alms houses and bettering houses. He was not prepared to enter fully into this subject now, nor did he intend to do so at present,—and his object in rising was to state some facts, and to point out the danger to be apprehended from the introduction of this word German; because it was now competent for every board of commissioners in the state of Pennsylvania to establish schools, as he understood it, in the vernacular language of the country. If this is the case, let it be so; but do not

insert any thing in the constitution which will make it imperative upon them to establish German schools, where there may be no necessity for it.

Again, he did not desire to see the provision in relation to the existence of schools for three months, contained in the amendment of the gentleman from Susquehanna, because the great difficulty in relation to education was, that those who had the direction of it, always went for the shortest time, and the easiest manner of disposing of it. He would prefer saying that the schools should be kept open for nine months in the year.

Mr. READ said, that his amendment did not say a word about three months.

Mr. CHANDLER resumed: He was glad to find the gentleman from Susquehanna, the friend of the most liberal system of education. He wished to see the system carried out on the most liberal scale. He wished no such word, as the word month, in this section of the constitution,—and he would rather, if the quarters of the year could be stretched into five, provide that the schools should be kept open five quarters in the year, than one quarter. He wished to have all limit, as to the time which the schools should be kept open, struck out. He did not care if you impose on the legislature the necessity of establishing the schools within three months after its adoption, and he would almost be willing to make it obligatory on parents to send their children to school. He had now occupied the time of the committee longer than he had intended, as it was his desire to make some remarks on this subject, hereafter. He hoped this word German would not be retained, unless it should be found necessary to conciliate the feelings of that highly respectable and useful class of our citizens. He most sincerely hoped that the words "three months" might be struck out, because he had no idea of American citizens being properly educated, by only receiving three months instruction in the year. The doctrine of instruction has become a popular doctrine in these days; we have heard it contended for on this floor, and if it is to be the prevailing doctrine, let us have the instructors well instructed. Why, sir, who would think of receiving instructions from persons who had only received three months education in the year. Then let all the children in the commonwealth, receive a proper education, so that all may be competent to participate in our republican government. If we look back at the message of a late governor of Pennsylvania, and see the startling fact set forth there, that there were then three hundred and fifty thousand children in this commonwealth, unable to read or write the language which they spoke, it would urge us on in providing a proper mode of instruction, for the children of our commonwealth. As to this word "common," he objected to it. He wished to have proper schools, but not common ones. He should not longer trouble the committee at present, but would take occasion to give his views more at large hereafter.

Mr. READ then modified his amendment, by substituting the word "commonwealth," for the word "state."

Mr. MERRILL said, it seemed to be admitted on all hands, that the present constitution should be altered in respect to the matter of education, and especially so altered, as to do away with all distinction between poor and rich. There appeared to be a good spirit prevailing

in relation to this subject, and he held that no republican constitution should go forth, entirely disregarding the subject of education. Then, if the present constitution was to be altered, and any thing was to be said in it in relation to the subject of education, could any thing less be said, with propriety, than what was said in the amendment of the gentleman from the county of Philadelphia. The first objection that was raised against that amendment, was, that there ought to be nothing in it about the schools being kept open at least three months. It might be thought by the gentleman from Susquehanna, and the gentleman from the city of Philadelphia, that three months is a very short time to keep open schools; but he could tell those gentlemen that it would be a great gain in many counties, to get the schools kept open for that length of time. He could assure those gentlemen that they might go into many counties, where they did not even have schools kept open one month in the year, for the admission of the children of our citizens. Then, if there was a clause inserted in the constitution, making it imperative that schools should be kept open for three months in the year, it would certainly be a very great gain.

Again—it was proposed to strike out from the amendment, the word German. Why, do gentlemen consider that about one-third of our citizens are Germans, and speak that language? A large portion of them, to be sure, speak the English language; but another large portion of them speak their vernacular tongue. Are we, then, to throw aside and disregard, the interests of this large class of citizens, so far as the education of their children is concerned, and to cease to encourage the cultivation of so fine a language as that of the German? Sir, the German language is one of the most copious and elegant of languages, and is, without exception, one of the most scientific languages of the present day.

So copious is it, that you can convey any idea with it, and draw the nicest distinctions,—aye, even the distinction which we have so frequently heard of, between the north and north-west side of a hair. You can draw all those nice distinctions in expression in that language, which it is impossible to draw in any other language,—and it is capable of being used in the most happy and elegant manner. It is a language which has expressed in it more of science than any other language, and is beginning now to be understood in all parts of the world. Then, is such a language as this to be entirely disregarded in Pennsylvania? Sir, our German citizens are a most respectable and industrious class of people; and the German mind is equal to the mind of any other persons. He spoke not now of the German mind as it existed in Germany, but as it existed in the commonwealth of Pennsylvania. The youth of this state, of German origin, have as much natural talents as the children of any other class of citizens whatever; and the Germans were as industrious, active and enterprizing as any other persons, and, as citizens of the state, they were highly estimable.

Now, those people. besides their natural partiality for their own language, are frequently discouraged from the learning of the English language, because of their natural expression, and the difficulty which they find in the pronunciation of the English. This discourages them from becoming English scholars. Then, if we discournge the German

education, we discourage all other education; because, if the children of such as he had alluded to, were not taught in the German, they would not be in the English, because of their being unable to make progress in it. But it is said there ought not to be two prevailing languages in one state. He did not know how it was to be proved that this ought not to be so. Well, then, if it is our object to make our people become homogenous, will you do it by coercing this class of our citizens to come into this system of English education at the outstart, or will you give their minds a start in their own language? Give them a chance to obtain some intelligence in their own language, and then they will be more able to see the necessity of coming into the language of the state. Nobody can suppose that the German can ever supersede the English in this state, or in this country, because all our public business is done in English. All our legislation is conducted in English, and all business in our courts is conducted in English, so that the English must continue to be the prevailing language. But you must give them some start—you must teach them to think, or it is impossible ever to introduce any education among them; and this, in his opinion, would be the proper way to bring them into our language. He contended, that if German education was recognised by your laws, and adopted as a part of your constitution, it would have more effect in producing that homogenous character in your citizens, than any thing else they could do. Sir, the German language, is a language which, when it goes down, and ceases to be spoken, generally, in this country, will become, and deserves to become, a learned language. It will be a language which every man will look to for those stores of knowledge which are to be found no where else. He thought, then, it would not be good policy to strike out this word. As to the objection that it went too much into detail, he thought there was nothing in it.

He was opposed to going into detail in many matters in the constitution, but merely to say that the German language should be recognised in the constitution, was not saying more, in his opinion, than we ought to say, if we have proper respect for our German fellow citizens. In relation to the objection to the words that the schools shall be kept open three months in the year, gentlemen have spoken of it as if that was to be the limitation of the instruction in each year. Now this was not the case.

The amendment provided that it must be to that extent, but it may be as much beyond that time as the legislature and the people may agree upon.

Under the present act of assembly there is no limitation—no time specified for the schools to be kept open, and consequently, we are frequently without schools, in some of the districts, the whole year. But if you insert a clause in the constitution, that the shortest time for the schools to be kept open shall be three months, then you will be certain of their being kept open for that space of time, throughout the whole state.

The legislature would, of necessity, make this provision, and then it is not to be supposed, when the people got their schools opened up in this way, but that they would require them to be kept open longer. Leave it with the people and the legislature, to provide as they may

think proper, as to the length of time they will keep their schools open after that time, but make it imperative upon them that they shall not keep them open less than that time. There is a great deal of local influence brought to bear on the legislature, which frequently prevents them from carrying out this system; but when they have a constitutional provision, requiring of them to carry it out to this extent, they will do it, and the people will be benefitted by it. He thought there was a very great necessity for making it imperative with the legislature to carry out this system to this extent,—beceause, if it is left entirely to their discretion, it may be passed over, as heretofore, as a matter of no very great account.

We all know that this subject of education, has been the burden of every governor's message, for the last thirty years, and the legislature, until within the last few years, paid no more attention to it, than if it had been a bird singing to them. He, therefore, preferred the amendment of the gentleman from Philadelphia county. It does, to be sure, go somewhat into detail, but in this case he thought some detail was necessary. He hoped this amendment might prevail, or, at least, that the German language would not be struck out, as he considered the encouragement of the German education as the stepping stone to universal education in Pennsylvania.

He had no particular objection to the amendment of the gentleman from Susquehanna. It was all very well, so far as it went, but it does not go far enough. It makes a mere general provision, and leaves the execution of it, the carrying out of the system, to the discretion of another body, which is frequently influenced in a manner as to make it almost impossible to carry it out properly. Then, if gentlemen desired to see education take a fresh start in Pennsylvania, and become universal, he hoped they would retain this clause in relation to the German language.

There is great genius among the youths of your German population, if you will but give them a start. Give the mind a start, and it will go on in pursuit of knowledge; but if you prevent the mind from getting that start, you bind it down in the fetters of ignorance, and stifle the genius of many of your young men. He sincerely trusted that such proposition might be adopted, as would tend to enlighten the whole of the youths of our commonwealth, and prepare them for the performance of the duties of good citizens,—for a people, to be capable of self-government, should be sufficiently informed to understand the effects of the powers executed by their agents, and to judge with propriety of all their acts.

Mr. SILL, desired to make a few remarks on the amendments now before the committee; and he would first notice the amendment of the gentleman from Philadelphia county. He would premise that the remarks he should make on this subject, he submitted with great deference, because he had not a particular knowledge of the effect which the common use of the two languages produced, never having resided in a portion of the state where the German language was spoken to any extent; but it seemed to him that the question now before the committee, was viewed in an erroneous light. It seemed to be considered by the gentleman from Union, (Mr. Merrill) that if we were to strike out from the amendment the word German, it would rather disparage the use of the German

language. He did not view it in that light, and did not believe it was to have that effect.

With regard to the letter read by the gentleman from the county of Philadelphia, (Mr. Ingersoll) it seemed to convey the idea, which, no oubt, was admitted to be correct on all hands, that the German language was a language of great beauty, great force and great copiousness, and that it consequently ought to be kept up in Pennsylvania. That it is a language in which many discoveries in the arts and sciences have been promulgated to the world—that it is in the learned world quite a universal language, and perhaps more so lately than in former times. Now, to all this, he agreed most readily. He agreed that it was a language among the learned, which had, and would receive, all that attention that it deserves; and far be it from him to utter a single sentiment in dereliction of that language, or of that portion of our community by whom it is spoken. But he apprehended that the question before the committee was not in relation to this matter. From whence, then, does it arise? It arises from the necessity for the organization of common schools.

Now, sir, what are the objects, and what are the purposes, for which common schools are instituted, and for what class of the community are they instituted? Now he contended that they were instituted, and the amendment in the report of the committee proved it, not for any particular class of the community, but for all classes. But were common schools intended as seminaries for learning the higher branches of education? He hoped the time would arrive in this commonwealth, when they would come to that degree of perfection; but what is now their situation, and what are the benefits to be derived from common schools? Why, sir, they are seminaries where, as he apprehended, the great body of the community, the children of the whole commonwealth, are to be taught: And he apprehended that it was in common schools, and in them alone, that the great body of the community was to receive all the education which they would probably ever receive. The question then arises, ought not the course of instruction in them, to be such as would be most useful to those who attended upon them? Was it not proper that they should be so organized that the course of instruction in them would be such, that when the child left them, he would be the best fitted, that the opportunity would admit of, for entering upon the duties of life, profitably to himself and to society. We must consider, then, which language would be most useful, not only to those children which are of English extraction, but to those, also, of German parents. Suppose a child is to receive no other education than what he receives in common schools, and he doubted not but what children could obtain an education at these schools, to fit them for all the duties of life. But supposing that he receives no other education than this, which language would be of most use to him, the German, or the English? Why, unquestionably the English language would be of the most use. No one could doubt this. Then let him learn what he does learn, in English. That does not prevent him from afterwards learning the German language, if he has the time and opportunity. Suppose the child is to learn but one language, which language would be of the most use to him? Why, unquestionably the English language would be, because it is the prevailing language of the country, and all business, both of the general government and of

this state, is conducted in that language, as well as the business of the the courts of justice. The gentleman from Union has said, that the German people are equal in capacity to any other portion of our community, and ought to be so educated as to fit them for every situation in society. Now, he never doubted this, nor did any member of the committee doubt it. But which of these languages, the German or the English, were best calculated to produce that effect? Suppose a youth is confined to the German language; suppose that is the only language he is taught; suppose every branch of education he receives is in the German language? Why, while he remains where he was born, where nothing else than the German language is spoken, it may be very useful to him, and as useful to him as an English education would be to a youth in an English neighborhood. But when he comes to go abroad in society, and to reside in other parts of the commonwealth, or in other states of this Union, would not an English education be of more use to him than a German education? Why, certainly it would. Again, suppose his fellow citizens should desire him to fill some high office, as their representative,—would not a knowledge of the English language be of more use to him than the German? Why, no one can doubt it.

I can have no doubt in the matter, and this is the point on which I place my reliance. I do not consider this vote very important in reference to the subject; but it is mainly important as being the expression of the opinion of this convention. As the matter now stands, there is no prohibition against teaching the children in the German language. That language is taught at the present time where ever the directors of the school wish it. It does not amount to a suppression of the German language to refuse to pass this amendment; it is only leaving the matter precisely where it was. But, suppose we should pass the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) is it not rather an indication of the opinion of this convention, that there are, and ought to be two languages and, in some degree, two communities of people kept up for all time to come, in the commonwealth of Pennsylvania? And is such a state of things desirable? Is it not, on the contrary, obviously opposed to the best interests of the commonwealth? This gives rise to other considerations. For my own part, I do not view the matter in this light—and I can not concur with the gentleman from the county of Susquehanna, (Mr. Read) who has expressed his views on this subject. He is of opinion that if there were portions of the commonwealth where the French or Spanish languages predominate, those languages should be kept up in the parts where they prevail by common consent. I can not concur in his views. I think that the whole people of the state should be amalgamated as soon as that end can possibly be accomplished; and that they should be made one people in sentiment—in principle—in language, and in every thing that can have a tendency to bind them in close bonds of union together. I do not mean, by these objections, to say that I would vote for the suppression of the German language. Not at all. I allude merely to the opinion which may go forth to our people as the opinion of this convention. I consider it would not be such an expression as ought to be favored.

I will ask the attention of the committee to one or two objections in a publication, upon which I have just laid my hand, and which, I think,

are well worthy of consideration. They are from the pen of a very eminent gentleman in the state of Ohio, who has himself paid great attention to the subject of education, and who was himself a professor in a very respectable institution. Speaking of the Prussian system of education, he makes the following remarks:

"Another principle of the Prussian school system, which ought to be "adopted by us, is the uniformity of language required in all the schools. "Whatever may be the popular dialect of the district, the language "of the nation and the government must be taught in the schools, not "indeed to the exclusion of the vulgar tongue, but in connexion with it. "This uniformity of language is of great importance to a nation's pros- "perity and safety; it is necessary, as a common bond of union and "sympathy, between the different parts of the state; and without it, a "nation is a bundle of clans, rather than a united and living body. The "facility of business and the progress of intelligence require uniformity "of language, and parents have no right to deprive their children of the "advantages, which a knowledge of the prevailing speech of the country "affords, nor to deprive them of the power of doing all the service to "the state which they are capable of rendering. If the foreign emigrants "who are among us, choose to retain their native language among them- "selves, it is well for them to do so; but let them not prevent their "children learning English, and becoming qualified for all the duties of "American citizens."—[See Prussian system of public education, and its applicability to the United States; a discourse delivered before the convention of teachers, at Columbus, Ohio, in January, 1836, during the session of the legislature, by C. E. Stowe, professor of biblical literature, Lane seminary, Cincinnati.]

I submit to this convention (resumed Mr. S.) whether it is not necessary that a child, in order that he may, in after life, discharge the duty of an American citizen, as well as those higher duties which appertain to his condition, should have a knowledge of the English language. I think it is necessary; and, if it be so, would it not be unwise, by a vote of this convention, to spread abroad the idea that, in all time to come, the two languages—the German and the English—are to be equally encouraged and promoted throughout this state. I consider this to be unnecssary. And why so? Because if any portion of the state now desire to have the German language taught, it is fully in their power to do so.

I am also opposed, Mr. Chairman, to the amendment of the gentleman from the county of Philadelphia, on account of the period of three months as mentioned in his resolution. I hope before many more years have passed over my head, to see the time when a much larger period than three months in every year will be allotted to persons, to receive instruction at the public expense. I have sanguine hopes that that period is not very far distant. I think it would be unwise, in framing a constitutional provision which might last for half a century to come, or even for a century, to indicate a limited period of time which must be satisfactory to the people—and which, although it might be considered sufficient for all necessary purposes at the present day might, in ten, twenty, or thirty years from this time, be evidenced as insufficient and which, at that future day, might be altogether disproportioned to the increased

resources of the commonwealth. I think this limitation is opposed to sound policy. The time may come, and it may not be very far distant when, by reason of the increased resources of the commonwealth, it may be perfectly practicable and competent to provide for the education of children during as great a length of time, as it may be convenient to them to attend. It is probable, for aught we can tell at this moment, that the time allotted may be increased to nine months.

I am aware that the amendment of the gentleman from the county of Philadelphia, does not actually limit the time to three months; but I am also aware that so soon as the education of the children has been attended to during that period, it might possibly be said that every duty imposed by the constitutional provision has been attended to, and that, therefore, no farther care need be taken. And it is for this reason, that I think the limitation, though not of an absolute character, will have in injurious effect on the cause of education, and that it should have a place in our fundamental law. Judging from the support which is now given to the cause by the commonwealth, I have no doubt that the resources of the state will be judiciously applied to this most interesting object, and that the schools will continue open so long as the appropriations will admit of their being so. But I think it is entirely unnecessary to designate the period of three months as being the time which would satisfy the constitutional provision. For these reasons I can not vote in favor of the amendment of the gentleman from the county of Philadelphia.

And there is one respect in which I consider the amendment to the amendment, as proposed by the gentleman from the county of Susquehanna, (Mr. Read) as objectionable. That gentleman proposes "that the legislature shall provide by law for the education of all the children and youth of this commonwealth." In my estimation this does not go far enough. It may embrace the true principle, but it does not go so far in expression as, to my mind, would be desirable.

Neither can I support the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll.) The words of that amendment are, "the legislature shall provide by law for the immediate establishment of common schools, in school districts, of every county of the state, wherein all persons may receive instruction at the public expense, at least three months in every year, in the English or German language, as may be by law directed." I desire to go to the full extent of public education without limitation as to time, and without designating, by constitutional provision, the particular language in which the children shall be taught. I am for saying, in the fundamental law of the land, not only that common schools shall be established—but that all children in the commonwealth shall be taught in those schools. I wish to send abroad an expression of opinion on the part of this convention, not only that these schools shall be established, but that they shall be places of education, where all the children of the commonwealth shall be taught. I consider this to be an imperative duty.

I shall not say more on this point at the present time, because it is not altogether appropriate to the immediate question before the chair. But I think there is great propriety in the expression by this convention of the opinion I have stated, because, to say so, indicates at once that there is a place provided by the constitution where all the children of the

state may receive the benefits and the blessings of education. For my own part, I do not see any thing either in the amendment of the gentleman from the county of Philadelphia, or the amendment to the amendment, as proposed by the gentleman from the county of Susquehanna, which is in any respect preferable to the report of the committee. I cannot, therefore, vote in favor of them.

Mr. PORTER, of Northampton county, rose and said that the gentleman from the county of Erie, (Mr. Sill) had so well expressed his (Mr. P's.) sentiments, on the subject of education generally, that it was almost unnecessary for him to add any thing to what had already been said. But, said Mr. P., I can not exactly concur with that gentleman in the views he has expressed in relation to the German language. I believe that there is not a doubt on the minds of scientific gentlemen, that the German language does open to the human mind the doors of a greater storehouse of knowledge than the whole world beside can afford. The works on the various branches of science and education in Germany, are fully equal in number and merit to those which have been written in any other language on earth; and it would be desirable, as a means of availing ourselves of all this knowledge, that the acquisition of the language should be placed within the reach of all who desire to learn it. It is a fact, and one which reflects very high credit on the German character, that many of the most important discoveries in science, which have been made in modern years have been among that people, and probably there never was a better satire, accompanied by instruction, given to any set of men, disposed to depreciate the German character, than is conveyed in the anecdote of the German nobleman at Venice.

He was received with great attention, and entertained with private theatricals by his acquaintance, and every one of these entertainments was wound up with some slur on German boorishness, in order to produce a laugh. At length, on the evening before he was going away, the German nobleman gave an entertainment of a theatrical character, and, in the course of the performance, introduced the genius of Cicero. Going along the streets of Venice, he encounters a man attacked by a robber. The person attacked drew a pistol and shot the assailant dead. The genius of Cicero, alarmed at the report, and astonished at the result of the shot, asked what this meant. The power and the effect of gunpowder were explained to him. What people, said Cicero, claims the honor of this grand discovery in the art of war? Barthold Schwartz, of Germany, claims this honor, was the response. Can it be possible that this people, so rude and uncultivated in my day, should have thus advanced? exclaimed the shade of the Roman.

The person who had thus been assailed, presently, desirous of knowing the time of night, drew forth his watch, a repeater, and touching the spring, it struck the hour. What handsome toy is that, quoth the shade of the orator. It is a watch—a chronometer, as it would have been called in your day, was the reply. A minute examination of its wondrously regular mechanism but confounded the scientific shade. And may I ask, said he, who invented this also. Peter Hele, was the response. And what countryman was he? A German, said the informant.

The man here reposed himself by a column near a light, and drew a

volume from his pocket and began to read. May I ask, says Cicero, upon what you are looking so intently, as though you would read? He replied, I am reading the works of Marcus Tullius Cicero, the most eloquent of the Romans, and handed him the book. How beautifully and regularly it is written, said the shade, with evident exultation, to find his own productions thus cherished. It is not written said the man, it is printed. Printed, says he, what means that? A due explanation was then given of the mode of printing, with the ease of multiplying copies thereby. And pray, said the Roman shade, who has brought about this amazing discovery, so calculated for the diffusion of knowledge and science. Faust, a German, was the reply. If, said Cicero, those barbarians, beyond the Rhine, who knew nothing of letters or of the arts of civilized life in my day, have thus advanced, what a wonderful work of improvement has been going on in the world. To what an exalted state of refinement and improvement must my countrymen have attained. Let me learn something of their pursuits at this time. A noise was heard at the end of the street, and presently up came a ragged troop of sallow Italians, some with hurdy gurdies, some with dancing bears, monkeys and the like, making discord horrible. These, oh Roman, are your countryman. The entertainment was broken up, and the German nobleman, too wise to risk the Italian steel, was out of the Venetian territory before the morrow's dawn.

This anecdote is strongly illustrative of that great progress which the German people have made in the useful arts and sciences; and it is a singular fact, that while Germany has taken the lead of all the world in the cause of general education, yet, at the same time, in the commonwealth of Pennsylvania, that cause has found less favor among the descendants of the Germans than of any others. This is to be attributed to the fact, that in Pennsylvania, with the exception of the Moravian settlements, the Germans are in a state of transition from one living language to another, a state always unfavorable to the cause of education. From their intermixture with the English, they have lost the purity of their own language, without acquiring a sufficient knowledge or taste for the other, to make them fond of it. And it would be desirable to do any thing to preserve their language in its purity and beauty, if thereby the cause of education is promoted. I myself have only an imperfect knowledge of it, but in my neighborhood it is spoken with as much purity as in any part of Germany. I speak now of the Moravian society, immediately in my vicinity, and no man who hears it spoken there, can fail to be delighted with its euphony and beauty. Now, if you can encourage in this German population, a desire for education by means of their own language, you will have done much, to overcome the prejudices which are now too common among them, against the cause of education, generally; and I care not whether you accomplish this end, by teaching the German population to become fond of their own language or of the English language. I am inclined to the belief, however, that the most advisable plan would be that they should be taught in their own language, because you may thus accomplish two most desirable ends. In the first place, you would overcome the prejudices which have subsisted among the German people, against the system of common school education, and in the next place, you would revive the slumbering love of their own tongue, and throw open

to them these great sources of knowledge, which are contained in it. By these means, a great deal might be accomplished. Without coming in conflict with prejudices, you may adopt a system which will inform them, and I care not what the language is. I, however, entertain no fears on the subject of keeping up the German language in the state of Pennsylvania. No injury can result from so doing. The gentleman from the county of Philadelphia, (Mr. Ingersoll) has well said, that in almost every nation there are two languages spoken. Besides this, the dialects of the same language are various in the same country. In various parts of Germany they are so different, that the people of one district can scarcely understand the people of another; and such is the fact in England. A man in one county, will hardly be able to understand his neighbor in another. You must keep up the language of the country. This is done in the commonwealth of Pennsylvania, by keeping up the English language; but it is not to be kept up to the exclusion of all other languages. I do not know what the practice has been in other parts of the state; but if it is the same as that of the county in which I reside, it is probable there will be no occasion to introduce a provision into the constitution; because the directors of the schools in the part of the state where I live, take care that instructions shall be given in both the English and German language. I am told, that in other parts of the state, they are under the impression that they have not the right to do so; and this impression has prevented the establishment of German schools in those districts.

But, Mr. Chairman, I have another reason why I am anxious that this matter of instruction in the language which they most prefer, should be carried out. In the German counties of this state, great pains are taken to prejudice the people against the common school system of education; in many counties they have refused to accept the law; and it is a fact known to me, that foreigners from Germany, and some of them in the guise of ministers of the gospel too, have been instrumental in increasing this prejudice, by representing to the German people, that, if the school law went into operation, the German language would go down. There is nothing so well calculated to keep alive in the minds of our German population, their strong prejudices against a system of education, as representations of this kind. It is my wish to satisfy these people that such is not the fact; to impress upon their minds the conviction that the acceptance of the school system will increase their opportunities of learning either the English or the German language, as their choice may be. If you can succeed in producing this impression, my word for it, the happiest results will follow. Get your men educated in any way you can. The world of science offers large inducements to its votaries; no man will ever have to sit down, like Alexander, and weep that he has no other world to conquer. If you will give a boy the rudiments of an education in English, French, German, or any other language; if you only inspire him with proper notions, he will go on improving; and you may finally lead him on to great ends. He may be looked upon as the diamond in the rough, which may, when properly polished, at some future day, become a bright and shining ornament and develope its inherent lustre.

Sir, the importance of education to all our people cannot be calculated, so vast, so immeasurable it is. The educated man—and by this term I

do not mean the mere book-worm—but I speak of a man who is educated in the broad acceptation of the term—who studies men as well as things, and things as well as books—an educated man in this sense, is a man not likely to suffer the liberties of the country to be in danger. It is the ignorant, the illiterate and the uninformed of your land, from whom danger is to be apprehended—it is such men whom your political demagogues can mould to their own particular ends, by instilling prejudices, misrepresentations and falsehood into their minds—by making them dissatisfied with their condition, and by teaching them that something better is to be obtained if they will put themselves under their control and guidance. When the minds of men are intelligent, when general information is spread abroad over the land, when your entire community shall know and understand their rights—and shall appreciate because they know and understand them—they are not likely to be deceived. They will read, and think, and act for themselves; and the greater the extent of the education which you can give, the better will it be for the liberties of the country, and the more sure will be the prospect that those dear and sacred liberties will be transmitted unimpaired to our children.

When the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) was first read, I was struck with an idea similar to that which fell from the delegate from the county of Erie, (Mr. Sill) in reference to the term of three months, as the space of time which that amendment prescribes, during which the duty of imparting education is imperative. I was, in the first instance, disposed to have gone against it; but, on farther reflection, I do not know that any improper inference could be drawn from it, or that any improper practices could result. It merely provides absolutely, that education shall be imparted for a period not less than three months in the year; but it does not say that the period shall not be extended beyond that time; and although three months may not be sufficiently long, yet it may be well to have a *minimum* assigned to every part of the state, while, at the same time, liberty is given to extend the *maximum* to any extent they please.

In my section of country, the system of common school education has worked well, and although opposition was made to it—although it was made a machine, by means of which, certain would-be politicians, who opposed it, hoped to bring themselves into popular favor and into power, still, the system has received public favor. I have no doubt in my own mind, that our section of the commonwealth has received essential benefit from it. There has been a decided improvement in the character of the men who are employed as teachers. I have known the time when any man, no matter what his moral character might be, was employed as a teacher. This, I rejoice to say, is no longer the case. The moral character of the man is looked to; his qualifications are looked to; and we have now a different race of men from that which we formerly knew, to improve the minds and the morals of the rising generation. Some part of this improvement, it is true, may be attributable to other causes, which may be noticed hereafter; but that great good has resulted, there cannot be a doubt in the mind of any man who has been at the pains to make himself acquainted with the subject.

In concluding these remarks, Mr. Chairman, I will express the hope, that, whatever may be the provision which we shall finally determine to

place in our fundametal law, in reference to this most important matter, may be absolute, and not optional, in its character; that it will be such as will render it obligatory on the legislature, to carry out the system which has been thus happily commenced. The amount of good which may be expected to result from it, is far beyond the power of human computation.

Mr. FULLER, of Fayette county, said, that the subject was certainly a very important one to the people of this commonwealth, but, that he considered the question immediately before the chair, as being of a very plain and simple character. So far as had yet been heard, it seemed to be the desire of the convention to direct the attention of the legislature to the subject of education, that they might forward it.

The amendment to the amendment, as proposed by the gentleman from the county of Susquehanna, (Mr. Read) would, as it appeared to him, (Mr. F.) accomplish every thing which could be desired by the friends of education—it embraced every thing which the gentlemen, who had hitherto spoken, were anxious to have; that was to say, it declared that the legislature should provide for the establishment of common schools throughout the commonwealth. This provision would be in perfect harmony with the system of education, now established throughout the state. That system had been established under the constitution of 1790, and, in his opinion, rather counter to the provision in the constitution; yet such was the strong bent or inclination of the people, that they got the legislature to establish this general system.

What was the proposition of the gentleman from the county of Susquehanna? The words were: "The legislature shall provide by law, for the education of all the children and youth of this commonwealth"—that was to say, that it should be constitutional, not only that the attention of the legislature shall be called to the subject, but that it shall be rendered obligatory upon the legislature, to establish a general system of education. There was no prohibition in that amendment against the German language—the whole was left open to the legislature. This was proper; it would be entirely unnecessary to enter into any details here. This was the plain, simple plan, and, in his judgment, every purpose would be answered by it.

Mr. DICKEY said, he was of opinion that the proposition, submitted by the gentleman from Susquehanna, (Mr. Read) would accomplish every purpose which the convention should undertake to accomplish at the present time. I have no objection, said Mr. D., that our German population shall have schools where they may be educated in their own language, nor is there any thing here which prohibits it. In the district in which I reside, the schools are taught in the German language. We are all well acquainted with the many difficulties against which we have had to contend, even to gain a start with the common schools. But those difficulties are now overcome, and the system will go on well, unless its progress should unfortunately be retarded by some constitutional provision. Under the operation of the common school system, as it now stands, all may be taught.

There is no necessity for the adoption of the amendment proposed by the gentleman from the county of Philadelphia, (Mr. Ingersoll) and which, in my view, would seem to put something like a restriction into the con-

stitution, that the common schools were only to be opened during three months each year. The amendment would at least bear the construction that the schools were only to be opened, at the expense of the commonwealth, three months out of every twelve. Under the operation of the present school law, more than the object contemplatad by the gentleman from the county of Philadelphia, had been obtained. The report for the last year, informed us that the schools had been kept open for the space of four months; and the report of the ensuing year, will, I have not a doubt, inform us that they have been kept open full six months.

The sum of $500,000 has been appropriated by the legislature of this state, for the erection of school houses in the different districts, and this has operated as one means of fixing permanently the common school system. School houses, I have no doubt, will be erected, before any great length of time has elapsed in every district; and, when this has once been done, my word for it, all the schools will be kept open, at least, three months in the year, and, most probably, for a much longer period. I am apprehensive of the consequences of making an innovation of any kind on the system, as it now esists; I am fearful of too much legislation on the subject. I know the dangers which we shall have to encounter, if we make any changes in the present system.

In the years 1833-4, the injunction in the constitution of 1790, was for the first time carried into effect in the state of Pennsylvania, by an almost unanimous vote of the legislature. But, at the very next session of the legislature, against all the efforts which the friends of the cause of education could make, they failed by a vote of eleven against twenty-two. Your common school system was repealed by a vote of the senate of Pennsylvania, and nothing arrested the hand of the destroyer but the manly firmness of a single delegate from the county of Adams, whom I now see before me, and who was, at that time, a member of the house of representatives, (Mr. Stevens.) I well remember the speech of the gentleman on that occasion. I well remember the effect which that speech had upon an anxious crowd of listeners, and the result was, that the law passed by an almost unanimous vote of the house. The effect of this upon the senate, was, that the law passed that body also. The system was saved from destruction by the independent action of the delegate from the county of Adams, who, rather than see that system abandoned, would have given up his candidate for the gubernatorial chair, and his favorite anti-masonry—to follow that banner which streamed with the light of human knowledge and human advancement.

In the following years of 1835-6—large appropriations were made, which settled the system on a more permanent basis, and schools are now established in a large portion of the districts of the commonwealth. I hope that no measures will be adopted on the part of this house, which will arrest the progress of our common school system. In its present shape, children may be taught in the English language, while there is nothing to forbid them being taught in the German, and this I consider to be all sufficient. The proposition which has been submitted by the gentleman from the county of Philadelphia, has already been offered to the legislature. It received the attention of that body, but it was thought that to leave the whole matter open to the legislature, and that they should have the privilege of doing that which they might consider best suited to

the wishes and the interests of the people, as these wishes and interests, might, from time to time, be developed, would answer every essential purpose. The gentleman from the county of Philadelphia, by referring to the journals of the house of representatives of that time, will find that the proposition which he now offers, was then acted upon and voted down by the house. He will have no difficulty in satisfying his own mind as to that fact.

I have no objection, Mr. Chairman, to strike out the term in relation to the poor; the term is no longer applicable. There is no necessity that any thing should be introduced in reference to the poor, which will appear to treat them as a distinct cla-s of people. I repeat my opinion, that the proposition of the gentleman from the county of Susquehanna, (Mr. Read) will answer every desirable object; and I think it goes quite far enough. But, at the same time, I will not vote against the amendment of the delegate from the county of Philadelphia, if it should be the desire of the German counties, that such a proposition should be adopted; but I do not think, so far as I have any knowledge of the matter, that they do desire it, and, for the simple reason that they know they have the privilege of receiving instructions in the German language, if they desire it. And, acting upon that principle with which we have set out, that no innovation should be made, unless upon good and sufficient reasons first shewn, I hope we shall not make a change. No action on the part of the convention, on this subject, has been called for by the people.

Mr. Brown, of Philadelphia county, said, that he presumed this whole question had been opened for the purpose of obtaining the views of the members of the convention. He concurred in the opinion which the gentleman from the county of Beaver, (Mr. Dickey) had expressed, that, in any thing they might do in this matter, if they expected to move effectually, it would be necessary that they should move cautiously. A rash act on the part of this convention, might place the whole system in jeopardy, and might do more injury than would counterbalance the good which had already been accomplished.

I do not think, continued Mr. B., that the proposition of my colleague, to insert a provision in reference to instruction in the German language as well as in the English, would be required even by the inhabitants of the German counties themselves. I do not think that we are called upon to act in reference to these matters of detail. I do not think that it falls within the proper scope of the duties which we are here to perform, to say, by a consitutional provision, whether the German language shall be perpetuated or not, with a view to keep up among us a distinct and separate people. This question has already been discussed in the legislature, and, to their hands, I would commit it. The report which was adopted yesterday, leaves it to the legislature to instruct the children of the commonwealth, either in English, German, French, or any other language; and I think we shall do nothing wrong in leaving the subject to be acted on by the legislature in this particular. I shall, therefore, go against the amendment of the gentleman from the county of Philadelphia.

But there is also another ground on which I shall oppose it. I do not like the introduction of the period of three months. If it be intended to

educate the children more than three months, the words are of no use; and if for three months only, it will not have a salutary effect. For such a term they would not be able to get teachers adequate to the task. If you do no more than this, it is nothing—probably worse than nothing. We think the proposition for three months, and also the proposition as to the two languages, are both injurious, and that they will not answer the public expectation. I object to the amendment also, if for no other reason than that the word "common," is introduced. I do not exactly comprehend the term—and a construction may be given to it hereafter, which we never contemplated. I think we shall have done all that we are required to do, when we leave it to the legislature to establish such schools as they think the public good may, from time to time, require, and as the public voice, from time to time, will sanction.

If the people of the commonwealth of Pennsylvania were desirous to establish common schools, for the purpose of educating children, at the public expense, they would doubtless call upon the legislature to legislate in reference to that object. In a few years hence, probably, the public sentiment would have changed, and the people be disposed to disseminate education throughout the different counties and districts of the state, through the agency of what are denominated the "higher schools," instead of by the medium of common schools. The public voice would, before any very great lapse of time, in all probability, require this change. He should, therefore, place no barrier against having their wishes carried fully into effect. His intention was, not to vote for placing any thing in the constitution which should operate as a restriction upon the action of the legislature. He felt particularly anxious to leave it free and unshackled to be influenced only by the public judgment. He knew of no restriction that could be imposed on the legislature, which would prevent their doing good, and they could not do wrong on a subject of this character. He would repeat, what he had already said, that the convention would do wisely to leave the matter free to legislative action. They should strike out that obnoxious feature contained in the article that the "poor" shall be taught gratis. His desire was to retain the report of the committee, unless stronger reasons could be given for a change. The reason that induced him to vote for a reconsideration was, because he wished to hear what could be said in favor of it.

Mr. READ, of Susquehanna, observed that, when last up, he had attempted to explain the objections which he entertained to the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) as others had done before him. It was not his intention to occupy any more of the time of the committee, as he felt convinced that the objections to it would be found to be quite insurmountable. His (Mr. R's.) object was to catch the attention of the members of the committee, who reported the amendment and to ask them whether the one which he had offered, did not provide for every substantial object they desired, at the same time that it was clear from the objections to which theirs was subject. He wished to call their attention to three objections which might be made to the report.

The *first* was, that they had inserted these words, which might be proper enough in the old constitution, at the time it was adopted—"as soon as conveniently may be." That time, however, had already passed away,

and the schools were now in operation; therefore, no necessity existed at present for vesting any discretion in the legislature, as to when schools were to be established throughout the commonwealth. All this, then, was certainly surplusage in the report of the committee. His (Mr. R's) amendment differed from the others in this respect, that it makes it imperative on the legislature immediately, and at all times, to provide for the education of youth throughout the commonwealth.

Secondly—his amendment seemed to avoid what appeared to be ambiguous in that of the committee; and it certainly was advisable to eschew ambiguity as much as possible. The words of the amendment to which he objected, were these: "All children may be taught at public expense." Now, these words—"public expense." were unquestionably susceptible of more than one construction; and if they should be retained, the consequence would be, that in those portions of the state where the people are most repugnant to the school system, they would, in all probability, draw a construction implying that the sum total of the expense of supporting these schools throughout the state of Pennsylvania, is to come out of the state treasury. Now, he could not suppose the committee intended that the section should bear this construction. He would, however, ask the members of the committee, whether this was not an easy and natural construction for them to draw? He desired to know from those who were in favor of sustaining the report, what effect it would have in promoting the cause of education? He asked if those who were opposed to the whole system, would not—if this objectionable phrase should be retained—be prejudiced against all our amendments to the constitution? He thought they would. To his mind the phrase was ambiguous, and ought not to be retained. It had been found necessary in all the states where the system of public schools had been introduced, to defray a portion of the expenses incurred in their support out of the public treasury,—and for the legislature to hold out inducements to the people to raise voluntary contributions on behalf of these schools. Even in those states of the Union, where it was admitted they possessed the best systems, only one-eighth, one-tenth, or one-eleventh, is paid out of the public treasury. If, then, the committee should retain the objectionable phrase, what would be the construction that the people would put upon it? Why, that the legislature would provide for the payment of the whole expenses out of the state treasury, and discourage voluntary subscriptions in aid of the system.

Now, would not this convention, by adopting this language, impose a restriction on the legislature? The third objection which was entertained, was to the word "common." This word appeared to him to be perfectly applicable and correct, although it did not seem to be understood by some gentlemen. This was used in this amendment, as also in all the late acts of assembly of different states, where, it seemed, they thought "common" a better word than "public."

It meant simply this: schools which are common to the whole people of the commonwealth—to the high and the low, the white and the black; in fact, all descriptions of people in the state. Some gentleman had requested him to modify his amendment by striking out the word "common." If it was insisted on, he would do so, though he conceived it was much

better as it stood now, inasmuch as it embraced all descriptions of the people. In his opinion, it would be much better to let the amendment stand as it now did.

Mr. MARTIN, of Philadelphia county, said he could not agree to adopt the amendment of the delegate from Susquehanna, in preference to the report of the committee. He thought that the objections which the gentleman had urged, as to the report being ambiguous, were founded entirely in error. He entertained no doubt that, on a careful examination of the report, of that portion of it which the delegate considered ambiguous, had never until now, been deemed so. Indeed, it formed a portion of the constitution of 1790.

The gentleman, in the remarks that he had made in favor of his own amendment, even went so far as to admit that it was full of ambiguity, and he had risen to show how he would evade it. He imagined that if there was any ambiguity in either of the amendments, it was in that of the delegate from Susquehanna, particularly in reference to the word "common," for which he had so strenuously contended. He (Mr. M.) regarded those as primary schools, where children were sent to learn a, b, c, or ab, eb, &c. He conceived that the delegate had entirely failed to shew that there was any ambiguity in the report,—or, in the constitution of 1790, which was in the same language. And, he had proved the fact himself, by acknowledging that a different construction might be given to the words "common schools." His (Mr. M's) objection was to the word "common," and there was established, as had already been remarked, in the first school district, not only common schools, but a high school.

Now, if the amendment of the gentleman from Susquehanna should prevail, and it should hereafter be the desire of the legislature to establish high schools, in order that all classes of the community might obtain an education, they would consequently be prevented from carrying their wishes into effect. He had already objected, and did now, to saddling the report with what were called amendments. If the delegate from Susquehanna, (Mr. Read) had succeeded in showing what he proposed, to be an amendment, he (Mr. Martin) would have voted for it. But, the gentleman had done no such thing, any more than he had made it appear that there was ambiguity in the report. It was here that he had said the report of the committee was like the constitution of 1790, in the language there made use of relative to the establishment of schools throughout the state, and that, although the sentence might be proper enough forty-seven years ago, it was now unnecessary. Why, he (Mr. M.) inquired, was it not necessary at this time? Were there not schools yet to be established—and could they be established at once? Were there funds sufficient? Had the members of the legislature the means immediately at command for that purpose? No. He preferred the report of the committee, containing, as it did, the language of the constitution of 1790—"the legislature shall, as soon as conveniently may be," &c. to the amendment of the gentleman from Susquehanna. He (Mr. M.) trusted that the constitution would be so amended, as to provide that the legislature shall, as soon as conveniently may be, and find practicable, establish schools—not "common schools," but primary or infant schools, or such other schools as are deemed best calculated to carry out a good system of education.

He would now repeat again, that he could not vote for the amendment to the amendment; and he hoped, that those delegates who desired to amend the report of the committee, would take care to satisfy themselves perfectly that there was a defect in the report, before they gave their vote for the amendment proposed.

The delegate from Susquehanna, as he had before stated, had not shewn that there existed any error in the report. Indeed, he admitted with him (Mr Martin) that his whole objection to the seventh article of the constitution of 1790, was founded on a wrong expression incorporated in it, viz: "the *poor* may be taught gratis." He went thus far with the delegate, but he could go no farther. The gentleman had proceeded farther with his objections, and contended that it was unnecessay to retain the words "as soon as conveniently may be."

Now, as he (Mr. M.) had already remarked, there ought not to be any departure from the constitution of 1790, unless very sufficient and substantial reasons could be shown to justify that course. He (Mr. M.) and others had examined into the subject, and were perfectly satisfied that there was no defect in this report. He trusted that delegates would be satisfied with the report of the committee, and would vote for it, against the amendment of the gentleman from Susquehanna.

Mr. SAEGER, of Crawford, observed that he had not yet troubled the committee with any speeches; but, inasmuch as the subject before them at this time was one in which he and his constituents took lively interest, be felt it to be imperative on him to say a few words in reference to it.

Some gentlemen had insinuated, and others had argued, that it was unnecessary to insert the word "German" in the article now under consideration. He hoped, however, to be able to convince the members of this committee, before he should have concluded what little he had to say, that this assumption was entirely destitute of foundation, and that it was absolutely necessary to insert the word in the constitution of Pennsylvania. He would state one fact, and which, he thought all would concede, went very far to prove the position he maintained.

In the section of the country in which he lived, one-fifth of the population consisted of Germans; and under the present school law, it had been a mooted question between the directors and the Germans, whether the latter could open German schools. The directors gave it as their opinion that under the existing law, they did not possess the power to act in conformity with the wishes of that class of our citizens. Therefore, no school had been opened there; and the same state of things had occurred in other parts of the state. He had been informed by delegates who came from different portions of the commonwealth, that the Germans there bore nearly a like numerical proportion to the rest of the population, and that they had been denied the same privilege which his constituents had sought in vain. Why, he would ask, should the German population be compelled by law, to contribute towards the support of common schools, in which they had no direct interest, and at the same time be deprived themselves of the advantages which they would otherwise reap, if an education, in the German language, was extended to

them? It was true that the laws of Pennsylvania, were passed, and published in the English language, which was the mother language of the state. But, in those parts of it, where the German was spoken by nearly all the inhabitants, was it right, he would ask, that they should be compelled to pay their quota for schools from which they received no benefit whatever. Some gentlemen who had spoken on this subject, had advocated the teaching of the German language in our schools. Now, that might be very proper, could power be given to the legislature to carry that object into effect.

He contended it was only right and just that constitutional provision should be made for the education of the German population, as well as the English. He had no desire to make the German more popular than it was now, because the laws and all the transactions of the government of Pennsylvania were in English, and consequently it should be cultivated in the first instance. Children, who learnt to read English in the schools, for a short time, could not understand the language, and were they, he inquired, to be debarred from reading the precepts of christianity in either language? He was afraid that unless some provision should be incorporated in the constitution, securing the benefits of a German as well as English education, to the German population of Pennsylvania, they would be deprived of the right and privilege which they now sought at the hands of this convention.

Mr. READ, of Susquehanna, moved to modify the amendment so as to read—"The legislature shall provide by law for the education of all the children and youth of this commonwealth."

Mr. STEVENS, of Adams, inquired whether he was to understand the amendment as a substitute for the first and second sections?

Mr. READ, replied, that he had not offered it with that view.

Mr. STEVENS said, that from the moment he had seen it, he regarded it as the most exceptionable proposition, that had yet been brought to the notice of the committee. It left every thing vague, and simply said that the legislature shall establish "common schools." What was meant by "common schools?" It might be understood to mean—schools open to all that might enter alike; or, subscription schools, and nothing more, unless it were indicated from whence the funds were to come—where they were to be raised. He was entirely opposed to the introduction of the word "common,' because it was susceptible of various constructions. Indeed, he regarded the amendment as striking at the very root of the system of education in Pennsylvania. If this was all that was to go into that part of the constitution, which provided for the promotion of the arts and sciences, he would be ashamed to vote for it. It seemed to him that the present course of the proceeding, was unworthy of a civilized nation, for it made but very little distinction between us and the savage of the forest. The amendment was really of so vague and indistinct a character, that he trusted it would be voted down forthwith. He confessed that he was pleased with the report of the committee, which removed the pauper system, and made a classification, founded on poverty and wealth. He would freely admit that he was better pleased with the proposition of the gentleman from the county of Philadelphia, (Mr. Ingersoll) because it seemed to recommend itself to the German portion of our fellow-citizens,

who are not provided for in any law on our statute book, in reference to the subject of education, as had been very properly remarked by the gentleman from Crawford, (Mr. Saeger.) The omission of the word "German" in the constitution, had created the opposition that was manifested in many parts of the state, to the school system. He asked gentlemen to say what would be the effect of striking out a proposition of this sort, after it should have once been introduced? What would be the feeling among the German population in that event? Would they not all be against the establishment of common schools, when they discovered that they were not to be placed on the same ground as those learning the English language? Would they not regard it as a clear and distinct indication of the opinion of this convention, that the German language ought to be discouraged? Undoubtedly they would. Would it not be considered as an insult offered to the Germans to leave them out? He hoped that the amendmend of the gentleman from Susquehanna, (Mr. Read) would be rejected; and he would vote for that, offered by the delegate from the county of Philadelphia, (Mr. Ingersoll) because it provided for the interests of a large, intelligent, and industrious portion of our fellow citizens. If the amendment should be adopted, it would operate as an inducement to them, to sustain the common school system; and, if it flattered their nationality, so much the better. Let us do every thing to conciliate their favor—take every means in our power to get this system adopted. Let us give the power to the legislature to establish schools in this language, if they should think proper. The amendment did not make it imperative on the school directors to establish schools in the German language. It said either in English or German. It was a mere limit.

There were many strong recommendations why the amendment ought to be adopted. If it should be, it would bring into vogue a system which was of the highest importance to the welfare of this great commonwealth. No amendment of a more important character could be introduced into this body. He trusted that, on some future occasion, he would have an opportunity of giving his views at length in regard to the importance, not only of common schools, but of the higher schools also. His belief was that the convention could do nothing that would cover itself with so much honor as by inserting, in our fundamental law, some specific article on this all important subject.

Mr. EARLE, of Philadelphia county, remarked that the subject of education, was one of the very highest importance, to every friend of liberal principles engaged in politics, and who desired to provide for the happiness and political equality of every member of the community—equality in their social condition—equality in their pecuniary condition, as far as was consistent with the laws of human nature, with the preservation of good order, and with the general good of the whole. Perfect equality we all know to be entirely impracticable, and we would only approach towards it just in proportion as we drew near to virtue itself. Consequently, if we were assembled here merely for the purpose of considering the subject of education, and to determine what regulations should be made in regard to it throughout the commonwealth, he would be disposed to go as far as the farthest. He would be in favor of providing, not merely an ordinary education for every poor man's son, but one of a superior kind. He would have him instructed, gratuitously, in the science of surgery, medicine,

law, &c. Then we should have physic and law at a cheap rate. This would produce equality. He believed that if this course was adopted, its tendency would be to promote the general welfare, and spread the principles of equality more thoroughly throughout the community. Abolish the hereditary notion, entertained by some families, that they are superior in their condition to others, and then an opportunity would be afforded the poor man of rendering his family more comfortably off, in every respect, than they had heretofore been. By doing this, the poor man, when he went to law, would be enabled to have his case attended to at a moderate charge; and, on account of the excellent education which his sons would receive, they would be capable of pursuing any business or profession in society they chose, and of moving among the most enlightened and virtuous individuals in the community. These were his, (Mr. Earle's) views of education. And, if this convention had been called for the purpose of laying down a system, he would be found to go as far as any one to make it general. But, it had not assembled for that, but for other purposes. It had met to remedy defect, and to fulfil the will of the people. Caution should, therefore, be observed, not to introduce amendments that might be calculated to create opposition, and at the same time, do no real good. The people could at any time, when they thought proper, make farther provision, in their constitution, respecting education. This convention could not drive them to do it now. When they wished they would do it. He would ask the conservative members, who shewed themselves so zealous to provide for the German population, whether the people would adopt the constitution after they should have made it, if they put in a clause to appeal to their prejudices? Would gentlemen go so far as to put in an amendment which was calculated to destroy the whole work? Would they insert a provision, and then go to the polls and vote against it? It behoved the gentlemen to be very cautious how they acted here. Some gentlemen had not been very consistent in their course. When he had brought in an amendment to prevent frauds in elections—a provision eminently fair, and which met the approbation of nineteen-twentieths of the people of the city and county of Philadelphia—yet, he was told on this floor that every member of the city and county would vote against it. He was moreover told that it should not be put in the constitution, because it was a subject for legislation. Gentlemen then voted against it, because they conceived it a proper subject for legislation. The proposition had created no opposition in the public mind, and was calculated not to defeat the adoption of the constitution, but to advance the attainment of that end. He had been told that the views which he entertained were altogether erroneous, and that if the people desired any thing to be done on this subject, they would instruct the legislature. Notwithstanding that such a provision was said to be improper, yet gentlemen had said sufficient to satisfy him that they would vote for it. He would ask if delegates intended to support such amendments as were likely to be adopted? If they did not, let us leave out the subject of education. Let us take those amendments only that were considered good, and would, doubtless, be adopted. Being desirous to see how gentlemen would vote on this question, he asked for the yeas and nays.

Mr. CHANDLER, of Philadelphia, would ask whether, if the committee should insert these words of the amendment, as it now stood, viz:

"Shall be taught either in the English or German," we did not necessarily exclude French and Spanish? He need scarcely add, that the Spanish language was fast becoming a very important language among a large class of our fellew citizens who were daily in communication with neighboring nations, both commercially and politically. He would not have it supposed that because he had spoken of this class, whom he did not wish to be excluded, that, therefore, he cared nothing about the Germans. He had felt the force of all that had been said by the gentleman from Crawford, (Mr. Saeger) and if the committee would agree so to amend the amendment as not to exclude the Spanish, he would offer no objection to the amendment.

Mr. INGERSOLL, of Philadelphia county said—certainly it does not.

Mr. CHANDLER:—It does by implication. I shall vote for the constitution, trying however in the mean time, to get it as near what I could wish it to be, as possible.

Mr. STEVENS, of Adams did not think that the amendment excluded it; but, he was not sure that it ought not to be excluded.

The committee rose; and,

The Convention adjourned.

FRIDAY AFTERNOON, NOVEMBER 10, 1837.

SEVENTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The question being on the motion of Mr. READ, of Susquehanna, to amend the amendment offered by Mr. INGERSOLL, by striking therefrom all after the words "section first," and inserting in lieu thereof the words as follows, viz:

"The legislature shall provide by law for the education of all the children and youth of this commonwealth."

Mr. HAYHURST, of Columbia, said, the state in which the question now was, required from him a few words, representing as he did, a county, the basis of which was a German population. He could not bring himself to vote against the amendment of the gentleman from Philadelphia, without some explanation, lest it might be supposed that he was against these privileges. If he correctly understood the amendment of the gentleman from the county of Philadelphia, it was exceptionable, because unnecessary. Neither the report of the committee, nor the amendment of the gentleman from Susquehanna, went to exclude the

German population from having their children educated as they chose. The amendment of the gentleman from Philadelphia, was exceptionable because of the introduction of the word "immediate," the adjective making the clause more peremptory, whereas the people are quite safe in the hands of the legislature. He saw no necessity for this "immediate" action. In the district which he had the honor to represent, there were parts in which the children could not be subjected to education. The legislature would be much puzzled to find a place for the education of three or four families. It was not a sufficient argument in reference to those whose residence was in the mountains to say they need education. He deplored the fact, but while he lamented it, he was compelled to ask by what mode could their children be educated? What mode could be pointed out? There was not any mode at present except to board out the children. The state would not pay for this, and there was no other way.

He would not be willing to introduce a word so strong as to make it obligatory on the legislature, to establish schools this year, or the next year, but would leave it to them to create the establishments to keep pace with the improvement of the country. Another objection to the amendment was the restriction of three months. The legislature would be able to judge better of this than we could, but the school directors in the different districts would be still better judges. Education must be made popular with the guardians as well as the children. It would be repudiated altogether unless it was made agreeable. The doctrine once prevailed that children must be whipped to school, and whipped when at school. But a different system had taken its place; and the plan of holding out inducements, which had succeeded to that of coercion, had been productive of glorious effects. If we make the clause obligatory, so as to compel the legislature to form establishments farther than circumstances would justify, the system would be made obnoxious to public censure. Although the legislature might thus fulfil the form of the constitutional law, they would neglect its spirit. But, in reference to the two languages, a word or two. The amendment of the gentleman from Philadelphia, is in these words: "The legislature shall provide by law for the immediate establishment of common schools, in school districts of every county of the state, wherein all persons may receive instruction at public expense, at least three months in every year, in the English or German language, as may be by law directed." It was not every figure which contained the greatest length of line that embraced the greatest extent of area; and so it was not always the greatest amount of verbiage that embodied the greatest merit. In reference to this proposition, he presumed that it would be apparent to the humblest intellect, that it narrowed down the principle and diminished the basis of education. He wished all the children to be educated in all the languages under the sun, but let the people judge of the propriety and possibility. In the common schools he would have English as the radical language; and after that might be acquired, at a later period, whoever chose to be taught other languages might be gratified. If we desired to teach the German, and the population were made up of neither English nor German, and all the tax payers desired to be taught in their own language, would it be exceptionable to refuse. He would make the basis wider. He could not

recognize any particular language, but would leave it to be determined by the people in the district, or as the legislature might, from time to time, direct.

The proposition of the gentleman from Susquehanna, nearly met his (Mr. H's.) approbation. The report of the committee was ambiguous in one expression, as to what the people should understand by "public expense." If the committee intend by this term, the fund based on taxes and levies, it was unexceptionable. But if it meant, "out of the treasury," the fund might not be realized when this clause would have to go into operation. A more definite phrase would, in his opinion, be better. The meaning he had in his mind was that education should be at the public expense. Every man should be required to pay according to his ability. If any one would move to amend by inserting the words "by taxation," or any other definite words, or "if the Germans should wish to be taught in more language than one," he would vote for amendments of that character. But it did not meet his approbation to include only two languages. To exclude all others was unjust. He knew not why the native of Spain, as well as Germany, should not have the privilege of giving his children the education which their wish and capacity indicated. At present he felt disposed to vote against the amendment of the gentleman from Philadelphia, unless it was extended so as to include all languages.

Mr. STURDEVANT, of Luzerne, could not regard the amendment of the gentleman from Philadelphia as an acceptable one. It appeared to him to go too far, so far as to introduce wrong distinctions, and to cherish a preference for only two languages. He was desirous to have the article so prepared as not to shew a preference for the German and English languages. He would have the French and Spanish languages also taught, when necessary. He was desirous to have some system established by the constitution, to be open to all—poor as well as rich. He would have no distinctions, but that the whole of the children of the citizens should be educated free of expense. This amendment does not provide that the schools shall be kept up, after they have been established. He had an amendment in his hand, which he designed to offer, if the amendments now pending should be rejected. It was in these words: "It shall be the duty of the legislature to provide for the establishment of such schools throughout the commonwealth as may be deemed necessary, in which all persons may be taught at the public expense." This proposition did away with the objections which had suggested themselves to his mind. It left education with the legislature to establish any other schools which they might deem necessary; and it also removed the distinction which formed an objection to his mind.

Mr. CLARKE, of Indiana, preferred the proposition of the gentleman from Susquehanna, (Mr. Read) to that of the gentleman from the county, (Mr. Ingersoll) and to the report of the committee. It contained within itself all that we wanted. It made it compulsory on the legislature to establish schools by law, and avoided the question entirely about English or any other language, as well as all these differences between common and high schools, and all the other difficulties which had arisen here. It harmonized with the constitution. This part of that instrument had remained a dead letter upwards of forty years. The governor had never

failed to put into his message a passage recommending education. At last it came to be regarded in the same light as the religious allusions, as matter of ornament. He had listened to the remarks of the gentleman from Adams, (Mr. Stevens) but had not been quite so well pleased with his concession to the Germans, as when he listened to a speech formerly made by that gentleman in the same place, when he said the banner streamed in light. He (Mr. C.) was in the lobby at the time that speech was made, and he had listened to it with delight. The friends of education looked at the course of the gentleman at that time with intense anxiety; and they were all delighted to find that he had planted himself on that ground, and that we had obtained such an able advocate. Although not of the same political opinions, he was pleased with the secretary of the commonwealth, and delighted with his course. But he was now disappointed with his appeal to the prejudices of the Germans.

He Mr. C. wanted, he said, to see some amendment to this clause in the constitution. He was opposed to the using of any particular language in the section. It was not proper in itself, and would only produce difficulty and embarrassment. The provision ought to look to the great subject of education alone, and to provide for that, by the establishment of a system of public instruction. What is education? Does it not consist in training the mind and in storing up knowledge, to be drawn forth afterwards for utility or pleasure? To establish education on a broad scale, we must look to this result only; and not to any particular branch of instruction. Besides, it was now too late in the day to appeal to the prejudices of the Germans. They will tell you, as a German clergyman told me, a few days ago, that they are willing that their children should adopt the English language, as their mother tongue. He had lately had the pleasure of having some Lutheran clergymen to lodge with him at his house, and it was, indeed, a very great pleasure; and they told him that some of their flock had adopted the English language and others the German, and the consequence was, that they were obliged to learn both and preach in both, and they thought it much better that the Germans should all adopt the English as their language. This was the opinion of clergymen who were educated men—that the time would soon come, when the tongue of the father land would be forgotten, and the English would become the universal language, in Pennsylvania. This, they assured me, was the feeling of the Germans generally in the state. One of these clergymen was a preacher in Westmoreland county, which was a German county—the greatest part of its inhabitants being of German descent, and he represented that even in that county, the English language was gaining ground, and would become predominant. There lived no man in the commonwealth who entertained for the German race, a higher respect than he did. Their industry, sobriety, and virtuous habits of life, recommended them to his esteem in an eminent degree. But, he would not for this reason, put any thing in the constitution, which was designed to flatter their prejudices, though he would not adopt any thing prejudicial to them. He would leave it to the trustees of the several school districts, to determine, in conformity with the wishes of the people of the whole district, whether the German should be taught or not. The people should pursue, undoubtedly, such a course of instruction for their children, as they themselves determined upon. The settlement of this

matter, might be safely and properly left to the trustees or commissioners of the schools in the several districts or counties. It was of very little importance, in what language they derived their knowledge, so they obtained it in some way. Science and literature might come to them through the English, the German, or the French, or any other language, and would still be of equal value to them and to all. But it is not, said Mr. Clarke, on account of my objection to this provision simply, that I go for the proposition of the gentleman from Susquehanna, (Mr. Read) in preference to the amendment of the gentleman from the county of Philadelphia.

I prefer the proposition of the gentlemen from Susquehanna, because it contains the true fundamental principle, in relation to this subject, in a few, plain, and intelligible words. After settling the principle, it leaves it to the legislature to fill up the details. Education will then go on, and there will not be a single district in the state, that will forego its advantages. The prejudices against it will disappear gradually, like vapor before the sun. We owe to ourselves, to the Union, and to the world, to show that we are the friends of education, and that here we have planted its standard. What was said by the German Lutheran clergymen, to whom he had alluded, was, he was confident, the feelings of a vast number of the most intelligent people in the state. He hoped the amendment to the amendment would be agreed to, and that it would be left to the legislature, to shape the system as they find it proper, and as circumstances might require.

Mr. CUNNINGHAM remarked, that the gentleman had stated the opinion of a clergyman, whom he had seen. He would ask where the clergyman resided.

Mr. CLARKE, stated, that it was in the county of Susquehanna.

Mr. CUNNINGHAM had risen, he said, to add his testimony to what had been stated on this subject, by the gentleman from Indiana. He would also bear testimony in regard to the honorable and successful efforts made in behalf of education, by the gentleman from Adams, (Mr. Stevens) for the last five years. He was one who had listened, with the greatest pleasure and admiration, to what that gentleman had said in this hall upon the subject, on former occasions. His speeches on the subject, had been alike honorable to himself and advantageous to the commonwealth. I, said Mr. Cunningham, am opposed to inserting any thing in the constitution, in relation to the German or the English language. The Germans who have been brought up with us, do not desire it; and my experience leads me to believe, that they do not expect any favors that are not accorded to all.

He had often heard it discussed among the Germans, whether it was expedient to have the proceedings of the legislature published in the German language or not. Many Germans in the legislature, very much doubted whether it was expedient to publish the governor's message, the public documents, journals, &c. in German, for the Germans wished them to be diffused through the commonwealth, in the language that was most common; and they did not desire to see any distinction made in their favor.

I think, said Mr. Cunningham, that we ought to have a sort of national

character, and that we ought no longer to be divided into separate races, and by distinct languages, and habits. Every thing tends to this happy result, and the Germans do not wish to have any thing done which will retard it. The day will soon come, in my opinion, and it is also the opinion of many intelligent Germans, when the German language will be unknown in this state. I know it is thought very popular to talk about diffusing knowledge and information, for the use of the Germans; but it is a mistake, to suppose that our Germans are in favor of continuing the publication of documents in their language. They desire to bring up their children in the prevailing language of the country. They learn their children the English language, and you would do them a greater favor by learning them the English than the German language, because they all see that it must come to that, and that a knowledge of the English or the prevailing tongue, is necessary to the convenience and prosperity of their children. I was in the habit, for a number of years, of sending to my German constituents, the German journal of both branches of the legislature The message of the governor, the report of the canal commissioners, and other important documents, I also furnished them in German. One third of all the interesting documents, were printed in German and the rest in English; and my share I was in the habit, for twelve years, of sending to my constituents, some of whom were Germans, though born and brought up in Pennsylvania. But I found, after some interview with them, that they did not desire me to send them these documents in German, because they were Germans. He sent the school report, in German, to those who would probably prefer to have it in that language. Among others, he sent it and other documents, to two highly respectable German clergymen in Lehigh county—both of them, men of learning and piety, and desired them to read and explain the documents to their neighbors. One of them thanked him for the documents, but remarked, that he did not much care about having them sent in German. To be sure, he could read it very well, he said; but, in the manner in which the documents were translated, they were of not so much use as the English documents. Their own language, he was of opinion, would soon come to be disused altogether, and the sooner it happened, as he thought, the better. The sooner the practice of publishing documents and proceedings in the German language was disused, the better. He had stated this, he said, to confirm what had been said by the gentleman from Indiana. His opinion was, that the day would soon come, when the German language would be superseded by the English altogether in this state.

Mr. DUNLOP said, as this was a question of some importance, it deserved all the consideration that the convention could give to it. It was first necessary that they should understand what they are about. It was necessary that we should look very carefully to these two propositions. The proposition of the gentleman from the county of Philadelphia, was, that the legislature should provide by law, for the immediate establishment of common schools, &c. The proposition of the gentleman from Susquehanna, is in these words: "The legislature shall provide by law for the education of all the children and youth of this commonwealth." As we had to decide between these two propositions, it was necessary that we should understand well what they are. The amendment of the gentleman from the county, goes on to provide, that in the common

schools, thus provided, "all persons may receive instruction *at the public expense.*" But this provision, that it shall be done "at the public expense" is omitted in the amendment of the gentleman from Susquehanna. Those, then, who wish that education should be conducted "at the public expense," must vote for the amendment of the gentleman from the county, and not that of the gentleman from Susquehanna. The proposition of the gentleman from Susquehanna, is extremely meagre. It directs that the legislature shall provide by law—but not how, and by what means—whether at individual or public expense.

Again, there was another grave difference between the two propositions. That of the gentleman from the county, says, that "*all* persons" shall receive instructions at these common shcools; and the amendment of the gentleman from Susquehanna, does not say *who* shall receive instruction. A very old fellow might come in for a share under this provision. But the proposition of the gentleman from Susquehanna, is confined to "children and youth of this commonwealth." Now, it was a well known principle of construction, that the express mention of one class was an exclusion of another.

Now he would vote down the amendment of the gentleman from Susquehanna, for the reason which he had already mentioned, that it was wanting in detail. It was necessary that these schools should be established by the constitution, and the principles on which they should be established, so laid down there, that there could be no mistake about it by the legislature; because, if we leave this matter to the legislature to carry out, they may do as they have already done, neglect it entirely, or do almost as bad. They may say that schools shall be established by subscription; or they may circumscribe and circumvent them in such manner as not at all to answer the purpose here designed to be effected. Therefore, he preferred the amendment of the gentleman from the county of Philadelphia, because it went more into detail. But if we merely say that the children of this commonwealth shall be educated at public expense, there might be some doubt as to what public expense meant. Now if it was at the private expense, every body would know that that meant for every one to pay for the education of their own children; but these words, public expense, he feared would not always be understood; one man might think it ought to be paid out of this fund, and another out of that fund, one might think that it should be paid out of one tax, and another would think it should be paid from another tax. One might think it should be paid by setting apart some particular appropriation, and another might think it should be paid by laying a new tax on the people. Some persons too might think that a portion of this fund should be raised by taxation, and another by subscription among the people.

The amendment, therefore, of the gentleman from Susquehanna, left all this matter to be disputed about by the legislature, and covered the subject up too much with ambiguity. He had an objection to be sure, to the latter part of the amendment of the gentleman from the county of Philadelphia, but still he did not want to see both amendments rejected, because we might be thrown back into a position from which it would be difficult to extricate ourselves. He hoped, therefore, that the proposition of the gentleman from Susquehanna, would be passed upon; and all those

of course who were disposed to say that common schools shall be established, no matter how carelessly or how slovenly, would vote for it; but those who desired them established for the public good, for the benefit of the community, in school districts, and at the public expense, will of course vote against the proposition of the gentleman from Susquehanna. Then, if those who have objections to the amendment of the gentleman from Susquehanna, will vote it down, they will find that it will be easy to amend the proposition of the gentleman from the county of Philadelphia, so as to meet their views. He had an objection to that part of it in relation to the schools being kept open three months, as he believed there should be nothing in it which should sanction any limitation as to time, and if the amendment of the gentleman from Susquehanna should be rejected, he would move to amend the amendment of the gentleman from the county, by striking out after the words "public expense" the words "at least three months in each year." Such a proposition might be easily construed to be a limitation to three months by the legislature, and he believed it was not intended by us to place any restrictions upon the legislature in this respect. Then if there was no restriction intended, why say any thing about three months: He would leave that matter to the discretion of the legislature and the people. If it was a matter as to how the schools were to be established, he would not leave it to the legislature, but as it was a mere matter in relation to time, he would leave that to their discretion.

Now, the next objection he had to the amendment of the gentleman from the county of Philadelphia, was that it contained the words "in the English and German languages" Now, he considered this entirely improper, and thought we ought not to insert it in our fundamental law, if it was for nothing else than for the sake of those people themselves. The term is inappropriate, and calculated to create distinctions in society. We have no Germans in Pennsylvania but the imported Germans. He did not like this word German citizen, and looked upon it as only calculated to draw distinctions between them and the rest of the community; and, for the sake of those persons, he would insert no such provision in the the constitution. Well, according to this provision, the instruction at the public expense, is to be confined to the English and German. There could be no doubt about that, because in law it would be considered, that that which was not named, was excluded. Well, who was prepared to assent to this? Again the instruction is to be in the English or German—not the English and German, but the English or German. That is, the legislature is to make choice between the English and German. We all know what the result of that would be. Why, sir, it would be the exclusion of the German entirely. But some gentlemen might say that the English or German meant both. Well, when we recollect how cautious gentlemen are when they have once sworn to support a constitution, we should have nothing ambiguous in it. When we recollect that the legislature have always held that our militia must turn out and train—because of the clause in the constitution, that the malitia should be armed and diciplined for public defence, we should have nothing in the constitution that should set hard on the conscience of our legislature. There should be nothing of ambiguity in carrying out so important a matter as this question of public education.

Sir, when the law comes to be enacted under this provision, this question will arise as to which language the instruction is to be in, and some no doubt, will contend that it is to be in both languages, and the whole matter will rest on this conjunction "or:" sometimes it is used conjunctively and sometimes disjunctively. Well, if it is to be taken as disjunctive, then it separates the languages, and means that the instruction shall be in the one or the other, but if it is to be received as being conjunctive, then it embraces both of the languages. Why then, should there be any thing left to doubt, or any thing which would lead to any difficulty in construction. The great difficulty was in couching this proposition in proper language. If you desire that the instruction should now be in both the English and the German, then it would be imperative on us for endless ages, to keep up this instruction in the German language. The proposition must either mean that the instruction was to be kept up in the English or German, or it means that it is to be kept up in both, and if we are to keep both up, let us say so at once, let us say we will instruct the people in the English and the German languages.

Then what position would we be placed in? We would then find that our instruction was to be in two languages, and that it was to be confined to these two languages so long as our constitution exists.

Now he would ask gentlemen, looking to the vast improvements which have been made in science and the march of mind, whether they were to put their finger on a stopping place in the instruction which was to be given in these public schools of this commonwealth in the course of years. Who could predict now, what funds might be set apart for instruction in this commonwealth in the course of time. We already, in the very commencement of the school system, have a large fund, which would doubtless increase, every year. We may have such a fund, in the course of time that it will be desirable that other languages should be taught in our public schools, than the German and the English. The time may come in this commonwealth, when every kind of instruction will be imparted in our common schools, which can now only be attained at our higher seminaries of learning. The time may come, when the wealthy of our land will be sending their sons to the public schools to learn Spanish, for the purpose of sending them to Havannah, or French, to prepare them for a residence in France. Then why should this limitation and restriction be placed in our constitution. He hoped that Pennsylvania might yet see the day when any of her sons could be prepared for the learned professions in her public schools. And when gentlemen would cast their eyes back on the vast improvements in our system of instruction within the last fifty years, they would not view this as a chimerical idea.

But again, were gentlemen desirous of keeping up in this country two languages for common use? Suppose the authorities of England, France or Spain, should attempt to keep up two languages in their governments. Why, we would look upon them as being deranged, to think of such a thing. What earthly object could there be in keeping up two languages in a country, when it is known that it would only be attended with difficulty, create distrust, and perhaps be the cause of public excitement. We know now what effect it has in times of political excite nents. The fact is notorious, that it is used for the worst of party purposes. Do we not all know the appeals which are made to the Germans, because they are

Germans, at the time of a governor's election, to turn out and support a particular man, because he is a German by birth.

Now, he deprecated all such proceeding, and would ask of any man here, whether such appeals could have any influence except with the ignorant? As a matter of public policy then, this ought to be discouraged. He could see no use or benefit which could be derived from keeping up the German as the common talk in any part of this commonwealth. No man admired the German language more, properly spoken, than he did; its richness, its copiousness, and its euphony, were such as was not to be met with in other languages, and no one admired the German character more than he did. He was acquainted with many of them, and knew them to be people of industry and intelligence, and he felt perfectly satisfied that not one of them would thank the gentleman from Union, (Mr. Merrill) or the gentleman from Northampton, (Mr. Porter) for the eulogies they had pronounced upon them. The gentleman from Union has told us that they are excellent, clever people, and useful citizens.

Why, sir, he might as well have told us that the Scotch Irish were the same thing. The Germans do not thank any man for such eulogies as these. But they are no Germans, and he should be happy to see the day come, which was gradually coming on apace, when all these distinctions would pass away and be forgotten. This distinction in classes of society should not be encouraged and kept up by such propositions as that contained in the amendment of the gentleman from Philadelphia. He believed there was not an intelligent German—he spoke of our fellow citizens of German extraction—of the young and the middle aged, who desired to see this distinction kept up. And there was hardly to be found at this day, a young German in the state; but who spoke the English language. In the city of Lancaster, twenty years ago, you heard nothing but Garman spoken; now, however, you hardly hear a word of it. So in the town of York, twenty years ago, you would hear nothing but the *bauren sprache* of the country; but, now it has all passed away and you hear nothing but English spoken. The young Germans don't wish to continue to speak it. Gentlemen had said a great deal about the literature of the German language, which was all true enough so far as it related to Germany; but he believed the literature of the German language in this state, was principally comprised in the Old and New Testament, and the Psaltery.

Now, he sincerely hoped that all these distinctions would be done away with, as the evils of them must be apparent to all. Why, he would ask any gentleman here, whether, in consequence of these distinctions, a man of Scotch Irish descent was not as much excluded from the gubernatorial chair, as if he had been born in Judea, or the heathen lands. The gentleman himself, (Mr. Ingersoll) has been named as a suitable person to fill that high office, but he would tell that gentleman that he stood no more chance, than a certain animal in a certain place, without claws. No sir, no man need look up to that high office, unless he is of German extraction. We poor followers of Scotch Irish descent, are as much precluded, and can make no more pretensions to this office than if we were born in Turkey or India. Well sir, what is the reason of this? It is because these distinctions are kept up, and because the prejudices of the people are appealed to by the worst of demagogues for the basest of pur-

poses. Appeals are constantly made to the people to support certain men, because they are of a particular extraction.

Now he would ask any intelligent man whether it would be proper to adopt a provision in our constitution, which would be calculated to keep up this distinction, and exclude for ever from the gubernatorial chair of Pennsylvania, all the descendants of the Scotch Irish, citizens of the state, for until the day comes, when these distinctions shall pass away, they are just as effectually excluded, as if there was a provision in the constitution prohibiting them from holding the office.

I will say, for my own part, that I am independent of all these distinctions, with this qualification, however, that I would not give the least valuable thing I have for any change, let my patriotism, or my intelligence, or my principles, be what they may.

We are a doomed and devoted race, and if you put this clause into the constitution, away go the expectations, not only of the present, but of future generations, for all such honor. This is a thing that is deprecated by the intelligent Germans throughout the country; they have asked for no such thing—they desire no such thing. There is not an intelligent German, among the tens of thousands in this country, who desire that such a state of things should exist. They desire that a man should be elevated for his patriotism, his integrity, and his public virtues. But is this the case in relation to your offices? Certainly it is not. And why is it not? Because their feelings of nationality are applied to; and, if this is the case, and if this is an evil, why do you desire to perpetuate it by a provision in your fundamental law. I feel satisfied that almost all the younger branches of the German families, desire no such thing. There are some gentlemen—and probably I could point out one in this house—who understand the German language critically, and yet their children do not speak it. They do not desire it—and if they did, it would be as you or I, Mr. Chairman, desire to learn German, French or Italian, as a matter of curiosity, which is of very little practical use to them. All the public records have been kept in English, and here all our business is transacted and carried on through the medium of the English language. I would desire that every man here should understand the German language. I have myself taken the trouble to learn it,—I know something about it, and I know that I have derived great pleasure from the pursuit of German literature. I think it is as rich and beautiful as any on the face of the earth. But does this furnish any sufficient reason why we should put this provision into our fundamental law? To whatever extent Sladle and others may have carried the literature of Germany, surely it does not become us, at this time of day, to place any such provision as this in the constitution of Pennsylvania. It is not the wish of the Germans themselves, but it is rather in opposition to their known desires. And I appeal to the gentleman from the county of Berks, (Mr. Keim) once more in support of this assertion. I say that if you do not strike out these terms, the most serious consequences must follow. I say, that it will be the means of forcing upon the legislature, the necessity of a total and complete exclusion of all teaching in the German language; because they must adopt either the one language or the other, and they will, of course, adopt the English language. Under the system as it now stands, German schools are established, and instructions given in the German

language. And I am in favor of this course. I am in favor of every thing which has a tendency to soften nature, to enlighten the mind, to develope the intellectual energies, and to subdue the prejudices of the human character. To accomplish these ends, I will go as far as I believe that I can reasonably and safely go. But if we are to adopt this alternative in the constitution of the land—if we are to say that the legislature shall provide for the establishment of schools, where instructions may be given in the English *or* German language, the legislature will, no doubt, feel themselves bound to say imperatively, that those instructions shall be given in the English language, and not in the German,—thus excluding altogether instructions in the German language. Are we prepared to sanction a provision of this nature? I trust not.

For these reasons, Mr. Chairman, I hope that if the proposition of the gentleman from the county of Susquehanna does not prevail, the gentleman from the county of Philadelphia will be prevailed upon so to modify his amendment as to produce no distinctions, but to open the road to all, at the public expense. Some gentlemen may suppose that this disposition of the subject will be unpopular. If it should be so, I cannot help it; and I have only to say, that I would much rather sacrifice an ephemeral popularity, for something that we have reason to believe will enhance our prosperity, and promote our happiness.

Mr. BANKS, of Mifflin county, said that, however much he might differ from other gentlemen on this floor, in reference to many matters of public policy, there could be no difference of opinion as to the importance of the duty of giving public instruction. Not a single voice in this enlightened assembly has been raised against the propriety of a public system of education, throughout the commonwealth—and that, too, at the public expense.

To those who have reflected at all upon this important feature in the affairs of the state of Pennsylvania, it is, said Mr. B., a delightful idea to know that the energy of every mind in this body, was turned to the consideration of this engrossing subject of public education.

Any man, who has lived in the state of Pennsylvania since the act of 1809, which provided what is called the poor law, under which, parents who were not able to instruct their children, had them taught at the public expense. Any man, I say, who has reflected on the operation of that law, and the distinctions which it created among the people of the commonwealth, must feel gratified with the more favorable condition of things, which has been brought about under the law of 1834, in removing from among us these distinctions between rich and poor, which had previously existed in connection with the subject of education. Allow me here to relate an anecdote. About the time that the law of 1834 took effect, and when many people began to avail themselves of the advantage of that law, a boy of the age of nine or ten years, who had been taught under the poor law of 1809, addressing a lady, said to her, I am delighted that the common school law is to go into operation this day. The lady said to him, what difference does it make to you? You have been taught hitherto at the public expense, and you will still continue to be so. Oh! but then, he replied, we shall hear nothing more in school about the rich and the poor. This circumstance left an impression on my mind, which can never be effaced, and I felt myself called upon to do

all that might hereafter lay in my power to abolish these odious distinctions.

And now, Mr. Chairman, to speak of the amendment of the gentleman from the county of Philadelphia, and the amendment to the amendment, as proposed by the gentleman from the county of Susquehanna.

At the first blush, I doubted the propriety of an amendment to the constitution in respect to the school system. I thought we were about to go too much into detail, and I thought that the words "at the public expense," which are made use of in the report of the committee, had better be left out. I am still of that opinion—and I also think it is better to say nothing about who shall be provided for, over and above the children of the community. It is better not to regard any thing that makes a distinction as to the children of English, and children of German parents. Those who are the friends of toleration, in the broadest sense of that term, will be ready, as it seems to me, to extend to every parent throughout the commonwealth, the privilege of having his children taught in the manner which he may think proper, without placing in the fundamental law of the land, a provision declaring that there shall be English or German schools established in the commonwealth. Nor is there any advantage to be gained by such a provision. Establish your common schools in every part of the state; let there be places of public instruction for common school education—let there be academies and universities established, and allow all children, whatever their nation or parantage may be, to go to school, without naming them in the fundamental law of the land.

Surely, Mr. Chairman, no part of our population can desire more than to have the privilege of sending their children to be taught in these public institutions, in such a manner as they may suppose will best prepare them for the active business transactions of life. What more can be desired?

Why, then, establish your common schools, and select for their management the best masters that can be procured, in whatever language it may happen to be. If the parties should not be satisfied with the arrangement, they will keep away their children.

In reference to the reasons assigned by the gentlaman from the county of Crawford, (Mr. Saeger) why he was induced to prefer the amendment of the gentleman from the county of Philadelphia, I will say that there must have been some mistake made under the act of 1834, or that the difficulty of which he speaks, need not have arisen. It is well known to those who are in any degree familiar with these matters, that it is the business of the directors of the common schools, to provide for the instruction of the children in the English and German language; and if the gentleman had applied to the superintendent of common schools in the county in which he resides, as to whether the schools should be taught in German or English, the gentleman would have received for answer, that if the majority of the people of that district required that the German language should be taught, it ought to be so. The minority, in this, as in other matters, should submit to the majority. If you can employ men that are competent to teach both the languages, then both can be taught at the same time. This, I believe, is the practice in

every district in the state. In the county in which I reside, it has been the practice to employ persons who were qualified to give instructions in both languages, so that all the children of persons who are contributors to the public expense, may be taught in either language. Sometimes, indeed, it turns out that men can not be found who are competent to teach both languages, but, in such a case, we must do the best we can.

Now, under the amendment of the gentleman from the county of Philadelphia, would our people be in any better condition than they were before? Can any thing better be done, than to declare that the legislature shall provide for the instruction of the youth of the community? What more can we do? If no teachers can be found, who are competent to give instruction in both languages, the legislature cannot be made responsible for that; but the directors of the common schools, having in view, as we are bound to believe, only the public good, and the good of the rising generation—these directors, I say, elected as they are by the people themselves, will feel themselves as much bounden to represent the will of their constituents, as we do in this body. Every man knows the fact that the directors have to conduct themselves in such a manner as to secure the approbation of the people, and we cannot expect that any thing more than this will be accomplished by any provision which we may place in the constitution. The majority will rule, and it is right and proper they should, whether in a district, county, or a state. And, this being the case, I can not see that there is any imperious necessity to incorporate into our constitution, any provision indicative of an impression on our part, that there are two different races of men in our commonwealth.

The remarks of the gentleman from the county of Franklin, (Mr. Dunlop) it seems to me, are inappropriate. Every man who has been educated, knows the advantages of the blessings which are to be derived from education. I shall not, therefore, detain the committee by an exhibition of the advantages which educated men, women or children, possess over those who never have had the benefit of any education. I need not turn the attention of this committee to those who have been the advocates of public education in the commonwealth of Pennsylvania, from the adoption of the constitution of 1790, down to the present time; nor to those patriotic and enlightened gentlemen, who, in the senate, and in the house of representatives of this state, have devoted themselves to this important cause. We all know that it has been the anxious desire of every governor of the commonwealth, and every enlightened man in the senate and house of representatives, that the children should be so instructed as to leave no room for any advantage to be taken of their ignorance.

Upon this subject, in the frame of government given by William Penn, in the year 1682, and under which the provisional council was constituted, he makes the following provision: Among other classifications, there was to be a committee of twenty-four members, who should constitute "a committee of manners, education and arts, that all wicked and scandalous living may be prevented, and that youth may be successfully trained up in virtue, and useful knowledge and arts." (See sec. 18 of Wm. Penn's frame of government, 1682.)

And, in the constitution of 1776, we find, in section 44, the following provision:

"A school, or schools, shall be established in each county, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct youth at low prices; and all useful learning shall be duly encouraged and promoted in one or more universities."

Then comes the provision in the existing constitution of 1790, and which it is desired now to amend. It reads as follows:

"The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."

So we find, contiuued Mr. B. that all the public men who have regarded the welfare of the people of this commonwealth, have been anxious upon this subject of education. For my own part, I should prefer the proposition of the gentleman from the county of Susquehanna, to that of the gentleman from the county of Philadelphia, because I believe that the latter amendment goes too much into detail; much more so than I suppose is either necessary or expedient.

The amendment to the amendment, (Mr. Read's) seems to me to indicate as much as possible, what is most desired in reference, generally, to the subject of education. It says simply, "that the legislature shall provide by law for the education of all the children and youth of this commonwealth."

Now, continued Mr. B. I regard this word "education," as better than the words "common schools;" and I think that the language of the amendment to the amendment, is better adapted to indicate what is clearly the intention of any amendment which may be made to the present provision. I prefer it, therefore, though it is not exactly what I could desire it to be. I shall not bring my own project forward just now, and I shall vote for the amendment. If that should not be agreed to, then it is probable that the division indicated by the gentleman from the county of Franklin, may be reached. If that can not be done, probably some modification of the report of the committee may be agreed to, which will answer every purpose.

Mr. FORWARD, of Allegheny, thought it quite evident that the discussion could not be brought to a close this evening. He conceived that if all the amendments now before the committee, were at once laid on the table, and ordered to be printed, the committee would be better prepared to discuss the merits of them to-morrow morning. With that view he would move that the committee do now rise.

A division being demanded, there appeared, Yeas 54. Noes not counted.

The committee then rose, reported progress, and asked, and obtained, leave to sit again to-morrow.

The convention adjourned.

SATURDAY, NOVEMBER 11, 1837.

Mr. SERRILL presented a petition from citizens of Delaware county, praying that no constitutional provision may be made in regard to the observance of the Sabbath, than that already provided by law.

Mr. DILLINGER presented a petition from citizens of Lehigh county, praying that a constitutional provision may be made for conducting the proceedings of courts of justice in German counties in the German language.

Which were laid on the table.

Mr. EARLE submitted the following resolution, which was laid on the table for future consideration.

Resolved, That the committee on accounts be directed to inquire and report on or before the 16th instant, whether any measures can be properly taken for diminishing the expenses of the Convention and accelerating the completion of its business.

Mr. CRAWFORD, of Westmoreland, moved that the Convention proceed to the second reading and consideration of the following resolution offered by him on the 6th instant.

Resolved, That the following additional rule be adopted: That no delegate shall speak more than one hour on the same question, either in committee of the whole or in Convention, without leave of all the delegates present.

Mr. CURLL, of Armstrong, asked for the yeas and nays on this question, and they were ordered.

Mr. DUNLOP moved to amend by stiking out the word "speak," and inserting in lieu thereof the word "eat."

The CHAIR said it was not in order to make any amendment at this time.

Mr. DUNLOP. I presume it will be in order about dinner time.

The question was then taken, and decided in the affirmative, as follows, viz:

YEAS—Messrs. Banks, Barndollar, Bedford, Bigelow, Brown, of Northampton, Brown, of Philadelphia, Cleavinger, Cochran, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Dickerson, Dillinger, Donagan, Earle, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, High, Houpt, Ingersoll, Keim, Kennedy, Kerr, Konigmacher, Krebs, Lyons, Magee, Mann, M'Call, M'Dowell, M'Sherry, Merkel, Miller, Montgomery, Nevin, Overfield, Pollock, Purviance, Ritter, Rogers, Russell, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Snively, Stevens, Taggart, Todd, Weaver—69.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barnitz, Biddle, Bonham, Carey, Chandler, of Philadephila, Clapp, Clarke, of Beaver, Cline, Coates, Cope-Cox, Denny, Dickey, Donnell, Doran, Dunlop, Farrelly, Fleming, Grenell, Helffenstein, Hiester, Hopkinson, Hyde, Jenks, Long, Maclay, Martin, M'Cahen, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Riter Royer, Serrill, Sill, Sturdevant, Thomas, Weidman, White, Woodward, Young, Chambers, *President pro tem*—49.

The resolution being under consideration,

Mr. MARTIN, of Philadelphia county, moved to amend the same by striking therefrom all after the word "of" in the third line, where it occurs the second time, and inserting in lieu thereof, the words, "the delegate from Westmoreland."

Mr. FULLER, of Fayette, expressed his hope, that attempts would not be made to turn this proposition into ridicule. If the word "all" were stricken out, and the words "two-thirds" inserted in lieu thereof, it would be better. Some gentlemen had said this was an attempt to gag the body; but he thought it a much greater gag when a single speaker occupied the floor for five hours at a time, to the utter discouragement of all others. The committee had become tired of this. Any gentleman could reach the point of his argument in an hour. It had become necessary that something like this should be adopted. All thought it would be proper. He knew several gentlemen who wished to speak. This he had heard in the course of conversation. On two thirds of the body giving leave, any gentleman might continue to speak beyond an hour. The business of the Convention had been greatly retarded by long speeches: and this resolution, if adopted, would prevent the necessity of applying the gag. There are some, also, had not yet spoken—gentlemen of sound views, and they would not be heard at all, without some such restriction. He wished the Convention would vote down this amendment.

Mr. M'CAHEN, of Philadelphia county, said, he would oppose the proposition, because, it was an abridgment of the right of speech. It was said that some gentlemen had spoken five hours, and it was hard after them, that others could not get an opportunity to be heard. His friend from Fayette, however, had had ample apportunity, and he was one who could compress his views into a small compass. I (said Mr. M'C) never expect to be able to occupy the committee for an hour; but I should be sorry that others, who are able, may not have the opportunity. Some gentlemen were afflicted with the tooth ache, and would be likely to refuse their consent that a gentleman should proceed, when all the others might be willing to give back, and thus a gentleman might be prevented from finishing his remarks.

Mr. MANN, of Montgomery, was in favor of the resolution, with the amendment suggested by the gentleman from Fayette. He had seen the good effects produced by similar resolutions in other public bodies. He did not desire to cramp any man who was making a speech of only reasonable length. He would be always willing to hear such speeches. But when a mass of irrelevant matter was introduced, he wished them to condense their remarks. For his part he never liked to have more preface than history. He would be willing to make the term still shorter. He hoped the amendment of the gentleman from Philadelphia county would be rejected, as it was calculated to bring the resolution into ridicule without reason. He would therefore, wish to reject the amendment, and to adopt the one which was suggested by the gentleman from Fayette.

Mr. RITER, of Philadelphia county, moved that the amendment, together with the resolutions be indefinitely postponed.

Mr. EARLE asked for the yeas and nays on this question, and they were ordered.

The question was then taken and decided in the affirmative as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barnitz, Biddle, Bonham, Brown, of Philadelphia, Carey, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Cleavenger, Cline, Coates, Cochran, Cope, Cox, Crum, Denny, Dickey, Donagan, Donnell, Doran, Dunlop, Farrelly, Helffenstein, Henderson, of Dauphin, Hiester, Hopkinson, Hyde, Jenks, Long, Maclay, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Reigart, Riter, Royer, Russell, Serrill, Shellito, Sill, Snively, Stevens, Sturdevant, Taggart, Thomas, Todd, Weaver, Weidman, White, Woodward, Young, Chambers, *President pro tem*—62.

NAYS—Messrs. Banks, Barndollar, Bedford, Bigelow, Brown, of Northampton, Craig, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Dickerson, Dillinger, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, High, Houpt, Ingersoll, Keim, Kennedy, Kerr, Konigmacher, Krebs, Lyons, Magee, Mann, M'Call, Merkel, Miller, Montgomery, Nevin, Overfield, Pollock, Purviance, Ritter, Rogers, Saeger, Scheetz, Sellers, Seltzer, Smith, Smyth—56.

Mr. KEIM, of Berks, moved that the Convention proceed to the second reading and consideration, of the following resolution offered by him on 10th instant.

Resolved, That the auditor general be respectfully resquested to furnish this Convention with the last statements of the affairs of the several banks of this commonwealth as deposited in his office.

The motion being agreed to, and the resolution being under consideration,

Mr. Cox, of Somerset, said, he apprehended there could be no necessity for the adoption of this resolution. The information sought for, had been published by order of the legislature, and was to be found among the documents of that body.

Mr. KEIM suggested that the gentleman from Somerset was in error, as far as regarded the last report of the banks. By the terms of the law, most of them were required to report on the 11th of this month. As the question of incorporation was now before the convention, it was important to obtain this report. He believed the officers of the commonwealth might call for information from the banks, independent of the stated reports. He was not certain as to this fact, but it was important to have the last report, or an abstract of its contents for the information of the Convention.

Mr. Cox did not care about the adoption of the resolution, but the law had been altered so, that the auditor general could call on the banks. The returns had not been received a few days ago, and he had heard that the auditor general intended to make an application to the banks. At present he had no information in his posession. He repeated, that he had no objection to the adoption of the resolution.

Mr. DICKEY, of Beaver, stated, that the banks were to report four times a year. The next report could not be obtained before January, he believed, as he thought the returns would not be made to the officer before December. He had no objection to the resolution.

Mr. MERRILL, of Union, thought, that if the returns were not in the office of the auditor general, it might be desirable for the gentleman from Berks, so to modify the resolution, as to call for the information as soon

as it could be furnished. The auditor general had authority under the law to call for it. He had supposed the returns were made every quarter, but it was not so. It was the practice to make the returns at the end of the year. Perhaps it would be better to postpone farther action on the resolution, and, in the mean time, ascertain if there was any information received on the subject.

Mr. M'CAHEN asked for the yeas and nays on the subject, and they were ordered.

Mr. WOODWARD. If the information was not in the office of the auditor general, the object of the resolution would not be obtained, unless it was modified according to the suggestion made by the gentleman from Union. He was pleased with the suggestion of that gentleman. It would be well so to modify the resolution, as to compel the information to be produced, if not already transmitted. He hoped, therefore, that the gentleman from Berks, would either postpone the resolution, or make the modification.

Mr. KEIM did not know that it would be necessary for the purpose of the resolution, that there should be any postponement. It was merely a call for information concerning the banks. We have the information already on our files, up to the December of the last year. Since that there had been no information received. He did not know whether the governor had waived the usual call for it, upon the banks, which he was empowered to make four times a year. A whole year had passed away since the last report, and there was no evidence in the department of the responsibility of the banks, or of their ability to meet the demands upon them. Sufficient time had been given them to make their statements, and they ought to be here. So that the principle was conceded, he was willing either to accept the modification, or to postpone the resolution.

Mr. MERRILL replied, that the gentleman from Berks was mistaken. It had been the custom to make one call for the condition of the banks, to be furnished at four different times. He was himself anxious to obtain the information asked for in the resolution, and he could not conceive the possibility of any one making opposition to the call for it. Every one must wish to have it in his possession; and no bank could be unwilling to furnish it.

Mr. BANKS, of Mifflin, moved to amend by adding, "and also to furnish a statement of the number of banks which have not made returns as required by law, or by the auditor general pursuant to law, and what steps have been taken to require the delinquent banks to make returns."

Mr. B. afterwards withdrew it for the present.

Mr. WOODWARD, of Luzerne, moved to amend by inserting after the word "to," "obtain &c." and striking out "last," inserting the word "full" before statement, and striking out the words "or deposited in his office," and inserting "on their first discount day" and then adding "in the months of February, May, August and November of the current year."

Mr. PORTER, of Northampton, said, that in looking into Parke and Johnson's digest, p. 525, he found the following:

"10. SEC. I. The auditor general be, and he is hereby authorized

and required, after the passage of this act, to address circulars to the several banking and savings institutions of this commonwealth, whenever in his opinion, it is deemed advisable, requiring them to make return under oath or affirmation, of the state of their respective banks, on four discount days during the year preceding, to be designated by him, stating in the form of a regular account current, the amount of their capital paid in, the gold and silver on hand, notes of other solvent banks, debts due to and from other banks, contingent fund, real estate at cost, notes and bills discounted, notes in circulation, stock and loans on stock, judgment and mortgages, and such other information as may enable the legislature to possess a correct knowledge of the actual condition of the affairs of the banks; the said returns to be prepared and arranged in tabular form, and communicate to both branches of the legislature as soon after the first Monday of December of every year, as may be convenient: *Provided*, that so much of any law as requires the banks to report in November annually, (be, and the same is hereby repealed."

So, said (Mr P.) the annual report is not required to be presented till the first Monday in December.

Mr. Dickey, of Beaver, observed that the information required would be better obtained under the resolution of the gentleman from Berks, (Mr. Keim) than by the amendment of the delegate from Luzerne, (Mr. Woodward.) The legislature having found it very difficult to get a precise and particular account of the condition and resources of the banks in any other way than by requiring, by resolution, that the auditor general should furnish them with an abstract of the state of the banks in a tabular form, they accordingly passed it, and obtained the information they sought. The delegates of this convention would find, on referring to their journal, the tabular statement in question. He knew not whether the auditor general had called for quarterly statements or not. It might be very difficult for him to get them at this time, if they had not already been obtained. But, he (Mr. D.) supposed that all the gentleman (Mr. Keim) wanted, was to ascertain what was the condition of the "monster," on the 1st November. All the information that he required could be obtained by adopting the original resolution.

Mr. Cox, of Somerset, said, that if he understood the law, as it was read by the gentleman from Northampton, (Mr. Porter) it authorized the auditor general to call for a statement of the condition of the state banks on any four discount days in a year. It appeared to him, then, that according to the terms of the amendment, the banks would not be compelled to answer, unless it happened that the days named therein were discount days. He thought it would be better not to designate any time at all. The auditor general did not possess the power to call eight times a year, but only four different times; and he had a right to name the days himself. He (Mr. C.) was of opinion that it would be better to let the officer himself settle the matter; for, doubtless, he would comply with the requisition of the resolution, as far as he could under the authority vested in him by law.

Mr. Woodward made a slight modification of his amendment.

Mr. Stevens, of Adams, said that the practice of the auditor general had heretofore been to make a call after the first of December, with regard to the condition of the banks. If it had been already made, then this

convention ought not to make a call on the auditor general for additional information to that which he would be able to lay before us in a few days. If the circulars to the banks had been issued three days ago, as he was informed by a gentleman who sat near him, was the fact, then the auditor general could not make a new call on them. The law had fixed the days, and he did not see why this convention should undertake to call upon the auditor general to fix the days. He (Mr. S.) knew that this body was omnipotent, and could do every thing. But omnipotent as it was, it ought not to go quite so far as this.

Mr. PORTER, of Northampton, remarked that he understood the auditor general had sent out his circulars. He told him so himself. He, (Mr. P.) believed that the first discount day was in May; the second, in June; the third, in July; and the fourth, in October. As the call had been made, he thought the resolution had better be modified so as to furnish the convention with the information.

Mr. MERRILL, of Union, said that the auditor general had made calls upon the banks—that all the returns would shortly be in his office, and that as soon as they were, he could lay before the convention all the information in his possession.

Mr. WOODWARD withdrew his amendment.

Mr. STEVENS: The resolution now only calls for what we have.

Mr. BANKS, of Mifflin, moved to amend by adding "and also to furnish a statement of the number of banks which have not made returns as required by law, or by the auditor general pursuant to law, and what steps have been taken to require the delinquent banks to make returns."

Mr. CHANDLER, of Philadelphia, thought that the convention were occupying time unnecessarily, and that, inasmuch as gentlemen were ignorant of the state of the auditor general's office, the better course would, be to postpone the consideration of the resolution for the present, until such time as we knew exactly what to ask for. He moved to postpone the resolution until Wednesday next.

The motion was agreed to.

Mr. KONIGMACHER, of Lancaster, moved the second reading and consideration of the following resolution, offered by him on the 20th ult.

Resolved, That twenty copies each of the Debates and Journal, English and German, of this Convention, be deposited in the state library, and that the balance be distributed among the respective members of this Convention.

The resolution was then read the second time, and being under consideration,

Mr. KONIGMACHER modified it so as to read as follows:

Resolved, That twenty copies of the Debates and Journals of this Convention in the English language, and the like number in the German language, be deposited in the state library; thirty copies each be deposited in the office of the secretary of the commonwealth, to be distributed among the heads of the state departments; one copy each to be deposited in the prothonotary's and commissioners's office of the several counties in the commonwealth. That each of the secretaries and stenographers of this Convention, receive one copy each. The balance to be distributed in equal numbers of copies among the members of this convention, to be by them placed in such public libraries, lyceums, and other places as they deem most beneficial and proper.

On motion of Mr. AGNEW, the farther consideration of the resolution, as modified, was postponed for the present.

Mr. LONG, of Lancaster, asked leave to make a motion, that when the Convention adjourns, it adjourns to meet on Monday.

Leave not granted.

Mr. EARLE, of Philadelphia county, moved that the Convention proceed to the second reading and consideration of the following resolution:

Resolved, That the committee on accounts be directed to inquire and report on or before the 16th instant, whether any measures can be properly taken for diminishing the expense of the Convention, and accellerating the completion of its business.

The motion was negatived.

SEVENTH ARTICLE.

The Convention resolved itself into committee of the whole, Mr. REIGART in the chair, on the report of the committee on the seventh article of the constitution.

The question pending was on the following amendment offered by Mr. READ:

"The legislature shall provide by law for the education of all the the children and youth of this commonwealth."

Mr. BARNITZ, of York, said, that notwithstanding tho proscribing pleasantry of his friend from Franklin, (Mr. Dunlop) which had been administered to the committee, he was disposed to support the general views of the delegate from the county, (Mr. Ingersoll) as contained in his amendment; and he would say to him, that he and those who supported his views, might indulge the delegate from Franklin in his humorous vein, because he was sure there was nothing of unkindness in what had been said, and he was not sure that the delegate from Franklin would not in the end adopt their views and come in to their aid. He stated that there were two propositions, the one submitted in the amendment of the delegate from the county, (Mr. Ingersoll) the other, the amendment of the delegate from Susquehanna, (Mr. Read) and of the two, although he was, at first impression, favorable to the latter, yet, from the information he had received on the floor, and his own reflection since, he now believed that the former was preferable.

He represented, and resided in what was called one of the German counties—the county of York; it was called German because a large proportion of its citizens were of German origin, and continued the habits and language of their ancestors in their intercourse with society and their domestic relations almost exclusively. The delegate from Franklin, (Mr. Dunlop) had referred to York county, as one in which some twenty years ago, the German language was the prevailing and universal language—but since, the English has taken its place entirely. This was true, as related to the town of York, but as to the county, it was very different. The county of York contains a population of about 50,000, and about the half, it is estimated, are Germans in habits and language. A large district, composed of several townships contiguous to each other, and containing about 20,000 in population, is almost exclusively German—you might ride through that section for a day, and you would

scarcely find a single family in which the German language was not the only language used, without a book or a newspaper in English. The town of York was different, and towns generally were different. Towns are composed of individuals of different habits, manners, and languages, who settle together as accident or interest may bring them—different languages soon amalgamate, and that which is the legal or established language soon displaces the other. Not so in the country. There it will be found that settlements or communities of similar habits and language generally convene and settle in the same neighborhood. They have in York county, English settlements and German settlements, in a great degree separated from each other; and no doubt the same kind of separation prevails in other counties in which there are German settlements.

He referred to the county of Berks, and appealed to the members of that county—to the counties in the north-east—to the counties up the Susquehanna—to Somerset, Lebanon, Dauphin and Cumberland, for the truth of his positions. The system of education referred particularly to communities, and could only be useful as it was applicable and suitable to them. It was therefore of the first importance that education in the German language should be provided for all such places as had been referred to; without it any school system would be useless as respects the German counties; and a large portion of our citizens, those who ranked among the most valuable and useful, would be deprived of benefits for which directly or indirectly they must contribute to.

Mr. B. said, he was in favor of making provision for education, and for the distribution of information, both in German and English. Every thing published by order of the legislature would be in English, unless special provision was made for the publication in German. So, the school commissioners, without some special provision on the subject, will feel it their duty to carry on the school system in the English language only, and thus to form the habits of the people into English. This was the policy of the school directors heretofore, and in this way they were disposed to interpret the act of assembly. The legislature, too, would give such a construction to the constitution, as would exclude the German language. The clause would never be carried into effect, unless made very explicit, and imperative. There was a peculiar propriety, in making this provision for education in German, a part of the public law. He had always entertained that opinion and he was the more confirmed in it by the letter of Mr. Duponceau. That very learned and distinguished gentleman, did doubt the propriety of putting this provision into our fundamental law; and that doubt went far with him (Mr. Barnitz.) But still he could not yield to that opinion. Some other objection had been urged by gentlemen here against putting the provision in our constitution. Some had said that we might as well put the French and Spanish language there as the German. But he differed with gentlemen as to this. We had no constituents, whose common language was French or Spanish, though there might be some individuals who spoke those languages. But the German population, on the other hand, formed a large portion of the inhabitants of the country. He himself lived in a county where they composed one portion of the population. There could be no propriety in making a provision for the education of children in a language which was not spoken, nor in common use, and

the argument that, if we provided for German, we must include in the provision, the French, Spanish and other languages, will not hold good. He objected, therefore, to taking away the mandatory part of the provision, by striking out the word "on." That, in his opinion, would leave it wholly ineffectual. If there must be a contingency about it, it had better be put in some other shape. But their discretion should be limited by providing that the power should be exercised as circumstances might require. It might be discretionary, but it should not be such a discretion as would take away the effect of the mandatory clause altogether. He felt a very deep interest in this question, and it immediately affected the interests of the people whom he represented. He was therefore in favor of the amendment, and hoped that it would prevail.

Mr. FLEMING, of Lycoming, had but one word to say in the matter. He believed that no gentleman objected to some provision for common schools. It was argued on all hands that they should be provided for, in the constitution. The only question was as to what was the best provision that could be made for this purpose in reference to the interests of all our citizens. He thought there ought to be some distinct expression of opinion on the subject, so as to shew the legislature distinctly what they should do. If we removed all doubt and obscurity as to the construction of the constitution on the subject, it would be an important advantage.

He doubted not that it was in the power of the school commissioners to allow the employment of German teachers. He was struck with the remark made by the gentleman from Crawford yesterday, that there was great difficulty in educating the Germans where the population was pretty nearly divided into German and English, particularly where the school directors are disposed to favor the English schools and deny schools to the Germans, when it appears certain, as that gentleman remarked, that if the Germans are sent to an English school and, at home, have nothing but German, they will improve but very little in English studies. Such a course of education might be unfavorable to any intellectual developement; and the German children would not obtain such a knowledge of the English language as was desired. It was obvious to him that it was proper to adopt such a provision as would open a way to establish German as well as English schools, so that the whole mass could have access to such schools as they preferred. In this way we should better promote the important object of education than in any other way. He was in favor of the amendment, because it fixed the construction of the constitution, so that it may not be quarrelled about or doubted. The amendment, as now offered, was fully adequate for the purpose, and it stood as well as it could stand. If we consider it right and proper that the Germans should have the advantage of our school system, why should we not say so in so many words, without leaving any thing for difficulty or doubt as to our meaning? Why shall we not say that there shall be German schools? If we mean so, let us say so. Is there any good objection to this? None, whatever. If it was not intended to deprive the German population of the benefit of the common school system, then this provision ought to be incorporated into the constitution.

Mr. CHANDLER, of the city of Philadelphia said, his objection to the amendment was that it was confined to the English and German, to the

exclusion of all other languages. The gentleman from York says that we have no constituents except English and German. But this was not strictly the fact. He was informed that there were some Welsh settlers in some parts of the state who spoke altogether in that language. The proposition of the committee as made in their report, was to give all persons the right to have their children educated in any language they pleased. It was said that the legislature might provide for other languages, and that in some counties German was the principal language that was read and spoken, and that unless this provision for instructing the Germans in their own language, should be adopted, it would be taken as the evidence of the hostility of the convention to the German language and to the Germans themselves. But he could not believe this. He concurred in every thing that had been said complimentary to the language and literature of the Germans, and to their character as good citizens. He desired that the best works in their language might be translated into ours; but he did not wish to see our own language destroyed by the introduction of any foreign idiom, any more than he wished to see our institutions altered in order to correspond with those of Germany. He was anxious to afford the German portion of our population the time and the means to accommodate themselves to our language.

Mr. JENKS had, he said, listened with attention, to all that had been said on this subject, and he had made up his mind decidedly to vote against the amendment and the amendment to the amendment; because he believed that the original report of the committee was better calculated to sustain the great interests of education in this state than the amendments which had been offered to it. The report was calculated to sustain the old constitution as it stood, with some little modification. Under that constitution, the legislature had already established a school system, and it was now in successful operation; and he apprehended that if we made any alterations in the constitution, we should interfere with the system. The importance of a general diffusion of education cannot be too highly estimated. Every thing valuable in relation to our republican institutions and in the constitution itself, depended upon it. He would, therefore, be very timid of any amendment that was likely to obstruct or arrest its progress. Every year the people had become more and more disposed to sustain and promote the school system. It was now prosperous, and nothing ought to be done that could possibly interfere with it. With some slight amendment he hoped the report would be adopted. He suggested an amendment—to strike out the words "public expense." If the amendment to the amendment was rejected he would offer this.

Mr. CLINE said, according to his recollection, there was not one member of the committee who did not think that some provision ought to be made by the convention on this subject, to be submitted, with other amendments, to the people. The best way to settle this question and to have it properly understood, was to adopt a constitutional provision on the subject. He was in favor of some modification of the constitution on the subject.

Mr. INGERSOLL said, he would now propose to modify his amendment, so to strike out "three months in a year," and insert the words, "as may be by law directed."

Mr. CLINE would not say, he remarked, but he liked the amendment as well as the report of the committee. One point had been but little adverted to. The objections to leaving it discretionary with the legislature whether to act or not. The present constitution says that the legislature may "as soon as conveniently may be," provide by law for the establishment of schools throughout the state. How had the legislature acted under this provision? They had understood it to leave the time of acting discretionary with them. Year after year, they, therefore, delayed the exercise of this power; and though they were solicited to attend to this important matter, they refused to do it. Now they were prosecuting a system, which, after so long a delay, had been established, and he hoped that hereafter progress might be made, in such manner as may answer nearly all objections. But he liked the words of the amendment of the gentleman from the county of Philadelphia, because they left nothing discretionary to the legislature The report of the committee did not fully meet his views on this point. The committee had retained the discretionary words of the old constitution, which he wished to see modified in this respect. He agreed that it would be a slight rebuke to adopt the word "immediate;" but it would indicate the will of the people that the subject should be immediately acted upon, and that it had been too long neglected.

The proposition of the gentleman from Susquehanna, though it might have the merit of brevity and of beautiful simplicity, was deficient, inasmuch as it did not provide that the legislature should act promptly and immediately on the subject. The proposition of the gentleman from Susquehanna was neither mandatory nor explicit. The present system of school education was weak and in some respects, faulty, and should it be overthrown, there was no provision in the constitution which would make it the imperative duty of the legislature to re-establish it on a firmer foundation, though it was undoubtedly the general wish of the people that this should be done. The provisions of this constitution would not be attended to any more than the former were, unless there was a specific and mandatory clause on the subject. He could wish some alteration of the words "at the public expense." That phrase was not sufficiently definite. He would rather say, at the expense of the commonwealth, or at the expense of the several counties of the state. We might make each county educate its children at the charge of the county. He wished the commonwealth to do it, no matter whence soever the funds were drawn from. With respect to the teaching of German and English in the schools, he was of opinion that it would be detrimental to the Germans to teach them in that language. Most of the enlightened Germans had given up all desire of perpetuating the German language. The German people generally, throughout the state, have come to the conclusion that it would be better for them to learn English and to teach it to their children. Those of them who spoke both English and German preferred to use the English, and their clergymen preached in that language. The German was always learned by their children fast enough. Their object was to teach them English. A mere German education would be of very little value to them, unless they read the books containing the German literature and science. But these books they had not. Few of them were in the country and few or none were imported. The German lan-

guage, therefore, would be the medium of no information to them. There might be a few old plays and novels in German which were in the country; but there was nothing substantial and useful for practical purposes to be reached by them through the German language. They had also the Bible and hymn book in German, and nothing else. Their German would be of little use to them, unless they imported some German works. But, in obtaining a knowledge of English they brought within their reach every thing which could qualify them to become active and useful members of society. He would prefer that the clause should end with the words "at the expense of the commonwealth."

Mr. DICKEY said, the language of the amendment under consideration was imperative on the legislature. It said that "the legislature *shall* provide by law for the education of all the children and youth of this commonwealth. The effect of the proposition of the gentleman from the county of Philadelphia will be to require the legislature to establish German and English schools, in each school district. Here, at present, the school system is not enforced on the people. It is left for their voluntary acceptance, if they please to take it. It is in the power of the people to say whether they will have schools or not. But by the adoption of either of the amendments, you interfere with the present school system and require the legislature, even without the assent of the people, and whether they want the schools or not, to establish them, in each school district, and tax the people of the district for their maintenance. This might have a very prejudicial effect on the school system, as it would, in some cases, disgust the people with it. The present system operated on the non-accepting districts as a premium to induce their acceptance of the schools; however the fund remains in the treasury until they have accepted the system. It remains in the treasury subject to their adoption of the scheme, in application to themselves. It was left with the people to say whether they would adopt the present system or not, and, if they did, the funds raised on the part of the commonwealth, for the purpose, remained in the treasury, where it is accumulating for their benefit, in case they should ever consent to receive it together with the system. The provision now proposed, completely overthrows this system, by making it imperative on the legislature to establish schools, whether the people choose to have them or not to have them. Now, in Chester county, the society of the Friends prefer to educate their own children, to receiving the system offered to them by the state. These people would certainly prefer that the system should be left voluntary. In the German districts, schools were much wanted, but the people in those districts preferred that the system should be left to their own acceptance or rejection. If we ever expect to root deeply this system in the affections of the people, we must make the system voluntary,—entirely so. But if we force it upon the people, it will be taken with an ill grace, and will be made use of, if used at all, with reluctance and suspicion. There were now two hundred non-accepting districts; but all would very soon accept, if left to themselves, without any compulsory interposition on the part of the legislature. But it would not be well to force the school system upon them until they were prepared for it. Such a course would, as he greatly feared, interfere with the progress, now very successful, of the present school system.

Mr. BROWN, of the county of Philadelphia would, he said, ask one question of his colleague, (Mr. Ingersoll.) He wished to know what was to be the construction of the amendment. The schools are to be established, "as by law shall be provided." Did this leave it optional with the people of the several school districts whether to have German or English schools? All persons, the amendment provides, shall be instructed at these schools in German *or* English. How was it intended to carry out this provision? Were the people concerned, or were the legislature, to decide whether the school, in a particular district, should be conducted in German or English? Or were the German schools to be taught in the German districts and not the English: or were both languages to be taught in separate schools, in each district? If only one language was to be taught it would make the disparity greater than ever. He should vote against the amendment in any case.

Mr. FORWARD could not vote for the amendment to the amendment, because, when he came to compare it with the report of the committee, it became apparent to him, as he thought it must to every gentleman, that it did not even meet the views and come up to the purposes intended by the gentleman from Susquehanna himself, so well as the report of the committee, amended as has been suggested. He hoped, therefore, that it would not be adopted, because it would not be of such value to the community at large, in his opinion, as the amendment contained in the report of the committee.

With regard to the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) he was exceedingly pleased to hear it proposed, and when it was first presented, he must say, that he was strongly inclined to favor it. He thought at first, that he could see some force in the remarks of those gentlemen, who supported it; but after the very able and interesting discussion which we have had, he had come to the conclusion that it would be better to reject it, and for these reasons: In the first place, we may by it derange the present system of instruction. This amendment contemplates the establishment immediately of a system of education. Now it appeared to him that this might disturb and derange the existing system of public instruction, and if the views of the gentleman from Beaver, were correct, as he had no doubt they were, it certainly would. By the present school law, it is left voluntary with the people whether they would adopt or reject the school system in their particular school districts. But if this amendment is adopted, the legislature of the commonwealth will not only be compelled to adopt it, but the people will be constrained to carry it into effect.

Another suggestion he would make as being worthy of consideration. The gentleman's amendment leaves this matter of instruction in the English or the German languages to the legislature or to the school directors. This matter with him had great force. The amendment does not say the children shall be instructed in the English or German, in the different school districts, but leaves the whole matter with the legislature or the school directors.

Now, he did not suppose that the gentleman meant to have schools for the education of children in both languages wherever there were persons who spoke both languages. Because, if this was the gentleman's intention, he apprehended that it never could be carried into effect in

many of the counties. The citizens of the county would not suffer, because they would not put the state to this expense for a thing so useless. The practice has been under the law to have the schools in that language, in which there is a great majority of the persons of the district. And in counties where the different classes were about equally divided, schools have been established in both languages. But, as he understood the amendment, it was to be left to the legislature or the school directors, to decide whether the instruction was to be in English or German. His objection, therefore, to the amendment was this, that in every place where any person was desirous of learning the German language, the public must provide for his being taught, no matter how much the people of that district may be opposed to that kind of instruction.

Now there is no distrimination in the report of the committee in regard to the language in which children are to be taught. That is left to the wisdom of the legislature and the school directors of the districts, acting under the immediate direction of the people of the districts. As the legislature has done so much in carrying out this system of education even contrary to the section of the constitution, he thought it might safely be entrusted with carrying out these details. He did not see that we could gain any thing in inserting these two languages in the constitution as being entitled to public favor, when the principle is recognized under our present law, and both languages are taught at the discretion of the people of the county. It seemed to him that we were not called upon here to establish a system of public instruction, but merely to recognize a plan of education already in existence and in the full tide of operation. It is not proposed that we should modify the system, but to extend and encourage it, that it may be carried out to reach every citizen of the commonwealth. He did not suppose that any constitutional provision would build up any system of instruction. You may amend the constitution as you will and legislate as you please, but if the people do not carry it out, it is of no avail. The system of education which is now in existence, was established some years ago, and it met with some considerable opposition, and was in part repelled by the people. Since, it has been amended and is now making its way, becoming popular and gaining in favor with the people every day. Then, he would ask, if it was not best to recognize this system, and commit the whole of the details to the wisdom of the legislature.

Mr. Smyth, of Centre, said he supposed it would be recollected by many present, that at the commencement of this system of education, now in existence, it met with considerable objection in many of the counties of this commonwealth. It was with the utmost difficulty that it was established in many of the districts, and few were found who were the advocates of the system that did not feel the effect of this hostility to it in some way or other. Time, however, has eradicated from the minds of the people the prejudices they had against it, and it is now smoothly and quietly winning its way into the favor of the whole people of the commonwealth. We ought to be very careful, therefore, in the establishment of our fundamental law, not to introduce any thing which would have a tendency to confuse our present system, or lead to its reorganization, for fear of getting up in the minds of the people a prejudice against it. The law of 1836 has had the effect to remove many of the prejudices

against the system, and many of the non-accepting districts have come in and accepted the system, and he believed our best plan would be to let the system work its way into public favor as at present existing. In relation to inserting both the English and the German languages in the constitution, he thought it wholly unnecessary. In the county where he resided, there was a considerable number of persons of German descent, and in that county we have both English and German schools, established in pursuance of the wishes of the people of the district.

Now, he considered that the same construction ought to be given to the law in every county situated as Centre county was, and that being the case he could see no necessity for the adoption of the amendment of the gentleman from the county of Philadelphia. The people have this power in their own hands in relation to the kind of schools which they will have, because they can elect their school directors with that view. Now he believed the better plan would be to adopt a proposition, something like this: "The legislature shall, as soon as conveniently may be, provide by law, for the establishment of schools throughout the state"—leaving it with the legislature to make such provisions as to them shall seem right and proper. He would make it imperative upon the legislature to establish or rather to keep up the system, but would then leave it to work its way with the people as it was now doing. He hoped to see the day when it would be universally adopted, but at the same time, we ought to be cautious how we make imperative provisions, lest we raise up greater objections to the system than have heretofore existed. The system is now rapidly gaining ground, and if we act wisely and carefully, it will still continue to gain ground; but if we insert in the constitution some obligatory clause, you will cause the people to rise up against it, and we will lose all at one blow that we have gained in years. He would merely make provision that the legislature should establish a system of education, and he would leave them to carry it out as they might think best, because they can consult the interests of their constituents from time to time, and be better judges of what details are necessary than we are.

As to the two amendments, he would prefer that of the gentleman from Susquehanna, to that of the gentleman from the county of Philadelphia, because it was the shortest, and came nearest to his views of the two, but he prefered the report of the committee to both, striking out all after the word "state" in the second line. His only object was to see the present system carried out, and he hoped nothing would be adopted which would have a tendency to injure or destroy it.

Mr. BEDFORD said, from the amendments which had been offered, and the discussion which has been had on the subject, it was evident that a great anxiety was felt on the subject of education. The subject was one of the greatest importance to the people of the commonwealth, and a system has been built up with much care and difficulty, and it now behoves us to move cautiously in making amendments to the constitution on this subject. He was the friend of education at the public expense, and while he felt the great importance of having a constitutional provision on the subject, he should have strong objections to introducing into the constitution any provision which would be objected to by that portion of the citizens of our commonwealth who were opposed to our present school law. He believed that law was sufficient to answer our purposes at pre-

sent, and he thought our true policy would be to support, uphold, and improve it as the circumstances of the case may demand. The whole matter ought now to be left with the people to work its way and gain favor by time. There was no danger of the people, but what they will do right. Our course is onward, the spirit of intelligence is abroad, and education will soon be brought to every man's door. He could see no necessity for making this provision in the constitution, as the legislature had full power and control of the whole subject, and will no doubt do it the amplest justice.

He also considered the amendment of the gentleman from the county of Philadelphia as objectionable, in the first place, because it provided for the education of all persons in the commonwealth at public expense, and he considered it improper to have any provision in the constitution in relation to any languages in which the children were to be taught, as this whole matter belonged to the legislature.

He objected also to the amendment of the gentleman from Susquehanna. In short he was a conservative in relation to this matter, or very nearly so. He believed we would gain but little in changing the old constitution in this particular, and rather than depart so far from it he would retain the old provision, striking out the word "poor." He did not know that he should have any objection to the amendment suggested by the gentleman from Bucks, (Mr. Jenks) because it left the whole of the details to the discretion of the legislature. He should, therefore, vote against both the pending amendments, and against the report of the committee.

Mr. SILL said there was one principle in the amendment of the gentleman from the county of Philadelphia, and also in the amendment of the gentleman from Susquehanna, which he thought of very great importance, and which would go, in his opinion, to derange the principles on which common schools were established, not only in this commonwealth, but in every country where they have been established.

What class of persons in every state and every community have been proposed to be benefited by these schools. It is children, and it is, and ought to be confined to children. He believed the system of common school education originated in Prusia. At least it was brought to such perfection there that it recommended itself to every civilized community, and in that country the age of the persons taught in those schools is limited from five to sixteen years. In the state of New York, where the common school system has been in operation some time, he believed there was a limit of the age of the scholars, and he believed they were not to exceed sixteen years.

Now he apprehended that there was a substantial reason for confining this system of education to children. Upon what principle is it that the public at large is called upon to contribute funds for the support of these schools. It is because it is necessary for the welfare of the children of the commonwealth; and because they are altogether incapable of providing education for themselves. Then because they are incapable of making this provision for themselves, it becomes the duty of parents to make it, and if the parents do not attend to it, it becomes the duty of the government, as far as is in its power, to provide for the wants of that class of the community who are incapable of providing for their own wants. But, sir,

this principle does not apply to adults. Suppose a man of twenty-one years of age is uneducated, is he to be educated at public expense on this principle? Not at all. He is able to provide for himself. The same reason does not exist, that the public should provide for his education as for the children. Therefore, persons who have arrived at the age of manhood, ought not, in his opinion, to be admitted into these schools, unless on some particular occasion.

Now it seemed to be admitted by every gentleman on this floor, that great credit was due the present secretary of the commonwealth, for the exertions which he had made, and in fact, he believed, that a great deal of the present prosperity of the system, was owing to the exertions of that gentleman. Any suggestion from that officer, therefore, he apprehended would be entitled to the consideration of the convention. He therefore begged leave to call the attention of the convention to the following remarks of that gentleman on this subject, in the report laid on our table:

"A most serious defect of the present law, is the admissibility of all ages, without exception, into the schools. During the first years of the system, when the schools were few and not well regulated, this evil was scarcely perceived, but it is now, and will annually be more felt, till the proper remedy be applied."

After some farther remarks on this subject, he comes to this conclusion:

"It is therefore suggested, that absolute admissibility be limited to persons between five and sixteen years of age, with discretionary power in directors to admit persons over that age when circumstances demand it. The object of the system is not the education of ignorant adults, but of the rising generation."

Now it will be perceived if this amendment is adopted, these suggestions will be entirely disregarded. If he recollected rightly, the amendment read that all persons shall be admitted to these schools. If there be a constitutional provision that all persons shall be admitted into these schools, will it be competent for the legislature to limit the ages of those who are to attend; and will it not make a great difficulty in conducting the schools. He had himself seen something of the effect of this system and of its operations, and he had also seen the difficulty which existed on this subject. At present there was no limitation as to age, and he had known where schools had been opened, and where young men more than twenty-one years of age, and young men who were perfectly able to provide for their own education, had presented themselves and claimed to be admitted into these schools, and were admitted. It was thought by the school directors that this was not according to the spirit of the law, but they considered that they had no right to exclude any one.

Now he begged to be understood as not proposing to the convention to make any limitation as to age, but he did object, and he thought it clearly and strongly objectionable to admit a provision into the constitution which would prohibit the legislature from making such provision in future, if it should be deemed expedient.

Mr. INGERSOLL. It does not so prohibit the legislature.

Mr. SILL That was the construction he had placed upon it. The provision was that the legislature should provide to have all persons

instructed at public expense. Now, he might be mistaken, but it struck him, that if this provision was adopted, no limit could be made to the age of children, because the constitution said, that all persons shall be taught at the public expense. The same reason applied to the amendment to the amendment, submitted by the gentleman from Susquehanna. It provided that all children and youth shall be taught. Now, he thought it unnecessary to go farther than to say that the children of the commonwealth, shall be taught at the public expense.

The old constitution contained the word children, but it also contained the word poor as connected with it. That is, that poor children shall be taught gratis. That was found to be objectionable. Then no distinction of classes should be made, because it has been found not to produce the effect intended by it. It had been found, as he was informed, that the number of children in the new schools, had increased, about fifty per cent.

Now, the reason of this, was not that the constitution did not provide that all should be taught, because the constitution remained the same. But, under the old constitution and laws, formerly enacted under it, provision was only made for teaching the poor children, the parents of all other children defraying the expenses of their education, if they gave them any. Well, sir, under this provision, there were hundreds of thousands of parents, who from feelings, whether improper or not, he was not disposed to say, but who from some feeling, were unwilling to avail themselves of the benefit of the law, and send their children to school as paupers. This provision, then, did not effect the object intended to be effected. It did not suit the spirit of the people, to be divided into classes, one portion to be considered poor and another portion rich. And, this was the reason why in the amendment of the committee, it was left so as to embrace all persons. It directs the legislature to provide for the education of all children—not adults, but all children, the children of the rich as well as the poor, thus making no distinctions in classes. The object of the committee being to direct the legislature to make provision that all the children of the commonwealth, should be taught in these schools.

He would be far from having any thing obligatory on the people in the constitution on this subject, and he would confine it to no particular languages; and he never knew that any direction had been given to the school law, in any of the counties, than that it was to provide for educating the children in such language as the people saw fit, until he heard it on this floor, and if this was the case, that such a construction had been given to this law, he would have the fifth article provide that no construction should be given to the law which would prevent the school directors from giving instruction in any language they pleased, and should agree upon. For these reasons he was opposed, both to the amendment of the gentleman from the county of Philadelphia and the amendment of the gentleman from Susquehanna.

Mr. BONHAM was apprehensive that the amendments were not calculated to produce any good results, as he was fearful that they might interfere with the system already in operation. It is now beginning to be popular, and in many parts of the country where serious objections were made to it, the people were beginning to adopt the system. In the

county in which he resided, the people were very sensitive on this subject. Many of the districts have now accepted of the system, but some have held to the old system. Now, this, he thought, was as it should be. He thought it ought to be left with the people of each district, to do as they think best.

The people do not like to be coerced into any matter, and it was infringing upon their rights and liberties, to do so. Now, in the township in which he resided, to the best of his knoweldge, there were but three or four English families, all the rest being German or of German descent, and he did not know that there was a single German school in the whole township. The Germans there, send their children to English schools, and he never had heard them complain on account of not having the privilege of educating their children in whatever way they thought proper. In fact, they never knew, that they were prohibited, by the school law, from having their children educated in such manner as to them seemed best. This matter should be left open, and he believed the legislature would always provide that the education of children should be in such way as the people of the districts thought most suitable to their wants, for the purpose of promoting their welfare in society. He viewed the amendment of the gentleman from the county of Philadelphia, as altogether unnecessary, and as calculated to agitate the public mind and cause objections to be to made to the constitution. He thought we should be very cautious in not inserting any thing in the constitution which is objectionable to the people. It appeared to him, that if we would take the first part of the section in the old constitution, omiting that part in relation to the poor being taught gratis, that it would be more acceptable to the people than any thing else. It would then read "the legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state."

He thought this would be altogether satisfactory, and would leave the matter in a situation not at all liable to objections. This would enable the legislature to go on and improve our present system from time to time, in such manner as most to promote the public good, and general welfare of the people of the commonwealth. With these views he should vote against all the amendments, and endeavor to get back to the old constitution, merely making the alteration therein, which he last mentioned.

Mr. Ingersoll said, as he was desirous of having the amendment as perfect as possible; and believing the suggestion of the gentleman from Bedford, (Mr. Cline) to be an improvement, he would accept of it, as a modification. This amendment would then read as follows:

"The legislature shall provide for the immediate establishment of common schools in school districts, wherein all persons may receive instruction, at the expense of the commonwealth."

He should prefer himself to say at the expense of the state, but that was a mere matter of verbiage, he would allow it to go as it stood. He was disposed to ingratiate his amendment into the good graces of gentlemen by accepting of all amendments which he could bring himself to concede to, and consequently he had thus modified his amendment, and now he would beg the indulgence of the committee, for a few moments, while he replied to some of the objections which had been made to it.

On this important question, the committee has been addressed by several members, some of whom, he believed, had not addressed the committee before, and he was free to say, that he had heard every one with pleasure, those who opposed his amendment, quite as much as the few who had seconded him.

Even his colleague (Mr. Martin) he was not sorry to hear him speaking on this subject; and he hoped he would yet get that gentleman's vote, which would be worth as much, if not more, than his speech was against it.

This was a subject of the utmost importance, and for obvious reasons, he thought some such amendment as this ought to be adopted. He had, therefore, brought it forward, and would now give the committee his reasons for submitting it, and would then leave it to those who felt an interest in the subject, for he had no local interest in it, trusting that they would take it up and support it, and modify it, if need be, in such manner, as to give the community at large, the benefit of some such all important fundamental provision.

Sir, how does the matter of education now stand? In this constitution which is now near fifty years of age, there was what he supposed might be taken as an injunction, a mandatory injunction, that as soon as conveniently may be, the legislature shall provide a system of general education. Well every body knows, that, of the forty-seven years which have elapsed since, he supposed he spoke within bounds when he said that forty-three or forty-four, passed by and nothing was done. It was in vain too, to talk of public sentiment, coming from this county, or that county, urging it on, for the fact was, that one individual, and he honored that individual, greatly for it, such a man as Governor Wolf, stirred up the community at large, to the shameful sense of their negligence of this all important obligation, which was resting upon them, and his successor, as the governor of the state, together with a few others in office, have carried out the system in the state to what it now is. A few individuals, high in office, bringing to bear their official influence, as well as their personal popularity, have stirred up the people and the legislature, and effected all that has been effected within a few years past.

Now, this was the first fact which he had laid down, and his logic should consist of a few simple facts, to which he should proceed step by step. The fact is, that there was a constitutional mandate on this subject, which had been utterly disregarded by the legislature for about forty years, until a few individuals, in high and responsible situations, determined to act in the matter themselves, by official and executive influence, until they succeeded in calling the public attention to the monstrous fact, that there were, a few years ago, near four hundred thousand uneducated children in this commonwealth; a state of things not to be laid at the door of any other state in the Union, unless it be some of those states we are in the habit of speaking of here, in a very slight manner. Certainly a state of things not to be imputed to any of the northern or eastern states.

This fact was brought to light, and what was the reason for the existence of this fact? One reason might have existed in the constitution, but he apprehended that a main reason was, that in every thing which was a

subject of controversy, the prejudices of the different classes of the community were appealed to.

The community in Pennsylvania is unlike any other community, in any other state. It is made up of two classes of people, totally different; and in fact, in some respects, almost hostile to each other; for it is in vain to conceal this, and say it is not so, because the remarks of the gentleman from Indiana, in relation to this being a governor making proposition, and those of the gentlemen from Franklin, that the Scotch Irish were excluded entirely from the gubernatorial chair, proved it, if proof was wanting.

It was perfectly obvious that there are prejudices, that there are feelings, and a line of demarcation almost amounting to popular hostility. In a word, the one-third of the population of Pennsylvania, being German, did not choose to be educated, because they were obliged to be educated by their masters, and because they were obliged to be educated in a language they did not relish, and consequently the children of our state have not received that education which they ought to have received.

Sir, in this I appeal to no German popularity. I feel as I ought to feel towards the German population, but I have said nothing eulogistic of them, whatever others may have said or thought. I treat the matter with perfect fairness—it is my desire so to do.

I did not say that statesmen take up this matter at all with any view to make or unmake a governor, or with any other object in view than the public good. And, for myself, I can assure the gentleman from Franklin, (Mr. Dunlop) that I would rather be connected with solid improvements of this kind in the commonwealth of Pennsylvania, than I would be made the governor of the state three times over. This is my sincere feeling on the subject.

Some years ago when a German governor, who now lives at Williamsport, was on in the city of Philadelphia—at the time La Fayette was passing through—I heard a gentleman say, that he had suggested what he had previously by letter suggested to me, in reference to the German language, and that the Governor assured him that he thought otherwise —that he wished the German language to be merged, and that he saw no necessity for keeping up double schools.

I can myself bear testimony to this fact. It was at that time that my mind was first brought to the consideration of this subject, and, after I had conversed freely with Mr. Duponceau, my opinions were matured to a certain result. And I think that the reason why the least educated portion of the state consists of a population of a peculiar descent, is that they do not choose to be educated under the tuition of others not of their own nation.

Now, with all this, is there any occasion to disguise the fact that the Scotch Irish feeling to the Germans is not altogether of the most friendly character. Permit me here to state, however, that the gentleman from the county of Franklin, (Mr. Dunlop) if I am not mistaken, was wrong in the complaint which he made, that injustice had been done to the Scotch Irish, by the people of German descent. Of the eight governors which the state of Pennsylvania has had, five have been Germans—and at least two or three Scotch Irish (as governors Kane and

Findley)—a very fair proportion, I should think, when taken in comparison with their relative weight in the commonwealth. The charge of injustice imputed to the Germans, in contradistinction to the Scotch Irish, has not, I think, been sustained. Then you have a constitutional provision on this subject of education, which has been utterly neglected for the space of forty years. You have at last got the anxious and manly interposition of the executive of the state, until it becomes (I do not speak invidiously, and I thank God for it) a part of the popularity of any governor, or of any candidate for that office. It has become one of his holds on public opinion, and the result has been, that much good has been effected within the last few years. But until it became so, nothing at all was done; and the reason was that this radical line of demarcation was drawn between all the classes of our people. One third of them being of a certain descent, and the others of another descent, and there being a natural feeling of not the most conciliatory kind, between persons who do not speak the same language, the Germans did not choose to be educated under the superintendence of the English. But this is no reason why they may not as well be educated in their own language.

Mr. DUNLOP asked leave to explain. He did not intend, he said, to assert that injustice had heretofore been done to the Scotch Irish—nor did he intend to intimate that any injustice was now being done to them, so far as regarded that portion of our population which was called German; because it would be recollected that he had distinctly stated, that the German population deplored the state of things existing in this commonwealth, as much as it was deplored by the Scotch Irish themselves. He well knew that all the intelligent Germans in the country would deplore very much that we should be under the necessity of selecting none but a German to be the governor of Pennsylvania—as much as they deplored that there should be so constant an appeal to their nationality. He did not know that any injustice had been done, but he believed that such would be the consequence, if the desires of some political demagogues could be satisfied. This was the extent of the idea he had intended to express.

Mr. INGERSOLL resumed. This then, Mr. Chairman, is the evil complained of, what should be the remedy? According to my idea, it is this—that we should not do exactly that which some ten or twelve of these gentlemen who approve the amendment which I have submitted, think best to be done—that is to say, that we should not leave the matter optional with the legislature. The philosophy of my amendment consists in this—that it *compels* immediate action on the part of the legislature by such enactments as they may think proper; and here is an answer at once to the objections of the gentleman from the county of Erie, (Mr. Sill) who has just taken his seat—that is to say, that while the legislature are to be compelled to act in the premises forthwith, they are still to act exactly as they think proper. But they are to press forward the cause of education. All persons, male and female, are to be educated, but if the legislature were to say that no persons shall go to school after the age of fifteen years, except in certain cases, so be it. I do not propose any interference there. My proposition is exactly that which has been made by the secretary of the commonwealth. The legislature *must* act,

but the mode of action is left entirely at large to them—that is to say, they are to give the option to each community according to the predominance of the population in that district—to do as they please, to say whether it shall be a German or an English school, or whether there shall be no school at all; because the legislature is not to impose a school upon a district, if the people do not desire to have any school at all. The legislature is to provide by law, such inducements to the people to accept a school as they think proper, according to their preference; and if the people desire no school at all, I suppose it would be optional with them to have none. Of this one thing, however, I am sure, that, under my amendment, the legislature must act efficiently, and forthwith, throughout the commonwealth. I am aware that my view of the matter necessarily suffers by the isolation of this section; but I have other provisions in my desk, and while these are in reserve, and while I must take up this section by itself, I am sensible of the disadvantage under which I labor in the argument. The subject which I have in view is, to render it obligatory on the legislature to act forthwith, because we all know, by the experience of more than forty years that, but for the benefit of this same thing called popularity, nothing would have been done up to this day, and all your constitutional provisions would have been of no avail, and here let me express the astonishment which I felt at listening to the arguments of the gentleman from the county of Allegheny, (Mr. Forward) and also of other gentlemen, as to leaving this matter in the hands of the legislature. Why did not the gentleman leave the matter of dueling in the hands of the legislature? Why did he insist that we should insert in the constitution of Pennsylvania, a provision that certain individuals who addicted themselves to this barbarous practice, as the gentleman thinks it to be, should be disfranchised? Why was the provision in relation to the militia put into the constitution? Why was it that, after a discussion of a week, a provision was inserted into the constitution to mitigate the system, so far as it affected the tender consciences of certain portions of our people? Do not all these things come within the scope of the legislative faculty; and is there any difficulty in the legislature making laws on these subjects? Why were they made a part of the organic law of the land? Was it not because we were told that it would not do to let this new constitution go forth to the people, unless all these things were made a part of the fundamental law? Were we not repeatedly warned of the necessity of adopting that course? Well—so also as to the subject of education; and I vouch the argument of the gentleman from Beaver, (Mr. Dickey) as being entirely conclusive. He has told us that the fate of this whole school system hung at one time upon the thread of their being in the house of representatives of this state, an eloquent and pathetic man—a man who was opposed in politics to the party which was then in power, and had that gentleman's banner not streamed in light, as did the banner of Napoleon, on a different occasion, when his army was about to be defeated—and when, but for that banner, the whole army might have been destroyed—what would have become of your system of common school education? Sir, that gentleman threw himself into the gap, he exposed in this sacred cause, every thing that was important to himself and he succeeded in saving a system that was in the very jaws of extermination.

Mr. Chairman, I do not feel disposed to risk this system on such a choice. Such an individual may not be in a condition to support it; or we may have no such man on whom we can rely. We should not leave the matter to the legislature. We should not skulk from the performance of that which seemed to be an imperious duty, from the fear that we may lose a little local popularity. We should not fear to assume the responsibility of saying to the people of this commonwealth, "you shall be instructed,' or of saying to the legislature "you *shall* at all events set before the people the opportunity of being instructed, if they choose to be instructed." We should not fear to say to the people, "you shall not be dependent on the action of the legislature for instruction, but you shall have the privilege to say whether you will be educated or not. For what purpose are we assembled here? We are sent here by the voice of the independent freemen of this commonwealth, to make a new constitution, which is to be submitted to the people for their ratification, or rejection, and it is for them to say whether they will accept it or not; if they should say that they will not accept it, I bow to their majesty, and there at once is an end to the matter. But we know that they will accept at least this feature of the new system; and how do we know it? We know it because the proportion of the acceptants to the non-acceptants of the system of education is as nine to two. What stronger testimony can we have of the public sentiment in this particular? We are therefore, morally sure that this provision, if adopted by us, will receive the sanction of the people; and although a county in one part of the state, or a county in another, may be opposed to it, yet there will be a majority of the people who will go in favor of inserting this provision in the constitution of the land. This, sir, is my conscientious opinion—and this is the answer to ninety-nine hundredths of the arguments which I have heard in opposition to this measure. I do no twish to leave the matter to the discretion of the legislatue; I wish to place the great cardinal principle beyond the reach or control of any legislature; I do not wish to jeopardise the system, by making it dependent on any contingency. It has been said that the whole matter will be endangered by adopting the course I propose. I can not concur in this opinion. The system has been in danger by supineness, and I know that several distinguished gentlemen in office, look to such a provision to allay those prejudices against the system of education, which have descended from the father to the son. Those prejudices, strong and bitter as they are, have to be conquered, but they must be dealt with kindly. The system which we now have, was brought to its present condition in the way I mention, and it is only to be consummated accordingly. I should be very sorry to be in a minority on this subject; but it is my opinion that it would be discreditable in this convention to rise without making any farther provision, than that which now exists in the constitution of 1790—or that we should leave the matter to be acted on by the legislative body. The gentleman from the county of Beaver, (Mr. Dickey) has told us that, during one year, the law passed the senate without a single dissenting voice—and yet that, during the very next succeeding year, a majority of two to one of that body was found in opposition to it. Are we to have no lesson from such experience as this? Or, are we again to leave the system exposed to such contingencies? Suppose that such a case as that referred to by the gentleman from the county of Beaver, should again happen, and that we

were not able to secure the services of some eloquent man in the house of representatives, who would stand boldly forth and breast the storm, what would become of the whole thing? Would it not be lost?

But, say other gentlemen, there is too much detail about this. How, let me ask? I cannot perceive that there is—and this is surely a mistake. There is not much more detail in the section as I have proposed it, than there is in the section of the constitution of 1790—very little more. One gentleman has talked about its verbiage. I will yield it to his consideration, and if he can put it into a more acceptable form than that in which it now appears, I am willing that he, or any other gentleman, should do so; and I shall feel myself under great obligations to him. Or, if he can suggest any modification fixing the same thought in a fewer words, I am willing to accept it. But I do not perceive how it can be done. As to those two amendments (and it is to be recollected, that we have some five or six of different kinds before us,) how do they compare with each other? That which has been offered by the gentleman from the county of Susquehanna, (Mr. Read) is, in my view, lame and inconclusive. I will again bring it to the notice of the committee. It declares "that the legislature shall provide by law for the education of all the children and youth of this commonwealth." Now, after all the experience which we have had, it appears to me that such a provision as this would be worse than futile. What says the amendment of the gentleman from the county of Luzerne, (Mr. Sturdevant?) "It shall be the duty of the legislature to provide for the establishment of such schools throughout the commonwealth as may be deemed necessary, in which all persons may be taught at the public expense." I admit that, in many respects, this amendment is better expressed than my own, but after all, I do not believe that it will answer the purpose. By this amendment, the legislature may provide by law for the establishment of schools when they please; it may be fifty years hence.

For my own part, Mr. Chairman, I deem it all important that instruction should be provided for in the German or English language by a constitutional provision; and here let me say a word, speaking upon the basis of a fact. The gentleman from the county of Mercer, (Mr. Cunningham) gave us the testimony of a clergyman, a resident in his neighborhood, as to the disinclination to propagate the German language, and the first time that my mind was ever opened on that subject, was at the time I have reference to, and where the same opinions were expressed by Mr. Duponceau, to the governor of the state. On the other hand, a gentleman has placed in my possession a list of fifteen German congregations in one county of the state, where nothing but the German language is preached. We know that the German language, in all denominations and sects among the German people, predominates in the pulpit; we know that, at the very last session of the legislature, a bill was passed requiring that all laws should hereafter be published both in the German and the English languages; and we know also that the gentleman from the county of Crawford, (Mr. Shellito,) said, in the course of his observations, that he spoke as the representative of the German interests, for the purpose of informing us that various constructions are put upon this law, and that by some of those constructions the German population are incommoded and made dissatisfied. In the face of such facts as these,

are we to deal with the mere speculative opinions of the gentleman from the county of Mercer? I should suppose not. I presume that a great portion of the members of this body, not being of German descent or connexion, may think that it would be better for us to merge the German in the English language. But what right have we to do so? Where do we find authority for such an act of despotism? Who is the conqueror, except it be Nicholas of Russia, in the instance of the poor Poles, who would oblige his victims to un-learn their mother tongue, and to learn another? I consider that the statement which has been made by a gentleman who owns himself to be the representative of the German interests on this floor, should furnish conclusive evidence to the minds of this convention, that the adoption of the amendment I propose, is requisite and proper for the welfare of a considerable portion of our people. If the gentleman makes this statement, and no man is found to contradict it, I feel it to be my duty to act accordingly. We have no right to speculate on the feelings and the prejudices of these people; on the contrary, we ought to indulge these feelings—to defer to those prejudices—in order to ingratiate ourselves with them; and thus, to coax them to do that which otherwise they would not do, by giving them the option to do it in such a way as they may think proper. I say, Mr. Chairman, that it is not right—it is not consistent with our system of government—it is not tolerant—it is not politic—it is not just, that we should refuse to give the broadest option to one-third of our own people to learn any other language which they may think proper to learn. All I want is, that they should have the option to be educated either in the English or the German; if they choose the English in preference to the German, it is all right enough. I am utterly ignorant myself of the German language—but I think that we owe it to this people—not as a matter of popularity—not as a matter of governor making—but with a view to consult their interests and their feelings—that we should say to them, if you will learn, learn as you please.

As to what has been said of the other languages, I can not but express my surprise. What other language is there in this state, except the English and the German? Will any gentleman say that there is any other? A member from the city of Philadelphia, (Mr. Chandler) did indeed say something of the Welsh language, and I think he said something about the remote or future importance of the Spanish language. In one or two counties in the state, there are Welsh descendants—and who still retain some of the habits and attachments which came with them from Wales. And, sir, is this a reason why we should incorporate with the constitution of Pennsylvania, a provision that instruction shall be given in the Welsh language.

Mr. Chandler, of Philadelphia, rose to explain. He had asserted as a positive fact within his own knowledge, that there was such a people who learned the Welsh language.

Mr. Ingersoll, resumed. I defer Mr. Chairman, to the veracity of the gentleman from the city of Philadelphia, but I doubt the accuracy of the statement; I should wish that the gentleman should be perfectly sure of his premises, before he makes the assertion. He may have heard so; and he may believe the fact to be so—of that I do not entertain a doubt. But even granting that the fact is so, I have no objection myself that he should put in another language.

But how is the fact in other states of the Union? Look, for instance, at Louisiana! What would be thought in that state, if any man was to be compelled to attend schools which were taught only in the English language? Could such a law be enforced! It is not a township or a county, or a mere handfull of the people, that we have got to deal with; we have to deal with a large proportion of the great mass of the people of our commonwealth—amounting, I believe, to some fifteen hundred thousand people. Yes, sir, five hundred thousand native or naturalized Germans, (and I know of no difference between native and naturalized)—with German habits and German association. What have we heard this very morning? Have we not had an application that a provision should be placed in the constitution, authorizing courts to be held in the German language? And what better demonstration could we have of the state of feeling on the subject? The whole aim and end of my project is so to deal with the matter, as that the whole people may be educated—men and boys—women and children—black and white. If the Germans choose to be educated in English schools, let them do so; but if they will not go to any school at all, unless they are to be taught in the German language, let them have the privilege. If we do not adopt some such course of policy, a governor of the commonwealth forty years hence may say, as Governor Wolf said, three or four years ago, or at least, as he was represented to have said—that there are three or four hundred thousand uneducated children in the state of Pennsylvania.

Mr. Chairman, many more objections have been made to my proposition than I consider it necessary at this time to answer; because I wish to concentrate my objections on the particular purpose I have in view—and which is simply to incorporate into the constitution, a provision making it absolutely imperative on the legislature to act upon this subject speedily and decidedly—not saying *how* they shall act, leaving that to their discretion—but giving them as broad an option as possible—and giving to the people the option of one language or another—of a school, or no school, if you please—but still taking advantage of the time to wipe off what has been a deep stain on our character, and a great disadvantage to our citizens, and to go forward for the time to come on a higher and a better road.

The argument which has been brought forward here, that we should take heed lest we make more haste than speed, is not applicable. I do not believe it possible that we can do so, because the gentlemen who have expressed an apprehension of such a result, have forgotten to advert to the fact, that the constitution which we are about to form is to be submitted to the people, and that they may say at the ballot-box whether they will accept it or not. Where then is the ground for apprehension? May we not act decidedly on this subject, and without any doubts or fear as to the result? If the people do not choose to accept it—there, as I have said before, will be an end of the matter, and we shall have no farther concern with it.

These, Mr. Chairman, are my views; I have given them fairly and frankly; I have discharged my conscience. I have done what I said, and even more than I said; for I thought that there were other gentlemen in this body who should have taken the part which has fallen to my lot.

But, finding that the first section of this article—which is the best of the whole matter, was passed upon in great haste, and entertaining a fear that nothing at all would be done, I felt it to be my duty to move for a reconsideration of the vote on that section—in order that my amendment might be submitted, as it has been, and in order that we might take all the propositions together, and carve out from them such a system as might best promote the one general object which we all have in view—the education of our people. I was not willing for my own part, that this convention should adjourn, leaving the provision as it is, the "lame and impotent conclusion," of the constitution of 1790. Let those do so, who think proper. I will not be one of the number.

Mr. CHANDLER, of Philadelphia, rose to say a few words in explanation. He wished to state to the gentleman from the county of Philadelphia, (Mr. Ingersoll) what he (Mr. C.) knew to be the fact, in reference to the Welsh communities of which he had spoken.

There were two Welsh congregations in the county of Cambria, to whom the Welsh language was preached. There were also certain parts of the county of Allegheny, in which the language was preached. And, from a gentleman with whom he had just now been in conversation, he (Mr. C.) learned that there was also such a congregation in the county of Schuylkill. So that there were Welsh congregations in Cambria, Delaware, Allegheny, and Schuylkill.

I trust, added (Mr. C.) that the convention will now understand that I have spoken according to my knowledge.

Mr. WOODWARD rose, he said, simply for the purpose of corroborating the statement of the gentleman from the city of Philadelphia, (Mr. Chandler.) He (Mr. W.) would add that there was also such a congregation in the county which he had in part the honor to represent, (Luzerne.)

On motion of Mr. COX, the committee rose, reported progress, and had leave to sit again. And a motion having been been made that the convention adjourn over to Monday.

Mr. EARLE, hoped that the convention would avoid all unnecessary waste or consumption of time. Complaints he said, had been made from time to time, by the conservative members of this body, of the waste of time and money in the prosecution of our labors. Articles had also been made in the conservative newspapers—he had read two within the last two days—complaining of the waste of time and money—and calling upon the convention to adjourn—that it would either finish its labors, or go home. He hoped the friends of reform would make a point, when any gentleman attempted to increase the expense or procrastinate the proceedings of this body, to call for the yeas and nays, that it might be known to the people of the commonwealth, that it was the work of a conservative and not of a reformer. He therefore asked the yeas and nays on the motion to adjourn over.

Mr. DUNLOP said, that one of the prettiest commentaries on the speech of the gentleman from the county of Philadelphia, (Mr. Earle) was that he had not himself been here for the space of two weeks at a time.

Mr. FORWARD suggested, that the gentleman from the county of Philadelphia, (Mr. Earle) should take an account of the labor of each member who made complaints—in order that it might be ascertained how many days he had been here, and how many days he had been absent.

Mr. EARLE, in reply to Mr. Dunlop, insisted that he (Mr. E.) had attended here more hours than three-fourths of the members.

Mr. BROWN, of Philadelphia, said he hoped the gentleman from the county of Franklin, (Mr. Dunlop) did not mean to state that the absence of his (Mr. B's.) colleague for two weeks, had retarded the business of the convention. He (Mr. B.) thought the gentleman's absence had accelerated it.

After considerable desultory conversation, the hour of one having arrived, and the question on the motion to adjourn over to Monday not having been taken;—

The CHAIR answered that, as the hour appointed by the order of the convention, for its daily adjournment had arrived, it was his duty to adjourn the convention until this afternoon.

So the Convention adjourned.

SATURDAY AFTERNOON, NOVEMBER 11, 1837.

Mr. CUNNINGHAM, of Mercer, moved that the Convention do now adjourn, and the question being taken on the motion, it was decided in the negative.

Mr. EARLE expressed his regret that certain remarks he had made this morning, were made so freely as to be supposed to reflect on any gentleman, the more especially as regarded the gentleman from Philadelphia county, (Mr. Brown.) He did not mean to assail that gentleman, nor any of the conservatives generally. But he would say, that his colleague had assailed him now, not for the first time.

Mr. BROWN, of Philadelphia county, said he had meant no personal attack.

Mr. EARLE made a remark or two in reply, explanatory in its character.

The question being on the giving leave to the committee to sit again on Monday, it was decided in the negative; yeas, 40, nays, 66.

Mr. BALDWIN, of Philadelphia, moved that the convention do now adjourn; and the question being taken, it was decided in the negative.

SEVENTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The question being on the motion of Mr. READ, of Susquehanna, to

amend the amendment of Mr. INGERSOLL, by striking out all after section one, and inserting a substitute.

Mr. Cox, of Somerset, rose to make a few observations. When the amendment to the amendment was first presented, he had been inclined to think he should vote for it, as there were many things in the proposition of the gentleman from Philadelphia, which he did not like. He had now come to a determination to vote against it, in order that he might move some amendments to the amendment of the gentleman from Philadelphia, which he had prepared. He would propose to amend in the form he had written, because he thought the amendment, in its present shape, was too imperative, and was, on that account, calculated to render the whole amendment unpopular with the people, together with all the other amendments they might be called on to submit. He would leave in the words "English or German," but would introduce in addition, "or any other language." He desired to adapt the section so as to provide for a general system of education. Any thing compulsory in its tone would not be well received by their constituents. The first school law which passed in this commonwealth, was on the recommendation of Governor Wolf, and it was alleged by many, that it compelled the people to accept its provisions, and on this account, it became unpopular. In 1834–5 a law was passed, and in 1835–6 a general law was enacted, which was accounted good; and which was accepted by most of the districts. All was left open to the people, and with a view to make it acceptable.

Mr. Cox said it was provided in the law of 1835–6, that the school system should be submitted to the several districts for their ratification and acceptance, at their discretion, every third year. Every third year they could say whether they would take it or not. That provision was in the thirteenth section of the school law of 1835–6. The question was to be decided on by the people of each district, whether they would accept the system or not. Meetings were to be called by advertisement, and they shall decide by ballot whether they will accept the school system in application to themeslves. That this was good policy, was sufficiently evident from the fact, that a majority of the districts which at first refused to adopt the school system had adopted it since; and if the system should be persevered in, without any thing to make it unpopular, he had no doubt that ultimately all the districts would come into it; and in that case there would be no necessity for any alteration of the constitution on the subject. But, if, on the other hand, the districts should persist in refusing to take the present voluntary system, then the compulsory system, now proposed, would be still less acceptable. The impolicy of going into any detail on this subject, and of providing for the immediate establishment of a compulsory system, after a particular plan, was amply proved by past experience, and especially by the unpopularity of the school law. The people of the state were almost ready to rise in arms when that law was passed, against the poll tax which it provided for—a tax which was authorized to be levied, and which was not to exceed fifty cents. It was the intention of the legislature, at the time, to leave it to the discretion of the county commissioners, whether to raise the sum by poll tax or otherwise; but it was the opinion of the Germans, that the law provides that at least some portion of the sum should be raised by

poll tax, Some districts refused to receive the system on this account. He hoped that any provision now made, would be put in words so plain that there would be no misapprehension of the meaning. But, if we undertook to go into any details, the inevitable result would be, that the provision would be rendered indefinite and unacceptable, and it would tend to prejudice, instead of promoting, the cause of education. There were many things in the amendment which were well calculated to make the school system, established in uniformity with it, very unpopular, and to prevent its acceptance by the people of the school districts. The word "immediately" in the first line, necessarily implied a revision of the present system. Its manifest and direct and imperative order to the legislature, was, that some alteration of the present school law should be made, and that some new provisions should be forthwith adopted under this clause of the constitution. This would not be acceptable, because most of the districts were well satisfied with the present school law, and believed it to be as good a system as could well be devised. Besides, they are reluctant to change a system which they have tried and approved, for an experiment, untried, and of doubtful success. But another very prejudicial effect of this clause, would be to increase and aggravate the opposition now made in some of the districts to the school system. Those districts which might ultimately come into the present voluntary system, and which undoubtedly will come into it, after a time, would be prevented from it by this alteration; and, if forced to accept the new system, they would do it with an ill grace. In the second line the amendment says, that the legislature shall "establish schools in school districts, in every county in the state." He supposed that under this provision, the legislature would be bound to force every district to accept and adopt the school system. The language plainly enough bore that construction, and it could have no other meaning or construction. Many districts, he was certain, would not submit to any thing of the kind; or, if they did, they would hold in hatred and contempt those who made the law, or aided in getting up the provision on which the law was framed. It would make the whole system of school education unpopular and deprive us of those rights, and that degree of liberty in such matters which every free people claim, and are entitled to. He was much surprised that the very intelligent gentleman from Philadelphia county, should have offered such an amendment. This was a question upon which our people were capable of judging for themselves, and upon which they had an undisputed right to judge.

The question ought to be left to their understanding and good judgment. We were told much of the intelligence and independence of the people, and he was always willing to give them credit for it, and to confide in their judgment. But why could we not leave them to decide upon this matter, and to say when they are ready to receive a school system? They decide upon other questions of equal moment and interest. If the people are so honest, and so intelligent, as we believe them to be, why shall we provide that these schools shall be "immediately" established, in every district? Why not provide that they may be established; and leave the time, and the manner of their establishment, to their own good judgment and discretion? Let us say, in the fundamental law, that a school system may be established, and then we may safely leave it

to the people, and to their immediate and responsible representatives, the legislature, to devise and carry into effect, a proper system.

If the discretion of the people must be limited as to one thing, why not as to another? If they are competent to decide, every seven, ten, or fifteen years; whether the judges shall be discharged or re-appointed, why shall they not decide also upon this less difficult question? If they are intelligent enough to know when a judge has discharged his duties faithfully, are they not also capable of judging as to the details of a school law? Surely it is not a question of less difficulty whether a judge is competent for his office, than whether, and when, and how, the common schools shall be established.

He would also strike out the words—"at the expense of the commonwealth." He objected to this provision decidedly, and also to the other phrase which had been suggested, viz—"at the public expense." In whatever way the schools were supported, it must be at the public expense, no matter in what way the tax was imposed or collected. To say that the expense shall be defrayed by the commonwealth seems to be intended to induce the people to believe that they are not to pay the money out of their own pockets. This was nothing more than whipping the devil round the stump.

The money must come, directly or indirectly, from the people. First, it must be paid in before it can be paid out; and it had better be raised at once by direct taxation, because the people would then know what they pay. He did not think that we ought to say how the money should be raised, or where it should come from. The legislature was the proper body to determine that. They have determined it heretofore, in every case, and they were able to do it, and might do it again, and on all occasions hereafter. That provision, in regard to the source of the money which was to defray the expense, might as well be left out, as it could do no good; and, in his opinion, it was improper to retain it, or any other matter of mere detail. There were some other objectionable clauses and words in the amendment. He would suggest the propriety of striking out all after the word "or," with a view to leave it to the legislature to provide for instruction in German, or any other language, as well as English; and, for this purpose, to add to the paragraph the following:

"Any other language that may by law be directed." The whole amendment would then read as follows:

"SECT. 1st. The legislature shall provide by law for the immediate establishment of common schools, in school districts in every county of the state, wherein all persons may receive instruction, at the expense of the commonwealth, *at least, three months every year*, in the English, or such other language as may by law be directed."

Mr. INGERSOLL said he accepted the suggestion as a modification of the amendment.

Mr. COX continued. He was very glad that the gentleman had accepted that amendment. When the present school law was before the legislature, he offered an amendment to it, which some of the gentlemen, now in favor of this amendment, then offered. It was that the German language should be taught by qualified teachers, when it should be thought proper—by the people. The object of this was to enable the

people to have their children taught in the German language, whenever they thought it necessary or convenient.

The adoption of such a provision would have convinced the Germans, that no hostility or unkindness, was felt toward their language, or race, and it would, in a good degree, have reconciled them to the adoption of the school law, the blessings of which would, in that case, have, we know, been different throughout the commonwealth.

He was satisfied that the rejection of this amendment tended very strongly to render the law unpopular with the Germans. The greater part of the Germans, in his district, understood and spoke the English language. But, still, they were anxiously desirous that their children should also receive a German education. They retained a strong and very natural attachment to the mother tongue, and did not like to see it neglected or disused. They wished their children both to write and speak it, and he thought it no more than right, that every proper facility, for this purpose, should be allowed to them. Though some gentlemen affected to consider this a mere popularity trap, yet it was a thing just and proper in itself; and, if the Germans wished it, it was certainly due to them that it should be put in the constitution. He did not doubt that the legislature would have ample power over this subject, and be able to provide for German as well as English education, in the school districts, without any express constitutional mandate for instruction in German; but, still, a constitutional provision to this effect would have a very good effect in two ways:—it would, in the first place, have a strong tendency to render the amendments to the constitution popular, and especially among the Germans; and, in the next place, it would also exert an influence upon the legislature itself.

Without some such provision, the legislature might neglect the measure; but with it, they would, of course, be under the necessity of making the required provision for the education of children in German, wherever it was desired. He should, therefore, vote against the amendment of the gentleman from Susquehanna, (Mr. Read) and he would propose to amend the amendment of the gentleman from Philadelphia county; (Mr. Ingersoll) in the manner he had before indicated, and if it was acceded to, he would then, with pleasure, vote for the whole proposition. He would urge its passage, in the form which he had suggested, having no doubt that it would be found acceptable to the people and practically beneficial. But he was satisfied that, in its present form, it would not be acceptable. He believed also, that, if the report of the committee, providing for a system of education, at the public expense, and without any provision extending the benefits of the system to the Germans, who were desirous of keeping up their own language, should be adopted by the convention, it would greatly endanger the adoption of any other of the amendments which the convention might agree upon and submit.

It would not be supposed that the legislature would repeal a law which was so popular as the present school law was said to be; and the argument that the legislature, for many years, neglected the exercise of the power enforced upon them by the constitution, was now done away with by the fact, that at last they had used the power, and established a school system in conformity with the constitution. The only thing necessary o be done, in this constitution, was to require a general system of educa-

tion, which should embrace a provision, that there should be instruction in the English language, and such other language as the people might desire. A school law was now in existence, and it was not likely that it would be repealed. All that we had to do was, to put into the new constitution some clause, recognizing the right and duty of the legislature to attend to the subject.

Mr. CURLL, of Armstrong county, said, that he had listened with much pleasure to the different speeches which had been made on this important and interesting subject, and he was pleased to find that no one member of the convention, had raised his voice against the importance of carrying out, to as full an extent as possible, the system of education which had been so happily established in this commonwealth. He had, also examined with much attention the different projects, which had been offered to the convention as amendments to the constitution of 1790; and, notwithstanding the very able arguments which had been submitted by the various gentlemen who presented these propositions, yet there was not one of them which entirely met his approbation.

The amendment to the amendment which was yesterday offered by the gentleman from Susquehanna county, (Mr. Read) comes nearer, to my views than any other—but the modification which he has made does not exactly please me. I have no disposition to attempt to make a speech—I desire merely to say a very few words in explanation of the reasons which govern me in the vote I am about to give.

I am in favor of striking out from the constitution of 1790, all after the word "state," so that the section will read as follows:

"The legislature shall, as soon as conveniently may be, provide, by law for the establishment of schools throughout the state,"—and I am in favor of retaining the balance of the section. I think that this is the best plan which we can adopt. I think that the operation of the word "poor" in the constitution of 1790, and the necessity of its insertion in the new constitution, has been superseded by the establishment of schools for all classes of our people, without any distinction as to rich or poor. I am opposed to entering into any details in the constitution. I am willing to leave the matter entirely in the hands of the legislature. I am willing that the legislature shall continue to have the privilege of extending this system, so far as their wisdom and the experience of the future may point out—without troubling them with any details in this—the supreme law of the land. I am of opinion that any other amendment than such a one as I speak of, will have a tendency to prejudice those other salutary amendmants which I confidently trust we shall be able to submit to the people. I shall not detain the convention with any farther observations. I have expressed very briefly the views which I entertain, and the views which will govern my course in the disposition of this section.

Mr. DICKEY said, that if the convention should determine to strike out from the constitution of 1790, the words "in such manner that the poor may be taught gratis," as had been indicated by the gentleman from the county of Armstrong, (Mr. Curll) it would be in effect, to let go that constitutional requisition which, as the constitution now stood, was imperative on the legislature, and which, at all periods of its history, had been complied with—that was to say, complied with measurably.

It had been alleged, from time to time, that the insertion of the word "poor" in this part of the constitution, was the principle reason why the parents of poor children had not generally availed themselves of the advantage held out to them, by the establishment of schools, in pursuance of various acts passed by the legislature, and intended for the benefit of poor children. And here he would beg leave to correct the gentleman from the county of Philadelphia, (Mr. Ingersoll) in what had fallen from him in respect to the common school system. He could not agree with the delegate that there was not an injunction on the legislature to establish common schools. The language of the constitution was,—"the legislature shall, as soon as conveniently may be, provide by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis." By the act of 1809, the poor are to be taught gratis; and great sums were contributed for that purpose during that year. If the convention should let go this constitutional provision, the legislature might not think it imperative on them to carry into effect, the 19th section of the common school law. The consequences of getting rid of the section now under consideration, would, in effect, be to repeal the act so far as respects the non-accepting districts. He did not feel at all disposed to consider what the act would be, apart from the constitution, or indeed, in any way to interfere with the school system of 1809. He greatly feared that if we attempted to make any alteration in the section now under consideration, we should be in great danger of disturbing, if not overthrowing the school system altogether. It was to be recollected that in 1840, the question would come up again, as it had in 1837, as to whether the school system should be accepted, or continued. If, however, the convention should now abolish the constitutional injunction on the legislature, that body would have to decide the fate of the school system.

Mr. CLARKE, of Indiana, had been informed by a delegate, that he had yesterday fallen into an error in mentioning the German place of worship in Westmoreland. It appeared there were others besides those he had enumerated. There was another piece of history that he would relate,— not that he wished to tear a leaf of the chaplet from the brow of the gentleman from Adams, (Mr. Stevens) who honorably threw himself into the gap, when the bill of 1835 was in the house, and saved it. Governor Wolf had declared that he would veto the bill, for he had risked his popularity on it, and was determined to sink or swim by pursuing that course, however unpopular it might be. Under these circumstances, the friends of the administration joined cordially with the advocates of education, to prevent the governor from being brought in collision with the representatives of the people. The gentleman from Adams, and other friends of the school system, lent their aid, and thus preserved the school system. He said this in defence of the late governor.

Mr. SMYTH, of Centre, would be sorry to do any thing that would bear injuriously on the interests of the poor. He thought the opposition of the gentleman from Beaver, (Mr. Dickey) against any alteration of the section, rested on ill-grounded fears. He entertained no doubt but that the legislature would do what was right on the subject of education, and see that the interests of the poor were attended to. He certainly had a right to trust to the good intentions of the legislature.

Mr. DICKEY would be as willing to trust the legislature as the gentleman himself, for he had no doubt that they would provide for the education of the poor. But, if we took away the constitutional injunction, we left the matter entirely at its discretion, which might sometime or other be lost sight of. We ought not, therefore, to let go the present section.

The question was taken on Mr. READ's amendment, and it was decided in the negative; yeas, 24, nays, 83.

YEAS—Messrs. Banks, Barclay, Brown, of Philadelphia, Clarke, of Indiana, Cleavinger, Craig, Crain, Crum, Cummin, Donagan, Foulkrod, Fuller, Gilmore, Hyde, Lyons, Magee, M'Call, Miller, Nevin, Overfield, Purviance, Smith, Taggart, Woodward—24.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Bigelow, Bonham, Brown, of Northampton, Carey, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Cline, Coates, Cope, Cox, Crawford, Cunningham, Curll, Darragh, Denny, Dickey, Dillinger, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Fry, Gamble, Gearhart, Grenell, Harris, Hastings, Hayhurst, Hays, Hellfenstein, Henderson, of Allegheny, Hiester, High, Hopkinson, Houpt, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Maclay, Mann, Martin, M'Cahen, M'Sherry, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Riter, Ritter, Rogers, Royer, Russell, Saegar, Scheetz, Sellers, Seltzer, Serrill, Shellito, Sill, Smyth, Snively, Thomas, Todd, White, Young, Chambers, *President pro tem.*—83.

Mr. WOODWARD said as his colleague, (Mr. Sturdevant) was indisposed and absent, he rose for the purpose of offering his amendment, which was to be found on the printed files of the house. He then moved to strike out the amendment of Mr. INGERSOLL, and insert the following in its place: "It shall be the duty of the legislature to provide for the establishment of such schools throughout the commonwealth as may be deemed necessary, in which all persons may be taught at the public expense."

Mr. W. then said that in order that his colleague might have the opportunity of submitting his views to the committee on Monday, he now moved that the committee rise.

The motion was agreed to; and,

The Convention adjourned.

MONDAY, NOVEMBER 13, 1837.

Mr. CLINE presented a petition from the citizens of Bedford county, on the subject of allowing negroes the right of voting, and against that privilege.

Mr. COATES presented a petition from the citizens of Lancaster county, praying for an extension of the right of trial by jury.

Mr. MEREDITH presented a petition from citizens of Philadelphia, praying that all lotteries may be abolished by a provision in the constitution.

All of which petitions were ordered to be laid on the table.

Mr. KEIM, of Berks, moved that the Convention proceed to the consideration of the resolution postponed till to-day, calling for information from the auditor general.

The motion being agreed to, the resolution was so modified by the mover, as to read as follows:

Resolved, That the auditor general be respectfully requested to furnish this Convention with the last statements of the affairs of the several banks of this commonwealth, as deposited in his office; and also to furnish a statement of the number of banks which have not made returns as required by law, or by the auditor general pursuant to law, and what steps have been taken to require the delinquent banks to make returns; and what dividends or revenue, if any, have been received by the commonwealth, from incorporations not possessing banking privileges.

The resolution, as thus modified, was then agreed to.

SEVENTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The question being on the motion of Mr. STURDEVANT, to amend the amendment by striking therefrom all after the words "Sect. 1," and inserting in lieu thereof as follows, viz: "It shall be the duty of the legislature, to provide for the establishment of such schools throughout the commonwealth as may be deemed necessary, in which all persons may be taught at the public expense."

Mr. BARNITZ, of York, wished to say a single word in explanation of what had fallen from his colleague, (Mr. Bonham) who had stated, that in his district, the schools had been anglicised, and English schools now are established there. There was no doubt that such is the fact. The gentleman was almost a stranger in York county; having recently settled there, he was not conversant with the manners of all the districts. That gentleman's district, said Mr. B. joining mine, coming into the suburbs, the constant intercourse which has existed, has assimulated the habits and manners of its citizens and those of the town. This was no doubt correct. The English language prevails there, and the intercourse of society is carried on without any inconvenience. But the places to which

I referred, are in the southern part of the county; and those who are acquainted with that part, know that through the whole of that section, the people are almost entirely strangers to the English language. We may as well have these schools in the Greek language as the English. This is a fact, well known to all those who are acquainted with the county. Mr. B. went on to say, that he had no connexion with the administration of the school law in York. With respect to that law, in York and other German counties, it had not been favorably received. The Germans had looked upon it as an innovation, and an interference with their religious and civil rights, and therefore, did not look upon it favorably. The amendments which had been since made, had removed their fears, and in a great degree reconcilled them to the measure. And as it has now become the established policy of the state, even these counties will perhaps accept of the law, if some improvements should be made in it. What they shall be, I am not informed, but there is a great complaint of the inequality of the burdens on the citizens. If the law was to be amended in this respect, there would be an increasing disposition among all citizens, to produce an acceptance of the law, and nothing would have a more powerful influence in bringing about this effect, than the establishment of schools of education in German.

Mr. BONHAM, of York, explained, that with regard to the remarks he had made on Saturday, he had stated that to his knowledge, there was not a German school in his district. His information on the subject was much more limited than that of his colleague, although he was not quite so much of a stranger as that gentleman had represented. Twenty years ago, he had married in this district, although he had not resided there until within the last few years. He had heard no complaint. His own impression was, that under the school law, a preference would be given to the German language. The directors might introduce it if they thought proper. He was apprehensive that the agitation of the question might disturb the people of the county, and he thought the better way was not to impede the progress of the law. It would seem from the remarks which had been made, as if every one who opposed the introduction of the word German, was opposed to the interests of the German population. It was not so with him—it was his wish to promote their interests But we who take this course, are opposed to the insertion of any particular language, and desire to leave it open, and optional with the people, that they may determine whether they will have their children taught in English or German or French; and that thus it may be regulated, without the insertion of these words in the constitution. He was willing to go for any thing which was best calculated to promote the object of all.

Mr. STURDEVANT, of Luzerne, would not have risen to say another word, but that the amendment was offered by himself, and some explanation seemed to be called for. He was sensible of the importance of the subject, and hoped it would be discussed at large. After so many weeks had been spent on other articles, he should be sorry if we could not find time to give serious consideration to this. The constitution, in reference to this great question, was a dead letter. The commonwealth was rolling in darkness, far behind every other state, and this was solely to be attributed to the defectiveness of the constitutional provision, which left it optional with the legislature. It was only within a short time, a very

few years, that the friends of education had ceased to be a minority in the state. Engaged in other occupations, the energies of this great commonwealth had been directed to the rapid advance of her system of internal improvements—every thing but the important subject of education. No appropriations for this object could be obtained until within the last few years, and the reason was, that, in the opinion of the legislature, no provision was required. We are all ready to acknowledge that this is the most important of all subjects; yet it was now left to the last and seemed to occupy the least of our attention; and if we now pass over this article without such an alteration as is required to give efficiency to the system, we shall be excusing the legislature, acknowledging that the course they have pursued, was a proper one, and admitting, what no one in his senses will admit, that the legislature have, on this subject, acted judiciously. The eastern states had gone far ahead of us. Their children are well educated under a wise system. The school system, which is well calculated to give the benefits of education through the commonwealth, has become, under the present article in the constitution, objectionable to the people. He knew that the objection among the people was, that the law was onerous in its operation, and failed to accomplish what it intended. On this account it had become most unpopular. Every thing ought to be done to remove this hostile feeling, and to render the system popular, and acceptable to all. No one ought to be excluded from its benefits, but the children of all, rich and poor, should be placed on an equality. He had offered his amendment, because he did not feel safe in sustaining the proposition of the gentleman from Philadelphia county, and he did not think the report of the committee sufficient. He objected to the amendment of the gentleman from Philadelphia, because the word German was introduced. Yet, to vote down that, might subject us to the charge by the Germans, of having a determination to vote down the German language. He could wish that the legislature should establish such German, French and English schools, as they may think best, at the public expense, for it should be at their expense. The subject ought not to be left entirely at the option of the legislature, as before. He considered that the establishment of a German school would be objectionable. There were but few Germans who desired that there should be any such. They wished their children to have an English education. They would prefer to have their children thus educated, and would not be satisfied until they can attain this object. The German poetry is most beautiful, and is admired by every man of taste and feeling, but there are no German books here, and, the Germans themselves, feel the propriety of giving their children an English education. All the proceedings of the courts are in English; all the public records are in the same language; and all who seek to rise must understand English. They may also understand German, but they must acquire the language of the country in which they are residents. However attached we may feel to the German language, English must be the prevailing language of the country. We cannot teach the German language to a German, but we may teach German to one of our own tongue. The Germans would, no doubt, regret to see their language pass away, but still they would desire their children to understand the English language, and to have an English education, although they might still wish them to talk in German. But this is not of much importance here. He would like to hear French spoken. That

language would come into use with those who could afford to obtain it. But it could never become the prevailing language. The English language must pervade our country.

However desirous we may be to perpetuate the purity of the German language, we cannot maintain its purity by any schools we can establish. That language can be of but very little service, except to those who are desirous of reading the German poetry and understanding it. But it is not to be expected that it will ever be universally spoken. If we reject the amendment of the gentleman from the county, it may be said that we are desirous of doing away with the German schools. But it is not so.

He (Mr. S.) had introduced his amendment, for the purpose of doing away with any such impression. He was not tenacious of his amendment. He was aware that his information on the subject was limited, and he would be more disposed to adopt any plans which might be offered by others, than to press his own.

Mr. FRY, of Lehigh, had not intended to say any thing on this subject, and he would not now say much. He had generally contented himself with giving a silent vote. But he was compelled, by the course which had been taken, to say a few words. Here are three or four amendments offered, and one of these provides that the English and German languages shall be taught. He believed that neither of these amendments ought to be adopted. He had read the report of the committee very carefully, had found nothing objectionable in it, and thought it ought to be adopted. This report had already been passed upon by the convention, and adopted by an almost unanimous vote. The next morning, it was moved to reconsider that vote, because the gentleman from the county of Philadelphia was anxious to offer an amendment. He believed, notwithstanding all this, that we should get along best by leaving the old constitution as it is, only adopting the report of the committee. It is not possible for us to force education upon the people. He had always been as anxious as any one to promote a system of education, but he could not coerce it. He was a member of the legislature, when the law was passed to create school directors, to provide rules, fix schools, and to go into a system of education, without any public funds being appropriated for the purpose. This law became so odious, that petitions came in from all quarters, and until it was repealed, the people would not rest satisfied. The constitution says, the children of the poor shall be taught *gratis;* and the legislature had now created a system, which had been adopted by four-fifths of the districts, although there are still some districts opposed to it. Even in the districts where the system had been adopted, there was some opposition; and this ought to make us careful how we act. Any thing introduced into the constitution, of a compulsory character, would have the effect of putting down the system. He thought the report of the committee came nearer to the proper thing, than the old constitution, and he should vote in favor of it. In some counties of the district in which he resided, the people had adopted the school law. It was never supposed by them, that they were prohibited from having German schools. Was it to be supposed that, when they contributed their own money for the support of these schools, they could be made to educate their children in any particular way? The people would educate their children as they

pleased, when they spent their money for that object; and if any thing compulsory on the subject, should be introduced into the constitution, they would not adopt it. They would reserve the right to educate their children according to their own pleasure. He was unwilling to say any thing about the German language, which had been much eulogized; and the letter read by the gentleman from the county, (Mr. Ingersoll) from such a highly respectable source, was honorable testimony in its favor. But he would recommend to gentlemen, to let this matter alone, and to avoid inserting in the constitution any clause compulsory in its operations. He would not say "*shall*" be the duty of the legislature. As public opinion progresses, we could, from time to time, pass suitable laws to keep pace with it. As to the amendment of the gentleman from Philadelphia, which required the immediate establishment of schools, he objected to it, on the grounds he had stated.

You can (said Mr. Fry) accomplish nothing by force. The legislature has commenced, and has done all that could be done during the time; and I am of opinion, that the less we say in the shape of amendment to the constitution, the better it will be for the cause of education. I believe that any injunction which we might now place in the fundamental law of the land, will be injurious in its consequences, and that it will rather tend to put down the system than to accelerate its progress. The people are able to judge for themselves—they will construe the laws and the constitution in their own way, and they will act accordingly.

I shall not, therefore, vote in favor of the report of the committee. I have no objection to say that the legislature "may" as soon as conveniently may be, provide for the establishment of schools, and that all the children of the commonwealth "may" be taught at the public expense. In all this there is nothing compulsory. But, even under the constitution of 1790, the legislature are not prohibited from doing thus much; and I should have no objection to leave the provision as it stands in the old constitution. I am willing, in short, to do any thing which does not, in my view, tend to interfere with the system itself. And I hope that we shall not adopt any of the provisions which have been offered.

Mr. Porter, of Northampton, said, that he rose for the purpose of correcting an error, into which his friend from the county of Luzerne, (Mr. Sturdevant) had fallen, in relation to the progress of the system of common school education in the state of Pennsylvania, and the appropriations which had been made therefor.

I find (said Mr. P.) on reference to authentic documents, that the following appropriations have been made by the state of Pennsylvania, at different times, for the purposes of education:

To academies,	$241,000 (in money and lands.)
To colleges,	224,000 (in money.)
Lands to do.	15,566
Lots do.	4,000
Total,	$484,566

Whether this was the most judicious appropriation which could have been made, I do not now undertake to say; but the character of the state has been in a degree reduced by neglecting this common school system.

In some remarks which I submitted the other day, I advocated the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) and I declare myself willing to vote in favor of any other proposition, which will remove all doubts from the minds of our citizens as to their right to give instructions, in such language as may be desired in each respective district. I hope that we shall accomplish that object, before we dispose of this question finally.

Mr. INGERSOLL then modified his amendment, by striking out therefrom the word "immediately."

Mr. MERRILL said, he was not about to debate this question, but he had risen merely to sate a fact in relation to the progress of public education.

At the end of twenty years (said Mr. M.) from the adoption of the school law in the state of Connecticut, it was found by the report of the superintendent of the schools, that all the counties but one had adopted it.

This fact was communicated to me by the superintendent himself. Now, our law has been in operation only four years—and I do not doubt, that before the expiration of any long space of time, our state will enjoy the blessing of a sound, substantial system of education in every part. We have no right to complain of the progress we have made thus far; we have done well, and with proper care and management, we shall be able to accomplish all that we could desire. It is certainly a fact that, notwithstanding the supineness which has been manifested in regard to a system of education for many years past, still it has never been lost sight of, and that although it has not been acted on, its importance has always been appreciated.

There is one point which presents itself in reference to the public expense of this system. I do not know how far gentlemen mean to say, that the expense shall be paid out of the public treasury. There are some very intelligent men, who think that this plan is objectionable. Some years ago, the school fund in the state of Connecticut, was large enough to support the schools without calling upon the state for aid of any kind. That which costs little or nothing is generally supposed to be worth little or nothing; and it seems to me to be essential to the progress of this system, that at least a portion of the expense should fall on the people. If it is otherwise, it will make the thing too cheap.

Mr. STEVENS said, that if he was not mistaken, the question now before the committee, was on the amendment proposed by the gentlemen from Luzerne, (Mr. Woodward.) He (Mr. S.) should feel compelled to vote against this amendment, because he liked the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) much better than the report of the committee, but he disliked the amendment of the gentleman from Luzerne, still more than he disliked the report of the committee. The amendment of that gentleman provided "that it shall be the duty of the legislature to provide for the establishment of such schools throughout the commonwealth, as may be deemed necessary."

This amendment, Mr. S. contended, would allow the legislature to establish high schools—not only schools for common education, but all kinds of schools—and indeed would seem to render it an imperative duty

so to do. He was not in favor of establishing high schools in this way; there was another and a more appropriate way of accomplishing that object. Probably it was not the intention of the gentleman from Luzerne, that this amendment should embrace high schools, but they were certainly included by the phraseology. He (Mr. S.) should therefore vote against it.

Mr. BIGELOW, of Westmoreland county, said, that before the vote was taken on the amendment offered by the gentleman from Luzerne, to the amendment of the gentleman from the county of Philadelphia, he would beg leave to say a word or two in explanation of his own views on this interesting subject.

When the amendment was first offered, I did not, (said Mr. B.) consider it necessary that the words "English or German," should be incorporated into the constitution, nor that we should specify any particular language in which the children of the commonwealth should be taught; because I was of opinion that it should be left to the proper school officers to provide for the schools in such manner as might be desired, from time to time, by the citizens of each respective district. But now, as so much has been said on the subject, I think it might be well, with a view to avoid all doubt and ambiguity, that we should introduce something like the following provision, which can not be the means of doing any injury, even if it does not accomplish, as I think it might, some positive good:

"The legislature shall provide by law for a general system of common school education; which shall be taught in such languages as may be deemed necessary; and which shall be extended to all persons within the commonwealth, who will avail themselves of such provisions."

I have the honor, Mr. Chairman, to represent in part, one of the counties in this state, a large portion of the citizens of which are of German descent; where there are about fifteen, and, probably, more churches belonging to different German congregations; and many of which churches are the joint property of two congregations of different persuasions. From this circumstance, we may infer that there are twenty, or even more than twenty German congregations in the county of Westmoreland; and many of them, to my certain knowledge, are very large, and composed of very respectable inhabitants.

The clergymen attached to these several congregations are constantly urging the necessity of bestowing upon the youth belonging to the families which compose these congregations, a certain share of German education, in order that they may learn the religious catechism; and their parents regard this as a solemn injunction which it is their duty to fulfil to the utmost extent of of their power.

In the township in which I reside, there are constantly kept up several German schools; and, notwithstanding that the free school system has been adopted in that township, still the German schools are supported exclusively by individual subscription. So far, therefore, the system has been of no benefit to the German residents there.

The English schools are considered, by a majority of the citizens, to be the most important. They are, therefore, adopted under the new sys-

tem; and such Germans as are desirous of perpetuating their native, or, otherwise, their original language, are compelled to do so by their individual subscription; while, at the same time, they must contribute their full share to the support of the English schools. In this there is neither justice nor equity; and I think it is the duty of this convention to apply a proper remedy.

By inserting the language which I have suggested, or something to the same effect, we shall avoid all that prejudice which will naturally arise, by directing that instructions shall be given in one language to the entire exclusion of all others; or by leaving the subject open to different and conflicting constructions.

I hope, therefore, that the amendment to the amendment will be negatived, and, if this should be done, I hope that the delegate from the county of Philadelphia, will accept of the language which I have suggested, as a modification of his amendment. I do not think that any objections can be made to a provision in this form.

Mr. DUNLOP said, that in consequence of the very good natured disposition which had been manifested by the gentleman from the county of Philadelphia, (Mr. Ingersoll) in accepting the various modifications which had been tendered, it seemed to him (Mr. D.) that the amendment, as it now stood, was nothing better than a crude and undigested mass. The amendment now provided that schools should be established, wherein all persons might receive instructions "in the English, German, or some other language." What was the meaning of all this, except generally, that the people should be taught? The committee were to adopt all these circumlocutions, to express the single and simple idea that the people are to be taught. If they were to be taught at all, they were to be taught in language of course; and why use all this circumlocution to do that which necessarily must be done in a certain way. He thought that the amendment was now in a condition that would deprive it of all the support which would have been given to it in its original form. He merely threw out these suggestions for the consideration of the gentleman from the county of Philadelphia.

Mr. CLINE, of Bedford county, said, that when the gentleman from the county of Philadelphia, (Mr. Ingersoll) had first offered his amendment, he (Mr. C.) had been willing to vote in favor of it, because he thought it was the most desirable proposition that had been submitted to the committee. But, owing to the many modifications which it had undergone, it was now so entirely different from the original proposition, that he could not bring himself to vote for its adoption. He should, therefore, give his support either to the report of the committee, or to some other amendment, in preference to that of the gentleman from the county of Philadelphia, as it now stood.

Mr. BARNITZ, of York county, said, that if there were no settled language in which our laws were to be carried into effect, the remarks which had been made by the gentleman from the county of Franklin, (Mr. Dunlop) would have some application; but they could not apply, when the actual condition of things was taken into consideration.

Our laws, said Mr. B. are carried into effect in the English language. That language has the preponderance; and my fear is, that although all

languages are, in a general sense, placed upon the same footing as to giving instructions, yet that here is a leading language—in which all your laws are carried into effect, and which may tend to the suppression of all others. This is a consideration which has impressed itself deeply on my mind—and it may be construed into a reason why every thing—and all other languages—must give way to the English language. That language, thus carries with it something of authority, by means of its operation in the laws and the regulation of the laws; and unless some special provision is made for the education of the descendants of the German people in the German language, all those who may be in any respect concerned in the administration of the laws, will be apt to believe that they have discharged the whole duty required of them by the constitution, so soon as they have seen the school law carried into operation in the English language. To my mind, this is a serious difficulty.

There is also another point worthy of consideration, and I am rather surprised that no gentleman has yet noticed it; that is to say, the distinction between a German education and an education in German. There is a great distinction. My friend from the county of Luzerne, (Mr. Sturdevant) has paid no attention to this point; and the gentleman from the county of Lehigh, (Mr. Fry) has entirely over-looked it. An Englishman may have a German education, although he may not know a word of the German language; but you never can give an English education to a German in England, without first teaching him the English language. What is the object which your law has in view? It is not to give a German education, but to give an education in German, to those who know and speak the German language. This is the obvious intent and meaning of the law. You might just as well say that you would give them an education in the Greek, the Latin, or the Hebrew language, as that you would give them a German education; it would amount to very much the same thing. Education is a benefit given, or offered, to the young—who must be instructed in that language which they have been accustomed to hear. It appears to me that the amendment would place the two languages on the same footing—though I should prefer the strong recommendation inferred by the word "may," to the use of the imperative term "shall."

As to the other languages—excepting, probably, some parts, where there might be considerable Welsh population—they were only isolated cases, in reference to which, no action would be requisite.

Mr. Ingersoll said, that the gentleman from the county of Bedford, (Mr. Cline) who had objected to his amendment in the form in which it now stood, was either under a great misapprehension of the nature of the amendment, or that he himself (Mr. I.) did not understand its purport.

It is undoubtedly true, (said Mr. I.) that I am very desirous of securing the good will of the majority of the members of this convention, for my amendment; but it is equally true that, in all its essential parts, it stands now, as it stood when I first presented it—especially in relation to the two cardinal points to which, at the very outset of the argument, I declared my attachment. It seems to me that no gentleman, who has examined the matter with any attention, can fail to see how close the identity is.

I must request the committee to view, for an instant, the language of the report of the committee. It is this: "The legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the state, in such manner that all children may be taught at the public expense."

Now what is the substitute which I offer? "The legislature shall provide, by law, for the establishment of common schools." This (continued Mr. I.) is the first point,—and here there is no option left as to what kind of education shall be given; it is to be based upon the common school system. This is an important and decisive feature in my proposition.

But, in addition to this, what does the amendment say? It provides that these common schools "shall be established in every county of the state." This, it will be seen, is a very important alteration: And then, in reference to the point which is, of all others, attended with the greatest difficulty, the amendment declares that "all persons may receive instruction at the expense of the commonwealth, in the English, German, or some other language." All this, I think, is plain and comprehensive.

The gentleman from the county of York, (Mr. Barnitz) says, you might as well say they shall be taught in Greek. I do not defer to his opinion. I think it would be an outrageous violation, if we were to put any thing of that kind into the constitution.

What is the operation of the law, as it now exists, when taken in connexion with such facts as have been stated by the gentleman from the county of Westmoreland, (Mr. Bigelow?) It is exactly like requiring the Irish catholics to support the protestant church. I repeat, that my anxious desire is to give every one the option to be educated in the language which he thinks proper, and that there should be no doubt nor difficulty left on the subject.

While I have the floor, Mr. Chairman, I desire to acknowledge myself entirely mistaken in the opinions I expressed as to the Welsh congregations. I have made the *amende honorable*, in private, to the gentleman from the city of Philadelphia, (Mr. Chandler) and embrace the first opportunity to acknowledge my mistake in public. I am willing, therefore, that my amendment should embrace the words, "or other language" —while, at the same time, it displays the word "German." We can thus say to every body, here is a school system provided for you—if you will learn, you may learn in any language that you please.

Mr. Dunlop said, that he did not intend to enter into an argument at this time,—but he thought it was due to the gentleman from the county of Philadelphia, (Mr. Ingersoll) that he (Mr. D.) should state that, in making the objections which he had to the modifications accepted to the amendment, he had forgotton to mention another objection which presented itself to his mind; and that was, the change of the original phraseology from the words "at the public expense," to the words, "at the expense of the commonwealth." The education of the children "at the public expense," did not necessarily imply that the money must come out of the public treasury; but it left fair ground for the inference that it might be taken in part from the treasury, and that the balance might be

collected by taxes upon the counties. Now, he would submit to the gentleman from the county of Philadelphia, whether the words "at the expense of the commonwealth," did not negative the idea that any portion of the expense could be raised by a tax upon the citizens? This consideration alone would be sufficient to make him (Mr. D.) vote against the amendment; because it took away all power on the part of the legislature to support the system by the imposition of a tax. It amounted, in short, to a positive enforcement of the common school system; a course which he did not regard as either prudent or politic.

Mr. HEISTER said, that he would very briefly state his views of this matter, to the committee. This was truly a delicate and an important subject, and he was of opinion that the less innovation that was made on the constitution of 1790, in regard to it, the better it would be. It was a subject on which the people were peculiarly ticklish and sensitive.

I object, (said Mr. H.) for several reasons, to the adoption of the amendment to the amendment, as proposed by the gentleman from the county of Luzerne, (Mr. Sturdevant.) In the first place, I do not like the insertion of the words "all persons"—and, in the second place, I do not like the words "at the public expense." I think it would be much the better plan, not to make this imperative. As the matter has been hitherto kept up in part by contribution, I think it more advisable not to confine the matter exclusively to the "public expense."

I shall vote against the amendment to the amendment; and although the gentleman from the county of Philadelphia, (Mr. Ingersoll) has shown a very accommodating disposition, in accepting various modifications, which have been suggested, still I think his amendment highly objectionable.

His amendment also contains the word "persons," which implies that all persons, of all ages, shall have the privilege of instruction. There is no restriction—no limit as to age. This, in my opinion, is very objectionable; and the result may be, that adults will be taught, to the disadvantage, or neglect, of the younger branches of families. In addition to this, I have an objection to any thing which has the appearance of being imperative: and I should much prefer that the matter should be left optional. I prefer the report of the committee, or the provision in the constitution of 1790, as it now is, both to the amendment, and the amendment to the amendment.

The system, Mr. Chairman, is working well; we have no cause to be discouraged. All we have to do, is, to be careful not so to force it upon the people, willing or not willing, as to compel them to take it faster than they are ready to receive it. This is the great, and, I believe, the only source of apprehension. The people, depend upon it, will receive the system in time, and it is probable that we may impede its progress by any incautious amendments which we may make at this time.

In relation to the introduction of the words "English, German, or some other language," as proposed by the gentleman from the county of Philadelphia, I can not see any necessity why they should be placed in the constitution. As the law now stands, no difficulty has arisen on

this score, I believe, in the German settlements. In the township in which I reside, there are some common schools kept up at the public expense, and it is left to the neighborhood to take their choice, whether they will receive instruction in the German or English language. But, in addition to this, I think it ought te be the policy of the legislature, to encourage education in the English language as much as possible. All the public records of every kind are kept in the English language, and it seems right to me that the Germans should be made to accommodate themselves to it.

I was myself brought up in the county of Berks, and there they found it requisite to teach in the English language. Such, too, is the case in the county in which I now reside, Lancaster. I believe that all intelligent Germans entertain the opinion, that it would be much better to dispense with the German language in the schools. I hope to see the day when the people of this commonwealth will not be distinguished by the title of German and English, and when we shall be known only by the common title of Pennsylvanians. This is my sincere desire.

In the state of Louisiana, as I have been informed, part of the members of the legislature speak in the French language, and part in the English. This is a state of things which ought to be done away with there, and which, I trust, no attempt will ever be made to introduce into the state of Pennsylvania.

It was suggested on this floor the other day, by the delegate from the county of Lehigh, that the proceedings in the courts of justice, in certain districts, should be held in the German language. I should regret to see such a state of things established. I think that the German language should be merged. I think that it would be better for the interests and happiness of our citizens, and that we should do all that we can to draw the bonds of union closer, and to make them one people in language, in manners, in customs, and in feeling. But, at the same time, I would do nothing by force; I would leave it to the Germans to come in gradually, as they choose to do. The intelligent Germans of our state, are themselves satisfied of the propriety of this course, and the German schools are becoming less and less wanted every year.

But, does the provision in the constitution of 1790, preclude instructions in the German language? Or would any amendment which we might make to that provision, in which the word "German," might not be specially introduced, exclude instructions in the German language? Certainly not, sir.

The German population can have instruction in the German language, if they desire to have it. They constitute about one-third of the wealth and population of this state, and the legislature, in which body they have themselves their due portion of representatives, will not undertake to exclude them from having instruction in their own language, if they desire to receive it through that medium.

As a farther corroboration of the statement I have made, that the German language was gradually merging into the English, I will refer to a case that occurred during the sittings of this convention in the last summer.

It will be recollected that we received the "Daily Chronicle" here, and that a number of copes were furnished in English, and a number in German. I believe, from some circumstances which came to my knowledge, that the English copies best answered the purpose which the convention had in view in subscribing for the paper. My friend from the county of Allegheny, (Mr. Forward) was obliging enough to offer me for some time, his German copies. I sent them to my neighbors, and thought I was rendering them an act of kindness. What was my astonishment to find that several persons to whom I had sent them, said, that if I had sent English copies, it would have been all right, but that the German copies which I sent, were of no use to them, because they could not read them. They speak the German language, it is true,—but their instruction is all in English.

Here is a sufficient proof that the German people are gradually accommodating themselves to the particular times and circumstances in which they live; and I think that they exhibit great wisdom in so doing.

I shall, therefore, as I have stated, vote against the amendment to the amendment. I shall, also, vote against the amendment of the gentleman from the county of Philadelphia; and, if an opportunity presents itself, I shall vote in favor of the report of the committee, for the reasons suggested, generally, by the gentleman from the county of Bucks, (Mr. Jenks) who sits before me.

I prefer that the provision should contain the words "as soon as conveniently may be," because I would incorporate in it nothing imperactive, and nothing which can give offence to any part of the community.

I would like, also, to see the word "common" introduced. That is a point which should not, in my opinion, be left discretionary with the legislature; because, if it were so, the provision might be made to include all kind of schools,—and this would be a course of policy which we do not contemplate. All that we desire at this time, is to have elementary schools.

I should also prefer to throw out the words "at the public expense." I feel satisfied that no subject has been brought before the convention which is so delicate in its nature, or in relation to which the people of the state are so sensitive, as about this very subject of common school education. It will be requisite for us to act upon it with great care and circumspection. Indeed, we cannot deal with it too gently; and, for my own part, I would rather give my consent that the provision of the constitution of 1790 should continue in force precisely as it now is, than I would vote to introduce into it, any thing which could give offence in any quarter.

The school system is established,—and, as I have said, it is all going on well. The people are gradually coming into the measure—their prejudices, which at one time arrayed themselves so strongly against it, are becoming less strong every year; and I should regret extremely, that any act on the part of this convention, of an imperative character, should have the effect of impeding its onward progress. I trust that nothing of the kind will be done.

Mr. STURDEVANT said, he would modify his amendment so as to insert after the word "legislature," in the first line, the words "as soon as conveniently may be,"—and, in the second line, after the word "such," the word "common," so that it would read as follows:

"It shall be the duty of the legislature, as soon as conveniently may be, to provide for the establishment of such common schools, throughout the commonwealth, as may be deemed necessary,—in which all persons may be taught at the public expense."

I make this modification, said Mr. S. because I am desirous to avoid all ambiguity in this provision. In the form in which it now appears, the amendment which I proposed, gives the legislature the power to establish German schools, or such others as they may deem proper. This will do away with the necessity of adopting the amendment of the gentleman from the county of Philadelphia, and also, with the necessity of introducing the word "German"—and will enable all persons to be taught at the public expense.

I think that the words at the "public expense," should be retained; but as to this, I am not tenacious. I have introduced these modifications, at the suggestions of some of my friends. I can see no use in introducing the words "English or German." In my view, they are extremely exceptionable. It was not thought necessary to introduce them into the constitution of 1790, nor does any such necessity exist now. If adopted, as I propose, the provision will enable the legislature to establish schools in any of the districts where the Germans may live, and where they may be taught in their own language. But it will leave the whole matter to the legislature; they will be left to judge of the expediency of the matter, and to establish such a system as they think will best answer the end desired. And until such time as they think proper to alter it, the system will remain as it is.

Mr. FULLER, of Fayette, said that, as the proposition of the gentleman from Susquehanna, (Mr. Read) had been voted down, and to which he was friendly, they must now proceed to consider what they should do with the rest.

No gentleman present entertained any other opinion than that this was a highly important subject, and the only object which they all had in view, was to farther the purposes of education. It was true, as had been well observed by several delegates, that there was danger lest, in making alterations in the constitution, we should alarm the prejudices and fears of the people of the commonwealth of Pennsylvania. If the system of education chosen, was not one properly adapted to the views of the great mass of the people, it might have the effect of prostrating—of putting down entirely, the whole system, and also, of defeating all the amendments to the constitution. If it should have the one tendency, it would have the other.

He, for his own part, was not inclined to put any thing in the constitution which would directly, or indirectly, have a tendency to defeat one or the other. He believed that the old constitution would be more acceptable to the people than any of the amendments which had been offered, except that of the gentleman from Susquehanna, (Mr. Read) which left the whole provision to the people of the state, who

might make such an arrangement and organization as they pleased. With regard to the amendment of the delegate from Luzerne, (Mr. Woodward) he would say, that if the words "at the public expense,' were stricken out, it would be unobjectionable.

Some of the features in the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) which appeared to be objectionable, had in a great measure, been explained away, though there still remained some which were objectionable. In that light he viewed the words "English and German." He thought it would be impolitic for the convention to undertake to say any thing about foreign languages. There were but few counties, in which the majority of the population consisted of Germans; and where there was, they could instruct their representatives in the legislature, to obtain the fulfilment of their wishes. Under all the circumstances, he conceived it would be better to leave the settlement of the matter to the legislature, than to designate the languages that should be taught. He would vote against this amendment, and the amendment to the amendment, and in favor of the old constitution.

Mr. KONIGMACHER, of Lancaster, remarked that the opinions expressed by the gentleman from Mercer, (Mr. Cunningham) and the gentleman from Bedford, (Mr. Cline) could not apply to the district which he had the honor to represent, when they stated that the German language was gradually dying away. And, consequently the convention was to be left to infer that it was not necessary to provide for the German language. Three-fourths of the population of Lancaster, was German, and they performed their religious exercises in that language. They consisted of Baptists, Menonists and United Brethren, and they were all highly respectable. Were they to be told it was useless for them to continue their intercourse with each other in the German language? One of the objections urged by the gentleman from Bedford, (Mr. Cline) why the language should not be encouraged, was, that there were no German books to be procured in this country. He (Mr. K.) must say that he was much surprised to hear that remark, especially coming from the source it did. He should be glad to know if it was not as easy to obtain books from Germany as from England. The Moravians taught in German as well as in English, and they had two boarding schools, celebrated throughout the country, in which there were children from all parts of the United States. One consisting of boys, and the other of girls. These establishments were situated in the centre of a German settlement. It would be just as wrong to say that those who speak German shall not learn English, as it would be to say that those who speak English shall not learn German. The one has as good a right to learn German as the other has to learn English.

He would cheerfully vote for the amendment of the delegate from the county of Philadelphia, (Mr. Ingersoll) but he did not think its terms were obligatory and imperative, and which he did not approve. As was very justly remarked by the gentleman from Beaver, the amendment might meet the approval of the German emigrants, (as the foreigners were designated in Pennsylvania) who were not accustomed to much freedom in their own country; but our native Germans are republican, and must be placed on the same footing as the rest of their fellow citizens. He did not like the amendment, because it was left to the discre-

tion of the legislature to say what language should be cultivated. He was afraid that if the amendment should be adopted, the German population might be deprived of German schools. His opinion was, that the convention had better not meddle with the subject, and that it would be perferable to leave it to the people, or their representatives. He could not vote for the amendment in its present form; he should therefore vote in the negative until it should come up in a shape that would meet his views. The report of the committee came nearer to them, but he could not promise to vote for it. The constitution, in its present form, he thought, provided every thing that was necessary. In his opinion, the cause of education had prospered as much in this commonwealth as any other in the United States. He did not know that it would be prudent to strike out the word "poor" from the section now under consideration; because, at the same time, the legislature, by passing an unpopular law, might abolish the privileges of the poor.

The question was taken on Mr. STURDEVANT's amendment, and it was negatived.

Mr. CHAMBERS, of Franklin, moved to amend the amendment of the gentleman from the county of Philadelphia, (Mr. Ingersoll) by striking out all after the word "legislature," and inserting, "shall as soon as may be provide by law for the establishment of common schools throughout the state."

Mr. C. said, that in offering this amendment to the amendment, he proposed to go back, as near as might be, to the old constitution. The opinion had been expressed here repeatedly, and assented to, that the constitution was not to be changed, unless for the purpose of remedying some evil, obviating some inconvenience, or affording some advantages to the public welfare. What, then, he would ask, were the objections that were raised to the constitutional provision in relation to our schools? The prevailing one was, that it was not sufficiently imperative. And, although the provision was simple and short, and modifications without number, had been proposed, yet none had met the approbation of the committee. What, he inquired, was the object of making the provision more imperative? For the purpose of directing the legislature. The proper director of the legislature, was public sentiment—public opinion—that was to direct them on this subject. The provision was only imperative in relation to the "poor," and left the subject of education generally to the legislature; and they had introduced a system as good, as liberal and as comprehensive as was possessed by any state in the Union. None of the states had gone beyond the commonwealth of Pennsylvania. What had done this? It was public opinion reflected by the representatives of the people. Public opinion had directed the legislature—established the system, and confirmed it. He was content with the general declaration that common schools shall be established, leaving the details to be arranged by the legislature, as had been already done, and that power had been exercised. Where, he asked, was the evidence that any thing was required to direct the legislature—to compel it to act on the subject? We found that it was not necessary, at least, in this commonwealth, because we had it. What, then, was the practice in other states? Had they thought it necessary to direct their legislature, and also to get it to state the terms on which they would do it? In 1821, when the state

of New York revised her constitution, this very subject was the engrossing topic of conversation, and a deep interest was felt in it. Yet, notwithstanding all this, the convention did not deem it necessary to insert a provision in regard to it, and left it to the control and arrangement of the legislature. In reading over the constitution of the empire state, as New York was called, no constitutional provision would be found in relation to education. Let us go to Massachusetts where a system of education and common schools have always received much attention. Did they deem it necessary when they revised their constitution only a few years since, to introduce an article saying how far the legislature should go, and what they should do? No; they were content to declare:

"It shall be the duty of the legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the University of Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, by rewards and immunities," &c.

To "cherish," was all that was enjoined. That was the sentiment of the convention of Massachusetts, in regard to their schools.

In the state of New Hampshire, where, also, this had been a favorite subject, and received the particular attention of the convention. they did no more than declare in general terms, as in Massachusetts, that:

"It shall be the duty of the legislators and magistrates in all future periods of this government to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country," &c.

He would turn next to the state of Connecticut, where this system had long been introduced. The constitution of that state was also revised a few years ago. And, did the convention, he asked, deem it necessary to impose a mandate on the legislature? No; they only declared by certain provisions, particular acts of their's inviolable.

1. "The charter of Yale College, as modified by agreement with the corporation thereof, in pursuance of an act of the general assembly, passed in May, 1792, is hereby confirmed.

2. "The fund, called the school fund, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public or common schools throughout the state, and for the equal benefit of all the people thereof," &c.

All, then, that the convention of the state of Connecticut did, was to insert in their constitution, a provision declaring their school fund to be pledged for school purposes. Here we had the action of these four states, who, on amending their several constitutions, did not think it necessary to impose on the legislature any provision on the subject of education. He was not disposed to strike out all the constitution, but merely to strike out all after the word "common," and after "state." We, then, left it to the legislature to provide by law for the establishment of common schools throughout the state. The manner of doing it was with them and the people. He was opposed to the amendment of the delegate from the county of Philadelphia, (Mr. Ingersoll) so far as it

directs the system to be carried into effect, without consulting the convenience, or approbation of those among whom it is to be introduced. He was not inclined to force the school system on those districts that were now opposed to it. He would leave it with them to accept or reject it. Although he was himself in favor of the system, yet he would neither persuade nor force these districts to adopt it. He disapproved of the amendment so far as it provides for education in the English, German, or some other language, because it was giving directions to the legislature and the people on the subject, which he entirely objected to. We might as well go farther, and point out that system of education to be adopted, which we desired; and say that these or those books must be used. These details were not necessary. He would leave them to the legislature, where errors, if committed, might be corrected. Experience had taught us that no constitutional provision was necessary in order to establish the common school system. It had been done by the legislature when public opinion required it. This fact was fully proved in those states, where no constitutional provision existed, and where the system of education adopted by them had been successful. He was for keeping the constitution as clear, as simple, and as comprehensive as possible. In the amendment that he had offered he had endeavored to obviate the objections urged against making it imperative on the legislature to pass laws authorizing the establishment of schools, or to thrust them on the non-complying districts. He left it to the legislature to exercise their discretion.

The amendment offered by the gentleman from Susquehanna, (Mr. Read) provides for the education of all the children and youth of this commonwealth. Now, he (Mr. C.) by his amendment obviated any objection that might be urged in regard to this class of persons. He had left out that part of the report which says that "children may be taught at the public expense." These were matters which he thought had better be left to legislative discretion. In the amendment offered by him, he had obviated, what had been considered on this floor, a very great objection to the section as it now stood, and that was the incorporation in the latter part of it, of these words: "that the poor may be taught gratis." At the period when the only system of education, known in the commonwealth, was a system for the poor; when there were only what were designated "poor" schools, the term was offensive, and the constitution did require altering in that respect. The legislature had the power to do away with that odious distinction, and they exercised it. The distinction, therefore, no longer exists, and the common schools are now all on an equality. The objection no longer exists. All are taught gratis; and there is no class of schools known as "poor" schools. No inconvenience could consequently arise from letting the provision stand as it now did. Any such distinction as that of "poor" scholar was unknown. He had omitted the words "that the poor may be taught gratis," so as to obviate all objections as far as possible.

Mr. Hiester, of Lancaster, would respectfully make a suggestion to the delegate, (Mr. Chambers) whether the legislature might not put this interpretation on it which was what he did not desire or mean, by this provision, viz: That every individual who shall send his, or her, children to school shall bear the expense. He (Mr. H.) thought that if this

amendment should be adopted, an opportunity would be lost of providing for the education of the poorer classes of society, and that the gentleman might as well amend his amendment, and say—that all the children of the commonwealth may be taught therein who shall pay, and none others.

Mr. CHAMBERS said, that although very desirous of accommodating every gentleman as far as he could, yet he found it absolutely necessary to abide by the amendment in the shape in which it now was.

Mr. CURLL, of Armstrong, rose to say that the amendment of the gentleman from Franklin, met his views. As the delegate had omitted the word "common," as he (Mr. C.) suggested on Saturday, had better be done, he would vote with pleasure for the amendment, and against all others.

Mr. INGERSOLL, of Philadelphia county, asked for the yeas and nays.

Mr. STEVENS, of Adams, said that he should be obliged to vote against the amendment. The objection made by the delegate from Lancaster, was conclusive. He did not know that any degradation was to be attached to the words "common schools." He wanted an amendment so framed as to say to our law-givers that every person is entitled to go to the schools gratis. And, unless the word "schools" *ex vi termini* implied that, there was nothing in the amendment which recommended itself to our favor. He preferred the report of the committee to any amendment, except that offered by the gentleman from the county of Philadelphia, (Mr. Ingersoll.) If that was to be negatived, he trusted that every other amendment would be, until we came to the report of the committee. He confessed that even to it he entertained a very great objection, on account of the word "children." When the proper time should arrive, he would move to strike it out, and for the same reason that applied to the word "poor," with which it was connected, and because the constitution spoke of teaching the poor, in a tone intimating disgrace. Here should be no legal paupers, and no invidious distinctions of this kind ought to be incorporated in an organic law. He was, therefore, opposed to letting the constitution remain unaltered in this respect. He did not wish to leave it at the option of the legislature to exclude any person from going to school, and receiving instruction. But, if this committee should agree to retain the word "children," they were adapting it to age also. The schools were to be opened not only to youth, but to age and ignorance, also. He was an advocate and supporter of the school law of Pennsylvania, and when, in the legislature, a motion having been made to fix a certain number of years at which an individual could be admitted, he moved to strike out the word "children," and insert "all the ignorant," and the amendment was carried by acclamation. He trusted that we were not going to make a retrograde movement, and at this late day shut the doors of our school houses against a man who was conscious of his being ignorant, and desirous to obtain instruction. He would vote against all the amendments, except that of the delegate from the county of Philadelphia, which was as broad and comprehensive as he desired. If, however, it should be negatived, then he would vote for the report of the committee, amended as he proposed.

Mr. READ, of Susquehanna, hoped that the amendment would be agreed to. It was, in his opinion, the most perfect one of any that had yet been

before the committee. It differed from his own only in this particular, that it contained the word "common." He had inserted it in his original amendment; but afterwards, in order to meet the views of those who disliked it, he moved to strike it out. He considered this amendment, as modified, even better than his own. It was better, because by it we got rid of the pauper system. He thought it very evident that we must either take this amendment, or the old constitution. He trusted that the amendment would be adopted without a dissenting voice.

Mr. FULLER, of Fayette, conceived that the gentleman from Adams, (Mr. Stevens) must be mistaken in supposing that the amendment of the gentleman from Philadelphia county, (Mr. Ingersoll) precluded any class of individuals from attending the schools. Mr. F. then read the following resolution, as offered by Mr. I:

"The legislature shall provide by law for the immediate establishment of common schools in school districts of every county of the state, wherein all persons may receive instruction at public expense, at least three months in every year, in the English or German language, as may be by law directed."

Mr. STEVENS explained—that he had spoken of the report of the committee, which contained the word "children."

Mr. BARNITZ, of York, was in favor of the amendment offered by the delegate from the county of Philadelphia, (Mr. Ingersoll) and against that proposed by the gentleman from Franklin, (Mr. Chambers.) He was afraid, from certain indications he perceived, that the committee were inclined to support the amendment of the gentleman from Franklin. If we were to be defeated, he thought it wise in gentlemen to submit to their destiny, and die gracefully.

Mr. BROWN, of Philadelphia county, said, he was originally opposed to the introduction of the word "common," but, on farther reflection, he had come to the conclusion that it was susceptible of another meaning, as for instance—common education. He had no desire to limit the action of the legislature in reference to the important subject of education. On the contrary, he wished them to have as much constitutional power as would enable them to carry out, to the fullest extent, the public sentiment. If, in a few years hence, the people should desire the establishment of higher schools, he thought that the legislature should possess sufficient power to grant what they wanted. He believed that at the present time, the city and county of Philadelphia were establishing a higher school. It was designated so in contradistinction to what were called "common" schools. He could wish to see higher schools established in every county in the state; but, from what he could learn, he apprehended there was little probability of that being done. With regard to the second section, and as to what would be its fate, it was impossible for him to say. He maintained that no provision ought to be inserted in the constitution, the effect of which went to prohibit the establishment of schools of every kind. The legislature should have the power to establish other schools besides common schools. He intented to vote against the amendment of the gentleman from Franklin, (Mr. Chambers) and also, against that of the delegate from Philadelphia county, (Mr. Ingersoll.) He would perhaps vote for the report of the committee, if the words

"at public expense" should be stricken out. If the committee should go back to the clause in the constitution, as he thought they would, they could strike out the word "gratis." He would prefer that this should be done, rather than that the word "common" should be introduced into the constitution, by the adoption of the amendment of the delegate from Franklin, which, as he had already said, he would vote against.

Mr. PORTER, of Northampton, observed that he preferred the existing constitution to the amendment of the gentleman from the county of Franklin, (Mr. Chambers) which was, to strike out the words "that the poor may be taught gratis," simply, because his amendment put in the word "common." Noah Webster, that prince of lexicographers, defines the word "common" to mean:—

"Belonging equally to more than one, or to many indefinitely; as life and sense are common to man and beast, the common privileges of citizens; the common wants of men, belonging to the public; having no separate owner. The right to a highway is common—general—serving for the use of all. Universal; belonging to all; as the earth is said to be the common mother of mankind. Public; general; frequent; as common report. Moral; ordinary; as the common operations of nature; the common forms of conveyance; the common rules of civility."

A man who is not ashamed of his origin, may be unwilling to send his children where they may be branded with the charge of poverty.

If the report was not adopted, he thought it would be better to strike out the words, "in such manner that the poor be taught gratis," from the first section of the present constitution. He disliked that provision, because, it set a mark on the poor, as distinguished from the rich, and, in carrying out the law, made it necessary to record the name of the individual two or three times, as one of the poor, first, on the assessors list, then on the school directors list, and finally on the school list. Some people might not, in after life, like very well to have their origin and history recorded in this way. In this republican country, people did not always like to be traced to a humble origin—though, for his own part, he was not ashamed of his own origin. It was well known that a feeling of repugnance at this distinction, had prevented many persons from accepting the means of education, thus offered by the commonwealth. He was anxious also, to keep out of our fundamental law, a recognition of the existence of two classes of society here;—for society, without such aid, was apt enough to divide itself into classes, and to establish broad distinctions between them. When we provided that the people should be educated at the public expense, only on condition that they were certified and recorded as paupers, they would refuse to avail themselves of the offer. That was the reason that the school acts, under this constitutional provision, had failed, and that feature we must leave out of the new system, or it would not work well. He was for leaving out the word "common" which occurred in the amendment, for if we had *uncommonly* good schools, as he trusted we should, he at least hoped that we should have those in which the higher as well as the common branches of education were taught. We had already commenced the establishment of academies, wherein the classical branches were taught, and he hoped they would be cherished under the new system. One academy was to be established in each county, as preparatory schools for

the colleges. He would like to see such a system in operation, as would afford the means of classical education to every child that desired it, without going beyond his own neighborhood. He wished to provide means for the education of teachers, and for elevating the rank of that profession in society. That must be the groundwork of any system that we adopted, for at present the teachers of the common schools were generally uneducated, and a sort of odium rested upon the whole profession.

He would adopt such a system as would enable every man's child to obtain a good classical education, if he wished it, and although such an education was not always necessary for the purposes of common life, still it was an undeniable truth, that the more intelligent and enlightened our people become, the more likely will they be to transmit, unimpaired, to posterity, the rich inheritance of our fathers.

Mr. FULLER wished to know, he said, if the gentleman from Northampton would go for the amendment of the delegate from Franklin, striking out the word "common." That was what he had understood him to say. But he (Mr. F.) was opposed to the omission of that word, as its meaning was well settled in practice, and well understood by the people of the state.

Mr. PORTER, of Northampton, did not, he said, approve of that word, as it occurred in the amendment of the gentleman from Franklin. He preferred the amendment of the gentleman from the county of Philadelphia, because, it told us what was meant by the word "common"—viz: education in English, German, or other language.

Mr. MANN said, the gentleman from the county, had been so accommodating in adopting the suggestions of different gentlemen, that he would propose one other modification of his amendment, in the hope that the gentleman would accept it, and believing, that it would secure the votes of several delegates for the proposition. It would certainly govern his own vote on the question. He wished the gentleman to strike out the words "or other language."

Mr. DICKEY objected to the amendments, because they proposed, he said, to do that by the constitution which it had been attempted already to do by law. Our common school system was in progress under existing laws, and if they adopted this new plan, it would open the whole question again, whether we should provide the means of general education, on a broad and substantial basis or not. The present was a voluntary system, and, though in successful progress, it was not yet established. Out of nine hundred and odd school districts, the system is in operation in nearly seven hundred, and about two hundred and forty of them were still non-accepting districts, but, as he hoped, would very soon become accepting districts. He did not look upon it as any disgrace to the legislature of Pennsylvania, or of any other state, to provide for the education of the poor and the unfortunate, at the expense of those who happened to be rich and more fortunate. Was it discreditable to the county of Montgomery, to raise four thousand dollars for the education of poor children? He considered it as creditable and honorable to the great men who founded the constitution of Pennsylvania, that they provided in the fundamental law, for the education of the poor, at the expense of the

rich—for the education of the poor and unfortunate, at least,—if all could not be educated at the public expense. He dreaded the innovations we were now making on this system. If we put the question of education to the people in a new form, he feared it might retard the operation of the present system, with which he believed, they were now well satisfied, and which, when fully carried out, would meet our wishes.

Mr. CHANDLER, of the city of Philadelphia, said, it was of very little consequence, what disposition was made of the section, inasmuch as the convention had succeeded in providing for establishing the schools. He would go for the amendment of the gentleman from Franklin, provided it did effect the principle object at which we aimed. It had been remarked that the constitution of Massachusetts, said nothing of public schools. This was very true, and it was unnecessary that any provision should be made on the subject in that state. There the public school system preceded any legislation, for it was the offering of the town system. But the constitution of Massachusetts, contained a provision in regard to the university. Fearing that the people might relax in their love of classical learning, they introduced a provision for the appointment of trustees of the university. The constitution of New York, contained no provision on the subject of public schools. But, at the same time, it did contain a clause in relation to the salt springs, which belong to the state. Of much greater importance was the subject of education, and the establishment of common schools—which are the moral salt springs of society? He was disposed only to insist, that the poor should be educated, and, as to the phraseology of a provision, which would reach this end, he was indifferent. Let us remove every thing which may form an obstacle to this great object. He had been struck with the remark, that our attempts to provide for the establishment of schools and colleges, had been a failure. The provision had expired and the colleges too. We decorate the upper story of the edifice of education, and neglect the lower story. Our colleges remained empty, because the lower story was not first filled. He would not agree to strike out the word "common." The schools were common, and this did not signify other than that they were common to all—and open to all. They should lead all who were disposed to enter, from the alphabet to the poetry of Virgil and Homer. The university and the colleges should crown the system. Every dollar given by the state to these higher institutions, went to diminish the expense of education there. There was no provision, he believed, in the constitution of Pennsylvania for the support of the poor; and, indeed, we had no poor, except the decrepid and the old. None were poor who were young and healthful; and it would be unnecessary to recognize a distinction between the rich and the poor. Any person with two hands, unless disabled by sickness or age, is competent to maintain himself in this state; and when a person becomes a pauper, he is no longer of the class designated as the poor. He did wish to give the public schools the character of elemosynary institutions; and let there be nothing relating to them, that would remind any one that he was poor, or to impress him with a sense that he was receiving charity at the hands of richer persons. He liked the phrase "public schools," and there was no danger of its being misapprehended by the people. It was paying a poor compliment to the people of this commonwealth, to suppose that

they did not understand the meaning of the word "public." Every man knows that he is a part of the public. While gentlemen expend so much breath, together with some talent, in lauding the people, they do them very little credit in supposing that they do not understand the meaning of that simple word.

Mr. EARLE had found, he said, in the course of this discussion, a number of ideas which were entirely new to him. He had never before heard that the people were discontented with that provision of the constitution, which requires that the "poor shall be taught gratis"—and it was the first time he had ever heard the suggestion that it is disreputable to provide for the wants of the poor. He was surprised to hear it urged, at this enlightened day, that it is a disgraceful feature of our constitution to provide for the education of those who, without the assistance of the commonwealth, can have no means of education. He regarded that as the most patriotic, wise, and liberal provision of the constitution of 1790, and he would not vote to strike it out, until he saw something provided, in its stead, that would be efficient for the same object. We did not consider it as discreditable to any person to be supported at the public expense, when they were deprived of all other means of support. It was disgraceful to the poor of England to be supported by the rich, and it was claimed as the right of the poor to be thus supported by their more fortunate neighbors, who, through the institutions of society, had become possessed of that soil which was the national right of all. The same system of laws which secures the land, that of right belongs to all, to a few, should secure the rights of support and education to the poor. The public good might require securing the rich in their rights to the original property of all—he did not quarrel with those laws—but it should be at least provided that out of that property the poor should be educated. It is not a disgrace to our laws that the poor are fed and clad under them out of the public treasury. It is not disgraceful to us to establish alms houses, where the poor are fed and taken care of, and why should it be discreditable to establish schools where the poor shall be educated at the public expense? We could not touch the old constitution in this point without incurring some danger, and he feared that any attempt to improve it, would hazard the interests of general, public education in the commonwealth. He knew of no man, he said, who was ready to go so far as he was himself, on this subject of public education: but it would be madness in him to attempt to impose his system on the people of Pennsylvania, for they were not prepared to receive it. They might be so prepared at some future time, and he trusted they would be. The people were now opposed to a compulsory system, and immediate action on it, and it would be exceedingly dangerous to the interest of education to propose it. If, as it might be said, the new system was not compulsory, and if it was left to the discretion of the legislature to carry it out or not, then it was a matter of mere moonshine.

The present law was the best provision we could have under present circumstances. The people had never, to his knowledge, asked for any change of the constitution on this subject, and they desired none. His own constituents, some time ago, did propose a general system of education for all persons; but, if they could not get that, then they were in favor of the education of the poor, at least, at public expense. He was for

holding on to the present provision of the constitution, he said, unless we could get some equivalent for it. The provision which he would prefer, in place of that made by the existing constitution, would be one making it imperative on the legislature to establish the schools for all persons, where the people wished for them, and, when they did not wish for them, to make it imperative on the legislature to establish free schools for the education of the poor.

Mr. SMYTH, of Centre, said, if the gentleman from Pennsylvania had ever gone into the country, he would have found that the distinction established by the constitution and the school law in favor of the "poor" had been a very serious prejudice to our system of education. The people did not like to be designated, and to have their children recorded as poor, and, therefore, declined the offer made to the poor of education by the commonwealth. It had been found very easy to make laws for providing poor-houses, and food and raiment for the poor without the authority of a constitutional clause on the subject, and it would be equally easy to educate the poor at the public expense, without making an odious distinction between them and other classes, on the face of the constitution. The constitution provides for no poor laws, and it makes no provision to prevent them from suffering for food, raiment, and habitation. But the legislature, notwithstanding that, thought it no breach of the constitution to make ample provision for them. If the gentleman from the county knew the feelings and sentiments of the country people on this subject, he would be aware of the existence of a great deal of difficulty in bringing the school law to bear, and a great part of that difficulty would be removed, by the omission of the clause designating the poor as a class.

Mr. M'CAHEN cared not, he said, by what name the system was called, so the great object in view was effected. He had listened to all the speeches on the question with great attention, in order to derive instruction from the debate, being himself but little acquainted with the subject, though it was one very delightful to his mind. His own education was obtained, if not at a poor school, at a very common school—for it was the school of experience—and there he had learned that an educated and well instructed people were the best stay of a republic. He had heard high compliments bestowed on the gentleman from Adams, (Mr. Stevens) and upon the executive magistrate of the commonwealth, for their efforts in favor of the establishment of the present school system. But there was much credit due, on the same score, to some others—to a large portion of his own constituents.

The first enactment in relation to the school system, grew out of a recommendation made by the governor in the year 1828; but, prior to that time, the great body of the working men of the city and county of Philadelphia had made use of every exertion to rouse the people of the state on the subject of education—to excite their pride in relation to it, and to awaken them to a sense of its importance. They made education their motto, and they rallied under that banner on the election ground. Many there were in the county of Philadelphia, who, to adopt the language of a distinguished statesman, (Mr. Webster) made it their "boast, that they had received their education at a free school"—and, if he could not remove the prejudice of the people against the free schools for the poor, he would not minister to those prejudices. He hoped that all those pre-

judices would soon be overcome, and we know that, during the last year, a great many of the non-accepting school districts had accepted.

In regard to the exclusive donations to the colleges, he would be glad if they were prohibited, and that the money might be expended in the establishment of schools open to all. He believed there was no one here who was not willing to record his vote in favor of the most general and equal provision for education that could be offered, and the proposition of his colleague would, no doubt, be acceptable here, provided it was believed that the people would adopt it. But he feared that they would not, and that, in attempting to modify the amendment so as to please all, he would fail to please any. If all the amendments failed, he hoped the report of the committee would be so modified as to make the provisions on the subject as general in their application as possible.

Mr. EARLE said, the gentleman from Centre, (Mr. Smyth) had mistaken what he had said. The people of his (Mr. E's.) district did object to the education of the poor, as a distinct class. They wished, as he himself wished, all classes to be educated. The present constitutional provision, though important, he considered as much better than none; and the proposition now offered, in lieu of it, amounted to nothing imperative upon the legislature.

The gentleman from Centre, did not think it discreditable to provide for the poor, because, he says, that in the school system established by law, their education will be provided for. The gentleman was willing that the law should provide for the education of the poor, and why was not the provision as proper in the constitution as in the act of the legislature? If it was a feature disgraceful to the constitution, why was it creditable to the law?

Mr. SMYTH was certainly in favor of having a law of the legislature to that extent, but he was not in favor of having such a clause in the constitution. He would leave it to the legislame to provide for the education of the poor in the non-accepting districts as they have already provided in the consolidated school law, but he saw no necessity of having a constitutional provision to that effect.

The question was then taken on the amendment submitted by Mr. CHAMBERS, and decided in the negative—yeas 51, nays, 68, as follows:

YEAS—Messrs. Ayres, Barclay, Bedford, Bonham, Brown, of Lancaster, Brown, of Northampton, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Craig, Crum, Cummin, Curll, Donagan, Dunlop, Foulkrod, Fry, Fuller, Gilmore, Hayhurst, Hopkinson, Hyde, Kennedy, Kerr, Krebs, Long, Lyons, Magee, Martin, M'Call, M'Sherry, Meredith, Merkel, Miller, Montgomery, Nevin, Overfield, Porter, of Lancaster, Read, Royer, Russell, Shellito, Smith, Smyth, Snively, Stickel, Woodward, Young, Chambers, *President pro tem*—51.

NAYS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Biddle, Bigelow, Brown, of Philadelphia, Butler, Carey, Chandler, of Philadelphia, Cline, Coates, Cope, Cox, Crain, Crawford, Cunningham, Darrah Dickey, Dickerson, Dillinger, Donnell, Doran, Earle, Farrelly, Fleming, Forward, Gamble, Gearhart, Grenell, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Ingersoll, Jenks, Keim, Konigmacher, Maclay, Mann, M'Cahen, Merrill, Pennypacker, Pollock, Porter, of Northampton, Purviance, Reigart, Riter, Ritter, Rogers, Saeger, Scheetz, Scott, Sellers, Seltzer, Serrill, Sill, Sterigere, Sturdevant, Taggart, Thomas, Weaver—68.

Mr. JENKS said he had taken occasion on Saturday afternoon to

state, that, in the event of the amendment to the amendment being negatived, he would propose an amendment thereto. He therefore, now moved to strike out of the amendment of the gentleman from Philadelphia county, all after the word "legislature," and insert the following: "shall, as soon as conveniently may be, provide by law, for the establishment of common schools throughout the state, in such manner that all the children in the commonwealth may be educated therein."

Mr. J. wished to be permitted to say that, by this amendment, we get rid of these offensive words in the constitution, "*the poor* may be taught gratis," and, at the same time, we retain all the provisions in the old constitution, except those words; and, at the same time, it will be perceived that it will be obligatory on the legislature, when, in their opinion, the finances of the state will admit of it, and in other respects it is convenient for them to do so, to provide for the education of the children of this commonwealth, as well the poor, as the rich. In offering this amendment, he had endeavored to guard, as far as practicable, the present law, in relation to education in this state, from the effects that might be produced upon it by an improper constitutional innovation. That law has been most judiciously and wisely framed. There is nothing coercive in all its features, and nothing imperative in any of its sections. It invites the people of the commonwealth to participate in the advantages it holds out to them; and the adoption of the law by them, is altogether a voluntary matter.

He thought that much time had been consumed, and unnecessarily consumed, in discussing the propriety of adopting this or that language, as a constitutional provision. The recognition of the principle, was all that was needed, in his opinion, to be inserted in the constitution.

Under the present law, it is with the people themselves, in their several districts, to say whether they will have their children taught in the English, German, Welsh, or other languages, and he considered it entirely proper that they should have the power of saying so. Again, in the amendment he had offered, it would be perceived that the words "at public expense" are omitted. He had objections to these words, and it seemed to him that the universal construction which would be placed upon them, would be that the meaning of them was that the funds for the support of these schools were to come directly out of the public treasury.

Sir, even if the finances of the commonwealth were adequate to that object, still it would unquestionably be undesirable that our public schools should be thus supported. Some gentleman has thrown out the idea to-day, he did not now recollect who, and it seemed to him to be the correct and common sense idea, that if our schools were supported entirely at the public expense, education would be too cheap and too common to attract general attention. There was much good sense in this idea, and in his opinion, that system of education which would be entirely at public expense, never could succeed in Pennsylvania.

There must be a contribution, on the part of the citizens, to a certain extent, to give them that interest in our common school instructions that was necessary to insure their prosperity. This question has

been so generally discussed, having been reviewed in all its parts, by other members of the committee, that it did not seem necessary for him to consume the time of the committee in extending his views farther.

Mr FORWARD acknowledged that he had come into this discussion with sentiments that had been some what modified from the reasoning which he had heard introduced here. He was not awaie when this subject was first broached, of the effect which might be produced in relation to the existing system of instruction in Pennsylvania. He was not aware, when his name had been attached to the report of the committee, on the seventh article, and when the subject was brought up before the committee of the whole, that the report of the committee, as well as the different plans which have been since suggested—did one and all, without exception, go to modify to some extent the existing school system of Pennsyvania. He would now inquire if this was not so?

Why, sir, in the existing school system, it is provided in the sixteenth section of the consolidated act, that, where a district rejects the common school system, a tax shall be laid, in pursuance of the act of 1809, to provide a school where the poor shall be taught; or in other words, a tax for the benefit of the poor, and applicable to the education of the children of the poor.

Now, sir, if these provisions in your constitution be mandatory, as he had no doubt they would be, then your school system must be carried into effect, all over the state, and in every county and district in the state. Would there be any exception? It would be made the duty of the legislature by these provisions, to provide by law, for the establishment of schools throughout the state.

Then, sir, if the legislature perform its duties, according to the constitution, would they not be constraining the public sentiment in those districts where the school system has not been accepted; where it has been repelled. What was to be done in these cases? Under the existing system, when any district refuses to accept of it, they are compelled to raise a tax for the education of the poor, and this they also raise in preference to accepting of the school system; yet, under the amendments proposed, if they were adopted, the legislature would be compelled to extend this system to districts which repudiated it. If this was not the meaning of the proposition, what was it? If it was intended by it that the laws of the legislature might be partial or general, local or universal, what was the use of the provision at all? He knew, perhaps, that this very objection strikes at the root of the report of the committee, as he found from the reasoning thrown out from different parts of the house, and he found himself very much embarrassed in relation to the subject. He was also very much puzzled, as to the amendment of the gentleman from the county of Philadelphia. He knew some part of his difficulty had been removed, but others remained.

He had come to this conclusion, then, in relation to this matter, that, if you adopt this provision or any other one which was mandatory, you repeal, or at all events, direct a repeal, of the existing law, by which com-

mon schools are established throughout the state, so far as relates to that part, leaving it discretionary with the districts to accept or reject the system. This was his idea in relation to this matter.

Sir, our situation is this: We have a system of common schools which have been built up in great wisdom, and by leaving it to the discretion of the people, it has attained a popularity that now insured its continuance.

He thought we might safely conclude that this system would be carried out to the fullest extent, if we permit it to work its way with the people, and to gain on their affections by degrees. But, it must now be recollected, that we are not legislating to give the people a law or a system which is to gain on them by degrees, we are not making a law by which they are to be persuaded, but we are making an amendment which is to be submitted directly to the people, for their approval or rejection. Then he would ask gentlemen, if it was unsafe to leave it to the legislature, which had built up such a system, as we have the whole management of this matter. Do we, in a word, gain any thing by any provision before us, unless it is that of the gentleman from the county of Philadelphia, which runs considerably into details, even if the people should adopt them, other than an acknowledgment in the constitution, of the importance of popular education. Do you obtain any thing by it, but what you now have provided for by the laws of your legislature. Well, then, if our system be insured to us by public sentiment, and by the laws of our legislature, we gain nothing by a mere acknowledment of it in our constitution. One word with regard to that part of the old canstitution which said that the legislature should provide for the education of the poor gratis.

He had always thought himself, that it was by no means disreputable to Pennsylvania, that she regarded the great duties of government to those classes of the community to whom fortune had been unkind; and he confessed it was a perfectly new idea to him, that this broad recognition of the rights of the poor, and of our duties to them, was disreputable.

There are poor children in this country. There are many families, and large families too, whose conditions are such that they are not able to educate their children; then, is there any thing disreputable in our performing our duty to that class of people. Whatever the rich may do, whatever the taxable inhabitants of the state may say, they are obliged, by our fundamental law, to attend to the interests of that class of our citizens, so far as their education is concerned. Then are these obligations which rest upon us disreputable to the state? He differed very much from those gentlemen, who looked upon this as a servile principle, or a principle calculated to produce servile feeling in a part of our community.

He was not aware that this feeling was entertained in relation to this mode of instruction, in any part of our state. It might be possible that it met with objection in the country, on this ground, but certainly not in cities and large towns. He knew in those towns and cities in which he was acquainted, they were glad to receive instruction in these schools, supported at the expense of the commonwealth—these poor schools.

He did not think it was any degradation to attend a school supported at the public expense. He did not think it any disgrace to acknowledge our poverty. But, even if it be so—and allowing this feeling to prevail, have we not got rid of it with our school system. Has the legislature not provided for it? Have we not the school system extending over a large portion of our commonwealth, and by the law which created that system, it is provided that those who reject it, cannot cast from them the poor and neglect their education.

Unless gentlemen were desirous that the poor of our state should be neglected, he did not think they ought to be so anxious to erase this provision from our constitution. He did not think it detracted any from the fame of Pennsylvania, that she has recognized in her constitution, the right of the poor to instruction at the public expense. If that be a disgrace, he was perfectly willing to receive his share of it.

Mr. BONHAM said his impression was, and had been, that the lighter we touch this subject the better. As there seemed to be considerable objection to the word, and it seemed to be obnoxious to many, he would consent that it should be erased; but he hoped that with, that exception, the present constitution would be allowed to remain as it was. The amendment suggested by the gentleman from Adams, seemed to obviate that difficulty, and he was willing to vote for it, if he ever got the opportunity.

The more, however, that he listened to this discussion, the more he was convinced that we had better leave this subject where it was. He knew many townships, in the county, he in part represented, who, because they were under the impression that it was attempted to force the school system upon them, rejected it, and would have nothing to do with it, when first presented to them. Since, however, they have become satisfied with it, and have now accepted of it. Many counties yet educate their poor children on the old system, and prefer that to the school system.

But he had no doubt if the present system was allowed to remain, as at present existing, that in the course of time, it would become general throughout the state. He should, therefore, be in favor of falling back upon the old constitution, and with that view should vote against the amendment of the gentleman from Bucks, and against the amendment of the gentleman from Philadelphia county; he believed the present constitution more satisfactory and liable to less objection, than it would be if it was amended by either of the propositions which had been submitted.

Mr. STEVENS regretted that the gentleman from Bucks had submitted the amendment now under consideration, because in truth, and in fact, it was only a reiteration of the report of the committee, and it seemed to him that it would be consuming much more time to submit it here, than by leaving the matter stand till we come to take the vote upon the report of the committee.

Again, it seemed to him to be scarcely fair, so far as the amendment of the gentleman from the county of Philadelphia was concerned, to be proposing amendments to it, which went to strike it out, and not allow a direct vote of the committee to be taken upon it, and if that amendment

was rejected, then we would be brought directly to the report of the committee.

He desired then to have a direct vote upon Mr. Ingersoll's amendment, and then upon the report of of the committee, as proposed to be amended. He could not, however, agree at all with the sentiment, that there was nothing disgraceful in putting into your constitution and laws, a distinction between the rich and the poor, so far as it related to the subject of education. He admitted that there was nothing disgraceful in poverty, and he was not speaking of any disgrace which attached to it; but he was speaking of the disgrace which would attach to your law givers, who would create distinctions on the subject of education between the rich and the poor, and he could not view it in any other light.

Sir, what do provisions of this kind create? They do create one rank, composed of the wealth of the land, and another of the plebeians and poor. Does it not create distinctions in society, to require that the names of the poor who are taught at these schools, have to be recorded on the archives of the county, some half dozen of times, and there to remain forever before they can obtain that education which ought to be free as the air to every human being in society. When you are going to enter persons in a poor house, it may be necessary, that, their names should be recorded on the county record; but, before you extend that to them, which should be extended to every man under liberal laws; before you extend that to them, which is to be the protection of all our institutions, to say that they shall become subjects of recorded poverty, was to his mind, disgraceful.

Sir, there is an honest pride existing in the bosom of many of our citizens which makes them draw back from sending their children to poor schools, to have them looked upon as paupers in the land—a laudable pride that has existed, and should be encouraged, rather than broken down.

Sir, these distinctions, which have been made by your laws, between the different classes of society—this setting up on one side, those possessed of wealth, and branding another class as plebeians and poor, has broken down the spirit of many of your young men, and lowered them in their own estimation. It was in vain for gentlemen here to say that they did not look upon this as a disgrace. The young mind is not possesed of this kind of philosophy to bear it up, and support it in the trials that it has to pass through. Those minds that have to pass through the degradation to which poor scholars have had to pass, under our law, will be degraded, unless possessed of very extraordinary strength. Is this class of your citizens to have instilled into their minds, from childhood, that they are inferior to another class?

Sir, this should not be. Every system of education in a free country, should be open to all without inquiring into their wealth or their poverty; and to tell us that it is no disgrace in the law giver, to mark out in your constitution, the lines of wealth and poverty, was to his mind, not in accordance with that spirit of liberty, which should prevail in every free country.

Where was the necessity of retaining now in the constitution, the idea

that there are ranks in our country, founded upon no inferiority in merit, but upon the simple question of how much more one child's father owns in dollars and cents, than another. He admitted that it was no disgrace to be poor, but it was a disgrace to him who called his neighbor a pauper. There was no disgrace in being the son of a poor man or a drunkard, but it was disgraceful in that man who would tell the child that his father was a drunkard and a pauper. Then, if it was a disgrace for a man to do this, in moments of excitement, how much more disgraceful was it in legislators, after the calm consideration of the subject, to adopt a provision which would require that the names of a portion of your citizens should forever stand on record as paupers.

He could not agree at all to this doctrine, which had been advanced by the gentleman from Allegheny ; but not desiring to occupy the time of the committee, longer, he would merely say that he should vote against the amendment of the gentleman from Bucks, and every other which may be submitted until we had a direct vote upon the amendment of the gentleman from Philadelphia county.

Mr. CUMMIN said, he did not now rise to throw any light upon this subject, but merely wished to know what the question pending was, and would ask the secretary to read it. [The secretary then read the amendment to the amendment as follows: "The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of common schools throughout the state, in such manner, that all the children in the commonwealth may be taught therein."] Mr. C. said he could not see the distinctions in this amendment, laid down by the gentleman from Adams, and did not believe but this amendment was better than it had been represented to be.

But, as he had before said, he did not rise to illustrate this subject, nor say any thing with respect to this amendment. He merely had risen to rejoice at what he never expected to have in his power to rejoice at, in this hall.

Sometime past, when the subject of the right of suffrage was before the convention, the gentleman from Adams, (Mr. Stevens) with great force and energy, did classify the people of this commonwealth, and brought down some of them to the lowest ebb, and would not agree, that they should exercise the rights of citizens of the state; because, as he alleged, they had slept in barns and hog pens. He was rejoiced, however, to find, that although the gentleman was opposed to universal suffrage, and to giving the poor man a chance to vote, yet he had now extended his views so far that he would carry education to every man's door.

Now, these two rights ought to go hand and hand, the right of universal education, and the right of universal suffrage, and there should be no distinction between them ; and because the gentleman had changed his views thus far, he hoped he would hereafter go with him in favor of universal suffrage.

At this period in Mr. C's remarks, the hour of one o'clock having arrived, the committe rose ; and,

The Convention adjourned.

MONDAY AFTERNOON, NOVEMBER 13, 1837.

SEVENTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The question being on the motion of Mr. JENKS, of Bucks, to amend the amendment as modified, by striking therefrom all after the word "legislature," and inserting in lieu thereof the words as follows, viz: "shall, as soon as conveniently may be, provide by law for the establishment of common schools throughout the state, in such manner that all the children of this commonwealth may be taught therein."

Mr. CUMMIN resumed his remarks as follows:

Mr. Chairman, when the committee rose this morning, I believe I was remarking on the wonderful change which had taken place in the conduct of the gentleman from Adams, (Mr. Stevens) in relation to the general right of suffrage in the people, and the new clause which he is desirous to introduce into the constitution. I hope I may be permitted here to refer to the time he was uttering his denunciations against all those who were not possessed of property to pay taxes—when he would have closed the door against citizens of respectability and character, while he opened it to men who had neither character nor respectability; this was not well. But since that time, Mr. Chairman, a most miraculous change has "come over the spirit" of that gentleman, and according to my view, there was a very good reason for it. An election has taken place in the county of Adams since that time, and if I am not greatly mistaken, the gentleman obtained his election by the votes of the very people whom he was desirous to exclude from the right of suffrage. We have a list of the taxables before us, and of the votes which the gentleman received for the last year, and the present.

The CHAIR here interrupted Mr. C. and stated, that this course of argument was not exactly in order. The question before the committee was on the amendment to the amendment as offered by the gentleman from Bucks county, (Mr. Jenks.)

Mr. CUMMIN resumed. I shall endeavour, Mr. Chairman, to get at that question before I take my seat. In the mean time, I am about to shew the inconsistency of the gentleman from Adams: and I will not trespass long on the attention of the committee in doing so.

I have looked over the list of taxables of Adams county, for the year 1835 and 1836; and I find that there was no township in that county, the number of the voters in which, amounted to the number which the gentleman from Adams had received, by some hundred votes; and it appears farther that at the last election—at which time there was a rail road constructing in that neighborhood—the votes exceeded those given at the previous election, by two to one all out.

In a certain township the whole vote was three hundred and ten during the last year—the gentleman got one hundred and eighty-six; but this year it was six hundred and twenty-six, of which the gentleman received five hundred and twenty four; votes given by vagrants and vagabonds, such as come from the state of Maryland to work on rail roads and the like. In what other way can this excessive number of vote be procured?

This, I should think, Mr. Chairman, is satisfactory evidence that the gentleman from Adams has extended his views recently not only in favor of the right of general suffrage, but also in favor of the right of suffrage in the negro population. How did the gentleman procure all these votes—five hundred and twenty-six out of six hundred and twenty-five? I will tell you. He got them from vagrants—from those who lie in barns, and wash their cravats in hog-trough; sir, shall any man insult the dignity of this body by saying, that the negroes are equal to the white population? I believe that every man should frown upon such sentiments, as I shall at all times.

The gentleman from Adams will find, by our original constitution, that they were separated entirely from us; there was a court of jurisprudence to try them, and that they have not been named from the time of William Penn down to the present day,—that they have never been brought near us, until they were taken hold of by those who possess the same kind of tender feeling towards them that he does. And is this to be borne from a gentleman who has filled your books (for I find his name recorded seventy times in the first volume of the proceedings of debates of this convention, and I suppose his name will be recorded in all the volumes together upwards of four hundred times?) Sir, it is a forced piece of business upon his part, and is strongly indicative of the deep feelings of humanity which he entertains towards the coloured people. Is the gentleman able to shew that there ever was such a proposition made in any legislative body as that which he has submitted to day? Where shall we look for the record of such a family? We cannot point to it. Is it not then an insult to the members of this body, to bring up these negroes into this hall, and to say that they are as much entitled to the benefits of education and to the right of suffrage, as the white population of the state? I am astonished and mortified to have such sentiments expressed in this hall.

I do not propose at this time, Mr. Chairman, to enter into an investigation of the history of these people—to enquire what they are, and what they have been, and what they will be, if it please God that their race shall continue, to the end of time. But I will say that it is improper and gross in the gentleman from Adams, or any other man, either to dispose of foreigners as he has done, or to bring into view a black population, in order that he may disgrace the constitution and the laws of our land, by embodying provisions in relation to negroes. The gentleman can send forth his notes of sympathy with a black population, while he has not a word to utter in favor of that nation which has sent a ruler and commander to every other nation in the world—even from the British government to the independent states of North America. Sir, there has been a time in the history of that nation, when there was not a court in Europe, nor an army, nor a cabinet, which had not an Irishman at the head of it. The men of that country were elected to the highest offices which it was in

the power of man to bestow. And it is such a people as this that the gentleman from Adams would treat with slight. It is conduct unworthy of him.

As to education, it is an honor and a glory wherever it is found. But what should we do, if the education of all the members of this convention, had been like to that of the gentleman from Adams? We might just as well stay at home, and give every man the liberty to do that which pleases him best; let every man make his own laws and measure out justice according to his own ideas. But we must admit that, in one instance at least, which has come under our own observation "much learning hath made a man mad." I will say no more on this matter, except that there are documents on file which will shew, that the gentleman from Adams has been elected by the votes of vagabonds and runaways from other parts of the country—and I say that he has wonderfully changed his views. And sir, when the question of the right of suffrage comes up, I suppose he will not dispute that every man shall be allowed to vote whether he pays taxes or not. With these remarks I leave the gentleman to the enjoyment of his own opinions.

In reference to the subject of education, I repeat my opinion that it is an honor to the human mind, if it be accompanied by those acts of benevolence, of virtue, and of honor which ought to flow from it. But in the absence of those attendant graces which should accompany learning in all ages of the world—it is a curse, and not a blessing—and I must add, that the less learning we have of that description, the better it will be.

In conclusion, Mr. Chairman, I must express my regret that, after having spent eight days in the discussion of this question of education, we do not appear to be one hair's breadth nearer to a conclusion than we were at the moment we first commenced upon it.

Mr. FORWARD said, that the sentiments which he had this morning expressed in relation to the subject-matter before the committee appeared to have been misapprehended by the gentleman from the county of Adams, (Mr. Stevens.)

I rose this morning, said Mr. F. for the purpose of stating a doubt which I entertained, lest the adoption either of the amendment, or of the amendment to the amendment, should have a tendency, if carried out—and, if not carried out, of course, it would be a dead letter—to disturb the existing system of education; and to divest the poor children of this commonwealth, of the right and guaranty as to their education, which they now possess under the constitution of 1790. This was the object for which I rose; and I now reiterate that it is a great and serious difficulty in my mind, and one which I have not ingenuity enough to overcome. If the amendment, or the amendment to the amendment, could be carried into effect, without disturbing the existing system, I should be content to let one or the other pass; but I fear it cannot be done.

The gentleman from the county of Adams, (Mr. Stevens) does not exactly appreciate what I have said. I did not intend to say that I was in favor of a system by which the poor could be educated separately from the rich—or that I was indifferent about the system, or that I had any doubt about the policy of extending it. It has always been my desire that the children of the commonwealth of Pennsylvania should be educated as

the children of the republic—that the poor as well as the rich should be embraced in the policy of the country, and that they should be educated together. I recognise the force of the gentleman's argument, that this distinction, in some parts of the state, may be felt in the minds of the poor—that they are to be educated as poor and not rich. And I contend that this is an argument in favor of the system as it is. My view of the matter is this; if the present system should be abolished, or discontinued, is it not better that the poor should have this hold upon the constitution of the state, than it would be to destroy it? We all know that there are some parts of the state of Pennsylvania, where this system has not yet been received; and where the only resource which is left to the poor is, education under the guaranty of the constitution of 1790. If you remove that quantity they will have nothing left to depend upon. Is not this apparent to every mind? And, if the condition of the poor is such as I have stated it to be, I will ask the gentleman from Adams, (for, I think, we go together so far as regards the principle of the thing,) whether this guaranty is not better than nothing at all? Is it expedient, is it wise to erase it from the constitution without, in the first place, securing, in its stead, some provision, under which the poor children of the commonwealth may be educated at the public expense? Sir, I cling to this guaranty tenaciously; and I do so sir, in behalf of those parts of the state where the common school system of education has never been yet received. I am in favor of a system of common school education; I think that it ought to be encouraged, and I will go to any proper extent to cherish and improve it. But I cannot see where lies the harm in this provision of the constitution. Is it injurious in its operation? Does it discontinue or take away, the power to make provision for all alike. Are you not entitled, under this very provision, to build up your system of education in such a manner as you may please. I am not able to discover what we shall gain, in behalf of those parts of the state, where the only reliance of the poor is on this clause—what, I ask, are we to gain? Unless, it should turn out that those particular portions of the commonwealth are willing to receive the existing system of common schools, or something in the place of it. If the object is to enforce, the system, whether the people are willing to have it or not, I grant there is some strength in the argument. But if, as I suppose, this is not the object, then there is a difficulty in the way, which I think it is not possible to surmount? Why not, therefore, leave the matter where it is. I think we should find it to be the best and safest course which we can pursue.

A word more, Mr. Chairman, and I shall have done. Is it not obvious that, if you attempt the compulsory establishment of this system in those parts of the state where it is not now established, you will raise up a party against you that will prove an extremely formidable opponent; and may you not in this way endanger the very amendments which we are desirous to make to the constitution of 1790? The anti-education party, even at the present time, is very strong, in several parts of the state. In the county of Allegheny, there are men strongly hostile to the existing system—there are many persons of property who are in revolt against it, and who, if opportunity served, would combine to pull it down. If any member of the convention could devise a plan, by which these difficulties may be avoided, I pledge myself to go with him, heart and hand. But un-

til that can be done, I must hesitate when difficulties present themselves which, I confess, that I am not able, by any reasoning of my own, to overcome or obviate.

I have nothing farther to say at this time, in regard to the subject.

Mr. CHANDLER, of Philadelphia, said, that having been associated with the gentleman from Allegheny, (Mr. Forward) in preparing the report of the committee, appointed on the seventh article of the constitution, in which all the members of that committee, without a single exception, had agreed to strike out the word "poor;" he (Mr. C.) confessed that he was not only amazed, but almost paralyzed, by the opinions which had since been expressed by that gentleman.

I had looked, (said Mr. C.) to a gentleman of his birth, commanding eloquence, and standing in society—a Pennsylvanian—to give me his powerful aid in removing from the state of Pennsylvania, the incubus which has so long rested upon her; and I confess that I am struck with astonishment to find, that, instead of going forward with me in the prosecution of this great and good work, he has fallen back again upon the rejected portion of the constitution of 1790, and is clinging to that which he but yesterday threw from him, as the rotten part of the system. Mr. Chairman, it is a matter of deep regret to me, to discover that this cause has been deserted by a gentleman, in whom we had put almost our whole trust and confidence. We must now trust almost alone to the goodness of the cause itself.

The gentleman seems to imagine, that, if we strike out from the constitution of 1790, the word "poor"—and if the legislature should make a movement, any mis-step, and the present system should, by any spasmodic action on the part of the people, be repudiated or discontinued—that then the poor would not be provided for. I do not know that, in such case, I should desire them to be provided for. I do not know that eleemosynary education, which would then be doled out to the poor, without the aid of any moral principle, would be very desirable for them. But, if that should be the case, what comes of the argument which we have heard so eloquently enforced in the course of this debate, of the onward and irresistible course of public opinion. Sir, when I have raised my voice to express the anxiety which I felt, lest any thing should be done in this Convention, which might arrest or impede the cause of education in the state of Pennsylvania, I have been met with the declaration, that our march was onward—that our banner streamed in light—that we had nothing to apprehend, and that all was going right. And what are we now told is the fact? Here is a proposition made to retrace our steps—to undo what we have done—to go back again to the constitution of 1790—otherwise, that all will be shipwrecked, and that the poor will be sunk.

Mr. Chairman, I can not desire that this should be the case; but I do desire that what we have done should be ensured to us by the exercise of a proper liberality of feeling on the part of this Convention, which will keep alive and cherish a similar feeling on the part of the legislature of Pennsylvania, which will meet with the sanction and the approbation of the people. We have been told, that the non-receiving districts are gradually becoming reconciled. We have been told, that the system has

been received in so many places, that it must go on to a glorious issue. Is it supposed that by removing this clause from the constitution, we shall obviate any of the prejudices which have existed, and, in many parts, still continue to exist, against this system? Every article in our constitution, with the single exception of the bill of rights, is put there for the purpose of taking something away from the natural rights of man. We are not bound, in the absence of the constitution, to educate the poor. The framers of the constitution of 1790, therefore, trenched upon the natural rights of the people, and put it upon them to educate the poor. Now, we who espouse a general system of education throughout the commonwealth, are desirous to go one step farther, and to provide that *all* children may be educated. We desire that the mechanic, or the artisan, the lawyer, or the merchant, the man who labors with the head and the pen, and who contribute out of their own resources, to the education of the poor, may themselves possess the privilege, to have their own children taught in the same school, if they choose to avail themselves of that privilege. And this is the object of the provision which the committee reported, and which, as I have stated, received the sanction of every member of that committee. It is well known to all of us, that the society of friends give largely to the education of all classes, and, at the same time, support the education of their own children. But we are not all in circumstances so affluent, as to be able to do this. And hundreds and thousands of men start in life, forgetting that while they raise a family, and pay for their daily support, they have not laid up the means by which they may be educated, and be thus prepared in due time, for the business and the duties of life. Sir, many of these very men who contribute from their own means, to the education of the poor, would be glad if the standard was raised, ever so little, so as to embrace their own children. But they are too proud to consent to their education under the repulsive title of "the poor." Let us cultivate that feeling as much as possible. Let us teach our people to believe that it is best for them—that it is most conducive to their happiness that they should mingle together, as the members of one common family. I am desirous, above all things, to see our children educated—the rich and the poor—all together. I would do away with all these exceptionable distinctions, and I would offer the benefits and the blessings of education, alike to the poor and the rich. Some gentleman, in the course of this discussion, made the remark that Daniel Webster had been educated at a public school. I do not know whether he thought that it was any thing to boast of; but I saw the other day, that a governor of a New England state, who had been educated at a public school, made it his boast, that he had been educated in one of the common schools of New England; where all men have all things in common, and where the children of the rich and the poor, are brought together without distinction. Such is the state of things which I am anxious to have established in the commonwealth of Pennsylvania, and which I will yet hope may be brought about by the action of this convention.

Mr. STEVENS said, that he was desirous of saying a few words in reply to the gentleman from the county of Allegheny, (Mr. Forward) because this was a subject on which the members of the convention should reason together, rather than speak from the hope of achieving a triumph.

Such, (said Mr. S.) is my feeling, and I take it for granted, that this is the ground on which that gentleman wishes we should meet. I confess myself unable to comprehend the course of argument which he has adopted, when he says, that if we strike out from the present provision of the constitution, the word "poor," and insert in lieu of it, the words "all persons or children," we shall do away with the law under which the children of the poor are now educated, in those parts of the state where the school law has not yet been adopted. I say, Mr. Chairman, that I can not understand this argument.

The substitute reported by the committee on the seventh article, for the provision in the constitution of 1790, provides "that the legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the state, in such manner, that all children may be taught at public expense." Does not this embrace fully as much as the present clause in the constitution? But, says the gentleman from Allegheny, if this provision is adopted, the consitutional obligation to provide for the education of the poor is done away with, and must necessarily fall to the ground. Sir, the gentleman knows as well as any member of this assembly, that the whole includes all the parts, and that the greater number includes the lesser. If this is the fact, if all are included, the only difference consists in this—that they are not included under the name of paupers, but are included as the children of the commonwealth. Is not this a provision which would do honor to the state? Is there any thing in it, more than in the provision of the constitution of 1790, which would prevent the extension of the system? It is not saying to you, you *shall* to-day provide schools in which *all* the children of the state may be educated; but it is indicative of a hope that the time may come when such schools will be provided in every district throughout the state. And can there be any thing objectionable in this provision? or any thing which will justify the inference, that the poor children in the non-accepting districts will be injured by its adoption? I grant you that we must wait for time and circumstance before we can accomplish this object; but are we, for that reason, to express a doubt in the constitution, whether that day will come or not.

The present provision of the constitution, in reference to the education of children, remained a dead letter for about twenty years; even as to those who were recorded paupers. The first law was passed in the year 1809; that is, within nineteen or twenty years after the adoption of the constitution of 1790. Let gentlemen turn to that act—let them examine its provisions, and then let them say, whether any Pennsylvanian can be proud of it. It renders it the duty of the assessors, to hunt out the objects of public charity, and declared that education shall be deemed an object of charity. Education an object of charity! Sir, it is, or at least it ought to be, a matter of public right—of public morals—and of public justice. It is not an act of charity. It is a duty which the government of every republic should discharge, to its citizens, as an act of internal policy, and as a means of preserving and perpetuating free institutions. The assessors, under the law of 1809, are to return those who are too poor to be otherwise educated. The circumstances of the parents of the children are to be minutely inquired into. Then, under the same act, the teacher is to provide a poor scholars' book—he is to keep it on

his desk, and he is to record in it the names of the scholars, and the number of days they were taught at the school. And worse than all, Mr. Chairman, this same book is to be filed among the archives of the county, as a monument of the glory of the state, to be brought to view, when any anxious or malicious person may desire, at any future period in the lives of those persons who received instructions under the law.

Sir, I concur entirely in the sentiments that have been expressed by the gentleman from the city of Philadelphia, (Mr. Chandler.) I doubt much whether, if the provision of 1790 is to be continued, I would not prefer that the whole thing should fall to the ground to-morrow. For my own part, I would rather see the children of the poor man take their chance, than I would see them educated by the unwilling charity of the state, and afterwards see thier names blazoned forth in the public records of our country, as the recorded sons of a pauper. Sir, there is something in this, at which the mind naturally revolts. I admit that there is no great crime in being convicted of poverty; but I never wish to see the children of the independent freemen of this commonwealth of Pennsylvania, dressed out before me in the party coloured garments of a convict, and pointed out, so that they may feel their inferiority. Every thing of this nature is in direct repugnance to the spirit of the free institutions under which it is our high privilege to live, and will not, I trust, receive any countenance at the hands of this Convention. If there is any one thing on earth, which, above all others, is calculated to break down and subdue the mounting spirit of the young, it is this cold and false pride—this attempt to fix upon your fellow creatures the badge of inferiority. If you cherish this false feeling by any legislation of yours, you do wantonly crush the feelings of a portion of your citizens, without necessity or cause; and you pursue a course which is directly hostile to that which the history of all free governments teaches you to adopt, and which is, to encourage, to cherish and to foster lowly merit, so that you may lead it on to high and noble ends.

Mr. Hopkinson said, that so far as he could judge of the sentiments entertained by the members of the Convention—so far as those sentiments had been delivered—there seemed to be a strong tendency to come back again to the provision of the constitution of 1790, which had once been changed by the vote of this body, and about which he had at the present time an opinion, although he had also many doubts and difficulties. And, said Mr. H., it is not with the view of entering largely into the argument of this section, but simply for the purpose of stating what that opinion and those doubts and difficulties are, that I now ask permission to say a few words. It may be, Mr. Chairman, that these doubts and difficulties may be answered, or removed by the arguments of other gentlemen on this floor, and I sincerely hope that such will be the case.

I have said that, from all I have heard, the tendency of the opinion of the convention seems to be, to come back to the provisions of the constitution of 1790—with one exception, however, and it is in reference to this exception, that I feel the most difficulty. I allude to the proposition to strike out that part of the provision of the old constitution, which declares that the poor shall be taught *gratis*.

As I am at present disposed, I feel inclined to strike out these words, and the reasons why I prefer this course are brief. When gentlemen

are discussing a subject, with a view to attain a certain end, it is well that they should keep their eye constantly on the end to be accomplished, and that they should adopt those means which are most likely to reach that end with the greatest facility.

What is the object which we now have in view? I speak of the one great, paramount object which the committee has now under consideration. It is this:—to extend the benefits of education as broadly as lies in our power, to all the people of this commonwealth. Is this the object? If it be so, we have nothing to do but to consider the means by which that object is to be accomplished, and every argument of every gentleman should go to display and support those means which are most likely to attain the end desired.

By what means, then, will you extend the benefits of education most fully, to the people of the commonwealth? That is the question. I answer, Mr. Chairman, by encouraging the people to come to it, and by removing all impediments which obstruct their path to it. Of this description, I regard that provision, in the constitution of 1790, which designates the children of a certain class of our citizens, as *poor* scholars; and this is an impediment which ought to be removed. I will come, step by step, as clearly as I can, to the point I have in view. If, then, this is an impediment to the general diffusion of education throughout the state, it is our duty to take it away. The question then presents itself—is this an impediment? For my own part, I am disposed to believe that it is. Sir, there is a natural pride in men; and, probably, a peculiar pride in the American character—to conceal, and not to display our poverty, even where it is not the result of our own vices. Sometimes, we know, it may be the result of our own vices; and, whenever that is the case, a man has of course a double motive to conceal it. But, when it is not so, we all have within us, in a greater or less degree, that feeling which prompts us to hide our poverty. It is to be remembered, that many of these persons, whose children may require education, may have seen better days—may have been unfortunate in life, and, by reason of their reduced situation and circumstances, may be unable to educate their families. This is a consideration worthy of our best attention. Shall we do nothing to soothe the recollection of past, and better fortunes, and to soften the feelings of wounded pride, so natural to such a condition? Shall we do nothing to allay the prejudice, which persons in this condition, will almost surely entertain, against allowing their children to be educated in the public schools? Yes, sir, ought we not to yield something to those prejudices, so that we may reach a better and a nobler object—the education of their children? I remember a case very strongly in point, and which I have not heard any gentleman advert to.

It will be in your recollection, Mr. Chairman, that the first pension law of the United States, even for the relief of revolutionry soldiers, made necessity the ground-work of the application. No man, therefore, applied for relief under its provisions, unless he was prepared to shew the existence of this necessity. He was then compelled to come forward before a court—where he must have the courage to stand out in view of his fellow citizens as a mendicant and a pauper. What was the consequence? and I can appeal now to my own knowledge of the matter. You found aged and venerable men—whose strong right arm had fought

your battles and defended your country in the hour of her utmost need—suffering, not perhaps the extremity of poverty—but still enduring the most painful privations, because they would not come before the court, and ask for relief. But at length the liberality—no, sir, not the liberality, but the justice of the Congress of the United States took away this most ungrateful stigma upon our national character. The degrading provisions were repealed, and the law was thrown open. And what has been the result? You see these aged defenders of your country's honor and your country's rights, coming forth from their secure retreats, but coming no longer as paupers. You see them requited for their services—asking and receiving what they may ask and receive, consistently with the honor of a soldier, and the pride of an American citizen. I have myself prepared the necessary papers for men, ranging from seventy to eighty years of age, and who have for years been enduring, not as I have said, the extremity of poverty, but the most painful privations, who are now comfortably provided for. May not such be the case with the poor children of the commonwealth? May there not be men, who, proud of their character and former situation in life, will decline to come forward and ask as mendicants for that relief, which they would be glad to receive if it could be imparted in any other way?

Human nature is an extraordinary compound of inconsistencies. Men will receive, under one name, what they would refuse under another—accept one station, under particular circumstances, but not under any other. In fact, after all, appearances make up a great deal of the business of life. Mr. H. had an anecdote to relate, and though he might not do it so well as the gentleman from Northampton, (Mr. Porter) he would relate it in the best manner he could. It contained a moral.

In the last century, there lived an excellent low comedian of the name of Edward Shuter, who, owing to his vices and irregularities and eccentricities, became a great favorite with those who were his superiors in condition and rank. One day a companion of his perceiving a large hole in his stocking, cried out "Ned, there is a large hole in your stocking." "I know it" said Ned. "Have it mended." "No, sir," he replied. "Why not?" asked his friend. "Because" said Shuter, "a hole in the stocking is an accidental circumstance, but a darn is premeditated poverty."

I contend, then, (said Mr. H.) that as all men are more or less proud and prejudiced, and indisposed to confess the real circumstances, especially if bad, in which they are placed—therefore, it becomes this convention, in amending the constitution of Pennsylvania, to cautiously guard against the retaining, or insertion of any thing, calculated to create prejudice or hurt the pride of any of our citizens. He would now tell another anecdote, by way of illustrating the powerful effect of pride and prejudice, on the minds of some individuals.

There was a lawyer, in a court of justice, pleading a cause in behalf of his client, who was really a very poor man, and in order to excite the sympathy of the jury, in regard to him, he was continually telling them of the poverty of his client, calling him his poor client, till at length the client could stand it no longer, and the next time the lawyer repeated "my poor client," the man started up and exclaimed, "not so poor as you imagine." His

pride could not brook that his poverty should be proclaimed to the whole world.

Such was the weakness of human nature. It was the duty of every paternal government, then, to remove these prejudices as far as it possibly could, by getting rid, in the first instance, of every thing having the slightest tendency to create them. His desire was to open the schools to all classes, who might be disposed to attend them. He had now expressed the reasons which operated on his mind in favor of leaving out of the constitution the word "poor." Your constitution might say nothing about "poor" and "gratis;" but when the provision came to be carried into practical effect, and owing to the great number of scholars, the question might arise—Can the intention of the framers of the provision in the constitution, be fulfilled, without incurring some exposure of poverty in those that attend the schools? He knew not what might be the result of the experiment.

Mr. STEVENS, of Adams, said, that in the common school system as it now was, and as the report of the committee would apply—there was no such application—nothing to apply to the poor. Every man had to pay his tax, whatever it might be. The farmer had his twenty dollars, the poor wood sawyer, his six cents. All could go to these schools who paid their county taxes.

Mr. JENKS, of Bucks, said, that if his venerable friend from the city, (Mr. Hopkinson) would examine the proposed amendment to the constitution, he would find that the only part of the section which it was intended to alter, was in reference to the word "poor," which was to be stricken out. The section, in question, was in the following language:

"The legislature shall, as soon as conveniently may be, provide by law for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."

Now, the amendment which he proposed in lieu of this, ran in these terms:

"The legislature shall, as soon as conveniently may be, provide by law for the establishment of common schools throughout the state, in such manner that all the children of this commonwealth may be taught therein."

With respect to the objection urged by his friend from Allegheny, (Mr. Forward) to the amendment, he (Mr. J.) did not apprehend that it would have the effect which he seemed to think it would have. The amendment was comprehensive, and included in it all the children of the commonwealth, and consequently dispensed with that offensive system of education, as provided for by the act of 1805—the object of which was to give an education to the poor. What, he asked, were the operations of that act upon the poor? The gentleman from the city of Philadelphia, (Mr. Chandler) asked the question—were its tendencies such as to discourage the poor from sending their children to school? He (Mr. Jenks) would answer the interrogatory, after having had a tolerably extensive observation, and feeling, as he had done, a deep interest in the education of the poor—that it had had, most decidedly, that effect. In elucidation of this, he would give an instance of his own village under the operation

of the law of 1805, and also, under that of 1835-6, he thought it was—establishing common schools. Prior to the year 1805, there were in that village, three schools, and it was the duty of the assessors annually to go round and ascertain the names and number of those children whom it was necessary to return to the commissioners as "poor" children. This duty they performed diligently and faithfully. But, among those returned, there was the mortifying consideration—the distressing reflection that they were put down as paupers. He regarded that act as a disgrace to the commonwealth. What was done under it? Why, we were schooling the children of the industrious poor of the state, not on an equality with the children of other citizens, but as paupers—depressing them in their views, depriving them of those ambitious aspirations, which ought ever to be encouragsd in the minds of the American youth, and giving them an unfortunate impression that they were inferior to other children. While, under the operation of the present law (which he was free to declare, did that legislature, which enacted it, immortal credit) the village to which he had referred as being scarcely able to sustain three schools, now had five very well attended. Indeed, complaint was made, that there were, at present, more scholars than could be attended to as well as was desired. Now, we saw the difference—the contrast between the act of 1805 and the act of 1836. He trusted that this amendment, or one of a similar character, the effect of which would be to expunge the offensive term "poor" from the constitution, would be adopted by the convention. He entertained no particular partiality for this amendment, because it had its origin with himself. If a better could be suggested, he was prepared to sustain it. But, until that was done, he would most unquestionably give his vote for this.

Mr. FORWARD, of Allegheny, wished to say a word or two in explanation, because what he had said seemed to be misunderstood. It was his anxiety to continue the system that had induced him to say as much as he had done, against the introduction of any thing into the constitution which might have a tendency to injure and render it unpopular. Not that he was indifferent to the subject of education. Heaven forbid. And not that he did not believe that all governments were in duty bound to see that the people were educated. It was a sacred duty which the government owed to the people. His zeal on the subject was dictated by what he had offered to the committee He wished to put a question to the committee, and if the difficulty, at present in the way, could be removed, he would go with them. He was, himself, one of the directors of the public schools. However, the question which he was about to put to the committee, was this:

Suppose the amendment to be adopted—would it, or would it not, endanger the present system? We adopt the amendment, and offer it to the people (including the two hundred and forty non-accepting districts) for their acceptance or rejection. We say that the legislature shall provide by law for the education of all the children of the commonwealth.

He asked what would be said by the non-accepting districts, which are opposed to the whole system? What was to prevent a man, in any one of the districts, from rising up and proclaiming aloud—"here, at last, they are attempting to force this system upon us. They say that we shall have the system—that it must be adopted all over the commonwealth—

that we must accept it—that the children of this district shall be educated at the public expense." Now, if there was no real information—no substantial basis upon which to rest the argument he had offered, then he would follow the lead of gentlemen who had taken opposite ground, and would support any amendment that was practicable. He thought, however, that the objections which he had noticed, would render the general adoption of the system impracticable; for, every man who was, at present, opposed to it, would be even more hostile to it under the amendment now proposed, than he was before. He was entirely in favor of this system—was the advocate and friend of universal education, and as desirous as any man could be, that the people would accept the boon offered to them.

Mr. FARRELLY, of Crawford, was desirous of saying two or three words, in answer to what had fallen from the gentleman from Allegheny, (Mr. Forward.) We had been asked whether the adoption of this amendment would endanger the present system. He would answer, that it would not. To understand correctly what would be the effect of the amendment, we should read attentively the language of the constitution. We would find that it was made imperative on the legislature to establish the school system. The terms of the section were in these words:

"The legislature shall, as soon as conveniently may be, provide by law, for the establishment of schools throughout the state," &c.

That was imperative enough, and was a mandate not to be opposed; and it concluded with this proviso: "In such manner that the poor may be taught gratis." He asked if any man would say, the true construction was—that the legislature was to see to the education only of those who were poor? That was not the meaning of the clause. It was made imperative upon the legislature to establish a system of education throughout the state; and this amendment did not make it more so. The act of 1809, provided for the establishment of schools, in which the poor are to be taught gratis. It makes provisions for the payment of the tuition. The feature now sought to be got rid of by the present amendment had always been regarded as objectionable. He maintained, then, that in striking it out, we did not condemn the present system. He conceived that the existing system was in pursuance to the article of the constitution, as far as he had read it, and that the pending amendment fully carried out its provisions. But, the present school law was not in accordance with the language of the constitution—"that the poor may be taught gratis;" for, under the present school system, the poorest man has to pay his tax. The rejection, or adoption of this amendment would decide whether or not the present system should be carried out. The adoption of it would be in pursuance of the constitution.

Mr. JENKS, asked for the yeas end nays.

And, the question being taken on the adoption of the amendment, it was decided in the negative; yeas 39, nays 74.

YEAS—Messrs. Barclay, Bedford, Biddle, Brown, of Northampton, Clapp, Clarke, of Indiana, Cleavinger, Craig, Crum, Cummin, Donagan, Farrelly, Foulkrod, Fuller, Gearhart, Gilmore, Hayhurst, Henderson, of Dauphin, Hyde, Jenks, Kennedy, Kerr, Long, Lyons, Magee, Martin, M'Sherry, Merkel, Montgomery, Overfield, Porter, of Lancaster, Royer, Russell, Serrill, Shellito, Sill, Thomas, Woodward, Young—39.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Butler, Chandler, of Philadelphia, Clarke, of Beaver, Clarke, of Dauphin, Cline, Coates, Cope, Cox, Crain, Crawford, Cunningham, Curll, Darrah, Dickey, Dickerson, Dillinger, Donnell, Doran, Dunlop, Earle, Fleming, Forward, Fry, Gamble, Grenell, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Hiester, High, Hopkinson, Houpt, Ingersoll, Konigmacher, Krebs, Mann, M'Cahen, M'Call, Meredith, Merrill, Miller, Pollock, Porter, of Northampton, Reigart, Read, Riter, Ritter, Rogers, Saeger, Scheetz, Scott, Sellers, Seltzer, Smith, Smyth, Snively, Sterigere, Stevens, Stickel, Sturdevant, Taggart, Weaver, Chambers, *President pro tem*—74.

The question recurring on the motion of the gentleman from Philadelphia county, (Mr. Ingersoll,)

Mr. BIGELOW said, as the gentleman had not accepted his amendment as a modification, he would offer the following amendment to the amendment, viz:

"The legislature shall provide by law for a general system of common school education, which shall be taught in such languages, as may be deemed necessary, and which shall be extended to all persons within the commonwealth, who will avail themselves of such provision."

Mr. CURLL said, as more than enough of time had been consumed in the discussion of this question, he would, if sustained, ask the previous question.

Mr. STEPHENS asked the yeas and nays, which were ordered, and were: yeas 58, nays 57, as follows:

YEAS—Messrs. Barclay, Barndollar, Bedford, Bonham, Brown, of Northampton, Clapp, Clarke, of Beaver, Clarke, of Dauphin, Clarke, of Indiana, Craig, Crum, Cummin, Curll, Darrah, Dillinger, Donagan, Earle, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, High, Hyde, Jenks, Keim, Kennedy, Kerr, Krebs, Magee, Mann, Martin, M'Call, Merkel, Miller, Montgomery, Overfield, Pollock, Read, Ritter, Saeger, Scheetz, Sellers, Seltzer, Shellito, Smith, Smyth, Snively, Stickel, Taggart, Thomas, Woodward—58.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barnitz, Biddle, Bigelow, Brown, of Philadelphia, Butler, Carey, Chambers, Cline, Coates, Cox, Crain, Crawford Cunningham, Dickey, Dickerson, Donnell, Doran, Dunlop, Farrelly, Fleming, Forward, Gamble, Hastings, Helffenstein, Hiester, Hopkinson, Houpt, Ingersoll, Konigmacher, Long, Lyons, Maclay, M'Cahen, M'Sherry, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Riter, Rogers, Russell, Scott, Serrill, Sill, Sterigere, Stevens, Sturdevant, Weaver, Young—57.

So the main question was ordered to be put.

The main question then being on adopting the report of the committee, as follows:

"The legislature shall, as soon as may conveniently be, provide by law for the establishment of schools throughout the state, in such manner that all children shall be taught at public expense."

Mr. STEVENS asked for a division of the question, so as to take it first upon the clause, ending with the word "state;" but, after some conversation, the Chairman (Mr. Reigart) decided that the clause was not susceptible of division, as the latter part thereof, could not stand as a substantive proposition, after the former part was withdrawn.

Mr. INGERSOLL considered that it was dangerous to be acting on this important subject, in so hurried a manner. He therefore moved that the committee rise, which motion was disagreed to.

Mr. READ then called for the yeas and nays, on agreeing to the first section of the report of the committee which were ordered, and were: yeas 47, nays 69, as follows:

YEAS—Messrs. Ayres, Baldwin, Barclay, Barndollar, Biddle, Brown, of Philadelphia, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Coates, Cope, Craig, Crum, Cummin, Dunlop, Farrelly, Fleming, Foulkrod, Gamble, Harris, Hastings, Hays, Helffenstein, Hyde, Keim, Kerr, Long, Magee, Martin, M'Cahen, M'Call, M'Sherry, Merkel, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Royer, Russell, Saeger, Sill, Stevens, Weaver, Woodward—47.

NAYS—Messrs. Agnew, Barnitz, Bedford, Bigelow, Bonham, Butler, Carey, Clarke, of Indiana, Cleavinger, Cox, Crain Crawford, Cunningham, Curll, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Earl, Forward, Fry, Fuller, Gearhart, Gilmore, Grenell, Hayhurst, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Ingersoll, Jenks, Kennedy, Konigmacher, Krebs, Lyons, Maclay, Mann, Meredith, Merrill, Miller, Montgomery, Overfield, Pennypacker, Read, Riter, Ritter, Rogers, Schectz, Scott, Sellers, Seltzer, Serrill, Shellito, Smith, Smyth, Snively, Sterigere, Stickel, Sturdevant, Taggart, Thomas, Young, Chambers, *President pro tem*—69.

So the report of the committee was disagreed to.

Mr. READ then called for the reading of the first section of the seventh article, which was read as follows:

"SECT. I. The legislature shall, as soon as conveniently may be, provide by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis."

Mr. READ then moved to amend this section by striking out all after the word "state."

Mr. PORTER, of Northampton, moved to amend the amendment, by inserting before the word "schools" the word "public," and inserting in lieu of what was proposed to be struck out, the words "in such manner that all who desire it may be taught at the public expense."

On motion of Mr. STURDEVANT, the committee then rose, reported, and obtained leave to sit again to morrow; when,

The Convention adjourned.

TUESDAY, NOVEMBER 14, 1837.

The President laid before the Convention the following communication:

CARLISLE, November 10, 1837.

Hon. JOHN SERGEANT,

President of the Convention to amend the Constitution:

Sir—It is the intention of the Cumberland Valley rail road company to have a public opening of their railway, between the Susquehanna river and Chambersburg, on Thursday, the 16th of November. The presence of yourself and the members of the Convention generally, is respectfully requested on that occasion.

I have the honor to be,
Very respectfully,
Your obedient servant,
W. MILNOR ROBERTS,
Chief Engineer.

Which was read and laid on the table.

Mr. STEVENS submitted the following resolution, viz:

Resolved, That the thanks of this Convention be tendered to the Cumberland Valley rail road company, for their polite invitation to attend at the opening of their railway from the Susquehanna to Chambersburg, and the Convention regret that public duty compels them to forego the pleasure of complying with it.

Mr. STEVENS moved the second reading and consideration of the resolution, and the motion was agreed to; the resolution was read a second time and adopted.

Mr. DICKEY, of Beaver submitted the following resolution which was laid on the table for future consideration:

Resolved, That the committee of the whole be discharged from the farther consideration of the seventh article of the constitution, that the consideration of the ninth article in committee of the whole be dispensed with, and that the convention will proceed immediately to consider, on second reading, the amendments already made to the constitution in committee of the whole, and that this Convention will adjourn *sine die* on the 25th day of December next.

Mr. STEVENS submitted the following resolution, viz:

Resolved, That the President draw his warrant in favor of the Secretary, for the sum of three hundred and fifty dollars, to be paid to the clergymen who have officiated as chaplains to the Convention, which they be requested to accept, with the thanks of the Convention.

Mr. STEVENS moved the second reading and consideration of the resolution at this time, and on this question he asked for the yeas and nays, which were ordered.

The question was then taken and decided in the affirmative, as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Bornitz, Bedford, Biddle, Chandler, of Philadelphia, Chauncey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Craig, Crain, Crum, Cunningham, Curll, Denny, Dickey, Dickerson, Doran, Farrelly, Forward, Fuller, Gamble, Harris, Hastings,

Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hopkinson, Kennedy, Kerr, Long, Lyons, Maclay, Mann, M'Call, Meredith, Merrill, Merkel, Nevin, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Riter, Rogers, Russell, Saeger, Scheetz, Scott, Sellers, Seltzer, Shellito, Sill, Smith, Sterigere, Stevens, Taggart, White, Woodward Sergeant, *President*—69.

NAYS—Messrs. Bigelow, Bonham, Brown, of Lancaster, Brown, of Philadelphia, Carey, Chambers, Clarke, of Beaver, Coates, Cummin, Darrah, Dillinger, Donnell, Earle, Fleming, Foulkrod, Fry, Gearhart, Gilmore, Grenell, Hayhurst, Hiester, High, Houpt, Hyde, Ingersoll, Jenks, Keim, Konigmacher, Krebs, Martin, M'Cahen, M'Dowell, M'Sherry, Miller, Montgomery, Overfield, Read, Ritter, Serrill, Smyth, Snively, Stickel, Thomas, Weaver, Young—45.

The resolution being under consideration,

Mr. THOMAS, of Chester, moved to amend the resolution by adding at the end thereof the words following viz: "and that the same be deducted from the per diem of the members."

Mr. INGERSOLL expressed some doubts as to the power of the Convention to give this compensation. Under the law of the legislature, certain specific powers of appropriation were given; and, unless this came under the head of contingencies, he did not think there was any power in the convention to make the compensation.

Mr. STEVENS contended that the convention had the same power in this case as to pay the door-keepers, &c. We had invited the clergy to officiate, and we had quite as much right to pay them a compensation, as we had to ask their services.

Mr. CHAMBERS, of Franklin, stated that he had offered the resolution under which the clergy were originally invited to officiate. He had supposed they would be gratified by the opportunity, and he had no doubt they were. When he offered the resolution, he had told the gentleman from Philadelphia, that he did not propose to establish the office of chaplain. Congress gave a salary to a chaplain. He was willing either to subscribe, or to take the amendment. He had no doubt as to the power of the convention to pass the resolution, if they could be satisfied on the subject of its propriety.

Mr. MARTIN, of Philadelphia county, was opposed to the resolution and the modification, considering the whole as against the constitution. He had no right to be required to pay for the support of a religion with which he had nothing to do. It was a bad example for the convention to set. The constitution of 1790 prohibits any requisition upon us to support a religion of which we are not members.

Mr. BANKS, of Mifflin, felt embarrassed how to act. He wished, on the one hand to treat the ministers liberally, at the same time he desired to perform his duty to the commonwealth. He was opposed to the amendment which would deduct the compensation from the *per diem* of the members. That would be obviously unjust, as many of the members voted against the resolution, and he would not be willing to tax any other of the members than those who had sanctioned the invitation.

Mr. PORTER, of Northampton, said we had proposed to employ the clergy. He thought it wrong to employ any persons without paying them, and therefore the chaplains being employed, ought to be paid. He knew there were gentlemen who had scruples, and these he would not coerce. The amendment of the gentleman from Chester could not consistently be carried. It involved a violation of the constitution, as

was remarked by the gentleman from Philadelphia county, to compel members of different creeds to pay for the support of a sect to which they did not belong. He would vote for the resolution, because he thought it right that these gentlemen should be paid. In a christian country it was proper; and he hoped the gentleman from Chester would withdraw his amendment.

Mr. WOODWARD, of Luzerne, also expressed his hope that the amendment would be withdrawn. He would not allow the gentleman to step between him and his wants. His wages has been fixed, and the gentleman from Chester should not step between him and his wages. It would be just as equitable to take his boots and his coat. He would not let go his salary, for his wages had been honestly earned. He would pay the gentlemen liberally, but he could not let go his own wages, unless compelled by force. He did not know whether it was common to open these conventions with prayer. The speech of Benjamin Franklin on opening the convention on the adoption of the constitution of the United States, he considered most beautiful. It was to be found in Pitkins' History, and he never expected to read any thing more beautiful. He could not vote for the amendment of the gentleman from Chester, nor obey it if it should be passed.

Mr. CHANDLER was anxious that the motion of the gentleman from Adams, should prevail, not so much however, on account of the clergymen proposed to be compensated, as on our own account. He thought our own self-respect ought to induce us to offer them at least as much as that proposed by the gentleman from Adams, and he was exceedingly sorry to hear any gentleman of this body object to it. His friend from the county of Philadelphia, had objected to this, because these clergymen were not of his religion, He presumed, however, that the gentlemen meant that they were not of the same sect with himself.

Now, he imagined the gentleman's case was not a peculiar one. They may not have been of the same sect with many of us, yet they were worshipping in that religion which we all possess. He presumed there was no member of the convention but had felt the kindly influence which has been spread over us by the morning services of these divines, and whether they were employed here or elsewhere, he should not only consider that the laborer was worthy of his hire, but that he who served the order should live by the order; but with the gentleman from Luzerne, (Mr. Woodward) he did not consider that this convention had any right to pass a resolution to force from any, a contribution of money against his will. If there were ten members who would be in a minority on the amendment to the amendment, of which he would be one, he would contend that the convention had no right to compel them to make any contribution against their will. When any one did him a service he would cheerfuly compensate him, but he would not allow any man to thrust his hand into his pocket to serve his own purposes. If the convention had employed certain officers they should pay them, if they had any regard for their own character and dignity. The gentlemen had performed the service asked of them freely, and he thought the convention, considering its own character, ought to render them an adequate compensation for the service which they had performed.

Mr. THOMAS said there appeared to be some mistake with regard to

the proposition he had submitted, as some gentlemen had looked upon it as a proposition intended to defeat the resolution proposing to compensate these clergymen.

Now this was not the object at all intended by him. He was as anxious that these gentlemen should be paid as any others who had rendered a service to the convention, but he was not willing to pay them out of the public treasury, because it would be establishing a precedent which never had before existed in Pennsylvania. He should be willing to contribute, now to pay these gentlemen an adequate compensation, and he would have been willing to have voted a higher sum than three dollars a day to ourselves, but as the legislature had fixed that as our salaries, we could do nothing else than leave it at what it was. He thought the only thing we had to inquire into, was, whether this would not be establishing a dangerous precedent to the legislature, and other assemblies of this kind, by paying this money out of the public treasury.

Now with the gentleman from the county of Philadelphia, he was willing to look upon this compensation which we receive here as a vested right, and he was also willing to regard the right of conscience, and although he had modified his amendment before, still if he thought there was a chance of its passing by any majority at all, he would be willing to modify it so that no one need pay but those who voted for it. He had no disposition to press any person to pay any thing against their will and against their conscience. But as his amendment appeared to embarrass the question, and lead to a lengthy discussion which would cost more than the amount proposed to be paid, he would withdraw it.

Mr. Shellito considered it highly discreditable to the body, that a long discussion, which must affect the feelings of these gentlemen very much, should be kept up here. Has it come to this, that the great state of Pennsylvania has become so poor that she cannot pay three hundred and fifty dollars to clergymen to perform service in her convention to amend her constitution? What will be the feelings of these gentlemen when it is laid before the world that we have had a long dispute as to whether we will pay them or not? He hoped the resolution of the gentleman from Adams would pass, so that we may pay them for the services they have so cheerfully performed.

Mr. Earle believed that this was the first attempt that ever had been made, from the first foundation of the government down to the present time, to introduce any thing like a connexion between church and state in Pennsylvania. [A laugh.] He knew that some gentlemen would laugh at this, but he would tell them, that the moment they adopted this, they went the whole principle of the convention, and they cannot sustain it on any other principle. If we adopt this, on the same principle, may you not have a clergyman in every township, paid at public expense? The resolution inviting these clergymen to perform this duty had been passed through the convention without much consideration; and if it had then been proposed that they should be paid out of the funds of the commonwealth, you would not have found ten men to have voted for it. There were not ten members of the convention who would have had the moral courage to have voted a tax upon the people of Pennsylvania, for the purpose of paying the clergy. He had no idea, at the time that resolution passed, that it was intended to compensate these clerical gentlemen, nor did he

believe that one twentieth part of the members ever entertained any such idea. Now, he denied our moral or natural right to pass this resolution, and if he put it upon the right of conscience,—if every member of the one hundred and thirty-three, composing this convention, one single member excepting, or, if instead of that, the whole people of Pennsylvania were here assembled, and all agreed to it except one, and that one himself, they had no right to compel him to pay any thing, directly or indirectly, for this object, and the moment you do so, it is as gross and outrageous a tyranny as ever was committed by any despot upon earth. This was the principle, and it was the principle he contended for, and although the gentleman from Luzerne had stood up for the principle, so far as it related to himself directly, still he had yielded it indirectly. He would ask that gentleman what right he had to compel his colleague from the county to pay a tax for this object, any more than the convention had to make him pay it directly out of his wages; or what right had he to say to the gentleman from Berks, (Mr. Keim) that he must pay a tax for the purpose of paying these clergymen, when he denied the right of the convention to compel him to pay it from his wages. He refused to contribute at the command of the convention, but he would send the tax collectors to his neighbors to compel them to contribute, because if we take this money out of the treasury, the legislature must supply it by the levy of a new tax on the community at large. The gentleman has no more right to make any citizens of this commonwealth pay the thousandth part of a mill for this purpose, than the convention have to make him pay the whole of his wages from the commencement to the end of this session. The principle was precisely the same in the one case as in the other. It was an outrage to compel those to contribute money for the support of a clergy who believed that our clergy should do as they of old did, go about doing good, without money and without price. He himself was pleased to see every religious society flourish. He was no sectarian, and respected every religious society, and was desirous of seeing all prosper, but he also respected the rights of conscience; and now said, that by passing this resolution, you not only violate a natural and indefeasible right, but you commit a positive infraction of the existing constitution of Pennsylvania, which is and will be in full operation until our amendments are submitted to the people, and approved by them; and if he was treasurer of the state of Pennsylvania, he would never consent to this violation of your constitution, by paying over the money which the convention might appropriate for this purpose. Like the gentleman from Luzerne, he would resist it, and rather cut off his right hand than permit the first dollar to pass out of it. This resolution was a plain and positive violation of the following provision in the bill of rights: "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled, to attend, erect or support any place of worship, or to maintain any ministers against his consent; that no human authority can in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishments or modes of worship." Now, sir, here is a plain constitutional provision, which would be violated by this resolution. If you cannot compel one citizen to support a ministry against his will, how are you going to compel a large class of the citizens of the commonwealth to do

so, whether they are opposed to it or not? If you cannot compel a member of this convention to contribute a portion of his wages to this purpose, how can you compel the people at large to do so? You have no more right to do the one than the other. The constitution says that no human authority can interfere with the rights of conscience, and yet you are endeavoring by this resolution, to compel men to pay a tax for the purpose of paying these clergymen. When the resolution was first brought in, inviting these gentlemen to perform this service, he was absent, but he afterwards objected to it; and he objected to it because you did not employ them in your legislative body,—because you did not employ them in your courts of justice, and your commissioner's offices, where it was just as necessary to have prayers as here. It was the right of every citizen to have prayers in his house every morning, either by himself or by such clergymen as he might see fit to employ, but this was no part of the public duty. It was a matter of private conscience with which we had nothing to do. But the moment you acknowledge the principle, and pay these men out of the public treasury, that moment you have a right to say that clergymen shall be employed and paid at the public expense, to open your courts of justice with prayer, to open your commissioner's offices with prayer, and to have prayers in every school in every township in the commonwealth. And the money for this purpose is to be raised by a forced tax upon men whose consciences may revolt at the idea. He said you had no right to put your hand into any man's pocket and take out the least sum which can be imagined, for any such purpose, while the existing constitution is in operation.

Mr. Stevens said it seemed to him from the time we had spent in this discussion, that we had more than worked out the three hundred and fifty dollars proposed to be appropriated to the payment of these clergymen. Now as to the constitutional objection to paying this money out of the treasury, he could not understand it, especially after every gentleman had admitted that the tax gatherer should be sent out for the purpose of collecting money to give each of us a Purdon's Digest, as he had never heard of any gentleman refusing to receive the work on account of constitutional scruples. He hoped that the vote would now be taken on the resolution, and that it would either be adopted or rejected, so that the commonwealth might not not be put to twice the cost by this discussion which the resolution called for.

Mr. Cummin believed the question pending was, with repect to paying the clergymen for the service they have performed in offering up prayers in this convention every morning. Now he considered, that the laborer was worthy of his hire, and that he who preached the gospel should live by the gospel. As he understood this question, there had been a call made upon these gentlemen by the convention, to open it every day with prayer, and he believed there was no conditions entered into as to compensation; but when the call was made, and they cheerfully accepted of it, it was but right that we should compensate them adequately. He would therefore give his vote to pay them, but he would not pay them extravagantly. They were not asked to perform any duty which put them to any expense, and the service did not exceed a few minutes in each day, therefore his mind was made up to pay them in proportion to their services, whether those services were of any use or not. He never

had thought that those services were of any great benefit, because he always had observed that the usual confusion and distraction of bodies of this kind prevailed the moment the minister left the president's chair. He would, however, compensate them, but that compensation should be far from that which the members of this convention receive, who have to attend here six hours a day, in performing a service for the good of the community. He would have no objection to voting to establish the principle that these gentlemen should be paid, but he could not sanction a principle by which they were to receive three dollars for two minutes' service. He was sorry, therefore, that while he was willing to give his assent that they should be paid an adequate compensation, he could not agree to the amount proposed to be paid. Some gentlemen have approved the payment of this sum, because they were opposed to these men being paid from the first. Now he did not think that any man had a right to make this distinction. Neither the gentleman from Philadelphia county, nor any other gentleman, had the right to make this distinction. If they had desired to make this distinction, they should have taken exception to the resolution at the time it was before the convention. But the gentleman did not take exception to it then; therefore he has no right to do so now. He has accepted of the service of these men, and therefore he should pay them or vote that the commonwealth, which is able to bear all burdens, should pay them for him. For these reasons, he would vote to compensate them in proportion to the services rendered, and if they would not be satisfied with that, he should think they were not what they professed to be; because, if it was money alone which they performed service for, they were covetous.

Mr. HEISTER believed with the gentleman from Crawford, that this discussion was calculated to wound the feelings of these gentlemen when it came to their ears. He was sorry that the gentleman from Adams had thrown this question upon the convention at a time when it was unexpected, and when the convention were unprepared to act upon it. Since, however, it has been introduced, he would respectfully suggest to the gentleman from Adams the propriety of modifying his amendment, so as to make the sum of two hundred and fifty dollars—fifty dollars a piece—to those clergymen who had officiated. He was of opinion that if it was thus modified, we might get a vote upon it without farther difficulty.

Mr. STEVENS would do any thing to accommodate gentlemen, and put an end to a discussion which was costing the state more than the sum proposed to be paid to those gentlemen. He therefore modified his resolution by striking out "three hundred and fifty dollars," and inserting "two hundred and fifty."

Mr. BROWN, of the county of Philadelphia, said it might be that this debate would not be very creditable to us if it was looked at in a pecuniary point of view; and he knew it was a delicate question. It was not the amount of money which he regarded, but it was the principle which was to be considered. He believed that this was the first time in this commonwealth, that it had been attempted to vote public money for this purpose, and although it is but a small beginning, we do not know to what it may lead. If we set this example, the legislature may see fit to carry it out and perpetuate it. He saw, by the proceedings of the convention of 1790, that they had adopted a similar resolution to the one we

had adopted in the commencement of our session, asking of the clergy of the place to open the convention with prayer, but he no where found among their proceedings that they had paid them, or attempted to pay them any thing. His feelings were altogether on the side of the clergy, and in favor of this resolution, but this was not the place to consult feelings when we have a solemn duty to perform to our constituents, and to the country at large. If we adopt this resolution and establish this precedent, where will it end? When we go to Philadelphia he presumed we would adopt a similar resolution, and invite the clergy of that city to perform the same duty, and if the one or two hundred clergymen of that place attend, we shall be under the same obligation to compensate them, which we are to compensate these.

Again, to whom will this money be paid if it is appropriated by the convention? Will there be any thing on the records to show for whom it was appropriated, and to whom it was paid. Our secretaries and other officers are known. We passed resolutions to employ them, and they are known to your committee of accounts when their accounts come to be settled, and it is known to whom the money is paid, but this was not the case with these gentlemen—they are not known to your committee of accounts. He thought this was a dificulty, and a very great difficulty, into which we have been thrown. Now he was willing to go as far as any gentleman in contributing to make up an adequate compensation for the benefits we have received from the services of these gentlemen, and he thought it would be the best plan to leave every man to gratify his own feelings in this way, and contribute what suits his own convenience. He did not doubt for a moment, that if it had been suspected when the resolution was introduced, asking these gentlemen to officiate, that the public treasury was to be drawn upon for an indefinite sum, but it would have been rejected by a very large majority of this convention. Now he did not know but that it might he considered an insult to those gentlemen, for us to say to them, that they should be put down at the salary the legislature saw fit to give us—three dollars a day—for the services they had rendered. The gentleman from Adams, however, may be right in the sum he has introduced as a fit compensation to be offered them, and he may be familiar with their wishes on this subject, but he did not wish to place them and the convention in this awkward predicament, and would, therefore, vote against the resolution submitted by the gentleman from Adams.

Mr. Stevens deemed it right here to say that he had never spoken to any of these reverend gentleman on the subject, nor had he heard any thing from any of their friends on the subject. He hoped, therefore, that gentlemen would not consider that they had any thing to do in bringing this matter before the convention. He had considered the amount first named in his resolution as a proper sum to be offered to them without consulting any one. He had modified and reduced the sum for the purpose of putting an end to the discussion and of perhaps saving a thousand dollars to the commonwealth, but as it had not effected that object, he now modified his resolution and put it back to "three hundred and fifty dollars," and would let it sink or swim at that sum.

Mr. Brown resumed. He said that it might be thought hereafter that they were instrumental in having this resolution introduced, and in conse-

quence of this it may prevent deliberative bodies hereafter from accepting of their services, because they think that they will be compelled to pay them if they do; and they will say at once that they are not anthorized to appropriate the public money for this purpose. He was satisfied that if this resolution carried, we would invite the clergymen to attend when we went to Philadelphia, because he had no doubt that many would now vote to pay them, because we were involved in this matter, who would not agree to accept of their services again. He did not therefore wish to do this injury, and prevent bodies of this kind from having the services of clergymen, when they could be had without charge, and he should therefore vote against the resolution.

Mr. FLEMING was well aware that if these reverend gentlemen had heard the debate on this subject, it would have been exceedingly unpleasant to them. As to the propriety of adopting the resolution, he had but a word to say, and that was that he thought it would have been much better to have taken the vote without debate; because it would be obvious that the discussion which we have had, has not changed a single vote, as we all have our peculiar notions in relation to this matter, and we are not to be debated out of them, or reasoned out of them, by a discussion of either one or two days. Inasmuch as this question can be postponed for a few days, without doing any injustice to those gentlemen who have performed this service, and there was no hope of bringing this debate to a close, he would move to postpone the farther consideration of the resolution until Saturday next, hoping that when it was taken up at that time, that a vote might be taken upon it without farther discussion.

Mr. M'DOWELL, then moved to postpone the farther consideration of the resolution indefinitely.

Mr. HEISTER said, if the gentleman from Adams, would modify his resolution so as to reduce the sum to two hundred and fifty dollars, he would then move the previous question.

Mr. STEVENS said, he had modified it twice to suit the views of other gentlemen, without having the effert of checking the discussion, and he would now let it take its chance at what it stood, and if it was adopted, well and good, and if not, it was a matter for the convention and not for him to feel ashamed about.

Mr. KEIM hoped this resolution would be indefinitely postponed. He was one of those who as a Pennsylvanian, thought this a strange proceeding in the convention. Without entering largely into the subject, the usual authority of precedent seemed absent, at least as to the proceedings of all the public assemblies that had met for political purposes in this commonwealth. Religious controversies should be kept as separate as possible, from the civil policy of the country, and in that respect he believed that the founder of Pennsylvania was extremely guarded and cautious, lest the same spirit of intolerance might be promoted here which had prevailed in the northern country.

Although he entertained an opinion in this matter, he was willing to exercise his right in the expression of it, conceding however due courtesy to those from whom he was bound conscientiously to differ, and in taking his position from the proceedings of our early legislatures he could not find any trace of history that authorized the employment of a single

individual in the capacity proposed by this resolution, much less had he been able to discover any justification from that source, for the employmen, of four persons, as were proposed to be paid by this resolution. There was then much to be dreaded in this sweeping effort to establish a new precedent, doubtful at least in its consequences, and, most certainly, opening the door to dissentions in religious creeds, which, of all other subjects, has been more productive of evil than good to the communities in which they have been agitated. We are here not to take cognizance of these things, except so far as irreligion may have become predominant and destructive of our civil rights and privileges. In this respect, no complaints have ever been heard from any quarter. On the contrary, every quarter of the land teems with the most flattering intelligence of a progression of blessings emenating from the exercise of the benign principles of a gospel dispensation.

As a subject of retrenchment and reform, however, this expenditure comes legitimately before us, and in that aspect, it is impossible to approve it, nor can its adoption have any salutary effect whatever, but rather be the means of forming a precedent that will be quoted in the future, at an enormous cost, and the beginning of an uncalled for and extravagant waste of the public treasure.

The state legislature will deem it their duty to adopt it, and carry it out, and no one can know, however small may be the beginning, where this principle will end. It may present inextricable difficulties, and throw a gloom over the very cause it would promote, or at least present, in the out set, a germ of discord which, of all others, must become more hurtful to the true purposes of free discussion, than any other subject that has ever been adopted.

But, sir, I object to this resolution, not only on the score of a want of constitutional authority to authorize it, but for a still more serious reason; it will introduce secular controversy into every deliberative body, for whatever purpose it may be formed, and be the provocation of a state of things foreign to the best interests of republican institutions. The great question of religious opinion will be mooted and restrained. Men will be pointed at with the finger of scorn, because they enjoy their own peculiar views, or because they cannot think alike with others more numerous and powerful, having the inclination to exercise, by their numerical strength, their power to coerce the weak, and oppress the feeble into the belief of their own particular tenets.

It was this violation of the natural rights of persons that induced the pilgrims to leave their native land; and seek repose in this then rude and inhospitable asylum. It was the remembrance of this violation of the first principles of our nature, that inspired the framers of the general government to reiterate the great truths that all men are created free and equal, and that they are endowed by their Creator with certain inalienable rights, that, among these, are life, liberty, and the pursuit of happiness. Aye, sir, it was this that said congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Our own bill of rights is even more specific. It says "all men have a natural and indefeasible right to worship Almighty God, according to

the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship."

When we reflect on the past, and mark the many scenes of war and bloodshed that are found on the page of history, humanity shudders at the thought that more lives have perished for opinion sake, than for any other cause.

Nor have those wars been confined to any particular sect; in turn, they who had the temporal power, also wielded it in a spiritual sense, until the astonished observer would almost turn with disgust, from a scene so fraught with the worst passions that disgrace the human heart. From this horrid picture of man's depravity, and untoward thirst for the control and government of his fellow beings, the degradation to which he would be subjected by an acknowledgment of such influences, would again renew those past events, and fill the earth with sorrow and desolation. Father would war against son, and son against father, the social ties that unite and bind communities together would be severed, and man, a savage monster, would revert into his original barbarism, from which the benign light of a refined religion had already so far redeemed him.

How awful is the delusion, that, under the avowed hope of glad tidings, should lead a crusade in martial array to re-conquer a land, which, of itself is only dear in the reminiscence, as the birth place of him whose whole life and doctrines taught peace on earth, and good will to all mankind.

Yes, under the pretext of religion, to carry the sword and faggot to the remotest parts of the earth, is, at the present day, one of the incomprehensible things of the past, and as repulsive now, as it then may have been esteemed and popular.

In this blest land, from the first, the empire of thought was free and uncontrolled, and every one, alike, exercised its promptings, as the best gift of heaven, conducive too not only of happiness here, but pointing to that goal beyond the stars, where sits enthroned the Great Eternal, as the abiding place hereafter.

The mind is various and desultory; and opinions, in all respects, can never be reconciled. It is incident to our very nature, that, in her own fancy, she should make the swift for the race, and the strong for the battle field, and yet, without other endowments, we are told from high authority, the goal may not be reached by the one, or victory crown the brow of the other.

Thus it is with human institutions, frail and erroneous as they necessarily must be, they should not overstep their propriety in requiring too much, lest they fail to attain what is really within their province, and conducive to the comfort and happiness of all.

What safety has any citizen in his religious opinions, if you do not recognize the principle, that every religious denomination shall have the privilege to employ whom it pleases for the purpose of offering up their adoration to the Great Creator.

Acknowledge but the right on your part to say what opinion shall prevail, and you endanger at once the perpetuity of religious freedom, by subjecting it forever to the capricious changes of a vacillating majority. There is then no safety—they who are in the ascendant to-day, may be in the declination to-morrow. Nor can we have any guaranty against infidelity itself, acquiring numerical force and usurping the right, according to your own precedent, to engraft its odious doctrines upon the country. Safety can only be insured by abstaining altogether from such action; then indeed, where none are preferred, there is but one interest to subserve, and that is toleration.

If the resolution proposed by the gentleman from Adams should be carried out, do gentlemen know what amount they are paying? We sit here not as censors upon particular religious opinions, but upon the general correct morality of the whole community, We sit here, at any rate, as a committee in relation to the expenses of the commonwealth, and we are bound to know what services are rendered before we pay for them. And last, not least, whether we have been benefited by them. Can any one say that is compatible with the dignity and beauty of holiness, that after a pious offering at the throne of grace, we should instantly convert this hall into an arena of political strife? The amount proposed is enormous. If we take it into calculation, the pay, at three dollars per day, for five minutes employment, would amount to $125,000 per annum. Let us reflect before we thus fritter away the funds of the people, and ponder over the objects to which we would apply them.

I am sorry, Mr. President, to be obliged to express my sentiments in this way, because no man is more disposed to respect the feelings of these gentlemen than I am, and although I am willing, as a private individual, to contribute towards their support, as a duty I owe to society, and as a means of upholding the general principle of religious exercise, yet I cannot lend my aid to take the funds of the commonwealth, for the purpose of applying them in a manner which may lead to the establishment of a dangerous precedent.

In making these remarks, let me invoke the spirit of charity for myself that I would beg to have extended to others. If it has been my misfortune to see, unlike others, it is a constitutional infirmity, marked by that frailty which characterizes all things human. It is foreign to my feelings, to invade the barriers of religious consolation, in whatever bosom it may be cherished, or wheresoever it may be found, no matter how the sentiment is entertained, only so that it is productive of good in precept and in practice.

The feebleness of humanity requires support, and earnestly seeks it, whether in the labyrinth of metaphysics, the abstruse studies of theological philosophy, or the more bland teachings of a revealed religion. There is a light of hope that sustains every one, and points him to another and a better existence, and if we differ as to the mode of travelling the bright path that leads to virtue, it is immaterial only so that we attain the end. Indeed, it would be a culpable effort that snatched from the meek and lowly follower of religion, the only support and comfort of his probation here, by an infliction of severe opinions upon him, inimical to his own rational views, and subversive of those delightful impressions which cheer him onward. He who would rob affliction of its solace, or destroy the

steadfast faith of the humblest of his fellow mortals, well deserves the obloquy, as he merits the reproach of that Deity he professes to worship. There is as much cruelty in the exercise of such a purpose, as there was in days of yore, when the animal machine moved but by the impulse of an unfeeling master, or became the incarcerated victim of his relentless power.

I hope sincerely our enthusiasm will not mislead us into the adoption of measures for which, perhaps we may express regret when the remedy has gone from us. At all events it is safe to negative the resolution before the convention.

Mr. DENNY said, that he had hoped the convention would have disposed of this proposition, without entering into this wide and irrelevant discussion. It was not the friends of this proposition who had extended the debate to this unnecessary length, and thrown open topics which were in no manner connected with the principle of the resolution. A union between church and state! He would ask the gentleman from the county of Berks, (Mr. Keim) whom he (Mr. D.) esteemed as a man of sense, whether he was serious in the assertion he had made that the introduction of prayer into this convention was dangerous to the liberties of the country? Sir, (said Mr. D.) I might have expected that the gentleman would have learned a lesson from the quotation which he has himself submitted. That whole quotation was a prayer to that Being before whom we ought all to humble ourselves. It was a prayer for mercy. And will the gentleman deny to the human family the blessing of prayer? or will he say that they shall not approach in supplication that Being to whom we are all indebted for life, for health, for safety, for intelligence, and for the blessings of religion, because it would be dangerous to the liberties of the country? I cannot believe, Mr. President, that the gentleman is serious in the expression of such sentiments. There is too much intelligence in the community, to allow men to be misled by observations like those which have fallen from the gentleman from Berks, and the gentleman from the county of Philadelphia, (Mr. Earle.) I tell the gentleman that the political controversies of men have done more to inundate the world with blood, and to rend human governments asunder, than all the religious controversies to which he has alluded. Religious controversies, it is true, have been fierce and bloody in many ages of the world. This is a fact well known to all of us. But the examples which we have had before us since the meeting of this convention, ought to teach us—if we do not wilfully close our eyes,—that there is no danger that any religious controversy will arise here, where so many clergymen, of different denominations, have daily offered up their prayers to the throne of grace. I should have supposed that the very circumstance that all these gentlemen, of so many different persuasions, had appeared here at our request, would be evidence enough that there was harmony and a mild spirit of christianity prevailing here—and not a spirit of ruthless controversy. The gentleman from the county of Philadelphia, talks of taxing the people; about going to gentlemen and taking a tax to support a religion which they are unwilling to support, and to which they can not yield their conviction.

This is very strange doctrine. I can assure the gentleman that I and my constituents have been taxed for worse things than prayer in this

hall. They have been taxed for the speeches of that gentleman, which will fill a volume of debates. But I do not intend to travel beyond the immediate question before the convention. I rose merely to express my sentiments at the remarks of the gentleman from the county of Bucks, and also, the hope that we may consider this resolution with a better spirit than has yet been manifested. I was about to suggest, therefore, that we should either dispose of it at once, or refer it to a committee.

Mr. PORTER, of Northampton, said that the proceedings of the convention reminded him, every once in a while, of one of Stern's chapters, which relates to the kings of Bohemia,—which, after leading us on a little way, digresses, and never gets back again. So it was with the convention in the present instance.

If gentlemen would second him, he would, with a view to get back to the proper issue, move the previous question.

Mr. WOODWARD said, that under the leave of the convention, he would just state, that many persons would be much satisfied, if the gentleman from Adams, (Mr. Stevens) would allow his modification to stand; and,

Mr. HEISTER said, that if the resolution was not so modified, he must vote against it.

The call for the previous question having been seconded by the requisite number,—and the question recurring,

Shall the main question now be put?

The yeas and nays were required by Mr. STEVENS, and Mr. REIGART, and are as follows, viz:

YEAS—Messrs. Baldwin, Barnitz, Bonham, Brown, of Northampton, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Craig, Crain, Crawford, Crum, Cummin, Cunningham, Curll, Dickerson, Dillinger, Donagan, Donnell, Doran, Farrally, Gamble, Gearheart, Grenell, Harris, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Dauphin, Hiester, Kennedy, Kerr, Long, Lyons, Maclay, Mann, M'Call, Meredith, Merkel, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Read, Royer, Russell, Saeger, Scheetz, Shellito, Snively, Sterigere, Stickel, Taggart, White, Woodward, Sergeant, *President*—61.

NAYS—Messrs. Agnew, Ayres, Banks, Barndollar, Bedford, Bigelow, Brown, of Lancaster, Brown, of Philadelphia, Butler, Carey, Chambers, Cleavinger, Coates, Cox, Darrah, Denny, Dickey, Dunlop, Earle, Fleming, Forward, Fry, Fuller, Gilmore, Henderson, of Allegheny, High, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Konigmacher, Krebs, Magee, M'Cahen, M'Dowell, M'Sherry, Merrill, Montgomery, Overfield, Reigart, Riter, Ritter, Rogers, Scott, Sellers, Seltzer, Serrill, Sill, Smith, Smyth, Stevens, Thomas, Weaver, Young—58.

So the convention determined that the main question should now be taken.

And on the main question, being,

Will the convention agree to the resolution?

The yeas and nays were required by Mr. KONIGMACHER, and Mr. FORWARD, and are as follows, viz:

YEAS—Messrs. Agnew, Baldwin, Barnitz, Biddle, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Craig, Crain, Crum, Cunningham, Denny, Dickey, Dickerson, Doran, Farrelly, Forward, Gamble, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny,

Henderson, of Dauphin, Hopkinson, Kennedy, Kerr, Long, Lyons, Maclay, Mann, M'Call, Meredith, Miller, Merkel, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Regart, Rogers, Royer, Russell, Saeger, Scheetz, Scott, Sellers, Shellito, Sill, Sterigere, Stevens, Taggart, White, Woodward, Sergeant, *President*—60.

NAYS—Messrs. Ayres, Banks, Barndollar, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Cleavinger, Coates, Crawford, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Grenell, Hayhurst, Hiester, High, Houp, Hyde, Ingersoll, Jenks, Keim, Konigmacher, Krebs, Magee, Martin, M'Cahen, M'Dowell, M'Sherry, Miller, Montgomery, Overfield, Read, Riter, Ritter, Seltzer, Serrill, Smith, Smyth, Snively, Stickel, Thomas, Weaver, Young—58.

So the resolution was agreed to.

On leave given,

Mr. STERIGERE, from the committee for that purpose appointed, made report, in part, as follows, viz:

That immediately after their appointment, they appointed Messrs. STERIGERE and SCOTT, a sub-committee, to proceed to Philadelphia, to make the necessary arrangements for the meeting of the convention at that place. That the committee, on their arrival in the city, learned that the city councils had unanimously passed a resolution, renewing their offer made on the tenth of July last, to furnish the convention with Independence Hall, or such other building as might be selected, at the expense of the city, for their accommodation, and appointed a committee, with full authority to carry the resolution into effect, on their part. The sub-committee immediately proceeded to examine all the buildings in the city which were supposed to afford accommodations for the convention. After a careful examination, the committee selected "The Hall of the Musical Fund Society of Philadelphia," on Locust street, between Eighth and Ninth streets,—which, in their opinion, affords more suitable accommodation than any other building in the city, which could be procured. This hall is about one hundred and ten feet long, by fifty-six feet wide. It has two entrances for delegates and spectators, is lighted with gas, and will conveniently accommodate the delegates and officers of the convention, and about five hundred citizens. Appurtenant to the hall are two apartments, suitable for secretaries' rooms, and for committee rooms. The city councils have commenced fitting up the hall, under the direction of the committee, agreeably to a plan agreed upon by them; and the same will be prepared for the reception of the delegates by the 27th instant.

The Musical Fund Hall is a very valuable building, and has been a long time in the charge and care of Thomas Jefferson Becket, appointed by the proprietors, who are desirous the same shall continue in his care. Mr. Becket is a careful man, of obliging manners, and will make an excellent door-keeper. The committee think it would be best to place the building in the care of an individual approved by the proprietors, and therefore, recommend the appointment of Mr. Becket, as door-keeper of the convention, from the 28th instant.

The society offer to heat and light the hall and rooms, for seventy dollars a week, and the committee recommend the convention agree to pay the society that sum, for the purposes aforesaid.

The committee cannot conclude this report without expressing

their thanks for the prompt attention and assistance received from the city councils, in the performance of the duties with which they were charged.

The committee recommend the adoption of the following resolutions:

Resolved, That when this convention adjourns, on the twenty-third instant, agreeably to the resolution heretofore adopted, it will adjourn to meet at the hall of the musical fund society, in the city of Philadelphia, on the twenty-eighth instant, at eleven o'clock in the forenoon.

Resolved, That Thos. Jefferson Becket be appointed door-keeper to this convention, from and after the twenty-eighth instant.

Resolved, That the convention agree to pay the musical fund society, the sum of seventy dollars a week, for heating and lighting their hall and rooms, occupied by the convention during its sessions.

On motion of Mr. STERIGERE, the convention proceeded to the second reading and consideration of the said resolutions.

And on the question,

Will the convention agree to the first resolution?

The yeas and nays were riquired by Mr. DICKEY, snd Mr. KEIM, and are as follows, viz:

YEAS—Messrs. Agnew, Ayers, Baldwin, Banks, Barclay, Barnitz, Biddle, Bigelow, Brown, of Lancaster, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Cleavinger, Cline, Coates, Cope, Cox, Craig, Crain, Cunningham, Denny, Dickey, Dillinger, Donnell, Doran, Dunlop, Farrelly, Fleming, Forward, Foulkrod, Fry, Gamble, Gilmore, Grenell, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, Hopkins, Houpt, Ingersoll, Jenks, Kennedy, Konigmacher, Krebs, Long, Lyons, Maclay, Mann, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Riter, Royer, Russell, Saeger, Scheetz, Scott, Serrill, Sill, Smyth, Snively, Sterigere, Thomas, White, Woodward, Young, Sergeant, *President*—84.

NAYS—Messrs. Barndollar, Bonham, Clark, of Dauphin, Clarke, of Indiana, Crawford, Crum, Cummin, Curll, Darrah, Donagan, Earle, Fuller, Gearhart, Hayhurst, Henderson, of Dauphin, Hiester, Hyde, Keim, Kerr, Magee, M'Call, Merkel, Miller, Montgomery, Read, Ritter, Rogers, Sellers, Seltzer, Shellito, Smith, Stevens, Stickel, Taggart, Weaver—36.

So the first resolution was agreed to.

The second and third resolutions were severally considered and agreed to.

SEVENTH ARTICLE.

The convention resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee on the seventh article of the constitution.

The question pending, was on the amendment of Mr. PORTER, of Northampton, which was to insert the word "public," before "schools," and after the word "state," to add as follows:

"In such manner that all who desire it, may be taught therein."

Mr. READ, of Susquehanna, withdrew his amendment, and then moved to strike out the whole section, and substitute the following:

"SECTION 1. The legislature shall continue to provide, by law, for the education of the children and youth of this commonwealth."

Mr. PORTER, of Northampton, said he did not like the phraseology of the resolution. He found, on referring to the resolution of 1836, that it provided for the establishment of a sufficient number of common schools, for the education of children above four years of age, who, by their guardians, or themselves, should apply for instruction. It was limited to youth, but provided for the education of every body beyond the age of four years. Any modification which would continue the present system, he would agree to. He moved to amend the amendment, by the insertion of the following:

"The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of public schools throughout the state, in such manner that all who desire it, may be taught therein."

This important subject had been a long time under discussion, and, doubtless, we all had the same end in view, and fully appreciated the value of education; and he, for one, had no hesitation in saying, that he would be satisfied with any principle that would carry out our views.

Mr. READ said, that he was very anxious to insert in the constitution, a clause which shall not be retrograding in the cause of education, and, at the same time, carry out the present school system, giving no intimation to the legislature, or reason to suppose, that we have any desire to have the system changed for the present. It seemed to him that, at least, he had hit on the phraseology which would carry out the object he had in view. The amendment that he had offered, was in these words:

"The legislature shall continue to provide, by law, for the education of the children and youth of this commonwealth."

In this amendment he had left out, and purposely avoided, the clause which had formed a part of almost every amendment that had yet been brought forward—"as soon as conveniently may be." These were senseless words, and might be mischievous, because they might induce the legislature to suppose that the convention was dissatisfied with the present system.

Instead, therefore, of conveying any such impression as would be done by retaining the words "as soon as conveniently may be," the phraseology he had used gave the legislature to understand that the present system was to be continued until a full and satisfactory experiment in regard to its good effects, had been made. But, it distinctly excluded the idea that the legislature ought to continue the system now in operation, if not found to work satisfactory.

He had a word or two to say, in reference to the terms "children and youth."

The present school system excluded no one, at any rate, under four years of age. That, however, was a matter of detail, and need not appear in the constitution. Some gentlemen wished to exclude adults from the operation of the system; some desired to confine it to children; some objected to the word "youth," and others, and he believed more, objected to the very extensive phrase, "all persons." His ideas

of the word "youth," were these:—If the system was confined to youth, all would be excluded under the age of puberty—say boys of fifteen, and girls of thirteen. At this age, children in the country get the best part of their education. The terms, then, of "children and youth," include every body. The term "children," would exclude all under the age of puberty; and youth, includes all under the age of thirty, or thirty-five, or forty. He desired to place this matter on the broadest possible foundation, and to avoid all detail in the constitution. He entertained the opinion that the school system was working admirably; and, if well, it ought to be continued. Let well enough alone. This amendment would be a sufficient indication to the legislature, that the present system ought to be continued till the experiment should, at least, have been fully tried. There certainly was nothing in the amendment that would convey the slightest idea, that, so far as the opinions of the convention are concerned, any change in the present school law, was desirable.

Mr. PORTER, of Northampton, moved to modify the amendment, by striking out all after the word "education," and inserting the following: "in public schools, of all persons within this commonwealth."

Mr. STEVENS, of Adams, said that the amendment of the gentleman from Susquehanna, (Mr. Read) seemed to have the same thing in view. He thought the amendment of the delegate from Northampton, (Mr. Porter) would meet the views of gentlemen, and he hoped it would be adopted.

Mr. PORTER asked for the yeas and nays.

Mr. CUMMIN, of Juniata, was in favor of giving persons an education till they were sixteen or eighteen years of age, and no longer. That was quite long enough. If they wished to be farther educated, and were desirous of acquiring a knowledge of language, they must go to school at their own expense.

Mr. HOPKINSON, of the city, said that he was sorry the gentleman from Susquehanna, (Mr. Read) did not accept the modification of the delegate from Northampton. Nothing could be more indefinite than the terms "children and youth." A man might have children sixty years of age. It appeared to him that these words might give rise to some difficulty, the definitions of them being so very vague and uncertain.

Mr. READ observed that he saw no difference, in substance, between the two; and therefore, he would accept the modification.

Mr. EARLE, of Philadelphia county, hoped the committee would not agree to the amendment, without having the yeas and nays taken. He did not like to see the yeas and nays called, on a trifling amendment, where it was admitted there was no substantial difference between it, and the proposition to which it was an amendment. On great constitutional questions, he would ask for the yeas and nays; for, then, it was right and proper that they should be called. When we were going to take a vote on amending the good old constitution, under which we had lived so long and happily, and grown so rich, he would ask for the yeas and nays. He would do so, because we ought not to alter the constitution without seeing who was in favor of an alteration, and who was against it. He asked for the yeas and nays.

The CHAIR said that they were already ordered.

Mr. BROWN, of Philadelphia county, said that he did not much like these words of the amendment—"shall continue to provide," if the meaning to be attached to them was, the present system shall be continued. If not, he would ask why the committee should not leave the old section to stand, the latter part of which was stricken out—"the legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state," &c.? Under that provision, the legislature had gone on to establish schools. Why not leave it alone? If it did not comprehend enough, then add to it the words which were now to become a part of the constitution, viz: That every inhabitant of the state may be educated; or, that all the children of the state may be educated. Let the section read: "The legislature shall, as soon as conveniently may be, establish schools throughout the state, that every inhabitant thereof, may be educated." He trusted that the amendment would not be adopted, because he did not think it was an improvement on the old part of the section.

Mr. CHAMBERS, of Franklin, moved to amend the amendment by striking out all after the word "shall," and inserting, "continue to provide, by law, for the establishment of common schools throughout the state."

Mr. FLEMING, of Lycoming, would say a few words in relation to the proposed amendment. He regarded the amendment now before the committee, as decidedly the best one that had yet been brought before them, for their consideration. By it we should get rid of the useless phraseology contained in the first section of the constitution, providing that schools shall be established. Now, as a system of common schools had already been established, all that remained for us to do, was to show by our action here, that we were disposed to continue the present system of education. As the section now stood, it occurred to him, if the word "continue" were made use of in the amendment, that a construction might be put on it that might imply the present system, and leave it as an injunction that future legislation should be directed to the existing system of common schools. Under the phraseology of the constitution, this would not be so. The word "continue," as used in the amendment of the delegate from Susquehanna, would confine it to the present system, therefore, it was objectionable on that account. However, the suggestion, or explanation rather, of the gentleman, (Mr. Read) had relieved him from the difficulty in which he had found himself. Now, the amendment would be perfectly consistent with legislative action, generally, in reference to common schools. The whole matter was left open to the people. It was true that the system, as it now stood, was yet to be submitted to the people, whether they would accept or reject it. The amendment would not impose any additional duty, neither upon the people nor the legislature. It merely gave a constitutional sanction to the continuance of the common school system, in such manner as the legislature may, from time to time, conceive most advantageous to the people of the commonwealth. He understood this amendment to be precisely of the character that was wanted, and which, for several days past, the committee had been striving to obtain. One high and favorable recommendation of the amendment was, that it brought the common school system home to the door of every man in the commonwealth, and left him to say whether he would, by his vote, accept it or not.

That was one feature in the common school system, which, above all others would be protected. It was an unquestionable fact that any attempt to coerce the people into this school system, would create division among them which would not be got over for years. Here the question came up at once, whether the people would accept, or reject the common school system. There was no excitement—no difficulty about it. There was nothing compulsory—every thing was done after an understanding with the individual. He either agreed to pay a tax or not; and it was left perfectly in the power of the legislature to carry out the provisions of this amendment, if passed.

Mr. DICKEY, of Beaver, said he had an objection to the amendment of the gentleman from Franklin (Mr. Chambers,) and, also, to all the other amendments which went to make any alteration in the phraseology of the constitution, because it threw open the whole system to the action of the people. He would ask gentlemen, whether it was desirable to throw down the glove to anti-school men, and say that they shall have this system, though against their will and consent? It mattered not what the phraseology might be, if the language was altered, the consequence would be injurious to the school system. There were, at present, no less than two hundred and forty non-accepting districts, that had declared their determination not to adopt the present common school system. He would ask the gentleman from Franklin to say—should the language he propose, viz; "That the legislature shall continue to provide," &c. be adopted, how he would put the section to the seven hundred and odd remaining districts, where there was a very large minority opposed to the school system.

If the amendments were to be voted upon by general ticket; or if they were to be submitted as a whole, or even separately, the anti-school men would unite all their forces to defeat the system. Now, he felt particularly anxious that nothing should be introduced into the constitution, which might have the least tendency to disturb the school system in operation. If gentlemen would refer to the ninth page of the annual report of the superintendent of common schools for 1837, they would find this language:

"We have now a system,—an admitted, permanent, and well understood starting point. To have obtained this, is a great advance to success. A system may be defective; it may even be one whose continuance, in its present state, will be impracticable; yet, if by general assent its necessity be admitted, and its continuance demanded, it will soon be amended and adapted to the circumstances of the case, so as to secure its permanence and utility."

"We have now a system—an admitted, permanent, and well understood starting point" says the superintendent. And now (said Mr. D.) there are gentlemen here who would open the whole subject again in the commonwealth. And—for what? For the purpose of changing a few words in the constitution relative to the education of the poor,—imposing upon the legislature the duty of seeing that done. This was a duty, however, which they ought to attend to, and which heretofore they had always performed. Indeed, it was a common subject of legislation every winter. It was not many years since that a number of blind boys, from the orphan's blind school in Philadelphia, visited this hall, and dis-

played their learning and accomplishments, and the aid of the legislature was asked, and it appropriated a certain sum towards the purposes of that institution. The legislature admitted, and acted on the principle, that those who could not educate themselves, should be educated at the public expense. It had been shown, that there were in Pennsylvania from forty to fifty thousand boys, and it was probable that the principle would be carried out in respect to them. He could not agree with the remarks that had fallen from the delegate from Adams, (Mr. Stevens) in reference to the word "poor," and the degradation which attached to those who availed themselves of the benefits conferred by the first section of the seventh article of the constitution. It would be apprehended that the striking out of the word "poor," would endanger the whole school system. He was fearful, as he had already said, that if this subject should be again opened, to be discussed by the whole people of the commonwealth, it would endanger the fate of all the amendments to the constitution. He felt as anxious as the gentleman from Adams, (Mr. Stevens) for the success of the common school system, regretted the attempts made to frustrate it, and doubted not that it would go on prosperously, if the constitutional provision in relation to it were left undisturbed. His maxim was—let well enough alone. The word "poor" would do no harm, and would not prevent the system from being carried out. He, therefore, trusted that nothing would be done, that was in the least calculated to defeat the experiment of the common school system.

Mr. CHAMBERS, of Franklin, said, that though unwilling to protract the debate, he felt it but proper, that he should say a word or two in reply to the delegate from Beaver, (Mr. Dickey.) He deprecated any expression of opinion on this floor in relation to the public schools. Why, he (Mr. C.) had understood from what had been said here, and the votes that had been taken, that it was the intention of the committee to express an opinion. We had an opinion, and we were not afraid to express it. The gentleman from Beaver had yesterday said, in respect to the amendments then before the committee, that they might have a tendency to embarrass the legislature, on the subject, and to derange the existing system. To-day it was proposed, to obviate these difficulties by the amendment he (Mr. C.) had offered, and that was, by insisting that the legislature shall continue to provide for the establishment of common schools throughout the state—so as to keep the present system, and not to disturb it. He had said yesterday, that he was for continuing as closely to the existing constitution as possible, obviating only those objections which were said to exist to the constitutional provision. The legislature, by the proposed provision, were left to exercise their discretion in regard to the system. With respect to those districts that had not yet accepted the system, it was not to be forced on them against their consent. The matter was left with the legislature and the people. He had no wish that it should be thrust upon any portion of the community against their consent. The terms which he had used in his amendment, were brief and perspicuous, and the language was better, he thought, than that which had just been read; which was, "the legislature shall continue to provide by law for the education, in public schools, of all persons within this commonwealth." What! was this convention to say that provision shall be made by the legislature for the

instruction of *all* persons? He thought such a provision as this, laid the section open to objections.

It is exposing it to an objection which does not exist in this amendment. The amendment which he had offered, conformed to the language of the constitution, and was plain and perspicious.

Mr. FORWARD asked, whether any man apposed to the system of common schools, as now established by law, could vote for this clause, and whether its insertion in the constitution, would not endanger its adoption by the people?

Mr. CHAMBERS said, in reply, that it must rest with the understanding and the wishes of the voters, whether they would take the amended constitution or not, after it was offered to them. There are many other provisions in it, which to many persons are objectionable, and it must be for the consideration of every man, whether he will forego mere objections to the instrument, and take it as a whole.

Mr. READ withdrew his amendment.

The question then recurring on the motion of Mr. CHAMBERS, to amend the section by substituting for it the following:

"The legislature shall continue to provide by law for the establishment of common schools, throughout the state."

Mr. FORWARD asked the yeas and nays, and they were ordered.

Mr. PORTER, of Northampton, renewed his motion, to amend the amendment so as to read as follows:—

"The legislature shall continue to provide by law, for education in public schools, of all persons in this commonwealth."

The question being taken, it was decided in the negative—yeas 31, nays 85, as follows:

YEAS—Messrs. Baldwin, Banks, Brown, of Northampton, Brown, of Philadelphia, Butler, Chandler, of Philadelphia, Cline, Crain, Cummin, Fleming, Gamble, Hastings, Henderson, of Dauphin, Hyde, Ingersoll, Kennedy, Lyons, Martin, M'Cahen, Porter, of Northampton, Purviance, Read, Riter, Rogers, Royer, Russell, Serrill, Smith, Stevens, Weaver, Woodward,—31.

NAYS—Messrs. Agnew, Ayres, Barclay, Barndollar, Barnitz, Bedford, Biddle, Bonham, Brown, of Lancaster, Carey, Chambers Clarke, of Beaver, Clark, of Dauphin, Clarke of Indiana, Cleavenger, Coates, Cope, Crawford, Crum, Curll, Darrah, Dickey, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop Earle, Farrelly, Forward, Foulkrod, Fry, Fuller, Gearhart, Grenell, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Hiester, High, Hopkinson, Houpt, Jenks, Keim, Kerr, Konigmacher, Krebs, Long, Maclay, Magee, Mann, M'Call, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Pennypacker, Pollock, Porter, of Lancaster, Reigart, Ritter, Saeger, Scheetz, Scott, Sellers, Seltzer, Shellito, Sill, Smyth Snively, Steinger, Stickel, Taggart, Thomas, White, Young,—85.

Mr. HIESTER remarked, that this subject had occupied a considerable time, and had elicited a great deal of debate, and very proper and instructive debate. Amendments embracing every view of the question, had been proposed and voted on and rejected; and there seemed to be in the committee a general disposition to let the provision of the old constitution stand, and to let well enough alone. To test the sense of the committee on that point, he now moved the previous question.

The CHAIR stated, that the main question was now upon the amendment to the section, proposed by the gentleman from Franklin.

Mr. HIESTER would, then, he said, withdraw the motion.

Mr. MARTIN hoped, he said, that the proposition now before the committee would be adopted. Some amendmant to the consti ution on this subject was necessary. There was a difficulty in conducting the common schools under the present provisions of the school laws. The law required that a child could not be taken over thirteen years of age, and, in many cases, the difficulty had been avoided by putting down the age of the child at thirteen, when, in fact, it was eighteen. He thought some alteration of the general school system was necessary, and the provision now proposed would have a very beneficial effect.

Mr. MANN asked, of the gentleman from the county of Philadelphia, (Mr. Martin) whether the school system of his district was formed under the present law, or a law made a long while ago. He believed, he said, that the present law had no effect whatever upon the schools in the city and county of Philadelphia. He was in favor of adhering to the provisions of the old constitution in reference to education.

Mr. MARTIN replied, that it was true that the school system of the Philadelphia district, was formed under a law made a long time ago; but he supposed that the provision now adopted, as a part of the constitution, would be applicable to every school district in the state.

Mr. SHELLITO said, there had been a great deal of debate on this subject, and he trusted that the question would now be taken, and that it would be decided whether we should make any charge at all in our existing constitution on this subject.

Mr. KEIM had listened, he said, with some pleasure, and, also, with some impatience to this discussion, because, he thought it had been unnecessarily protracted. He was at first disposed to strike out the words "in such manner that the poor may be taught gratis," because, he knew very well that they had heretofore been a great objection, not to the constitution itself, for the great majority of the people of Pennsylvania never read the constitution—but it had been an objection to the school law, and a great obstacle to carrying out its provisions in detail. But, he believed, that the present school system, which had now been generally adopted in the state, had done away with objections, and that it had been lost sight of in a great measure. After hearing all the arguments and facts on every side of the question, he was now disposed to vote against every amendment, and to adhere to the existing provision on the subject. There were strong objections to all the alterations that had been proposed, and he believed it would be unsafe to alter the clause, as it stands, in any way. It would be hazardous to make any change, for the people would hardly be disposed to sustain the constitution offered them, if there was any material change on this subject. There was no doubt on the minds of any one, that the present system was working very well, and he was of opinion that it would be best to leave it as it was, not doubting that it would soon work its way into general favor and success.

Mr. BROWN, of Philadelphia county, said, that, in order to test the sense of the committee, on the question whether they were in favor of the old constitution, omitting the clause providing that the "poor" be "taught gratis," he would offer the following amendment, in lieu of the proposition before the committee.

"The legislature shall, as soon as conveniently may be, provide by law, for the establishment of schools throughout the state." These were the words of the present constitution, leaving out the next clause; "in such manner that the poor may be taught gratis."

Mr. M'CAHEN asked the yeas and nays, which were ordered.

Mr. FORWARD remarked, that the proposition would test the question of continuing the provision designating the poor, but it was liable to all the other objections which had been urged against the section, and it would raise the very disturbance which we had deprecated. The question being taken on the motion, it was decided in the negative—yeas 33, nays 83, as follows:

YEAS—Messrs. Baldwin, Banks, Brown, of Philadelphia, Chandler, of Philadelphia, Clarke, of Indiana, Cline, Cummin, Cunningham, Curll, Farrelly, Fleming, Foulkrod, Fuller, Gamble, Helffenstein, Hopkinson Houpt, Long, Lyons, Martin, M'Cahen, Reigart, Riter Russell, Sellers, Shellito, Smith, Stevens, Taggart, Weaver, Woodward,—33.

NAYS—Messrs. Agnew, Ayres, Barclay, Barndollar, Bedford, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Butler, Carey, Chambers, Chauncey, Clark, of Dauphin, Cleavinger, Cope, Cox, Craig, Crain, Crawford, Crum, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Dunlop, Earle, Forward, Fry, Gearhart, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hyde, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Maclay, Magee, Mann, M'Call, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Pennypacker, Pollock Porter, of Lancaster, Porter, of Northampton, Purviance, Read, Ritter, Rogers, Saeger, Scheetz, Scott, Sellers, Seltzer, Sill, Smyth, Snively, Sterigere, Stickel Thomas, White, Young,—82.

The question then being on the amendment, offered by the gentleman from Franklin, (Mr. Chambers,)

Mr. MAGEE moved to amend the same by adding to it the words following:

"But no imperative power shall be invested in the legislature, to compel the establishment of such schools."

The hour for the usual recess having arrived, the committee rose and reported progess; and,

The Convention adjourned.

TUESDAY AFTERNOON, NOVEMBER 14, 1837.

SEVENTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The question being on the motion of Mr. MAGEE, of Perry, to amend the amendment, by adding thereto the following words, viz: "but no imperative power shall be vested in the legislature to compel the establishment of such schools."

Mr. MAGEE, of Perry county, said that he had risen for the purpose of explaining, as briefly as he could, the reasons which had induced him to offer his amendment. They were these; to obviate the objections which existed, on the one side, to the retention of the words, "so that the poor may be taught gratis;" and, on the other hand, to do away with the fear which some members of the convention entertained that, if those words should be stricken out, the effect would be to set the non-accepting districts against the new constitution which was now about to be framed.

I am myself, said Mr. M., in favor of striking out these words; and, if the committee will adopt the proviso which I have offered, I am of opinion that all the difficulty will be overcome, so far at least as the non-receiving districts are concerned. The legislature would thus be restrained from forcing the school system upon these districts, where a majority of the people were opposed to its introduction. He hoped that this proviso would be adopted.

Mr. M'CAHEN said, that he hoped the amendment to the amendment, would not receive the sanction of the committee. Whenever an opportunity had presented itself, (said Mr. M'C.), I have voted on the most liberal principle in reference to the subject of public education; and I call upon the members who are associated with me in this convention, when they are about to pass on a question of such vital interest, not to manifest so much tenacity about the prejudices and the fears of their constituents.

Sir, I came into this body as a reformer; and I regret to say that, among us, there are a great number who are opposed to the introduction of any liberal principle into the constitution on this subject of education. If those who declare themselves to be in favor of liberal principles, are not also in favor of liberal education, I must cease to be a reformer. I shall go in favor of the broadest proposition which this body will adopt; and I can not bring my mind to believe that those gentlemen who will vote for liberal amendments to the constitution, will be found to record their votes against a liberal system of education. Every consideration of public morals and public policy requires that such a system should be established and fostered throughout our commonwealth.

This is a subject, Mr. Chairman, in which I feel a very deep interest. I hope that we all feel that interest, which every parent and guardian ought to feel in improving the condition of society, and making it such as

every intelligent and patriotic mind must wish to see it, and that we shall lend our aid to the establishment of such a system as will one day call forth the gratitude of our whole people. I can not believe that the provision of the constitution of 1790, was the means of producing the present system of education. It remained a dead letter for many years. The existing system of common school education is probably the best which could have been introduced for the present time; but I also believe that in those districts were the law was accepted, the people had gained so much knowledge through it, that they would not now be afraid to meet the question on a broader scale. I hope that some better proposition than we have yet had will be brought forward. As the matter stands at present, I shall vote in favor of the proposition of the gentleman from Franklin, (Mr. Chambers.) In my section of the country there are no prejudices to overcome—no fears to allay in reference to the subject of education. There is a prejudice, however, against the word "poor;" but we can over-look this with more propriety than we can an objection to a school law that is calculated to educate all the children of the commonwealth. I hope that the liberal members of this convention will seize upon the opportunity which offers itself, to adopt the best measure in their power. I have no fear that the people will reject it. I believe, on the contrary, that they will readily adopt it.

Mr. EARLE said that he could not vote in favor of the amendment to the amendment, as proposed by the gentleman from the county of Perry, (Mr. Magee;) but if that gentleman would consent so to modify it, as to add to the end of the proviso, the words "in any district against the consent of the people thereof," he (Mr. E.) was willing to vote for its adoption.

But, (said Mr. E.) I rose principally with the view to correct an error into which the gentleman from the county of Philadelphia, (Mr. M'Cahen) has fallen, in supposing that any of the reformers in this convention are opposed to the introduction of liberal provisions into the constitution, in regard to public education. This, sir, is a mistake; or, at least if there be such, I do not know the fact. The reformers of this body are willing to have liberal provisions, and they are willing that those provisions should be placed in the new constitution. But they fear that the people are not yet ripe for such action. They certainly will be so at some future day, and such a provision as is here spoken of will be introduced into the constitution. But, as things now stand, we do not wish to endanger all the amendments which we shall send to the people for their approval or rejection, by introducing an improper system of education.

Mr. STEVENS said it appeared to him, that notions of reform had taken such deep-rooted hold on the mind and feelings of the gentleman from the county of Philadelphia, (Mr. Earle) that he could scarcely give a moment's attention to any thing else, lest it might perchance have an injurious influence upon him.

If (said Mr. S.) the provisions of the constitution of 1790, in ragard to public education, are to be amended at all, I hope that these amendments will be as good, as broad, and as liberal as we can possibly compass. For my own part, I am willing now to pledge myself to vote in favor of submitting the article on education to the people, in a distinct and separate form, so that we may have the direct vote of the people taken upon

it in such a manner as not to influence the other amendments which may be made to the constitution. Let them reject this portion if they will—and adopt the others, if they will. I desire that they should have as full an option as we can give them. If this course should be adopted, we need hear no more about endangering all our other amendments. I have no wish to endanger any of them; and I throw out this suggestion now, because I am anxious to take the sense of the people of this commonwealth upon the great question, whether it is in accordance with their wishes and feelings, that one portion of their fellow citizens shall be recorded paupers, and that another portion, in all their future life, and in every part of the world, shall have the privilege of pointing them out as having been recorded paupers.

Sir, I hope that the time has at length come, when this stigma will be taken away from our state; it has existed too long already. I should, to be sure, feel less sensitive upon the subject than I now, if some of these gentlemen who think that to be thus recorded is no disgrace, could see their own children set up in the common schools for a mark—could see them pointed out as poor—as recorded paupers. Sir, I wish this from no evil spirit, but simply that they might learn by experience, what the feelings of the poor man must be, when he sees his children in so degrading a situation; and then I would bring these same gentlemen to their former state of wealth and independence, that they might judge for themselves what the difference must be. Can any man doubt what the effect would be? I know that, although the effect might cost them acute pain for the time, they would come out of the ordeal better prepared to extend to all our citizens the benefit of an honest equality.

And, the question having been then taken, the amendment to the amendment was rejected.

And the question on the amendment of the gentleman from Franklin, (Mr. Chambers) was then taken, and decided in the affirmative, as follows, viz:

YEAS—Messrs. Ayres, Baldwin, Banks, Barclay, Bonham, Brown of Lancaster, Brown, of Northampton, Butler, Chambers, Chandler, of Philadelphia, Clarke, of Beaver, Clarke, of Indiana, Cline, Cope, Craig, Crain, Crum, Curll, Denny, Donnell, Farrelly, Fleming, Foulkrod, Fuller, Gamble, Gilmore, Helffenstein, Houpt, Hyde, Ingersoll, Kennedy, Long, Lyons, Magee, Martin, M'Cahen, M'Call, M'Dowell, M'Sherry, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Read, Riter, Rogers, Russell, Serrill, Shellito, Smith, Smyth, Snively, Stevens, Taggart, Thomas, Weaver, Woodward—62.

NAYS—Messrs. Agnew, Barndollar, Bedford, Biddle, Bigelow, Brown, of Philadelphia, Carey, Chandler, of Chester, Clark, of Dauphin, Cleavinger, Crawford, Cunningham, Darragh, Dickey, Dickerson, Dillinger, Donagan, Doran, Dunlop, Earle, Forward, Fry, Gearhart, Grenell, Harris, Hastings, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Jenks, Kerr, Konigmacher, Krebs, Maclay, Mann, Miller, Nevin, Overfield, Ritter, Saegar, Scheetz, Sellers, Seltzer, Sill, Sterigere, Stickel, White, Young—52.

So the amendment was agreed to.

The CHAIR then announced that the question recurred on the first section as amended.

On this motion, Mr. DICKEY called for the yeas and nays.

Mr. STEVENS said it struck him that there was no farther question now to be taken. If we were amending the report of the committee, then

the question would be on agreeing to the report as amended, but the report has been rejected, and we are amending the section to the constitution, and we certainly could not take a question on the section, because, if we rejected, it we would have no clause in the constitution on the subject of education.

Mr. DICKEY hoped that the same question would now be taken which had always been taken, namely, on agreeing to the section as amended, and he also hoped the yeas and nays would be ordered on it.

Mr. STEVENS thought it entirely improper, and contrary to all precedent to take the question on agreeing to the section as amended. When we have amended it as much as we can, then it is to stand.

Mr. SERGEANT thought that the gentleman from Beaver was under a wrong impression in relation to this matter. When we are amending the report of a committee, it has always been the practice, and it was right that it should be so, to take the question finally on the report of the committee as amended. But in this case the amendment is to the section of the constitution, and that being the case the question on the amendment is the final question. Within his recollection a question had never been taken on the section. The question, therefore, which had just been taken, was the last question, according to the usage of the convention heretofore.

Mr. DICKEY then moved to amend the section by adding to the end thereof, the following, "so that the poor may be taught gratis."

Mr. CHAMBERS said that this amendment was not in order, because his amendment, which had just been adopted, struck out these words.

The CHAIR ruled the amendment to be out of order.

Mr. SILL then moved to amend the section by adding to the end thereof, the following: "so that the benefits of education may be extended to all the children of the commonwealth."

Mr. PORTER, of Northampton, rose to a question of order. A motion has been made to amend the section of the constitution and a motion to amend that. The question has been taken, and both these amendments disposed of, and an amendment to the section has been agreed to. He now wished to inquire whether this was not the last vote which could be taken on the question, and whether the section could be farther amended?

Mr. DICKEY said, if this question had been taken on the section as amended, it would be the last which could be taken, but it had not.

The CHAIR said that he conceived that the section was open to amendment and believing so, he had entertained the amendment of the gentleman from Erie.

Mr. READ had no doubt but the section would be subject to amendment, until the question was taken upon agreeing to the section as amended, and if the question has never been taken on a section of the constitution as amended, it is because an occasion had not occurred that required that vote. Most clearly there was another vote to be taken. We have agreed to the amendment just adopted, but it is, and will be no part of the constitution, unless the vote is taken on agreeing to the section, as amended. And the very fact that the section was now amendable, and would

continue amendable from this until next April, showed that the President was mistaken; and that the Chair was right in the first place in supposing that another question was to be taken.

Mr. STEVENS said we had now taken the final question, so far as the section was concerned, as no other question could be taken on the section, let it be taken on what amendments to the section it might. He admitted that you might propose amendments to the sections, but he would suggest to the gentleman from Beaver, (Mr. Dickey) whether it would not answer as well to defer his amendment, proposing to brand, forever, the poor, by keeping an eternal record of their poverty in your county archives, until we come to second reading.

Mr. DICKEY said, that the question before the committee came up on the section of the constitution, to that the gentleman from Franklin (Mr. Chambers) offered an amendment; and that amendment has been agreed to. But he would ask every member of this committee, whether, before that amendment can become a part of the constitution, another vote is not required to be taken upon it. He contended that the gentleman from Susquehanna was right in saying that the question must be taken on the section as amended, as it will be amendable till April next.

Mr. SILL said, he was very sorry to bring an amendment before the house, at a time when it was not considered proper by some of the members of the convention; but he would merely state to the committee, that he considered the principle involved in the amendment he had submitted to be extremely important. It appeared to him, that after having taken away from the constitution the provision which made it imperative on us to provide for the education of the poor children of the commonwealth, we ought to supply it with something equivalent to that. It seemed to him, that if we did not do this, we would rather be retrograding, in relation to this matter, than advancing from the constitution of 1790. According to the old constitution, it seemed to be admitted to be the duty of the legislature, to promote schools throughout the commonwealth; and it seemed to be the idea of the framers of that instrument, that all the children of the commonwealth ought to be taught. He presumed their idea was, that those who were not poor were able to educate their own children, and would do it, and in order that the poor might also receive an education, they inserted a provision that the poor should be taught gratis. Now, by the amendment which has been adopted, that provision is taken away from our constitution. He would, therefore, ask every gentleman, in taking that away, where was the provision for the poo ? Take away that feature from your constitution, and where is the poor man that can come forward and claim the benefit of it. There certainly is none, and he would submit it to any member of the convention, whether it is not to be presumed that our laws are made to provide for the education of the poor, in consequence of this very provision in our old constitution. Now his view of the subject was this:—that he would perfectly agree to amend the constitution by taking away that feature, which appeared in the minds of many gentlemen who were, and who had shown themselves to be, the real friends of education, to be objectionable, but at the same time he was desirous of replacing it with something which would be an equivalent.

He was desirous of having a clause in the constitution of Pennsyl-

vania, which would be a guaranty of the right of the children of the poor to receive instruction, and that guaranty, he apprehended, was contained in an unobjectionable form in the amendment which he had submitted, requiring that all the children in the commonwealth should receive an education.

Now he would submit this question to every gentleman in this committee. Was there a gentleman here who would wish to see, or was willing to see, any child in this commonwealth uneducated, because himself or his parents were so poor that they were unable to give him an education? Was any gentleman here willing to see any child in this commonwealth brought up, without having the light of knowledge poured in upon him, an uneducated and a comparatively useless citizen? He presumed there was not a member of the committee who would advocate this principle. He apprehended it to be a most imperative duty on every government to see to the education of their children. It was a duty on many considerations. It was a duty, because it was one of the most effective means of providing for the defence of the country, and the safety of republican institutions; and it is a more important duty, in a country like ours, where the government is republican, and where it is necessary for every citizen to understand its principles in order to appreciate its blessings. Entertaining these opinions, where was the impropriety of expressing them? Why, sir, has the cause of education and the cause of humanity retrograded since 1790? Even at that early period, our ancestors were willing to acknowledge this principle, that education was a right which the poor could demand in the instrument which they framed, and it has been acted upon by the people since that period of time. Why he supposed, that, since that period of time, there was no single subject which had engaged the attention of eminent men, and stirred up the whole public mind, more than this subject of education. Since that time, nations have taken up the subject, and a great system of general and universal education has been carried into complete operation. The kingdom of Prussia, since 1790, has carried the system of education into such effect, that he supposed every child in that kingdom, between the ages of five and sixteen years, was now receiving an education, and a most excellent one too. Well, his idea in offering this amendment—and he was sorry that it was considered by any one as coming in at an unpropitious time—was, not only that the poor should receive an education gratis; but that all the children in the commonwealth, should receive an education at the public expense; that schools should be so constituted, that the benefits of education might be imparted to all the children of the commonwealth. Now does any friend of education ask more than this? He presumed not. Does any one apprehend that this was saying too much? He humbly apprehended they did not. Is it not a correct principle? Is it not proper? Is it not desirable? Was it not a proper principle to be expressed by this convention, that the benefits of education should be imparted to all the children of the commonwealth? But the apprehension seems to be entertained by some gentlemen, that a provision of this kind might operate injuriously upon the present school system of Pennsylvania, which is in successful operation. Sir, I would be among the last to introduce any thing which would in the remotest degree have that effect. But let us examine it, and see if it would have that effect.

What is the amendment to do? The section as he proposed to amend it, would read as follows:

"The legislature shall continue to provide by law for the establishment of common schools throughout the state, so that the benefits of education may be extended to all the children in the commonwealth."

Now, as respects the subject of education in this state, the community is divided into two classes. One of them, and by far the largest, have accepted of the benefits of the school law, and the other portion are the non-accepting districts. Could then this effect, which had been apprehended by gentlemen, be produced by this amendment, either to the accepting or the non-accepting districts? Could it operate injuriously to the accepting districts? No—because they have already accepted of a system which will effect the result contemplated by the amendment. Well, then, how was it with relation to the two hundred and fifty non-accepting districts? How would it operate injuriously to them? Why, sir, they are now attempting to carry into operation the same object. It is true, it is not so universal as in the districts which have accepted of the school system But in the non-accepting districts, they raise a tax for the education of the poor; schools are kept up, and the benefits of education are extended to those who are unable to provide it for themselves. Under this general idea then, he apprehended that it was applicable to both classess of the community.

But he might be asked by some gentlemen, where is the necessity for this, and why not leave the law as it is? Well, he would state his idea of what was desirable and appropriate. As he had before mentioned, if the section ends where it was before he moved his amendment, there would be nothing in the constitution, tending to convey the idea that instruction was important, and that all the children should be educated; much less that there was any authority for levying a tax upon the community at large, for the education of the poor children. Now he apprehended, under the provision, as it would stand with his amendment, that both systems now in operation could be carried on; and he farther apprehended, that it was a duty to the public, and to that helpless class of the community—poor children—that there should be such an expression of opinion in our fundamental law.

He would not take up any more of the time of the committee on this subject now, but would merely say that he considered his amendment as a very important one, or he would not have undertaken at this late hour to have introduced it; and it was with great reluctance he had trespassed thus long on the time of the committee.

Mr. Stevens then moved to amend the amendment, by striking out the word "children," and inserting the word "persons."

Mr. Sill, of Erie county, said that he hoped the amendment to the amendment would not be agreed to, for the reasons which he had suggested, when he had addressed the committee on a former occasion.

I think, said Mr. S. that it would destroy the spirit and intention of the amendment. About two or three days ago, I took occasion to bring to the notice of the committee, the report of the secretary of the commonwealth, (that is, in the capacity of superintendent of common schools,) in which he states, that the age should be limited. And this he points out

as one of the defects of the present system. I believe, also, that in all nations where the common school system is carried into effect, this has been a point of difficulty; and we have heard it stated by members of this body, that this was one of the difficulties in carrying the system into effect in the different parts of the state in which they reside. I presume that the legislature would act with all care and circumspection in any regulations which they might make of this kind—but, I think also, that we should not place any provision in the constitution which might seem to be of a prohibitory nature. If the provision was made to extend to "all persons" in the commonwealth; the legislature would not, of course, have the power to limit it to children. I think that the amendment, if adopted, will go far to destroy the good effects which now result from the establishment of the common school system. I shall feel myself compelled, therefore, to vote against it.

Mr. STEVENS said, that he had but a few words to say in answer to the remarks of the gentleman from Erie, (Mr. Sill.)

I admit, said Mr. Stevens, that the report of the secretary of the commonwealth, as superintendent of common schools, does recommend that children of a certain age only, should be taught in the public schools; and I will state also that that is the only part of his report to which I can not yield my approbation. That portion of the report found no favor with the legislature, and I hope it will never find favor with any deliberative body in the commonwealth of Pennsylvania. There are but a few states in which the common school system has been carried into operation, where such a limitation has been admitted.

In the state of Vermont, and also in several of the adjoining states, the only preliminary question which the law requires is this—Is the applicant ignorant - is he desirous to learn? There may be many persons at the commencement of a free school system in a state, who may be above the age of children—may be at the age of puberty—and who have never had an opportunity to avail themselves of the benefits of education. We know there are such in our own state. Would you deprive them of the opportunity of learning, if they are disposed to learn? Would you close the door against them, and, by refusing them an admission, compel them to remain in ignorance for ever? There are a vast number of persons who may, in early life, have lived in other states, and who may come into the state of Pennsylvania at the age of twenty or twenty-one years. Are all such to be excluded? Will you tell them that, because they have not the means to instruct themselves, you forbid them being instructed at all—but that they must continue through life as ignorant as they are now? Is there any age in human existence when ignorance is desirable, or even to be tolerated? Will you give the sanction of your high authority to such a doctrine as this? I remember very well, at a former period of my life, and in another state, what was the operation of this system, as extended to all persons. I have myself been a teacher in New England. I have taught married men of thirty years of age. I have taught persons of all ages between the age of four and thirty—and it was this very feature which seemed to me to constitute the great beauty of the whole system. It was thrown open to *all* the ignorant, and I shall be sorry to see knowledge and the means of acquiring knowledge, confined to any one age. There is no reason to fear that our schools will ever be too

full; the heart of a patriot should rejoice even at the most remote prospect of such a contingency. Could there be any sight more pleasing than to see your whole population, crowding, with anxious steps, to the gates of knowledge? This very system has tended to open that prospect to our view, wherever it has been adopted. In the borough in which I live, the average number of scholars, before the adoption of this system, was one hundred and thirty-five; and, since its adoption, that number has increased to an average of three hundred and seventeen—and with only the same amount of population. We have abundant evidence in this fact, that there are a vast number who wished to be educated, but who were not willing to receive an education under the old system. I hope that the amendment will not be agreed to.

Mr. CURLL said, that he felt very desirous that the amendment to the amendment should prevail. He also, like the gentleman from Adams county, (Mr. Stevens) had taught a school for a period of nine or ten years; and, (said Mr. C.) I have frequently had in my school in Chester county, men and women older than I was at the time. If I rightly understand the present school law, no persons above the age of fourteen, are permitted to go. Few persons have received an education by the time they are fourteen years of age. Will intelligent men in this body, stand up for a liberal system of education, and yet not permit those to partake of its benefits, who are taxed for its support? This is a wrong principle, and I hope it will not be acted upon here.

And the question was then taken on the amendment to the amendment, and was decided in the affirmative—yeas 54, noes not counted.

So the amendment to the amendment was agreed to.

And the question was then taken on the amendment as amended, and the same was agreed to.

The question then recurring on the adoption of the section, as amended:

Mr. DICKEY called for the yeas and nays on the amendment as amended, and they were ordered.

Mr. PORTER, of Northampton, rose and said, that he begged gentlemen, before they acted finally on this section, to reflect what they were about to do. If they negatived this proposition, they would, in fact, decide that there should be no constitutional provision on the subject of education.

Mr. DICKEY said, that he also would ask gentlemen to reflect before they voted, and he would also remind them that if this section as amended was negatived, we should then fall back upon the first section of the seventh article of the constitution of 1790. He hoped that the section as amended would be negatived, and that we should again return to the first section of the old constitution.

The gentleman from Adams, (Mr. Stevens) is anxious (said Mr. D.) to put off the decision of this question, until it shall come up on second reading in convention. Sir, I hope that we shall avoid that course. I dread the effect of opening this question to be again agitated from one end of the commonwealth to the other—of again hearing the cry of "school or no school"—of "school men and anti-school men?" I am anxious that we should leave the system, as we found it when we commenced our labors here—progressing in the respect and affections of the people

The superintendent of common schools does not state in his report, as one of the defects of the present system, that the poor should be educated *gratis*. This is not once made on objection by him. He makes use of the following language:—

"An inspection of the column of defects, is both instructive and encouraging. Of the districts that have expressed an opinion as to the merits of the system, only four are wholly opposed to it, while twenty-one declare that they have discoved no defects. One hundred and fifty-five, pronounce the general want of state appropriation, and fifty-six, the want of a school house funds, to be its chief defects. Thirty-two are opposed to the amount of general taxation; and fifteen wholly opposed to, and four in favor of increasing or continuing the poll tax. Seventy-five are in favor of paying directors, treasurers and secretaries; six say there are too many, and eight complain of want of attention by directors. Fourteen demanded a limitation of the age of pupils, and twenty-four state the want of competent teachers, to be the greatest defect of the system." [Annual report of the superintendent of common schools of Pennsylvania, read in senate, February 18, 1837.]

So (continued Mr. D.) the superintendent does not allege that the principle of teaching the poor *gratis*, is a defect in the existing system. And yet the gentleman from Adams, (Mr. Stevens) proposes that this provision should be stricken out of the constitution, and that we should thus take away the guaranty which the poor now have, that they shall be educated at the expense of the commonwealth.

Looking to the direction which this debate has taken, it would be well, Mr. Chairman, to inquire how these words, "that the poor shall be taught gratis," came to be inserted—to look to the object which the framers of the constitution of 1790 had in view—what were the reasons which governed them—and who it was that introduced the principle. For this purpose, I will read a few sentences from page 241, of the history of the proceedings of the convention of 1790.

"It was moved by Mr. WILSON, seconded by Mr. HUBLEY, to insert the following section, in the seventh article of the proposed plan of government, viz:

"SECT. 1. A school or schools shall be established in each county for the instruction of youth, and the state shall pay to the masters such salaries as shall enable them to teach at low prices."

At page 244 of the same book, you read that when, on a subsequent day, Mr. WILSON's motion was considered, Mr. M'KEAN, once the governor of this state, made a motion which was seconded by Mr. FINDLAY, of Westmoreland—a democrat known to every man in your commonwealth—to add the words "and the poor gratis." And of the subsequent proceedings, we find the following account in the same book:—

"It was then moved by Mr. PICKERING, seconded by Mr. EDWARDS, to postpone the said section, in order to introduce the following in lieu thereof;—

"The legislature shall provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis.

"And the question on postponement being taken, it was determined in the affirmative.

"A motion was then made by Mr M'LANE, seconded by Mr. LINCOLN, to insert after "legislature," the following—"as soon as conveniently may be."

"Which was agreed to and the section as amended was adopted."

And in this manner continued (Mr. D.) was originated the principle which we now find in the constitution of 1790. And in all the complaints which we have heard, have we once heard that this principle formed any portion of the ground work of those complaints against the present system of education, or that it has been pointed out as impeding the progress of that system? I have never yet heard such a complaint. Why then should we give cause for agitation in the commonwealth, on this subject —merely for the sake of striking out the words "the poor shall be taught gratis"—and when we were to gain nothing by it?

The gentleman from Adams says farther, with the hope of securing more favor for this amendment, that he will give his vote to send this article to the people, distinctly and separately from the rest, in order that their wishes and feelings may be directly expressed upon it. But, sir, when we come to take the vote on the question of separation, is it not doubtful whether a majority of the members of this convention can be found to vote for that separation? I am inclined to the belief that all amendments we may make here, will be embodied in the old constitution, and will then be submitted as a whole to the people. It will be a difficult matter, I think, to effect a separation of any one article from the rest. I hope, therefore, that the convention will leave the provision of the constitution of 1790, just where they found it; for I seriously apprehend that, if any amendment should prevail, laying an injunction on the legislature to educate all persons, of all ages, our common school system will be prostrated forever.

Mr. STEVENS said, that it was not often that he saw the gentleman from the county of Beaver, (Mr. Dickey) resort to disingenuous arguments to support any position he might assume; and he (Mr. S.) was therefore, induced to believe that he had done it, in the present instance, through inadvertence rather than design. Still, said (Mr. S.) the gentleman's arguments are disingenuous. He speaks of the report of the superintendent of common schools, and says that the word "poor" has never been pointed out by him as an objection to the present system. Sir, it must be remembered that these reports come from the accepting districts; and the gentleman knows that, in those districts which have not yet accepted the law, there is no longer a pauper system at all. The objection is in the constitution; and the question was not proposed, what was the objection to the constitution, but what were the objections to the system? But, as the gentleman from Northampton, (Mr. Porter) has said, reject this amended section, and you will be left without any power at all. Is the committee desirous to bring about such a condition of things? Is there in reality so vast an anxiety in the mind of the gentleman from the county of Beaver, as to this school system, or is there something of that spirit operating on his mind which we saw in our little borough, when this system was adopted? Five of the nabobs, who supposed themselves to

be of purer blood than the plebeians, by whom they were surrounded—would not send their children to the free school, but they clubbed together, and hired a master, and sent these young nobility to be instructed by him, lest they should sit by the side of those poorer children who had patches in their clothes. Sir, I fear that something of that spirit is manifesting itself among some of the members of this body: they do not like that this insidious distinction between the rich and the poor should be erased from the fundamental law of Pennsylvania. For my own part, I must say that I have no noble blood in my veins—and, if I had, I could not regard it as any thing to boast of I leave it to others to reap what happiness they may, from the self-satisfied feeling that they draw the springs of life from purer sources than their fellow-men, by whom they are surrounded. I have no communion with feelings such as these.

I trust, Mr Chairman, that this amended provision will be adopted, at any rate for the present. If it is to be stricken out, let it be on second reading. And let us enjoy, at least for a few weeks longer, the reflection, that we have not yet destroyed that glorious principle of equality which lies at the very root of our republican institutions.

Mr. Forward, of Allegheny, said that he had already addressed the convention several times on the subject, and nothing but the deep anxiety that he felt in regard to it, could have induced him to trouble them again. He was the friend and advocate of popular education, and he believed it to be the very first duty of a republican government to educate the people, (if they were disposed to receive instruction,) partly at the public expense, and at their own. It was as well the duty of the people to receive instruction, as it was, that of the government to provide a part of it. But, notwithstanding this, we must take matters as we found them, and must look at society as it was now. It was vain and useless to look at theories. What, he asked, had we here? We had a constitution that embraced humanity—which provided, that the poor should be taught at the public expense. He had been astonished to hear the principle spoken of as though it were disreputable to the country. He was surprised to see gentlemen fired with indignation at the announcement of the well known fact—that there were poor in the country, and that they did not recognise the christian duty, of educating them at the public expense. Not a single argument had been made here, which did not strike at the poor law. It was very easy to falter about the matter; but it was not argument. Was a man to be insulted, because he had a claim on the bounty of his country? He (Mr. F.) trusted not. What was the argument of the gentleman. He had drawn us a picture, but where did he get the original? Did he find it in those districts where the system had been received, and put in operation? Was there any thing in it? Nothing. Were the poor educated there? Yes, and with the rich. So, that that part of the constitution, which related to the poor, was a dead letter—was so in operation. And where was the harm, if the reputation of the state was saved by it? The poor and the rich were educated together. It was not there, then, that the gentleman found the original of his picture. Where did he find it? Why, in the non-accepting districts. He was for taking away from the non-accepting districts the least benefit—the least charity that might be conferred on them by the constitution. The gentleman from Adams, (Mr Stevens) and others were found rising in their place

and arguing in that strain. What they, practically, contended for, was the striking out of the present provision. This, he (Mr. F.) could not vote for, although the rich, in the non-accepting districts, might be disposed to vote it down, yet he was unwilling that, on that account, the poor should be deprived of the benefit which was to be derived from it. Was there any sophistry in this? Where the school system was received, this part of the constitution was in operation, and where it was not accepted, it was because the voice of the rich was against the poor. The poor, however, had this guaranty, that they had a right to claim it, from the commonwealth. In all the non-accepting districts, the poor were educated, and now it was proposed to take education away from them. What, he asked, were they to get in lieu of it? Nothing. He desired to know—whether the gentleman proposed to force upon those districts, his system of education. Was that the object of the gentleman? The whole of his argument bore out the conclusion. The gentleman had drawn a strong and striking picture of the disparagement—of the wounded feelings—of the shame, mortification, and blushes of the parent and child, induced by the introduction of the word "poor" in the constitution. He had contended that it had done much to prevent the general adoption of the school system. The question was—could we get rid of the word "poor," in the constitution? And, here we came to the very difficulty, that we had encountered from the first. If the people would ratify this; would accept what we propose, he would go with the gentleman from Adams, (Mr. Stevens) and the gentleman from the county of Philadelphia, with all his heart. But, he felt confident they would not do it. Now, he would ask, whether any harm would accrue to the system, by retaining the section in its present form? Whether it would prevent the advancement and growth of the system? Why, no; indeed, nobody pretended to say that any harm would be done—that it was likely to crumble to pieces. The school system was flourishing—was rapidly gaining ground far and wide. What, then, were delegates about to do? Why, no good to the system; it did not need their aid They were going to do nothing less than to force on the non-accepting districts a provision in lieu of that contained in the constitution, that the poor shall be taught gratis. What, he inquired, had this convention done? Why, it had diminished the patronage of the governor, and the consequence would doubtless be that thousands would be mortified and wounded in their feelings. Was it to be supposed that those who were already in office, or expected to obtain office, would vote for the amendments? Was it, he repeated, to be presumed that those who desire to share in the spoils would cast their votes in favor of the amendments? Gentlemen here were about to abandon the inferior magistracy, and thus would they raise up opponents to defeat the amendments—for there was to be found in every town a body of men in array against them, whose livelihood depended, more or less, upon the existing order of things. He would solemnly ask every man here whether, when the amendments came before the people, the enemies of the school system would not vote against it. Many delegates talked of submitting the amendments separately, instead of altogether. Now, he thought it must be easily foreseen by every one, that should this be done, in all probability a great variety of influences would be brought to operate on them, which might be fatal to them. The question would no doubt be put to the people—what was it? Why, that the school system

shall be diffused and made universal throughout the state? He knew that in almost every county which had accepted this system, it had met with great opposition. He had heard it spoken of in many towns in terms of the greatest indignation. There were small townships in Westmoreland district that had been induced or coaxed to try the experiment, they being told to vote it down if they did not like it. He inquired whether this had not been done in many districts. And, the question was, are you in favor of the system, or not? What was the reply? He ventured to say that not a single man would be found voting for these amendments, who was opposed to the school system. The strongest possible influence would be brought to bear against them. It was the educated, the leading men in the community that were to operate in this matter. Gentlemen, like the delegate from Adams, (Mr. Stevens) had prevailed upon the people, here and there, to adopt the system as an experiment, and although it had encountered much opposition, it was nevertheless, gaining in public favor. He maintained that the present constitutional provision would work great good in the non-accepting districts, where the people had to support their poor. They, had, therefore, better avail themselves of the advantages it held out, and let the children of the rich and the poor go to school together.

Mr. MARTIN, of Philadelphia county, said that he was at a loss to perceive how it was necessary to engraft the pauper system in any shape, or form, in our constitution, for the purpose of disseminating education among the people of the commonwealth of Pennsylvania. Who, he would ask, were the poor that the laws require should be taken care of? Why, it was those unfortunate poor that were not able to take care of themselves. They were a class of society which both kindness and humanity enjoined on us to see well provided for. And, they must submit to be paupers, if gentlemen here would insist that they were paupers. But why should children be paupers? What were poor children? He would like to know from those delegates who had talked so much about the poor children of the commonwealth, what was meant by "poor children?" Whether they were those who were unfortunate, and not able to obtain those advantages which fell to the lot of the more affluent? If they were, then he (Mr. M.) would call upon delegates to come forward, and put shoulder to shoulder in their behalf. It was, perhaps, necessary that these children should be distinguished from the rest, as particular provision was made for their support. But, he doubted much whether there were any children in Pennsylvania to whom the designation, of "pauper" properly applied. Why, should these children be stigmatised as paupers? It was impossible to engraft on the constitution any thing that created an invidious distinction, as the word "poor" did. It made a distinction between one class and another. The day had gone by when that might have been considered right and proper enough. At the period when our government was about to be established, there was a good deal of emigration going on from the federal states, into this commonwealth, and much anxiety and perplexity was manifested among the people, in reference to the propriety of distinguishing the son of a farmer or mechanic, from the son of a gentleman. And, the question was absolutely brought up, and gravely discussed whether it was not necessary that a mechanic's son should wear some badge, or checked shirt, or something

else in order to show his condition; for, it was thought extremely hard that a gentleman's son, whose father had given him a good education, should not be distinguished from a mechanic's son. The opinion of that day had gone by, and there was not a man in this convention who recognised such a feeling, or would raise a question of this kind. Then why, he would ask, should we put any thing in the constitution making a distinction between two classes of men. He thought that there was no danger to be apprehended from making the section general in its terms. He was extremely sorry to see a gentleman, friendly to reform and to the amendment of the constitution, as his friend from the county of Philadelphia (Mr. Earle) was, take the ground that he had done. He had said that the lands were given by Providence for the benefit of all mankind, and that those who held them were bound to support those who did not possess the same advantages. Let those gentlemen who were disposed to have the section stricken out of the constitution, come forward and say so at once, then we should understand what we were about, for indecision, at this time, was calculated to do more harm to the school system, than could well be imagined.

Mr. CHANDLER, of the city, said that he had felt the whole of the morning, a deep and strong interest in all that had fallen from delegates, in reference to this highly important subject. And, now that he had risen for the purpose of offering a few remarks, it was not with a view of decrying or upbraiding the school system, but for the purpose of expressing the hope that the friends of education, and common schools, would not press the subject any farther, or crowd it with any more amendments. He would, at this moment, if it were not too late, reply to the few remarks which had fallen from the gentleman from Allegheny, (Mr. Forward.) That gentleman had not risen on this floor, many times, that he had not turned the whole current of the discussion on that side which he advocated; or, when an officer was to be elected, or a vote was to be changed, he was a prominent actor in the scene. Having seen that gentleman rise in his place to-day, and take the stand he had done, he (Mr. C.) took courage, and would express his sentiments candidly and freely in regard to the question under consideration. He maintained that there was nothing in the first section, of the seventh article of the constitution, which ought not to be there. It was a well known fact, that the constitutions of almost all the states in the Union, provide for the education of the people; and the poor houses in each, form rather a formal, than a necessary appendage to their regulation. The alms houses of Pennsylvania, would contain every pauper in the state of Massachusetts; while the poor houses of Massachusetts, numerous and large as they were, would not contain the children of our state, who could neither read nor write. He had risen merely to say, that he should support the proposition, and that when the subject should come up again, he would then trouble the committee with some farther remarks on the subject.

Mr. FLEMING said, the gentleman from Allegheny, (Mr. Forward) says, the adoption of the proposed amendment, will nullify the act of the legislature, under which the present school system is established, so far as it provides for the instruction of the poor, and open the whole question of public instruction again. But, he, (Mr. Fleming,) would ask whether, if this amendment be adopted, the legislature would not still have the power

to provide for the education of the poor gratis? Does not this proposition embrace the poor as well as the rich? We all looked to the legislature to carry on the work, which we were all pleased to call a good work, and no one intended or supposed, that this amendment was to diminish their power over the subject. That work, which had been so well begun, was to progress, and the people would never set their faces against it. Was this argument strong enough to deter the committee from making an amendment to the constitution on this subject, as well as on any other subject, when, in our opinion, amendment was necessary? He trusted not; and it was the opinion of many, and probably of a large majority here, that some amendment to the constitutional provision on this subject is necessary, in order to give it efficiency, and to clear the path to general education, from all obstacles. If, as the gentleman said, there are in the accepting districts, some large minorities, who oppose the system, so in the non-accepting districts, there are also large minorities, who are constantly and earnestly exerting themselves to procure the acceptance of the common school system. He had no doubt there was a large majority of the people, in all the districts, favorable to erasing from the constitution, the clause providing that "the poor" shall be instructed "gratis;" and he knew, from his own personal experience and observation on the subject, that the clause had been detrimental to the cause of education. The feelings of the people and of the youth particularly, were opposed to that distinction between the poor and the rich, which was made in the constitution, and no whole system founded upon it could succeed. However lightly we might estimate the feeling of the youth of the country on this subject, it will have strong influence, and we may be assured, that, as long as we keep that provision in our fundamental law, we cannot make education general.

If we adopted the amendment, would the legislature be the less bound to make provision for the instruction of the poor? Does it tie their hands, or, in any way, embarrass them, so that they cannot carry out a general school system, embracing provisions for the instruction of all, both rich and poor? Would it prevent them, he asked, from providing, in the most ample and acceptable manner, for the education of the poor? If so, then, sir, the amendment does not go so far as I would wish. My wish, (said Mr. F.) is that the poor should be taught, and that gratis; but I want to see the words which cast the reproach of poverty into the teeth of children, and which connects with their earliest education, a deep sense of arbitrary distinction in society, erased from our fundamental law.

Mr. FORWARD said, that the amendment would deprive the poor of the non-accepting districts, of the advantage which they now enjoyed under the act of 1809. Now, I, sir, am the friend of education, (said Mr. F.) and I protest against being set down as hostile to it. If it depended on me, I would provide for the education of all, both rich and poor, at the public expense. It is asked whether, if the amendment be carried, and the constitution of Pennsylvania be thus altered, there will be any change in the present school system, as established by existing laws, and, if not, what legislation will be necessary to carry the constitutional provision into effect? The gentleman from Lycoming is anxious to adopt the amendment for the purpose of carrying out a system of common schools. But the constitution now provides, that "the legislature shall provide by

law for the establishment of schools throughout the state." This, sir, has been done. A system has been adopted, and is going rapidly into complete effect. They are going on to perfect the system, and there needs no new enactment to carry it out; and no law is necessary on the subject, except for the purpose of remedying defects which may be found in the system, and in the regulation of its minutiæ. My object, sir, is to make our action consistent with the action of the legislature and the people. Whatever amendment is adopted, should be consistent with the system already established.

Mr. FULLER asked whether, if the amendment was rejected, the provision of the old constitution would remain in force or not.

The CHAIR said it would.

Mr. FRY was, he said, an advocate of the act for calling this convention, as a member of the legislature. He voted for it and heartily approved of the measure. But he had never heard, as one of the friends of reform, that any reform was needed, or called for, in reference to the constitutional provisions on the subject of education. But this question had been brought up, and a discussion upon it had occupied already nearly one week of our time. Were we going to abolish the system which had been established under the existing constitution? He hoped not. There had been no complaint in regard to its operation among the people. He had read reports of the directors respecting the state of the schools, and the operation of the system in different parts of the state, and found no ground of any dissatisfaction, and no complaint. He hoped, therefore, we should come back to the old constitution. He thought there would have been an end of the matter before the recess, and he was surprised to see amendments argued again now. The legislature, it was very clear, could pass any necessary laws on the subject, without any alteration of the constitution, and he hoped the question would be brought to an end, without farther discussion.

Mr. DUNLOP asked what would be the effect of the rejection of the amendment.

The CHAIR replied, that the existing provision of the constitution would stand.

Mr. CLARKE, of Indiana, did not rise, he said, to make a speech on this subject, but to state a few facts in relation to it. He had read somewhere, when a boy, that the time was coming when democracy would be served like witchcraft. Perhaps it might be so. If gentlemen succeeded in getting the word poor out of the constitution, he thought it would help the poor and the cause of democracy. He did not apprehend that any farther legislation would be necessary to secure the adoption, by the whole commonwealth, of the school system. But he would give a matter of fact, which was of some interest in relation to this matter. In the little village where he lived, we had hard work, before the school act was passed, to make up a neighborhood school with thirty-five scholars. The whole expense was borne by a few individuals, aided in a very small degree by the county. But now the little school house was crowded with seventy-six scholars. This great increase of the number, was the consequence of getting rid of the word "poor" in the school law, and, if we could get rid of it in the constitution, it would greatly help the cause of education in the state.

Travelling in New England—and, sir, we all speak well of the people in New England, whatever we may say of them out of it—we find a great degree of practical equality. The stage driver is often as intelligent as those who ride with him, for they are all educated together. Being educated at the same school, and in like manner, they are brought practically upon an equal footing. He recollected that, when he was in the West Indies, he went on board of a yankee vessel on a Sunday. All the hands were clad in a cleanly manner, and all were engaged in reading, and it would have been impossible for any stranger to tell the cook from the captain. Such a thing would not be seen on board of a Baltimore or Philadelphia vessel. He was young then, but the circumstance impressed him with the idea, that there must be great practical equality in New England. Now, we name the reason for it—they were educated together at the same schools.

Mr. DICKEY said, he recollected very well, the effect of removing the restriction. The schools became crowded. But the proposed amendment was more for the purpose of educating the rich than the poor; and whether those who advocated it were for excluding the poor or not, that would be its effect. It was intended by this provision, to force two hundred and forty non-accepting districts, into the school system at once, which would hazard the whole system. If the amendment had any effect, it would be to destroy the act of 1809. He was anxious to preserve and carry out the existing system, and to retain in the fundamental law of the state, a provision for the education of the poor. The gentleman from Indiana might as well try to get the word poor out of the holy scriptures, as out of the constitution. There would be as much propriety in the attempt, and that, he supposed, would be the next amendment wanted.

Mr. PORTER, of Northampton, did not, he said, understand the logic on the other side of the house, where it was contended, that the phrase "all persons" meant only the rich, and not both the poor and rich. The phrase included all the poor, both the poor in spirit as well as in the purse. He liked the provision, because it amounted to a strong recommendation to the legislature, to continue the work of general education throughout the commonwealth. He accorded also with the sentiment of the gentleman from Indiana, that we should adopt a system that would introduce a practical equality in all our schools. He would, he said, relate a circumstance which would illustrate the effect of the system which he advocated. When the old distinction in favor of the poor was preserved in the school system, a man who had more money than wit, fell into a controversy on the election ground, with a neighbor, whom he taunted with his poverty, saying, I helped to educate your children. The next year, after the school law had passed, this poor man, who contributed his shilling towards the general school tax, said to his rich neighbor, now I help to educate your children. In this way all are put upon a footing of equality, and all pay for all, in proportion to their means.

Mr. MERRILL said, if all the districts in the state accepted the school law, this constitutional provision would be of no use, and, for one, he did not give up the hope that all would accept it.

Mr. DUNLOP remarked that we had now come to a serious point in this matter, at which it became us seriously to reflect on our vote, and upon our accountability to posterity, for the decision we made. The subject

had been discussed for a week, a vast variety of opinions had been expressed, and there had been great difficulty in forming any conclusion. We had now come to the vote, and before we gave it, he trusted we should have an opportunity to exchange opinions on the subject, and he therefore moved that the committee rise.

Mr. WOODWARD hoped, he said, the committee would not rise.

The motion to rise was lost.

Mr. DUNLOP took this decision, he said, as an expression, on the part of the committee, of an anxiety to hear him speak, for which he was particularly grateful to them. It emboldened him to go on and present some of his views on the subject. He was surprised, he said, to hear the gentleman from Allegheny, (Mr. Forward) attempting to rally the friends of reform, on this question. He appealed to the friends of reform, to whom he did not profess to belong, to aid him in defeating a proposition which he had himself brought forward and sustained. He, Mr. D. did not know in what position to find that gentleman on any question.

He had understood him to come here opposed to the tenure of good behaviour, and now he understood him to be in favor of retaining it. He had understood him to be in favor of some other reforms, which he believed he now opposed—but he was not sure what the gentleman's position was on any of the questions of reform or alteration,—for between reformation and alteration there was a vast difference. He certainly had understood the gentleman to be the friend of education—the friend of common schools—the friend of a free school system—in the broadest and universal and extensive sense—yet he now found that gentleman laboring to retain in the constitution a provision which was more destructive to the school system than any other, and he also saw him rallying the friends of the reform party, which he had repudiated, and in opposition to the very position which he had before sustained. He could not really comprehend how such arguments could come from that gentleman, or from any other gentleman, no matter how sophistical he might be.

The gentleman says that this will be an unpopular amendment, and will prevent the adoption of the new constitution, to which he is opposed. He, Mr. D. could not understand that. But, sir, said Mr. D. it is not certain that the amendment will be unpopular. He recollected the time when he thought it impracticable to introduce the general school system in Pennsylvania. He advocated the school law, as a member of the committee on education, in the legislature, when it was voted down. It was agreed, almost unanimously, that the project of establishing a free school system was impracticable; first, because there were no public funds to carry it on; and second, because it would be unpopular. But, after Mr. Brooks' report on the subject, and the exertions of the gentleman from Adams, (Mr. Stevens) who, at one time, stood almost alone, as the fearless and efficient advocate of education, in the legislature—and after it had been so seriously urged and advocated by Governor Wolf, it began to gain favor. It was earnestly recommended by Governor Wolf. It had been recommended by other governors before, from mere affectation; but by Governor Wolf, it was seriously and earnestly urged, and

to him in a great measure, were we indebted for the final establishment of the school system. Posterity would give him due credit for this, if we did not.

The system was growing every day, and from its earliest beginning, to this day it had been gaining, instead of losing popularity. No man had had occasion to regret voting for the proposition, and if there were some benighted districts that refused to accept the law, there were others that received it with open arms.

What had been the progress of the system? Its course was onward, with truth and virtue for its support. In twenty years more, how glorious and how cheering to the heart of the philanthropist and the patriot, would be its results? Was not education at the very foundation of all good principles of government? Has not General Washington laid down the axiom, that liberty and virtue have nothing to fear, but ignorance?

He was surprised that the gentleman from Allegheny should oppose the amendment, and he did not understand the motive of his opposition to it. Some denied that there were any poor in the state, and said they did not know what was meant by "the poor;" but he (Mr. D.) supposed that those who could not pay for the education of their children were intended to be designated as "the poor;" as the subject of the provision was education.

The gentleman from Allegheny says, if we carry the proposition, we shall endanger the education of the poor. This was a false conclusion. If we educated all, how would the poor be deprived of their education? If the amendment be accepted by the people, then all will be educated, and, if it be rejected, then the present system will be left in full force, and the same advantages will be continued to the poor as at present. In either case, the poor will be certain of the means of education. If we offer an improved system, and it is accepted, very well; and if it is rejected, the poor will be no worse off than they now are.

Either the gentleman from Allegheny or he had come to a false conclusion. The gentleman from Allegheny and the gentleman from Beaver supposed that the amendment would require the immediate establishment of common schools in the state. He did not so understand it. Those gentleman did not see the distinction between providing for the establishment of the system, and actually establishing it. In this, provision for an establishment is only required. A man may provide materials for building a house and for making a speech, and yet not build the house nor make a speech.

He (Mr. D.) might provide the materials for writing a book—and he hoped to write one some day, as it was essential to the full dignity of a man—but to make the provision was one thing, and to write the book another.

So the legislature might provide for a general system of free schools, and yet not compel an immediate establishment of it. Was there not, then, a great difference between requesting the legislature to establish a school system, and requesting them to provide for its establishment? The amendment was not in the imperative terms that the gentleman from Allegheny and Beaver supposed.

The language of the present constitution was that "the legislature shall, as soon conveniently may be, provide by law, for the establishment of schools throughout the state;" but did the legislature feel bound by this to establish schools? This provision of the constitution slept for a quarter a of century.

He considered the phraseology such as to afford time for providing the manner and means of carrying the provision into effect, and it was no more imperative than the provision in the old constitution. The system would not be forced upon the non-accepting districts, unless they wished it. We proposed to furnish the means, to open the way, for the establishment of schools, and then let the districts accept them or not. He could not concur in the argument of the gentleman from Allegheny, and he would be glad to have it explained, so that he might go with him cheerfully, or differ from him confidently.

Mr. FORWARD, of Allegheny, said, he would trouble the committee with a few remarks in reply to those which had fallen from the gentleman *from* Franklin, (Mr. Dunlop.)

That delegate had undertaken to travel beyond the record—to avoid the discussion here, and to inquire into his (Mr. F's.) pretensions and claims, personally, to the attention of the committee. What right, or authority that gentleman had to do it, he would not now inquire. But, he would only tell that gentleman, that, before he undertook a task of this sort, he ought first to ascertain, that the facts were correct.

Now, whatever the source might be, to which his inquiries were directed with respect to himself, (Mr. Forward) he knew that the delegate was greatly mistaken.

He had told us that he (Mr. F.) came here to oppose any change of the inferior magistracy of the state. He should like to know where the gentleman obtained his information. The delegate must know—for he (Mr. F.) had published it, that he was decidedly in favor of a change in the tenure. He came here with those sentiments, and advocated them, and voted to carry them out in the convention.

He understood that he (Mr. F.) came here opposed to the tenure of good behaviour. This was not the fact, for he was in favor of preserving the tenure of the judges of the supreme court untouched—of limiting the governor to a single term, and of depriving him of the sole power of appointment to office. These were what he had advocated. With regard to the secondary courts, he was for placing the power of appointment to them, in proper hands, and that the judges should hold their offices for a term of years. He had carried out his notions, and should continue to adhere to them, until he saw that he was in error. The gentleman from Franklin did not know what pretensions he (Mr. F.) had to the character of a reformer.

Here Mr. INGERSOLL rose to a question of order.

THE CHAIR said, the gentleman from the county of Philadelphia (Mr. INGERSOLL) was himself out of order, not being in his place.

Mr. FORWARD did not know whether it was in order for him to reply.

Mr. INGERSOLL said it was unreasonable, at hat time of night to continue the discussion.

Mr. FORWARD proceeded. He did not know that he deserved the name of reformer. He liked to see improvements made in the constitution. What his sentiments were was well known to the convention. He had not attempted to rally the reformers. He had said that if any change was made in the constitution which should disturb the common school system, that all the amendments proposed to the constitution would encounter opposition, which might prove fatal to them.

When he found that whatever might be done here, would not tend to the improvement of the system—that it must go on as it had begun, and that, as it was built up without any change being made in the constitution, he declared that he would go with gentlemen any length, to sustain the system.

This convention, however, must submit the question to the people; and it was in reference to the people's action on the subject, that he would be guided in his conduct. He was the friend of education, and that every gentleman here knew him to be. This was the answer he had to give to the gentleman from Franklin.

Mr. EARLE, of Philadelphia county, moved that the committee rise; which was not agreed to.

The question was then taken on the section as amended, and it was decided in the affirmative—yeas 80—nays 38.

YEAS—Messrs. Ayres, Baldwin, Banks, Bedford, Biddle, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Chandler, of Philadelphia, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Coates, Cope, Craig, Crain, Crum, Cummin, Cunningham, Curll, Denny, Donnell, Doran, Dunlop, Farrelly, Fleming, Foulkrod, Fuller, Gamble, Gilmore, Grenell, Hastings, Helffenstein, Henderson, of Allegheny, Henderson, Dauphin, Hopkinson, Houpt, Hyde, Ingersoll, Kennedy, Long, Lyons, Magee, Martin, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Pertor, of Northampton, Purviance, Reigart, Read, Riter, Rogers, Russell, Scott, Serrill Shellito, Sill, Smith, Stevens, Taggart, Thomas, Weaver, Woodward, Young—80

NAYS—Messrs. Agnew, Barndollar, Carey, Chandler, of Chester, Cox, Crawford, Darrah, Dickey, Dickerson, Dillinger, Donagan, Earle, Forward, Fry, Harris, Hayhurst, Hays, Hiester, High, Jenks, Keim, Kerr, Konigmacher, Krebs, Maclay, Mann, M'Call, Overfield, Ritter, Saeger, Scheetz, Sellers, Seltzer, Smyth, Snively, Sterigere, Stickel, White—38.

On motion of Mr. WOODWARD, the committee rose; and,

The Convention adjourned.

WEDNESDAY, NOVEMBER 15, 1837.

Mr. HIESTER, of Lancaster, presented a petition from citizens of Pennsylvania, inhabitants of Chester county, on the subject of incorporations, and praying that a clause may be inserted in the constitution, prohibiting any members of the legislature, who may be interested in such incorporations, from voting, in case of application for a charter, or an extension of privileges, which was laid on the table.

Mr. WOODWARD submitted the following resolution, viz:

"*Resolved*, That the secretary be authorized to convey to Philadelphia, for the use of the Convention, one copy of the several journals of the senate and house of representatives of this state."

Mr. WOODWARD moved the second reading and consideration of the resolution, and the motion being agreed to, the resolution was read a second time and adopted.

Mr. KERR, of Washington, submitted the following resolution, viz:

"*Resolved*, That when this Convention shall meet in Philadelphia on the 28th inst., each member shall have the privilege of retaining the same, or corresponding situation he now occupies in this hall."

Mr. KERR moved the second reading and consideration of the resolution, and the motion being agreed to, the resolution received its second reading, and was adopted.

Mr. CHANDLER, of Philadelphia, submitted the following resolution, viz:

"*Resolved*, That the use of this hall be allowed to Mr. E. C. Wines this evening, for the purpose of delivering a lecture upon the importance to Pennsylvania, of a general system of public schools, and the best means of promoting that desirable object."

Mr. CHANDLER moved the second reading and consideration of the resolution, and the motion being agreed to, the resolution was read a second time and adopted.

Mr. DICKEY, of Beaver, moved that the Convention proceed to the second reading and consideration of resolution No. 123, offered by him on the 14th instant, in the words as follow, viz:

Resolved, That the committee of the whole be discharged from the farther consideration of the seventh article of the constitution, that the consideration of the ninth article in committee of the whole be dispensed with, and that the Convention will proceed immediately to consider, on second reading, the amendments already made to the constitution in committee of the whole, and that this Convention will adjourn *sine die* on the 25th day of December next.

Mr. DICKEY asked for the yeas and nays on this question and they were ordered.

The question was then taken, and decided in the negative, as follows, viz:

YEAS—Messrs. Agnew, Baldwin, Barndollar, Barnitz, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Craig, Crum, Denny, Dickey, Dickerson, Dillinger, Dunlop, Forward, Harris, Hays, Henderson, of Dauphin, Hiester, Hopkinson, Ingersoll, Kerr, Long, Lyons, Maclay, M'Call, M'Sherry, Merrill, Merkel,

Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Royer, Saeger, Scott, Seltzer, Serrill, Sill, Snively, Stevens, Thomas, Young, Sergeant, *President*—49.

NAYS—Messrs. Ayres, Banks, Barclay, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Clapp, Clarke, of Indiana, Cline, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Donagan, Donnell, Dorsan, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Helffenstein, Henderson, of Allegheny, High, Houpt, Hyde, Keim, Kennedy, Krebs, Magee, Mann, Martin, M'Cahen, M'Dowell, Miller, Mevin, Overfield, Porter, of Northampton, Read, Riter, Ritter, Rogers, Russell, Scheetz, Sellers, Shellito, Smith, Sterigere, Stickel, Taggart, Weaver, Woodward—67.

SEVENTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee, to whom was referred the seventh article of the constitution.

So much of the said report as is called "section second," being under consideration, in the words following, viz:

"The arts and sciences shall be promoted in such institutions of learning as may be open to all the children of the commonwealth.

Mr. CHANDLER, of Philadelphia, rose to call the attention of the committee to report No. 38, which is as follows:

The committee appointed on the 7th article of the constitution, respectfully report—that in their opinion, there should be an additional section to the said article, with the following provision, viz:

In order to advance the cause of education, and secure the most advantageous expenditure of the moneys appropriated to that object, there shall be established by law, a board of public education, to be composed of one or more commissioners, to be elected by the legislature, who shall have the care and management of the public funds appropriated by law to that object, together with the superintendence of common schools, and such other public seminaries of learning as may be established by law throughout the state.

Mr. CHANDLER moved to amend the report of the committee by making the proposition he had just submitted, precede that report. He would ask the patience of the committee while he made a few observations in explanation of his object.

That banner of learning which had been described as streaming in light, had appeared to him, to have hitherto been floating in clouds and darkness. The discussion and the vote had now taken that course which he had expected. The proposition which he had offered did not go more into detail than the article relating to the judiciary. The object is to secure to the people the full benefit of that system of education, which had received the final sanction of their votes. An immense quantity of seed had been scattered, and it was our duty, as faithful representatives, and as good citizens, to gather the harvest for those we represent. For twenty years, we have seen the light break up, then flicker awhile, and die. A bill was passed, and was submitted to the people for their votes. Sometime after the election, on looking up the votes, he read in the papers, that we had carried the elections, and that not a single free school

man had showed himself at the polls. We have now exhibited an improvement in that state of things. The bill was not exactly to his taste, but the people have gone beyond the constitution and the provisions of the present law. Governor Wolf, in almost every one of his messages, recommended this subject, in connexion with the electoral canvass, thus keeping the subject alive, and although in opposition to the administration at that time, he (Mr. C.) believed this course would lead to ultimate benefit. This plan, for which we owe so much to the late governor, has been followed up by the present chief magistrate. It has become connected with him, and has received the sanction of the people. It was said that all these things are in their infancy. The system of canals and rail roads, connecting all parts of the state, is still said to be in its infancy, although millions have been expended upon it. He agreed that it was so; but, if this great system is in its infancy, what is the condition of public education? It is a mere embryo; the unbaptized offspring of Pennsylvania; rough, but soon to be polished; shewing little of its magnitude and proportions, but soon to be expanded into perfection. He had listened with delight to the debates which were now going on. He was pleased to hear of the greatness of the state. Its geographical greatness, its exhaustless mines of ore, its fertility not to be surpassed, its growth in the arts, all make us proud of its condition, and should fill us with reverence and gratitude to Him, who has spread out to us this bountiful land for our enjoyment. Greatness! A different word should be selected. Greatness applies to the physical. When we speak of moral greatness, we should have something like evidence to exhibit. Man is the noblest fruit the state produces. Of the great men who have been nurtured into greatness here, some who have been here, and some abroad, have shed splendor on the state. All this we may boast of every where, except at home and among an assembly of Pennsylvanians, where it is not so seemly. But these distant gleams, do they partake of our republican character? Are they what we should seek? When we boast of this, we do not seek to elevate the people to some degree of rank. If we boast of this, as constituting our greatest pride, the greatness of the state is an imperfect pyramid, its base is upwards, and its weakest part in the earth. He had felt deeply anxious for the fate of this measure. But, although imperfect, after all, the system was capable of being made perfect. He had voted and spoken against the policy which had been pursued. But the spirit of education is abroad: if it had slept, the sleep had done some good—it was only buried under the verdure which spontaneously grew around it. But gentlemen had admitted that the improvement was owing to the efforts of individuals acting on the people. He would be content to keep what we have got. He would wish to act as a balance wheel of the great machine. His attention had been called once or twice to the progress of education. Brilliant as its success has been, it would be more remarkable when the system shall be adopted.

But, sir, with all the love of learning that prevails in Massachusetts, it is found impossible to keep alive the spirit of education, without some such clause as this. The legislature wanted a commissioner, like this which is here proposed, in every district in the state, and provided for annual reports from him as to the state of the schools. It was true that there was no provision on the subject, in the constitution of Massachu-

setts. But why was the subject omitted in the constitution? Because they never dreamed it to be necessary to lay injunctions upon the legislature of that commonwealth, upon the subject of education. The laws had for a long time fully provided for the subject. But there were constitutional provisions on many other subjects. We, too, had provided in our constitution for almost every thing else. We have provisions in reference to trade and improvements. We have persons appointed for the superintendance of roads and canals. We have, too, a state geologist. In fact, wherever there is a dollar to be earned, we have a man to get it.

We were told that it was dangerous to force this system upon the people, when they are not prepared to receive it; but he never heard, in any state, of the people asking for provisions on the subject of education, until they were offered. But, let them be made, and they will be slow to part with them. They will always receive them with gratification,—no case was ever heard of to the contrary. They must be used to the system, before they begin to think of, or appreciate it. There is no such objection urged against rail roads or canals; and yet the people did not demand them, until they were offered. Every man was taxed to sustain them, and the system of internal improvement was put into operation. What was the result? Why, the man who would now question the utility of canals and rail roads, would be deemed worthy of a strait jacket. Yet, he remembered the time when it was dangerous, almost, for a man to advocate the system of internal improvement. He never heard any one, in this state, speak against the public schools, and it was a great mistake to suppose they were unpopular. The people of this commonwealth were in favor of the diffusion of light and knowledge. The only difficulty is, that all cannot agree as to the time and the circumstances of a system of education.

He would do justice to the feelings of gentlemen who so earnestly opposed the amendment which had been carried. None of them had any objection to the school system, on the score of expediency, and there was not one of them who would not wish to have schools in his own county.

But the object of his motion, was to insure the application of the full benefits of the system, to each district in the state,—overcoming at once all the difficulties, as to details, which have some time prevented its voluntary acceptance in some of the districts. There were six hundred and ninety districts that had accepted the system, and two hundred and forty that had refused it. He did not wish to force the system on the non-accepting districts, but to make them acquainted with it. He asked it with a view to encourage parents, and to encourage school directors, to the good work which we all desire. We must soon have public schools in every county and district of Pennsylvania. The work cannot go back. The system must be followed up, and it is for us to expedite this work, and give it stability. We must establish it on such a basis that its advantages shall be equally diffused through each county and district in the state. The system which he proposed, was one that was adopted in regard to all the public works of the state. There was nothing new in the principle on which the system was founded. It had always been

adopted in every place for the diffusion of light and knowledge in the world.

Who did not know that in the year 1775, the society of methodists, now so numerous and wide-spread, consisted of only one man. One individual, so recently as the year 1775, represented the whole of that flourishing institution, which is now the most numerous of any religious sect in this country, with one exception,—extending into the bosom of the union, and diffusing every where the influence of their moral example. How was this done? By concentration; by establishing a certain point, and extending accountable agencies abroad. They had their preachers, and travelling agents every where abroad, and where there were ten men collected together, they formed a class. The example of this excellent society ought not to be lost upon us.

Wherever there are two or three gathered together, in the name of education, there let us be, with the means ready for encouraging and promoting it, and securing its success.

The proposition had nothing to do with the details of education. That would belong to the school directors and teachers, in connexion with the children, when they were a little advanced. In the same manner the details of our internal improvements are left to the commissioners, and other officers. He deemed this matter of so much consequence, that he could not leave it without expressing the hope that we should have the aid of all, in making useful and permanent provisions in regard to it. Those who had opposed the proposition which was carried yesterday, would, he hoped, come forward to sustain this. His long acquaintance with the subject of education, had made him an ardent, if not a wise, friend and supporter of the cause. He wished to see the asperities of party softened down, and an impression created on the mind of every one, of the necessity of moral improvement, as the basis of the future greatness and glory of the state. The system of common schools was to be our chief reliance for this great object. The colleges diffuse a broad glare, for a moment, but their light vanishes, and leaves all void and cheerless. They are but of little use, except to guide us on our way. Like the bright foam, on the shore, they indicate the danger of the coast, but the common schools diffuse their gentle light through every part of the land.

He had not risen to make a speech on the subject, and should not, until he saw some farther objections made to the proposition.

Mr. Ingersoll said he had intended to submit a proposition as a substitute for that offered by the gentleman from the city of Philadelphia. He would send it to the chair, and say a few words in respect to it.

The amendment was read as follows:

"The legislature, in joint ballot, shall select a person as a director of education, who shall fill the office for three years, and be re-eligible, and whose duty it shall be to superintend all the public schools, and make a report of the same, every year, to the legislature, during the first week of the session."

Upon this amendment, Mr. Ingersoll wished, he said, to say a few things. He would explain his object to the gentleman who had the care of this subject, if his interference in it might not be deemed impertinent.

He would not have interposed at all, unless for the purpose of offering a plan which he considered better than that of the gentleman from Philadelphia, both in regard to form and substance.

The first two lines of the gentleman's amendment, he considered useless, and worse than useless. One president, or director, of education, was preferable, in his opinion, to a board, because it would cost less, and because individual responsibility was preferable to that responsibility which is divided among several persons. The director, or superintendant, could appoint his assistants through the commonwealth, who would be responsible to him, and make to him their returns. This officer might be called the rector,—and, being at the head of this department, he might be a classical gentleman. He saw no reasons why he should not be, and there were abundant reasons why he should be. The appointment of a rector of the commonwealth, with assistants, was the leading amendment which he had intended to suggest. There was one other idea that was very important: to make the rector responsible for the annual report of the condition and operations of his department, in the same manner as an annual report is required from the secretary of the commonwealth. An annual report of the state of the schools would be valuable and interesting.

These were the reasons why he had offered this amendment. It required no argument, as it spoke for itself. As at present advised, he considered this as the best scheme, in regard to this subject, that had yet been offered by any one, and it certainly appeared to him that it presented fewer obstacles than any other.

Mr. Stevens confessed, he said, that he preferred the proposition now offered for consideration, and, if it was agreed to, he would move the postponement of the subject for the present. The remainder of the article referred to corporations, and that would occupy so much time, that no question could be taken upon it between the present time, and the time of meeting in Philadelphia. He had no doubt that many amendments would be submitted on that subject, and that it would require much time for their discussion and consideration; and his desire was, that they should be presented to the notice of the convention now, and ordered to be printed, so that they might be well understood, and our plans and views matured in regard to them, before the convention met in Philadelphia. We shall then have before us all the plans on the subject of education, and have ample time to reflect upon them. He did not think any vote ought to be taken here on the subject, for, according to his experience in deliberative bodies, the last week would be confused and unsettled, and the members, even if there should be a quorum, would be indisposed for considerate action on so important a question.

He moved that the report on the seventh article, so far as education was concerned, be postponed for the present.

Mr. Clarke, of Indiana, was opposed to the motion to postpone. He had observed, ever since we met, that every attempt to hasten the action of this body, had ended in retarding it; and, whenever we got fairly under way, and our minds bent on a subject, some gentlemen were impatient to drop it, and get to something else. In this way our business was obstructed and retarded.

This reminded him of the farmer who began his work in one place, and, without completing it, would go to another field, and begin something, which, also, would be left incomplete. Now, we have got through the first step on this subject, and our minds are directed to it; now, then, while our attention is directed to the subject of education generally, and while all the various plans and arguments in relation to it are before us, why shall we not go on? Is there any good reason for dropping it at this stage of the business? There would be none in his opinion. The gentleman from Adams had given no satisfactory reason why we should not go on. Could we not proceed to consider and decide the question in relation to the colleges?

With respect to the amendment of the gentlemen from the city and county, he was prepared to give some reasons why it ought not to be postponed. The question whether we should have a superintendant of education, was a very interesting one in relation to the school system, and, as we had talked so long about it, and apprehended so clearly the views of each other in regard to it, we might come to a conclusion upon it.

As to the question, whether there shall be one director, or a board of directors, he thought it unimportant in reference to the main subject. That was a point, too, that might very properly be left to the legislature to decide. The adjustment of it partook too much of legislation, and was out of our sphere. We must leave something to the legislature, and confine our own work to the establishment of principles. The importance of the school system intimately connected it with the constitution, and rendered it proper that a provision should be made in regard to it in our fundamental law. He thought it would be highly injurious to the progress of business, to postpone the consideration of the subject to any future time. We ought to proceed with the consideration of the subject, whether we agreed to the proposition or not.

I do not, sir, (said Mr. Clarke) think it well to fly from one thing to another, in this manner. Let us go, step by step, through this subject of education. Let the proposition be offered and voted on. That there will be a bare quorum here, ought not to be an argument against proceeding with our business. If gentlemen will go away—if they will not give their attention to public business, let them take the consequences of their neglect. But let us do our duty.

He hoped, therefore, that we should be allowed to go on with the discussion before us.

If it was true, as the gentleman from Adams (Mr. Stevens) had said, that there would be but little business done after Monday next, why should we take up an entirely new subject now? We could not get through the exordium of a speech upon a new subject. He would not like himself to speak to a very thin audience, and for the reason that the gentleman urged, he was opposed to taking up any new subject before the recess. He hoped we should continue upon the subject upon which we were at present engaged, instead of flying off to a new one.

Mr. Stevens said the gentleman had misunderstood his reasons for a postponement. He agreed that we might as well consider this subject as any, if we took no vote upon it. He had proposed the postponement,

with a view to avoid a vote on the question—which he thought a very important one—while the house was so thin. But the discussion of the subject could be carried on by a few, as well as by many. He would now withdraw his proposition.

The question was taken on the motion of Mr. INGERSOLL, to amend the amendment, and it was decided in the negative.

The question was then taken on Mr. INGERSOLL's amendment, and decided in the negative.

Mr. INGERSOLL then moved to strike out of the third line the word "board," and insert the word "commissioners," and to strike out the words "to be composed of one or more commissioners."

Mr. CHANDLER accepted of this as a modification.

Mr. DICKEY then called for the yeas and nays on the amendment, which were ordered.

Mr. READ asked of the gentleman from the city of Philadelphia, (Mr. Chandler) to modify his amendment, so as to strike out all after the word "schools," in the sixth line. The reason which suggested itself to his mind for doing this, was a good one. Without saying any thing about the propriety of the clause, it seemed to him to be out of place, to have it connected with the section in relation to common schools. Would it then not be better to postpone this matter until we pass upon the third section. It appeared to him to be beginning at the wrong end, to adopt this clause before we pass upon the section in relation to the other seminaries of learning.

Mr. CHANDLER said the gentleman from Susquehanna must perceive, that, if the state should endow seminaries of learning of a higher standing than common schools, that by this provison, they would have the right, as well as it would be their duty, to have them superintended, as well as the common schools which they have created. He was indifferent as to the form in which this should be adopted, and if it would meet the views of the friends of education, that he should thus modify his proposition, he would have no objection to doing so. He accordingly modified his proposition in pursuance of the suggestion of the gentleman from Susquehanna.

Mr. CLARKE, of Indiana, said, as the gentleman from the city seemed to be disposed to accommodate all the friends of education, he hoped that, to accommodate him, he would so modify it as to omit that part in relation to having the superintendent, or whatever he may be, charged with the keeping of the public funds applicable to this purpose. He thought the providing for that was decidedly a legislative duty. The legislature must, of necessi y, have the care of the public purse; and he considered it as entirely impropar in us to say what tax shall be collected, how it shall be collected, how much shall be collected, where it shall be kept, or how it shall be expended. As he understood the proposition, it would be essentially appointing in the constitution another state treasurer. Now all this matter in relation to the management of the public funds, in his opinion, was the peculiar and appropriate business to the legislature, and we should make no provision in relation to it. He was entirely favorable to the gener l object of this proposition, and he did think that our common school system would never be in a prosperous condition, until it was

connected with a system of inspection; and that the inspection of that system will be necessary for the purpose of bringing the system to perfection. So far he agreed with the gentleman from the city of Philadelphia, and so far he concurred in the general object of the proposition, but he thought that this object should be attained through the legislature, and by a provision by law. It is sufficient for us to say, that the legislature shall provide for the establishment of these common schools, leaving the whole mode and manner of providing for them, as well as for their inspection, to the legislature of the state. In the legislature, as a member of it, he certainly would advocate something like this, to engraft into our school system a system of inspection, but he thought it ought not properly to be a part of the constitution. It was running too much into detail, and he thought there was great force in the arguments of the gentleman from Beaver, and the gentleman from Allegheny on this subject, as well as those of other gentlemen, that the more you disturb the school system, the more you beget predjudices in the minds of the people against it; and the more injury you do it. Then the better plan was, to leave the system as it stands, without meddling with it more than was actually necessary, and leave the whole subject open for legislation. It was for these reasons that he should feel constrained to vote against this amendment—not that he was in the least opposed to the system, because he would go heart and hand with those gentlemen who might be desirous of carrying out the system to the fullest extent in the legislature; but because he objected to the appointment of an officer by the constitution, who was, among other things, to have the management of the public funds, which matter peculiarly belonged to the representatives of the people, the legislature of the state. He should therefore feel bound to record his name against this proposition.

Mr. AGNEW said he had forborne, during the lengthy discussion which we have had on the subject of education, to say any thing. He had been content to record his name silently on the propositions which have been brought to our notice; but, when so great an innovation as this was about being made, he could not forbear from expressing his views. There were two modes, it struck him, of getting at this question. One is a speculative, and the other a practical mode. So far as regarded the speculative mode, he thought he could concur in every thing which had been uttered in relation to the importance of education, which had agitated the public mind for some time in this commonwealth. He had gone with those who voted in favor of propositions on that subject. He was in favor of the extension of education throughout the whole commonwealth, and would go for prov ding the necessary institutions to carrry it into successful operation. He was, therefore, in favor of the common school system, and in this point of view he might be considered as acting with those gentlemen who were aiming at the most perfect attainment of this object. But he took it that this matter was to be considered in another point of view—in a practical light. Well, then, as to that practical point of view, what is the situation in which we are now consulting upon this subject? It must be recollected, that, until very recently, we have had no system of general education in Pennsylvania. It has only been within the last two or three years, that the public mind has become aroused to the importance of this subject. Within that time, the authorities of the

commonwealth have taken hold of it, and he might say, have forced it upon the people, and were now continuing to force it upon them—for you have yet about two hundred and fifty non-accepting districts in the commonwealth. They are, however, coming in by degrees, and they should be left to come in at pleasure, without any coercion. Well, sir, what is your situation now? Why, you have a system of common schools in operation in a large part of the state, and in progress in other portions, and you have a superintendent by law, charged with all the duties with which you intend to charge the board of commissioners under the pending amendment. You have then the substance, and you are running after the shadow. You are now about to throw this commonwealth into fearful commotion, and raise up a strong and a powerful party, in opposition to the adoption of the amendments you may make to this constitution. You are about to raise up against it large minorities, even in those districts which have accepted of the school system, and large majorities in those which have not accepted it or repudiated it, to be added to all those who are opposed to a change in your judiciary system, to all those who are opposed to any change in relation to executive patronage, and to a restriction of the jurisdiction of the legislature, and to all others who may be opposed to amendments to the constitution. You are going to raise up against the constitution your judges, your justices of the peace, and your county officers, with all their friends, in connexion with the party opposed to the school system in Pennsylvania. This, sir, is what you are going to do by interfering with this school system. The proceedings of gentlemen in relation to this matter, reminded him of the fable of the dog and the shadow. The dog, to obtain another piece of meat, dropped the one in his mouth, and could find no other. So it will be with gentlemen who advocate these propositions. They have the substance, but they are running after shadows. This was the situation in which you were placed. Is it necessary that a provision of this kind should be inserted in the constitution? Do you acquire any substantial good by it? Do you acquire a system of common schools by it? No sir, —you have that already. Do you acquire a superintendant by it? Why no—because you have a superintendant charged with the duties you propose to confer upon your board of commissioners, or whatever you may choose to term them. Then you gain nothing by it —and are only placing a question before the people which will arouse them again on this subject, and throw them into such a state of agitation, that you not only endanger the system of education which you have, but you jeopard the whole of the amendments which you have made to the constitution. He considered that we should act in relation to this matter, with a view to some practical result, and not be carried away by mere speculative and fanciful theory of education. Why, sir, this was a subject on which men's minds become eloquent, and that eloquence might carry away the feelings of the multitude, but he apprehended that we ought not to deal in fancy in a matter of this kind, but that we ought to deal in facts, in substantial facts. We must recollect that we have to consult the feelings and the prejudices of the people in relation to this matter, for it matters not what system of education we build up here, even if it was the ultimatum of perfection, if it is not sanctioned by the people, because they have the power of rejecting all our acts. If we were fixing upon the people a constitution in which they had no voice—if we were merely here to

establish a government upon such principles as would most promote the public good, without consulting the opinions of another body, then he would say we might only consult our own minds and the public good; but when we are acting under circumstances such as are existing around us, we are to ask ourselves not only whether we are promoting the public good by our acts, but we are to ask ourselves, will our acts be acceptable to the people of Pennsylvania.

It is in vain for us to say that this would be a good provision, or that that would be a good provision, unless the people of the commonwealth will accept them from us. It is vain for us to insert any provisions in the constitution, unless we have reasonable expectation that the people of the commonwealth will accept of them from us. Well, sir, what is the report of your superintendant of common schools? Nearly one half of the people of the commonwealth opposed to your school system, large minorities opposed to it in the accepting districts, and some two hundred and fifty districts which will have nothing to do with it. Then you have a large number of persons in the commonwealth who are opposed altogether to amending the constitution. Then he would ask you if these persons were going to come in and support innovations of this kind. Gentlemen must recollect that a large number of the citizens of this commonwealth believe our constitution to be a matchless instrument. He would ask you if there was not a large conservative party in the commonwealth, who would vote against your constitution, no matter what you put into it. This was the situation in which we were now placed. Then he would ask the real friends of education, whether they were going to build up a structure of this kind, which must inevitably fall, and will perhaps, bring down with it the whole system of education. He professed to be a friend of education, and as an evidence of it, he would stand by the school system which we now have, and he was impressed with the belief that it would not take twenty years in Pennsylvania, as it has done in some of the other states, to come into complete and successful operation, and become popular with the people. And when it did become popular with the people, if it was desirable to have a provision of this kind in the constitution, it can be inserted under the provision which he had no doubt would be adopted for future amendments to the constitution. He would leave the whole matter with the legislature, so that the present school system might have a fair opportunity of becoming universal and popular with the people, as he had no doubt it would; and we would not endanger it with any such provision as that proposed now to be inserted in the constitution. In consequence of not having said any thing before since this subject of education was under consideration, he had thought it to be his duty to have said thus much for the purpose of preventing the impression from going abroad, from the votes he had given, that he was opposed to the subject of education. He therefore now hoped that the committee would cease running after shadows, and hold on to the substance.

Mr. MERRILL said he thought the gentleman from the city of Philadelphia had accepted of a modification which was calculated to destroy the effect of the whole amendment. He thought if there was any system of a higher grade than the common schools to be established, it was to be done under some law of the commonwealth, and if so there ought to be as much supervision over it as over the common schools. It was quite

as important to have an officer to supervise these seminaries of learning, as to supervise the common schools.

Mr. CHANDLER, of the city of Philadelphia, explained, that he had accepted of the modification upon the condition, that if any provision was made in the constitution for these higher seminaries of learning, then that provision should be attached to it.

Mr. MERRILL said that might answer very well, perhaps. It must be recollected, however, that we have some two or three sections to the constitution on this subject of education, and it would seem to him to be most proper to have this provision applying to the whole of them He, therefore, thought that the safest and best plan would be, for the gentleman to wait until the other sections were brought up and acted upon, and then introduce this as a third section, applicable to all of these institutions. He thought that this would obviate the difficulty in relation to this matter now existing, and he thought it much better that it should be arranged in this way, than to have all in one section. In relation to the charge of the public funds applicable to the purposes, he thought the gentleman from Indiana, (Mr. Clarke) was right. He thought it entirely improper that we should have two sets of officers taking charge of the funds of the commonwealth. He believed the better plan would be, to separate the supervision of your public schools and seminaries of learning, from the distribution of the funds of the commonwealth entirely. If any person was appointed superintendent or commissioner, or whatever you may please to term him, to look over these institutions of learning, he apprehended he would have business enough on his hands, if he performed his duty, without having the care of any of the funds of the commonwealth; and he took it that the care of the funds of the state ought to be in other hands. He would, therefore, respectfully suggest, whether it would not be the better plan to provide in the constitution a section, that the legislature should provide for the supervision of the whole of these institutions in a law to that effect. If we commence going into detail, we will most certainly get into difficulty, and therefore, he thought we should merely give general directions to the legislature. He hoped that such a provision would be adopted, as would make it imperative on the legislature to establish schools, and then leave the whole of the matters of detail to their wisdom and experience. He hoped, therefore, that the gentleman's amendment would be withdrawn, or that it would be so amended as to make it as general as possible.

Mr. FLEMING thought there was no necessity for our introducing into the constitution, such a provision as that proposed by the gentleman from the city of Philadelphia. It occured to his mind that the question presented to our consideration, amounted to nothing more nor less than this. Will we provide in the constitution for the election of an officer, whose duty it shall be to superintend our seminaries of learning, or will we leave that matter to the legislature? It is a part and parcel of the details connected with the common school system, and that was the only question now presented for the consideration and decision of this body, at this time. This being the case, it certainly appeared to him that we ought not to encumber the constitution with this matter, which was nothing more nor less than a matter of detail. Now, by a reference to the section already adopted by this body, it will be seen that ample power is given to the legisla-

ture to provide for all the necessary officers to carry the system of education fully into effect. Then is it necessary for us to go on with details farther than to make such general provision as will enable the legislature fully to carry out the views of the people in relation to this important matter. The first section of this article says that "the legislature shall continue to provide by law for the establishment of common schools throughout the state." Now he thought it necessarily followed, that if they were authorized to continue to provide for the establishment of common schools, they had the power to provide all necessary officers to carry the provisions of the law fully and effectually into operation. Then the only question left for us to determine is, will we take away the authority, will we take the details out of the hands of the legislature, and make these provisions ourselves. There are objections to going into these details, some of which were very forcibly urged yesterday by the gentleman from Beaver, and the gentleman from Allegheny, and thus far he agreed with them. He did not consider that so far as we have gone in relation to this subject of education, we had made any such material alteration as would affect a single vote, or a single individual in the commonwealth; but if we go on to establish new officers and new institutions in the constitution, which will impose an additional tax upon the people of the commonwealth, it appeared to him that it would have a detrimental effect upon the system of education itself. Now this provision might be found in practice not to answer the purpose so fully as we expected. The officer proposed to be created by it, is to have the whole control of the schools, and is to be their general head; but it may be found in practice to be more desirable and proper, to leave this authority in the hands of the secretary of the commonwealth, where it now rests. It will always be important that a fit individual—a man conversant with the whole system from the beginning to the end of it, should be retained in that situation. It will always be a situation attended with a vast deal of labor, and will require a great deal of industry and inquiry, and on that account it would not be desirable to have it filled with new men, year after year, because every person must at once see the importance of keeping an individual in that situation who is perfectly conversant with the whole system, and master of his business; and it may be found that it may be better to employ an individual clerk in one of the departments, in order to give the head of that department an opportunity of attending to this business, which he may be so capable of doing credit to.

In a frugal government like ours, there may be a saving to the people in disposing of this office in this way, while at the same time, it will be giving us perhaps an opportunity of getting a better officer than we otherwise could get; and it might be found that to provide for the election of an officer to take charge of those institutions, would be an experiment which would not work well in practice. He considered that ample power was given to the legislature to carry the school system into full effect in the manner most suitable to attain that object, and therefore he felt inclined to vote against this proposition.

Mr. CHANDLER, of the city of Philadelphia, would beg leave to say, that if there was any thing of detail in the amendment he had submitted, it was very trifling indeed, and he considered these objections, in relation to detail, as entitled to very little consideration. If gentlemen would turn

to the constitution of Massachusetts, they would find that the people of that state, with a view of fostering the military spirit, had made provision in that instrument for the appointment of captains and other subordinate officers of their militia.

How much more important is it then, that we should have our citizens trained in the paths of knowledge, than that the state of Massachusetts should have her citizens trained in the science of arms. In the constitution of the state of New York, a provision is made for the sales of certain lands, and the appropriation of certain tolls on her canals for purposes of education. This looked something like details, and this was in the revised constitution of that state. Then it was to be found that in other states, they made provision in their constitution in relation to the manner in which their schools were to be established, and the funds to be applied to their support. Now he did not ask that we should have a legal enactment in the constitution on this subject, but he desired that the subject of education should be spoken of, and that we should have an officer whose duty it shall be to superintend and encourage the schools, and remedy defects in the system. But gentlemen say that the legislature can make ample provision for this object. Now we all know what influences operate on the legislature. We all know how many colleges have been endowed by the legislature, and we know that it has become so unpopular a matter, that gentlemen will scarcely venture now to vote for such an appropriation. He then had no desire that your school system should be neglected through some new views of popularity.

Mr. SILL said he would state in a very few words, the views taken by the minority of the committee on this subject, which he thought would tend to correct the misapprehensions which seemed to be entertained, as to the views of the minority of the committee. When the committee on the seventh article took this matter into consideration, it occured to them at once that there was a very important interest which had sprung up in this commonwealth, since the formation of the constitution of 1790.

He considered the matter of public schools and the interest involved in it, in a moral and intellectual point of view, as of the utmost importance to the state, and he thought he was not incorrect, when he stated that it had been admitted by every gentleman who had spoken on the subject, that this subject of education involved considerations more important than any other article in the constitution. In this point of view, and under these consideration, the committee were induced to look around and examine the progress of the system in other places. They were aware that the subject was a new one in this commonwealth, that the interests involved in it were great, and that not much was to be gathered from confining themselves at home, and they thought it proper to look abroad at the lessons of experience in other states. We thought it proper to carry search into other communities which had fostered interests of this kind, and among whom they had flourished, and come to maturity; and we found that in every community where these interests had been viewed with that importance, which they deserved, where they had thrived, flourished, and been productive of much good, they had resorted to the same means of conducting them, now proposed by this committee. In the kingdom of Prussia, where the most had been effected by this system of public schools, a country which has set a pattern to England and France

and all other intellectual countries in the old world; a country to which one of the most enlightened states in this Union, has sent a public agent for the purpose of examining their school system; they are conducted there by having placed at the head of these schools, one of the first dignitaries of the land, and not only that, but one of the first ministers of state, the minister of instruction. Well, sir, what are his duties? He has the care and superintendence of the whole of the institution, of the whole of the finances connected therewith, not only the expenditures, but the receipts for, school purposes. This same plan was adopted in Connecticut, and he believed also in Massachusetts. In Connecticut, there is appointed by law, a superintendent of public schools. In Michigan, he believed the same office is recognized. Now what was proposed to be the duties of these officers, according to the views of the minority of the committee, as laid before the convention in their report? Why they are to have the care and management of the public funds applicable to this object, and the superintendence of the public schools. Now he apprehended that in this point of view, if any officer was to be appointed by law for these purposes, he would have these duties imposed upon him. He apprehended that the appointment of an officer of such high and responsible duties, by a constitutional provision, would be productive of more good than if he were created by law.

In the state of Connecticut, they have what is called a commissioner of the school fund, who has the whole care and management of the fund. Well, sir, it is a fact known to many of the members of this committee, that under his care and management the school fund, has prospered to such extent, as to afford the means almost to educate the whole of the children of the commonwealth; but sir, there is still a defect there, and the system does not answer all the purposes that might be expected of it. It is not so beneficial as many think it ought to be, and what is the reason? Why sir, although the funds are ample, and they are judiciously managed by the commissioner of the school fund, still there is one defect, and what is it? It is the disbursement of the funds, or rather the expenditure of them. The commissioner pays over the funds to those who have the direction of the schools, and there his duty ceases; and whether they are judiciously applied; whether the schools are well kept, or whether the instruction is proper or not, it is a matter of which he can have no concern. Here however, the committee propose to increase the duties of those officers. We propose that they shall not only have the management of these funds, but that they shall also see to the application of them; that they should not only carefully manage and superintend the school fund, but they should see every dollar of it judiciously applied, and to the best possible purpose; that they should see to the whole direction of the schools throughout the state, and in the course of the year visit every school district, and if possible, every school house in the state, and see that proper teachers are employed and proper books used, and suitable studies pursued, and that a report of all this should be made annually to the legislature at the commencement of its session. Now, in his humble opinion, this was the only way in which a school system can ever finally succeed. We may raise funds sufficient to keep our schools open at the public expense, for the period of six months in the year; but if the disbursements of the funds are not seen to, if the qualifications of teachers are not examined into, and in short, if we do not have a general

superintendence of the whole of the details of our schools, they never will succeed. Now we put the plain question to gentlemen:—are not these objects of sufficient magnitude to embrace the time and attention of one or more individuals? It is said, however, by gentlemen that the secretary of the commonwealth has attended to his duty with great ability. This was true, and so far he has managed it with as much ability as, perhaps, any other individual could; but we find he has been employed in this business nearly the whole of his time; and being necessarily absent in the performance of these duties, the other business of his office must be at times neglected. He finds it necessary in order to discharge the duties thus imposed upon him, to travel over every portion of the state, and he has but lately returned from a tour in furtherance of this important object.

Now he apprehended there was an impropriety in imposing this duty upon this officer. The secretary of state is especially charged with the care and archives of your state department, yet here you impose another duty upon him, of an entirely different character, which requires of him to absent himself from the seat of government, and neglect those duties which appropriately belong to him. He could not see the propriety of enforcing this duty upon the secretary of state. But it will be said by some gentlemen, that if we adopt this proposition for the appointment of these officers, that we increase the expenses of the state. Sir, can any man believe that the salaries of one, two or three commissioners, who would direct their time and attention to this all important object, would not be more than compensated; and that the state would be more than gainer by the expenditure which she would incur? Why sir, we have important subjects in this commonwealth: the subject of roads and canals, and we employ canal commissioners for the purpose of superintending them, and it was not thought by any that they were injudiciously employed, or that their employment was not necessary for the superintendence of these objects. If it was a fact then that it was of importance to employ these canal commissioners, of how much more importance is it to employ superintendents of your system of education. This latter object is of as much more importance than the former, as mind is than matter. In every point of view, in which the committee considered this subject, they deemed it right and proper that a superintendence over our institutions of learning, should be had. Well, admitting that this matter was judicious in itself, as he was firmly convinced it was, and ought to be adopted, still it seemed to be apprehended by some gentlemen, that if the question even was—as to whether education ought to be promoted, it might be doubtful whether it would be expedient to put it in the constitution. Well he admitted that that question was worthy of our attention, regard, and serious consideration. But if the matter was right and proper in itself; if it would tend to promote the cause of education; and if it would tend to promote economy in the system—is it right to anticipate and say that the people will not approve of it?

Do we not believe, and have we not good reason to believe, that the people of this commonwealth will approve of any thing which is in itself right, and proper, and judicious? Have we not sufficient knowledge of the character of our people, to justify a confidence on our part, that such will be the case. I would be as far as any gentlemen in this hall from

proposing, or giving my vote in favor of any proposition, which I had cause to believe might tend to alienate the minds and affections of the community on the subject of education. It had already made a very favorable impression on their minds; and the question which we should next decide is, by what measures can we best cherish and increase that favorable impression? I think that those means will be found to consist in such an administration of the system as will be most advantageous to the people—and as will carry its uses and benefits into every town, village and hamlet in the commonwealth. How can this be better effected? It is my humble opinion, Mr. Chairman, that a great portion of the money and time which has been expended on the subject of education—especially in the earlier stages of its progress—has been, I will not say, wasted—but that it has not been applied to such just and good purposes as it might have been applied to. And what is the reason of this? It is that a proper system of instruction has not been introduced—because, the instructors who have been employed, in many instances, have not possessed the requisite qualifications, for the satisfactory discharge of their duty. I repeat that we have not always acted on a proper plan. But, let us suppose that such a proper plan was to be effectually carried into operation throughout the state. Suppose that we had school commissioners, who would see that such a plan was universally introduced, and rigidly carried into effect. Do you not believe that we might anticipate the most beneficial results to the cause of education? Do you not believe that when the people see, and the children see, that so parental has been the action of their government, that it has even suffered its officers to visit them in their schools—to reward merit—and to incite them to good conduct—do you not, I ask, believe that the effect and tendency of such a plan would be most auspicious for the cause of education, and would aid its progress in the opinions and affections of the people? I have not a doubt that it would; and these, I believe, are the views of the minority of the committee on this subject.

I have but one more observation to make, Mr. Chairman, and that is, as to the objections which have been raised, in reference to the character and management of the funds. There seems to be some mistake in this respect. I understand that some gentlemen in this body are apprehensive, that, if such a commission as is here described were to be appointed, they would be invested with the power to raise the funds for this object, to as great an extent as they might think proper; and this is made a ground of difficulty in the adoption of the plan suggested. In answer to this objection, I have only to say, Mr. Chairman, that such is not the construction which was intended to be put on the resolution by the minority of the committee who reported it. They did not design that the commissioners should have any thing at all to do with *raising* the funds; that office is to belong to the legislature. But, it seemed to the minority of the committee, that it would be necessary to have some person appointed, whose especial duty it should be to see to the expenditure of those funds. The secretary of the commonwealth, under the present system, disburses the funds, and the directors of the schools draw upon him from time to time for the requisite amounts. It is not any part of our plan to confer any such authority on the commissioners, or to take the funds out of the hands of the legislature—that power is to remain

precisely where it is. The only object that we have in view, is to husband all these funds with as much care as possible, and to see that they are applied to the very best uses. This is the whole scope of our proposition.

Mr. SMYTH, of Centre county, said, that if the measure proposed, were to be admitted in all parts of the state of Pennsylvania, and was every where to be accepted by the people, there might be some weight in the arguments which had been brought to support it. But, when it was considered how many objections would be raised against it, and how many serious obstacles must be encountered, the whole aspect of the matter was changed; and it would behove that body to be very cautious in what manner they were about to act.

It is a fact, said Mr. S. which is well known to a number of the gentlemen composing this body, that there are serious objections entertained on this subject by the people, in many parts of the states, and I am apprehensive, that the more we multiply the provisions in the constitution in relation to it, the more difficulty you will throw in the way of the adoption of all the amendments which we may make to the constitution of 1790. This, sir, is the reason why I deprecate the amendment which it is now proposed to make.

The amendment requires that a superintendent or superintendents shall be appointed for the purpose of travelling over the state, and examining into the condition of the different school districts therein. Now, it is to be recollected that this measure cannot be carried into operation without incurring a considerable expense. The secretary of the commonwealth has already performed this duty—and, for any thing we have heard to the contrary, he has performed it to the satisfaction of all parties. What will the people of Pennsylvania say? If you create such officers, you must allow them salaries, for they will not do such work for nothing—and, from the indications which we have seen, the people are already tired of the many heavy expenditures in the different departments of our government. Suppose that this convention should make no provision at all. Is not this matter already provided for in the constitution of 1790? It certainly is so; because, under that constitution, it is made the duty of the secretary of the commonwealth to visit these schools—to act as supervisor over them—and, to report on their condition and management. What more should we require? Is not this all that is necessary to the well being of the system? Or have we reason to believe that the duty assigned to him, has been negligently, or inefficiently performed by the secretary of the commonwealth? We have never heard such a complaint made. We may rest assured, Mr. Chairman, that the more difficulties we throw in the way, in the form of additional expenditures, the greater will be the opposition made to the system; gentlemen may endeavour to conceal this fact, but it is not the less a fact on that account. We ought, therefore, to exercise the greatest caution, lest we should introduce into our fundamental law, any thing which can be made the basis of new, or increased opposition to the system. It seems to be supposed that commissioners ought to visit the schools—that they should examine into the mode and manner of instruction—into the books of instruction—and into the minutest details of the subject. I can see no necessity for the appointment of such agents. Why cannot the directors in the district

perform all this duty? And is it not a matter which should be left open to the action of the legislature? I think it is—and I can perceive no ground for the interference of the convention. We have no reason to doubt that the legislature will attend to all these details in a proper way. Why then should we interfere, especially when we know that we are, at the same time, about to do that which may endanger all the amendments which we may place in the constitution?

These are briefly my views, Mr. Chairman, and I have thought it necessary to express them in the hope that I might be instrumental in preventing this convention from taking a step which I believe to be of an injurious tendency. I do not know what weight they may have. I am as sincere a friend to the cause of education, as any gentleman within the sound of my voice—but I deprecate the idea of placing too many amendments in the constitution, lest, in grasping at too much, we should lose every thing. I would much prefer to see the provision of the constitution of 1790, retained all in its present form, and let all the details be left to the legislature.

I shall vote, therefore, against the amendment, and in favor of retaining, as it now is, the second section of the constitution of 1790.

A motion was then made by Mr. M'CAHEN, to amend the amendment by striking therefrom all after the word "and" in the fifth line, to the word "superintendence" in the sixth line.

And, the question having been taken, the said motion was rejected.

The question then recurring on the amendment to the amendment, as proposed by the delegate from the county of Philadelphia, (Mr. Ingersoll.)

Mr. FULLER, of Fayette county, said, that he had risen to give his views, which he would do in a very few words.

I am of opinion, said Mr. F. that this amendment, if adopted, will thwart the very object which the gentlemen themselves have in view—that is to say, to press forward the cause of education. Sir, we are about to travel too rapidly. We are about to set too much machinery in motion, by creating too many officers, and increasing the expense of the system; all which, I am afraid, will be attended with deleterious consequences, and will, in all likelihood, be the means of prostrating the whole system. Sir, let us take heed what we do—let us not act rashly, and thus, in aiming at greater benefits, lose those which we now enjoy. I believe, that all that is requisite to insert in the fundamental law, in regard to this subject, has already been passed upon. I do not think that the farther action of this convention is required. The legislature has full power to act; and I, like the gentleman from Centre, (Mr. Smyth) would prefer to have the subject in their hands. If, however, any thing else should be done, I confess myself better pleased with the provision contained in the report of the committee, than with any other proposition. That provision simply declares that "the arts and sciences shall be promoted in such institutions of learning, as may be open to all the children of the commonwealth;" this is not going into detail; it leaves it as a matter for future legislation. It is an indication which may serve as a farther guide to the legislative body—it defines their power, and nothing more; it pays no attention to details. I believe that this is

all which the convention should do, if indeed, it does any thing at all; though I have doubts whether even this will be of any essential service. My present impression is that it will not. I shall vote, therefore, against this proposition; and yet, I feel as friendly towards the cause of education, and am as desirous to promote it, as any gentleman in this convention can be. I believe that its progress will be more effectually secured by leaving the constitutional provision as it is, than by any thing which we can add to it.

Mr. JENKS, of Bucks county, said, that so far as regarded any changes in the constitution of 1790, he felt himself to be much of a conservative in principle. He had no disposition to sanction amendments to that constitution, merely for the sake of change, or the love of novelty; and, before he could be prevailed upon to vote for any amendment of any description, he must be fully satisfied in his own mind, that the good of the people would be promoted by it. And still less, said Mr. J. have I any disposition to introduce amendments by the side of the several sections of the constitution, which are nothing more nor less than a mere repetition of the powers there given.

It appears to me, Mr. Chairman, that the amendment now offered by the gentlemen from the city of Philadelphia, (Mr. Chandler) is altogether unnecessary—that it is superfluous—for the single reason, that it extends to the legislature, no farther power than that which they possess at the present time under the constitution of 1790. If this is the case—and I think it must be obvious to every gentleman that it is so—why should we run the risk of incorporating this with our other amendments. Let us reflect on what we are doing; and let us not hastily and unnecessarily append a provision to this section, which we may at a future time have reason to regret. We shall find that to be our best and safest course. If the amendments which we have already made—and all of which are to receive the decision of the people, before they can become a part of our fundamental law—if, I say, these amendments are calculated by their excellence, to recommend themselves to the favor and acceptance of the people, do we act wisely in placing the adoption of these amendments in jeopardy—as I believe we shall, by the introduction,—a section which is both uncalled for and unnecessary. The construction which I would place upon the constitution as it is, would be, that the legislature had ample power, if they thought proper, by the enactment of a law, to provide for a superintendent of common schools. Viewing the matter in this light, and believing that the proposed amendment is entirely unnecessary, I have made up my mind to vote against it. I believe that all the powers intended to be conveyed by it, are already conveyed by the existing clause in the constitution of 1790; and I see no reason why we should incumber it with any further provision.

Mr. STEVENS said, that he thought he should vote in favor of this amendment, because he thought that it was, in itself, a good provision. It is true, said Mr. S. that I have heard other gentlemen express the same opinion, yet they say that they will vote against it on the ground that, if we introduce any amendment into the constitution on the subject of education, we shall endanger before the people, all the other amendments we may make. Is this a proper motive of action for a statesman? I am surprised to hear such an argument resorted to, on a question of this vital

interest to our people. What amendment have gentlemen in their eye which they consider more important to the commonwealth than an amendment on the subject of education? What is there to be lost or endangered by the adoption of a provision of this kind, which it would be a deplorable matter to lose, rather than risk improvements in regard to education? Are there things in this constitution, which lie nearer to the hearts of the reformers than the question of educating the people of the commonwealth, in every branch, from the lowest to the highest degree of human knowledge, which we are capable of attaining? If such considerations as these are weighing upon the mind of any gentleman here, I will ask him to say, whether such are the fair and proper motives which ought to influence him in the vote he is about to give? To my mind, Mr. Chairman, there is nothing in the constitution so important—nothing which affects so deeply the good or evil government of the country, as this very subject of education. It is second to none in magnitude, and second to none in its influence upon our social system. I shall, therefore, give my anxious attention to this, first, above all other matters claiming our consideration. I take the converse position of gentlemen who have spoken here, deprecating this movement, lest we should throw all our other amendments into jeopardy, and I say, that if I am in doubt about other amendments, it is because I fear they will jeopardise any amendment we may make on the subject of education. I have nothing to conceal as to my views or feelings. I shall not avoid voting on any amendment, which any gentleman may be disposed to bring forward on this particular subject. I shall meet it boldly, whether it may finally affect the question, as to how many months a scholar should remain at school—for three or for six, or even for a longer period;—or the question, whether a black man shall vote or not. I shall not suffer myself to be governed by any such contracted rule of action, in the discharge of my duties here. These are all matters which should be lost sight of, when it is attempted to put them in comparison with those more vital considerations involved in the question now before the committee. Their conduct, therefore, will be directed solely, with reference to the merits of the question, and not with reference to the adoption or rejection of any other amendments, to which this convention may agree. If, however, I were to suffer myself to be so affected, I might vote against it, lest the popularity which this subject of education has in the state of Pennsylvania, might drag the other amendments along with it. Do gentlemen reflect what high compliments they are paying to the honesty and to the intelligence of their constituents? If I was disposed to play the demagogue, I would say they were slandering the people. There can be no more legitimate foundation for a charge of slander, than to say, that if you adopt amendments calculated to aid and give impulse to the great cause of public education, you will set the people against the constitution. I do not believe in such a result. But suppose that it is so—suppose that strong prejudices do exist against popular education in certain parts of the state, what has that to do with the matter? Do gentlemen suppose that they are required by their duty here as the representatives of the people, to obey the instructions of ignorance? Is this the doctrine of instruction? And when statesmen come into this hall, do they suppose that they come only for the purpose of acting out the ignorance of those who sent them? To minister to their prejudices? To pamper their

false appetites? Is this the office we describe, when we speak of the duty devolving on the representatives of freemen? If it be so, what enlightened, what virtuous, what patriotic mind could bring itself down to such a low and unworthy occupation? I do myself, to some extent at least, acknowledge the right of instruction. But will any man go so far as to say that, if he is elected by an ignorant man, he must remain ignorant also? That, if he is elected by the opposers of a system of education, he must therefore set his foot down against all education? Must he put on the armor of prejudice, and stand forth a champion to combat knowledge in this hall? And is not all this opposition, when you come to analyse it closely, founded upon this very basis? I do not intend to say that such is the design of any gentleman here, but I do say that such is the inevitable effect of the arguments we have heard. I think that this amendment will have a decidedly beneficial influence, and I shall therefore vote in favor of it. Nor do I think that it will have a tendency to make the cause of education less respected, or less popular in the commonwealth, than it is at the present time.

I am of opinion that if the members of this convention, instead of giving way to what I conceive to be groundless fears and apprehensions, and thus shrinking from all responsibility in relation to this question, would act vigorously here—and, when they go home to their constituents, would boldly vindicate what they had done, because they believed it to be right and proper—if they would trust the issue to the verdict of an intelligent people—and if, instead of nursing up the prejudice of ignorance, they would meet them full in the face with a view to dissipate and overcome them, I believe that we should soon hear no more of *agitation* in the commonwealth. I believe that in a few short years from this time, we should find our whole population wondering that any man ever attempted to get up an agitation among us, the object of which was to put down the progress of human improvement, and to perpetuate the reign of ignorance throughout our land. I invite gentlemen, therefore, to go forward with me in this great and glorious cause. I ask them to set aside all their doubts and misgivings—and to throw themselves and their course of conduct in this body, fearlessly upon the judgment of their constituents.

Mr. Dickey said that, he should vote against this amendment for two reasons; the first of which was, that it proposed an innovation upon the present school system—and the second, because he thought the provision altogether unnecessary and useless for all purposes of carrying out the great objects of education throughout the state.

This is not the first occasion, (said Mr. D.) on which I have had an opportunity to admire the tact, the ingenuity and the talent of the gentleman from the county of Adams, (Mr. Stevens) as brought to bear on this question of education. I have listened to him in our legislative halls—I have heard him advocate the cause with all the eloquence of which he is master—and I have gone along with him in its advancement. But it is unnecessary, at this time, to introduce any provisions either in reference to common school, or any other kind of education; and, notwithstanding all that has been said to the contrary by the gentleman from Adams, I am satisfied in my own mind, that the provision introduced yesterday, if finally adopted by this convention, will agitate the commonwealth from one end to the other. I am satisfied that it will be the means of putting down

the whole of that fabric which the gentleman from Adams has so much aided in building up. Sir, we must look at this as a practical question; we must discard all theory and all speculation—and we must take the people of Pennsylvania precisely as we find them. If we do not, we must look for defeat only in every effort we may make.

In many parts of this commonwealth, Mr. Chairman, the prejudices existing against this system of education are very strong—yes, sir, and strong too, even among the enlightened portions of your citizens; some of the members of the society of Friends oppose it, not because they are opposed to the education of the children, but because they have already schools of their own, which are endowed, and at which the children are taught.

Then again—there are other counties in which the German population predominates, where these prejudices are very strong—and thus you find them existing through the whole length and breadth of your commonwealth, with the exception of a few parts on your northern border. You have large and powerful minoriti s composed, in many instances, of intelligent and influential men, who have arrayed themselves in opposition to this system. Some of them pay a tax for its support of four or five hundred dollars, and I have been told that, so great is their influence becoming in some parts, that the system will not be able to stand before it. Are we to pay no regard to such facts as these? Are we to pass them over as idle dreams having no existence in reality? Will the gentleman from Adams, with all this opposition and all these prejudices staring him in the face, as exhibited to the legislature at its last session, by the report of the superintendent of common schools—would he, I ask, desire to throw open this system more and more to the attacks of its enemies, by appending such a provision as that adopted yesterday—and then by adding section after section, when the article shall again come up on second reading in convention? Is the gentleman willing to stir up this fresh agitation among the people of the commonwealth? And what does the gentleman suppose will be the result? The superintendent of the common schools, states in his report, that there are two hundred and forty non-accepting districts, and seven hundred accepting districts in the state; and if you will examine into the amount of population in the two hundred and forty non-accepting districts, you will find that it is almost equal to that of the seven hundred accepting districts; and if, to the population of those two hundred and forty non-accepting districts, you add the powerful minorities which are known to exist in the seven hundred accepting districts, and what influence do you not raise against the system? You will have your thousands upon thousands opposed to it.

How, let me ask, have we been able to proceed so far in our endeavors to establish this system? Has it been by putting the question of school or no school? Certainly not? We have not acted on the commonwealth as an aggregate; but we have cut it up into districts, and, by offering premiums, we have induced seven hundred of these districts to accept it. But once throw this question open, and you may be assured that in a short time—or, at all events, so soon as the new constitutional provision goes into operation, your system will be laid prostrate; and, if the provision is put at all to the people, and even supposing that it should be negatived, that step alone, in my opinion, will go a long way towards its prostration.

Why should we run this risk? Why are we not willing to leave it to further legislation? May not this system be seized hold of at some future day, when the politics of the state are in a condition different from that in which we now see them? The system is not yet permanently fixed in the feelings and affections of the people; and this fact is as well known to the gentleman from Adams as it is to myself. He knows, as well as I know, that we have been compelled to yield to these prejudices; and he knows that although the system might have been accepted in the year 1837, yet that the question must again be put to the people in the year 1840—so that we may ascertain whether it is rivetted in their affections, or not—and whether it is to be done away with or not. And yet we are asked to insert these new constitutional provisions.

Mr. Chairman, if these provisions should be inserted by this body, and should hereafter be rejected by the people—as I do not doubt they will—the circumstance may have an important bearing on the elections which are to take place in the different school districts in the year 1840. Have gentlemen thought of this? If they have not, I hope they will do so without loss of time. I am for letting well, alone. These provisions can do no good. We can gain nothing by their adoption, but it is possible we may lose every thing. The provision of the delegate from the city of Philadelphia, (Mr. Chandler) is unnecessary. So far as regards the school fund, the commonwealth makes yearly appropriations to the amount of two hundred thousand dollars. The superintendent has nothing to do but to draw his warrent upon the secretary of the commonwealth in favor of the school directors, and all the balance is raised by taxation. And who ought to have the direction of the funds, but the people by their school directors? Where can they be more properly entrusted? I would not disturb the present system in this respect, and, for all other purposes, the amendment is perfectly useless. The duties therein mentioned can be as well performed by the superintendent of the schools, as by a board of commissioners appointed for the purpose. I shall, therefore, vote against the proposition. There is also another proposition on our records—that is to say, to throw open the colleges to all persons—I suppose at the public expense. I hope that the constitution of 1790 will be left, in these respects, just where it is.

Mr. Chandler, of the city of Philadelphia, said that he did not expect that any argument of his could make much impression on the minds of the committee, after the whirlwind of eloquence which had just passed over them; although sometimes the still small voice of truth might be heard even amid the violence of the tempest. All that I wish, (said Mr. C.) is to free myself from the imputation, that I would do any thing, either directly or indirectly, to injure the cause I advocate.

I admire the zeal which the gentleman from Beaver (Mr. Dickey) exhibits, when he speaks of the opposition made to the school system, by the society of Friends in some of the counties. We know how careful the convention has been of the scruples of that portion of our citizens. We refused to leave it to the legislature of the state, to free these Friends from the sin—as they deemed it—of bearing arms for the defence of the commonwealth—and we are now told that they disapprove of these public schools, because they are not their own. Sir, I know that I have once a year, in my official capacity, to vote for directors of the public schools;

and I know also that we always look out for one or two staid and steady quakers, so that the duty which that office imposes may be efficiently performed.

In relation to the remarks which have fallen from the gentleman from Bucks, (Mr. Jenks) as well as from other delegates, as to endangering the whole of the amendments which we may make to the constitution of 1790, if we submit to the people the new provisions on the subject of education, I have but little to say. The gentlemen themselves can not expect that arguments of such a nature are to have much weight here. They surely can not gravely ask men of common intelligence to believe that the people would throw away a constitution which was sound in every other respect, merely because it contained a provision securing to two hundred and seventy thousand people now able to read, the blessings of education, and if they should do so, all I can say is, that I have strangely over-rated the feelings, the intelligence and the judgment of my fellow citizens. Yesterday and to day we have been told of those who may be turned from office; and so we are to compromise with our consciences, in order that we may propitiate the votes of those who are unworthy of their office. If this is not offering up incense at the shrine of Molock, I know not what is. This reminds me of the wanderer in the grove, who seeing the statue of Jupiter, bowed to him, and asked him to bear in mind, (if he ever came into power again) that he had bowed to him in his adversity. There is something very like this in the arguments of gentlemen here.

Mr. Chairman, let us do right in this matter. whatever may come of it hereafter. The gentleman from Beaver county, has alluded to the time when the political circumstances of the state shall be changed. I will tell the gentleman, that it is to that time that I look forward in the course which I have pursued on this question; that we may provide against that change, and that we may thus secure what all are anxious to secure—and what we all feel—although we do not all express the feeling —we are every year in danger of losing.

Mr. Porter, of Northampton county, said that he did not know that it was very important whether the convention adopt this amendment, or whether they determined that it should be left to legislative action.

I have risen, (said Mr. P.) for the purpose of repelling the charges which have been made against the friends of education on this floor. It is a well known rule in controversial theology, not to allow your adversary credit for common sense, or common honesty. I do not know whether that rule has ben introduced into the politics of the present day to the full extent; and yet it seems to me that there are some gentlemen here who, in their zeal for some trifling two-penny object in relation to the justices of the peace, or changing the mode of election of certain petty officers, would put down altogether the great cause of public education in the state of Pennsylvania. They regard it as a secondary object. Sir, I am not one of that number. I think that the cultivation of the intellectual faculties of man is a matter of vastly more importance than the appointment of justices of the peace, or the election of petty officers. I think that it is of vastly more importance to expand the mental faculties of the citizens of your commonwealth, to adopt proper measures for their moral culture, than it is to adopt provisions having reference solely to the

improvement and development of the physical resources of that commonwealth. This, Mr. Chairman, is my belief; and so believing, and with that end in view, I shall pursue it at any and every hazard. And when gentlemen here are inviting the friends of reform to throw out of view all improvements on the subject of education, lest, peradventure, they should endanger the other amendments which may be submitted to the people, let me admonish them to beware what they do. Let them take care that while they are avoiding the rock of Scylla, they do not suffer themselves and their vessel to be swallowed up in the whirlpool of Charybdis. The gentlemen have need of the very best skill which their pilots can command; and I commend them to its vigilant exercise.

Are the friends of education in this hall opposed to all reform in the constitution. They are not; but the gentlemen may assure themselves, that the friends of education may be brought to array themselves against all reform, by such wholesale denunciations as have been dealt out by the gentleman from the county of Beaver, (Mr. Dickey.)

Sir, in the course of conduct which I may adopt in this convention, I claim credit for purity of motive, and directness of purpose; and when I find gentlemen disposed to withhold such credit from me—to attack my motives, and to attack the integrity of my purpose, I call upon them to look into their own bosoms and to see that all is right there. The man who is fond of imputing improper and impure motives to others, is always in danger of having motives not the purest imputed to himself. Sir, I came into this body a friend to the cause of education—I will go out of it still a friend to the cause of education; and I would infinitely rather see all other reforms which you may make go to nothing, than I would see the cause of education in the slightest degree injured. And are we to be told, at this time of day that we are not to patronise that cause? Are we to be told that we must retrograde—that we must go back again—that we must trample it under foot? And why? From a fear, forsooth, that some political demagogue may operate upon the passions and the prejudices of the people, and may stir up an opposition to your doings. Let me tell gentlemen that they are in more danger from the intelligence of the people, than from their ignorance.

Why, the day of Bœotian darkness had passed away, and the daylight of truth and knowledge had broken in upon us; and the man who sought to ride into power by pandering to the prejudices, and vices, and follies of the ignorant, reckoned without his host. No man could accomplish that object in Pennsylvania by resorting to such dishonorable and unworthy means; he could only do so by appealing to the common sense of the community—to their intelligence and discernment. He would again repeat, that no man could do it by ministering to their prejudices and ignorance That day had gone by forever, thank God. He would ask gentlemen on the other side, if it would not be unwise and indiscreet to adopt the jesuitical motto, in relation to this matter—that "the end justifies the means?"—if they could be in more danger than by arraigning those who were the advocates of popular education? What more did the friends of education want, than to adapt the present system to the habits and manners of the people? Why, what had gentlemen done? They had merely declared that as the good work had been commenced, they would give it a constitutional recommendation

in order that it might progress the more rapidly—that the man who laid his hand to the plough should receive an education—that his march should be onward. Had we not heard, year after year, that the "schoolmaster was abroad," and that the minds of the people were becoming enlightened? He, then, that would stay the glorious progress of education, had but little to recommend him to the confidence of the community. And we were told that we had better not act upon the subject, in the manner we proposed, for fear the people of Pennsylvania might be opposed to it Not because it would not be right to do so. Oh, no. And yet these were the people, whom we had been told, were to be trusted with every thing! They were; and he was willing to trust them, when even their exclusive friends would shrink from the trial. He was willing now, as he always had been, to approach the people coolly and deliberately, and lay facts before them, upon which they must decide. They would doubtless be true to themselves. They had ever been so; and it was a foul slander to say that they had been opposed to education as well as to internal improvements. They might have differed as to the details, but upon the grand principle, there was no difference of opinion. There was a subject to which the beautiful motto applied: "Good instruction is better than riches." This sentiment was adopted one hundred and fifty years ago in Pennsylvania; and it had been breathed in every act of Pennsylvania, since the time of William Penn, and was contained in the constitution of 1790. And should we be recreant to the welfare of the people? Should we say that the cause of education should not go on—should not progress? He trusted in God that we should do no such thing. He hoped the day had gone by when such a rallying cry would be needed to lend aid to any politician.

He was in favor of fostering the cause of education by every means in our power. He would have the common school system fully, perfectly, and completely carried out. He would like to see it carried into full operation in the two hundred and forty non-accepting districts, which rung again and again in our ears. But these two hundred and forty districts, as they had been called, it appeared had dwindled, dwindled, and dwindled down to two hundred, so that we might expect, before any great length of time should elapse, to hear nothing more said about them. The common school system was marching onward. Truth had penetrated the vale of darkness. "Onward" was the cry, and "onward" it would be, until not a district in the state would be without a common school.

In regard to the immediate proposition before the chair, it was desirable that the convention should dispose of it, by leaving it to be legislated upon by the legislature of Pennsylvania. No one, he believed, had taken any objection to it, and argued that it was not a subject which should come under the action of the legislature. Was not the subject of duelling left to be settled by those bodies? Did not every one agree to, and acknowledge, the fact, that the secretary of the commonwealth had more duties than he could well perform? Then why not provide for an officer to take charge of this department of common schools, who should devote all the energies of his mind to its proper management. It is of more importance than any other—more important than that of the settlement of the accounts of the commonwealth—more important, too, than

that of the commissioner of the commonwealth, and the man who has in charge the improvements of the state.

He trusted that he should hear no more of the rallying cry of being opposed to all innovations upon the constitution of 1790, and that gentlemen would come up to the work, and with a determination to do all the good they could, whatever might be the consequences which might follow.

Mr. AGNEW, of Beaver, had not expected to hear more than one champion of education. He had known of but one, and now there was another who would be celebrated in the papers of the day, as throwing a flood of light on this grave and important subject. The purpose, however, for which he had risen was, to repel the aspersions which had been thrown out by gentlemen on the other side in reference to what had fallen from his colleague, (Mr. Dickey.) Charges had been made against that gentleman which were not founded in fact. Who, he (Mr. A.) would ask, rallied the reformers? Who, he desired to learn, imputed any improper motives to gentlemen? He defied the gentleman to put his finger on any thing which would bring home the charge to him, (Mr. Dickey.)

Several gentlemen, by indulging in sophistry and disingenuous argument, had endeavored to show that our argument was founded in an ignorance of the people, and of their wishes. This was entirely fallacious, for the objections which had been urged, were founded upon a solid basis. We contended that we had all the benefits we wished—all that the friends of education here proposed, and did not require the amendments brought forward, nor to lose what we at present possessed. We did not wish to excite the public mind on the subject. He would ask if alterations which the gentleman had made in reference to other subjects in the constitution, and the county officers among the rest, had been such as all could have desired, and rest their hands upon in security? No, they were not. He would ask, if the course proposed to be adopted was one calculated to advance the cause of education? Whether the argument which had been made, was against ignorance, or the friends of education? He would repeat, what he had before said, that we had got all that we desired. He, therefore, trusted that we should be let alone.

He would now call the attention of the convention, for a few moments, to the report of the superintendent of common schools, for the present year. That officer says:

"Upon a close examination of the progress of common schools in Pennsylvania, with a view to the improvement of the system, the inquirer is met, and, in a great measure, discouraged in the outset, by results directly opposed to those which the same facts, under ordinary circumstances, would produce. Counties, among the most intelligent, enterprising, and devoted to the general interests of education, are found to be among the most hostile to the system. Others, which from their wealth, density of population, and moral character, might be supposed peculiarly adapted to its beneficial action, are scarcely less averse than the class just named. On the other hand, as he advances from the older counties, with a population somewhat of a homogeneous charac-

ter, he finds the system increase in favor among the new and mixed people of the west and southwest, while it is unanimously accepted by the recent and thinly inhabited settlements of the whole north.

"Until the causes of these singular anomalies are fully ascertained, their agency either corrected or made to promote the common object, all farther attempts to amend the system will be vain. In view of them, one general remark, or rather principle, presents itself, which should never be lost sight of. It is, that in adapting a system to the wants and feelings of a community, possessing such various conflicting interests and prejudices as ours, little, if any, aid can be derived from abroad. In other states, having one language, one people, one origin, and one soil, a system suited to *one* district, satisfies the whole. Not so here. No project, however wisely planned, or systematically adapted, can be pronounced sufficient till approved by the test of experience. Hence, it becomes the policy—nay, it is the duty of the legislature, neither on the one hand, unduly to press any part of the design, no matter how theoretically beautiful if it has been condemned in practice; nor, on the other, ever to relinquish a point, once gained in favor of the system, however far it may fall short of previous calculation. It is only by resting on, and starting from, such naturally admitted points, that success can at all be achieved, in any enterprise."

This (continued Mr. A.) was the ground of our argument. Would gentlemen say that this report was not to be relied on? Would they go so far as to say that it had nothing to recommend it to the attention and consideration of the committee? The report had met the approbation of men in all parts of the state, as being founded on a just conception of the system. And yet he and others, who had spoken as he had done, freely and candidly on the subject, were now, it seemed, to be placed in the position of those whose arguments were founded upon the ignorance and prejudices of the community!

Gentlemen on his side of the question could, perhaps, quote—if they chose to do so—as aptly, or express themselves as eloquently, as the gentleman from Northampton (Mr. Porter) had done, in favor of what they regarded to be proper; but enough, he apprehended, had already been said, to convince the committee of the propriety of the course that ought to be adopted.

The superintendent of common schools had stated, in his report, that the system was opposed, mainly, by men of influence; and had given a variety of facts, which well deserved the serious and deliberate consideration of the committee, before they voted on this highly interesting and important subject.

He (Mr. Agnew) had found it necessary to make these few remarks, principally on account of the aspersions which had been thrown out by those on the other side. He knew it to be a very common practice to resort to them for the purpose of rendering a cause odious; but it almost invariably had an opposite effect. However, the adoption of such a course of conduct was disingenuous, and altogether unworthy of those who wished to be guided and governed by reason, rather than prejudice.

Mr. EARLE, of Philadelphia county, remarked that there were many

gentlemen who pretended to be friends of reform, and made a profession of confidence in the people, yet, in this matter, they were unwilling to trust to the people's intelligence. It was very often the case, that propositions were brought forward in a very confident and bold manner, and they, at the first glance, passed for great truths. But, upon being examined, they were found to be great falsehoods instead of great truths. Yes, the very reverse of the truth. And so it would turn out to be in the present instance. What! was it possible that those who professed to be the friends of education, and whose constituents expected them to carry out the system to perfection, were not willing to trust the people? The real and true friends of education were not afraid to trust the people. Certainly not. But how was it with gentlemen of a particular school? Why, they say, as they always have said, since the creation—"We dare not trust the people with every thing, it is dangerous." These gentlemen went for inserting in the constitution a compulsory provision, because they said that the mass of the people are not intelligent enough to act upon the subject themselves.

He had made these observations, simply because there had been a general allusion made to the course taken by himself and others in relation to this matter. It was his intention to vote for the clause. He regarded the convention as having taken a fatal step in proposing to make any alteration in the constitution relative to education. If the instrument should be changed in that particular, he would advocate its being submitted to the people separately from the other parts of the constitution.

Mr. DUNLOP, of Franklin, moved to amend the amendment by striking out "legislature," and inserting "governor;" and also, by striking out "elected," and inserting "appointed."

Mr. INGERSOLL, of Philadelphia county, asked for the yeas and nays, and they were ordered.

Mr. DUNLOP said, he considered the true mode to be, "election" to office, and not "appointment," as it was agreeable to the true theory of our constitution. Besides, experience had clearly shown that the legislature was a very bad body in making appointments. He was quite sure that they had not exhibited much sagacity in the appointment of the bank directors. His belief was, that almost all the money that had been lost through the banks of the commonwealth, had been lost by those very men whom the legislature had appointed to watch it. He spoke with great respect of the officers; but the fact was, the responsibility was so much divided, that men were not in the habit of thinking of consequences. The principal responsibility was with the governor.

Now, what he (Mr. D.) wanted, was, to give to the governor the appointment of these officers, then men better qualified for the stations would, in all probability, be selected; for, the legislature did not exercise their judgment so nicely and discriminately in reference to the qualifications of the officers, as might naturally be expected would be done by the governor, upon whom devolved a very heavy responsibility.

Mr. FORWARD, of Allegheny, would suggest to the gentleman from Franklin, that a term should be inserted.

Mr. DUNLOP then modified his amendment, by inserting the words—"for the term of three years."

Mr. SILL, of Erie, asked for a division of the question: the vote to be taken first on the appointing power, ending with the word "governor."

The question was then taken on the first branch of the amendment, and decided in the negative—yeas 30, nays 89.

YEAS—Messrs. Baldwin, Brown, of Lancaster, Carey, Chambers, Chandler, of Chester, Chauncey, Cochran, Cope, Cox, Cunningham, Denny, Dickerson, Dunlop, Harris, Hiester, Hopkinson, Jenks, Kerr, Lyons, M'Call, M'Sherry, Meredith, Merkel, Pennypacker, Porter, of Lancaster, Royer, Russell, Scott, Snively, Young —30.

NAYS—Messrs. Agnew, Ayres, Banks, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Chandler, of Philadelphia, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cline, Craig, Crain, Crawford, Crum, Cummin, Curl, Darrah, Dickey, Dillinger, Donagan, Donnel', Doran, Earle, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gearhart, Gilmore, Grenell, Hastings, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, High, Houpt, Hyde, Ingersoll, Keim, Kennedy, Konigmacher, Krebs, Long, Maclay, Magee, Mann, Martin, M'Cahen, M'Dowell, Merrill, Miller, Montgomery, Nevin, Ovefield, Pollock, Porter, of Northampton, Purviance, Regart, Read, Riter, Ritter, Saeger, Scheetz, Sellers, Seltzer, Serrill, Shellito, Sill, Smith, Smyth, Sterigere, Stevens, Stickel, Sturdevant, Taggart, Thomas, Weaver, Woodward—89.

Mr. INGERSOLL, of Philadelphia county, hoped the gentleman from Philadelphia city would accept the second branch as a modification.

Mr. CHANDLER accepted the modification accordingly.

Mr. INGERSOLL said it was not his intention to embark in the storm of commotion which had prevailed here. Neither did he suppose that anything he could say would have any great effect in producing tranquility. He thought, from the very strong indications which had been exhibited, that the substitute which he had moved for the proposition of the committee, was destined to fail. He really expected so; but still he deemed it a matter of consequence to say a word or two only before the committee rose, because it seemed to him, that in the tempest of passion, which had raged, gentlemen had lost sight of the true question. It should be borne in mind, that this was the first time this subject was ever acted on, organically, in the state of Pennsylvania. He wished that fact to be impressed upon the mind of every gentleman. There was no provision of the kind in the constitution of 1790. He meant to say, that at that time, the subject of education was but little, if at all, thought of in the states south of New England. It was a mere nullity inserted in the charter, and was not acted on for twenty-five, thirty, or forty years. We were now acting on it for the first time, and intended it to form a part of our frame of government. He was aware that for some years past, the subject of education had claimed the attention of all the free countries in Europe. It was a new, and, indeed, a great and growing subject; and gentlemen had now gravely and deliberately discussed whether it should be inserted in the constitution or not.

He must confess that when he heard his friend from Indiana, (Mr. Clarke) say that it was a subject fit only for the action of the legislature, it struck as a discord upon his ear. He regarded this as a subject which ought to be treated with the greatest care, and one respecting which he should think he had not done his duty, if he did not put on record some-

thing more than his vote. He wished to know what was the fear which some gentlemen entertained of vesting the legislature with power over this highly important subject. What was the argument against bestowing this power? Suppose we analyzed it, in all fairness and candor—without partiality, and without passion.

The gentleman from Beaver (Mr. Agnew) said, here was a system in full march, and you endanger it by introducing any change; it is well enough as it is, and you had better let well alone. What, he asked, had been said by his friend from the city, (Mr. Chandler) and the gentleman from Northampton, (Mr. Porter) that this view of the matter was predicated upon an apprehension of the popular judgment. He (Mr. I.) never did,—never would,—and never could, act upon that apprehension, because he could sincerely say that he felt no fear, nor did he wish to indulge in it. It was an idle apprehension to harbor, particularly in a country like ours, where the people's sovereignty was acknowledged, that they are not to be trusted. Had the people shown any objection to entrusting this power to the legislature? No, they had shown none whatever.

It had been said that this was a question of taxation, and not of education. It was not that the people do not wish to be educated. The difficulty was with the rich, and not with the low and the humble. The question was not what we should do to make this matter acceptable to the common people, only, but to all classes of society, and at the same time not give a pretext to the rich to increase the amount of their taxation upon the poor, which, he believed was in some parts of the state considered onerous. What, then, he inquired, was it we proposed to do? Why, to put into our constitution what was to be found in almoust every state constitution, a provision in relation to education. Let gentlemen turn to their book of constitutions, and they would see that the revised constitution of New York, as well as the constitution of Michigan, adopted but the other day, provides for the education of the people. The gentleman from Erie, (Mr. Sill) informed the convention, very truly, that in Prussia, the subject of education was entrusted to, and placed under the superintendence of one of the highest officers of the government. He (Mr. Ingersoll) hoped that that disposition would be made of it under our own state government. The gentleman from Centre, (Mr. Smyth) and others, had spoken of the expense attending this system of education. Was there ever such an egregious mistake. He hoped that gentlemen would say nothing more about the expense. Why, the salary of a superintendent would not be more than fifteen hundred dollars, or two thousand dollars a year, and he could not save less than one hundred thousand dollars or two hundred thousand dollars, per annum to the state. The great object now in view was to put the system of common school education upon such a foundation, as to be as perfect as could be desired, while, at the same time, it would be carried on, in the most economical manner, One of the principal objects we had in view was to educate those who were to teach others. The great difficulty was not to obtain boys and girls, but to get them educated. We wanted a superintendent to look after those who were to be the schoolmasters; to prevent the squandering of money incident to a new and untried system; and to make a general report at every session of the legislature, so that the people may learn how the system works.

Mr. I. gave way, without concluding, to a motion for the committee to rise.

The committee accordingly rose, and reported progress; and,

The Convention adjourned.

WEDNESDAY AFTERNOON, NOVEMBER 15, 1837.

SEVENTH ARTICLE.

The Convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The amendment offered by Mr. CHANDLER, of Philadelphia, to so much of the report of the committee as relates to the second section of the said article, being under consideration.

Mr. INGERSOLL expressed a hope that the gentleman from Philadelphia would accept as a modification, an amendment to strike out "board of commissioners," and insert "commissioner." He had little to say; he hoped when the article came up on its second reading, the subject would find more favor with the convention. He had brought with him the New York constitution of 1830, and that of Michigan framed last year. He hoped gentlemen would give attention to the subject. He particularly called attention to the constitution of New York, where a whole page of details would be found on the subject. Why do we appoint a treasurer by a constitutional provision only? He hoped gentlemen would examine the matter calmly. It was the first time this subject had been brought up in Pennsylvania. The appointment of a superintendent would be a saving of a great sum of money to the state. The subject was not considered unworthy of constitutional notice, and was not left entirely to the legislatures in New York and Michigan.

Mr. CHANDLER said, the great object of this class of the friends of education was to fix in the constitution some retaining power. He accepted the amendment of the gentleman from the county, and modified his amendment accordingly.

The question was then taken on the amendment to the report of the committee as modified, and was determined in the negative, as follows, viz:

YEAS—Messrs. Baldwin, Banks, Butler, Chandler, of Philadelphia, Chauncey Clapp, Cline, Cochran, Craig, Cummin, Cunningham, Doran, Farrelly, Gamble Grenell, Hyde, Ingersoll, M'Cahen, Merrill, Pennypacker, Pollock, Porter, of Northampton, Read, Riter, Royer, Russell, Serrill, Sill, Stevens, Thomas—30.

NAYS—Messrs. Agnew, Ayres, Barclay, Barndollar, Barnitz, Bedford, Bigelow, Bonham, Brown, of Lancaster, Brown, of Northampton, Brown, of Philadelphia,

Carey, Chambers, Chandler, of Chester, Clarke, of Beaver, Clarke, of Dauphin, Clarke, of Indiana, Cleavinger, Cox, Crain, Crawford, Crum, Curll, Darrah, Denny, Dickey, Dickerson, Dillinger, Donagan, Donnell, Earle, Fleming, Foulkrod, Fry, Fuller, Gearhart, Gilmore, Harris, Hayhurst, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, Martin, M'Call, M'Dowell, M'Sherry, Miller, Montgomery, Nevin, Overfield, Porter, of Lancaster, Reigart, Ritter, Saeger, Scheetz, Sellers, Seltzer, Shelhito, Smith, Smyth, Snively, Sterigere, Stickel, Sturdevant, Taggart, Woodward, Young—81.

Mr. CRAIG, of Washington, moved to amend the said section by striking therefrom all after the word "in," in the second line, to the end, and inserting in lieu thereof the words as follow, viz: "one or more manual labor seminaries of learning."

The question being on the amendment.

Mr. FARRELLY said, he was opposed to the amendment adopted. He was in hopes that some amendment would have been adopted, similar to that proposed by the gentleman from Philadelphia. The present amendment to promote education by the means of the establishment of manual labor schools would not, he feared, have the effect desired. It would tend to lower the standard of education. Many branches of science were omitted altogether in the manual labor schools, and nothing like a complete education could be obtained at them. The standard of education, already too low, would be reduced still lower by the encouragement of these schools. He did hope that we should put something in the constitution expressive of the sentiment that the legislature should afford encouragement to the higher branches of education. He was not prepared, at present, to give his views fully upon this interesting subject.

Mr. STEVENS was pleased, he said, with the views presented by the gentleman from Crawford. The present constitution was nothing more than a dead letter in regard to educaion; and, he agreed that it was impossible to do any thing effectual for the promotion of the higher branches of education, without inserting a provision for the incorporation and endowment of colleges. But, he hoped the gentleman would postpone his proposition, for the present, until we had time to reflect maturely upon the subject.

Mr. PORTER, of Northampton, did not, he said, rise to support the amendment of the gentleman.

He rather wished it to be withdrawn; but he did not wish to be supposed to dispute the utility of manual labor schools; and, he would bring forward proof to the gentleman from Crawford, that they did not always lower the standard of education. There was a manual labor school in Easton, and it turned out the best scholars in Pennsylvania. They were, in fact, calculated to raise the standard of education, instead of depressing it. He could satisfy the gentleman that the opinion which he had hastily taken up as to the effect of manual labor schools was incorrect. The system had been tried, and its results were such as to entitle it to the admiration and approbation of all.

He knew there was a difference of opinion on the question, because few had witnessed the effects of the system. He was willing, however, to let the matter alone; to leave it to the people and the legislature of Pennsylvania to do as they pleased on the subject; and to suffer the

manual labor system to work its own way into public favor, according to its merit.

Mr. CRAIG said, the amendment went to enjoin it upon the legislature to establish one or more manual labor schools in the state ; but it did prohibit the legislature from establishing any other kind of school or college. But it enjoins it upon them specially to attempt the promotion of science in one particular way, by way of experiment. The gentleman from Crawford alleged, that a proper education was inconsistent with the manual labor plan, and that the encouragement of the system would tend to depress the standard of education. If labor was a disgrace to any man in the commonwealth, then this was true. If education was inconsistent with labor, then the gentleman was correct. Yet, still, even if the system be not the best for a complete education, if it is an economical mode of education, ought it not to be encouraged. Might not this be a very good way of supplying cheaply the means of a good education to a vast number of those whose resources would not justify a highly finished education, and whose pursuits would not justify nor require the expense or time which would be necessary in obtaining a complete education. But we have heard from the gentleman from Northampton, who lives near a manual labor school, and whose testimony is adequate on this subject, that the manual labor system has been highly successful—that it has elevated, instead of depressing, the standard of education, and that it has made as good scholars as any other system which has been in operation in this state.

Why, then, should we not encourage a system which promises so well, at least, so far as to make an experiment, with only two schools, as proposed in the amendment? It was not surprising that gentlemen, educated in a different way, should not relish this mode of acquiring knowledge. Should we not promote industry as well as education? Young men, and old men, were disposed to be idle and to indulge themselves in habits of indolence. But, if the manual labor system promoted habits of industry and improved the physical energies, it was well worthy of our adoption.

He knew of nothing better calculated to strengthen the powers of the mind, than the exercise of the body. So far as bodily exercise was calculated to promote the health of the student it must certainly be beneficial. For a sound mind it was necessary that there should be also a sound body. Regular labor, too, had a tendency to draw young men into habits of industry, almost involuntarily. He appealed to any gentlemen for the fact, whether any other description of school possessed this advantage to the extent of the manual labor schools. It would be found, too, that wherever the manual labor schools had been established, they had succeeded, to admiration,—making good scholars, promoting health and industry, and cheerfulness, and costing but very little in comparison with other schools.

If such were its results, why should not the system be adopted and encouraged by the commonwealth? These schools possessed another advantage. They were calculated to promote the mechanic arts. Every young man came out of the school an ingenious and industrious mechanic. Would not this be advantageous both to the individuals and to the commonwealth? Would it not give them a means of acquiring a living and

of adding to the wealth and strength of the community? It was not surprising that gentlemen educated in a different way, should entertain a prejudice against this mode of education; but those prejudices ought to yield to experience and observation. If the manual labor institutions had proved to be useful and successful institutions, it became the state to encourage and foster them, and to promote their establishment in every part of the commonwealth. It ought to be considered that, on the score of economy merely, if they had no other superiority, they were the best institutions for education that we ever had.

The young men, who are in indigent circumstances, can defray the expenses of their education by their own exertions, and yet progress as rapidly in their studies as if they devoted no time to exercise and labor. This would be more pleasing to young men of independent spirit than to be placed upon any charity, public or private. We saw, in many of our seminaries, that young men of good parts and easy circumstances, for want of active employment, gave themselves up to luxury, idleness and dissipation.

The manual labor system would be far better for their health, their moral, and their intellectual improvement. If such were the advantages of the manual labor system over any other,—if it promoted health, morals, industry, science, and the mechanic or agricultural arts, why should it not be adopted and encouraged by the commonwealth of Pennsylvania? Why should not the new constitution contain a provision, requiring a small experiment of two schools to be made, leaving it to the legislature to multiply them, if they thought proper. The legislature had lavished thousands upon other systems of instruction, and they had failed. A college, founded in the west had entirely failed. This was a system which would work itself out, and which would make the whole community educate itself. The system was capable of application, not only to the higher, but to all the seminaries of learning. It was equally well adapted to all, and would be useful in all. Its utility had now been acknowledged every where, both by friends and enemies. He hoped the question would be taken whether this body was willing to adopt so beneficial a system.

Mr. INGERSOLL concurred, he said, in the gentleman's argument. He had no hostility to the plan, but disliked the form of the amendment. It was the perfection of modern learning that it was of a useful and practical character, and he did not think it would suffer any deterioration from these schools. But he would suggest to the mover that his amendment would not carry out his design; and he proposed the following as a substitute, which was read:

SECT. 2. The legislature shall constantly encourage by adequate endowments, institutions open to all for prosecuting literary, scientific and above all, agricultural improvements, and for the establishment of libraries in the English, German, and other languages, at least one in each township.

He offered this from no hostility to the object, but from a wish to carry it out.

Mr. DICKEY said, the college referred to by the gentleman from Northampton, had received ten thousand dollars from the commonwealth. A

year or two after, it applied for a further allowance, and for forty acres of land, which were granted. He believed there was another similar college in Franklin county. He was certain that appropriations were made by the legislature for two, if not three of these institutions. The principal object of the gentleman who had moved this amendment was therefore accomplished. Manual labor schools had thus already received the countenance of the state; and, if the experiment succeeded, the legislature would carry the system farther.

The question was then taken on the amendment and it was lost.

The question recurring on the report of the committee.

Mr. DICKEY hoped the attention of the committee would be drawn to this section. It reads: "The arts and sciences shall be promoted in such institutions of learning, as may be alike open to all the children of the commonwealth." Now, he considered that this was opening up too broad a field to present to the people at the present time, and therefore he preferred the section in the old constitution.

Mr. WOODWARD concurred entirely with the gentleman from Beaver, and hoped this section would be voted down. "The arts and sciences shall be promoted in such institutions of learning as shall be alike open to all the children of the commonwealth." Now, he did not know how this would take with the people. If it was to be an additional tax or charge upon them, he felt satisfied that it would not be borne by the people, and if they were to be taxed, he had much rather they should be taxed openly, and not in this obscure and hidden manner. He therefore preferred the section in the old constitution to this section of the report.

Mr. BROWN merely rose to make an inquiry of the chairman of the committee who reported this section. He merely wished to inquire of that gentleman, whether the colleges were to be open to all without expense, or whether it was intended they should be as colleges now are open to all who are able to pay?

Mr. FORWARD would announce to the committee that he did not consider himself pledged to the support of this amendment. This section was not penned by him, and he could not pretend to give to the committee the intentions of all those gentlemen who had signed their names to this report. The section appeared to look more to equality than the old constitution, but he was not prepared to say that education in seminaries of learning should be at the public expense. He would merely say he was not pledged to support the section and should not vote for it.

Mr. STEVENS thought, from the remarks of the gentleman from Luzerne, and the gentleman from Beaver, that this section was too indeffinite, but still he thought some provision should be made to act as a restraint upon the legislature on this subject, that they should give their aid to some of the permanent institutions, and not squander it on new ones which may never come to any perfection, or build up some few institutions at the expense of the state which will forever rem in on a permanent footing or some such provision of this kind, but there seemed to be no plan devised by any one else and he was not now prepared to submit one, and he was unwilling that this section should be discussed in its present shape, when it seemed that it could only be rejected, and the whole matter thrown back where it originally stood. If then the motion would

meet with any favor he would move that this section be postponed for the present, and he should do so with the sincere desire that something might be done for the permanent benefit of the cause of education. In going on to the next section, which was in relation to corporations, we would here open a wide field for debate, and every gentleman would be able to lay his views before the convention before we adjourned to Philadelphia, and he presumed that no vote would be taken on it before that time. He therefore moved that the consideration of the section now before the committee be postponed for the present.

Mr. BROWN hoped we would not agree to postpone this section at this stage of our business. He was free to say that he believed some plan might be proposed which would be useful, but he had heard nothing yet which met his views. He hoped we would go on and gentlemen would give us their views and submit their plans, so that we would know what we were doing, because at present we have nothing before us to consider, and know not what to do.

He was opposed to the plan of having any certain sum appropriated to this college or that college now in existence; and, unless gentlemen could show him that more good would arise from public donations from the state to these colleges, than had arisen from it, he should not only go against the amendment, but he would also go against the section of the old constitution, which he thought had been an evil, and an evil which had squandered a great deal of the money of the commonwealth. He was in favor of having the legislature provide some higher schools than our common schools for the education of the youth of our commonwealth; but he thought we must all agree that the attempts which the legislature had made to encourage the arts and sciences by donations to colleges had resulted more in the education of the youths of other states than our own. He hoped the subject would not now be postponed until we hear the views of different members of the committee in relation to it.

Mr. CHANDLER, of Philadelphia, was happy to find, in the long list of names appended to this report, that his was not among them. He himself, had brought forward a proposition of the utmost importance to the cause of education, and he had sprung the question on it as early as he could, and he had got twenty-one only, in favor of it. Now his word for it, if this discussion went on for two or three days, he would not be able to get even a martin box on a school house in Pennsylvania. Why, sir, what do we here see? Here is the chairman of the committee on education, actually refusing to come forward and explain a single line in the report to which his name is first attached.

Now, if he had blood enough in his veins to expect to live long enough to enjoy popularity, he would turn in and take up, and sustain this subject of education as a matter of popularity, because he believed the day would shortly come when it would be one of the most popular topics in the state. He sincerely hoped, however, that some proposition might be made, by which the convention would pass over this question for the present, for he saw that the convention was in no mood now, to promote the cause of education and science.

At the time this report was made he was confined to a sick bed, and had no hand in the matter; therefore, he knew nothing of the views of the committee on this subject, nor had he any hand in the matter, or he

would not have deserted it. With reference to what had fallen from the gentleman from the county of Philadelphia, (Mr. Brown) in relation to the gentleman from Adams or any other friend of education, proposing a plan to be discussed at this time by this committee, he hoped it would not be done, for, so sure as it was discussed, it would be voted down, let it be in whatever form it might be. Now, he said this not in anger, or, because of disappointment, but because he believed the committee was not now in a college vein or a school vein; and we had better, therefore, go upon the corporations, where we will all be more at home. He presumed that the object of the committee, in reporting this section, was to make such provisions for the colleges, that the sons of the poor men of the commonwealth, might be able to obtain an education there without paying more than the sons of the rich men. He was not, however, going to defend that which was an offcast of the whole committee, but would merely express the hope that this question might be postponed until we were better prepared to act on the subject of education than we now are.

Mr. MARTIN said, when this section claimed the attention of the committee to which the subject of education had been referred, he was pleased to see that that committee were united on the subject.

Mr. READ submitted whether it was in order to detail here, the proceedings of a committee of this body.

Mr. MARTIN resumed. He was about to show why this subject should not be postponed. He believed the committee was as well prepared now to act on the subject, as they could be at any future time; and he must say, with the gentleman from the city of Philadelphia, (Mr. Chandler) that he was astonished to see that the friends of this measure, were deserting it, that they were not willing to support it or say a word in its favor, and that they were willing it should be postponed and thrown aside, perhaps never to be taken up again. What objection can there be to it, that it is to be thus thrown aside, and is there nothing to be gained by it? If the framers of the constitution of 1790, regarded a section to that effect proper, in order that the arts and sciences might not be lost sight of in Pennsylvania, and that they should not be suffered to go down, was there any harm in saying so at this time of day? Most certainly not. Well, the question now pending, was as to the postponement, and he presumed gentlemen would prevent him from going into the merits of the question, and he was not very anxious to do so at this time, but he would merely state a simple fact, and that is, that the first section of this article which you have adopted, makes this section absolutely necessary. If it was necessary in the constitution of 1790, when your first section did not provide that the schools in your commonwealth should be common schools, how much more important was it now, that that provision should be made for the promotion of the arts and sciences. The first section which you have just agreed to, provides that all your schools should be common schools. Why, sir, it bears upon its face, that a section of this kind will be necessary, unless gentlemen desire to see the arts and sciences go down entirely in Pennsylvania. The only difference between the section as reported by the committee, and the section in the constitution of 1790, was, that they were to be open alike to all the children of the commonwealth. Now if it was intended by those who reported this section, that

these institutions should be open to all the children of the commonwealth at the public expense, let them come forward and say so, and if it was not, let them say so. He wished gentlemen to come forward and state what object they had in view in reporting this section, and then we will be able to act understandingly, and adopt such provision as will be most beneficial to the cause of education. Now it has been objected that we should not go into details in relation to these matters in the constitution. Well, if it is not proper to go into detail, he hoped, at least, that we would adopt such fundamental principles in the constitution, as will compel the legislature to carry out in detail, what the gentleman from the city, (Mr. Chandler) has failed to carry out. He believed that this second section in the old constitution was a wise one, and he believed such a one was now absolutely more necessary than it was before. He hoped, therefore, the commitee would not pass over and neglect this subject, and leave the arts and sciences fallen to decay in the bosom of this mighty commonwealth.

Mr. PORTER, of Northampton, thought we might as well dispose of this subject now as at any other time. Let us have the vote upon it, and if gentlemen have determined that the arts and sciences shall not be promoted and encouraged in Pennsylvania, let them say so at once, and let it be proclaimed to the world that the promotion of the arts and sciences, is a thing too insignificant for the consideration of the people of this commonwealth.

Now, our fathers in 1790, voted that the arts and sciences should be promoted in one or more seminaries of learning. But his friend from the county, thought that all that had been done in relation to this matter, had been done to no purpose. Now he begged leave to differ with that gentleman, and he perhaps differed from him with some knowledge on the subject.

Mr. BROWN explained. He had not said that no good had been done, but that the good was not in proportion to the expenditure.

Mr. PORTER resumed. He was glad the gentleman had qualified his expressions, because they certainly were stronger when delivered, than with this qualification. He thought we must either adopt the section in the old constitution or something like it, or else the arts and sciences would not be encouraged in Pennsylvania by the countenance and support of the government. He had heard a great deal said here about colleges doing no good, and he supposed every one spoke according to his own knowledge, and he should speak according to his knowledge in relation to this matter. It had not been his fortune to receive a collegiate education, and he was very sorry for it; but because he had not received the benefit of a collegiate education, he did not hold that a college education did no good. He believed that the promotion of the arts and sciences in seminaries of learning, was a matter of great importance to this commonwealth; and he should like to have fellowships established here, where gentlemen could pursue the study of scientific subjects, and take their degrees the same as in many of the universities of Europe. He hoped to see the day when we would have fellowships established in our colleges, where a course of scientific studies could be pursued to the greatest extent.

The CHAIR reminded the gentleman that the question was on the motion to postpone, which did not open up the merits of the question.

Mr. PORTER was aware of that, and he was endeavoring, by showing the importance of the subject, to induce the committee to act upon it now and not postpone it.

Mr. STEVENS then withdrew the motion to postpone.

Mr. PORTER said, he had heard a great deal about the expenditures on the colleges, and the little good that had resulted from it. Now he believed this was a fact with regard to one of our colleges and one only. There was one college to which the state had made a large donation, which did not prosper. He alluded to Dickerson college, at Carlisle. That college, however, was now in a prosperous condition. It had changed hands. Its professors are able, active and industrious men, who conduct it in a most praiseworthy manner, and it is now filled with students. There was no other college beside this except the university of Pennsylvania and Jefferson college, at Canonsburg, which had received more than twenty thousand dollars from the legislature. Well, we all know in what condition the university of Pennsylvania is, and if gentlemen desired to see what might be done with industry and enterprise, with some little aid from the state, he would point them to Jefferson college at Canonsburg. That college, he believed, had its origin in a classical school, instituted by James Ross, of Pittsburg; and it had to struggle along for a long time without funds, and with all the embarrassments attending upon the establishment of a new institution of this kind; but the donation of twenty thousand dollars from the state, at an appropriate time, put it upon a good footing, and it is now in a most flourishing condition. Lafayette college at Easton, had received a donation from the state of $12,000, and it is in a flourishing condition. Madison college at Uniontown, had received but $5,000, and it was in a flourishing condition. Pennsylvania college at Gettysburg, had received $18,000, and it was in a flourishing condition. Washington college at Washington, had received $17,000, and it was in a flourishing condition. Western university at Pittsburg, had received $12,000, and it was in a flourishing condition. Marshall college at Mercersburg, had received $12,000, and it was in a flourishing condition. As to the Allegheny college at Meadville, it had received $10,000, and he did not know himself any thing about its condition, but he presumed it was prospering. Now these were not auroraborealisis which would blaze up for a moment, in a stream of light, and then withdraw, leaving us in darkness and gloom; but they were institutions which have about them, something which is genial to our feelings; there was something to be found there to elevate and improve the mind, and increase the moral culture of the youths of our state. These institutions do not hang heavy on the hands of the people, but recommend themselves to the hearts and the affections of every friend of education in the commonwealth.

We have been told, sir, by others, that we are dissipating the funds of the commonwealth—that we are frittering them away, by scattering colleges over different parts of the state, and that we should act more wisely by concentrating the funds and expending them on one large building. I do not concur in this opinion. The population of the state of Pennsylvania, is about one million and a half, and when you compare the

number of your colleges with the aggregate amount of your population, what is it? Meadville college is in a state of prosperity. If the legislature of Pennsylvania has been appropriating money in this way, and if some of these appropriations have failed for a time to answer the purposes for which they were intended, there is no reason to be discouraged on that account, as to their ultimate success. It is like casting your bread upon the waters, that may return to you after many days. I do not believe that one single dollar of this money has been misapplied; I believe, on the contrary, that it is seed sown in good ground, which will bring forth its fruits in due season. I am indeed willing to admit that, for a time, owing to the inadequacy of the appropriations which have been made, we have not reaped as much good from these institutions, as we should have reaped, if the appropriations had been larger. There can be no doubt, however, that the cause of education has been, and will continue to be promoted by them. It is a fact, susceptible of demonstration, that you have ten young men with liberal educations at the present day, where you had only one some twenty years ago. What stronger evidence can you have of the progressive strides which the cause of education is making in the state of Pennsylvania? Look at your population, and see whether it is behind that of any other state in the Union, in its endeavors to advance this cause?

It is of great importance that these institutions should be scattered over the state—and why? Because, by such means you reduce the expenses of education, and you place it within the reach of every man of moderate circumstances in life. This is an important consideration. Take the sum total of the travelling expenses, incurred in going from the centre of the state, to one or the other end of it, and what will be the amount? The colleges, it is known, have two vacations; and to travel twice a year will add the annual sum of thirty dollars to the expenses of each student. This is no trifling object, when we reflect, that it amounts to about as much as the charges for tuition in the institutions themselves. I am not to be told, Mr. Chairman, that this is a trifling sum of money, for I know that it is matter of serious thought with parents—men living in moderate circumstanes—that the expense of education in the higher branches of of knowledge, should be reduced as much as possible. We are all aware that the lower the price of tuition is, the greater will be the number of persons who will avail themselves of it. The university of Pennsylvania, is filled with professors of known and acknowledged talents; but to persons residing out of the city and county of Philadelphia, it is in a measure inaccessible. The heavy expense of boarding, prevents persons from availing themselves of the benefits of that institution, unless they happen to be in very good circumstances. What is the condition of these institutions at the present time? We have now in good and successful operation—including the university of Pennsylvania—not less than eight colleges, with an average number of one hundred students each, so that there are eight hundred young men in the state of Pennsylvania, who are at this time pursuing a course of liberal education. With such facts before us, we need not doubt the still more extended benefits which will result from these institutions, if they shall continue to be conducted on liberal and enlightened principles.

But, Mr. Chairman, I have another objection, in addition to those

which I have stated, against concentrating all the resources of the commonwealth, to be expended on one great institution. From the best information of which I am in possession, I do not believe that it is advantageous to have a very large number of students in one establishment. If gentlemen will turn to a work called "Russell's Tour through Germany;" or to "Dwight's Travels," or to those of any other individual who has travelled through Germany, and studied the institutions and the customs of the German people, they will find that where there are a large number of students, they not only rule the institution itself, but actually rule the police of the place. I speak now of institutions which are situated in towns of ordinary size. I cannot refer to all the institutians of this kind which are established in Germany. I will, however, refer to some of them. Of these the universities of Berlin and Gottingen, are the most celebrated.

In the year 1829, there were in the university of Gottingen, no less than between twelve and thirteen hundred students; eighty-nine professors; three hundred thousand volumes; and five thousand manuscripts.

In the university of Berlin, in the year 1826, there were sixteen hundred and fifty students.

The university of Heidelberg has six hundred students, and forty-five thousand volumes.

In the university of Gena, in the year 1829, there were six hundred students, and one hundred thousand volumes.

In the university of Tubinger, in the year 1830, there were eight hundred and eighty-seven students.

And Russell and every other traveller through Germany, who is acquainted with the facts, will tell you, that where a very large number of students are congregated together in one institution—it is not found to be attended with beneficial results, either in the cause of morals or education.

It is true that the Germans have turned out of their universities, some of the most accomplished and reputed scholars, that the world has ever known: because, no man can graduate without going through a certain course of examination, in the various courses of science which he is required to study. This examination is an indispensable pre-requisite. I am aware that it is also true, that many of the students in these institutions, never do graduate at all; and it always will be the case in such large establishments, as these, where the students have so many temptations, to spend their time in any other way than in the pursuit of knowledge. And, for these reasons, with a due regard to the moral character, and to the cultivation of the mental faculties of the rising generation, I never wish to see more than two hundred and fifty students congregated together in one place. To go beyond this limit would, I believe, be unwise and injurious. And it is for these reasons also, that I would like to see our colleges so situated as to be accessible to all; and these with moderate appropriations by the state, for the salaries of professors, library and library apparatus, we may be able to get along and flourish, and all your sons may be educated.

There is one point, Mr. Chairman, in which the state of Pennsylvania is lamentably deficient. I speak of a library. There is not in this state—

I had almost said in the United States, any thing like a good library. The library, to be sure, is good, so far as it goes; but I fear it is deficient in many of those standard works, which ought to be a component part of that which we dignify with the title of a good library. Sir, it will be a glorious day for the state of Pennsylvania, when she can boast of such a library, as that which is to be found in the university of Gottinger; where, as I have stated, they can exhibit three hundred thousand volumes, and five thousand manuscripts—the property of the institution. Whenever that day arrives—as I fervently hope that it may arrive—a man of science will possess the means of making himself acquainted with every subject to which he may please to refer. This object ought to be accomplished, by laying an injunction on the legislature, to promote the gradual increase of the libraries, at the same time that they support seminaries, for the higher branches of learning.

I do not feel, Mr. Chairman, that this body is in a condition, at the present time, to encounter many amendments to the project before us; and I hope that we shall, without much farther delay, come to a decision, either on the amendment reported by the committee, and which seems to me to be a good one; or on retaining the original provision of the constitution of 1790.

I will also take this opportunity of giving notice to the committee, that I shall hereafter offer a distinct proposition, in relation to libraries, library apparatus, and such like matters. It is time, I think, that we should begin to pay closer attention to them than we have hitherto done.

Mr. FORWARD said, that after the remarks which had been made by the gentleman from the city of Philadelphia, (Mr. Chandler) he (Mr. Forward) owed it to himself to state, that he had taken it for granted, that the assent of that gentleman was given to the report of the committee, although he had not happened to put his signature to it, as was usual in such cases. I thought, said Mr. F., that it was assented to *pro forma*. I gave my assent to the amendment of the second section of the seventh article, and I agreed to report it to the convention. I believe that it was agreed to by the members of the committee, because it had a more liberal aspect than the provision in the consittution of 1790. Upon farther deliberation, however, I am inclined to think, that as much would be done by leaving the section in its present form, as would be accomplished by the proposed amendment. The words of the old constitution, are simply these, "The arts and sciences shall be promoted in one or more seminaries of learning."

In one or more seminaries of learning! This is imperative language. One or more seminaries of learning are to be established in the commonwealth; but, it will be perceived, that there is no limit to the number, nor to the extent of the patronage which is to be given by the state, in funds or otherwise. This injunction being general, and there being no restriction, it would, I think, be better, to leave the constitution as it is at present, unless some member of this body can show, that some other provision, enumerating the amount of patronage, in funds or otherwise, which shall be bestowed, would be preferable. I know that the amendment means a more liberal appearance, but when you come to analyze it, you will find that it amounts to about the same thing as the old provision. believe that we ought either to retain the provision of 1790, as it is, or

that we should insert some other provision in the new constitution, which promises equal benefits. For my own part, I cannot see the necessity for making any alteration at all; because I think that the provision of 1790 goes the whole length, so far as any of us are desirous to go.

Mr. CLARKE, of Indiana county, said it had been remarked by some gentleman, that we had got into a narrow passage, and that we must be cautious how we directed our steps. He thought, however, that if an examination was made, it would be seen that the bridge was sound.

There is something singular, said Mr. C., in the position in which we are placed at this time. I am surprised to find that the names of seven gentlemen, members of the committee appointed on the seventh article of the constitution, were signed to the report—not one of whom rose to say a word in support of it—and yet some one of whom must have drawn it up with his own hand, unless indeed he had procured an amanuensis to draw it up for him. I suppose this was not the case. The report, I take it for granted, was drawn up in the usual way, and yet gentlemen tell us that they are not prepared to support it. I am somewhat perplexed at this strange and unaccountable proceeding.

So far as I have studied this matter, Mr. Chairman, I believe that the provision in the constitution of 1790, is as good as any which we can substitute for it; and I believe, therefore, that I shall vote for its retention. In reference to the patronage which should be bestowed on colleges, I confess myself to have been once an enthusiast. But I am less so now. I believe that the state ought to make liberal appropriations to advance the cause of education—so far as it can be done consistently with other matters of public expenditure—but I think that these appropriations ought to be directed chiefly to our common schools. There will always be a great number of our citizens, who will be anxious to educate their children, and there will be others who would desire to educate themselves, when they grow older. I know many clergymen, respectable and able men, who have educated themselves exclusively, and without the benefit of schools or instructors. So I think that, in the first place, the commonwealth should expend its money chiefly on the common schools. In making these remarks, I would not be understood to say any thing in opposition to the building of colleges, and making provision for the purchase of libraries, library apparatus, &c., but I do not think that the commonwealth ought to provide every thing that is requisite to sustain the professors.

I concur in opinion with the gentleman from the county of Northampton, (Mr. Porter) that it is better to have a number of these institutions, located in different parts of the commonwealth, rather than that we should concentrate all our resources upon one grand, splendid institution, like that of Virginia.

> "'Tis yours to judge how wide the difference stand,
> Between a splendid and a happy land."

I think that it will be more beneficial to the commonwealth, that we should turn out from our schools and seminaries, good citizens and useful men, rather than splendid scholars. Some of the most useful men we have in the state, have received their education at Canonsburg, and yet that institution never yet received much of the state funds. Under all

the circumstances, I think we had better leave the provision of 1790 in its present shape. I doubt much, whether any thing we can do, will improve it. It does not place any obstacle in the way of the action of the legislature. It says that "the arts and sciences shall be promoted in *one or more* seminaries of learning;" but it leaves the number indefinite, and, therefore, the legislature can act from time to time, as public opinion, or the wants of the citizens, and the condition of the public finances, will admit. We may thus encourage as many of these institutions as we please.

One word, Mr. Chairman, in reference to the amendment proposed by the gentleman from the county of Washington, (Mr. Craig.)

I voted against that proposition, because I thought it was a matter which ought to be left to the legislature. I saw no necessity, therefore, to insert any provision in the constitution. I pursued the same course in regard to a system of inspection of the public schools—of which I am decidedly in favor—because I thought that that also, would be best left in the hands of the legislature. They possess full power to act in the premises.

As to the manual labor system, I am very favorably impressed towards it. I think it would be a great advantage, if we were all to turn our boys out to work, as well as to read. The mind, we all know, is not the only part of the human system which requires to be educated—the body should be educated also—and the morals and the manners. All these must be included; otherwise the education we may receive is of an imperfect character, and probably, of doubtful good. I take it for granted, however, that these matters are attended to at all our institutions. They profess, also, to take care of the morals, although there is one thing which I always considered to be wrong. They set out by appealing to the ambition of the scholars, and not to their emulation; and it appears to me that this is calculated to have a very injurious effect upon their minds in after life. But the physical part of man, I repeat, should be educated as well as the moral, and it is only in these manual labor institutions, that you can have any prospect of attaining that end. If you have a number of these establishments scattered over the state, in such a manner, that they can be got at without difficulty, where the boys can work two or three times a day; is not this better than to send a boy two or three hundred miles from home, where he will learn to lie in bed until nine or ten o'clock in the morning, and to sit up until twelve o'clock at night.

I had not intended, Mr. Chairman, to have said so much on this subject; but I see there is no disposition on the part of the committee, to work this afternoon, and that, after this, we shall probably adjourn.

Mr. Keim, of Berks county, said, that knowing the predicament in which the chairman of the committee of the whole, (Mr. Reigart) was now placed—he (Mr. R's.) name being one among those signed to the report of the committee on the seventh article of the constitution, and he being precluded at the present time from expressing his own sentiments, it seemed to him (Mr. K.) to be proper that he should say a few words in behalf, both of himself, and of the chairman of the committee of the whole.

For my own part, said Mr. K. I can not understand this matter. I

will state in a very few words, what my individual object was, in assenting to the particular section proposed. Of the course of the committee in relation to it, I shall forbear to say any thing.

The provision in the constitution of 1790, appears to be a dead letter; or, in other words, it has been so much neglected, that it has entirely failed to answer the purposes for which it was intended. This is one of the reasons why I assented to the change. My opinion was also influenced by the report of the secretary of the commonwealth, read in convention the 22d of June, 1837—and which makes the following statement in regard to the public cost of education. I read from page six:

"In academies.—Of the public cost of academies the department possesses little information. It is believed that no portion of their expenses are defrayed by annual taxation. Academies, in forty-five counties, have, from time to time, received aid from the state, sometimes in money, generally in the proportion of two thousand dollars to each county, amounting to one hundred and six thousand nine hundred dollars; and sometimes in land, whose value it is difficult to estimate, but supposed to be worth at least, one hundred and thirty-five thousand dollars, making a gross amount of aid to academies, of two hundred and forty-one thousand dollars.

It is believed that no grants have ever been made by the state, with less general good effect than those to academies. It seems to have been intended to endow one strong institution of this kind in each county, as a kind of radiating point in the county system of education; but the project has proved nearly a total failure. In obedience to a resolution of the legislature, efforts were made, last summer, to ascertain the condition of the county academies; and the result was, that only seventeen were reported to be in operation, the total number of whose students was one thousand one hundred and eleven. Many of those that yet survive, are considerably in debt.

In colleges.—The public cost of colleges has also been in the form of occasional donations, either in money or land. The total aid in money amounts to two hundred and twenty-four thousand six hundred and sixty-six dollars, and in land to about nineteen hundred dollars, making a gross amount of grants to colleges, heretofore, of two hundred and sixty thousand dollars. The whole number of institutions of this kind, incorporated in Pennsylvania, is believed to be fourteen, of which eleven are in operation.

All the information on the subject of colleges and academies, possessed by this department, will be found in the annual report of the superintendent, submitted to the last legislature, particularly in tables E, F, and G, appended to that document."

It was proposed with a view of counteracting the difficulties said to exist, growing out of the provision in the old constitution, in that respect; also, to prevent the legislature from being partial in making the distributions.

"The arts and sciences shall be promoted in such institutions of learning as may be alike open to all the children of the commonwealth."

This section was supposed to be sufficiently expressive, and to contain all that was desired. He had given the views he entertained in regard to this section. He was aware that there were gentlemen here opposed to a system of general education, and who regarded this provision relative to teaching the arts and sciences to the children of the commonwealth as an obnoxious feature in the constitution. No less than four days had been already consumed in debating this subject, and a great variety of amendments had been offered—many of them almost exactly alike—and all of which were voted down. For his own part, he confessed that he was ready to live or die by the report of the committee. He thought that experience must have taught us that we should have to take either the report of the committee, or the old constitution. To use the language of old Dentatus, he would say that he should have to "die with wounds on my face and not on my back."

Mr. SERGEANT said he did not think that this clause would positively kill any body. It was not so bad as that. At the same time it contained no living principle, so that no one could live by it. It was altogether of too general a nature, and much more short of the purpose than the clause contained in the old constitution. The constitution of 1790 pointed out a general duty to be performed by the legislature, and in that duty there was comprehended a power given to perform it, which power ought certainly, in his opinion, to be retained in the constitution. The chief meaning—the chief virtue of this clause in the seventh article consisted, not in what it directs to be done, but, in what it gave the power to do. If the constitution had contained no such clause, a question might have been raised whether the legislature had a right to legislate in reference to schools and seminaries of learning. But, as this clause existed, there could be no doubt that the legislature did possess this power. And, they would continue to have it, if the article now proposed, should be inserted; but there were added these words: "The arts and sciences shall be promoted in institutions of learning, which shall be alike open to all the children of this commonwealth." Now, he did not know what was meant by the term "all the children of this commonwealth." They introduced an ambiguity. He thought it was very material to designate more particularly, what were the institutions which were to be opened to the children of the commonwealth. And, upon what terms the children were to be educated? Were they to be educated free? If the meaning of the clause was, that none should be excluded who paid what might be demanded of them, then there was no necessity for its being inserted in the constitution—because, of course, those who paid what was required, would be admitted. If it meant that all were to be free, in all seminaries, it went too far, and was impracticable. He thought that the clause, as it stood, in the present constitution, was better than this, unless the latter part should be rendered clear and precise. He would not have said a word, however, but for a remark of the gentleman from Northampton, (Mr. Porter) and of the gentleman from Indiana, (Mr. Clarke.) The gentleman from Indiana had expressed a doubt of the value of contributions by the public to support seminaries of learning. "Educate the children of the poor," is the idea meant to be conveyed, by which he (Mr. S.) supposed was meant, the children of parents, so poor that they could not give them any education at all. Now, he would ask that gentleman

why he would not assist every man though not in such extreme poverty, who had done all that his means allowed him to do, to give his children a good education, but was not able, without some help, to give them as good an education as he desired? He would state a fact by way of illustrating his meaning—a respectable man in the county of Philadelphia called upon him a short time ago, and knowing that he (Mr. Sergeant) was connected with the university of Pennsylvania, said that he had a very promising son—that he wished to give him the best education he could, and that he would be able to pay one half the cost of it if sent to that institution. Now, here was a case of a man who had a son who, he said, was at a common school, but he wished him at a better. He was not destitute. He would pay a part of the expense, but not the whole. In consequence of what the state had done for the institution, he (Mr. S.) had it in his power to inform the individual that if he would pay what he said he conveniently could do, the rest would be remitted. He would ask why every man under like circumstances, should not be thus assisted, as well as a man who could contribute nothing to educate his children? The argument was as good in the one case as in the other. There were many industrious men in the commonwealth, who would like to give their children an education in a good seminary, but who required some aid to enable them to send them to the highest schools. This would only be affected by public support to such schools. If we wanted higher seminaries, it was quite clear and demonstrable that we must aid them from the public funds.

We should only be doing our duty by assisting them, for education is a great public concern of the very first importance. It is the duty of every parent to do all in his power to procure a good education for his children. It is, also, the interest of society that education should be as widely diffused as it possibly can be. If it were a public good—if it were a thing the community stood in need of, of which no one doubted, then public assistance must be rendered. One more step. He would say that no good seminary of education, suited to the public wants without public aid, could maintain itself. The gentleman from Indiana, (Mr. Clarke) had said that he would not pay the public money to maintain professors. Now, he (Mr. S.) would repeat, that without such contribution, in some shape or other, there was not a good seminary which did, or could, maintain itself. Take, for instance, the college of Princetown, in New Jersey; the amount of money which went to the support of that institution, was principally derived from contributions, chiefly by individuals, and it far exceeded that which had been altogether expended upon the institutions of this commonwealth. Many of the sons of this commonwealth were under the roof of that institution, and Pennsylvania had been contributing to its support. It was only recently that that college—having had a great accession to its number of students—wanted the sum of $100,000, to erect new buildings; it was obtained by donations of individuals. We, in Pennsylvania could not follow the example of that institution. Every one came to us for aid, from every quarter of the country, and we gave it according. He was glad we did so, because good came of it. There were wealthy individuals who could contribute largely towards the support of our institutions, but we had no right to ask them. It was the duty of society, generally, to aid seminaries of learning, if able to do so, and

this rich commonwealth clearly had the ability. If it were true, as he believed it to be, that no high institution could maintain itself, there must be, as already said, something contributed towards it by the public. There might be a few persons in every community who would pay any price for education. But they were few. Many more could pay a part, and were willing to do so. But this would not suffice. The institution could not subsist.

The university of Pennsylvania could not have been founded, nor gone on without public aid. It stood in need of aid at present, and ought to have it. Few were able to pay large sums for education. If tuition were confined to the children of those who could pay a share of what was necessary to maintain an institution, a large and meritorious portion of the community must be left unprovided for—they would not be able to educate their children at all, in the higher branches, whatever their inclination or capacity.

The point to which he wished to call the attention of the committee, and concerning which, he thought the gentleman from Indiana had fallen into a great error, was this: ought not the commonwealth to extend, as far as she can, the means of educating all the children within her limits —not confining education to the children of the wealthy only, but diffusing its blessings as much as possible—placing them within the reach of as many as possible? Harvard college had received, he knew not how much money in various ways. Quite lately, a donation had been made to it of $200,000.

Exactly in proportion to the funds thus provided, will be the diffusiveness of the benefits. They lower the cost, and so they bring the means of a good education within the reach of a greater number of our citizens. They enable the institutions to educate some at less than the highest price, and some even without any price at all. Is it not clearly a public duty, then, to give such aid.

With regard to the public libraries, in Pennsylvania, he believed they did not stand in need of any aid. To the honor of Pennsylvania, and in answer to what had fallen from the gentleman from Northampton, (Mr. Porter) in reference to libraries, he would state, as a mere matter of fact, that the state of Pennsylvania possesses the best library in the United States. It was commonly called the Philadelphia library—one of the founders of which was Dr. Franklin. Not one dollar had been paid by the state towards it. It was the work of private contributions.

He would say a word or two as to the manual labor system of education, for he did not intend going into a discussion of the question, at this time, as to whether it was a good system, or a bad system. One feature of it which recommended itself to his attention was, that it happened to harmonize with the views which he had already taken. It proposes to cheapen good education, and thus to extend it in this way, a young man while at college is to be enabled, in part, to support himself by his labor. The money earned would go towards paying for his instruction. So far it promised well.

He (Mr. Sergeant) while at college, had a class mate, somewhat advanced in life, too, who supported himself with money he had earned by his daily labor.

A very distinguished man, Robert G. Harper, he had understood, supported himself, while in college, by teaching.

Mr. Ewing, the late senator from Ohio, stated not long ago, that all he had learned, was paid for with money earned by the labor of his own hands.

A plan which encourages and aids such exertions, is so far a good plan. It supplies what might otherwise be wanting. But, it struck him that if he had his choice of the two systems, all circumstances being equal, he should prefer the old one to the new; and for this reason, that he did not believe in the necessity or efficacy of the manual labor plan, to preserve or invigorate health. Youth are taught, by nature, to exercise their bodily powers. They are not usually kept so close, but that they have their hour of recreation; their spirits are buoyant and free; their exercises and amusements are of that kind which invigorate the body. They are much more inclined to neglect the culture of their minds. What, he would ask, was the manual labor system? It was that a youth should work one portion of his time at the spade, and another at his books. Now, he (Mr. S.) would prefer working at one time, and playing at another, rather than to have work alternate only with work. There is no refreshment or relaxation in the change. The man who could overcome this difficulty, would shew a sort of heroism; the system might be better than none; but he (Mr. S.) would not prescribe it as a general system. He had no objection, however, to letting the plan have a fair trial.

But his opinion was, that play was better relaxation for youth than work. We live here but a sedentary life—sitting so many hours every day in this house. If after laboring a long time together and inhaling the bad air, we were to be marched out to work with a spade, he apprehended that none of us would deem it much of a recreation. Let us work when we work, and play when we leave off work. That constitutes true relaxation.

He would not say that the objections which he had hinted in reference to the system, were conclusive. He had merely expressed the inclination of his individual opinion. He should not be willing to introduce any constitutional provision in regard to any particular system of education, but was for leaving the matter as it at present stood. The difficulty was in being more precise in the language we use; and he did not believe that the whole united wisdom of the convention could make the provision more plain than as it was expressed in the present constitution.

Mr. Butler, of Philadelphia county, moved that the committee rise; ayes 49—noes 43.

The committee then rose, reported progress; and,

The Convention adjourned.

THURSDAY, November 16, 1837.

Mr. Chandler, of Chester, presented two petitions from citizens of Chester county, praying that the right of trial by jury may be extended to every human being.

Mr. Chandler, of Chester, presented two petitions of like import, from citizens of Allegheny county.

Mr. Lyons presented a petition from citizens of Delaware county, praying that no constitutional provision may be made for the farther observance of the Sabbath, than that already provided by law.

And the said petitions were laid on the table.

Mr. Sterigere presented a petition from citizens of Bucks county, praying that a constitutional provision may be made, prohibiting negroes from the right of suffrage.

And the said petition was laid on the table; and,

Mr. Sterigere having moved the printing of the last named memorial.

Mr. Cox, of Somerset made some opposition to the motion on the ground that a great expense would be entailed on the commonwealth if every petition presented here should, in consequence of this precedent, be ordered to be printed.

Mr. M'Cahen, of Philadelphia county, reminded the gentleman from Somerset, that a petition from certain negroes, resident in Pittsburg, was ordered to be printed.

Mr. Sterigere also referred to this circumstance, and contended that the negroes ought to be precluded from the exercise of the right of voting. He stated that the election had this year been influenced by negro votes, in the county of Bucks, and that they had come within twelve votes, last year, of electing their member of congress. He thought that there was a false feeling abroad on this subject. They could not be placed on an equality in political and social rights, with white citizens. No white citizen would permit a negro to educate his children, or to marry into his family. He read extracts from a newspaper, an argument on the subject of the rights of the negroes, as they had been exercised and tolerated since the proprietary government, and which recited the various laws which had been passed by the provincial legislature, to restrain and punish free negroes. He stated that the convention had just ordered the printing of one petition on this subject, and as this was a different argument from the other, it was wrong to refuse to print it also.

Mr. Banks, of Mifflin, objected to the precedent which would be set by the printing of this petition. It was to be expected that replies to it would come in from different parts of the state, and, if this was printed, it would also be considered but fair to print those which may hereafter be introduced on the subject. He hoped the gentleman from Montgomery would withdraw his motion.

Mr. Earle, of Philadelphia county, hoped that the gentleman from Somerset would withdraw his opposition to the motion, which was likely

to produce a discussion which would cause a great expenditure of money to the commonwealth. He moved to amend the motion by adding to it, that the document read by the gentleman from Montgomery should also be printed.

Mr. Cox, of Somerset, replied that he thought the document read was the most important of the two memorials. He professed himself to be an enemy to slavery in the northern states, but at the same time, declared that he was equally opposed to the modern abolitionists. He did not approve of the printing of this memorial, because we may expect voluminous petitions, if this was published, and the cost to the commonwealth would be immense, while the mischiefs which would be produced by the circulation of these memorials would be lamentable in their results. He would not go into the argument as to the relative rights of bond and free, but he did not think that the argument in the paper read by the gentleman, had any bearing on the question, important as it was.

Mr. Brown, of Philadelphia, hoped that if this memorial was not printed, those who affected to have the interests of the negroes so much at heart, would be willing to take the responsibility of the refusal. But, as the petition of the coloured people of Pittsburg had been printed—and he had voted against that motion on account of the improprieties of language which the petition contained—it was but just that this also should be printed. He considered it inevitable that this question would come up for discussion before this convention, and he wished that the people might have all possible light on the subject. He desired that his constituents might know that the citizens of Bucks county considered that their rights had been violated in the case complained of. He did not wish that any garbled opinions should be sent abroad, but that the full light should be shed on the subject.

Mr. Cummin, of Juniata, said he believed that the memorial could not be received. He concurred in the sentiments expressed by the delegate from Montgomery, (Mr. Sterigere) and could add nothing to what had been stated by that gentleman, unless the convention went into a discussion of the orignal question of slavery.

The President said it was not in order to discuss any other question than that of printing the memorial.

Mr. Cummin was again about to continue his remarks—when,

Mr. Hiester, of Lancaster, rose to a question of order. According to the rules adopted for the government of the convention, the gentleman from Juniata ought to resume his seat until permitted to go on. [Here Mr. H. read the 9th rule on the subject.]

Mr. Cummin thanked the gentleman from Lancaster for admonishing and reminding him of the rule. He (Mr. C.) did not dispute a word or letter of the rule, and it was with regret that he had felt himself called on to rise in order to take some notice of remarks made by a gentleman which he regarded as highly improper. He would say nothing more at present.

Mr. Sterigere, of Montgomory, said he had no objection to the printing of the memorial, although he did not think it was necessary that the gentleman from the county of Philadelphia (Mr. Brown) should have made the motion. He, however, was desirous that the document should

be printed at our own expense, and that the gentleman should have a copy of it. More time would be spent, and consequently money expended, than would pay the cost incurred by the printing of the memorial. He had asked that it might be printed, because it came from a large number of highly respectable and intelligent constituents of his, and contained arguments of a different character from any that had heretofore been presented to this convention. If any petition had already been received, the contents of which were of the same character, he would not have asked the printing on these grounds. The gentleman from Somerset (Mr. Cox) said, that he (Mr. S.) wanted it printed, because others had been printed. It was easy to put words into another's mouth which were not used by him. He had not made use of such language, and did not thank the delegate for attributing it to him. The debate that had taken place on a former occasion, had called the public attention to this subject; and much excitement was felt throughout the commonwealth against putting the negroes on a footing with the whites. He thought it was right that the people should be in possession of the contents of this memorial. It had, therefore, better be printed, and then it would be circulated far and wide through the medium of the newspapers. He was disinclined to take up any more of the time of the convention, and hoped that without farther discussion, the motion would be agreed to.

Mr. FORWARD, of Allegheny, had hoped that the question of negro rights and privileges would have been passed over by the convention. But, as it seemed it must be brought up, he for one was ready to act upon it, and wished all the light that could be shed on it. Understanding, as he did, that the memorial contained a new argument, he desired that it might be printed, in order that an opportunity should be presented of examining it. He would suggest to the gentleman who presented the document that it be printed without the names. The argument was sufficient, and we should have it.

Mr. CUMMIN, of Juniata, said that if he understood the question, it was, whether the memorial from people of colour should take preference of one from white citizens of the commonwealth. He really was astonished that any gentleman in this convention should rise in his place, and express himself so favorably towards the negroes. If we were in St. Domingo, or Hayti, where the coloured population are ten to one, it would be quite a different thing. But here, in Pennsylvania, for an attempt to be made to put down a memorial from white citizens, by blacks, was something new and audacious in its character. He believed that the same gentleman who opposed the other memorial relative to religious restrictions, voted for this—when the man, whose name stood first on the list of signatures, keeps two wives in Pittsburg. Why, we had better, at once, let the black population hold a convention, and we adjourn, so that they might pass laws for themselves. He thought that the memorial should be printed. He regarded it as wholly out of the question to think, for one moment, of inserting any provision in the constitution, the effect of which was to place the blacks upon an equality with the whites, From the first organization of society in Pennsylvania, the people of colour never had equal rights and privileges with the whites. With regard to the blacks having, in some parts of this state, sometimes voted at elections, as had been stated, he (Mr. C.) maintained that notwithstanding that,

they were not citizens, as he understood the gentleman from Somerset, (Mr. Cox) to contend they were. They possessed no right whatever to vote.

When he addressed the convention on a former occasion on this subject of negro rights, &c. he went into an historical and biblicial account of this people, and shewed that they had been held, in all time, in a state of bondage. He hoped that the memorial would be printed.

Mr. HIESTER was opposed to printing this memorial, because he thought it quite unnecessary, as one petition from the whites as well as one from the blacks had already been printed; the one being a set-off to the other. It was also unnecessary on the ground of expense. He had no desire to make any distinction between one paper and another. Gentlemen had gone into the merits of the question whether blacks should be allowed to vote or not. He would not go into the consideration of the matter at this time. He recollected that when in congress, in 1833–4, a great many memorials were presented for and against the restoration of the public deposits, which were ordered to be printed; till, at length, there were no less than six or eight volumes of petitions, with the names of the petitioners appended to them. There was not a member but what was convinced of the error that was committed in ordering the first petition to be printed, which became a precedent. Every gentleman was heartily sick of the rule that had been adopted, before the end of the session. And the library of congress was now full of these useless volumes. He was fearful that we were falling into the same error. He entertained no doubt but that the printers could thank us for having the memorial printed with the names. But, as to their being of any advantage to members' constituents, was out of the question. They were of no use whatever. He would move that if the document should be ordered to be printed, the names should be left out.

Mr. Cox asked if any one had a right to call for the reading of any paper, the subject of which might be under discussion?

The PRESIDENT replied that he had.

Mr. M'CAHEN, of Philadelphia county, observed that his friend from Lancaster, (Mr. Hiester) had said he would vote against the printing of the memorial, because it incurred an unnecessary expense. His (Mr. M'C's.) opinion was, that the cost would amount to about twenty dollars.

The opposition shown here by gentlemen to the motion to print, had already cost about one hundred and fifty dollars. He believed that if the memorials had been ordered to be printed, without any debate, the result would have been an immense saving. He thought the printing of the memorials a matter of more importance than seemed to be generally supposed.

If the coloured population are entitled to exercise the right of voting, which was a sacred right, which no community of men should surrender, and gentlemen who believe they possess it should bring forward all their arguments to make out their case; they ought to vote that every argument which supports the cause they advocate, should be printed. The right of suffrage he held to be among the most valuable of the inalienable privileges, which the freemen of this commonwealth enjoy. The lan-

guage of his colleague (Mr. Brown) was very pretty and favorable to the blacks. And he (Mr. M'C.) would hold him to go a step farther, after it should have been decided in convention, that the male black population are entitled to vote, and that was to support a proposition which he (Mr. M'C.) would move, viz:—That the female blacks shall have the right of voting. Why should they not have the right as well as the male population? Had they not property, and did they not contribute, to the best of their means, to the support of the government? Then why should they be oppressed? Why should they not be put on the same footing as the male population? He trusted that justice would be done. As humanity was the great rallying word, it remained to be seen whether gentlemen would carry out their professions. He hoped that his memorial would be printed, and every other of the same character that might be presented, as the subject was one of the very highest importance. He hoped, too, that the time would come, when this subject would be discussed calmly, coolly and dispassionately.

He and his colleague (Mr. Brown) had voted for printing the memorial presented by the gentleman from Allegheny, (Mr. Forward) and it was nothing more than a right to which the petitioners were justly entitled. He presumed that, inasmuch as the privilege of petition was secured to every individual in the commonwealth, that no objection would be made to the printing of the memorial. He would ask for the yeas and nays.

Mr. Shellito, of Crawford, said, he looked upon this as one of the most important questions that ever had, or ever would come before a body of this character. Indeed, we might sit here to amend the constitution for seven years, and not be called on to decide a question involving such grave consequences as this did. He believed that our very existence as a nation, was, in some measure, identified with the decision of it. That was the way in which he viewed the matter. Once open the flood gates to this innovation, and where, he should be glad to know, was it going to stop? Why, it was amalgamation to the fullest extent. Almost every right was allowed, but that of voting. And, no one wanted to meddle with their rights. Supposing coloured men to be elected in this state as members to congress, who would sit by, or hold communion with them? Would it not be offering a gross insult to the southern states of the confederacy? Would not such a state of things result in the dissolution of this union. Pennsylvania had better withdraw from the Union at once, than venture upon an experimeet of this kind. The doctrine, as now contended for, if carried out, would place coloured men in your jury boxes, where you, sir, [looking at the president] are sitting, and in many other distinguished stations. He was of opinion that we should have every light that could be obtained in regard to this important question. He hoped that we should meet the question coolly and calmly, and decide it in a manner that would give satisfaction to the people of the commonwealth generally.

Mr. Fuller, of Fayette, said, the argument was, that if we voted in favor of printing and referring these memorials, we were prohibiting the right of petitioning. Now, that was not the fact, The right of petitioning to this body had never been refused. He thought it totally unnecessary to print so many copies of a petition as would give it a cir-

culation throughout the Union. because it would appear in the public prints, and thus be spread before the people. With regard to the memorial from Pittsburg, in the county of Allegheny, he would state that he voted for printing it, because the convention had ordered the memorial from the society of friends in Philadelphia, to be printed. And, if he had not done so, it would seem as if he desired to preclude it. He did not see why we should be called upon to print both sides, merely for the purpose of having them disseminated throughout the state. The expense would be almost equal to the cost incurred in the printing of the journals. He would not say that they would do it, but we all knew that the printers had an interest in inducing and encouraging the presentation of memorials, in order to get the printing of them. If, as was alleged, the argument was strong, it was as strong in the memorial in manuscript as it was in print, and every member would have a right to refer to it. He should vote against the printing of the memorial.

Mr. MARTIN, of Philadelphia county, said, that if he was not mistaken the motion made, was to print the memorial, together with the documents. He would vote for the printing in consequence of the character of the remarks that had fallen from gentlemen opposed to the motion. Those who had opposed the printing, had done so, because they were desirous that the subject should not be discussed. Now, he took a very different view of this matter. He was decidedly of opinion that this question as well as others before the convention, must be met and he arrived at that conclusion, because he thought that the public sentiment had developed itself to that extent. It was singular ground for gentlemen to take, (and which only shewed that they were afraid to meet the question) that was, the little expense that might be incurred in printing the memorial. The subject must claim the attention of this convention, sooner or later, and that to a great extent. The table was covered with as many petitions in favor of giving the right of suffrage, as there were against it. Now, with these facts before us, was it proper that we should say that the subject should not be touched? that we ought not to incur the expense of printing? that we ought not to take a full and fair view of the whole subject? He differed entirely from gentlemen who held this opinion. He voted for printing the memorial from the coloured people of Pittsburg, who said that they were superior to any other class in that part of the country. He did not believe them; but still he gave his vote in favor of printing the memorial. There was now before the convention, a memorial and documents of an entirely different character—denying that there was any truth in the assertion, and asking that the coloured people be prohibited from voting. It was impolitic, to say the least of it, to hold up the argument here and before the public, that the convention does not mean to meet the question. It was better to say that we intend to meet the whole subject; and in doing so, care must be observed not to suppress the views of those who sent us here. He would not now go into the merits or demerits of the question—nor would he go into a discussion as to the colour of the skin of those individuals who had sent their memorials to this body. The time might come when he would deem it his duty to go into a full discussion of the question, which could not be dodged, and state his opinions freely and fairly. He hoped that the memorial and documents would be ordered to be printed.

The CHAIR said that no documents accompanied the memorial, therefore, a motion to print them, would not be in order.

Mr. HIESTER moved that the signatures to the memorial be omitted. He would say a word or two in reply to the delegate from the county of Philadelphia, (Mr. Martin.) He (Mr. H.) did not say that he was opposed to printing the memorial on the ground that he did not wish the subject to be brought forward. He said that he would meet the subject at the proper time. The delegate from Fayette, (Mr. Fuller) had confined himself strictly to the question, while other gentlemen had wandered from it. What was the object of petitioning this convention? Was it to enlighten it, or the public at large? He apprehended that the object was to give information to the body to whom the memorial was sent.

Mr. CUMMIN: I think the gentleman is out of order.

The CHAIR: He is in order.

Mr. HIESTER would say, then, that if the object of the memorial was to influence the body to whom it was sent, the object was already attained. It had been respectfully received, and every member had had the benefit of the argument. Whenever the subject should come up for discusssion, any member could call for the reading of the manuscript memorial, that thought proper. He saw no reason why the convention should go into a discussion of the subject at this time, nor that the memorial should be printed. If ordered to be printed, it would only appear on the journal. None out of doors would be benefitted by it. If the object was to enlighten the people, let it be printed in pamphlet form. Looking at the matter in every point of view, he conceived it to be entirely useless to print the documents. It would be setting a bad example; for if courtesy was granted to one member, it must be to another. He had no objection to hear the merits of the question whenever it should be brought forward at the proper time, when he would be found ready to vote on it.

Mr. MACLAY said, he did not often trouble the committee, and he should now be silent if he had not heard some very extraordinary doctrines on this subject, from the gentleman from the county of Philadelphia and the gentleman from Montgomery. The laws of Pennsylvania, made before it was a free state, had been referred to, to shew what were the rights of the blacks within this commonwealth. Those gentlemen contend that the constitution of 1776, is inoperative in regard to the blacks and has no effect upon the laws previously made, in reference to them. But I am of opinion, on the contrary, that all laws inconsistent with that constitution, were abrogated by it. That inference I draw from the incompatibility of laws with the constitution of 1776. Gentlemen contend that this constitution in referring to "freemen," means *white* freemen, though it does not say so.

He could shew from cotemporaneous authority, what was the meaning of the framers of the constiution of '76, and what rights they intended should be enjoyed by the blacks in this state. The document which he should read, was a part of an act passed by the assembly in 1780, only four years after the adoption of the constitution, and it afforded conclusive evidence that the blacks were considered as freemen at that day. The preamble to the act of 1780, providing for the gradual abolition of slavery, which, so far as it bore upon the question, shewed what was the meaning

of the word "freemen," as then understood. The preamble is as follows:

"When we contemplate our abhorrence of that condition, to which the arms and tyranny of Great Britain were exerted to reduce us, when we look back on the variety of dangers to which we have been exposed, and how miraculously our wants in many instances have been supplied, and our deliverances wrought, when even hope and human fortitude have become unequal to the conflict, we are unavoidably led to a serious and grateful sense of the manifold blessings, which we have undeservedly received from the hand of that Being, from whom every good and perfect gift cometh. Impressed with these ideas, we conceive that it is our duty and we rejoice that it is in our power, to extend a portion of that freedom to others, which hath been extended to us, and release from that state of thraldom, to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to inquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know, that all are the work of an Almighty hand. We find, in the distribution of the human species, that the most fertile as well as the most barren parts of the earth are inhabited by men of complexions different from ours, and from each other; from whence we may reasonably, as well as religiously, infer, that He, who placed them in their various situations, hath extended equally his care and protection to all, and that it becometh not us to counteract his mercies. We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step to universal civilization, by removing, as much as possible, the sorrows of those, who have lived in undeserved bondage, and from which, by the assumed authority of the kings of Great Britain, no effectual, legal relief could be obtained. Weaned, by a long course of experience, from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of all conditions and nations; and we conceive ourselves at this particular period extraordinarily called upon, by the blessings which we have received, to manifest the sincerity of our profession, and to give a substantial proof of our gratitude.

"II. And whereas, the condition of those persons, who have heretofore been denominated negro and mulatto slaves, has been attended with circumstances, which not only deprived them of the common blessings that they were by nature entitled to, but has cast them into the deepest afflictions, by an unnatural separation and sale of husband and wife from each other and from their children, an injury, the greatness of which can only be conceived by supposing that we were in the same unhappy case. In justice, therefore, to persons so unhappily circumstanced, and who, having no prospect before them, whereon they may rest their sorrows and their hopes, have no reasonable inducement to render their service to society, which they otherwise might, and also in grateful commemoration of our own happy deliverance from that state of unconditional submission, to which we were doomed by the tyranny of Britain."

He was not disposed to go farther into the question at this time, and would only add that he was in favor of printing the memorial. He was for discussion on all questions, and could see no reason in favor of cover-

ing up any thing from the light; for he held with Mr. Jefferson, that error was harmless when reason was left free to combat it. He had voted for printing the memorial of the people of colour belonging to Pittsburg, and he should also give his vote for printing this county memorial.

Mr. CUMMIN said he agreed entirely with the gentleman last up, as to the freedom of discussion. He was in favor of meeting this question as well as any other question, fearlessly and fairly. He would, therefore, freely state his objections to the argument of the gentleman from Mifflin. That gentleman had not, he thought, made a distinction between a "freeman" and a "citizen;" but there was a very broad and obvious distinction. A man may be free under the constitution, and be entitled to many privileges of freedom, and be a freemen in a constitutional sense, and yet not be a "citizen," within the meaning of the law and the constitution, nor be entitled to exercise the rights which appertain to citizenship. Citizens pay taxes; citizens are enrolled in the militia, and are, in time of war, marched into the service of their country; and citizens fill the offices of government and the halls of legislation; but the blacks in this commonwealth have never yet exercised any of these rights and privileges of citizenship. It has never been supposed nor contended by any one, that they are eligible, as citizens, to civil, military, or judicial stations under the government of this state. They are still freemen in regard to some personal rights, and rights of property. The act of 1780, for the gradual abolition of slavery in this commonwealth, gave to the black population, freedom in different degrees, and in a certain way, and to a limited extent, but to none an unqualified freedom. Some were to be free at the age of twenty-eight, and others beyond a certain age were to remain slaves, and all who were born after a certain time were to be free, that is, not be slaves. They were free from obligations to any master or owner, and free to acquire and hold property under the protection of the laws which applied to all. But this act did not elevate them to the dignity of citizenship. There was not a clause nor a word in it which enforced upon them the rights or, imposed on them them the duties, of citizenship. If this act made the blacks citizens, why, he asked the learned gentlemen around him, has it remained in operation so long? Why, for more than half a century, with all the philanthropic writers that we have had for the promotion of the interests of the black population, and with all the sympathy which has been enlisted in their behalf,—why, he asked, have their rights been suffered to lie dormant? Why have they never been exercised and claimed? Why were the blacks never called to the jury box? nor into the militia service? They were, sir, kept distinct and separate from the citizens, in regard to the privileges and duties of citizenship. It has made them free, but it did not make them citizens. It recognizes them as a distinct people, and they are and must be a distinct people. It was never intended, either by the framers of the constitution of 1790, or by the subsequent acts of legislation, that the blacks should enjoy the right of suffrage any more than the other rights of citizenship, and for the same reasons which rendered proper their exclusion from the militia, from the jury box, and from judicial and legislative offices, they were also excluded from all participation in the right of suffrage, either in regard to the state, or federal government. If, as is now contended by the gentleman from Mifflin, (Mr. Maclay) they are entitled,

under the constitution of 1796, to to the right of suffrage, and to all the other rights of citizenship,—and the gentleman did not undertake to say that they were more entitled to one of these rights than to the other—how had it happened, he would again ask, that they have been kept out of their rights for sixty years? They would not, for so long a time, have been disfranchised, if they had been supposed to be entitled to all the rights of citizenship. It would not have been left to this late day, and to the efforts of modern abolitionists to claim for them the enjoyment of such valuable privileges. The position sustained by gentlemen was that, because the black population were freed from slavery, they were entitled to vote, as citizens, upon the payment of a tax, or upon complying with the terms imposed upon white citizens by the constitution. To go farther, at this time, into a refutation of this doctrine, would be useless; but when the subject came, as it must come, fully and finally before the convention, he would, with the indulgence of the committee, prove from the history of the commonwealth, that the persons of colour within it are entitled to none of the rights of citizenship, and of course, that they are not entitled to the right of suffrage. He considered this as a mere party question, got up by the agitators of the present day, and intended, if possible, to bring the north into collision with their brethren of the south—so much he must be allowed to say, whether in order or out of order. That was the fact and every body knew it. The pretention of the blacks to the right of suffrage, was one of the schemes of abolitionism, and it was to be urged here and in our courts of justice, by the abolition agitators.

Mr. CURLL here called the gentleman from Juniata to order. The gentleman, he said, had better reserve his amunition till the enemy had come in sight. The question as to the rights of the blacks in this commonwealth was not now before us. When it was brought up, it would be quite time enough to discuss it. Certainly this was not the proper time for that discussion.

Mr. CUMMIN was about (he continued) to draw his remarks to a close. He had not intended to go into the merits of the question, but had risen to reply to the argument of those who had taken this occasion to support the claims of the black population to the right of suffrage. He had disputed the position of gentlemen, that the blacks were citizens because they were no longer slaves, and he would be prepared, at a proper time, to bring incontrovertible proof that they were not citizens within the meaning of the laws and the constitution of this state. He had nothing farther to add, except the remark, that he should vote in favor of printing the memorial, and all other memorials on the subject. Like the gentleman from Mifflin, he was in favor of free discussion, and like him he held with Mr. Jefferson that, error was harmless, "where reason was left free to combat it." But he, furthermore, considered the memorial as containing correct principles, and principles which it was important for the citizens of this commonwealth to cherish and maintain.

Mr. STERIGERE said, it was true that he had quoted the laws of Pennsylvania, when she was a slave holding state, with a view to illustrate the meaning and objects of the constitution of 1776. He found nothing in that constitution, which gave the blacks, either expressly or by implication, the right of suffrage, or any of the rights of citizenship; and he

was glad to find that the same view was taken of the subject by the gentleman from Juniata (Mr. Cummin) and others.

He could not agree at all with the gentleman from Mifflin, (Mr. Maclay) that the act of 1780, for the gradual abolition of slavery, had any bearing on this question. It freed the blacks from the yoke of slavery, but it conferred upon them none of the rights of citizenship. It removed some of their burdens, but it gave them no political privileges. In regard to all their civil and political disabilities, it left them precisely as they were when they were slaves; moreover, the act of 1780 was an act of ordinary legislation, and the same power which made it, could also repeal it. The law gave them a jury, trial and if it were repealed, they would be liable to be hung up on conviction of capital offences, without the privilege of a trial by jury, as they were before the passage of that act. He did not wish to provoke any discussion at present, on the question connected with this memorial; he only asked the printing of it for the information of the convention and of the public, and as a matter of respect due to the memorialists.

The gentleman from Lancaster was of the opinion that, as we had printed one memorial from the blacks on this subject, and another as a set off from the whites, that, the account being eqally balanced, it was unnecessary to print any thing more on the subject. According to this argument, the memorialists must wait till another black petition is presented and printed, before their memorial can be printed. This course, he thought, would not be very respectful to the white population.

Mr. Forward said he would refer to some of the provisions of the act of 1780, to show what was its meaning in reference to the colored population.

The 10th section of the act, provided that "no man or woman, of any nation or colour, except the negroes and mulattoes, who shall be registered as aforesaid, shall, at any time hereafter, be deemed, adjudged or holden, within the territories of this commonwealth, as slaves, or servants for life, but as free men and free women."

Now, the act does not say that they shall be free *white* men and women, but of whatever colour they are, that they shall be free men and women.

It was argued that the act did not give the blacks any political privileges; but neither does it give those of any other colour, political privileges. Some gentlemen contended that, if this act was repealed, the blacks would thereby be remitted to their original condition. This could not be so, for the act proposed merely to restore them to their natural rights, of which they had been unjustly deprived. If the act was repealed, it did not follow that they would be remitted to the condition of slavery, but that the condition of slavery is inconsistent with our constitution, and with the right which it recognises.

So neither would it follow that by the repeal of that law, they would lose the constitutional right of trial by jury, or any other privilege which they have enjoyed.

Suppose we repealed the bill of rights, would it follow that all the natural rights there declared to belong to us, would be repealed? It was altogether a false notion that, by the repeal of a law, the natural rights would

be taken from any man. We might as well say that, by the repeal of a law under which we acquired property, we should be deprived of that property.

The act of 1780 did nothing more than to restore to the black population, the natural rights of which they had been unjustly deprived. He hoped the subject would be fully discussed at a proper time.

Mr. FULLER said, if the convention decided that the memorial should be printed, they might as well direct, at the same time, that every other similar memorial, hereafter presented, should also be printed. Much time had been consumed in the discussion already, and, if the question of printing was to be raised every time a memorial was presented, more time would be wasted.

We had already directed two memorials on this subject to be printed—one on each side of the question; and, in regard to both, the procedure he believed was wrong Neither should ever have been printed. But, as we had now printed one on each side, it was time to stop. He was surprised that any gentleman should contend that it was necessary to print for the purpose of acquainting the convention with the views and arguments of the memorialists, for any gentleman was at liberty to go to the files, and read the paper, and it would not occupy one more than five minutes.

The only object of printing, must be to circulate the paper out of the house, and, if this was a proper object, we might as well pass a resolution for handing all such papers over to the printer. But, we could have all the benefit of the arguments of the memorial, without printing it.

Mr. HOPKINSON said, the question before the committee, was only whether we should print *that* memorial.

As to the question about the rights of the blacks under the law of 1780, and the constitution of '76, and '90, he had nothing to say on that subject.

In regard to the motion to print the memorial, the simple inquiry is, what is the object of it? What is the object of printing any memorial? Is it to instruct the people at large? No. That is better done in some other way. Is it to pay a compliment to the memorialists? No. It would be no disrespect to them not to print it. The only useful object of printing, would be to inform this convention of its contents. But any member may read it, and possess himself of its views in five minutes. What was the use then of printing it? When a memorial contains facts and statements which we wish to study at home, it is useful to print it. But it is unnecessary to take home with us a document containing only a few general principles, which any one may remember.

Mr. WOODWARD, fearing, he said, that the whole day might be wasted in this discussion, rose for the purpose of moving the previous question, which was seconded by the requisite number.

The main question was then ordered to be put.

Mr. M'CAHEN asked for the yeas and nays, and they were ordered, and were, yeas 84, nays 29, as follows:

YEAS—Messrs. Agnew, Baldwin, Barclay, Barnitz, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clarke, of Beaver, Clark, of Dauphin,

Clarke, of Indiana, Cleavinger, Cochran, Cope, Craig, Crain, Crawford, Cummin, Cunningham, Curll, Denny, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Gamble, Gilmore, Grenell, Hastings, Hays, Helffenstein, Houpt, Ingersoll, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Lyons, Maclay, Magee, Mann, M'Cahen, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Nevin, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Ritter, Rogers, Saeger, Scheetz, Scott, Sellers, Serrill, Shellito, Smith, Smyth, Snively, Sterigere, Stickel, Taggart, Thomas, Woodward—84.

NAYS—Messrs. Ayres, Banks, Barndollar, Clapp, Cline, Cox, Crum, Darrah, Fry, Fuller, Gearhart, Harris, Hayhurst, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Long, Merkel, Miller, Montgomery, Russell, Seltzer, Weidman, White, Young, Sergeant, *President*—29.

So the memorial was ordered to be printed.

Mr. STERIGERE presented two petitions from Bucks county, and one from Montgomery county, of the same tenor of that before presented by him, which were, on his motion, laid on the table.

Mr. KONIGMACHER offered the following resolution, which was read, and laid on the table:

Resolved, That the printing of petitions, or memorials, presented to this convention, will hereafter be dispensed with, unless ordered by two-thirds of the members present.

Mr. AGNEW offered the following resolution, which was laid on the table, one day under the rule:

Resolved, That from and after the twenty-seventh instant, the thirty-seventh rule of this convention shall be so altered, that the same shall read as follows, viz: "None but the members of the convention and its officers, *the mayor, recorder, and members of the councils of the city of Philadelphia*, and such stenographers, reporters, or other persons as shall have permission given them by the president, shall be permitted to come within the bar of the convention, during the session."

Mr. SCOTT, of Philadelphia, offered the following resolution, which was laid on the table, and ordered to be printed:

Resolved, That the seventh article of the constitution ought to be amended by the introduction of the following provision: "The existing universities and colleges of this commonwealth, shall be endowed from time to time, as the funds of the commonwealth may permit, until the higher branches of a liberal education shall be made generally accessible."

Mr. COPE, from the committee on accounts, made the following report:

That the following sums, annexed to the names of the president and members of this convention, are due to them respectively, for their daily pay and mileage, during the present session thereof, beginning the seventeenth day of October, 1837, and ending on the twenty-seventh day of November, the same year, both days inclusive; and the mileage of each member computed from his home to Harrisburg, and thence to Philadelphia.

Resolved, That the president draw his warrant on the state treasurer, in favor of the president and the several members of the convention, for the sums set opposite to their respective names.

[The list of delegates, with the respective sums allowed, is appended to the resolution.]

The resolution was considered and agreed to.

Mr. STERIGERE remarked that he thought the resolution yesterday

adopted, in relation to the order in which the members shall take their seats in Philadelphia, would be productive of some inconvenience, and ought to be rescinded.

The resolution was read as follows:

Resolved, That when this convention shall meet in Philadelphia, on the 28th instant, each member shall have the privilege of retaining the same, or corresponding, situation he now occupies in this hall.

Mr. CLARKE, of Indiana, moved that the vote, adopting that resolution, be re-considered.

After a brief discussion, in which Messrs. STERIGERE, DUNLOP, BROWN, of Philadelphia, MEREDITH, CURLL, and CLARKE, of Indiana, took part, the motion was disagreed to.

Mr. MAGEE moved that the convention now proceed to the second reading and consideration of the following resolution, submitted by himself on the 16th of May last:

Resolved, That a committee of —— members be appointed to inquire into the expediency of so amending the constitution of Pennsylvania, as to prevent the future emigration into the state, of free persons of colour, and fugitive slaves from other territories.

Which motion was disagreed to. Yeas 47, nays 49.

Mr. EARLE then moved that the convention proceed to the second reading and consideration of the following resolution, submitted by himself on a former day:

Resolved, That the committee on accounts be directed to inquire and report, on or before the 16th instant, whether any measures can be properly taken for diminishing the expenses of the convention, and accelerating the completion of its business.

On this motion,

Mr. EARLE called for the yeas and nays, which were ordered, and were—yeas 82, nays 27, as follows:

YEAS—Messrs. Banks, Barclay, Barndollar, Barnitz, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Carey, Chambers, Chandler, of Chester, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cox, Craig, Crain, Crawford, Cummin, Cunningham, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Earle, Fleming, Forward, Fry, Fuller, Gamble, Gilmore, Grenell, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Ingersoll, Jenks, Keim, Kennedy, Kerr, Krebs, Long, Magee, Mann, M'Call, M'Dowell, M'Sherry, Merkel, Miller, Montgomery, Overfield, Pollock, Purviance, Reigart, Ritter, Rogers, Russell, Saegar, Scheetz, Scott, Sellers, Seltzer, Serrill, Shellito, Smith, Smyth, Snively, Sterigere, Stickel, Taggart, Thomas, Weidman, White, Sergeant, *President*—82.

NAYS—Messrs. Agnew, Ayres, Baldwin, Butler, Chauncey, Cline, Cochran, Cope, Crum, Farrelly, Foulkrod, Harris, Hastings, Hayhurst, Hays, Helffenstein, Hopkinson, Hyde, Maclay, Martin, M'Cahen, Meredith, Merrill, Pennypacker, Porter, of Lancaster, Read, Young—27.

So the motion was agreed to.

Mr. EARLE then modified the resolution by striking out the "16th," and inserting the "20th instant."

He would state to the convention the reasons which had influenced him in submitting this resolution. We are now about to remove to the city of Philadelphia, and it has been thought by many of the convention, that we have more officers of this body, than is necessary. Whether

this were so or not, he did not pretend to judge, but he thought it a proper time to make some inquiry on the subject. As there are some of them who reside in Harrisburg, and will, no doubt, be employed by the legislature, the question will arise, when we arrive at Philadelphia, whether we will proceed to a new election of new officers, and now was the proper time to inquire into the propriety of employing these new officers.

Again, he thought the expense of printing might be somewhat curtailed. He had observed that these resolutions, of some two or three lines each, had been printed upon three separate half sheets of paper, which might all have been contained on one page, and these resolutions, too, had been printed without an order of the convention.—No vote had been taken on the question, and he presumed they were merely printed upon the suggestion made by the gentleman from Alleghegheny, (Mr. Forward.) He did not know what authority there might be for having such resolutions printed, but certainly they were printed without the order of the convention. He believed there was an order that amendments to the constitution were to be printed, but he knew of no order to print resolutions, without a motion to that effect. He had no doubt that this was an unintentional error, but the committee of accounts could inquire into it, and correct such errors in future.

But there was another matter he desired to notice. It had been repeatedly stated here, that every time the yeas and nays were called, it cost the state forty dollars. Now, he did not know how this was, but admitting it to be so, he conceived this money was much better spent, than much which we spent in other purposes. But he ventured to say that a plan might be devised, by which the yeas and nays might be called in one-third the time which it now takes to call them. We have three secretaries, and suppose one should call over the names, while one of the others marked the yeas, and the third one marked the nays, on a separate list. By this process, the yeas and nays might be called, in one-third or one-quarter of the time it now takes, and thirty dollars would be saved to the commonwealth by it, every time the yeas and nays were called. If we have not secretaries enough to do this, we might employ additional assistance, and pay them double or treble the amount of money they now receive, and save fifty dollars a day by it.

He called the attention of the committee of accounts to this matter, and, as they were more familiar with the subject than any other persons in the committee, he had proposed to refer the matter to them, hoping they would give it that attention which it deserved.

Mr. Hayhurst moved to amend the resolution by striking out the words "committee of accounts," and inserting the words "a select committee of seven persons." His reasons for making this motion, were these. We are now within a few days of the close of our session, previous to removing to Philadelphia, and the committee of accounts are busily engaged in settling up the accounts of the members of the convention, postage accounts, printers and binders' accounts, and various other accounts connected with the convention, which engrossed their whole time and attention. This laborious duty was imposed now on the committee of accounts, and he thought it a rather ungenerous act to endeavor, at this late day, to force upon them a new duty of this kind.

Again, by this resolution, the committee of accounts would be required, not only to digest a plan for the reduction of the expenses of the convention, but also for accelerating the completion of its business. Now, it must be recollected that the legitimate and only duty of the committee of accounts, was to deal in filthy lucre, to examine and adjust the accounts of those who perform a service to the body, and it was not to be expected of them that they could raise their ideas so high as to digest plans for making all men think alike and act alike. This was a duty which he knew of no one better qualified to perform, than the gentleman from the county of Philadelphia (Mr. Earle) himself, and with this view he had moved that the subject should be referred to a select committee, of which the gentleman would doubtless be chairman, so that he might have the opportunity of displaying his talents on this important matter.

The amendment of Mr. HAYHURST was then agreed to.

Mr. FORWARD rose to explain in relation to the three small resolutions, referred to by the gentleman from the county of Philadelphia, (Mr. Earle.)

It would be recollected that these amendments were submitted, in committee, late in the evening, and he had moved that the committee rise, and explained, at the time, that he did so with the view of having these amendments printed and laid on the table by the next morning. This was the object of the rising of the committee, as he had expressly stated, and he did not think it necessary in convention, to move their printing, as he thought they would be printed as a matter of course. After the convention had adjourned, he saw the secretary in relation to it, and he was told that there had been no order for printing them. He, however, requested that they might be printed, as the committee had rose for that purpose, and stated, at the time, that if the convention would not pay for the printing, he would do it out of his own pocket. This was the manner in which the resolutions were ordered to be printed.

The question was then taken on agreeing to the resolution, when it was adopted.

Mr. MARTIN moved that the convention proceed to the second reading and consideration of the following resolution, submitted by himself, on the 20th of last month:

Resolved, That the freemen of the city of Philadelphia, and the freemen of the county of Philadelphia, shall each elect one sheriff and one coroner.

Which motion was disagreed to.

Mr. SHELLITO asked, and obtained, leave of absence for the afternoon of this day.

Mr. MEREDITH then asked leave to make a motion to dispense with the recess.

Mr. MANN called for the yeas and nays.

Mr. MEREDITH said if we were going to spend forty dollars in taking the yeas and nays, he would withdraw the motion.

Mr. MARTIN moved that the convention do now adjourn.

Lost.

SEVENTH ARTICLE.

The convention then resolved itself into committee of the whole, Mr. REIGART in the chair, and proceeded to the consideration of the report of the committee on the second section, as follows:

"SECTION 2. The arts and sciences shall be promoted in such institutions of learning as may be alike open to all the children of the commonwealth."

Mr. FRY then moved to strike out all after the word "learning," in the second line, and insert "as the legislature may from time to time deem necessary."

Mr. FRY, of Lehigh county, said that there were a number of amendments now before the committee, none of which seemed to be exactly the thing that was wanted. He believed that all that the convention could do, would be to leave the subject to the legislature, to act upon it, from time to time, in such manner as they might think proper. At the same time, he was of opinion that the language of the provision of 1790, "that the arts and sciences shall be promoted in one or more seminaries of learning" was not sufficiently expressive. There was no necessity for saying how many colleges should be established, or to enter into details of any description. All that could be required was, that authority should be given to the legislature to act.

And the question on the amendment was then taken, and decided in the negative; yeas 31—nays not counted.

So the amendment was rejected.

The question then recurred, "will the committee of the whole agree to the second section of the report of the committee?"

On which question the yeas and nays were required by Mr. HIESTER and nineteen others, and are as follows, viz:

YEAS—Messrs. Banks, Chandler, of Philadelphia, Cline, Grenell, Hastings, Ingersoll, Keim, Martin, M'Cahen, Pollock, Reigart, Russell, Sellers—13.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barclay, Barndollar, Barnitz, Bigelow, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Carey, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cope, Cox, Craig, Crawford, Crum, Cummin, Cunningham, Curll, Darrah, Denny, Dickerson, Dillinger, Donagan, Dunnell, Doran, Dunlop, Earle, Farrelly, Fleming, Forward, Foulkrod, Fry, Fuller, Gamble, Gilmore, Harris, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Houpt, Hyde, Jenks, Kennedy, Kerr, Konigmacher, Krebs, Long, Lyons, Maclay, Magee, Mann, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Miller, Montgomery, Overfield, Pennypacker, Porter, of Lancaster, Purviance, Read, Ritter, Saeger, Scheetz, Scott, Seltzer, Serrill, Sheilito, Smyth, Snively, Sterigere, Stickel, Taggart, Thomas, Weidman, White, Woodward, Sergeant, *President*—98.

So the second section of the report of the committee was not agreed to.

The question then recurring on the second section of the constitution, in the words following, viz:

"The arts and sciences shall be promoted in one or more seminaries of learning."

A motion was made by Mr. BROWN, of Philadelphia, to amend the section by striking therefrom all after the word "in," in the first line, and

inserting in lieu thereof the following: "such institutions of learning as may be established by the legislature for the purpose of giving a higher education to those who shall qualify themselves for such in the common schools, and shall be open to no other."

Mr. BROWN said, that he did not intend to press his amendment on the attention of the committee at this time; he had drawn it up hastily on the spur of the moment. He would state, however, that he had drawn it up in conformity with the views which he entertained on the subject of education, and which were that if it was to be the duty of the legislature to encourage the arts and sciences, they should do it in connexion with the common school system, and that persons should first become qualified there for the higher branches of education before they were allowed to enter these institutions. This was the light in which he viewed the matter.

On a former occasion, said Mr. B., in the course of some remarks, I took occasion to say that this section in the constitution of 1790, had been made the foundation of abuse; and I felt desirous to make such amendments to it as would effectually prevent the recurrence of similar abuses for the time to come. Some considerable sums of money have been appropriated by the legislature under this section, to very little purpose. I do not intend to say that no good has resulted from these appropriations; but I say that but little good has been derived from them compared with what we might expect to have seen under another system. I shall not, however, enter into particulars now, especially as the intention has been announced by one or two to offer amendments. I merely throw out these hints for the consideration of the committee; and for the purpose of making known to them the course which I intend to pursue in future.

I have a record of immense sums of money which have been paid to some of these institutions, the doors of which have been closed for the whole period of a year, and which, even when their doors were open, have not answered the purposes for which they were intended. The Franklin Institute of Pennsylvania, which had earned for itself so great a name not only in this state—but throughout the whole Union—and which had done so much towards encouraging the arts and sciences—had never received any aid from the state, while other institutions towards whom its aid had been liberally extended, had done little or nothing in return.

Mr. MARTIN, of Philadelphia county, said that he should regret to see a vote taken on this amendment, without proper reflection. It appeared to him that the amendment was worthy of consideration—that there was a good deal in it. The committee had just decided against the amendment reported by the committee on the 7th article, and which left these institutions alike open to all classes. The amendment of the gentleman from the county of Philadelphia, (Mr. Brown) took a different view of the subject; and if fairly considered, he (Mr. M.) was not sure that it might not be proper to adopt it. He certainly thought that it was well entitled to a respectful consideration. He was not prepared, however, to vote upon it at this time, and as the hour was late, he would move that the committee rise.

And, the question being taken, the motion that the committee now rise, was rejected.

And, the question was then taken on the amendment, and was decided in the negative without a division.

So the amendment was rejected.

Mr. JENKS, of Bucks county, rose and said that there really seemed to be something in the amendment of the gentleman from the county of Philadelphia, (Mr. Brown) which, at first view, seemed to commend it to the attention of the committee.

The CHAIR said, he would remind the gentleman from Bucks county, that the amendment of the gentleman from the county of Philadelphia had just been rejected, and that it was not now, therefore, under the notice of the committee.

Mr. JENKS said, he was aware that such was the fact, and his observations would go to the point of the committee's rising. Although the question had been decided on the amendment—and he did not feel himself at liberty to make any observations upon it—yet it occurred to him that it would be desirable to incorporate into the constitution a provision advising the legislature to devise some means by which the great commonwealth of Pennsylvania should have a supply of competent teachers. He thought that this course would be necessary in furtherance of the system which had been adopted by this body. He was of opinion, however, that this was a point which should not be lightly passed upon. It required reflection, and, with that view, he would move that the committee now rise.

Which motion having been agreed to, the committee rose, reported progress, and obtained leave to sit again.

A motion was then made by Mr. MARTIN,

That the convention do now adjourn.

Which was disagreed to.

On leave given,

A motion was made by Mr. KERR,

That the convention take a recess until three o'clock this afternoon.

Which was agreed to.

The Convention then took a recess until three o'clock, P. M.

THURSDAY AFTERNOON, NOVEMBER 16, 1837.

SEVENTH ARTICLE.

Agreeably to leave given,

The convention again resolved itself into a committee of the whole, MR. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The second section thereof being still before the committee,

MR. JENKS rose and said, it would be recollected that the committee had risen at his suggestion this morning, for the purpose of giving an opportunity to members to consider more maturely some principles which might be introduced into this section. He perceived that the gentleman from the county of Philadelphia, who offered the amendment which had been reported, was not now in his seat; and inasmuch as he, (Mr. J.) had not yet had sufficient time to make up his mind on the propriety of offering an amendment which had suggested itself to his mind, he should not trouble the committee with it at this time. When the amendments should come up on second reading in convention, an opportunity would again be offered to him, of which he might avail himself to make some proposition. He would not now, therefore, detain the committee with any farther remarks on the subject.

And, no farther amendment having been offered to the said second section; the committee of the whole proceeded to the consideration of so much of the report of the committee, as declares it inexpedient to amend the third section—which said section is in the following words, viz:

"Sect. 3. The rights, privileges, immunities and estates of religious societies and corporate bodies, shall remain as if the constitution of this state had not been altered or amended."

A motion was made by MR. READ, of Susquehanna, to amend the same, by striking out the section, and inserting, in lieu thereof, the following, viz:

"Sect. 3. The stockholders of all banks hereafter chartered, re-chartered, revived, continued, or relieved from forfeiture, shall be made liable for the debts of the corporate body."

MR. FORWARD said, that he presumed the gentleman from the county of Susquehanna, (Mr. Read) would have no objection if the third section of the constitution of 1790 should stand, merely affirming the rights and privileges of certain religious societies. Mr. F. meant to say that, even if the proposition of the gentleman from Susquehanna should be adopted, this clause of the section of the old constitution might still, he supposed, to remain as it was. He could not see what object was to be attained by interfering with it; and he would be glad if the gentleman from Susquehanna would state his views.

Mr. READ said, he would state in answer to the suggestion of the gentleman from the county of Allegheny, (Mr. Forward) that he had prepared, and intended to submit to the consideration of the committee *seriatim*, some eight or nine new sections to the seventh article of the old constitution; and that, in doing so, he should, he supposed, have provided a substitute for that clause of the third section, which the gentleman thought ought to remain as it was. If he (Mr. R.) should be so fortunate as to succeed in getting into this article several of the amendments which he was about to propose, the object of the gentleman could be effected, even if I should not bring in, what may amount to a substitute, by adding the clause after the committee should have disposed of the various sections which he proposed to offer.

It is very probable, continued Mr. R., that, upon this subject of banking—a subject which is now intimately connected with all the affairs of this country—a subject which enters into the minds and reflection of every intelligent man throughout the union—a subject which is now in great disorder and confusion, and in reference to which we are all at fault, scarcely knowing how to act, or where to turn, that we may arrive at correct and safe conclusions. It is, I say, very probable that the opinions which I entertain, and which I shall not hesitate boldly to avow—may go much farther, than it can be supposed a majority of the members of this convention are prepared to go. Looking at the matter in this light, I have prepared my amendments, or at least have intended to prepare them, in such a manner as to meet not my own individual views altogether, but what I have supposed might be regarded as the views of a majority of the members of this body. But, Mr. Chairman, in the remarks which I am about to submit on this, the first of the series of my amendments, it is my intention to give my views frankly and fully on the subject of banking generally; though I do not design to carry out those views, in any of these amendments, to the full extent of my own wishes—or to the extent to which I should carry them out, if I could suppose that I should receive the support of a majority. I have stated, however, that I do not believe that the majority of this body is disposed to go the same length as I am myself willing and desirous to go, if I had the power. I have determined, therefore, to shape my course accordingly.

It was remarked the other day, in the course of some observations made in committee by the president of this convention, (Mr. Sergeant) when on the subject of the judiciary, that, in his opinion, the stability of our republican institutions depended upon the decision of the question then under discussion before the committee. Without saying any thing as to the correctness or incorrectness of this opinion, it seems time, Mr. Chairman, that it may be affirmed with great truth—and probably with more unquestionable accuracy, that the continuance, the stability, the perpetuation of all our republican institutions does depend—nay, even that the fate of this commonwealth of Pennsylvania, is now hanging on the action of this convention, in relation to this very subject of banking. Sir, I do believe that it is. It is, in my opinion, a subject of great importance to the people of this country—important at all times, but emphatically so at the present crisis. Since the first day of the meeting of this convention, the the country has been disturbed, agitated, convulsed from one end to the other, by the confusion, the derangement, the fluctuations, the embar-

rassments and disasters which have been produced in consequence of some error or deficiency, in our practice or in the notions we entertain in relation this subject. These are facts so well known to every individual in the land, that it is needless for me to dwell upon them. We have all felt the injurious results of this state of things; and there has not been a day nor an hour for many months past, in which the fatal evidences of them have not forced themselves upon our attention. Is it not time, then, that the people of the state of Pennsylvania, and especially that this convention, to whose keeping the dearest interests of the people are committed, should awaken *en masse* to an examination of the evils of our monetary system, with a serious and inflexible determination to apply every lawful and proper corrective. I, Mr. Chairman, rejoice that an opportunity is now afforded us to enter into a thorough investigation of this system, and I will not suffer myself to doubt that we shall all approach it, with a single view to the public good.

Mr. Chairman:—The amendment now before you, together with eight others, which I intend to offer in succession, have been framed with a view to meet what I suppose to be the sentiments of a majority of this convention. My own individual opinions, sir, in regard to the necessary restrictions upon corporations, and especially banking institutions, are, I am aware, far in advance of the sentiments of that majority. In the remarks I am about to submit, I shall "take the responsibility" of fearlessly declaring my own opinions on the subject of banking and currency. Sir, I am impressed with the belief—nay—I may say I have a deep and settled conviction, that the permanence, stability, and eventual success of our republican institution are suspended upon the action of this body in regard to this particular subject. If so, sir, is it not time that the people of Pennsylvania, en masse, and especially this convention, to whom the interests of the people are committed, should awaken to a consideration and thorough examination of the evils of our monetary system? The fact that an industrious, enterprising, and intelligent people, surrounded with all the elements of wealth and prosperity, should, in a time of profound peace, blessed with abundant harvests, and all the varied productions of active industry, be perodically subjected to scenes of embarrassment, panic, and distress, such as the last twenty years have exhibited, proves some fundamental and fatal error in the mode and manner of transacting business. Sir, is it not the duty of this convention, to seek out and correct such error?

That fatal error will be found in our paper banking system.

This declaration is not made under any party feeling, or political prejudice, but under a thorough conviction that the strongest advocate of that system, who will take the trouble to examine the subject with the single purpose of eliciting truth, will finally acknowledge the correctness of the proposition. The subject of currency is somewhat complex in its operations and influences upon the interests and prosperity of society; and the favored few, the monied nobility of this republican land, who have been amassing princely fortunes, for the last half century, by its secret and insiduous operations, have a direct interest in mystifying the subject as much as possible. These causes combined, have deprived the great mass of the community of the time and opportunity to acquire that full and particular knowledge of its operations and effects necessary

to the protection of their rights. While the mass of the people have been endeavoring to discharge all their duties to society, by a course of honest and laborious industry, the bank speculators have been craftily and insidulously devising, and gradually fastening upon them, a system of extortion, peculation, and invisible taxation, more onerous to be borne, and more destructive of their vital interests, than all the injuries which impelled our fathers to a separation from the mother country. A system by which the real wealth of the country, the productions of the farm and the work shop, the fruits of honest industry, are transferred from the producer to the banker and speculator, by a secret agency, or bank magic, utterly inexplicable to the operatives, by the sweat of whose brow real wealth is created or produced. A system by which the requisite stimulant to honest industry is either destroyed, and the main—aye sir, the only sources of real wealth are dried up, and the currents of prosperity cease to flow, or the producer must exchange the fruits of his labor, for a fictitious, worthless paper medium, at all times liable to perish on his hands, at the will or caprice of a board of bank directors. For it is a notorious fact, too palpable to be denied by any honest man, that such is the power and influence of the banks, at the present time, that they regard no law or restriction, any farther than they deem it their interests so to do.

What then is our condition? And how long are we to submit to a state of vassalage, imposed by the "aristocracy of wealth," which always controls banking institutions? And, secondly, how are we to be released from this fearful power, which is paralyzing industry, and preying on the very vitals of society? I grant you, sir, that these are grave questions, and the difficulty in giving satisfactory answers is greatly increased by the consideration that we are surrounded by states in the same lamentable condition with ourselves, over whose policy we have no control, and who may not feel disposed to co-operate with us in any measure of radical reform. However incompetent I may be to answer these questions, they must be met, and answered by this convention. The united wisdom of this body must be adequate to the task; and the people expect some measure to be devised, and to be incorporated into the fundamental code, which shall give efficient future protection against those grievious calamities, under which they have so long suffered, originating in a depreciating currency. This convention cannot, without dereliction of duty, separate, and leave the people exposed to all the varied evils of unrestricted legislative power, in regard to corporations, and especially banking institutions.

The time has now arrived when the legislature must be restricted, in regard to this particular subject, or the foundations of the social compact will be broken up. The struggle has already commenced, between the "democracy of numbers," fighting for the restoration and preservation of their individual rights; and the "aristocracy of wealth," warring for the continuance of exclusive privileges, totally inconsistent with the rights of man, the prosperity of the country, and the letter and spirit of our written constitutions.

The general government is a government of limited powers. It possesses no powers, except those specifically granted, and such auxiliary powers as may be necessary to carry the specific powers into full execu-

tion. That the power to charter a bank is not specifically granted to congress, is admitted, and that it is not a necessary auxiliary power, has been shown by others, and can, at any time, be shown to the satisfaction of any reasonable inquirer. The right accorded to the general government, "to regulate the currency," applies only to the constitutional currency, and never can be construed to embrace a paper currency, which the general government was not authorized to issue, and which the states were expressly forbid to issue. I may add, in relation to a national bank, that it is matter of history, and also apparent on the face of the journals, that an amendment was offered granting the power to congress, which was rejected by the framers of that charter of our rights—and wisely too. They had participated in the revolutionary struggle, wherein the necessities of the colonies, the disparity of resources, and the holy nature of the cause, had, in a measure, justified a resort to a national paper currency. But they had also experienced the re-action of that then necessary measure. They had felt, and suffered, under the operation of the continental paper money system; and not believing that any subsequent event could justify a like resort to a fearful expedient, they strove, by every guard within their reach, to protect their offspring against the curse of a depreciating, inconvertible paper currency. The fundamental law of this Union, then, does not authorize congress to charter a bank, in any form, or under any circumstances. The same fundamental law declares, that "no state, shall coin money, *or emit bills of credit.*" That is to say, no state shall coin money, or make, introduce, use, or authorize any substitute for money. This is the plain, common sense construction of the clause, that "no state shall emit bills of credit," or bank notes, which are bills of credit, not based directly on the credit of the state, but on the credit of a corporation, the creature of a state. Money is gold and silver coin, and nothing else, by the express provisions of that instrument.

Thus, the separate states are expressly prohibited, by their own voluntary compact, from meddling, or interfering, with the currency of the country; and what a state cannot do, directly, she cannot do indirectly, or through the agency of a corporation. What "one does by his agent, he does by himself," is a maxim as old as the elements of civilized society. The distinction sometimes taken, by bank advocates, that, although a state may not emit bills of credit, or promises to pay, as a substitute for the constitutional currency, yet, that she may authorize her agents to do so; that is to say, that she may confer a power which she does not possess, is too weak a subterfuge to pass current in a school room debate.

True it is, sir, that we have all been estranged from the principles and spirit of the constitution. The entire people from Maine to Florida, have been beguiled from their true interests, by the gradually increasing desire to amass wealth, independently of industry; and have put a construction on the constitution consistent with the existence of state banks. And that construction has prevailed as legitimate, till most of us had acquired a habit of considering it a binding exposition of the meaning of that instrument.

The local position of Pennsylvania, surrounded as she was, by paper money manufacturing states, has given strength and support to this wide

spread and almost universal error, which has decoyed us into an inextricable labyrinth, and, in a measure, compelled us to adopt a similar policy in self-defence. War and homicide are, in the abstract, evils of fearful magnitude, and yet nations and communities may justify both in self-defence. We have been carried along the tide of popular error under the same strong delusion which seems to have pervaded all classes, of all political complexions, not only in Pennsylvania, but the whole mass of the community, from Maine to Louisiana,—from the Atlantic to the Mississippi.

When the question of incorporating the first United States Bank was being agitated, William Pitt, one of the most distinguished statesmen of modern times, made this prophetic exclamation: "Let the Americans adopt their funding system, and go into their banking institutions, and their boasted independence will be a mere phantom." Were not these words spoken in the spirit of prophecy? Is not the literal fulfilment now before us? Are not bank monopolies as deleterious, as subversive of the real independence of the great mass of the people, as were the feudal tenures, which sapped the foundation of European liberty? There, every other interest was made to succumb to the interest of the land holder—here, every other interest is disregarded for the benefit of the paper bank speculator.

Thomas Jefferson, the great apostle of the rights and liberties of the people, the acknowledged standard of correct political principles—opposed the creation of that bank with all the powers of his Herculean mind. He objected to a national bank on constitutional grounds; and he objected to that, and all other paper money establishments, on the ground that "it would raise up a monied aristocracy in our country, which would set both the government and the people at defiance; that it would take deep root, in the hearts of that class from which our legislators were to be drawn. And, thus, those whom the constitution had placed as guards to its portals, would be sophisticated, or suborned from their duties. That by breaking up the measure of value, it would make a lottery of all private property." Had Thomas Jefferson lived to witness the events of the last two years, and especially the last six months, and had he spoken of the *past*, could he have portrayed our actual condition more lucidly, or with greater accuracy, than when he uttered the foregoing prophetic sentences? Had the warning voice of the father of democracy been duly heeded, we should not now have found the barque of our national prosperity, wrecked in an ocean of worthless rag currency.

Alexander Hamilton, than whom no man was more conversant with the spirit of our fundamental code, remarked: "The emitting of paper money is wisely prohibited to the state governments." This he said by way of preface to what he was about to say in relation to a national bank; not as a disputed or disputable proposition, but as a postulate, or common place remark, which no one, at that day, would presume to question. He adds, "and the spirit of the prohibition ought not to be disregarded by the United States government. Though paper emissions, made under a general authority, might have some advantages, not applicable, and be free from some disadvantages, which are applicable, to the like emissions by the states, separately, yet they are of a nature so liable to abuses—*and, it may be affirmed, so certain of being abused*—that the wisdom of

government will be shewn in never trusting itself with the use of so seducing and dangerous an expedient. In great and trying emergencies there is almost a moral certainty of its being mischievous." Here then we have the "words of truth and soberness" proceeding from the great apostle of that political party, now contending so stoutly for the continuance and perpetuation of all the manifold evils of an inconvertible paper currency.

Why have the disciples of Hamilton contemned the counsels, and eschewed the wisdom, of their patriarchal head? Why have they refused to listen to the prophetic warnings, and to regard the sound maxims of their patron saint? Is it not, as Jefferson foretold, that the bank mania has taken "deep root in the hearts of that class, from which our legislators" have been drawn? Is it not because they have been "sophisticated or suborned" from their duties? Is it not that the private interests of bank speculators have taken precedence of the public welfare in our legislative halls? Is it not, that the love of lucre with that class who claim "all the property, all the talents and all the refinement," has superseded that active patriotism which was wont to influence Hamilton and his coadjutors? But this is not a question between the disciples of Jefferson, and those of Hamilton; for, on this subject, the views of these great political leaders were identical, or nearly so. It is a question between the "aristocracy of wealth," embracing about one-tenth part of the community, and the "democracy of numbers," the remaining nine-tenths of the people. The interests of the former party are identified with the banking system, and diametrically opposed, not only to the interests, but to the constitutional rights of the mass of the people—that is to say nine-tenths of the people. The line of distinction between these parties is easily drawn, and may be clearly traced. It is a tangible and visible line, and proves, at first sight, that the interests of the former are necessarily incompatible with the inherent rights of the latter. Those of the former, or speculating party, live upon, and enrich themselves from the proceeds of the labor of the latter. Those of the latter, or industrious party, sustain themselves and their families on the fruits of their own industry, in some necessary and honest trade, occupation, or profession. The speculating party includes all those whose private interests are promoted by the existence of banks, such as bank officers, stockholders, stockdealers, and speculators of every description, who become such, or are prompted to reckless speculation, by bank facilities.

The industrious party include all operatives, and a vast number, who thoughtlessly advocate the banking system, but who live by honest industry, and whose interests are inconsistent with the existence of banks. They, also, from the same source—active industry—sustain and enrich all the members of the speculating party, without a murmur, and a portion of them are among the loudest in praises of the banking system. It is because they do not see the operation of bank machinery, by which the fruits of their toil and labor are insensibly and clandestinely drawn into the coffers of the speculator. In the same spirit in which monastic asylums, orders of nobility, and feudal tenures, were once considered necessary adjuncts to organized communities, do these men, really belonging to one party, but constantly playing into the hands of their adversaries, look upon banks as something which always have been, (so far as

they can recollect) which always must continue, (so far as they know,) as something so intimately interwoven with all our habits of acting and thinking, that the progress of improvement must cease without their aid, just as the Indian supposed that wars must terminate, if prisoners were not to be tortured.

From the fact that those nearest allied to banking establishments accumulate wealth in undue proportions, these men come to the careless and vague conclusion, that, in some mysterious mode, all the wealth in the community springs from, or originates in, the existence of banks; when, in truth, an examination of the subject would soon convince them that banks are not the sources, but the reservoirs of wealth; clandestine depots, cunningly devised machines, like the hook of the angler, and the snare of the fowler, to decoy the innocent and the careless, and to catch and retain the substance of the unwary. But they will not recur to the maxims of the fathers of that party, under whose banners they are arrayed; and with the foregoing vague and indefinite notions in regard to banking, they continue to flutter within the orbit of a bank circle, under the same fascination which allures the feathered songster to the fangs of the rattle-snake.

Is it not then the imperative duty of this convention to meet the crisis, to secure, in future, the industrious classes from the peculations, the legalized robberies, of the aristocracy of wealth; to seek out the causes which have destroyed all confidence, prostrated credit, paralized industry, arrested improvement, and dried up the resources of happiness, wealth and prosperity?

The people, sir, look to us to provide for the correction of these abuses; to cauterize the gangrene of a dying paper currency; to hygeniate the vital fluid of the body politic; and to adopt measures for the gradual, somewhat protracted, but certain and effectual removal, of the four score ulcers, which now mar the fair face of this once happy commonwealth, and which, if not removed, in due time, will unite their influences, concentrate their energies, and reduce nine-tenths of this people to an iron yoke of oppression, more grievious to be borne than Chinese despotism, or Russian autocracy. These ulcers (banks) cannot, without fatal results, be removed by a single stroke of the knife. Caution must be observed, a temporizing policy must be pursued with existing evils, and a period of fifteen or twenty years must be allowed for their final extinction. As their putrescent issues gradually disappear, and thus create a demand for specie, the precious metals will flow in, to fill, or rather to prevent, a vacuum, as naturally, as certainly, as water flows from our green hills to old Atlantic's reservoir. Gold and silver are not as the speculators would have us believe, the mere representatives of wealth; they have not a nominal value, greater than their intrinsic worth. Their intrinsic value, consists in their specific qualities, and their peculiar adaptation to the many purposes of society, for which they are sought, and to which they are applied; and, also, in the quantum of labor requisite to their production or development. They are as emphatically the fruits of labor, the reward of honest industry, as are the productions of the farm, or the proceeds of the workshop. They are in themselves substantial wealth. Neither the silver miner, nor the gold hunter, receives greater profits, than the grower of wheat, or the manu-

facturer of carriages. Miners are less liberally rewarded than are the growers of wool and cotton, or the manufacturers of leather or iron. Are not then gold and silver as intrinsically wealth, *per se*, as wool, wheat, or iron? The contrary doctrine is one of the syren songs of the speculators, by which they endeavor to mystify the subject of currency, and secure to themselves the surplus earnings—aye, sir, and a portion of the necessaries of the industrious classes. For the purpose of enhancing the comparative character of paper currency, they affect to under value, and they grossly misrepresent, the character of the precious metals. The coining of these metals does not, in any degree, increase their value. The government stamp, is a mere certificate of weight and purity, and, as such, is convenient in the transaction of business. Indeed, until recently in the United States, the government standard value was in truth less than the intrinsic value of gold; and hence it was, as an article of commerce, necessarily exported—its intrinsic value, in foreign countries, in the form of bars or bullion, being greater than its nominal value, in this country, in the shape of coin. Hence the necessity of passing the late gold bill by congress, by which the principal motive for the exportation of gold has been taken away. If gold has no intrinsic value, why is it, that tens of thousands of eagles and half eagles are annually melted down in our cities, to make guard chains, and other trinkets, for the bank gentry, who are thus monopolizing the wealth of the country in exchange for their worthless rag currency? With all these proofs to the contrary, staring us in the face, can any thinking man be so weak as honestly to believe that gold has no intrinsic value? It is impossible, and, therefore, he who promulgates this doctrine is a bank man at heart, and intends to deceive you. With the same sinister intentions the bankers tell you that bank bills are the representatives of money, and thus, by a double falsehood, debasing the one, and exhalting the other, they pretend to establish an equality of paper money and metallic coin. That bank bills represent money, is not true; at all events, of American bank paper. It will not be contended, I suppose, that paper, not convertible at will, represents any thing,—(but the folly of a community.)

In the year 1830, the total amount of money in the United States was twenty-two millions in round numbers, seven millions of which consisted of deposits, leaving fifteen millions, to be represented by bank bills. The amount of bills at that time in the hands of the people, was sixty-one millions, in round numbers. Not more than fifteen millions of these bills could be the representatives of the fifteen millions of specie then in the vaults.

Pray, sir, tell me of what were the other forty-six millions the representatives? Will it be answered, that they were the representatives of the farms and personal chattels of the customers of the banks? Some of them might have had value, as obligations payable at some indefinite future period; whether or not, was unknown to the holders; but not one dollar of the forty-six millions was convertible, or the representative of money; as currency they had no value. They were, perhaps, the representatives of moonshine, of fog, or of abstract ideas on the subject of banking; they were evidently the representatives of empty vaults, of the covinous cupidity of bankers, and of the blind folly of that portion of the industrious classes, who thoughtlessly ministered to a rotten system

Again: no particular bill, of the sixty-one millions, was convertible, except upon a remote contingency—that of being among the first bills presented for payment. Bills convertible on a remote contingency, or, indeed, on any contingency, do not represent money; and, therefore, it may be truly affirmed, that no fraction of the sixty-one millions, then afloat was the representative of wealth. To issue, and characterize it as such, was a gross fraud upon the people. One peep behind the curtain, by the bill holders, whose interests were involved, and a scramble for preference would have ensued; the bubble would have burst, and the industrious classes would have lost at the least forty-six millions, which were then safely deposited in bank coffers. Corporations without souls, being destitute of moral accountability, deaf to the calls of justice and the cries of humanity, governed solely by interest, seldom pay a debt, whatever may be their claims against customers, after their credit is ruined, and their means of peculation destroyed. Hence I am justified in saying, if the truth had been disclosed the loss to the industrious would have been at least forty-six millions. The currency was rotten at the core; it has continued decaying, daily more and more, till the external semblance of the thing has passed away, has left us prostrate and humiliated, with an apparent inclination to bow, submissively, to the mandates of a haughty and insatiable monied aristocracy. We have not had a sound currency since the Bohon Upas of bank guardianship spread its broad branches over this widely extended country. Without a sound currency, no nation can continue to prosper.

Sir, it is the duty of the general government "to regulate the currency," but it has not been done, because the states have usurped the powers of that government, in regard to this subject, and, under present circumstances, it is not in the power of that government to relieve us, as it is presumed that public opinion is not prepared for penal enactments against the circulation of state paper. Is it not then the duty of this convention to awaken from this fatal lethargy; to restrain the legislature in its ruinous policy; to interpose its agency to arouse us to a sense of our abject condition, to renovate our energies, for one united and desperate struggle, to save the commonwealth from the withering influences, and paralizing effects of a depreciating currency?

Here Mr. READ yielded the floor; and,

On motion of FULLER, the committee rose and reported progress; and,

The Convention adjourned.

FRIDAY, NOVEMBER 17, 1837.

Mr. SELLERS presented a petition from citizens of Montgomery county, praying that measures may be taken to prevent all amalgamation between the white and coloured population in regard to the government of our state, which petition was ordered to lie on the table.

Mr. KONIGMACHER, of Lancaster, moved that the convention proceed to the second reading and consideration of the following resolution offered by him yesterday, viz:

"*Resolved* That the printing of petitions and memorials presented to this Convention, will hereafter be dispensed with, unless ordered by two thirds of the members present."

The motion being agreed to, the resolution was read a second time, amended and adopted.

A motion was made by Mr. MAGEE, of Perry county,

That the convention proceed at this time to the second reading and consideration of resolution No. 48, in the words following, viz:

"*Resolved*, That a committee be appointed to inquire into the expediency of so amending the constitution of Pennsylvania, as to prohibit the future emigration into this state, of free persons of colour and fugitive slaves, from other states or territories."

Mr. MAGEE said, that he did not desire to elicit debate, nor should he himself detain the committee with any observations, unless the course persued by other gentlemen might require him to do so. The resolution explained itself. It simply called for a committee of inquiry, and as it had now been lying a considerable length of time on the files of the house, he trusted that the resolution would be adopted, and that the subject would be forthwith investigated.

Mr. DONNELL demanded the yeas and nays.

Mr. THOMAS, of Chester county, moved to amend the same, by inserting between the words "of" and "free," in the third line, the word "foreigners."

Mr. T. said, that he was desirous to have a detailed report from a committee, on the subject of all emigration into the state of Pennsylvania: and if such a committee was to be appointed at this time, it would be better that the whole range of emigration of every kind should be embraced in the inquiry.

Mr. M'CAHEN demanded the yeas and nays on the amendment.

Mr. MAGEE said, that he had risen simply for the purpose of inquiring of the gentleman from Chester county, (Mr. Thomas) what was the object he had in view, in offering his amendment? The intention of the amendment as he conceived, was to throw ridicule on the subject of the original resolution. No other construction could be put upon it; and it was extremely out of place here. I am not myself, continued Mr. M. a foreigner, although, I am a descendant of foreigners; and if, as I suppose, it is the design of the gentleman from Chester county, to throw ridicule upon that class of our citizens and to bring them into dis-

repute, I can only say that he shews a very mistaken judgment in selecting this as the plan for such attempts. I will tell the gentleman that the class of men upon whom he would thus throw slight, taken as an aggregate, are not to be surpassed in point of intelligence, moral character, or patriotism, by any other class of people in the state of Pennsylvania. I do not indeed know what the situation of the country would be at the present time, if it had not been for the presence of foreigners. I think it would have been but a wild wilderness, and that its situation to day would have been rather awkward. It would have been a difficult matter to settle between the whites and the blacks, as to who should have the mastering in our political institutions; and no man can tell what the result might have been. But, sir, I shall not pursue the subject farther. My resolution merely proposes an inquiry into a subject, which we all acknowledge to be of great importance to the people of this state. I do not think that it is a fit subject for ridicule, and I hope that the gentleman from Chester county will withdraw his proposition.

Mr. MARTIN, of Philadelphia county, said it appeared to him that the amendment proposed by the gentleman from Chester county, travelled out of the road, and contained matter which lay beyond the power of this convention. It would be in the recollection of every gentleman here, that the subject of the powers of this body had, in the early stages of its session, been fully discussed, and had been settled upon very liberal principles. In his view, the convention would be going beyond all calculation, if it undertook to inquire into the expediency of annulling the constitution of the United States. And this, said Mr. M., is in effect the proposition contained in the amendment of the gentleman form Chester county.

The constitution of the United States provides for the emigration of foreigners into these states; and yet we have here a proposition for the appointment of a committee to inquire into the expediency of prohibiting them from coming. Where do we find our authority for this proceeding? Or, are we about to set up this convention as a supreme tribunal over the whole land, to put down the constitution of the United States, and to do any other unjust and illegal acts which may suggest themselves to our fancy? It will behoove this body to look to its acts, and to be careful that it does not go beyond its legitimate sphere of action—that it does not travel over the border line of the state of Pennsylvania, trespassing on other states, and invading the powers of other tribunals. Sir, I think the subject of the resolution proposed by the gentleman from Perry county, is a very grave one, and that it ought to receive the deliberate consideration of this convention. And if the gentleman from Chester county, who moved this amendment, intended merely to ridicule the principle which is laid down in that resolution, I must tell him that he is not treating with fairness such of the members of this body as are in favor of the proposed investigation. If, however, the gentleman is in earnest, I would recommend him to turn to the constitution of the United States, and then he will be able to satisfy himself that his object is not tangible. I hope, therefore, that he will save the time of the committee by withdrawing his amendment;—if he does not, I trust it will be rejected.

Mr. WOODWARD moved to amend the amendment by adding thereto, the words "and that the said committee be also instructed to inquire into

the propriety of so amending the constitution, as to prevent any foreigners who may arrive in this state after the fourth day of July, 1841, from acquiring the right to vote or to hold office in this commonwealth."

The CHAIR said, that the amendment of the gentleman from Luzerne county, (Mr. Woodward) could only be introduced, by moving to strike out the amendment of the gentleman from Chester county, and adding his proposition to the original resolution. In any other form, it would be out of order.

Mr. WOODWARD said, that he did not wish his amendment to interfere in any way with the resolution of the gentleman from Perry county. He (Mr. W.) was in favor of the object of the resolution, and was under the impression that he could substitute his own proposition as an amendment to the amendment. But, as he could not do so, he would withdraw it for the present.

Mr. THOMAS said, that with a view to enable the gentleman from Luzerne to bring forward his proposition, and to take away all obstruction to its immediate consideration, he (Mr. T.) would withdraw his own amendment.

The amendment of Mr. WOODWARD being then before the committee;

Mr. DONNELL, of York county said, it seemed to him that the amendment of the gentleman from the county of Luzerne, would be out of place if referred to a committee, and that it was a matter for the action of the convention.

Mr. COX, of Somerset county, said that he was not prepared, and he did not believe that the members of this convention were prepared, to give their sanction to such a proposition as had been brought forward by the gentleman from Luzerne county, (Mr. Woodward.) If this country was to be considered, as it had hitherto been considered, as an asylum for the persecuted and the oppressed of all nations—if the people of other countries chose to emigrate hither—to become the naturalized citizens of our state, willing to submit themselves to our laws and to stand forward in defence of our soil—if they become good citizens and intelligent and honest men; was it possible, he would ask, that any gentleman could rise in this body with a serious intention of offering a provision which should exclude them for ever from holding office under this commonwealth, or that he could seriously think of raising a committee to make any inquiry on the subject? Sir, said Mr. C. I trust not. I cannot believe it possible that any gentleman is serious in the introduction of such a proposition, or that he can flatter himself that it will meet with any countenance from this body. It is entirely repugnant to the genius and spirit of all our institutions. I trust that no such proscriptive system will be adopted here; nay, I feel sure that it will not. I will not do such injustice to the members of this convention, as to suppose that they can be brought to vote for its adoption. I entertain a better opinion of their intelligence and there liberality of principle. I trust that, in the United States of America, every man who behaves himself well, who is meritorious, intelligent and honest, will still continue to be entitled to the rewards of office, if he chooses to aspire to them; and I hope that the proposition of the gentleman from Luzerne, will be put down by a decided vote.

Mr. WOODWARD said, that he had not anticipated this morning that an

opportunity would be presented to him to introdnce this subject, to the notice of the convention; he was not, therefore, prepared at this time to say more than a very few words; although, it was a subject which had been on his mind for a long time past and had claimed his serious consideration.

I have long felt a desire, said Mr. W., that something should be done in relation to it—that the facts should be investigated, and that some proper and efficient measures should be adopted, if, upon that investigation, it should turn out that measures of any kind were requisite.

Sir, I appreciate as much as any man living, the many political rights and privileges which I, in common with the people of the United States, are now enjoying; and it is my honest impression that we do but squander those privileges in confering them upon every individual who chooses to come and claim them. He knew that a great portion of those who came among us from foreign countries, consist frequently of the worst part of the population of those countries, that they are unacquainted with the value of these privileges, and that, therefore, they do not know how to value them. I think that in thus confering indiscriminately upon all, we are doing injury to our liberties and our institutions; and I believe that, if the time has not yet come, it will speedily come, when it will be indispensibly necessary either for this body or some other body of this state, or of the United States, to inquire whether it is not right to put some plan into execution by which foreigners should be prevented from controlling our elections, and brow-beating our American citizens at the polls.

At the time the constitution of the United States was formed, it was necessary to promote emigration. The population of our country was wasted by a long war; and it was necessary to hold out inducements to foreigners to come here. But times have greatly changed within the last few years. The reason and the necessity for extending this indulgence to emigrants have ceased. Besides this, it is to be considered that there are other inducements in the climate, and in the natural advantages of the country to prevail upon them to come here, without adding to them the incentive of office. In expressing these sentiments, Mr. Chairman, I wish it to be understood that I cherish no prejudice against foreigners, I entertain no feeling of unkindness towards them, from whatever part of the world they may come, nor would I do any thing which should have a tendency to proscribe them from coming. We have many very estimable men among them; and I do not propose in my amendment to take any thing away from them. I merely wish that a committee should inquire, whether it is competent for us to introduce a provision into the constitution of the kind I have mentioned, to take effect after a certain date, so long distant that all future emigrants may know what their privileges are to be, before they leave their own country. My proposition is not intended, nor will it operate, retrospectively; it effects no one now here, and no one who may be on his way here. It looks exclusively to the future. What valid objection can there be to the inquiry? Why should we throw open these great political privileges to every species of character that may light on our shores? Are these privileges of such little value, that we do not deem them worth protection or defence? Have they no claim upon our feelings—no claim upon our affections? Have

they not been won in many a well fought field? Are all the treasure and the blood which have been poured forth for the attainments of these privileges, to be regarded as nothing? Have they not been bequeathed to us by those who sacrificed all they had on earth to secure them? Are they not truly and emphatically our most precious legacy? And what claim have foreigners from any country—aye, sir, from *any* country, which is strong enough to justify us in prostituting our political privileges by conferring them carelessly and indiscriminately on any individual who may reside here for two or three years—become a naturalized citizen—and then command our offices? There are very many of these emigrants who know nothing of political privileges in their own country before they emigrate to this. The word is unknown to them, or if they hear of it at all, they hear of it as something in which they have no participation. Is not this the fact? Sir, we all know that it is; we know that very many of these emigrants never enjoyed any political privileges themselves—that they have no knowledge of them—and, least of all, have they any knowledge of our people, our government, or our institutions. The acquirement of this knowledge is not the work of a day. They have no sympathy in common with us; they have no gratifications to render them fit recipiants of these high political privileges. If any of us choose to pass over to England, Ireland, or France, and to settle ourselves there, what do we gain by the change—I mean in a political point of view? Nothing; we lose all. We are not suffered to acquire any political privileges such as we bestow upon them. There is no reciprocity—the advantage is all on one side; and whatever we may give to them, we ourselves can acquire nothing of the kind? Why should this be so? Or, if the adoption of such a system was necessary at one time, why should it still be adhered to, when every thing in the form of necessity has long since passed away? I can discover neither wisdom nor policy in so doing.

The idea, Mr. President, is simply this—I would afford to all foreigners who shall come to this country after the date of my amendment, protection in their person, their property, and all the natural rights which they could enjoy under any civilized or well ordered government. I would permit them to acquire wealth; to pursue objects of their own ambition; I would, in short, allow them to become in all respects equal citizens with us, except only in this one matter of political privileges. All their natural and all their civil rights, should be amply guarantied and protected; and they should become citizens in common with us in relation to all objects, except voting and holding office. And do we not hold out sufficient inducements for foreigners to make this country their home, even if we take from them these political privileges? Surely, sir, we do—such, indeed, as no other nation upon earth can proffer.

But, Mr President, it is not my design to enter into the discussion of this matter at the present time; and I owe an apology to the convention for having said so much in regard to it. I have a strong feeling on the subject; though I confess that I entertain doubts whether this convention has the power to act. I am well aware of the nature of the provision in the constitution of the United States, and which has been referred to by the gentleman from the county of Philadelphia, (Mr. Martin.) I would do nothing in contravention of that provision; I merely wish that the question should be referred to a committee, that they may inquire whether

this convention has the power to act at all in the premises; and if it has the power, whether it would be expedient to act. I am, however, surrounded by many valued friends whose opinions and judgment I appreciate; and it appears that they are unanimous in thinking that I should withdraw it. I, therefore, yield my own judgment to their's, and, having explained my views, I withdraw the amendment.

The question then recurring on the adoption of the resolution:

Mr. CUMMIN, of Juniata county, rose and said that he thought it was a very hard case that a member of this convention should introduce a proposition like that brought forward by the gentleman from Luzerne, (Mr. Woodward)—that he should support it by a strong argument against all foreigners, and that he should then withdraw it, and thus cut off all opportunity of reply to his elaborate address. Such had been the course of the gentleman from Luzerne. He had offered his amendment—he had made a speech in its favor—and he denied to other members the privilege of showing that he was entirely mistaken in his aristocratic argument.

Sir, (said Mr. C.) the gentleman from Luzerne, is the last man from whom I should have expected an action of this kind. I would have been glad that the gentleman would have left the way open for a short time at least, that we might examine the subject in relation to the foreigners of this country, from the time of the revolution down to this day, and that we might demonstrate even to his satisfaction, that his speech contains one of the most exclusive and aristocratic arguments ever submitted to a republican assembly.

The CHAIR here interposed, and said that the gentleman from Luzerne county, had withdrawn his amendment, and that, not being before the convention; it was not now in order to discuss it.

Mr. WOODWARD, therefore, rose and said: Mr. President, If I have done wrong in withdrawing my proposition, and so prohibiting reply to my observations, I regret it; and I now renew the amendment.

The amendment being again before the convention;

Mr. CUMMIN resumed his remarks. During the revolutionary struggle, he said, there were a great number of foreigners engaged in the military service of that day. I believe it is known to us all, that some eminent characters from foreign countries, took part in the revolutionary war with the friends of civil liberty, and that they rendered good service to the cause. It is not needful that we should mention their names; they are to be found in history. I have not risen to make a speech, I have but a few observations to offer. The revolutionary struggle is over, the cause of human freedom has triumphed—the wand of the oppressor is broken—and, so far at least as our happy land can be concerned, is scattered in fragments over the earth. The congress of the state, in a spirit of liberality which reflected high honor upon that body, and with a view also to the advantage of the people of this country, opened the door to the oppressed and the persecuted of all nations. It said to the hungry, "come, and be fed;"—to the naked, "come, and be clothed;" to the political bond-slave, "come, and be free." The country was blessed with a fine and fertile soil; and the people of all the nations in the world, especially Europeans, flocked joyfully to it. When they arrived here, there were laws prohibiting them from the exercise of suffrage for a

certain space of time, until they became naturalized citizens according to law. Any naturalized citizen was a citizen of the United States, precisely as much so as if he had been born in the land. He then became entitled to the right of suffrage; but he could not thrust himself into an office, as the gentleman from Luzerne infers he could, without he first possessed this qualification, and not then unless he was known for his fidelity, and as a true friend to the people.

These are the regulations, Mr. President, which have been put in force from year to year—or from time to time, as the circumstances of the country might require. There have been several acts of naturalization passed; the provisions of those acts have been very properly enforced; but there never yet has been even an insinuation thrown that, after a foreigner has once complied with the requisitions of the law, and has become a naturalized citizen of the United States, he should be prevented from holding any office, with the one single exception of that of the chief magistracy. I say, sir, that such an insinuation has never been breathed, and for any gentleman claiming to be a liberal and enlightened citizen to introduce at this time of day a proposition to prohibit from a certain future date, all foreigners from voting or from filling any of the offices under the commonwealth is, in my judgment, an absurdity, not less than it is an insult to the understandings of the member of this body. Sir, I entertain a more exalted estimate of the intelligence and the public spirit of this body, to suppose that such a proposition can receive any countenance at its hands. Has there ever been a time since the revolution, when there were more foreigners than there are at present? What is their general conduct? Does it appear that they stir up discontent among the people? that they excite insurrections? that they disturb the peace and harmony of society? or that they attempt to thrust themselves into public offices of emolument or honor, by means of rebellous acts? Can any man assert this, and tell the truth? And does not our experience furnish ample testimony to our minds, that, in all these respects, their general conduct is without stain or reproach? If such then is the proper and unexceptionable course which foreigners pursue, when they arrive in this country; if their fellow citizens, native as well as naturalized, find their qualifications satisfactory, and their characters without stain—if they are in all respects men who are entitled to public confidence, why is an effort now to be made to declare in the fundamental law of the land, that, after the year 1841, no foreigners shall have the right to represent the people of the state or the country, even though he should be the best qualified man in it? Do we not now assert that foreigners have been the means of the preservation of our government, and that they are the only true men in general, who stand up boldly and fearlessly for those principles of government which hold the United States together? The gentleman allows that they should be in a state of probation—and that they should remain under trial for some years even before they are permitted to vote. How many years, I would ask, did the gentleman himself serve, before he was called to office? He is well qualified, I grant, to fill the office; he stands among his fellow citizens eminent for his talent and ability, and yet, sir, there might have been a law passed which would have deprived him of the power to hold it. Can the gentleman form any opinion how he would relish the operation of such a law? Does he not think it probable that

his feelings might smart under it, and that he might complain bitterly of its injustice?

But, Mr. President, I do not wish to consume the time of this convention, for I know it to be valuable. I rose merely for the purpose of shewing that, even if the gentleman from Luzerne county, was not serious in offering this amendment—and I was inclined at first to think that he was not serious—it was an outrageous proposition to offer in this convention. The whole tenor of the gentleman's argument, went to cast reproach upon foreigners, and to shew that they were not worthy to be trusted.

The gentleman reasons rather out of the book in one point, when he says, that the time is now come, when the United States can do without foreigners—that there is no necessity for them—that the people of the United States are now able to fight their own battles, and that they can live safe and free without their presence. He is mistaken if he supposes that he can find a justification, in such reasoning as this, for the argument which he has offered. There is no ground on which it can be justified. I hope, therefore, that he will withdraw his amendment; and that he will make an apology for what I regard as a gross insult upon the Irish, and the other foreign population of this state.

Mr. DUNLOP, of Franklin county, moved to postpone the farther consideration of the whole subject until Tuesday next.

On which motion Mr. M'CAHEN demanded the yeas and nays.

Mr. DUNLOP then said that, at the request of the gentleman from Luzerne, he would withdraw his motion for postponement.

So the motion was withdrawn.

Mr. WOODWARD said, that he had not risen for the purpose of making the apology called for by the gentleman from Juniata county, (Mr. Cummin;) for he (Mr. W.) knew well, that, to an American assembly, no apology could be necessary. He had risen merely for the purpose of withdrawing his amendment.

So the amendment was withdrawn.

The question again recurring on the adoption of the original resolution;

Mr. DUNLOP said, that this resolution contained matter of grave importance, and that it required serious consideration and refutation. And although, since the gentleman from Luzerne had withdrawn his amendment, he (Mr. D.) should not renew his motion to postpone; yet, he must express his surprise that the gentleman had requested him to withdraw that motion, only that he might withdraw his amendment. If he had known that such had been the object, he (Mr. D.) would not have withdrawn it; especially after the remarks which the gentleman had been pleased to make, for the benefit of himself (Mr. D.) and his friend before him, (Mr. Cummin.)

Mr. KONIGMACHER, of Lancaster county, renewed the motion previously made by the gentleman from Chester county, (Mr. Thomas)—but by him withdrawn to amend the resolution by the insertion of the word "foreigners."

Mr. K. referred to the situation of the alms house of the city and coun-

ty of Philadelphia, of the inmates of which, he said, he had been informed, about seven-eighths were foreigners.

Mr. K. also alluded to certain recent and very gross violations of the quarantine law, which had taken place in certain parts of the state of New Jersey; where many foreign paupers had been clandestinely landed, and absolutely without the means of life.

Mr. BROWN, of Philadelphia county, said that he thought the gentlemen on the floor, representatives from the city and county of Philadelphia, should feel themselves greatly obliged to the gentleman from Lancaster county, for offering this amendment. It was certainly an act of great condesension and kindness, and he hoped it would elicit a becoming sense of gratitude.

Mr. B. did not know what the gentleman's means of information were. He had never heard, however, that any complaints had been made on the subject; if there had been, it was new to him.

Mr. KONIGMACHER disclaimed any intention to trench on the jurisdiction of the gentlemen immediately representing the interests of the city and county of Philadelphia. He would, however, withdraw his amendment.

So the amendment was withdrawn.

A motion was made by Mr. MACLAY, of Mifflin county, to amend the resolution by striking therefrom the following words, viz: "free persons of colour and."

Mr. MACLAY, said he would trouble the convention with but a few words. He had not thought much on the subject, but it appeared to him that the resolution, if adopted so as to include free persons of colour, would be treading on unconstitutional grounds.

On reference (continued Mr. M.) to the constitution of the United States, article 4, section 2, we find the following provision:

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Now, whether the resolution in the form in which it was offered by the gentleman from Perry county, (Mr. Magee) is, or is not constitutional, depends upon the fact whether free persons of colour are, or are not citizens. If they are not citizens, then I can perceive nothing unconstitutional in the matter; because I think that we might safely pass a resolution to prohibit the emigration of persons of colour from Africa, China, Hindostan, from France or Spain, or any other part of the world, if persons of colour should come from thence. But free persons of colour who are in the state of Pennsylvania, and in the several states, have a right, according to my idea, to the privileges and immunities here referred to. I am no lawyer and do not lay claim to any deep knowledge of constitutional law; but, reasoning only on such knowledge as I have, I should say this is the correct construction. Let us suppose a case. I have heard that, in the state of Maine, there is one person of colour who held the office of a justice of the peace.

Now, have we any right to prohibit that man from coming into the state of Pennsylvania, and from enjoying "the privileges and immunities" of a citizen of any state, more than we have to prohibit any other

citizen of the state of Maine? I conceive that we have not, and that such a prohibition would be a direct violation of the provision in the constitution of the United States.

But, Mr. President, let us go a step farther; for it so happens that we are able to turn to more satisfactory authority on this point.

Some four or five years ago, I saw a decision by Judge Johnson, of the supreme court of the United States, which had reference to this very question. A law had been passed in the state of South Carolina, by which it was provided that any person of colour coming into that state, should be imprisoned until such time as he gave certain security, which was required by that law. A person of colour arrived at Charleston, on board of a vessel from one of the northern ports, as a seaman. He was arrested and put to prison. A writ of habeas corpus was applied for. He was brought up before Judge Johnson, who after hearing an argument, decided that the law of the state of South Carolina was unconstitutional—that the man being a citizen of a northern state had a right to all the privileges and immunities of a citizen of any state to which he might choose to go. There are probably some lawyers in this house who are better acquainted with the decision than I am. These, however, are the facts of the case, as I have read them in the public prints. If this is the law of the land, it is manifest that we have no right to prohibit any free persons of colour who are citizens of any other state in the union, from coming into the state of Pennsylvania. There can then be no doubt about it. If such is the law we have no power to act, and I hope that so much of the resolution as relates to free persons of colour will be stricken out.

Mr. Cox, of Somerset county, said that he thought the gentleman who had charge of this resolution would find some difficulty in carrying his point through; and also, that he would find, on a little farther investigation, that the convention had no such power as was here contemplated.

I agree (continued Mr. C.) with the gentleman who last addressed the convention, in the opinion he has expressed as to the constitutional question; and, in addition to this, I think that the terms of the resolution are rather indefinite. Free persons of colour! What particular shade of colour does this mean? Does it mean coal black? or half black? or a quarter black? or a creole? or does it simply mean persons of dark complexion? The gentleman is not sufficiently distinct in the language he has chosen. There must be some clear designation; because, if there is not, it will be impossible for us to know with any certainty on what we are voting. The Indian, for instance, is of a colour rather reddish—not black; and we know that, in many states of the union, men, distinguished men, have descendants rather of a copper colour—something of the yellow-boy kind.

Mr. C. entered into some details on the last mentioned point, and then proceeded:

I want to know what the colour is to be precisely; but even then it is all a farce, for we have no power to act.

Under the amended constitution of the state of New York, persons of colour are entitled to vote under certain regulations; and in that constitution the words "persons of colour" are used.

The first section of the second article is as follows:

"No man of colour, unless he shall have been for three years a citizen "of this state, and for one year next preceding any election, shall be "seized and possessed of a freehold estate of the value of two hundred "and fifty dollars, over and above all debts and incumbrances charged "thereon; and shall have been actually rated, and paid a tax thereon, "shall be entitled to vote at such election."

Now, the provision which the gentleman (Mr. Maclay) read from the constitution of the United States, which declares "that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states," consisted with this provision in the constitution of the state of New York, shews clearly that we have no power over the subject; and even if we had, that it would probably be going rather far to attempt to exercise it.

The constitution of the state of Massachusetts, has the following language:

"Every male person (being twenty-one years of age, and resident of "any particular town in this commonwealth, for the space of one year "next preceding) having a freehold estate within the same town, of the "annual income of three pounds, or any estate of the value of sixty "pounds, shall have a right to vote in the choice of a representative, "or representatives, for the said town." Chap. 1, sec. 3, art. 4.

In that state, (continued Mr. C.) persons of colour possess all the rights that are common to other citizens, so far at least, as voting is concerned; and yet we, in the state of Pennsylvania, are gravely asked to raise a committee, in order thet they may report to us, whether free persons of colour can not be excluded by constitutional provision, from coming into this state.

I hope the gentleman who introduced this proposition will be able to shew us our authority for excluding free persons of colour from coming among us; and, in the next place, I hope he will so modify his resolution as to designate the particular shades of colour which it is intended to embrace. If he does not do so, I must vote first in favor of the amendment of the gentleman over the way, (Mr. Maclay) and then against the whole resolution.

Mr. MANN, of Montgomery county, said, that he should not have troubled the convention with a word on this resolution, had it not been for the remarks of the gentleman from Mifflin county, (Mr. Maclay.) Many of the remarks of the gentleman from Somerset county, (Mr. Cox) he considered irrelevant, and he should not, therefore, reply to them in any manner.

The gentleman from Mifflin county, had read to the convention a clause from the constitution of the United States, which I do not think has any bearing on this question. The states of Virginia and North Carolina, and I believe all the slave holding states, have laws expressly prohibiting any person of colour, after he becomes free, to reside more than two years within the limits of their states, on pain of again becoming slaves, and they have also laws prohibiting the emigration from other states. I have never heard, nor do I believe, that any constitutional objection has ever been raised. Now in consequence of these laws, in other states, Pennsylvania which has no such law, becomes inundated with the black

population. The habits of these coloured emigrants become more dissipated than those of any other portion of our citizens, and they mingle with those of the most degraded character; owing, probably, to the sudden transition from a state of slavery to freedom.

The decision of Judge Johnson, which has been referred to by the gentleman from Mifflin county, (Mr. Maclay) I think can have no application in the present instance, because the case there referred to, was, that of a sea-faring man; and it is known that men of this description are placed under somewhat different laws from those which govern slaves of the soil.

I regret very much to see an attempt made to bring so grave a subject into ridicule. I think it is high time that something should be done to prevent this emigration. The evil is great, and it calls loudly for a remedy. Surely, no objection can be sustained, either on the ground of justice or expediency. It is time that we have a law which gives to all free citizens the right to vote, but I do not regard the black population as citizens, and, therefore, I do not consider them entitled to a vote. If the gentleman from Perry county, (Mr. Magee) would so modify his amendment as to make the words "persons of colour," read "the negro race," I think it would be definite enough to meet, even the fastidious views of the gentleman from Somerset county, (Mr. Cox.)

In any event, I hope that the resolution will be adopted, and that the committee will be forthwith appointed.

Mr. Brown, of Philadelphia county, said, that because one gentleman in this body was not able to distinguish colours, it did not therefore follow, that colour did not exist. The gentleman from Somerset county, had demonstrated satisfactorily, Mr. B. should think, to the minds of every man who heard him, that, in treating of the subject of colour, he was speaking about that which he did not understand. The gentleman had spoken of negroes, mulattoes and creoles. He (Mr. B.) had never before heard that creole was a colour; and the merit of this discovery was due to the gentleman from Somerset county. It was certainly something new.

Mr. Cox rose to explain. He admitted, he said, that he had not been as much in the slave-holding states as the gentleman from the county of Philadelphia, (Mr. Brown.) That gentleman had lived in the state of Virginia a long time, and it was, therefore, reasonable to expect that he would possess much better acquaintance with the subject of colour than could be expected of him (Mr. C.)

Mr. Brown resumed. It was evident that the gentleman had not been much in the south, or he might have known that the creole had nothing to do with the state of Virginia. He would be under the necessity of going much farther south to find the creole. The creole was not known in Virginia. It was a breed belonging to the West India Islands, and to Louisiana. It was a native born citizen of foreign descent, and distinguishable, in several respects, from the aborigines of the place.

The term "person of colour," had a certain meaning, clearly defined and well understood. It was recognized under the constitution of the United States—by the laws of the United States, and by the decisions under these laws. There could be no difficulty in this matter. He

thought (although he would not undertake to speak with certainty) that this subject had been before the legislature more than once; and, if I recollect right, the difficulty which was found to lie in the way, was, that the constitution did not authorize any such prohibition. I may be in error about it, but I think that this was the objection. If it be so, it is a fit subject for investigation. And, without expressing any opinion as to the propriety of the measure, he would say that he thought it was due to those portions of the state which felt themselves aggrieved by the introduction of this class of people, that the inquiry should be made. The gentleman from Perry county, simply asked that a committee might be appointed to inquire into the facts, and to lay them before the convention, that they might act advisedly, and exercise a proper power in the matter, if it should turn out that they had any power over it. Was not this a reasonable request? Should it be refused? The subject was not new—public attention had been called to it years ago—and it had been brought before the legislature. Laws of this description were made in other states, and why should they not be established in the state of Pennsylvania, where the evil threatened to increase to an extent which no man could tell.

No person of colour could be taken to the state of Maryland, of Delaware, of Virginia, or Ohio, or into any other of the surrounding states; and if the schemes of those who wish to abolish slavery, should succeed, and if the slave-holding states should agree that these free negroes shall not remain on their soil, is it not the duty of Pennsylvania to look to the consequences, and to see whether it is expedient and proper, or compatible with the interests and the safety of our own people, that our gates should be thrown wide open to all persons of colour who chose to enter them? It was a subject which required serious investigation—which demanded the attention of this convention, and he hoped that they would not separate without bestowing upon it the attention it deserved.

But this question was also of much importance as connected with another subject; that was to say, the subject which was brought before the convention yesterday. He alluded to the petition presented by the gentleman from Montgomery county, (Mr. Sterigere) from citizens of Bucks county, praying that a constitutional provision may be made, prohibiting negroes from the right of suffrage. If these negroes were to be entitled to equal political privileges with the white citizens of the state, and which privileges were not granted to them in the other states of the Union, did we not hold out to them the strongest inducement that can be offered, to come and settle among us?

These were very grave questions—and should not be lightly estimated. The condition of this people, the peculiar state of the times in relation to them—all demanded investigation; and it becomes this convention to fix definitely, by constitutional provision, the position which they shall occupy for the time to come in the state of Pennsylvania. The question must, before any great length of time had elapsed, be met boldly, and acted upon decisively and firmly; and the sooner it was settled the better. It was often very convenient for bodies of men, acting in their public capacity, to defer encountering an evil which must one day be met, and to thrust the duty upon those who might come after them. This, however, was not the course of policy which

patriotic men, acting as the public agents of the people, should suffer themselves to follow. In the performance of that which they knew to be right, and which the public interest and the public safety alike demanded from them, they should be turned aside by no impediment, they should be awed by no fear of the responsibility they might incur. Such, he hoped, would be the conduct of the convention in regard to this imposing question; they had a duty to perform—he hoped they would not shrink from it.

He did not intend to follow the gentleman from Somerset county, (Mr. Cox) in bringing in the names of distinguished citizens of the United States.

Mr. B. here made a brief reply to some remarks which fell from Mr. Cox, on the point referred to, and then continued:

There could be no sort of difficulty in ascertaining what was meant by the term "persons of colour;" and, if necessary, the convention could even go so far as to fix precisely the shades of colour which should be permitted to come into the commonwealth. This, however, was not necessary at the present time. The question was simply one of inquiry—nothing more—and he trusted the committee would be appointed.

Mr. EARLE, of Philadelphia county, said, suppose it should happen, Mr. President, that all the nations of Europe were to pass laws to prevent the oppressed natives of Ireland from migrating to their territories; I would ask the gentleman from Juniata county, (Mr. Cummin) and my colleague from the county of Philadelphia, (Mr. Brown) whether the fact that the oppressed and persecuted people of Ireland or of any other country, were prohibited from emigrating to any other land, should serve as an inducement in the mind of a christian, a philanthropist, or any good man, to prohibit their emigration in relation to our own country? I think these gentlemen will readily answer in the negative, and we have here a strong argument in favour of opening the doors of our commonwealth to this most cruelly oppressed people—I speak of the negro race. If the gentleman from the county of Philadelphia, held the same opinion as those who are opposed to the abolition doctrines, he would say that the efforts of the abolitionists tended only to rivet the chains of the slave still more strongly upon him.

Mr. BROWN, of Philadelphia county, rose and denied that he had ever said any thing of the kind.

Mr. EARLE resumed. I did not say that the gentleman had expressed this as his own opinion; but I say that such is the doctrine of the anti-abolitionists, and that his argument amounts to about the same thing. If there is any prospect that the chains of the slave will be rivetted faster upon him, in consequence of the efforts which are made for his liberation, then it is obvious that we need entertain no great fear that the state of Pennsylvania will be "inundated," as the gentleman from Montgomery county, (Mr. Mann) has expressed it with the black population from other states. The number of coloured emigrants would be so inconsiderable that we need not dread any evil consequences from them. The white population of the state of Pennsylvania has been increasing very fast within the last few years, and it is now increasing faster than ever. It is,

and it must continue to be a white population, and I have no fear that the black population here, can ever increase faster than the white. Where, then, is the ground for apprehension? Where the necessity for this system of proscription? Is there any member of this convention who has even suffered a particle of injury, in his person or his property, by the existence of the coloured population among us? Have we not, on the contrary, derived great benefit, not only from the presence of the coloured population, but of emigrant Irishmen? I am aware of the fact that, in the minds of a particular class of our citizens, there is a feeling against the Irish emigrants who labour on our canals and on our other works of internal improvement; and I am also aware that, in the minds of another class of our citizens, there is a feeling against the coloured emigrants. But, there is no doubt that, in all our intercourse with both the Irish and the coloured emigrant, we get the best of the bargain. They submit themselves to do menial service, and we get the profit. If they would not do this, we ourselves would be compelled to do it. The situation of the slaves in the southern states, is like that of the children of Israel under the iron rule of Pharaoh, King of Egypt. Pharaoh, it will be remembered, would not let the children of Israel go. And so it is with the slaveholders of the south. They will not let their slaves go. And why? Because they derive profit from their labor. And we, in the state of Pennsylvania, gain as much by the labor of the same number of coloured people as the slave-holder of the south gains, although the labor is of a different kind.

He should think it the hardest thing in the world to deny the poor wretches refuge—a resting place for the soles of their feet. It was the last thing that one should deny to another.

Mr. M'CAHEN, of Philadelphia county, moved the previous question; which was sustained.

And, the main question was ordered to be put.

Mr. M'CAHEN asked for the yeas and nays.

Mr. MACLAY asked for a division of the question, to end with the word "colour."

The PRESIDENT said, the motion was not in order.

The question was then taken on the resolution, and it was decided in the affirmative—yeas 56, nays 50.

YEAS—Messrs. Banks, Barnitz, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke of Indiana, Cleavinger, Cochran, Crain, Crum, Cummin, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Dunlop, Fleming, Foulkrod, Fry, Fuller, Gamble, Hamlin, Harris, Hastings, Hayhurst, Helffenstein, Henderson, Dauphin, High, Hyde, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Miller, Overfield, Read, Ritter, Rogers, Russell, Scheetz, Sellers, Smith, Smyth, Snively, Stickel, Taggart, White, Woodward—56.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cline, Cope, Cox, Craig, Crawford, Cunningham, Denny, Dickey, Earle, Forward, Gilmore, Hays, Henderson, of Allegheny, Hiester, Hopkinson, Houpt, Ingersoll, Jenks, Kerr, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Saeger, Scott, Serrill Sill, Thomas, Weidman, Young, Sergeant, *President*—50.

Ordered, That Messrs. Magee, M'Dowell, Keim, Clapp, Doran, Young and Smyth, be the committee for the purpose therein expressed.

SEVENTH ARTICLE.

The Convention again resolved itself into committee of the whole, Mr. REIGART in the chair, on the report of the committee to whom was referred the seventh article of the constitution.

The question pending, was on the amendment of Mr. READ, of Susquehanna, viz:

"The stockholders of all banks hereafter chartered, re-chartered, revived, continued, or relieved from forfeiture, shall be made severally and individually liable for the debts of the corporate body."

Mr. READ resumed his remarks,

Mr. Chairman:—From the year 1811 to the year 1835, one hundred and ninety-three banks broke up in irretrievable bankruptcy, viz: In

Massachusetts	7	North Carolina	2
Maine	9	South Carolina,	2
New Hampshire,	2	Georgia	2
Rhode Island	1	Louisiana	2
Connecticut	2	Alabama	3
New York	13	Tennessee	9
New Jersey	7	Kentucky	47
Pennsylvania	19	Ohio	28
Delaware	2	Indiana	3
Maryland	9	Illinois	3
District of Columbia	5	Missouri	2
Virginia	12	Michigan	2

Precise accuracy, in regard to the amount of bills of these one hundred and ninety-three broken banks, at the times of their respective failures, is not attainable. But analogical deductions from known facts, enable us to approximate the truth, nearly enough for the purposes of illustration. In this mode we arrive at the conclusion that the circulation of these banks was $57,900,000, and that twenty-five per cent. of these liabilities was eventually paid by the broken banks. This leaves $43,515,000 of their bills *never redeemed.* A dead loss to the industrious poor. A clear gain to the wealthy banker. A tax upon, or more correctly speaking, a robbery of the industrious classes, of almost two millions annually, fraudulently abstracted from the pockets of the honest, hardworking producer of wealth, and embezzeled by the magic of a paper system, and its natural concomitants, into the coffers of bank speculators! Suppose a like amount of our property had been unlawfully seized upon by a foreign nation, would not the country have been in a blaze of commotion, from the centre to the extremeties? Would not every voice have been raised to demand retribution, and every arm nerved to enforce the demand? Or suppose one tenth part of forty-three and a half millions, thus lost to the operatives, had been illegally taken from our merchants, on the highway of nations, would not the cry for retributive justice have reached the remotest corner of the republic, and have been echoed, and re-echoed, from every domestic fireside and hamlet in the Union? Would not the whole power of the government have been put forth to redress injury and punish insolence? And should we not all have exclaimed, with one voice, "millions for defence, not a cent for tribute?" Why are we thus sensi-

tive in regard to commercial rights? And thus lethargic in relation to the rights of the farmer and mechanic? Are not their rights as sacred, their interests as dear, and their success and prosperity immesurably more important, than those of the mercantile class, or the speculating coterie! Where, then, in practice, is our boasted eqality of rights? If these abuses are not to be corrected, if these legalized robberies are not to terminate, if the vampire grasp, of bank aristocracy is to remain fastened upon us, then was William Pitt right when he said, "let the Americans go into their banking system, and their boasted independence will be but a phantom." To the total loss of the forty-three millions, is to be added all the losses, all the sacrifices, all the distress and misery, incalculable in amount, consequent upon the individual bankruptcies caused by the failure of the banks. These banks were chiefs in the money mart, and carried down thousands in their train.

In the year 1815, there were two hundred and eight banks, in the United States, with a capital of eighty-one millions, In 1816, two hundred and forty-six banks, capital eighty-nine millions. In 1820, three hundred and seven banks, capital one hundred and thirty-seven millions, and in 1828, four hundred banks, capital one hundred and seventy-six millions, exclusive of the broken banks. The capital mentioned was but nominal; probably the *real capital* vested was from fifteen to twenty millions. It could be estimated only; it could not be known, except to the initiated. The bill holders, most interested in the fact, were, for the benefit of the bankers, kept in the dark. Since 1828, the increase of banks, and nominal capital, has distanced statistics. From the above data, and the recent ratio of increase, it is a safe estimate to put down the present number of banks at six hundred, with a nominal capital of two hundred and sixty-four millions, and a real capital of twenty-six millions. This estimate of real capital is certainly not too low, having reference to the usual and almost universal practice of creating what is deceptively termed bank capital, by the banks in this country. The common practice is to pay in the first, and sometimes the second instalment of five dollars, on a hundred dollar share. The stockholders then pledge their stock to some neighboring bank for bank promises, which are put into the new bank, as capital, and immediately divided among the bankers or loaned out for their benefit. If two new banks are to be put in operation, about the same time, they, in the kindest feelings imaginable, exchange unrepresented paper promises, and thus the fraudulent issues of each, constitute the capital of the other. Another, and perhaps the most common mode of creating capital is as follows. After paying the first instalment of five dollars, being one twentieth part of a share, the stockholders draw their individual promissory notes, payable to the bank, for the amount of subsequent instalments, and these promissory notes are carefully filed, made up in bundles and stowed away, either in the vault, where the moisture destroys them, or in the attic, where the rats use them up at leasure.

Though in form collectable, these notes are not so in fact, having been executed in fraud of the law—having originated in fraud, which vitiates all contracts, no suit can be sustained upon them. The courts of justice will not give validity to a fraudulent and void instrument. These stock notes were never intended to be paid, and, in fact, never are paid, for the best of all reason, because it is against the interest both of the drawers and

the holders to enforce payment, if it could be done. The drawers are the stockholders in their individual capacities, and the holders are the same persons in their corporate capacity. Upon this false capital, the banks issue paper to double, treble, and sometimes quadruple, the amount of their nominal capital. For this vile trash do we exchange our substantial wealth, the fruits of our toil and labor.

Upon this false foundation, now rests millions of our property, about to slip from our grasp forever, like the beautiful creations of a mid night dream--not like the dream to "evaporate into thin air," but, on our returning vision, to re-appear as substantial wealth of bank speculators, in the form of splendid palaces, and all the countless luxuries of more than European extravagance. They (the bankers and speculators, who are partners in this vile traffic,) receive our property, our flour, our gold, our wool, and all the varied productions of active industry, and they give us their bank bills, which are promises to pay money, which they never expect or intend to pay, which are mere acknowledgments of indepted-ness to us, and, therefore, ought in justice to pay us interest on the amount so long as we hold their obligations. And yet they have the impudence to tell us, "these bills (say they) are just as good for you, and answer all your purposes, just as well as gold and silver coin—call them money, and you shall pay us interest." Thus we are cheated with false signs and tokens, and we pay *them* interest, not upon what we owe them, but upon what they owe us. If, in individual transactions, the creditor should agree to pay interest to his debtor, an apartment in the lunatic asylum would be awarded to such creditor by general acclamation. We do the same thing in our dealings with banks; the only reason why we do not readily discover the folly and absurdity of the practice, is the number of persons engaged in the transaction, and our habit of dignifying worthless rags with the name and attributes of money. "Hence we learn the magic of a name." The monopoly granted, the absence of real capital, and the inducing the creditor, by false pretences, to pay interest to the debtor, are the grand secrets of bank robbery—the talismanic wands by which our earnings are imperceptibly, and without equivalent, swept away—the philosopher's stone, by which the bank alchymists transmute every thing to *their* gold.

Estimating the bills in circulation at fifty per cent more than the nominal capital, and we have three hundred and ninety-six millions of spurious currency now in the hands of the industrious, for which their substantial property has been exchanged. In other words, the banks are indebted to the people three hundred and ninety-six millions of dollars, on which the banks ought to pay interest, according to the universally received opinions of mankind, in relation to individual transactions. But the operatives are actually paying interest to the banks on the same amount, that is to say $23,760,000 annually. These twenty-three millions are annually received by the banks without the colour of right. They have no more right to it, in a moral point of view, than has the highway robber to your purse. They take this amount in the best of times, without any bank failures, without suspensions, without any convulsions in the money market, it is an ordinary and natural consequence of the American banking system. In addition to this, our six hundred banks are now bankrupt, and their notes depreciated ten per cent. It is an insult to

common sense to tell us, that bills retain their par value, and that gold and silver bear a premium. It is another of the syren songs of bank duplicity. Two-thirds, or four hundred of the banks may possibly revive, and eventually redeem a portion of their notes, yet the ten per cent on two hundred and sixty-four millions, amounting to twenty-six millions in round numbers, is already lost to the community, that is to say, to the producer of the necessaries of life. The producer ordinarily sells his surplus productions, so soon as they are fit for market, and when you exchange your wheat for a depreciated bill, you lose the ten per cent, although the bank gains nothing, (except the interest for several years,) for the speculator, who is commonly the banker in his individual capacity, standing between the producer and the corporate institution, pockets the ten per cent, which you lose by depreciation.

With the spurious capital, we have shewn the banks generally to possess, and with the truth partially disclosed by the late convulsions in the money market, it would be almost miraculous if two-thirds of the banks should ever revive; but to be most liberal in my estimates, and allow only one-third of the present banks, with a circulation of one hundred and thirty-two millions, finally to fail, in accordance with former dear bought experience, let us imagine (it is probably but imagination) that these banks will pay twenty-five per cent. of their circulation, and it leaves an item of loss, to the industrious classes, who are best entitled to enjoy wealth, and who have a perfect right, or should have, to the fruits of their own labor, of ninety-nine millions more. Add this to the forty-six millions lost by the broken banks, and the twenty-six millions lost by the depreciation on the late suspension, and you have the enormous sum of one hundred and seventy-one millions, in a period of twenty-six years, insidiously and fraudulently abstracted from its rightful owners and appropriated to the bankers. One hundred and seventy-one millions, besides the interest charged, and paid, on supposed capital, on mere moonshine, gradually increasing, and now amounting annually to twenty-three millions, the total amount of which, I will not stop to calculate.

Sir, in the face of all these facts, the bankers have the assurance to contend that paper is a better medium than gold and silver coin! Truly it is better *for them* by some hundred millions, and in the same amount, it is worse for nine-tenths of the community. We have tried an experiment which many of the early patriots warned us against, and we find ourselves minus several hundred millions. Such, sir, are the results of our paper money banking experiment. Look at these results and then say if you can account for the loud and incessant cry of "Hard times! Hard times!" Say also if you can explain that excessive, agonizing appetite for new banks and more bank capital, which has deceived the ordinary acumen of an intelligent people, and controlled, 'sophisticated or suborned' your legislators?

Although some of the banks may yet prove solvent, yet as connected with the currency, they are absolutely bankrupt, notwithstanding they profess to have acted voluntarily on suspending specie payments. Mr. Biddle says, "if the United States Bank of Pennsylvania had consulted its own strength, it would have continued payments without reserve." If this be true, in regard to this or any other bank, then are such banks

doubly, trebly guilty; inasmuch as the voluntary infliction of an injury is far more culpable than an unavoidable malfeasance. In corroboration of this opinion, permit me to quote the words of a distinguished statesman, a bosom friend of the bankers, and one not liable to prejudice against the paper system.

John Quincy Adams, in allusion to the above declaration of Mr. Biddle, says: "I incline more srtongly to the opinion that the suspension of specie payments, by such a bank, should not only operate as an immediate forfeiture of its charter, but be made a penal offence in the president and directors of that institution. The violation of moral principle, committed by a bank in suspending specie payments, is, in my estimation, not inferior to that of fraudulent bankruptcy in an individual." This opinion of a leading bank advocate will surely be admitted as good authority, by all honest, thoughtless supporters of the banking system. Pennsylvania, although now a leader in the bank mania, was not the first or among the first, either before or after the adoption of the federal constitution, to adopt this ruinous policy, but in both instances waited till she was forced into it, in self-defence, surrounded as she was by the paper issues of other states.

Massachusetts issued paper money in 1690, which underwent a regular depreciation. South Carolina established a bank and issued paper in 1712 with a like result. Pennsylvania issued paper money in 1723, which was loaned on real security, and on the security of plate deposited in bank. This paper was made a legal tender under the sanction of penal enactments, and yet its minimum depreciation was eleven per cent.

New York, New Jersey and North Carolina all tried the experiment of a paper currency, previously to the revolution, and all with the same results. The paper depreciated, the banks and speculators waxed rich, and the people, that is to say the industrious classes, became poor in the same proportion, and raised the cry of hard times.

Virginia issued no paper money till more than a century after Massachusetts set the example. During all that period the people of the "Old Dominion," themselves enjoyed the fruits of honest industry, bankruptcies were unknown except in history, wealth was duly distributed, industry was stimulated to increased exertion, money was abundant; the people were contented and happy "until the destroyer came" in the shape of a spurious currency in 1792.

After the adoption of the constitution, which expressly prohibited the issuing of paper money by the states, Massachusetts was the first to violate this provision, by establishing a bank at Boston, in 1784. She chartered a second in 1792.

New York chartered one in 1784, one in 1792, and another in 1793. Maryland followed suit in 1790, Rhode Island in 1791, South Carolina in 1792, Virginia in the same year. Connecticut chartered three banks, and the district of Columbia one, in 1792.

All these banks were in operation, insidiously withdrawing the specie circulation from Pennsylvania, before she was driven into the measure in 1793; since which time the flood of paper money has continued to rise

until its swelling surges have engulfed a youthful, industrious and vigorous community.

The patriot Snyder exerted all the force of his powerful mind, and all the influence of his official station, to arrest or check its destructive progress. He urged upon the legislature the danger of creating *privileged orders*, vested with rights and immunities, not enjoyed, nor without penalties to be exercised by the great body of the people. Alluding to the privileges of banks to charge a greater interest on loans than others, and those loans not of money or money's worth, but loans of a false credit conferred by an act of assembly—rights and immunities, which, if exercised by the common people, would subject them to prosecution by indictment, to incarceration with thieves and robbers. He urged upon the legislature the notorious fact, that all the nations that have authorized an extensive paper currency, and the experience of our own country, have furnished melancholy examples of the disastrous consequences which flow from such a system. He stated his fears "that if the bill should become a law, it would tend only to enrich the wealthy and the speculator, while it would, in various forms, heap burdens on the poor and industrious." He asked the legislature these questions: "Shall we increase the pressure? Shall we indirectly aid our internal and external enemies to destroy our funds, and embarrass the government, by the creation of forty-one new banks?" He insisted that the "passage of the bill would cause a hoarding of specie and ruinious depreciation of bank notes."

But he urged his reasons, backed by the literal fulfilment of the prophetic warnings of Jefferson and Hamilton, without effect. A monomania had taken possession of public sentiment, a spirit of wild and reckless speculation was pervading all classes; the warnings of common sense, and active patriotism were drowned in the general clamor for more banks, and the universal passion for acquiring wealth without industry. The bill passed by two thirds of each house, and the predictions of Snyder have become history.

The causes of the present derangement of the currency, as well as of all former pressures and panics, will be found in the radical defects and rottenness of the paper system, in the extavagant issues of that medium, and in the reckless, ruinous spirit of speculation, thereby engendered. Banking and speculation beget, foster, and increase each other. Banking stimulates speculation, which in its turn stimulates the desire for more banks. The natural and rational remedy, would be the removal of the cause—the gradual reduction and eventual extinction of bank paper.

The bankers advise an *increase* of paper, the incorporation of another national bank—a prescription just as absurd as that of throwing boiling water on a scalded child, by way of cure. They would have us believe that the expiration of the charter of the late national bank, the removal of the deposits, and the requisition for lawful money in exchange for the public domain, have brought upon us this wide spread ruin and universal distress. This weak and wicked attempt to deceive the people, will not take; careless and listless as we have been on this subject, we are not so ignorant as to be deceived by this silly pretence, for political effect, daily repeated in our ears.

The mammoth bank has been continued, with enlarged powers, as admitted by its president, and what school boy cannot understand that the removal of the governmnet deposits could no more produce general bankruptcy, than the removal of your deposits from the Harrisburg to the Lebanon Bank would cause general bankruptcy in the counties of Lebanon and Dauphin? The later bank would issue as much paper on the strength of your deposits, as would the Harrisburg bank. If A, B and C, neighbours of a rich man, have become insolvent, by extravagant, improvident adventure, how, in the name of common sense, will the ability of these insolvents to pay their debts be affected by their rich neighbour depositing *his* money in one or another of his desks? Again: the same rich man, having been in the habit of exchanging his rye and corn for whiskey, with the distillers, and ascertaining that there would be a scarcity of bread stuffs in the neighbourhood, issues an order to his steward to sell no more grain, unless payment be made in money, or in labour, which is equivalent to money. What lad, who carries our resolutions to the desk, is so ignorant as to believe that this order would produce general insolvency and universal distress all over the country? And yet this order is, in all its analogies, the famous specie circular of the general government. What school boy does not know that overbanking and overtrading have involved us in this wide spread insolvency? This cry of the bankers against the general government, this attempt to charge our difficulties to its measures, is too ridiculously absurd to deceive the most unwary. It is a notorious fact, that the policy of the late administration, by increasing our metallic currency from twenty to about eighty millions, so far from producing, has *delayed* this general insolvency of the banks and the speculators, some two or three years.

There is another allegation of the bankers, which *is* generally believed, without examination, and which has deceived the great mass of the people. It is this, "that there is not a sufficient quantity of the precious metals in the world, to answer the purposes of currency." This is false and deceptive, and has had a mischievous influence on public sentiment.

There is now at the least eighty millions of coin in the United States, and more than two hundred millions of gold and silver metal, a portion of which has never been coined, and the residue has been melted down, simply because the demand for coin has been superseded by the influx of paper money, all of which will assume or reassume the shape of coin, if a demand for it shall be created by the gradual removal of a paper medium—an amount amply sufficient for all the purposes of legitimate commerce. For the purposes of immoderate and ruinious speculation, it is not our business to provide.

There is gold and silver enough in the cities of London and Paris, if coined, for the commercial purposes of all Europe, and enough in three of our Atlantic cities for all the fair business transactions in the United States. Gold and silver being articles of commerce, and possessing intrinsic value, will naturally, and necessarily, like all other productions of labor, seek the best market.

If the United States would discard paper money, and thereby create a demand for coin, the precious metals would flow in from other countries,

exactly in proportion to the extent of that demand, and thus supply all the exigencies of commerce and currency. If the demand for sugar, rice, or coffee should be multiplied twenty fold, in one year, such demand could not be answered; but if the same increase of demand should gradually arise in a period of twenty years, the supply would keep pace with the demand, and there would be no scarcity of those articles. So in regard to gold—allow the requisite time, and the supply will equal the demand, or there is no truth in the science of political economy.

Of all the popular arguments in favor of paper currency, the most plausable is, "that paper is cheaper than metallic currency." True, it is furnished without industry, but as industry is the only source of wealth, the legitimate deduction would be, therefore, it is worthless. But it is cheaper for the government, that is to say, for the privilege of robbing the people, and exercising a portion of sovereign power, a national bank will transact the fiscal affairs of the government without charge; and, for the same privileges, a state bank will give you a bonus.

These supposed advantages are based upon the false notion, that the people are to become subservient to the interests of the government, whereas the true principle is, that governments are instituted solely for the benefit of the people. Should the large sums belonging to the treasury of the United States now in the banks be eventually lost in this universal bankruptcy, (which probably may happen) our government will find, that of all modes of conducting its fiscal concerns, that by bank agency is most expensive.

The late national bank was chartered under the pretence that it was necessary to restrain or prevent excessive issues of the state banks. It was a total failure. It did not in any degree restrain them, as the amount of their circulation, at the expiration of its charter, incontestably proves. It could not restrain them. It could not even sustain itself, without the support of the national treasury. When that bank expanded, the state banks expanded, when it was forced to contract, the state banks followed suit, and hence the pressures and panics, the sacrifices and sufferings, which were brought upon the people under its malign auspices. Mr. Biddle himself admits that the constant tendency of banks is to over-issues. And over-issues must necessarily be followed by contractions, or insolvency, either of which brings disastrous embarrassments upon the people. The great pressure and panic of 1819 was thus generated by the United States Bank, within eighteen months after its incorporation, when it reduced its circulation in three months and ten days, four and a half millions in four cities, to wit: Philadelphia, Baltimore, Richmond, and Norfolk.

This pressure convulsed the country to its centre, and ruined thousands of the industrious classes. The bank itself was greatly alarmed, in the fear that its weakness should become apparent, and its friends held a meeting to discuss the propriety of petitioning congress to save it from expected bankruptcy, by making its bills a legal tender in payment of debts. The bank, however, saved itself by its violent contractions, and the consequent ruin of vast numbers of the people.

Such was the extreme severity of this pressure, produced by this great regulator of the currency, that all the governors of the states noticed it

in their annual messages, and nearly all the legislatures appointed committees to inquire into its causes. About this time a committee of congress reported that the bank had forfeited its charter, but forty members of congress were stockholders, and the resolution to institute proceedings against it was negatived. It then had more than eight millions of public deposits, and all the aid which government could give. Such, so weak and feeble, was the institution, which we are gravely told was the great balance wheel of our prosperity.

As a necessary consequence of the paper system, alternate expansions and contractions continued during the existence of the United States Bank, and a succession of pressures and panics cruelly punished the industrious classes, for their easy credulity in listening to the sophistry of bankism.

There was a pressure in 1822, followed by the great and distressing pressure of 1825, which was so peculiarly severe, that the friends and directors of the United States Bank discoursed publicly of the expediency of stopping specie payments. The president acknowledged his fears for the fate of the bank, and admitted, that she was saved only by his begging as a special favor, of a New York bank, that it would receive a bill of exchange instead of specie. Had the New York bank been stubborn, the catastrophe of 1837, would, must, have occurred in 1825. Then came the ruinous pressure of 1828, and again the paralizing pressure and panic of 1832, the pressure of 1835–6, and the explosion of 1837, are of course, fresh in the recollection of all.

No less than six severe pressures, during the life, under the auspices of, and originating in the late national bank. With these recorded facts before us, can any man be so perversely mad as to recommend a new national bank as a remedy for existing evils? As, then, it is out of the power of the general government to furnish an adequate remedy, is it not the duty of this convention to prohibit or discourage the incorporation of state banks in all time to come—to forbid the legislature relieving the present banks from the effects of forfeiture, unless upon the condition of immediate resumption of specie payments, and a provision making the private property of stockholders liable for the debts of the corporate institutions.

These charters expire at different periods, and, of course, under a judicious system, paper would *gradually* disappear, and thus create a demand for the constitutional currency; an influx of gold would necessarily occur, and, in a few years, we should be relieved from this paper nuisance—this deepest, direst curse that ever paralized the energies of a nation.

Mr. PURVIANCE moved to amend the amendment, by adding to the end thereof the following words: "in proportion to their stock held therein," which motion was disagreed to.

On motion of Mr. WOODWARD, the committee then rose and reported.

The President having resumed the chair, a motion was made that the committee sit to-morrow.

On this motion Mr. DICKEY called for the yeas and nays, which were ordered, and were—yeas 28, nays 74, as follows:

YEAS—Messrs. Baldwin, Brown, of Philadelphia, Butler, Chauncey, Cleavinger Cochran, Cope, Cunningham, Denny, Doran, Dunlop, Fleming, Foulkrod, Gamble Hastings, Helffenstein, Hopkinson, Ingersoll, Long, Lyons, Martin, M'Cahen, M'Sherry, Merrill, Porter, of Lancaster, Reigart, Scott, Woodward—28.

NAYS—Messrs. Agnew, Ayers, Banks, Barndollar, Bigelow, Bonham, Chambers, Chandler, of Chester, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cline, Cox, Craig, Crain, Crawford, Crum, Cummin, Curll, Darrah, Dickey, Donagan, Donnell, Earle, Fry, Fuller, Gilmore, Grenell, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Houpt, Hyde, Jenks, Keim, Kennedy, Kerr, Konigmacher, Krebs, Maclay, Magee, Mann, M'Call, M'Dowell, Meredith, Merkel, Miller, Montgomery, Overfield, Pennypacker, Pollock, Purviance, Read, Ritter, Russell, Saeger, Scheetz, Sellers, Serrill, Sill. Smith, Smyth, Snively, Stickel, Taggart, Thomas, Weidman, White, Young, Sergeant, *President*—74.

Mr. M'CAHEN moved that the convention adjourn. Lost.

Mr. HIESTER asked leave to make a motion that the convention take a recess until three o'clock.

On this motion Mr. M'DOWELL called for the yeas and nays, which were ordered, and were—yeas 68, nays 31, as follows:

YEAS—Messrs. Ayres, Baldwin, Banks, Bonham, Chandler, of Chester, Clark, of Dauphin, Clarke, of Indiana, Cleavenger, Cline, Cochran, Cox, Craig, Crain, Crawford, Crum, Cunningham, Curll, Darrah, Denny, Donnell, Dunlop, Earle, Fleming, Foulkrod, Fry, Fuller, Gilmore, Hayhurst, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, High, Hopkinson, Hyde, Ingersoll, Jenks, Kennedy, Kerr, Krebs, Long, Lyons, Mann, Martin, M'Call, M'Dowell, M'Sherry, Merrill, Merkel, Miller, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Saeger, Scheetz, Sellers, Serrill, Smith, Smyth Snively, Stickel, Thomas, White, Woodward, Young, Sergeant, *President*—68.

NAYS—Messrs. Agnew, Barndollar, Bigelow, Brown, of Philadelphia, Butler, Clapp, Clarke, of Beaver, Cummin, Dickey, Donagan, Doran, Gamble, Harris, Hastings, Houpt, Keim, Konigmacher, Maclay, Magee, M'Cahen, Meredith, Overfield, Purviance, Reigart, Read, Ritter, Russell, Scott, Taggart, Weidman—31.

So the question was determined in the affirmative.

Mr. HIESTER, then moved that the Convention take a recess until three o'clock.

Mr. DORAN called for the yeas and nays.

The hour of one o'clock having arrived, the convention took the usual recess until three o'clock.

FRIDAY AFTERNOON, NOVEMBER 17, 1837.

Agreeably to leave given,

The convention again resolved itself into a committee of the whole, Mr. REIGART in the chair, on the report of the committee, to whom was referred the seventh article of the constitution:

The pending question being on the amendment of Mr. READ,

Mr. CLARKE, of Indiana, demanded the yeas and nays on the adoption of the same.

Mr. MARTIN, would inquire of the Chair, whether this was intended as an amendment to the fourth section of the seventh article, as reported by the committee?

The CHAIR said, that it was an amendment to the report of the committee on the third section of the seventh article, which report declared it inexpedient to make any amendment to that section.

Mr. MARTIN said, he was scarcely prepared to say any thing; for he did not exactly understand the nature of the amendment, and of the report now before the committee. The committee having reported no amendment to the third section of the article, the subject of corporations would, he should suppose, come up on the report of the minority of the committee, to whom the article had been referred. Of this he was not certain. He merely asked for information, that he might know how the report of the minority of the committee, which was now on our files in relation to corporations, would be affected by this amendment?

The CHAIR said, that the report of the minority of the committee on the seventh article, had not yet been before the committee of the whole.

And the question on the amendment was then taken, and decided in the negative as follows:

YEAS—Messrs. Banks, Bigelow, Bonham, Clapp, Clarke, of Indiana, Crain, Crawford, Cummin, Curll, Darrah, Dillinger, Donagan, Donnell, Fleming, Foulkrod, Fry, Fuller, Gamble, Gilmore, Grenell, Hastings, Hayhurst, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Magee, Mann, Martin, M'Cahen, Miller, Myers, Overfield, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, Smyth, Stickel, Taggart, Weaver, White, Woodward—48.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Chambers, Chandler, of Chester, Chauncey, Clarke, of Beaver, Clark, of Dauphin, Cline, Cochran, Cope, Craig, Crum, Cunningham, Denny, Dickey, Doran, Earle, Farrelly, Forward, Harris, Hays, Helffenstein, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Lyons, Maclay, M'Call, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Reigart, Russell, Saeger, Scott, Serrill, Snively, Thomas, Weidman, Young, Sergeant, *President*—55.

So the amendment was rejected.

After some conversation on a question of order,

A motion was made by Mr. READ, to amend so much of the report of the committee, to whom was referred the seventh article of the con-

stitution, as declares it inexpedient to amend the same, by inserting the following in lieu thereof:

"SECT. 3. No bank shall issue any bill, check, promissary note, or paper credit of a less denomination than ten dollars, nor after the fourth day of July, 1842, of a less denomination than twenty dollars."

Mr. FORWARD said, that it would be a benefit to the members of the convention, if this proposition could be laid on the table, in order that it might be printed. It was a momentous subject, and he was not prepared to act upon it, until farther consideration. It would not, he said, be doing justice either to the subject, to ourselves, or to the people of the commonwealth, to act thus hastily. He would, therefore, move that the committee now rise,

Which motion was agreed to.

And the Convention having risen,

Mr. INGERSOLL moved that the Convention resolve itself into a committee of the whole, on the ninth article of the constitution.

Which motion was rejected, yeas 39, noes 46; and,

On motion of Mr. FRY,

The Convention adjourned.

SATURDAY, NOVEMBER 18, 1837.

Mr. COPE, from the committee of accounts, reported the following resolutions, which were read a second time, considered, and agreed to:

Resolved, That the President draw his warrant on the state treasurer, in favor of Packer, Barrett & Parke, printers of the English Debates, for the sum of three thousand five hundred dollars, to be by them accounted for in the settlement of their accounts.

Resolved, That the President draw his warrant on the state treasurer, in favor of Samuel Shoch, secretary, for the sum of one thousand five hundred dollars, to be accounted for in the settlement of his accounts.

Mr. COPE, from the committee on accounts, made the following report, viz:

That they have had the accounts of the following officers and persons in the service of the convention, under consideration, and find them to be as follows, viz:

Samuel Shoch, secretary, 42 days, at $8 per day, 106 miles at 15 cts. per mile,	$351 90
George L. Fauss, assistant secretary, 42 days, at $7, 132 miles, at 15 cts. per mile,	313 80
Joseph Williams, assistant secretary, 42 days, at $7, 227 miles, at 15 cents per mile,	328 05

James E. Mitchell, sergeant-at-arms, 43 days, at $3 per day, 306 miles, at 15 cents per mile,	174	90
Douglass W. Hyde, assistant sergeant-at-arms, 40 days, at $2 per day, 120 miles, at 15 cents per mile,	98	00
Daniel Eckles, door-keeper, 44 days, at $3 per day, 124 miles, at 15 cents per mile,	150	60
Lawrence Lewis, assistant door-keeper, 41 days, at $2,	82	00
John Shott, do do at $2,	82	00
Jesse Windsor, do do at $2,	82	00
William Bausman, messenger, 17 days, at 75 cents,	12	75
Joseph Montgomery, do do 75 cents,	12	75

The above bills include the whole time from the date at which each person came into the service of the convention, up to the evening of the 24th instant; and the time of the first, second, third, fourth, and sixth named persons, up to the evening of the 27th instant.

Resolved, That the President draw his warrant on the state treasurer, in favor of the above named persons, for the sums set opposite to their respective names.

The resolution was then read a second time, considered, and agreed to.

Mr. EARLE, of Philadelphia county, from the special committee, to whom was referred the resolution on the subject of retrenchment, made the following report, in part, viz:

1. *Resolved*, That all the assistants of the sergeant-at-arms, and the present door-keeper and his assistants, together with the boys employed to attend on the members of the convention, be discharged from and after the twenty-third instant.

2. *Resolved*, That no person or persons be hereafter employed to render any service whatever connected with the convention or its business, except with the approbation of the committee of accounts, and on a memorandum previously furnished to that committee, of the compensation expected by such person or persons.

3. *Resolved*, That no report from any department, nor from any committee of the convention, be inserted in the Journal of Debates, unless by express direction of the convention.

4. *Resolved*, That no motion on any other subject than the alteration of the constitution, nor the debates, nor the yeas and nays thereupon, be inserted in the printed Journal of Debates, except by express direction of the committee on printing.

5. *Resolved*, That when any resolutions, amendment, or petitions shall be ordered to be printed for the use of the convention, the same shall be compactly printed, and all upon the same sheet of paper, so far as may be practicable.

6. *Resolved*, That the yeas and nays in the Journals be printed in close column or paragraph form.

7. *Resolved*, That when the yeas and nays shall be called in convention or committee of the whole, one of the clerks shall call the names, and one or both of the other clerks shall keep the record of the answers.

Mr. EARLE moved the second reading and consideration of these resolutions, and the motion being agreed to, the first resolution was read a second time.

On motion of Mr. EARLE, the first resolution was modified so as to strike out the words "twenty-third," and substitute in lieu thereof, the words "twenty-fourth;" and, after some conversation, the first resolution, as modified, was agreed to.

The second resolution being under consideration,

Mr. COX, of Somerset, moved to amend the same, by striking therefrom the words "committee of accounts," and inserting in lieu thereof, the

words, "select committee appointed to make arrangements for the accommodation of the convention in the city of Philadelphia."

After a few words from Mr. M'SHERRY, of Adams, in opposition to the change, the question was put, and the amendment was rejected, and the resolution was agreed to.

The third resolution was then considered and agreed to.

The fourth resolution being under consideration, Mr. EARLE called the yeas and nays on the question of its adoption, and they were ordered.

[A brief conversation here took place on the propriety and impropriety of suppressing any part of the proceedings or debates, or of interfering with the stenographer in the discharge of his duties.]

Mr. HASTINGS, of Jefferson county, moved to amend the resolution, by striking therefrom all after the word "Resolved," and inserting in lieu thereof, the following words, viz: "That the committee on printing be instructed to inquire into the cause of the delay in printing the journals and minutes of the convention, and report to the convention."

Mr. MARTIN, of Philadelphia county, moved to postpone the farther consideration of the amendment, together with the resolution, indefinitely.

After a few remarks by Messrs. SHELLITO, CURLL, CUNNINGHAM, and MANN,

Mr. EARLE called for the yeas and nays on the motion to postpone, which were ordered, and were, yeas 66, nays 36, as follow:

YEAS—Messrs. Ayres, Baldwin, Barndollar, Bonham, Brown, of Northampton, Chambers, Chandler, of Chester, Chauncey, Clapp, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cope, Cox, Craig, Crain, Crawford, Dickey, Dickerson, Donagan, Donnell, Doran, Dunlop, Farrelly, Fleming, Foulkrod, Gilmore, Hamlin, Harris, Hays, Henderson, of Allegheny, Hopkinson, Houpt, Hyde, Ingersoll, Jenks, Keim, Kennedy, Long, Lyons, Magee, Mann, Martin, M'Dowell, Meredith, Merrill, Merkel, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Russell, Saeger, Schectz, Scott, Seltzer, Serrill, Shellito, Sill, Smith, Snively, Stickel, Taggart, Weaver, Weidman, Sergeant, *President*—66.

NAYS—Messrs. Banks, Brown, of Lancaster, Brown, of Philadelphia, Butler, Clarke, of Beaver, Cochran, Cunningham, Curll, Darrah, Denny, Dillinger, Earle, Forward, Fry, Fuller, Gamble, Hastings, Hayhurst, Hiester, High, Kerr, Konigmacher, Krebs, Maclay, M'Cahen, M'Call, M'Sherry, Montgomery, Myers, Overfield, Read, Ritter, Sellers, Smyth, Thomas, White—36.

So the motion to postpone indefinitely, was determined in the affirmative.

The convention then proceeded to the consideration of the fifth resolution, and after some few remarks, by Messrs. MEREDITH, EARLE, MERRILL, and CURLL, it was disagreed to without a division.

The convention took up the sixth resolution.

After a few remarks by Messrs. MEREDITH and INGERSOLL,

Mr. EARLE moved to amend the resolution, by providing that the yeas and nays should be printed in four columns.

Mr. INGERSOLL, thereupon, moved the indefinite postponement of this resolution; which motion was agreed to without a division.

The convention next took up the seventh resolution.

Mr. MERRILL, after a few remarks, moved its indefinite postponement.

After a few remarks by Messrs. EARLE, MERRILL, and HIESTER,

Mr. MERRILL withdrew the motion to postpone indefinitely, and moved to amend the resolution, by providing that no member's name shall be called twice.

Mr. M'CAHEN then renewed the motion to postpone indefinitely, which was agreed to.

A motion was made by Mr. MEREDITH, seconded by Mr. DICKEY, to reconsider the vote, given this morning, on the second of the said series of resolutions, which is as follows, viz:

"2. *Resolved*, That no person or persons be hereafter employed to render any service whatever, connected with the convention or its business, except with the approbation of the committee of account, and on a memorandum previously furnished to that committee, of the compensation expected by such person or persons."

Which motion was agreed to; yeas 58, noes not counted.

And the resolution being again under consideration,

A motion was made by Mr. MEREDITH,

To amend the resolution by inserting after the word "persons," where it first occurs, the words "except those who have been, or may be, elected by the convention."

Which amendment was agreed to.

And the resolution, as amended, was adopted.

A motion was made by Mr. PORTER, of Northampton, seconded by Mr. COX,

That the convention reconsider the vote, given this morning, on the third resolution, which is as follows, viz:

"3. *Resolved*, That no report from any department, nor from any committee of the convention, be inserted in the Journal of Debates, unless by express direction of the convention."

Which motion, after some discussion, was agreed to.

And the said resolution being again under consideration,

A motion was made by Mr. PORTER, of Northampton, to postpone the farther consideration thereof indefinitely.

And on the question,

Will the convention agree so to postpone?

The yeas and nays were required by Mr. EARLE and Mr. FRY, and are as follow, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Bonham, Brown, of Lancaster, Brown, of Northampton, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Clarke, of Indiana, Cleavinger, Cochran, Cope, Cox, Craig, Crain, Darrah, Dickey, Dickerson, Donagan, Donnell, Dunlop, Farrelly, Fleming, Foulkrod, Fuller, Gilmore, Harris, Hastings, Hays, Helffenstein, Henderson, of Allegheny, High, Hopkinson, Houpt, Hyde, Jenks, Keim, Kennedy, Kerr, Lyons, Magee, M'Cahen, M'Dowell, M'Sherry, Meredith, Merrill, Myers, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Russell, Saeger, Scheetz, Scott, Serrill, Smyth, Snively, Stickel, Taggart, Thomas, Weidman, White, Sergeant, *President*—72.

NAYS—Messrs. Crawford, Cunningham, Curll, Denny, Dillinger, Earle, Fry, Hayhurst, Hiester, Ingersoll, Krebs, Maclay, Mann, M'Call, Merkel, Montgomery, Overfield, Read, Ritter, Sellers, Shellito, Sill, Smith, Young—24.

So the resolution was indefinitely postponed.

On leave given,

Mr. HAYHURST, from the committee on accounts, reported the following resolution, viz:

"*Resolved*, That the President draw his warrant on the state treasurer, in favor of James Wright, librarian, for the sum of seventy-six dollars, in full for his services for thirty-eight days, during the present session of the convention, at two dollars per day."

And on motion of Mr. H., the said resolution was read the second time, considered and adopted.

A motion was made by Mr. M'CAHEN, that the convention proceed to the second reading and consideration of the resolution read on the 10th of May last, in the words following, viz:

Resolved, That a select committee, of ——— persons, be appointed to inquire, and report to the convention, whether the people of this commonwealth, by a legislative enactment, or by a provision in their new constitution, can repeal, alter, or modify an act of assembly of this commonwealth, entitled "An act to repeal the state tax on real and personal property, and to continue and extend the improvements of the state by rail-roads and canals, and to charter a state bank to be called the United States Bank," passed the eighteenth day of February, A. D. eighteen hundred and thirty-six; and if the people have such power, whether it would be proper and expedient to repeal, alter, or modify that act, or any part thereof; and in what way, and on what terms, the same should be done.

And on the question,

Will the convention agree to the motion to consider?

The yeas and nays were required by Mr. M'CAHEN and Mr. DENNY, and are as follow, viz:

YEAS—Messrs. Banks, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Beaver, Clarke, of Indiana, Cleavinger, Crain, Crawford, Curll, Darrah, Dickerson, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gamble, Gilmore, Harris, Hastings, Hayhurst, Helffenstein, High, Hyde, Ingersoll, Keim, Kennedy, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Myers, Overfield, Porter, of Northampton, Read, Ritter, Scheetz, Sellers, Shellito, Smith, Smyth, Stickel, Taggart, Weaver, White—53.

NAYS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Brown, of Lancaster, Chambers, Chandler, of Chester, Chauncey, Clapp, Clark, of Dauphin, Cochran, Cope Cox, Craig, Cunningham, Denny, Dickey, Forward, Hays, Henderson, of Allegheny, Hiester, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Weidman, Young, Sergeant, *President*—50.

So the motion was agreed to.

And the said resolution being under consideration,

A motion was made by Mr. SCOTT, to postpone the farther consideration of the resolution, until the fifth day of December next.

Mr. S. said, that before the question was taken on his motion, he desired to call to the recollection of the members of the convention, the fact that this resolution had been on the files of the house ever since the 10th of May last. It was now called up for consideration, not by the gentleman by whom it had been originally submitted, (Mr. Doran) nor, as it seemed, by his consent or approbation, but by another gentleman who, it was to be presumed, ought not to be regarded as having the

care of it. It was called up, too, at a time when nearly one fourth of the members of the convention were absent from their seats—and at a time when they had gone to their respective homes for the purpose of making the necessary arrangements previous to proceeding to the city of Philadelphia.

It was called up, therefore, at a time when it was not possible that it could be fairly considered, calmly discussed, or properly passed upon. He apprehended that it could not be the desire of any member of this body, under these circumstances, to proceed to a discussion of such a character as that which must arise on this resolution; and that it would be apparent that the motion which he had made for postponement, was the motion which common sense would dictate.

Mr. DORAN, of Philadelphia county, desired to explain. The resolution had been called up without his consent, approbation or knowledge.

Mr. SCOTT resumed. I have so stated, Mr. President; and the gentleman from the county of Philadelphia, (Mr. Doran) will do me favor to recollect, that I presented this very fact as one of the peculiarities of the transaction in which we are now engaged—that is to say, that the gentleman who is the offerer of the resolution did not call it up, but that it was called up by another gentleman, not the author of it. I address myself to the sense of fairness and justice of every member here present; and I would ask whether, when we are to legislate not upon ordinary subjects, but upon a grave and a great matter of public interest, is it right, is it proper, is it just, nay, sir, is it honorable, that a body of men gathered together for such high purposes as those for which we are assembled, to consider a matter at all in an attitude to which no other term than that of surprise can be properly applied? He would put it to men of all parties, of all sentiments, and of all feelings, to say whether they were willing to proceed to the consideration of this, or any other resolution, under such circumstances as these? Did the gentleman from the county of Philadelphia, (Mr. M'Cahen) who had called up this resolution at this improper and unseasonable time, suppose that the debate which must arise upon it could be concluded in a day, or even in the successive day? Or on the day succeeding that? The gentleman knew but little of the grave importance of the subject, if he thought it could be thus lightly disposed of. Or, did the gentleman flatter himself that it could be treated as it ought to be treated, between this time and the period fixed for the adjournment of this body, to meet in the city of Philadelphia? If he did so, he was seriously mistaken. It would be impossible to enter into the consideration of a question which had reference, not merely to the particular institution designated in the resolution, but to the great question of all charters and their sanctity—a question involving the tenure by which we all held our estates and titles to land—which involved our rights of property, real as well as personal—it would be impossible that such a subject could be regarded as it ought to be regarded, if taken under these circumstances and at this time. He begged gentlemen to reflect upon the fact that, when this body was full and its members were not scattered over the state as they are at the present time, the consideration of this resolution had been more than once asked for, not, indeed, by a positive motion to bring it up; but the gentleman who pre-

pared it, had more than once been asked if it was his intention to call it up. Every opportunity, therefore, for a full investigation of the subject-matter of the resolution had been given at the preceding session. The gentlemen who, according to all parliamentary usage, had the right to call up the resolution, had had the inquiry several times put to him, whether he designed to bring it up for discussion, and he had not thought proper to do so. Under these circumstances, he (Mr. S.) was of opinion that it would be a stain upon the character of this body, if it were to suffer itself to be driven into the consideration of this resolution at the present time. He hoped the motion to postpone would prevail.

Mr. M'CAHEN, of Philadelphia county, said, that he thought a little farther reflection would satisfy the gentleman from the city of Philadelphia, (Mr. Scott) that his argument was not sufficiently well grounded to authorize the convention to postpone the consideration of the resolution. What had this convention to do with the private arrangements of its members? If they had thought proper to return home, and to leave their duties here to be performed by any one who happened to remain, with them must rest the consequences. If any error occurs—if any measure is adopted in their absence which they may regret, they could have none to blame but themselves. He apprehended, however, that even if the consideration of the resolution should be postponed until the twenty-ninth instant, the attendance of the members would not be more numerous than it was at the present time. It was probable, indeed, that the members from the city and county of Philadelphia might be present; but, as regarded the attendance of gentlemen from other parts of the state, he did not expect they would be much better off than they were now.

The gentleman from the city of Philadelphia, had stated, that he (Mr. M.) had brought up this resolution without the consent or knowledge of its author; and his (Mr. M's.) colleague had also made a similar statement. He found, however, on reference to the list of yeas and nays, that his colleage had recorded his name in favor of the second reading and consideration of the resolution. He had, therefore, yielded his assent.

The argument which had been made use of by the gentleman from the city of Philadelphia, that the resolution had been on the files of the house since the tenth day of May, furnished in itself a strong reason in favor of its consideration at this time. He (Mr. M.) was surprised, that the attention of the convention had not been traced to it long before this. His object, however, in calling it up at this time, was not that it might be discussed, but that a select committee might be appointed to report upon it. The convention would then be in possession of all the facts and arguments, and could discuss them at leisure. He apprehended, also, that his colleague who offered the resolution, would be found ready and willing to see the resolution brought forward at this time, to sustain it with all his energy, and that he would not thank the gentleman from the city of Philadelphia, (Mr. Scott) for the spirit of interference which he had manifested between him and his proposition. He hoped that the motion to postpone would be rejected, and that the resolution would be agreed to.

Mr. CLARKE, of Indiana, said, he hoped that the postponement would not take place. He did not think that there was much force in the argu-

ment of the gentleman from the city of Philadelphia, (Mr. Scott) that the convention should not proceed to the consideration of this resolution at the present time, because, it had not been called up by the gentleman who had originally prepared it. If a member of this body, brought any proposition before its notice, it was to be taken for granted that he was serious in calling attention to it, and when that proposition had been printed at the public expense and laid on the files of the house, every member had the right to call it up, if the original mover, for some reason known to himself, should not think proper so to do. No man could have any ground to consider himself aggrieved at this course; because the resolution or proposition, having once come into the possession of the house, became the property of the house, and subject as such to be disposed of at any time.

From the vote which had just been taken, it appeared that the resolution was called up by a majority of the members, and why should it not now be acted on? The gentleman from the city of Philadelphia, deprecated action at the present time, because, so many members were absent from their seats. On a vote taken this morning, there were found recorded the names of one hundred and two delegates present; and this was almost as large a number as had been in their seats for the last two weeks. He could see no reason, therefore, why the resolution should not now be taken up and disposed of. It provided simply for the appointment of a committee of inquiry; and these committees were generally appointed on propositions of this kind, even if their appointment was no more than a matter of courtesy.

The committee would make a report to the convention, and they would be put in possession of the views entertained on both sides of this interesting question. Suppose that gentlemen choose to leave their seats, to go home, and to neglect their business here, was that any reason why the hundred delegates who were left, should abandon the public business, or why the consideration of the many important matters pending before this body, should be postponed until some future day, when, perchance, there might be a more full attendance? If they were to act on this principle, the labors of the convention could never be brought to a close. No such courtesy as that pleaded for here, was extended, when the bill to which this resolution had reference, was passed into a law. He happened to have been present in the galleries at that time; a mere "looker on here in Vienna." He well remembered that no such courtesy was shown, and that every effort that was made to procure a little delay in the passage of that law, until the people of the commonwealth should know what was going on in their legislative halls, was voted down in both houses. The cry then was, get the bill through—lose no time, but get the bill through; and, if the people are dissatisfied with our action to day, they will have an opportunity to express that opinion, and to act hereafter through their representatives. All the gentlemen who were here at that time, knew the truth of this statement. And yet, when that bill was passed under such circumstances and in such haste, we were now asked to postpone the consideration of this resolution, till certain members return from visits to their families, so that, peradventure when they arrive here, a majority may be found to vote against the inquiry. If but a few weeks had been given to the citizens of Pennsylvania, to speak out their sentiments, the bill would never have been passed.

They would have put it down with a voice of thunder; and it was now too late to talk of courtesy.

He, therefore, hoped that the resolution would not be postponed, and that a committee would be appointed to report in reference to our action at some future day; at which time, he trusted the convention would be full, and that a majority of it would do what was right. But, as to postponing the consideration of the resolution out of courtesy to absent members, he could not give his consent.

Mr. PORTER, of Northampton, considered this a very important subject, and wished to know whether the resolution was not disposed of at an early period of the labors of the convention—whether it was not included in the reference of all resolutions which merely proposed inquiries, to the respective committees? He had just voted for the second reading of the resolution, and he would not have done so, had any good reason been assigned to the contrary. He, for one, was prepared to take his share of the responsibility, in voting for the resolution. It was due to the character of the state and the people of Pennsylvania, that this important question should be at once settled, and that, for the future, there should be no doubt resting on their minds. He was exceedingly anxious that this vexed question should be set at rest. He, therefore, hoped that the committee would report at large, and at an early day.

Mr. FULLER, of Fayette, said he was opposed to the postponement of the resolution; and for the reasons adduced for the adoption of that course. The delegate from the city of Philadelphia, (Mr. Scott) had adverted to various circumstances, and among others, to the absence of several members, as a reason why the resolution ought not now to be acted on. Why, there were more than one hundred members present to day; and on the 29th instant it was not probable there would be that number. Many gentlemen who had returned home on a visit to their families, at a distance of two or three hundred miles, could not be expected to be in the convention on the 29th, and probably would not be there for several days afterwards. Then, why not, without farther delay, have this committee appointed to inquire and report on one of the most important subjects that this convention could decide upon, as was admitted by the gentleman himself. The speedy decision of the question was of vital consequence, not only as concerned bank charters, but also vested rights of property—all of which were at stake. Why should the gentleman object to the appointment of this committee? He (Mr. F.) thought the strongest reasons existed, why the committee should be appointed without delay, and be one of the most intelligent that could be raised. He had full confidence in the president of the convention, and doubted not that he would make a fair and judicious selection of members to compose the committee. Would any gentleman say that this was not a subject which was worthy of being inquired into? He thought they would not. In answer to the objection taken, that the gentleman from the county of Philadelphia, (Mr. M'Cahen) ought not to have called up the resolution, for the reason that he was not the author of it, he (Mr. Fuller) would say, that when a resolution was put on the files of this convention, it did not belong to any gentleman in particular—it belonged to all, and any member was at liberty to call for its consideration. The gentleman who offered it, voted

for it and did his best to sustain it. He maintained that it was the duty of every member to sustain it.

Mr. REIGART, of Lancaster, said the question was on the postponement of the resolution till the 29th instant.

Mr. SCOTT modified his motion to postpone from the 29th instant, to the 5th December next.

Mr. REIGART would say a few words in reply to what had fallen from the gentleman from Indiana, (Mr. Clarke) who, he conceived, had misapprehended the question now before the convention. He asked no courtesy from the gentleman, because he knew that he should receive none. The delegate had said that the charter of the bank of the United States, was passed with indecent haste. How did he know it? Did he participate in the proceedings of the legislature that passed the bill? And, did it become a member of this convention, to rise in his place and asperse the legislature? Shall it be said, that there was no member of this convention, who dared to vindicate the conduct of the legislature? Although he was not a member of that body, yet he would not stand by and hear it arraigned, as it had been, without one particle of proof being brought forward against it. We asked no courtesy of that gentleman nor any other, who might feel disposed to asperse and speak disparagingly of the legislature. We were prepared now to meet him upon this question. He desired to know why the gentleman, (Mr. Clarke) pressed the resolution at this particular time? Was it not because he found the radicals of the convention in a majority, owing to the absence of a great number of delegates? That was the true ground. "No," says the gentleman, "if members will go home, let them take the responsibility. Let us act on the resolution at once." The gentleman from Fayette, (Mr. Fuller) said that there was no good reason for postponing it. He (Mr. R.) had no doubt there was not in the mind of that gentleman, because he knew full well that he could command a majority. And, the gentleman had the modesty to tell the president of this convention, that he had the utmost confidence in him; and said also, in so many words, that he knew he would appoint such members on the committee, as would report in favor of the resolution. He (Mr. R.) hoped that gentlemen would now vote on this matter, and meet the advocates of this resolution on their own ground. He apprehended that there was sufficient integrity in this body, to vote the resolution down now, and forever.

Mr. BROWN, of Philadelphia county, said he did not intend to go into an argument of any length. The question now pending, was merely on the reference of a resolution to a committee, with a view to the future action of the convention; and, therefore, it was not necessary, at this stage of the business, to involve ourselves in a protracted debate. If, however, it was the disposition of the body, he had no doubt that every gentleman was prepared to discuss and maintain that course of proceeding, which he believed to be right and politic. He believed that many good reasons could be alledged, why this resolution should not be postponed, but acted upon at this time. If some gentlemen here were desirous to create agitation and debate, why, the few days that we had left could be as well devoted to discussing this matter, as any other. It was known that we were now nearly through the first reading of the articles, and that when in committee of the whole last, we had under consider-

ation an article relating to corporations, of which the subject of this resolution formed a part. Then what, he asked, could be more opportune, than to act on the resolution at this time? as it was necessary that the committee to whom it would be referred, should report before we got to a second reading.

The gentleman from Lancaster, (Mr. Reigart) said the motion to refer this resolution to a committee, would be voted down. He thought the gentleman would be mistaken, if he supposed that all the friends of the bank of the United States would oppose it. He (Mr. B.) believed that he had lately seen, in a letter from Mr. Biddle to Mr. Adams, an intimation that in regard to the bank of the United States, the action of the convention would be necessary, and that it would be taken, and that it should not be evaded, but met. The friends of the bank of the United States, here, then, had not the sanction of the friends of that institution elsewhere, to oppose the introduction of the subject in this convention. The delegate from the city, (Mr. Scott) had complained that the gentleman who called up this resolution, had no right to do it. He (Mr. B.) denied the assertion, and agreed with the remarks that had fallen from the gentleman from Fayette, (Mr. Fuller) that a resolution, when put on the files of the convention, might be called up by any member of the body. The convention had now only a few days more to sit in Harrisburg, and if the subject was to be touched at all, it was only right that the incipient course of action should be adopted, viz: by the appointment of a committee. The delegate from the city, (Mr. Scott) had spoken of the property and other interests which were at stake, and of the danger of unsettling them. This was an argument, which only went to show the necessity of settling the question at once. But, should the resolution be negatived, as the gentleman from Lancaster thought it would, why, then, there would be an end of it. He imagined, however, that the delegate would find himself mistaken. The gentleman had taken the delegate from Indiana, (Mr. Clarke) to task, for insinuating that the bank bill was passed with indecent haste. That was a matter of opinion. He (Mr. B.) had the authority of a gentleman, who was a member of the legislature at the time, for saying that the bill was only partly read. The gentleman, to whom he alluded, was now on this floor.

Mr. DENNY, of Allegheny, called for all the facts.

Mr. COX, of Somerset, denied the correctness of the facts as related, and wished to know who the gentleman referred to was.

Mr. BROWN replied—the gentleman behind me.

Mr. GAMBLE, of Lycoming, then immediately rose and said, "I am the man."

Mr. M'CAHEN called the gentleman from the county of Philadelphia, (Mr. Brown) to order.

The CHAIR called to order.

Mr. BROWN hoped the resolution would be adopted, and that a committee would be appointed to inquire, whether it was not necessary to make some constitutional provision in relation to the subjects embraced in the resolution. He hoped that the committee would examine and consider the matters referred to them, with the care and attention to which they were entitled, and be enabled to report at an early day, when the

convention could take up their report, and dispose of it according to its wisdom and judgment. He, for his part, would rest satisfied with the decision to which this body might come, let it be what it might.

Mr. M'CAHEN said there were only two or three members absent, and that, in all probability, if they had been present, they would have voted for the resolution. The gentleman from Lancaster, (Mr. Reigart) had said that the opportunity had been taken by gentlemen—by the radicals here, who found themselves in a majority, to call up the resolution. He hoped the gentleman would acquit him of any design to take advantage of the absence of members.

Mr. REIGART replied, that when the yeas and nays were called, it appeared so.

Mr. M'CAHEN was desirous to prevent the least reproach from being cast on Philadelphia, or from an erroneous impression going abroad.

Mr. DENNY, of Allegheny, said that he was surprised when he heard the gentleman, (Mr. M'Cahen) move to take up the resolution. He was not free from suspicion in regard to that movement. We knew there had been many caucuses held lately, and he thought that this might be one of the measures determined there.

Mr. M'CAHEN said that no such thing had come to his knowledge.

Mr. DENNY observed, that these were the suspicions which crossed his mind. The ingenuity of the gentleman, (Mr. M'Cahen) had discovered there was a majority present in favor of the resolution, and therefore he had confidence enough to call up the resolution for consideration. The delegate from the county of Philadelphia, (Mr. Brown) averred that the convention were as ready to act on the subject now, as it would be at any other time. If a committee were, at this time, to be appointed, they would make a report before we adjourned. And, should it be favorable, we would have to agree to it, under the screws. The previous question would be sprung upon us, and we should be deprived of an opportunity of duly considering the grave questions involved in the resolution. Now, he would ask if the convention was prepared to act upon a resolution which, in its consequences, might affect millions of property, and the interest of the great mass of the community. He had always supposed the gentleman from Indiana, (Mr. Clarke) possessed that share of courtesy, at least, which would have prevented him from alluding to the proceedings of another body, and making them the basis of action for this convention. He had said that the legislature passed the bank bill with indecent haste, and that therefore, he (Mr. D.) supposed, the convention would disgrace itself by hurrying the resolution, now under consideration, to its adoption! The gentleman's argument was, that the legislature acted with indecent haste; and, from the anxiety manifested by him, it would seem as though he desired this body to do the same thing. This course of proceeding might meet the approbation of the gentleman's constituents; but it would not meet the approval of the constituents of members generally. He did not think that any member of this convention, had a right to get up here, and arraign the conduct of the legislature. He had examined the journal, and found that the bill went through both houses—was gravely discussed, and amended, and afterwards received the governor's assent. He (Mr. D.) denied that there was the slightest

foundation for the charge, that the bill had been indecently carried through. "The party" would do justice to those who were aspersed, when their aspersions would be forgotten. It was very true, as had been said by the delegate from the county of Philadelphia, (Mr. Brown) that the conservatives would have voted in favor of considering the resolution, if they could have done so advantageously. But, the fact was, (said Mr. D.) they thought that this important resolution, in which was involved the interests of thousands, and which was calculated to affect the credit of banking and other institutions, and even of the commonwealth itself, had better not be acted on at this time. He hoped, then, that a due regard to the rights and interests of individuals, would induce the convention to postpone the consideration of the resolution.

Mr. MARTIN, of Philadelphia county, said that the appearance of the resolution corresponded exactly with its real character. It was to inquire and report to the convention certain things. Now, he was at a loss to see in what respect a committee of inquiry was objectionable. The gentleman from Allegheny, (Mr. Denny) feared that if a committee was appointed, they would report forthwith. The delegate's fears outrun his judgment. He could assure him, that such a hasty course of proceeding, would not meet his (Mr. M's.) support.

The gentleman from Lancaster, (Mr. Reigart) objected to acting on the resolution, at this time, because there was a majority of members, called radicals, present. He (Mr. M.) however, did not consider himself one of that class. He had always denied the charge, and should continue to do so, until he ascertained what was the proper meaning of the word. The gentleman said it was all a mistake as to their having been any indecent haste, in passing the bill chartering the Pennsylvania Bank of the United States—that it was deliberately passed. If so, the gentleman ought to join those who had shown themselves desirous for an investigation. There was something in the charter that required investigation. The bill was not entitled, a bill to charter a bank of the United States, as a bank of Pennsylvania. He was not in the legislature at the time. All that he knew about the matter, was from hearsay, except as to the title, which authorizes the charter under a different name. He thought there was nothing to be feared from an investigation. Those who knew the charter to have been fairly obtained, ought not to object to the appointment of a committee. No good reason could be assigned, why we should not investigate the subject. He did not think it necessary to go into much argument. But what, he asked, was to be gained by postponement, when it was recollected that it had been on our tables so long, and the attention of members and the people of the commonwealth, generally, had been turned to it? The resolution appeared in all the papers a month ago. He trusted that the convention would agree, at once, to the resolution, and that a committee would be appointed. If this had been done weeks ago, we should have had a report on the subject from the committee, before this time.

Mr. MERRILL, of Union, said there was one fact which would induce him to vote for a postponement, and that was, that the gentleman who introduced the resolution, had changed his mind in relation to it, and intended to offer an amendment in committee of the whole.

Mr. FLEMING, of Lycoming, called the gentleman from Union to order, on the ground, that he had no right to allude to anything which was not immediately before the convention.

The CHAIR (Mr. Chambers) ruled that the gentleman was not out of order, for intimating what would be done.

Mr. MERRILL proceeded: He knew that the gentleman (Mr. Doran) intended to bring forward his amendment in the committee of the whole; and he (Mr. M.) had no objection to meet it there. The delegate had shown him the amendment he intended to propose to the seventh article; and, he (Mr. Merrill) supposed that when this question came up, it would be as well discussed in that way as in any other. He must say that he did not think it exactly courteous for one gentleman to take a resolution, which belonged to another, out of his hands. The author was certainly more entitled to have the control of it. The object of the resolution, as he understood it, was to institute an inquiry as to how we should hold all our property. He thought that the appointment of a special committee, presupposed that something was wrong; it looked as if a preconceived opinion was entertained, in regard to the existence of a certain state of things. He was altogether in favor of acting on the gentleman's amendment in committee of the whole, instead of on the resolution at this time, as was proposed. He believed that this course would meet the approbation of the convention. If the resolution was to be taken up now, and the gentleman was to offer his amendment also, we might be discussing it both in committee and in the convention for some time. He thought it would be better to postpone the resolution. As he had voted against taking it up, he should be in favor of postponing. He did not think there was any disposition on the part of any gentleman to avoid meeting the subject. He conceived it to be a matter of some importance that the proposition should be regularly discussed. The gentleman from the county of Philadelphia, (Mr. Doran) had evinced a desire to adopt a course that was perfectly fair and legitimate, and he (Mr. M.) thought it only right that he should be indulged in his wish.

Mr. COX of Somerset, would like to see the question brought up, in some shape or other, though he did not desire to have the resolution adopted now, as there was so many members absent, who would wish to participate in the discussion. As he had just observed, he should like to see the subject come up, in order that we might have an opportunity of seeing who would vote for destroying vested rights. This was what he wanted to see. He wanted the question to be taken by yeas and nays, so that the people might see who were in favor of preserving vested rights, and who against them. He was sorry there were not more matters embraced in the resolution; whether a farmer, who has a warrant or patent for his land, could hold it any longer than the commonwealth might choose to permit him? And, whether the commonwealth could not get it back again, and confer it on another? He desired that the people should know clearly and explicitly, whether or not they could hold all that was granted them by law. He hoped that the subject would be taken up and decided by the convention, before its final adjournment. He thought it was due to every man—to every citizen—to the character of the commonwealth, and to every other state in the Union, to know the fact, that whatever was conferred on a man by law, could not be taken

from him. We had been told, that the bill chartering the Pennsylvania Bank of the United States, was passed with indecent haste. Now, that might be a matter of opinion. He knew that there were some persons who considered every thing indecently done, that was not done precisely in their own particular way and manner. This was, perhaps, the opinion of the gentleman from Indiana, (Mr. Clarke) but others thought differently. This practice of making charges against public men, acting under the obligation of an oath, or throwing out insinuations as to the propriety of their conduct, had become too common, and ought to be discountenanced. If men, who are elected as representatives of the people, and notwithstanding that they do the best they can, are to have charges made against them of this character, who, he would be glad to know, would be got to fill the public offices. If he understood what the gentleman from the county of Philadelphia, (Mr. Brown) had said, it was this: that the gentleman from Lycoming, (Mr. Gamble) had declared that the bank bill was not read in committee of the whole, and that he had not seen it.

Mr. Brown explained: That was not exactly what he stated. It was, that only a portion of the bill was reported to the house; and the gentleman who reported it, said the other part was in his room.

Mr. Cox replied, that if the gentleman from Lycoming said so, it must be true. He was sure that gentleman would not say anything that he did not believe.

Mr. Brown, of the county, repeated his statement and his conviction that it was true.

Mr. Cox did not apprehend, he said, that the gentleman would say any thing that was not true. He could see no possible necessity for acting on the subject now, and thought it had better be deferred till some day when the convention was better prepared for it. As at present advised, he should vote for the postponement.

Mr. Fleming said, the question was whether we should postpone this subject for the present. He had not heard any sufficient reason in favor of the postponement. A certain committee has been appointed to make inquiries in relation to the matter. Was there any thing wrong in that? It was every gentleman's privilege to look into the subject, if he thought it worthy of consideration, and to bring it before this body. Why, then, all this feeling on the subject? The subject had been brought forward regularly. Both sides could be heard, and the issue could be made up between them as well now as at any time. Was it because their file leader was absent, that gentlemen were so reluctant to touch this question? Did they wish to consult him? Is not every one here prepared to do justice to the question now? He himself was as fully prepared now, as he would ever be. He was ready to do the question ample justice. For what reason was it proposed to postpone this resolution? It is said that there are thirty one members absent; but it is also true that one hundred and two members are present and prepared to go on with business. If we go on the ground of this objection, then we can do no business; and we put it in the power of a few members, who choose to be absent, to obstruct the whole business of the convention. It could not be expected that all the members would be here at any time. He would ask what there was of

so alarming a character in the consideration of a resolution, merely proposing an inquiry on a very important subject. If there was a charge involved in it against some individual, its inquiry would be considered as a matter of right.

Was there any thing so alarming in the consideration of a resolution of inquiry on a very important subject, as to arrest on that account, the proceedings of the convention. The investigation would, in an individual case, be deemed as a matter of right. If there was a charge or even a surmise against himself, he would demand investigation as a matter of course, and the convention could not refuse it to him. But here the charge related to a matter, connected with our public duties, and to a subject of deep interest to all the people of this commonwealth. Must we wait for five years, till we are permitted to enter upon this holy ground? What do we propose to do, to inquire into a matter which has agitated the people of this commonwealth for many years, and to spread before the commonwealth, the facts of the case, with our opinions thereupon. He did not impute any improper motives to any one, but, where there is so much feeling on the subject among some individuals, he was led to suspect something rotten in the state of Denmark. If, however, the opinions on the other side, were perfectly honest, if all in this transaction, could be shown to be perfectly fair, if it was altogether erroneous to suppose that the people had been deceived or maltreated in this matter, then why shall not the facts and opinions to this effect be spread out upon the record. But, if the whole proceeding was characterized by fraud, if it could be proven that it was got up fraudulently and void from the beginning, then the people ought to know it, and have all the facts in regard to it. Gentlemen cannot support their position that, though unconstitutionally obtained, the charter is still binding upon the people, from whom it was thus extorted.

Mr. Cox, asked whether the gentleman went to say that he (Mr. Cox) had asserted that it was binding, though obtained by fraud?

Mr. Fleming replied, that vested rights have been much talked about, as if a charter fraudulently obtained, could vest any rights in any incorporation.

What have vested rights to do with this transaction? It is not intended to shelter the fraud under the sacred obligation of a pretended legislative contract? If so, why is so much said about vested rights. The old bugbear of taking away the title of the lands of the farmer, is brought back upon us. What is this for, but to support and maintain the fraud, if it proves upon investigation, to be a fraud? We are all to be turned out of our possessions, by these rascally democrats. That is the cry which is wrung through the whole commonwealth. Do gentlemen believe that vested rights will really be swept away by the raising of this committee of inquiry? Is this alarm that vested rights are at stake and in danger, to be used as an argument here in support of every fraud and abuse, and against all investigation and inquiry? He was certainly disposed to treat vested rights, wherever he found them with all due respect, but what had we to do with them now? We want the facts: we want the truth; and, upon the truth alone, we want a full report, as the basis of future action. He had no party feeling about this matter, but he wanted an honest inquiry into it.

We might as well go home, if from this enlightened and courteous assembly, we cannot obtain a faithful and impartial inquiry in a matter of such general and pressing moment. It occurred to him that it was a very uncourteous and unusual proceeding on the part of the convention, to hesitate at such a proposition as this. It would not be urged that this was not a suitable place and time for the inquiry; for there would be no better opportunity of getting at the whole truth of the matter, than was now afforded. Here we can give both parties a hearing. We can see what is alleged on both sides. We can give the people of this commonwealth an opportunity to see what is alleged on both sides. Some gentlemen oppose the consideration of the resolution, because they say full justice cannot now be done to it. But cannot we have a full inquiry before we go to Philadelphia. He wished no advantage and did not propose to precipitate the inquiry. He was opposed to any party action—and to hurrying through the investigation.

He did not propose to pattern after the course pursued by the legislature, in their investigation of this matter. He did not wish to go into any hurried examination of so important a matter; but to sit down to a quiet and deliberate investigation of it. Should this inquiry be put aside and thrown out of view, the people will not be satisfied. They look to us for some action on this subject; and he was therefore against the proposed postponement.

Mr. Forward wished he said, to say a word or two upon this matter. He would assure the gentleman from Northampton, and the gentleman from Lycoming, that he had no feeling of a party or personal character to gratify, in relation to this matter. He objected to the consideration of the subject of charters generally, and in relation to this particular charter. Suppose it was an inquiry proposed in reference to a charter obtained by a rail road company, he would in that case have the same objection to the proposition. Sure the gentleman from Lycoming, would not take upon himself the power to break a charter, in any case, unless he found that he was authorized to do it. But this convention had no such authority that he could find. The convention was assembled by the people, and was authorized by them to propose amendments to the constitution of the commonwealth and to submit them to the people thereof. That was the language of the law; and the purpose thus specified, and for no other were we elected.

Then, sir, we are brought here to propose amendments to the constitution, while the people are to determine whether they will accept them or not. But, what is the language of this resolution? It was an inquiry whether the people of this commonwealth by an amendment proposed to the constitution and adopted by them, will repeal or modify an act of the legislature. But this was not competent for the convention to do. He put it to the gentleman from Lycoming, as a lawyer, to say whether, if the convention agreed to annul the bank charter, or to propose its repeal to the people, it would be an "amendment to the constitution," without the meaning and intent of the law. If the people adopted the proposition, would it be "an amendment to the constitution?" What is a constitution. It is the law regulating the organization of the government. The convention, in framing the fundamental law of the government, cannot undertake retrospective legislation; nor go into any inquiry with a view to the

repeal of legislative charters. The resolution proposes to resolve the convention into a common criminal court. To adopt a proposition, repealing a charter, and then to call it an amendment to the constitution, was a mockery of language. It would be declared to be retrospective legislation, not an amendment to the constitution. If we see fit so to amend the constitution as to enable the legislature or any other tribunal to repeal a charter, we can do so. But we cannot, with any regard to decency, strike at the existence of a charter, and then call it an amendment. Let the gentleman stake his legal reputation on such an opinion. He knew too well what is due to his professional standing to do it.

The CHAIR here reminded the gentleman from Allegheny that the question was on the motion to postpone.

Mr. FORWARD said he was giving a reason for postponing any proposition not coming within the power of the convention. The question must come up in some other shape. He could not conceive any object for inquiring into facts. What facts were wanted? Had not the matter been discussed over and over again, in the legislature? Had they not all been spread out in printed reports and extensively circulated at the public expense? The legislature published a document of fifty pages, with demonstrations against the bank and arguments for the bank. But what have we to do with the bank or with any bank. We have just as much to do with one bank as with another; or with any other incorporated company as with a bank. Why should we not arraign some other incorporation, beside the bank? We are sent here to act on specific subjects, not upon speculative subjects, which were not within our competency. On the subject of the executive and the judiciary departments, the convention, reported amendments amply, without any facts or opinions. But on the subject, the committee is required to report facts and arguments, instead of a simple amendment. Why had we not reports at length on the subjects of the legislative, executive, and judicial departments? The convention did not deem it necessary to proceed in that way in reference even to those important subjects. But now it is proposed to have a report upon which nothing new can be said; and an argument which must be met by a counter report, and all this upon a subject having nothing to do with the convention, and its legitimate objects.

Mr. FLEMING said, the gentleman from Allegheny tells us that as this is an idle proposition, that it is not in the province of the convention to act upon it, and that the object in view is an amendment within the meaning of the act calling the convention. But the gentleman has not shewn that the proposition is so much out of place. If there was any thing in his argument; it went to shew that the subject could not be considered at all, that the action of the legislature in regard to it, even if corrupt, could not be revised nor corrected. The argument is then distinctly this, that the incorporation having got a charter, no matter how, must keep it—that any company, a banking or any other association that obtains, no matter by what means, a charter, has a virtual right, which no one dares to touch—a right which is inviolable. He doubted whether the people would sustain this doctrine. The people were always disposed to do what was right, and, if they thought the gentleman from Allegheny right in his views, they would sustain him. But it was impossible that they would view such principles as those as safe, or correct, or repub-

lican. If the legislature, when assembled to protect the property and the rights of the good democrats of Pennsylvania, should undertake to defraud and deceive them, in their legislature—if they should create a perpetual mortgage upon their farms, and do this for the purpose of enriching an association of capatalists—it is, says the gentleman, all right and legal, and there is no power to correct the evil. If the people are cheated in a legal and regular way it must stand so; for to afford a remedy you cannot go beyond the strict line of legal technecality. No matter if the process by which the act be obtained is a fraud upon the people from beginning to end, yet as the act passes, a right becomes virtual under it, and it was never yet disputed. The law, he says, covers and protects the fraud; and the people cannot, if they will, go back and repudiate and repeal the work of their representatives. Now, I will ask the gentleman from Allegheny, and he will answer me fully and candidly, whether, if he got the property of an individual in his hands, by fraud, he will consider that, in law, and justice, that property belongs to him.

Mr. FORWARD said he knew and all concurred in the opinion that a charter fraudulently obtained was voidable by law. There was no dispute about this It required no act of this convention—no amendment to the constitution of the state to repeal a charter surreptitiously obtained. The legislature can institute proceedings against the corporation at once. They need not our aid. I put the question whether we are a court to try the question whether a charter was fraudulently obtained, and whether we had any power to annul a surrepticious charter by an amendment to the constitution.

Mr. FLEMING replied that the people expected us to take up this question. It had long been agitated in this commonwealth, and the call of the convention had direct reference to it. The power of the people to annul the charter was unquestionable, and they could do it, by giving their assent to a proposition to that effect from us. The objection made by the gentleman to the power of the convention was merely technical. It was his belief that the people did look to this body to do something on the subject.

On motion of Mr. HEISTER,

The Convention then adjourned until Monday.

MONDAY, November 20, 1837.

Mr. Sellers presented a petition from citizens of Montgomery county, praying for a constitutional provision to enable the citizens of Montgomery, or any other county in the commonwealth, having a considerable number of German citizens, to obtain county officers who understand and speak the German language.

Which was laid on the table.

Mr. Meredith, of Philadelphia, submitted the following resolutions, which were laid on the table for future consideration, viz:

Resolved, That it is the sense of this convention, that contracts made on the faith of the commonwealth are, and of right ought to be, inviolable.

Resolved, That it is the sense of this convention, that a charter duly granted by act of assembly is, when accepted, a contract with the parties, to whom the grant is made.

Mr. Ingersoll submitted the following resolution, viz:

Resolved, That the committee on the judiciary be instructed to consider all the resolutions submitted to this convention concerning the organization of the courts of this state, together with such other projects as the said committee may think proper; and report a plan for establishing the jurisdiction and duties of the several courts, together with the number and arrangement of the judges, on or before the 5th day of December next.

Mr. Ingersoll moved that the convention do now proceed to the second reading and consideration of this resolution, which was decided in the negative; yeas 31.

The convention proceeded to the farther consideration of the resolution submitted by Mr. M'Cahen, of Philadelphia county, on Saturday last, as follows, viz:

Resolved, That a select committee of ——— persons be appointed to inquire and report to the convention whether the people of this commonwealth, by a legislative enactment or by a provision in their new constitution, can repeal, alter or modify an act of assembly of this commonwealth, entitled "An act to repeal the state tax on real and personal property, and to continue and extend the improvements of the state by railroads and canals, and to charter a state bank, to be called the United States Bank," passed the eighteenth day of February, A. D. eighteen hundred and thirty-six; and if the people have such power, whether it would be proper and expedient to repeal, alter or modify that act, or any part thereof; and in what way, and on what terms the same should be done.

The question recurring on the motion of Mr. Scott, to postpone the consideration of the same until the fifth day of December next.

Mr. Scott, of Philadelphia, rose and said, when he submitted his motion to postpone the farther consideration of these resolutions till a future day, he had stated the reasons which induced him to make that motion. Among these reasons, he had referred to the incidental way in which these resolutions were called up. The gentleman who was their author, (Mr. Doran) had not intended to bring them forward for the consideration of this body. The busy part of the session had gone over without any motion being made for their second reading. The house

was now thin, and the peculiar circumstances of the convention were adverse to a candid and deliberate examination of the subject. He would add that it was contrary to parliamentary practice that not the mover of a resolution, but any other person who chose to assume the control of it, should take it out of the hands of him who offered it. Although, according to parliamentary practice, he had asked indulgence to make a few remarks before the resolution was taken up, he was surprised at the manner in which his application was met. He was surprised that a gentleman should have adverted tauntingly and unkindly to the absence of many of our friends. The course of that gentleman had been usually liberal, and it was known that he himself in the discharge of his duties in the post office department, was sometimes necessarily absent from his duties here. But the gentleman had, on this occasion, only come up to a prescribed duty, and this must be his apology.

Nor (said Mr. S.) was I so much distressed by the taunting tone and language of the gentleman from Lycoming, which was accounted for by the circumstance that, while speaking, he heard the reverberations of the cannon with which the whigs were celebrating their recent victory in New York. But he (Mr. S.) felt obliged to that gentleman because he had put on the resolution a construction, which had not been previously put on it, and which the resolution itself did not, on its face, present. It affects to call merely for the assertion of an abstract principle: but, according to the construction of the gentleman from Lycoming, it contemplates nothing more or less than the instituting of this body into a court of trial of a legislature which three years since went out of office. This novel court of inquiry, then is intended to examine and try those who are not before it.

It had been said that a declaration had been filed, and we are to put in a plea capable of being passed on. But the gentleman should recollect, as a lawyer, that it is not the feature of any court to call for a plea *instanter*. A few days rule is generally granted in the circuit court. Yet here we are called on for a plea *instanter*, and it was doubtless intended that there should be a *snap judgment*. Such was to have been the course. But what would have been thought out of doors of this convention of the people of Pennsylvania, if they had thus concluded the farce of their proceedings? The first act of this farce was exhibited at the last session of the convention, when the reports of the minority of the judiciary committee, on the subject of the judicial tenure, were sent abroad, piles on piles, to be placarded, not only on the oak trees, but on all the hickory trees throughout the commonwealth. But the whole scheme has turned out a splendid abortion.

With regard to the remarks of his friend from Indiana (Mr. Clarke.) By that venerable gentleman he had heard it proclaimed solemnly, and, in this assembly, that the day of courtesy has gone by, and that ordinary parliamentary decorum is no longer to be observed. In lieu of the usual parliamentary courtesy, we are to have substituted a stern and arbitrary power which will trample down all the privileges and courtesies and usages which have been established, in its way to the accomplishment of its object. He was mortified, deeply mortified, to hear this exposition, coming, as it did from a gentleman on this floor to whom, on all occasions, in this body, every kindness has been shewn by every member of this body, whether friendly or in opposition.

Mr. CLARKE, of Indiana, explained. He did not intend to say the day of courtesy had passed away, and that the scabbard was thrown away. He only meant to say that the advocates of the banks came with a very ill grace when they asked for courtesy at the hands of their opponents.

Mr. SCOTT resumed. There was danger in even so general a remark as that. It is first said the day of courtesy has gone by: and then the gentleman comes, forty-eight hours afterwards, connects this assertion with particular circumstances. But the gentleman was mistaken in supposing that we, on this side, were advocating the course of the bank of the United states. We were pleading no such cause, and our language would not justify such application of it. We were asking for courtesy for the last legislature, as the gentleman from Lycoming (Mr. Fleming) had told us we were putting the senate and house of representatives on their trial for acts done some years ago. As to the bank question, he was ready to go into that, at any time. That institution had already been tried by the people, and the verdict was now coming in from Maine, Georgia, New York, and wherever the public voice had spoken. The verdict was a universal one. It was not courtesy for that institution that we asked for.

He would now say that as all the applications for time and the ordinary courtesy had been refused, he would make no more. He would ask for no time, but would go at once to the question of indefinite postponement. He would accordingly so modify his motion, in order to give the proposition the fate it so well deserved. He concluded with modifying his motion, so as to make it read—"That the consideration of the said resolution be postponed indefinitely."

Mr. DORAN, of the county of Philadelphia, regretted exceedingly that his colleague, by calling up his (Mr. D's.) resolution at this inauspicious time, should have jeoparded its success. He would not complain of want of courtesy in his colleague for doing so, without consulting him; but he did complain of that untempered ardor and zeal which urges the soldier rashly to rush forward into the battle, before the ground has been examined, and thus to expose his own friends to defeat. Of this he did complain. It should have been remembered that every port is not to be carried by storm. Did his colleague reflect on the subject? Had he reflected on the effect which might be produced by his course on the interests of those he and I represent—that on this success of this measure we founded our hope of a repeal of the charter of the Bank of the United States? Or had he reflected on the effect of his motion on the daily labors of this convention? When he could answer these questions to the perfect satisfaction of the convention, then they would tell his colleague that he was perfectly justified in bringing on the action.

However unequal (said Mr. D.) I may be to my colleague in ability, and however much I may admire his learning and talents, I do not desire to fight under his colours and command. What was the history of this resolution? Early in the month of May last, when the commerce of the country was flourishing, and when agriculture was in a condition to reap profits from labor; when the manufacturer was basking in sun shine, and prosperity seemed to be universal, he had introduced the proposition. Was there ever a more propitious time for bringing forward a proposition

concerning charters and corporations? Was there ever a more auspicious season for it? Mr. Van Buren had then been recently called to the national helm, and by this event the rights of the people had been vindicated. In a few days after this time, the whole prospect was suddenly changed. There was a general suspension of payment; the wheels of the government all stood still; and society seemed to be on the point of resolving itself into its original elements of anarchy. Every one was bound under such circumstances, to do all he could to sustain the country. Could he, at such a moment, or could any one have been justified in urging and advocating a measure calculated to increase the general disorder.

Independent of this, however, there were other considerations which controlled his course. When he introduced this resolution, he immediately saw, that, in its effect on this convention, it was calculated to bring out personal feelings and animosities which seemed to have been slumbering or dying away. He then hesitated as to the propriety of proceeding; and after consulting with the democratic members, concluded that it would be better to postpone the farther consideration of the subject, until democracy should have gathered strength to contend with the monster.

Then came on the New York elections, and the other elections throughout the country; and the empire state, previously the strong hold of democracy, deserted republican principles and went over to the enemy. He could not think that such was a favorable time for bringing forward his resolution.

There were still other reasons not less cogent. The proposition itself involves an important inquiry, and would necessarily lead to two reports, and the question of printing these reports would give rise to an exciting discussion. We have seen cases of this kind, in which a similar course has led to a debate, which has been gone over again, and thus a great expense has been produced to the commonwealth, without any corresponding benefit.

He had therefore been induced by every view he could take of the subject to abandon his resolution, and, in lieu of that course, to move at once an amendment to the constitution, providing for the repeal of the charter of the Bank of the United States. That amendment had been lying in his drawer for some days, and he had shewn it to several gentlemen, both friends and enemies; and there were gentlemen around him who would bear him out in the assertion that he had intended to bring this amendment forward. The principle itself stood on ground too strong to require any course, such as that which had now been taken at a time when so many strong reasons operated against its agitation.

After these remarks, he would only say, in addition, that if the motion of the gentleman from Philadelphia had been for the postponement of the resolution to a day certain, he would have voted in favor of it; but he would now give his vote against its indefinite postponement.

Mr. M'CAHEN said: I must come in for my share of notice in this matter. True, I did not consult my colleague, in regard to the time of bringing forward the proposition. But no matter. I found the resolution on the files, and it was the property of the convention, any one had a

right to call it up, and the inquiry which it proposed, was one of great importance to the convention. I don't believe, said Mr. M'Cahen, that there was any policy which ought to prevent me or any one from bringing the subject before the convention. It proposed an inquiry into the power of the convention, to repeal a contract which we believe to be unjustly obtained. It proposed to inquire whether an exclusive privilege had been granted, and whether there was any power to repeal it. I believe that this was a proper time to make the inquiry. It is the right time for the friends of the democracy to stand up to any question involving their rights and principles. We were all pledged to our constituents to repeal this charter, and I hope that no one of us, will, at any time, be wanting in faithfulness to our principles and engagements. This, sir, appeared to me to be precisely the proper time for bringing forward this subject. The day had been selected by our friends on the other side, for celebrating their New York victory, and while the sound of their cannon was ringing in our ears, it appeared to me to be fit and proper farther to enliven the scene, by the introduction of this subject. If my colleague, after forty-eight hours consideration, thinks my course worthy of his rebuke, I very cheerfully ask his pardon, and trust that my constituents will excuse me for the offence. That the movement could result in any injury to my colleague I did not believe; nor do I see how I, in any way, discredit him by supporting his resolution. I trust that the convention will direct the inquiry, and that the whole subject will be brought before us. If we take this course, we shall not hereafter be taunted with the influence of the banks in Philadelphia. It would be creditable both to the democratic members, and to those on the other side to act now, while uninfluenced by the presence of the bank directors, and leave it to be surmised that any hesitation on the subject, hereafter, is attributable to the influence, by which we shall find ourselves surrounded, when we convene in Philadelphia. I did not rise to discuss this question, but simply to urge the inquiry proposed in my colleague's resolution. There was a difference of opinion here on the subject, and why should not all difficulty be removed by an inquiry

I have been told that my colleague was apprised that an intention existed to call up the resolution, and he then said he was prepared for it. If, however, in obedience to those I in part represent, I have offended my friend and colleague, I repeat that I sincerely beg his pardon. But I fear this will not be my last offence. My colleague has referred to me "as a military man, who ought to know the art of war better." I can only say, that as a good soldier, when I found the enemy stealing into our camp, and officers deserting to them, I was determined to fight! even if it was the fight of desperation. My colleague has said, too, "that he, for one, would not fight under my command, nor under my colours.' Be that as it may. I call upon him to fight under the command of a superior authority; I mean his constituents; and under the broad banner which streamed upon the election day, bearing upon it in characters which could not be misunderstood, 'equal rights and no monopoly.'

The gentleman talks, too, as if the proposition was exclusively his property; and he alone was responsible for its success or defeat. I beg leave to say that it is a question of deep and abiding interest, in which every member of this community is interested. Ay, too, my colleague

and myself are pledged to the repeal of this bank charter, if it can be justly done.

My colleague asks "if I am prepared to discuss this grave constitutional question," "the repeal of a bank charter?" I trust I will ever be prepared—not perhaps, as a great constitutional lawyer, but as one who knows that the sacred rights of the people have been trampled upon, and their will publicly declared, traitorously disregarded. My learned colleague argues "that at the time he offered this resolution the country was prosperous; that it was the golden age—but now the country was in a state of uncertainty and doubt, created by the stoppage of specie payments by the banks; that society was resolving itself into anarchy and confusion." My opinion is, that the argument used by my friend, is the very best that could be offered in favor of instituting this inquiry. When it is admitted that the banking institutions have been the cause of the difficulties in society—then is the right time—now—to make this inquiry—while Pennsylvania is strong in her democracy, and prevent these baneful institutions from prostrating her, too, at the feet of a monied power.

I contend that where great principles are concerned, that all times are the right times to sustain them and carry them into practice. I hope, therefore, Mr. President, that the motion to postpone will not prevail, but that a committee will be appointed in accordance with the resolution, and the whole subject brought fairly before us.

Mr. Brown, of the county of Philadelphia, said, he was consulted in relation to the introduction of the resolution into this body. He was neither father nor godfather to it. His colleague did not consult him as to the movement. He took all the responsibility of the measure upon himself. I differ, however, said Mr. Brown, with those who suppose that this is an improper time for the introduction of the resolution. If there was ever a time when the country was overspread with gloom, and when it might be improper to agitate a question affecting the banking interests, it was on the 10th of May, when this resolution was first offered. Since that time, the situation of the country has become much better. Every thing is now more quiet and settled. But if ever there was a time when principle should yield to expediency, it was at the time chosen for offering the resolution. He would not admit, therefore, that it was proper then to agitate the question, and improper now. He thought the time chosen by his colleague, (Mr. M'Cahen) for calling up the proposition, was as favourable as any that could be selected, and that he was very far from being censurable for the course he had pursued. This subject had been talked of throughout the state. It was known that the resolution was here on our files; and it was expected that we would act upon it.

It was asked why we did not take it up when we came fresh from the people, with a full knowledge of their sentiments and feelings on this subject. There might be some excuse for a little delay; but, why, it would be asked, after introducing the resolution, did you let four, five, or six months pass, without considering it, or disposing of the subject? In this matter, we were all involved. Every colleague of the gentleman from the county of Philadelphia, (Mr. Doran) and every member of the same party in the convention, was equally involved with the gentleman

himself, in the censure which would be visited upon the democratic members, for neglecting this important subject. It would be said to us by our constituents, if the member from the county of Philadelphia did not fulfil his duty in calling up the subject, why did not you do it; it was equally your duty to attend to it as his.

I will not agree, said Mr. Brown, that a great principle must be sacrificed to a point of etiquette, in this way. I will not consent to see an important question suffered to slumber, merely because one gentleman, who has assumed exclusive charge of it, does not choose to call it up. Supposing the subject was any other than what it is: suppose it be any one of the great subjects which we were sent here to consider, would the convention be justified in neglecting it, because any one gentleman did not wish to touch it?

Suppose the subject to be the tenure of the judiciary, was no other member to be allowed to call up the subject, except the one who first brought it to the notice of the convention? If he happen to be absent, shall the subject be suffered to slumber? Shall others say, that, as the gentleman has not called it up, we have no right to do it? Suppose the subject to be the suppression of secret societies,—and there are many here who felt an interest in that subject—should it sleep, unless the original mover of the resolution, in regard to it, should be present and disposed to urge it? Any member has the right to call up any question, whenever he may think proper. There was no principle of courtesy which should prevent it.

But, again, other members here were pledged to press this proposed inquiry, besides his colleague. Why should his colleague, (Mr. M'Cahen) be charged with discourtesy in calling up the resolution, when the gentleman from Adams, (Mr. Stevens) had given us notice that he intended himself to demand its consideration? That gentleman pledged himself to bring up the subject, and gave notice to his colleague, (Mr. Doran) in order that he might be prepared for it. We had upon our records, the notice that the subject would be called up at an early day.

The president of the Bank of the United States of Pennsylvania, had also declared that the question should be settled here. The friends of the bank were for bringing the question here. All parties agreed that here it should be settled. Why, then, should a motion be made to postpone it indefinitely? Are we to be told that the subject shall not be called up? Shall it be postponed indefinitely? The gentleman from the city, who made this motion should give the friends of the resolution an opportunity to amend it, so as to perfect its language, and free it from any objections. The question will be asked abroad, how has the subject been disposed of, how has it been agitated? The people will be anxious to know what we have done with it. Why was it made a leading point at the election? Why did the president of the bank say it should be settled here? Was it not admitted that the subject was identified with the meeting of this body? The people of Pennsylvania would then naturally ask, why did we shrink from the consideration of the subject, by an indefinite postponement of it. It had gone abroad that some of us here, intended to interfere with vested rights—to break up the rights of property. But, sir, said Mr. B. we have too deep a stake in the interests of society, to undertake to break up its foundations.

But it is true that we recognize something beyond the rights of corporations. We look to the rights of the people. They have vested rights —indefeasible rights—and gentlemen should recollect this in connexion with this subject. If the rights of the people have been improperly taken from them and bargained away to corporations; if the people have thus been deprived of their natural and contitutional rights, have we not the power to inquire how this has been done, and whether it has been constitutionally done? He did not say that the people had been thus betrayed, but he insisted that we had a right to inquire whether it was so or not. Moreover, he was of opinion that the people were the tribunal which should decide this question; and, if they found that their rights had been wrongfully taken away, it was in their power rightfully to recover them. The inquiry would also serve to aid us in so amending the constitution, as to prevent the recurrence of a similar proceeding. This whole matter, said Mr. B., was referred by the people to this convention, and it was their belief that this body would investigate it. They looked to us for protection from any invasion of their rights from any quarter. They relied upon us to put them in a way to recover any rights and privileges of which they had been wrongfully deprived, and to guard them against any similar encroachments in future. It was, he repeated, the expectation of the public, that we should put a provision into the amended constitution, which would prevent any similar abuses of legislative power hereafter. It was objected to the present consideration of the subject that the number of members absent was very great—that there were too few of us to go into such a question. But the number present, was sufficiently large for any business. There were one hundred and four members present here, and the opinions which they represented, were relatively the same, as those entertained by the whole body. But it did not matter how many were here at the vote on the inquiry; after the investigation was over, and the subject was to be acted upon, a full house would be desirable. Most of those who opposed the inquiry now, cared but little as to the time of the inquiry. They would be equally opposed to an inquiry hereafter, and under any other circumstances. We, said Mr. B., propose only any inquiry; but, on the other side, it is taken for granted, that an investigation will result in the report of a provision for the repeal or recission of the act of the legislature incorporating the bank. He only wished that the subject should be inquired into, and that the report should be made in full convention. The friends ought to be the most forward of any in the community, to urge this investigation. Why should they fear to put the matter to this test? Who ever before heard of a corporation or an individual shrinking from an investigation of this kind? We were not about to resolve ourselves into a criminal court to try any body. We were trying the old constitution, one of the charges against which, is, that it does not afford adequate protection to the people, against legislative usurpation. We wish to see whether this constitution is liable to abuse, and, if so, how they can be prevented in future. Such an inquiry is in perfect accordance with the duty of a body, assembled to revise the fundamental law of the land, with a view to the better security of popular rights. He could see no reason why the proposed inquiry should be delayed on reference. It was due to the people of the commonwealth and to the importance of the subject matter, that it should be made thoroughly and without delay.

Mr. BIDDLE said it was true, as the gentleman from the county (Mr. M'Cahen) had asserted, that the questions now under consideration, had been brought before the people. The battle was indeed fought at the late elections. Two banners then waved in the air. On one was inscribed "property and order," and on the other, "loco focoism and disorganization." Thanks be to God, one is floating in triumph; while the other is trampled in the dust. The people have come up to their own salvation, and have shewn themselves capable of self government. The people have decided the question, and we are now secure in our rights. But, under what circumstances and for what purposes, does the gentleman seek to agitate the question here? We are now about to separate, and many members of the convention are absent. Was this a suitable time to inquire, whether charters granted by the legislature, would be or ought to be repealed, modified, or altered, at a time when, as the gentleman from the county (Mr. Doran) alleges, we see strewed over us the wrecks of so many individual fortunes; when the storm which has swept over us, prostrating commerce and business of every kind, has but just began to subside, and when some few gleams of comfort begin to break in upon us. Was this a time, he would ask, for us to assert or exercise the right of disturbing every chartered institution in the commonwealth, when we think proper? Was there no danger in this course? Would it not be likely to increase the agitation of the community, and plunge it again into distress and disorder?

Our credit has suffered abroad, and our commerce has been prostrated at home. Those who set up the cry of "perish credit," "perish commerce," may now well rejoice in their success, for they have seen both prostrate before the influence of their miserable and mischievous policy. But they are beginning again to rise. The recuperative energies of the people, in which we may always safely confide, will restore our past prosperity. Commerce will again flourish; credit will be re-established; and industry will again receive its reward. The people, in the recovery of their strength and prosperity, will not forget the causes which led to their disasters. They will have done with nostrums and with the political quacks, who administered them. The experiments and the experimenters, will both be abandoned to insignificance and contempt. They will enjoy their rights, under their own institutions, in tranquility and peace, undisturbed by the dreadful visions of anarchy, confusion and the violation of private property, which have lately been presented to them.

Much has been said here of the bank of the United States. It is an institution, with which I have had little or nothing to do. It has been the fashion with some politicians, to declaim against it, and he had never had occasion to become one of its defenders. He had no other interest in it, or regard for it, than he had for those institutions generally, where private rights were concerned. In relation to that bank, it appeared that it was, some years ago, chartered by a legislature, in which the democratic party had a majority. Last winter, after a great deal of excitement against the bank, a legislature convened, in which our party had but twenty-eight representatives; a committee was then appointed, composed of men who were not of our party, to investigate the charges made against the legislature from which the charter was obtained. The whole subject was deliberately examined and reported upon. All the charges,

as to the manner in which the charter of the bank was obtained, were investigated. Could there have been held an inquiry under circumstances, more inauspicious to the bank and its friends? But what was the result? The complete vindication and exculpation of the institution from all censure. Yet we are told that all this must go for nothing—that the bank must still be hunted down; and that the democratic party of Pennsylvania have declared against its charter, and the rights which it shelters, a war of extermination. The bank was entirely acquitted, in spite of party clamor, excitement and prejudice, upon a full and fair investigation, by a democratic legislature, and yet we still hear raised against it, the ungenerous cry of fraud, fraud. Some of the senators who voted for the charter, were accused of bribery and corruption; and how did it turn out? The charge was disproved, and the accusation laughed to scorn throughout the whole country. The accusers threw themselves on the people for support, and they had leave to stay at home. The people as well as the legislature, triumphantly acquitted the bank, and withdrew their confidence from its accusers. But, it is now asked, why shrink you from an inquiry? Can the truth be injurious to you? But, who shrinks from any inquiry? Not the bank. The bank is not here. Nor the legislature which chartered it, for they are not here. Shall we then be told that we shrink from any inquiry, when we hesitate to take the responsibility, under such circumstances, of re opening this agitating question—of seizing upon a time, when our prospects are a little brightening, and our prosperity reviving, to throw every thing back into doubt and disorder? He hoped the question would not now be brought up for the purpose of agitating the community. In no way could its consideration produce any good, but it might effect much mischief.

Mr. MARTIN said, the resolution was merely one of inquiry, and had little to do with the merits or demerits of the question. But there had been brought into the question, very unnecessarily, as he thought, much apprehension, hesitation, and alarm. Are we afraid of the people—of our own constituents, or of this convention? Were we promoting agitation, and stirring up strife and controversy among the people, by this resolution? He differed entirely from those who were so much afraid of stirring up dissension and turmoil among the people. We were told that the public mind was easily agitated on this subject, and that, if we moved in it, we should cause great popular excitement. But he did not believe there was any danger of stirring up any thing. Now he would ask gentlemen to see who composed this convention. There were two classes of politicians here. There was no use of denying this or of doubting it. One class believe that the charter of the bank was legally and constitutionally and properly obtained; and another class think that it was not. We were told that we must not touch the subject, for fear of bad consequences—for fear of stirring up those who are opposed to the bank—and that the subject, for this reason, must be postponed. All this apprehension was idle and unreal. Those who entertained it, in reality, could have taken but a very superficial view of the character and condition of the people of this commonwealth. The great mass of the people was composed of individuals, who obtained their living by industry—by the honest sweat of their brow. The possessions which they held as their own, they have acquired by toil and by economy. Are not these the

very men, who are most likely to retain a sacred regard for the rights of property, and for the general peace and welfare of the community. What were they to gain by uprooting the foundations of society? They had every thing to lose by agitation, and nothing to gain. Sir, the apprehension of an insurrectionary and disorganizing spirit from such men, is altogether without foundation. They are the last body of men on earth, from whom any such thing is to be feared. No men knew the value of property better than those who have obtained it by their own industry, and none respect the rights of property more than they do. His colleague (Mr. Doran) formerly stood in advanced ground, as to this inquiry. He was the first who sought it, by means of the very resolution which had now been called up. Why should his colleague now wish to draw black lines about that resolution, and expunge it? I ask him to maintain his position, to suffer the resolution to be adopted, and the inquiry to be made. Let the question be settled now and forever, whether the bank obtained its charter wrongfully or not.

Mr. CHAUNCEY was desirous of knowing, he said, the precise state of the question at the present time. It had struck him with surprise that the two members from the county of Philadelphia who had just spoken, should intimate that there was something like an effort on the part of a portion of the convention to stifle investigation. Did he, he would ask, rightly understand that this subject was before us for discussion.

The CHAIR replied; certainly.

Then, said Mr. CHAUNCEY, if as I supposed, every thing in the resolution is before us for discussion, with what propriety is it said that we are stifling investigation. We have as yet entered upon no investigation. There is a proposition introduced by those gentlemen and they have a clear field for sustaining and advocating it. We challenge them to come forward and maintain it. Is this stifling investigation? We invite the friends of the resolution to give us their sentiments and arguments fully upon their proposition. We are willing to hear them. But are we to be expected to jump at once to their own conclusions, without an argument? If we do not concur with them before they have offered their reasons for the proposition, shall we be accused of stifling investigation. Before we agree to appoint a committee to make investigation, is it not proper that we should ask what you seek for and what is your object. It falls upon those who moved the resolution to give their reasons for it. We may come forward and shew that we have the right to proceed in this manner towards the object which you may propose, and depend upon it, you shall have the investigation.

Mr. FULLER said he knew not what would be the fate of this resolution, nor was he very anxious how it was disposed of. He was not himself fully satisfied with the form of the resolution. But it was highly important that we should make an inquiry into the manner in which the bank obtained its charter. He was not certain that it would be proper for this convention to make that inquiry. He believed it would be more proper for the legislature to do it. If the object is to inquire whether we have a right to modify or repeal any political right—or a charter

held by a political right; for charters in his opinion were held not by vested but by political right—the question might as well be met now as any other time.

He was not certain that the resolution was in a proper shape. It ought, in his opinion, to be so modified as to inquire generally whether if it should be proved that the bank or any bank is an institution injurious to the public interests, its charter could be modified or repealed. That is an important question, and one which the people of Pennsylvania must consider in some shape or other. Three fourths of the people of the state, out of the pale of bank influence, are willing to give the legislature the right to revise, remodel, and abolish such chartered institutions at pleasure. He intended to offer an amendment embracing all banks and all charters. The raising of a committee to make an examination into the subject, was done more in accordance with the wishes of the convention, than of any individual. Will it be contended, by any one, that the people of Pennsylvania are not dissatisfied with the conduct of the bank of the United States; according to the shewing of the gentleman from Philadelphia, there were charges against this institution of a most gross and important character. An investigation has taken place before the legislature. It was true that the committee failed to ferret out all the corruptions attending the transaction, and that they failed to make the charges good. But any man must know the extreme difficulties attending such an exposure. The transactions to which fraud was imputed were necessarily secret and confidential, and it was difficult to reach them. For this very reason, the legislature ought to have the absolute power to repeal a charter or to modify, when it is found that, however obtained, it is injurious in its character to the public interest. But that is not the question before this convention. We have nothing to do with the facts of the case. Our object ought to be to inquire whether the legislature has the power to modify or repeal a charter, and, if not, whether we should not give them the power. He himself maintained that the legislature had the power already to revise, abolish, or modify any charter, on the principle that a charter is a political institution. They have the same right to repeal a charter that they have to remove a judge. The right in both cases rests on the same principle. A lawyer gives up a practice of four or five thousand dollars a year to become a judge. He takes the office at a great pecuniary sacrifice. He has as good a right to remain in office as the bank has to retain its chartered privileges. But there is no vested right in either case, but a political right.

We can return to the bank its bonus, and to the people their rights, which the legislature bartered for this mess of pottage. The rights, conferred upon the bank were taken from the people, and, as they cannot be exercised without injury to the people, the representatives of the people have the right to remove them. The legislature have the right unquestionably to abolish an institution when it is found pernicious to a whole community. How the question will terminate I cannot tell. The influence of the banks is very great. They have a powerful hold upon the people—such a one as may bias the judgment of the honest and intelligent men in the community. The idea of gain is so strong and so powerful, as to tend directly to influence the best judgment of the fairest

mind, upon this or any other similar question; I cannot, therefore anticipate a favorable vote in the convention. But if this question were, like that of life tenures, stripped of all personal considerations, I should have the strongest hopes of a result that would forever defend the country from the political influence of banks. There is a pernicious influence which operates upon the feelings and judgment of men, in the exercise of the right of voting upon questions of this kind. If he could have the members of this body, or any of the legislative bodies of Pennsylvania stripped free and clear of all influences of this kinds, and all interest in banks, when they make a decision of this kind, he should rest satisfied; because he believed that decision would be such a decision as the people of Pennsylvania would be satisfied with; but nothing short of such a decision as this will ever satisfy the people of this commonwealth.

Now, how many of the members of this body may be connected directly or indirectly with banking institutions, he knew not; nor did he know who of our number was connected with these institutions; but in order to attain an independent, impartial and fair decision on this all important question, he did say that every man holding stock in any bank, when the question of placing restrictions upon that bank came up in this body, should withdraw or decline voting upon. Where it was proposed to place restrictions upon a banking institution, most assuredly a part owner in that bank was disqualified from voting on the subject, if he looked at all to legal or parliamentary usage.

Certainly no gentleman here could agree that it would be proper for any man to vote on a question which would either be taking away or adding to his interest.

With these views he had prepared a resolution which he had intended to submit; but, the time for submitting resolutions this morning passed over before he was aware of it. The resolution alluded to, was in the following words:

"*Resolved*, That no member of this convention who holds stock in any bank within this commonwealth, shall be deemed a competent or impartial voter on any question in which the immediate interest of such delegate shall be involved by any constitutional provision, either restricting or regulating such banking institution."

This was not an idea of his own, nor was it a new idea, because it prevailed many years ago, and was to be found upon the parliamentary precedents of Great Britain as well as of this country. He found in Jefferson's Manual, page sixty-two, among the rules and regulations for the government of deliberative bodies, the following paragraph:

"Where the private interests of a member is concerned in a bill or question, he is to withdraw. And, where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge, in his own

cause, it is for the honour of the house, that this rule of immemorial observance, should be strictly adhered to."

This appeared to him, to be consistent with every principle of justice and propriety, and when the question of placing restrictions upon any of the banking institutions of this commonwealth does come up, he had no doubt if it should be found that any of the members of this body, had an interest therein, that they would withdraw, and decline voting thereon, He was opposed to the indefinite postponement of this resolution, and desired to have it taken up as it stands, in order that we may reach the first of it, which goes to inquire into the expediency of repealing a charter by a subsequent legislature. This appeared to him to be one of the most reasonable propostions which could come up before the convention.

Why, sir, every application for a bank charter, he believed had been accompanied by some reasons for it, and those reasons he believed, had uniformly been, that it was for the public good, for the good of the community. This was the plea always set up to obtain a bank charter.

Well, then, if upon experience it has been found that an act of incorporation of this kind had not resulted for the good of the community, on which alone, the application had been made, would it not be reasonable that the legislature should have the power of restricting or abolishing it altogether?

Most clearly in his opinion, this power should be vested in the legislature. He believed they now had this power; but, if it should be found that they had not, most assuredly it ought to be conferred upon them.

Mr. M'CAHEN said, the learned gentleman from the city (Mr. Chauncey) had asked those who proposed or supported this resolution, to give the reasons why they wished to have it adopted. Why, sir, is it not sufficient to say that the matters embraced in the resolution were simply matters of inquiry in relation to a subject which was contested by the two great political parties of this commonwealth. Was it not enough to say that a doubtful point should be inquired into and cleared up. Those who supported this resolution were anxious—at least, he was anxious, that this committee should be appointed, to inquire if it be in the power of the convention so to restrict the legislature, in the passage of laws, in opposition to the interests of the whole people of the community, and whether it is not in the power of a subsequent legislature, if such laws be passed, to repeal or annul them. It was a question yet undecided in Pennsylvania, whether the legislature of this state, had a right to pass a law, which a subsequent legislature could not repeal, and as the whole subject of vested rights would necessarily be brought up, his opinion was that it would be appropriate that the subject should be sent to a committee to be examined and acted upon, and to have a report made by them on the subject.

Why, sir, if the legislature should undertake to give to a single individual of this commonwealth, the exclusive right, to the purchase and sale of all the flour made in the commonwealth, would it not be agreed by the farmers and by every one else, that this was an unjust and monstrous law, and would they not have the right to ask a repeal of it.

Now, this was a question which ought to be gravely met, and solemnly considered, as to whether the legislature had the right to give away the natural privileges of free citizens of this state. Now, this whole resolution, was a resolution of inquiry as to whether the legislature was vested with this power, and being merely a resolution of inquiry, and the point being a mooted one, he would ask the gentleman from the city (Mr. Chauncey) to vote for it, so that it might be forever cleared up. The whole resolution from beginning to end, is founded upon inquiry, and does not embrace a single argument in relation to any matter, one way or the other, so that all those in favour of fair, free and full inquiry ought to go for it, and then, when the report of the committee comes in, if it is based upon sound principles, it can be adopted, and if not, it will be rejected. It seemed to him that the ordinary courtesy in relation to such matters, ought to induce the convention to grant this inquiry.

The gentleman from Fayette (Mr. Fuller) has referred to an article in the Manual to show that those interested in a question, ought not to vote upon it. This might be proper enough on the main question; but, he hoped that no member of this convention, would be prevented from recording his vote, in favour of this inquiry, because it was a mere matter of inquiry, and that inquiry too in relation to a matter which was of interest to every one in the community, as well the stockholders in these institutions, as he who was not a stockholder.

The gentleman from the city of Philadelphia, (Mr. Scott) who addressed the convention previous to the last gentleman from the city, has spoken of the expression of the people on this subject, in a neighboring state very recently. The gentleman had said, that that opinion of the people of that state had swept across the country, like a flood, and set the seal of condemnation upon such doctrines as have been advanced here, by gentlemen on this side of the house.

Now, sir, if it be so, that the people of that state are opposed to those doctrines which we here advance, it does not follow that the people here are against it. He (Mr. M'C.) had no doubt but the banks in the state of New York, were influential in producing the result, which the gentleman from the city, so much rejoices at; if they did so, he would ask the members of this convention, and he would ask the people of Pennsylvania, whether it was not an evil in the banking system, which ought to be inquired into, so that a like occurrence might not be witnessed in this commonwealth. He would ask the people of this state, whether it was not proper that banking institutions should be prevented from taking part in the political contests of the day, and whether the influences of moneyed corporations should be permitted to be thrown in the scale on one side or on the other, in all party contests?

The banks of this commonwealth were created for the public benefit, but whether they had been a great benefit to the public, he was not pre-

pared to say, but the friends of certain banking institutions have told us that they have produced such great and extensive evils that it is necessary to have something to regulate the currency, some great institution to exercise an influence over all the rest. Yet when this great institution is created, we find it doing all in its power to prevent the currency from being regulated.

He had been told that the banks, in many quarters of this state, instead of contributing to the benefit of the people, and to the relief of their wants, have kept large balances of their funds in the other end of the state, for the purpose of drawing drafts upon, thereby enhancing their profits without affording that benefit to the people contemplated by their charters, while at the same time they have refused to pay their notes, at those places where these large balances were accumulated. Well, in such cases was there to be no remedy? Must the people submit to all the evils which may be imposed upon them by banking institutions without any means of redress? If so, it was idle to call this a government of the people.

We have been told by certain gentlemen, that the country was in an unexampled state of prosperity, during the reign of a certain institution. Well, it was so yet, and has been so during the whole suspension of specie payments. It is true that the price of labour has been depressed somewhat, because of persons being thrown out of employ, by those who depended upon bank facilities, to keep them up, but what is the fact in relation to the real wealth of the country? The country has yielded an abundant harvest? The real producer of wealth has been successful: and the only depreciation which we have is that which has been the result of wild speculation, and overtrading. specie has retained its value, and the produce of the country, yet retains its value, and it is bank notes and bank stock alone which has depreciated. This was the state of the facts in relation to the depreciation which has taken place in our country. The real capital has maintained its value, and the fictitious capital has depreciated.

Now, in relation to the power of the legislature, he held that one legislature had not the power to pass a law which a subsequent legislature could not repeal. Other gentlemen thought otherwise, consequently there was a difference of opinion, and because of this difference of opinion he thought it was proper that an inquiry should be had on the subject, so that the matter might be finally settled to the satisfaction of all parties; and if it was so, that the legislature had this power, at present claimed for it, he thought it a legitimate matter for an amendment of the constitution, so that the rights of the people might be more fully secured. He hoped, therefore, that the motion to postpone might not prevail, but that the committee might be appointed, and that a report might be made on the subject, so that the whole of the facts and arguments, on this subject might be laid before the convention, and before the people of the country.

Mr. Chauncey said, that the gentleman from the county, who had just taken his seat, had asked him for his vote, in favour of this resolution. Now, he would tell that gentleman, that he could not have it, unless he goes farther than he has gone in convincing him that it was proper. He could not give his vote for the appointment of a committee, to make

an inquiry, which he did not believe it was in the power of this body to make.

That gentlaman, as well as all those gentlemen who supported the resolution, have been called upon to show how it was competent for this body to exercise the powers set forth in the resolution now pending before this convention. This call has been distinctly made and it is for them to answer it.

What were the subjects of inquiry proposed by this resolution. In the first place, it is desired to ascertain whether the people of this commonwealth can, by a legislative enactment, repeal a law of a previous legislature, chartering a certain banking institution; and, in the second place, whether it is competent for this convention to repeal a law, made by a legislature of the state, the proper constitutional tribunal to enact laws.

Now, he called upon gentlemen to show some plausible reason, or plausible ground for this—not by a broad discussion of vested rights, and the rights of property—but a plausible reason for the adoption of this resolution. Was not this reasonable? And he would ask gentlemen, if the simple call for this committee was sufficient without some good reasons to support it.

Has not a committee of the legislature of the state gone into this whole matter, and examined as to whether the charter of the bank of the United States was fairly obtained; and have they discovered any fraud as to the manner in which that charter was obtained. Then do gentlemen desire a committee to be organized for the purpose of going into the whole subject of the bank of the United States, and to make a report thereon, perhaps an unjust report, a report implicating a legislative body, in the honest and constitutional discharge of its duties? Was this the inquiry which gentlemen desired to make? Or has it been shewn that this body had the power to go into any such broad inquiry and investigation.

Is it competent, in the first place, for this body to institute this inquiry, and if it is competent for it to do so, is it to be expected that upon the report of this committee, this convention is to act without first knowing what are the legitimate powers of the body. Is it not asking too much of us to do this? Is this convention to act simply upon the request of those who have introduced this resolution, without having any of the reasons given, why the inquiry should be instituted. Let these gentlemen, therefore, show that it is competent for this convention to do these things if they can, and they will have work enough for this day, if they do it, and, until they can do so, it is idle to ask this body for such a committee. He did not know, and could not say, what the precise object of this investigation was to be, but this he could say, that this resolution had not slumbered upon the files of this house since the tenth of May last, without being a subject of consideration, for nothing. He put his argument upon the ground, that this inquiry was not a legitimate subject for the consideration of this convention, and this was the question he called upon gentlemen to meet. He wanted the convention to be satisfied on this subject, by sound and substantial reasons; and these reasons he did not want to come from a committee raised for that purpose, but from gentlemen upon this floor before this committee was appointed. Let

them bring forward their strong reasons into this house, and show us that this convention has the powers they claim for it. Here is the proper place to do so, and let them meet the proposition fairly here. Let gentlemen show that it is competent for this body to repeal a charter granted by the legislature, or whether it was competent for it to advise the legislature whether it could do so. Now, gentlemen were called upon to do this, and if they were not prepared to do this, they were not ready to have this resolution adopted.

Mr. BROWN, of the county of Philapelphia, said, it was not the first time, which the gentleman from the city of Philadelphia (Mr. Chauncey,) had doubted the powers of this convention, to act upon questions which were legitimate subjects for its action. This convention does not perhaps, agree in opinion with that gentleman; and if the gentleman would refer to many of the constitutions of the states of this union, he would also find them at variance with his doctrines, and none perhaps more so, than the existing constitution of Pennsylvania, which the gentleman has always professed to venerate so much. The gentleman contends that it is not in the power of this body to repeal a charter in existence at the present time. Now the framers of the constitution of 1790, held no such doctrine as this, because, they have expressly provided in the seventh article of that constitution, that "the rights, privileges, immunities and estates of religious societies and corporate bodies, shall remain as if the constitution of this state had not been altered or amended." Now, he took it for granted, that the framers of this constitution thought it proper that this provision should be inserted in the constitution, otherwise, these corporations would have fallen to the ground, and, it seemed to him that we would have to insert such a clause as this in the new constitution, to save these institutions, or the result would be the same. Then if it was necessary that a clause should be inserted in the constitution of 1790, that "the rights, privileges, immunities and estates of religious societies and corporate bodies, shall remain as if the constitution of this state had not been altered or amended," the same thing was necessary now. Then if the same thing was necessary now, most assuredly we have the right to say, what institutions shall remain the same, as if the constitution had not been altered, and what should be abolished. He now took the very same ground taken by the framers of the constitution of 1790. He held that it was in our power to say what institutions, or what corporations should continue, and what should not. We might say, if we thought proper, that those for religious purposes might be continued, and those for other purposes abolished. We might in short, so far as the power to do so was concerned, abolish what we pleased and continue what we pleased, and this was in strict accordance with the expressed opinions of the framers of the existing constitution. These were the grounds which he took in relation to this matter, and these were his ideas on the subject. Now, what are the opinions of the gentleman from the city, who had just taken his seat? Does that gentleman mean to convey the idea, that if this same legislature which chartered this bank with thirty-five millions for thirty years, had granted it a perpetual charter for one hundred or five hundred millions, that still the people must have born it. Does the gentleman mean to convey the idea, that if a charter is once obtained, no matter by what means, and no

matter how oppressive it may be on the people, or how it usurps their rights, still it having been granted by the legislature, it is out of their power to touch it, or to alter, amend or abolish it? Does the gentleman mean to say that the people in their sovereign capacity, although they have the right secured to them, to alter, reform or abolish their government at will, have not the power to abolish a corporation of a banking institution, created by their agents, no matter how it may have been established, or what means may have been resorted to, to obtain it? He asked the gentleman if these were the ideas he meant to convey. Because, if the people of Pennsylvania, in their sovereign capacity, had no power to alter, amend or abolish a charter of a banking institution for thirty years, they had no power to abolish a perpetual charter. Now he wanted to know whether, in a free republican government, where all power was inherent in the people, a banking corporation, a bank charter was to be above the people and entirely beyond their reach. If this was the doctrine which gentlemen held, he wanted to have it sent forth to the people of Pennsylvania, that this was the government desired to be given them. He wanted the people to know that a power was to be given to their legislative bodies, to grant away their rights forever; that there was no way of remedying it; and that when a legislative enactment is once passed, that there is no power any where to annul or abolish it. He would repudiate any free government or government which made pretensions to be free, which would thus yield up its rights, and consent that a law once passed, no matter how unjust or how obtained, was to remain inviolate forever. Why, sir, this is the old doctrine, which has come to us from beyond the waters, that the king is vested with powers from above, and can do no wrong, and that the people not having any power conferred upon them from Heaven, have no right to meddle with his acts. This was the cry which had been raised by a certain class of persons from the beginning, but he held that if the people yielded to this doctrine, they were as much under a despotism, as though they were under some of the despots of the old world. It was necessary that there should be a recuperative power in a free government; that there should be a power some where, that can correct all the abuses of government; that there should be a power somewhere, that could secure the rights and interests of free citizens; and he wanted gentlemen to tell him where this power was, if it was not in the people themselves. As the gentleman has granted to the legislature these extensive powers, he would ask of him to carry them out until they were beyond the sufference of the people, and tell him how, and by what means the people could get rid of it. There is a power and there must be a power adequate to these evils, or a free government would be a solecism and an absurdity. The right to exercise these powers, and the expediency and propriety of doing so, are very different questions. The expediency and propriety of this measure he was not now going to discuss, but the power of the people was unquestioned. He believed the people had the power in all free governments to change their institutions when and how they pleased; and he believed farther, that in doing so, they violated no principle of justice. He believed the voice of the people to be the voice of God, and what they did to be right within itself and he could not for a moment agree that they could violate the rights of individuals. He did not believe that the voice of the people, ever sanctioned any such abuses, and for one, he was willing to trust them with

all power. With this view of the question, he would leave it for the present; and leave gentlemen to take their ground on this question, assuring them that he was willing to meet the issue, let them put it on what ground they please. If they put it upon the ground that what has been done by the legislature is all right, and that it would not be to the interest of the people to disturb it: or if they place it upon the ground that it is a vested right, and the people have no right to alter it, he would meet them on either of these grounds, and discuss the question fairly and candidly when it came up.

Mr. PORTER, of Northampton, said, he should vote against the motion to postpone the resolution indefinitely, and he should do so for the reasons which he should now briefly give. He had said on Saturday, that it was a matter of very great importance that this question should be settled, and he was apprehensive, that the postponement of it indefinitely might be misunderstood or misrepresented. He thought it was time that this grave and important question should be settled, and settled so that it cannot hereafter be doubted, when a grant is made to individuals and their money invested in it, that the investment is safe, and that it cannot be repealed. We have a great deal of stock held in Pennsylvania by citizens of the commonwealth as well as strangers, and it was of great importance to the community at large, that they should know when they make an investment upon the faith of the government, that it would be secure and stable; and being desirous of seeing a vote of this body upon this subject, he should vote against the motion to postpone indefinitely; and if the question came up hereafter, he should give his views upon it. He should have no objection to going into this inquiry now, if it should not be thought by the convention to be prejudicial to the question one way or the other, because, he desired the question to be settled. Or some gentleman might introduce a proposition, and have a decision of the convention upon it. Since this subject has been agitated he had turned his attention somewhat to it, and he had examined the matter as much as he could, after attending to his other business, for the last six months, and the results of his examinations had brought him to this conclusion. That the power to create banking corporations, is a power committed by the constitution to the legislature of this commonwealth, and that when exercised by the legislature according to the forms of the constitution, a contract is created between the people of the state and the corporation, which it is not in the power of either party subsequently to impair without the assent of the others If the contract be violated by either party, redress is to be sought before the legal tribunals of this country, which are competent to investigate and decide the subject. That the powers of this convention are confined to the consideration of alterations and amendments to the constitution of this commonwealth, to be submitted to the people. We have no power for other purposes, and therefore, the power to repeal charters legally granted and accepted by the corporations, does not exist in this body, any more than in the legislature of the commonwealth.

Mr. BANKS said, that on the motion made by the gentleman from the city on Saturday, to postpone until December, he had some doubts as to the course he should pursue. Courtesy dictated that he should allow time to advise upon this subject, and the time named he did not think

was too long, considering the importance of the question, and that it was necessary that gentlemen should reflect upon the subject in order to come to right conclusions. That courtesy however which had been asked for by the gentleman from the city, has been entirely removed by the modification of his motion this morning, to postpone the resolution indefinitely. That courtesy which the gentleman from the city first asked for, and called to the aid of his motion, has been violated by himself, and it now becomes every gentleman to come forward and say, whether he is for or against extending that courtesy to the resolution which it is entitled to. The resolution was a question of courtesy. It bears courtesy upon its face, and only courtesy, for it proposed no definite action, and no definite action is asked for. A committee of inquiry is only desired to inquire into certain matters, and if they come to any conclusion thereon, and made a report on the subject, it was for the convention to say whether it would agree to that report, and if it did agree to it, it was then for the people to confirm it. So then if courtesy was all that was asked for by the gentleman on Saturday, the friends of this resolution, might lay the same claim to have courtesy extended to it. If this inquiry was to be denied, it was affirming that the legislature had the power to pass any law they pleased, no matter how much it might operate to the prejudice of the people of the commonwealth. It would be affirming that the legislature was possessed of all power, and having once exercised it, no matter if it were in opposition to the will of the whole of the freemen of this commonwealth, they must be held to it; they must be held to the bond, and there was no power to get them clear of these acts, though they weighed the people of the commonwealth to the earth. The gentleman from the county of Philadelphia, (Mr. Brown) had noticed this matter rightly. If they had the right to go this far, they had the right to go farther, and grant perpetual charters to any extent they pleased, and there was no mode for the people to obtain redress.

Was it not a question of sufficient importance to have a committee to inquire into, and report whether it was in the power of a subsequent legislature, to repeal or modify a law passed by a former legislature, and if they had not that power, whether it should not be conferred upon them. The subject is an important, an engrossing one, and the people will inquire about their own rights, and will not suffer themselves to be trampled upon. They will act out what they believe to be right, and mark with reprobation what they believe deserving of reprobation. *Delenda est carthago.* The cry will go out from the senate house to every corner of the state, and the United States Bank will be put down, and destroyed, the people will not endure it. The people desire no exclusives in this commonwealth, nor will they be ruled with a rod of iron. No, sir, they will rise in their sovereign capacity, and put down those persons and those corporations which desire to rule over them. If the gentlemen hold to the doctrine, that the end justifies the means, let them do so, but the people will not believe it, and they have so acted since this act of incorporation has been granted.

On the very first opportunity which was presented, after the passage of that act of assembly, the people of Pennsylvania showed, by their votes at the polls, how they were disposed towards it; they shewed that they were unwilling to submit to the dominion and control of this vast

moneyed power. They spoke their sentiments in tones which were not to be mistaken. They shewed, by the men whom they elected to represent them, that they would not be tyrannized over by any act of your legislature. And they have done so since that time. They have reiterated their sentiments in that same voice of thunder which it has been impossible to misunderstand, and which has made itself heard in the remotest corners of our commonwealth.

They have demonstrated, as we all know, that there are ten thousand freemen in the state of Pennsylvania, who will never bend their necks nor bow their knees to this great mammon of unrighteousness—that they will think for themselves, speak for themselves, and act for themselves, upon all suitable and proper occasions.

The gentleman from the city of Philadelphia, said Mr. B. has been pleased to say, in the course of his remarks, that a voice had spoken forth in May last, sweeping from the empire state to the southern quarter of the Union, approbating this exclusive system. Sir, I deny the fact, and challenge him to the proof. The empire state, as it has been called, and as it is now sneeringly called, because it has been enabled, by the banking power, to become so enriched, stands now in the attitude of a money power arrayed against the people—against the power of numbers; and let a full and fair opportunity be given to the people of that state to speak out their sentiments upon this subject, and, my word for it, it would be such as cannot be mistaken. Let it come fairly to this test in the empire state—a state which is now boastingly held up as having sustained a banking system which is worse than the rotten borough system ever was, in its most corrupt day; let the question, I say, be fairly made, between the people and these banking institutions, and, my word for it, down go the banks; and every man who would overrule the wishes of the people by means of bank influence, would receive the severest reprehension.

In the part of the state from which I come, where we breathe the free mountain air, we submit to no such domination; to no act which tended to take away, to diminish, or, in the slightest degree, to impair the rights which we possess under the constitution and the laws of the land. But to all laws fairly and righteously enacted, we show as much regard as it is our duty to show.

The people there have spoken on this subject. The people there have had mill-stones cast around their necks, in order to prevent them from returning the representatives they were desirous to elect; but all to no purpose. They have shown by their elections that they are not to be so stifled. They have spoken out as independent freemen always should speak, when an effort has been made to invade their just rights, and that voice has been heard.

But why should not the inquiry which is proposed in this resolution, be made? Why ought it not to be made? If gentlemen who desire that the banking system should come to be regarded by the people as worthy of their support, why should the inquiry be refused? Is there any thing to conceal? Is there any thing which the advocates of the system fear to lay bare to the public eye? Why not investigate the subject, and thus satisfy the community—the people of the state of Pennsylvania—that the

act of assembly was rightfully and fairly passed, and that every thing that was done in relation to it, was as fair and as open as all legislative proceedings ought to be, so as to entitle them to the public approbation and confidence?

If you appoint the committee asked for in this resolution, and they can send out a report which will satisfy the people that nothing improper was done—that no sinister means were resorted to—that the act was passed by the process of fair and honorable legislation, and that, therefore, it would be right for them to submit to it, and to uphold this institution, so be it. Certainly there can be nothing wrong in the inquiry. It is right that the investigation should be had; and, moreover, it is right, as it seems to me, in reference to the institution itself, that the committee should be raised. The friends of that institution ought to desire, and not to avoid it. They ought to desire it, I say, because it will afford them abundant opportunity to prove to the people, if they have the means of proof, that all the complaints which have been made of the manner in which the act was passed, were without foundation; and that it was worthy to be approved by the people. This is the proper, and this is the usual course.

The friends of every administration of your government, whether state or federal, so far, at least, as my knowledge extends, are always anxious, when an allegation is made against the administration, affecting the integrity of its action or purpose, to throw wide open the door of investigation, that the administration may clear itself of these allegations, or justify its own proceedings.

I refer to a case which occurred about a year ago, and which is fresh in the recollection of us all, when Mr. Wise, of Virginia, and others, made certain complaints in congress against the administration of the general government, about the time that General Jackson was going out of power. Did not the friends of the administration come out boldly, and like men, and say, let inquiry be made? And did they not vote for it?

Such, also has been the case in Pennsylvania, when the state government has been assailed on the ground of mal-feasance in office, the friends of the administration never shrunk from inquiry. The members of this body who have been in the legislature, know that it has always been the practice to allow these inquiries to be made, so that the administration might justify itself, or sink, as under such circumstances it would deserve to sink, low in the confidence and the estimation of the people. I say, therefore, that the friends of this institution should be solicitous to bring about this inquiry, so as to set at rest the minds of the people. They can be cajoled or deluded for a season, but not forever. They may be cast down for a time, but, my word for it, they can not be destroyed. You may stifle their free actions for a season, but in their own time and their own way, they will trample under foot every obstacle which interferes with the full exercise of their rights, and will silence, and put to shame, every man who would take from them that power, which they alone ought to possess.

For my own part, I would gladly join any gentleman, of any party, in eliciting inquiry upon any subject, where it was supposed that the inquiry would be to the advantage, or the interests, of the people.

In conclusion, Mr. President, I return my thanks to the gentleman from the city of Philadelphia, (Mr. Scott) that he made the motion to postpone the consideration of this resolution, inasmuch as it will awaken us to the necessity of firm and vigorous action.

We must now carry ourselves under one of two banners. We must gather either under the banner of the people, or the banner of the banks. I, for one, have taken my election; I go for the people, and against the banks.

Mr. CLARKE, of Indiana, said that he should of course vote in the negative, on the motion to postpone, indefinitely, the consideration of this subject. He had always been in favor of inquiry, and he would now do nothing to obstruct it.

It had been said by the gentleman from Mifflin county, that the friends of the late administration had never shrunk from inquiry, and investigation.

I can say, for myself, continued Mr. C., that as a canal commissioner, I have stood a number of investigations, and have never shrunk from any of them. On the contrary I have always been first to meet them. We all, to a man, stood up for inquiry.

Now, I should be glad to be informed, whether it is the desire of the friends of the United States Bank of Pennsylvania, to smother this inquiry? If it is so, be the consequences with them. We wash our hands from them.

But, sir, let not gentlemen deceive themselves. Let them not suppose that they can stifle this investigation for ever. I can assure gentlemen, that the time is coming when the people of the state of Pennsylvania, will have the most full and ample investigation, whether the gentlemen who now oppose it, are willing or not. The investigation which was entered upon during the last winter, was not as full as the people desired.

The inquiry, however, which was prepared in the resolution of the gentleman from the county of Philapelphia, (Mr. Doran) is directed simply to the point, whether any thing ought to be done, and can be done, and, if so, by what body.

The gentleman from the city of Philadelphia, seems to be astonished at me for the course I have pursued. I will tell the gentleman that I am acting here as the free representative of a free people—that I feel myself bound to oppose a measure which, in my opinion, will sap the foundations of the liberties of the people, and take from them their dearest and most precious rights; and if, in so doing, I happen, occasionally, to say some hard things, it arises from the situation in which I am placed.

Sir, the controversy in which we are now engaged, is that which has existed in all ages of the world. It is the controversy between power taken from the people, on the one hand, and the efforts of the people to preserve their rights, on the other. The people have always been struggling against the encroachments of kings and lords, and of moneyed power.

One of the gentlemen who has addressed the convention, from the city

of Philadelphia, has said that there were two banners hoisted—the one superscribed with the word "property," and the other, with the words "loco-focoism."

Now, Mr. President, I think I know what the meaning of this word "property" is, according to the definition which I find in the dictionary; but what is the meaning of the word "loco-focoism," or what is the idea which the gentleman from the city of Philadelphia does himself attach to it, I am not able to tell. I find, however, that those who claim to be the peculiar conservatives of law and property, are also found always to be the advocates of vested rights, of monopolies, of schemes for accumulating property and power, which are hostile to the liberties of the people. If this is the meaning of the term "property," which is inscribed on the one banner spoken of, then I know what it is.

But what is "loco-focoism?" The party which the gentleman from the city seems to think is holding up what he terms the banner of "loco-focoism," I have always thought were contending for equal rights and equal privileges,—for the right of accumulating and enjoying property. They had no ill will against any man. All they wanted, was, that all men should be equal in the eye of the law; and that no exclusive privileges should be given to one man, or one set of men, which were not to be alike enjoyed by the whole community. It is against these privileges that the party to which I belong, are contending. If those who have arrayed themselves boldly and manfully in opposition to exclusive privileges—if those who have ever propagated the doctrine of equality, in the broadest sense of that term—if, I say, such men can be called the supporters of loco-focoism, then the doctrines of christianity must be called a species of loco focoism. The men who have turned the world up side down,—were loco-focos—if this be loco-focoism. And why did they turn the world up side down? Because they propagated those just and righteous principles, which lead to equality. And who was arrayed against them in that day? The libertines—the advocates of Roman power, the high-toned federalists, shall I call them, of that day—the supporters of absolute dominion. They were opposed to these loco-focos.

And who next? Why, the long faced Pharisees—these sanctimonious men, with skirts and garments cut in a particular way. They were opposed to the loco-focos.

And who next? The Scribes—those doctors of the law, who were learned in all the traditions of the elders. They were opposed to the loco-focos.

And who next? The Sadducees—the deists and infidels of that day; men who did not believe in a future state of rewards and punishments. They were opposed to the loco-focos.

And who next? The rabble.

And, Mr. President, it is identically so at the present day. Your lovers of power, your sanctimonious men, your doctors of law; and, in the cities, those who depend on the wealthy man to say, do this, and they do it. The same identical spirit is prevalent at this day, that was prevalent then, and this is the same identical contest. These may be hard words, and may sound rather harshly in the ears of bland and

accomplished gentlemen,—but these are my sentiments, and if they are the sentiments of loco-focoism, let them be so. We subscribe on our banner, "property and equal rights,"—the rights of millions—the rights of the whole people. It is for this reason that we contend against all monopolies.

But, sir, it is not necessary to go into an argument about monopolies at this time; I allude to them only to shew the propriety of this inquiry. And what is this? It is an inquiry in the most innocent form, to see if any thing should be done, and, if so, how it should be done. And will you suppress this inquiry? Will you vote it out of this body? The gentleman from the city of Philadelphia, says we have no right to go into this question? Who, then, has the right? If a majority of this body think that they have the right and the power to ratify it, who can dispute it?

If the people of Pennsylvania think they have been wronged, and say so by their votes, how will you gainsay that which the majority does? If the majority is against us, I, of course, acquiesce for the time being. But "let those who think that they stand, take heed, lest they fall."

How was it in the time of Charles the second, and James, when the dissenters of England, and the covenanters of Scotland, were hunted down? It was that which brought about the glorious revolution (as they call it) of 1688; and I warn gentlemen, when they think they are in the hey-day of success, not to be too sanguine. At present, they seem to have the power, now that they have gained some advantages in the elections,—and, probably, they have the power in this convention. But be it so. It is our duty to raise our voice for the equal rights of the people, —whether with success or not, we must still do our duty. That is a matter for the people, under Providence, hereafter to decide.

I shall, therefore, go against this indefinite postponement; and if it be not postponed, I shall vote in favor of the resolution. I suppose, however, that it will be postponed. The discipline is strong. We know ourselves to be in a minority here. We do not want any thing beyond that which we may claim as honest friends to the rights of the people—not that I would be understood to say that those who oppose us, are dishonest.

I have some other things in my mind; but as I have said hard things enough, and might say still harder, I will take my seat.

And on the question,

Will the convention agree so to postpone?

The yeas and nays were required by Mr. EARLE, and Mr. CLARKE, of Indiana, and are as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Craig, Cunningham, Denny, Dickey, Dickerson, Dunlop, Farrelly, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Heister, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Russell, Seager, Scott, Serrill, Sill, Snively, Thomas, Weidman, Young, Sergeant, *President*—58.

NAYS—Messrs. Banks, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Crain, Crawford, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gilmore, Has-

tings, Hayhurst, Helffenstein, High, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Mann, Myers, Overfield, Porter, of Northompton, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, Smyth, Stickel, Taggart, Weaver, White—47.

So the consideration of the said resolution, was indefitely postponed.

A motion was made by Mr. Mr. MEREDITH,

That the convention proceed to the second reading and consideration of the resolutions offered by him to-day, in the words following:

Resolved, That it is the sense of this Convention, that contracts made on the faith of this commonwealth, are, and of right ought to be, inviolable.

Resolved, That it is the sense of this convention, that a charter duly granted by act of assembly, is, when accepted, a contract with the parties to whom the grant is made.

And on the question,

Will the convention agree to the motion?

The yeas and nays were required by Mr. MANN, and Mr. REIGART, and are as follows, viz:

YEAS—Messsr. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Craig, Cunningham, Denny, Dickey, Dickerson, Dunlop, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Weidman, Young, Sergeant, *President*—57.

NAYS—Messrs. Banks, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Crain, Crawford, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gilmore, Hastings, Hayhurst, Helffenstein, High, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Mann, Martin, M'Cahen, Myers, Overfield, Porter, of Northampton, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, Smyth, Stickel, Taggart, Weaver, White—50.

So the motion was agreed to.

Mr. INGERSOLL asked that the question might be taken separately on the resolutions.

And the first of the said resolutions being under consideration,

Mr. INGERSOLL said, that he had risen simply for the purpose of expressing a hope that the first resolution would receive the unanimous sanction of the convention. He should vote for it with all his heart; he could see no objection to it. There was something, however, in the second resolution, which did not meet his approbation.

Mr. MEREDITH, of Philadelphia city, said that he had called up these resolutions for consideration at the present time, because, although he was happy to hear that the first of the two was likely to receive the unanimous vote of the convention, yet something had been said by members in various parts of the house, which, it seemed to him, made it necessary and expedient for this body, before it adjourned, to give the freemen of the commonwealth a view of the opinions here entertained, upon matters so vital to their interests.

I have heard, said Mr. M., this morning and on Saturday last, denunciations against a portion of the members of this house, charging them

with shrinking from the investigation of a principle, which is agreed upon all hands to be of the deepest importance. I do not choose to follow the gentleman to the quarter from whence he has drawn his comparisons.

The only reason for these denunciations, is, that we have not thought fit to vote for the appointment of a committee of five or seven members, to inquire into the validity of those principles upon which every man, before he came here, from the first moment in which he was entitled to the exercise of the right of opinion, by exercising the right of suffrage, had, or ought to have, made up his opinion. I desire to shew that I, for one, have no disposition to shrink from an investigation of the principles which have governed me, and which will continue to govern me, in relation to these matters. I desire it to be known that it is not in accordance with my wishes, my feelings, or my principles, that investigations should take place in the secrecy of a committee, in regard to matters which lie at the foundation of public morals. I ask for this investigation now, here in the face of all mankind, with the eyes of the people upon us—with the yeas and nays recorded, and let every gentleman come forward, as I have no doubt he will cheerfully do, and record his opinion here.

The resolutions I have made as perspicuous as I supposed they were susceptible of being made; and, while they lie at the root of the matter on which the parties in this body disagree, I trust they may be found to involve a final decision of the question.

The first declares, "that it is the sense of this convention, that contracts made on the faith of the commonwealth, are, and of right ought to be, inviolable." I do not suppose that there is a man here, who will be willing to record his vote against this proposition.

We all know that by the constitution of the United States, an instrument which is not amenable to our control, nor open to our recommendations, it is expressly prohibited to the states, to pass any laws impairing the obligation of contracts.

But, Mr. President, this will not satisfy me. I am unwilling that it should go forth as the voice of Pennsylvania, that it is under the constitution of the United States alone, that contracts are to be held sacred, at least by us. I regret to say, that we are too much in the habit of thinking that it is under this alone, that we hold this sacred principle. I deny it; sir, I deny it. I deny that the sanction of this principle is to be found in that, or in any other written constitution, alone. I claim it as a principle which lies at the foundation of public and private morals; and I claim it as a principle having a far higher sanction than can be given to any principle by an ordinance of men; and I say, therefore, that these contracts are not only inviolable under the constitution of the United States, but that of right they ought to be inviolable. And I ask, is there a gentleman here who will record his vote against this proposition? because, although it may be proper for those who have been hunting the freemen of this commonwealth from post to pillar, and from bush to thicket, to carry out their party views, and even to push them to extremities. Yet now, when the people have risen in their might, to claim the rights which are their own, I would like to see the man, of whatever feelings, opinions, or party he may be, who will dread the result of those feelings and

opinions, if they heard him to say, that contracts ought not, of right, to be inviolable! A contract not of right inviolable, sir! To what a pass have we come!

But to what a pass had things come, when any body of men—sitting in the very heart of Pennsylvania—sitting here, could deliberate, solemnly and gravely, whether agreements, public or private, are to be inviolate! Whether they are to be sacred for the future—whether those legislative acts, authorizing contracts and engagements to be entered into, and which had made our state so prosperous, are to be, for the future, held in respect! He wished to shrink from no investigation on the subject. He wanted no committee to satisfy his mind about it. He believed that no committee could be appointed but what would come to a conclusion favorable to recognizing all contracts. We have already heard that one legislature has a right to annul the acts of its predecessor. He desired that gentlemen would put their names on the record. And, in saying so, he begged not to be understood as speaking with warmth or in ill-temper. He did not mean to say that gentlemen would not hold to the opinions they had expressed; but he wished the people of the commonwealth to know these opinions. He entertained no doubt but that the people would respect those great and important principles which lie at the foundation of their government. The second resolution was a corollary of the first, and he apprehended it would not meet with the same unanimity. From the expression of feeling that he had witnessed on this floor, he was led to suppose that there was something in it which might possibly not meet the gentleman's (Mr. Ingersoll) approbation. He felt quite sure that if the gentleman saw the matter in the light which he (Mr. M.) did, he would support it—would yield his assent as cheerfully to that resolution, as to the first. He (Mr. M.) regretted this difference of opinion between the gentleman and himself; but, while he did so, he had no desire to aggravate, by any remarks of his, that difference. But, it was the people to whom we must appeal. They must decide the matter; and he was willing to stake what feeling he entertained on the issue. He supposed, too, that every gentlemen present was willing to do the same. If it was said that a contract is inviolable, then the question would arise—what is a contract? If it was an undeniable truth that a contract is inviolable—that a solemn promise made by the legislature to certain parties, and accepted by them, and they proceed to perform the duties, without any violation of the terms agreed on, he was, then, entirely at a loss to see how such an agreement did not come within the meaning of the word "contract." He knew not what difference of opinion there might be among gentlemen as to the term contract; nor did he know what distinction might be drawn between the constitution of the United States and that of the several states in regard to it. But when he looked to the consequences resulting from agreements, and the faith reposed in the party granting, he could not entertain a doubt that promises made and acted upon, were as binding on the legislature, under the great moral law of our nature, as on any other body or set of men whatever. An agreement or contract was equally as valid and binding—whether made by the house of representatives, senate and governor on one side and a poor man on the other, as it would be if made between two private individuals. These were his (Mr. M's.) views on the sub-

ject, and respecting which he had no desire to provoke any debate. He hoped that a larger vote would be had in favor of inserting something in the schedule than there was on the resolution. He had been opposed to bringing up the question in the shape of a resolution, thinking that a clause in the schedule, similar to that in the constitution of 1790, might become necessary hereafter. But, the step which had been taken here in regard to the resolution just postponed, had satisfied his mind that this was a mere appeal to party feelings. The course which the debate had taken, was calculated to create an impression among the people, that a majority of the convention were in doubt on some one of these principles. The bare appointment of a committee ought to have induced us to wait until they had reported and made known their principles, and, no doubt, gentlemen would have made up their minds coolly and deliberately, instead of being kept, all the interval, in a state of feverish excitement, as we had been. It was now, however, too late to regret that the subject had been introduced. When the resolution was laid on the table, he had hoped it would be left there. But, as it had since been discussed, and various principles been advanced, he trusted that before we returned to our constituents, we would put the public mind at rest. He would ask whether, in regard to the two principles, there was any difference of opinion on the subject. He apprehended not. He thought that we should, at least, be able to say to the people, (whatever might be said in debate—whatever might be said in party animosity) that on great and sound principles, the majority hold such opinions as are calculated to allay all fears, and settle the public mind in reference to contracts. They believed all contracts to be inviolable, and that a contract made by the legislature of the state, in the form of the constitution, with a body of individuals, or a single individual, is as inviolable as in any other form. And, the day when these principles shall be denied, the brightest jewel will have been torn from the crown of Pennsylvania—her brightest honor will have faded —when the time shall come that she can no longer point, with pride, to the maintenance of public order and public justice—to her unshaken fidelity to public engagements—to her great principles of public morals, which lie at the root, any government must become worthless and be destroyed. He knew that the time was far distant in this commonwealth; but he could wish that many of the delegates charged with the duty of reforming the constitution, held the same sound opinions as are held by the great mass of the community, and which, too, they would continue to hold.

Mr. EARLE, of Philadelphia county, said, he presumed with his colleague on the right, that all the members of this convention would subscribe to the general doctrine which the gentleman from the county of Philadelphia advocated, and which induced him to support the first resolution. He, (Mr. E.) however, thought he could convince the gentleman that that resolution, taken as a general rule, was not true, in point of fact. He would say there was not an intelligent man but what must admit that it went farther than the monarchist or aristocrat—that it out-Wellingtoned Wellington, out-Polignac'd Polignac, out-Webstered Webster, out-Hamiltoned Hamilton. The doctrine contained in that resolution was not to be found laid down by any writer on national law. The most tyrannical writer—the writer most opposed to public liberty, that ever lived, never advanced a doctrine so monstrous. What was

the doctrine? It was, that contracts, no matter what, are inviolable. How inviolable, he asked? Five minutes, five days, five years, or ten thousand years? Does the gentleman mean to fix no time—no limitation? What kind of a contract, he asked, did his friend from the county of Philadelphia, (Mr. Ingersoll) mean? Suppose that his colleague should make a contract, and pay into bank one hundred dollars, that he (Mr. Earle) should be henceforth a slave to him and his posterity, would that contract be binding on him, (Mr. E.?) He would ask his colleague this question—supposing that our forefathers had omitted to insert the bill of rights in the constitution, and the legislature had made contracts in derogation of natural rights, would those contracts have been binding to endless ages? Could they never have been abolished? It was a doctrine which could not be maintained. Our rights were undoubtedly imperfect, and he presumed there was no one would venture to say that, in every sense, the liberties of the people were guarded. Our legislature possessed the power, under the existing constitution, to commit a thousand acts which might bear oppressively on the people. Could the doctrine be advanced, in this enlightened age, that, because the legislature had once done wrong, in granting a charter, that the people were without a remedy? Take the case of Spain, the government of which country had made a contract with the Catholic clergy that they should have the revenues for a certain period in consideration of the aid granted by them. Should it happen that a change took place in the government, politically or religiously, would it be said that the Catholic clergy had a claim on the government? He presumed not. Take the case of Ireland, which had out-Wellingtoned Wellington; or, the case of England, and the change which had taken place in that country from the Catholic to the Protestant faith, which changed the revenues of the country into other hands. Had they not a right to do it? There was Ireland, too, a country cruelly oppressed, and made to pay tithes to the Protestant church, for the support of the Protestant clergy, to whom they, as Catholics, never listened. Yes! they paid their tithes to enable the clergy to indulge in rioting and dissipation. Would the Irish, then, not have a right to resist this oppression, if they could? Most undoubtedly they would.

Some years since, the legislature of New York, thought they had a right to grant exclusive privileges. They passed an act granting the exclusive privilege to Robert Fulton of navigating the waters of the Hudson river by steam. The supreme court of the United States decided the act to be invalid—not that the legislature had not the right to pass it—but that the navigation of rivers was under the control of congress.

Now, suppose the Pennsylvania legislature to pass an exclusive act—one dollar being paid annually as a consideration—or, as Chief Justice Marshall said was formerly done—one pepper corn for the exclusive privilege to make all the shoes and boots—would not the legislature have the right to pass such an act? Surely they would. He would ask the gentleman whether the public good was not the supreme law? And whether all maxims that contradicted this, were not false?

Suppose that an individual were to introduce a new article of manufacture into Pennsylvania, and the legislature, by way of encouraging

it, were to grant him and his heirs forever, the exclusive right, in consideration of the payment of a certain sum, of selling the same in Philadelphia, and it should afterwards be discovered that the article was deleterious and injurious to the people, he (Mr. E.) would ask whether the legislature, acting for their good, would not have a right to annul the law?

If the gentleman from the county of Philadelphia, (Mr. Ingersoll) who offered the resolution, said he meant nothing more by it than the general principle that contracts rightly made, and not contrary to the rights and liberties of the people were binding, why he, (Mr. Earle) went with him. If he meant the mere fact that the legislature have the power to make a contract, whether through fraud or folly; or, if he meant on the faith of the commonwealth—

Mr. INGERSOLL: On the faith of the commonwealth.

Mr. EARLE proceeded. Well, suppose it to be made on the faith of the commonwealth. He denied that any body could bind the commonwealth against their conviction—against the public good. If he (Mr. E.) was descended from Shem or Ham—

Mr. INGERSOLL. Or Japhet.

Mr. E. would have no relief with the other. He would deny that another had the exclusive right to navigate the Susquehanna. He wished to know whether a contract went with the land, or with posterity, or with those who made it? If we are bound by those who made it, then do we owe a part of the national debt of England, and had better set about paying so much as was contracted before the revolution. We were bound to the Indians on the Susquehanna before we settled here.

The doctrine, however, was ridiculous—absurd from beginning to end. There was not the slightest particle of truth for its foundation. No man could bind his son in an act, except where the moral and equitable obligation arose from circumstances. Take the case of a slave, for instance: according to the law of Maryland, a man is made a slave to one, but you cannot make a contract binding him to any one for a term of years. A slave to one, does not necessarily make him forever a slave to another. The next generation is as free as that before it. As Jefferson said, in a letter on this very subject, "No man can make a contract, as such, binding on his son. His son, when he comes of age, has a right to accept or reject it."

He (Mr. E.) would admit that a charter might be morally binding, and that we had no right to repeal it, unless it involved the public good. And, if repealed, we were bound, in justice, to pay back the consideration. He would not say that a thing was binding, which was contrary to liberty or common sense. There was no truth in the doctrine; but admitting, for the sake of argument, the doctrine to be true, there had not been a freeman from the days of Adam, and would be none. He hoped the gentleman from the city of Philadelphia, (Mr. Meredith) would so alter his amendment that almost every member would vote for it.

He (Mr. E.) would move to strike out all after the word "Resolved," and insert—

"That contracts, fairly and properly made on the faith of the commonwealth, and not inconsistent with the rights and liberties of the

people, are, and of right ought to be, inviolable; but the people have, at all times, an unalienable right to take private property, when needful for the public use, upon paying a fair compensation therefor."

The amendment embraced two principles: *First.* That contracts must be fairly and properly made. And, would any man, in this enlightened age, deny that this was right and proper enough? He imagined not.

Second. They must not be inconsistent with the rights and liberties of the people; and there are certain rights stated in the Declaration of Independence which are inalienable, and no contract can be made, or supposed to be made, which at all conflicts with the inalienable rights of the parties to it—those being rights which they cannot give away. Suppose a man, for instance, to make a contract with another, that he would forever surrender to him his right of conscience, say for a million of dollars—and he pays him the money—the man might be bound in point of honor. Would he (Mr. E. asked) be bound by it? Not at all. He might offer to return the man his money; and if he refused to take it, the man would not be bound by the contract, inasmuch as he was not compelled to do that which was contrary to his obligations to God and his fellow beings.

How many there are, in this body, who think the masonic oath contrary to the principles of morality, and would not deem themselves bound by it. He presumed that gentlemen would admit, with him, that all oaths must be consistent with the rights and liberties of the people, or they are not binding.

The last branch of the amendment had always been recognized by every gentleman, but yet he thought it right to introduce it. Take the case of this commonwealth, and of the government of the United States, both of which were continually taking property against the will of the owner. Our legislature is in the yearly practice of violating contracts. The owner says: "I will not permit your canal to go through my land;" and the legislature says, "you shall; the public good is the supreme law, but we will pay you a fair compensation. And that is all you are entitled to. You shall not be a judge of the bargain; but we will give you an opportunity of objecting to our offer. Somebody else must say what it is worth." That (Mr. E. said) was a principle which was recognized in all governments; and without it no good government could exist. He hoped that the amendment he had offered would prevail.

Mr. INGERSOLL moved that the Convention do now adjourn.

Lost.

The question then recurred on the adoption of the amendment.

Mr. DONNELL, of York, asked for the yeas and nays.

Mr. MEREDITH declined to accept the amendment.

The question was then taken on the amendment, and it was decided in the negative—yeas 43, nays 60.

YEAS—Messrs. Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Crain, Crawford, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Earle, Fleming, Foulkrod, Fry, Fuller, Gilmore, Hastings, Hayhurst, High, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, Mann, M'Cahen, Myers, Overfield, Read, Ritter, Rogers, Scheetz, Sellers, Shellito, Smith, Smyth, Stickel, Taggart, White—43.

NAYS—Messrs. Agnew, Ayres, Baldwin, Banks, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Craig, Cunningham, Denny, Dickey, Dickerson, Dunlop, Farrelly, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Weidman, Young, Sergeant, *President*—60.

The committee rose; and,

The Convention took the usual recess.

MONDAY AFTERNOON, NOVEMBER 20, 1837.

The question recurring on the first resolution offered by Mr. MEREDITH, this morning, in the following words, viz:

Resolved, That it is the sense of this Convention, that contracts made on the faith of the Commonwealth, are, and of right ought to be, inviolable.

Mr. BROWN, of the county of Philadelphia said, that in the morning session he had been desirous to postpone this subject until to-morrow, to allow time for reflection. But finding that this course was not generally acceptable, he did not urge it. Since that time, he had come to a different conclusion. He could discover nothing in this resolution which has any relation to any amendment of the constitution; and he would ask the gentleman from Philadelphia, who seemed to have taken the powers of this convention into his charge, where he would seek, for the purpose of discovering any power to pass this resolution.

He would like an answer to this question—What right have we to take up any thing for discussion and decision which is not to be submitted to the people?

Here, in this resolution, there is nothing to submit to the people. There is nothing contained in it which is within the sphere of our duties. It was altogether different in its character from the resolution of his colleague, which was disposed of this morning, and which provided for the appointment of a committee to inquire if there was any thing on the subject which should be submitted to the people. Whether we should think it proper to submit any amendment on the subject to the people, was the question to be referred to that committee. If gentlemen who advocate this resolution would now ask for the appointment of a committee to be charged with the duty of preparing an amendment to the constitution, or

to submit to the people, for their decision upon it; a proposition declaring that contracts "are and ought of right to be inviolable," he would go with them on that question. It had occurred to him that this was a proper subject for legal adjudication; and that it was not within the range of our duties to take the subject into our consideration, and to send abroad our opinions, without giving the people an opportunity of passing upon them.

He did not believe in the power we possess to fix and settle this question here, in this hall, without sending it to the people for them to accept or reject the proposition. Was it for us to give a new idea for the people to act on? The whole of the question now under consideration had assumed this shape, and he could not bring himself to vote for it. He would never be forced to vote for any question in this convention, which was not to be sent to the people for their acceptance or rejection. We are here, appointed and acting as the agents of the people, and they have the right to receive or reject the fruits of our labors which is to be presented to them; and believing this, he looked on the resolution now under consideration as entirely extraneous in its character, and he would not consent to go into any question irrelevant to the purpose for which we were appointed, and the legitimate objects of our deliberations. Gentlemen might with just as much propriety, introduce into this body, a proposition to recognize Don Pedro or Don Carlos. He desired it to be understood that he had taken his ground; and unless he was placed in a position in which his vote would come before the people of Pennsylvania, to receive the test of their censure or approval, he would not be induced to place it on record.

Gentlemen might talk, as they pleased about his readiness to destroy vested rights. He desired to see the question put to the people, whether they are of opinion that vested rights ought to be secured, under all circumstances. Let gentlemen then place the question in a position on which public opinion concerning it may he tested. He placed himself on that ground, and he had come to a determination not to vote either for or against the proposition, unless it can be submitted to the people for their decision, after we shall have acted upon it. He would, now that the gentleman from Philadelphia to whom he had before addressed himself, (Mr. Chauncey) was in his seat, repeat the question he had previously put, whether it came within the range of the powers of this convention, to pass a declaratory resolution, saying that a charter duly accepted was a contract, and that, as a contract, it ought of right to be inviolable, and is so? He would ask if any proposition acted on by this body ought not to be, and which must subsequently be, submitted to the people for their approbation or rejection?

Until the resolution now before the convention assumed that form, he did not consider himself bound to give his vote upon it, as a delegate in the reform convention, acting under powers which are specified by the authority which called us into existence. On no occasion would he give his vote, until he was called on to do so, in accordance with his own sense of his duty, and then he would act in the case as his best judgment might direct.

Mr. Reigart, of Lancaster, rose and said, that this was beyond all doubt, a very searching resolution. It was clearly to be seen that it

pierced to the core. He was very desirous to see who would vote for it, and who against it. The minds of the people had been so long and so industriously called to the subject, that there could be no doubt, every delegate on this floor was prepared to vote one way or the other. For the purpose, therefore, of bringing this matter to a conclusion, he would call the previous question.

A sufficient number rising to sustain the call, the previous question was seconded.

Mr. M'CAHEN, of Philadelphia county, asked the yeas and nays on the question, and they were ordered.

The question was then taken, "shall the main question be now put?" and was decided in the affirmative by the following vote, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Craig, Cunningham, Dickey, Dickerson, Dunlop, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Houpt, Ingersoll, Jenks, Kerr, Konigmacher, Long, M'Calf, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Weidman, Young, Sergeant, *President*—53.

NAYS—Messrs. Banks, Bonham, Brown, of Northampton, Butler, Chambers, Clarke, of Indiana, Cleavinger, Crain, Crawford, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Earle, Farrelly, Fleming, Foulkrod, Fry, Fuller, Gilmore, Hastings, Hayhurst, Helffenstein, Hiester, High, Hyde, Keim, Krebs, Magee, Mann, Martin, M'Cahen, Myers, Overfield, Porter, of Northampton, Read, Ritter, Scheetz, Sellers, Shellito, Smith Smyth, Stickel, Taggart, Weaver, White—48.

The question was here taken on the first resolution, as follows:

Resolved, That it is the sense of this Convention, that contracts made on the faith of the Commonwealth, are, and of right ought to be, inviolable.

The yeas and nays having been required by Mr. REIGART, were as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chambers, Chandler, of Chester, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Craig, Crain, Cunningham, Denny, Dickey, Dickerson, Dillinger, Dunlop, Farrelly, Forward, Gilmore, Harris, Hayhurst, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Ingersoll, Jenks, Kerr, Konigmacher, Long, Maclay, Mann, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Russell, Saegar, Scott, Serrill, Sill, Snively, Thomas, Weidman, White, Young, Sergeant, *President*—66.

NAYS—Messrs. Brown, of Northampton, Butler, Earle, Fleming, Hyde, Smith, Weaver—7.

So the question was determined in the affirmative.

The question being on the second resolution, as follows:

Resolved, That it is the sense of this Convention, that a charter duly granted by act of assembly is, when accepted, a contract with the parties to whom the grant is made.

Mr. INGERSOLL would, he said, take the liberty to make a single suggestion to the mover of the resolution. If he would insert the word bank before the word charter, its meaning would be perfectly plain.

Mr. MEREDITH asked whether, if he modified the amendment as the gentleman proposed, he should have his vote for it.

Mr. INGERSOLL. No.

Mr. MEREDITH was pleased, he said, with the unanimity that appeared to prevail in the convention on this subject. The second resolution was not intended by him to cover bank charters merely, but every other institution which might be incorporated.

A motion was made by Mr. PORTER, of Northampton, to amend the said resolution by striking therefrom all after the word "Resolved," to the end, and inserting in lieu thereof the words as follow, viz: "That the power to create banking corporations is a power committed by the constitution to the legislature of this commonwealth, and that when exercised according to the forms of the constitution, a contract is created between the people of the state and the corporators, which it is not in the power of either party subsequently to impair, without the assent of the other. If the contract be violated by either party, redress is to be sought before the judicial tribunals of the country, which are competent to investigate and decide the subject; that the powers of this convention are confined to the consideration of alterations and amendments to the constitution of this commonwealth, to be submitted to the people. We have no power for other purposes: and, therefore, the power to repeal charters, legally granted and accepted by the corporators, does not exist in this body, nor in the legislature of the commonwealth."

Mr. PORTER then rose and said:

Mr. President, I have felt myself called on to offer this amendment because I connot agree to the proposition contained in the second resolution offered by the delegate from the city of Philadelphia, (Mr. Meredith) in the general terms in which it is expressed. I do not think the principle correct, that all the charters of incoporation are beyond legislative control. Those which are of a public or political character, such as municipal corporations and the like, not partaking of the nature of contracts, are subject to the supervision of the legislature, which has the power to alter, re-model, and repeal the same as the exigences of the state and a regard for the public good may require. It is, in my judgment, to private corporations, that the principle is applicable and the position true, that a charter is a contract and cannot be altered by one of the parties to it without the assent of the other.

I regret that this subject has been called up for action at this time. I regretted that the delegate from Philadelphia county, (Mr. McCahen) saw fit on Saturday last to call up for consideration the resolution offered by his colleage, (Mr. Doran) on the 10th day of May last, proposing "that a select committee be appointed to inquire and report to the convention whether the people of this commonwealth by a legislative enactment, or by a provision in their new constitution, can repeal, alter or modify an act of assembly of this commonwealth entitled "an act to repeal the state tax on real and personal property, end to continue and extend the improvements of the state by rail roads and canals, and to charter a state bank to be called the United States Bank," passed the 18th day of February, A. D. 1836, and if the people have such power, whether it would be proper and expedient to repeal, alter or modify that act, or any part thereof, and in what way, and on what terms the same should be done; because our labors, previous to the proposed adjournment to Philadelphia, were

drawing to a close, and a number of delegates, holding different views in relation to the matter, had gone home, not supposing that this exciting subject would be brought up for discussion and decision during their absence. The impolicy (to say the least of it,) of so calling it up must now, I think, be fully manifest to all. But when it was called up for consideration, and the vote of the convention was taken upon it, I voted for considering, and subsequently against indefinitely postponing the resolution, because I seldom vote against inquiry on proper subjects; and I then thought and still think, that the more prudent course for the friends of the institution alluded to, if I may use the term, would have been to have had the committee appointed and to have had a report from it, embodying the law upon the subject, giving the solemn decision of this convention thereon, with the reasons therefor, to the public, and, permitting the minority to report their views and let both go forth to the world, for the public to pass between them. A majority of this body, however, for reasons no doubt satisfactory to them, thought differently, and postponed the resolution indefinitely, which was in effect negativing it. And that majority have thought it expedient to give to the world in the shape of a resolution, their views of the law of the case, in order that no misapprehension may be entertained in regard to those views. For the same reasons which governed me in going for the former resolution of inquiry, I shall now go for a proposition to give to the world the views of this body on the subject, which is one of deep and absorbing interest, and important for rendering secure and permanent the institutions of our country and the rights of our citizens.

I have investigated the subject with care and attention, and have brought my mind to a conclusion as to what the law is, and having done so I shall give the result to this body faithfully and fearlessly. I have no hesitation in taking my share of the responsiblility of so doing.

The proposition submitted, as well as the amendment proposed, involves the subject of corporations, and is intimately connected with their effect upon our rights and institutions. It is a grave subject, and one to the consideration of which, clear heads, sound hearts, and if it were possible, unprejudiced minds are required.

On one hand, we should be careful to guard against the dangers, honestly apprehended by a large proportion of our constituents, from the multiplication of corporations or monopolies, while on the other, we should be as cautious not to permit clamour, often excited from any other than honest motives, to lead us to the commission of acts of positive injustice.

It may be wise and salutary, and perhaps it may essentially aid us in arriving at sound and correct conclusions, to inquire into the origin, progress, uses and tendencies of corporations. We have in our country a great number of corporations scattered through every part of the Union, created and intended, such at least it was supposed by those who constituted them, to concentrate mind, capital and action in the extension of religion—the diffusion of science and the arts—literature and education—the carrying out of great schemes of internal improvements and the promotion and prosecution of commerce, agriculture and manufactures.

A corporation is a political institution. It is an artificial being, which exists only in contemplation of law. It has no other capacities than

such as the charter confers, either expressly or by direct and necessary implication, to effect the purposes of its creation. The origin of municipal corporations may be traced to the establishment of *municipa* or towns by the Romans in the countries which they conquered, conferring upon the inhabitants all or a portion of the rights of Roman citizens. After the abdication of Roman authority in England, the remains of the municipal corporations which they established, contributed, no doubt, to the formation of those elective governments of towns, which were the foundation of the liberty which modern nations enjoy. Nor were the the effects less evident on other portions of what had been the Roman Empire.

The commercial cities of Italy, when the degeneracy of the feudal system had rendered that system justly odious, boldly assumed new privileges, and formed themselves into bodies politic, under laws of their own making. Their example was followed by those of other nations, and a certain amount of freedom was thus obtained, ultimately secured by force of gold, from the kings and emperors of the day, whose weakness or whose wants, growing out of the crusades and their feudal wars, thus ministered to the progress of liberty. "Thus," as has been well observed, "order, security, industry, trade and the arts revived in Italy, France, Germany, Flanders and England."—2 *Kent.* 218. These corporations grew and increased in power and consequence, and are now found to possess the power of local government in all principal cities, towns and boroughs of Great Britain, as well as of other countries.

As to private corporations, Blackstone attributes them to Numa Pompillius. Yet the formation of collective bodies may be traced to the Greeks. In the laws of Solon, copied into the Pandects, the institution of private companies is authorized. But the more jealous policy of the Romans, induced greater form and care in forming them, which was not permitted without a decree of the senate or emperor.

The names *university* and *college* are derived from the Roman appellations of such companies of tradesmen, &c. as they established, called "universities," as constituting one whole, out of many individuals, and "collegia" from being collected together.

The Romans, however, were not only careful in requiring the assent of government in the creation of these corporations, but also in dissolving every combination not thus constituted. At least such we find to be the case according to Suetonius, in the age of Augustus, as well as of Julius Cæsar, who dissolved all but the ancient and legal corporations.

The younger Pliny, on the occasion of a great fire, recommended to the Emperor Trajan, the institution of a fire company of one hundred and fifty men, with an assurance that none but those of that business should be admitted into it, and that their privileges should not be extended to any other purpose. But it was refused by the emperor, who alleged that societies of that sort had greatly disturbed the peace of the cities, and that for whatever purpose they might be instituted, they would not fail to be mischevious. [*Pliny's Letters*, p. 610—*Letters* 42–48.] Herein his imperial majesty seemed as much prejudiced against corporations as many of the plain republicans of the present day.

There was one trait in the corporations created by the civil law, which

distinguished them essentially from ours. There the members remained individually liable for the company debts; with us they do not; and it is in this particular alone, in which the difference between them is found to exist—for their system, like ours, divided them into eclesiastical and lay, civil (or political) and eleemosynary. The literary corporations, such as colleges, as we denominate them, are comparatively of modern invention. No degrees were granted by colleges or universities, we are informed, prior to the thirteenth century. And indeed it would seem that there were few, if any corporations, except of a municipal character, in England, prior to that time.

The Italian states had been among the first as well as most important agents in carrying on commerce upon an extended scale. So early as the tenth century, we find the Venitians carrying on trade with Alexandria, in Egypt. About the middle of the twelfth century they established their "chamber of loans," which was in effect the organization of the first bank, and was instituted for the management of the fund raised to relieve the state finances from the embarrassments under which they labored, and in process of time, and after various modifications, become the Bank of Venice, and served as the model for similar institutions subsequently established in other countries.

"The table of exchange" was established in Barcelona at the commencement of the fifteenth century; the Bank of Genoa within a few years thereafter, which in a short time assumed the name of "the Chamber of St. George," and its organization made more permanent by a new arrangement carried into effect about the middle of that century.

It was not until the beginning of the seventeenth century, that Amsterdam next followed their example, in establishing the bank of that city, and about the close of that century, say about 1694, the charter of the Bank of England was granted. It was originally granted only for twelve years, and had been renewed from time to time.

Why or wherefore it was, we cannot now say, but it does seem that the republics of modern times were the creators of the first banks, and much as the multiplication of corporations would seem to be at war with the principles on which republican governments are founded, the fact is undeniable that in republican America, there have been more corporations created than in all the rest of the world beside, and in the state of Pennsylvania more than in all Europe.

On this subject I extract form Angel & Ames' valuable treatise on corporations, the following remarks:—"It would be a much more easy task to enumerate the corporations of the aggregate, and not of the municipal kind, now existing in Europe, than it would be to enumerate those now established in the United States. In no country have corporations been multiplied to so great an extent as in our own, and the extent to which their institution has here been carried, may very properly be called "astonishing." There is scarcely an individual of respectable character in our community, who is not a member of at least one private company or society which is incorporated. If a native of Europe who has never traversed the wide barrier which separates him from us, should be informed, even with tolerable accuracy, of the number of banking companies, insurance companies, canal companies, turnpike companies, manufacturing companies, &c., and of the literary, religious and charitable

associations that are diffused throughout the United States, and fully invested with the corporate privileges, he could not be made to believe that he was told the truth. Two centuries, he would say, have scarcely elapsed since civilized man first found the country a wilderness, wherein the uulettered savage roamed in unmolested freedom."

Acts of incorporation are moreover continually solicited at every session of the legislature, and there is no reason to believe but that hundreds of new charters will soon be added to the present mighty mass. The New York convention, in the year 1821, attempted, says Judge Kent, to check the improvident increase of corporations, by requiring the assent of two-thirds of the members elected to each branch of the legislature, to every bill for creating, continuing, altering or renewing any body politic or corporate. Even this provision, as we are told by the same author, failed to mitigate the evil: and he refers the reader for an instance of the failure, to the session of the New York legislature of 1823, that is the first session after the operation of the check just mentioned. At that session *thirty-nine* new private temporal corporations were instituted.

We may refer to another instance of the difficulty of resisting the propensity to an injudicious incorporation of private companies, which occurred in the state of Pennsylvania. At the session of the legislature of that state of 1812–13, a bill to incorporate twenty five baking institutions, the capitals of which amounted to 9,525,000 dollars, was passed by both houses of the legislature, by a bare majority of one vote in each. The bill was returned by the governor (the intrepid Simon Snyder) with his objections, which were sensible and cogent, and on a re-consideration the votes were 38 to 40. At the following session the subject was renewed with increased ardour, and a bill authorizing the incorporation of forty-one banking institutions, with capitals amounting to upwards of 17,000,000 dollars, was passed by a large majority. This bill was also returned by the governor, with additional objections, but two-thirds of both houses (many members of which were pledged to their constituents to that effect) agreeing on its passage, it became a law on the twenty-first of March, 1814, and thus was inflicted on the commonwealth an evil of a more disastrous nature than has ever been experienced by its citizens. Under this law thirty-seven banks, four of which were established in Philadelphia, actually went into operation, the charters of which expired in 1825, and nearly all of them have since been renewed.

Judge Kent says "that the multiplication of corporations in the United States, and the avidity with which they are sought, have arisen in consequence of the power which a large and consolidated capital gives them over business of every kind; and the facility which the incorporation gives to the management of that capital, and the security which it affords to the persons of the members, and to their property not vested in the corporate stock. And the remark make by Mr. Justice Duncan, of Pennsylvania, viz: "That the state was an extensive manufacturer of home made corporations,"* will apply, as our readers well know, to every state of the Union.

This work was published in the year 1832, and I am indebted to it for a collection of many other facts and dates which I have embodied in these

* Bushnel v. Com. 15 S. & R. 186.

remarks. Since its publication the work of manufacturing corporations has gone on almost in geometrical progression, and it does seem that something ought to be done to check this onward current of legislation. No charter ought ever to be granted to an association of individuals, for the accomplishment of any project, which individual means and individual enterprize are capable of effecting. But where a necessary object is in view—one by which the interests of the community, or a large portion of it, will be greatly promoted, and individual effort is found inadequate to the object, then there should be no hesitation in incorporating companies for such objects, and clothing them with the necessary powers to carry them out.

Corporate property and franchises are important in amount and extent, and they have not the same sympathies in public opinion thrown around them, for their guard and protection, that individual rights have. They, therefore, offer a more tempting subject for power to prey upon, whether as has been well observed, that power resides in the prince or the people.

Hallam, in his work on the constitution of England, (when speaking of the statutes of mortmain) regards corporate rights and property as placed on a different footing from those of individuals, and claims for the parliament of Great Britian the right to re-mould and regulate them *in all that does not involve existing interests;* and the inclination of my own mind would lead me to desire that such should be the case here. And if this is all that could be claimed for the parliament of Great Britain, which is claimed to be, and for most purposes is omnipotent, we cannot in this country, where all legislative authority is limited and restricted, be supposed to be authorized to go farther. Yet if it shall be discovered from the investigation of this subject, or if the principle be deemed settled in public opinion, independent of this discussion, that existing rights cannot be effected, I think such a power, reserved in future grants, may be salutary to the public at large, if it be prudently exercised. For it does frequently happen that corporations are created with but little reflection and care. That their objects are not sufficiently guarded, and evils not anticipated have arisen, and do arise almost daily.

The rapid increase of corporations before alluded to may lead, and unquestionably has a tendency to lead, to combination prejudicial to the interests of the citizens at large. While I freely admit the great good which has flowed to our country from the construction of roads, bridges, canals, rail roads, &c. by the combined enterprize and capital of our public spirited citizens, under acts of incorporation, I cannot but deplore the multiplication of corporations for almost every purpose to which individual enterpize could be as well, if not better, directed. In justice to our commonwealth it must be confessed, that she has not sinned beyond her neighbours in this wholesale manufacture of corporations, for other states of the Union have done even more at it than Pennsylvania.

There is little doubt that owing to the creation of one corporation in our state, I mean the Bank of the United States, the subject of corporations has become a more exciting topic of discussion than it otherwise would probably have been. That institution was originally chartered by congress. As the term of its charter was about to expire, an act was passed by the two branches of the national legislature to renew it, which

was vetoed by the president, and failed to become a law. It was then placed in an unfortunate position of opposition to a popular chief, who held so large a place in the affections and feelings of the people, that all opposition to him, or to almost any of his measures, was next to useless, and always unsuccessful and the chance of the renewal of its charter by the action of the general government, became entirely hopeless. In this state of things, the political disputes among the politicians of Pennsylvania, gave the friends of that institution an opportunity to obtain a charter from the state government, under which it is now carrying on its operations. Whether this act of the legislature of Pennsylvania will be for good or for evil, time will develope.

My own position in relation to this institution, although in nowise connected with it, was something peculiar. Educated in all the principles and feelings of the old democratic party, which feared and resisted the accumulation of power in the general government, I believed and still do believe, that congress possessed no power either by the express language of the instrument, or by direct and necessary implication, under the constitution of the United States, to create a banking corporation. But those competent according to the constitution to pass upon the matter, have decided otherwise, and I must submit. The several presidents, and many of the congresses of the Union, have given sanction to laws incorporating banking institutions and acts supplementary or in relation thereto; and the supreme court of the United States has decided that such enactments are not contrary to the constitution of the United States. Like my illustrious namesake, (James Madison,) than whom no one better understood constitutional law, I bow in submission to these determinations of the matter, and deem it safest and most prudent—best calculated to sustain the character and permanency of our government and its institutions, to consider the constitutionality of the matter forever at rest, unless the existing constitutional provision should hereafter be altered so as to exclude the exercise of such power. It therefore resolves itself into a question of expediency. I confess the feelings under which I was educated, strengthened no doubt by the fact that the old bank of the United States, (I mean that incorporated in the year 1790,) was charged with having lent itself to political purposes, and caused the ruin of some of the merchants of this city, because they would not yield their political opinions to the officers of that institution, that this mainly prevented the renewal of their charter in 1810–11, and the strong and decided opposition entertained and fearlessly expressed by Simon Snyder, the political Gamaliel, at whose feet I may be said to have been brought up, in 1813 and 1814, against the entire banking system, led me to wish that the experiment might be tried of doing without a national bank on the expiration of the last institution. Yet being out of the vortex of politics, I took no public part by attendance at meetings or signing petitions or memorials one way or the other, in relation to the renewal of the charter, the removal of the deposits, or any of the measures connected therewith.

From the little examination I gave the subject I thought the removal of the deposits unnecessary, and as every unnecessary interference with the financial operations of the community operates injuriously upon some portion of that community, by occasioning derangement and embarrassments in the monetary concerns of individuals, I disapproved of that act.

When it had been done, however, I was desirous of testing the capacity of the state banking institutions for performing the fiscal agencies of the government, and therefore would have opposed the establishment of another national bank, until the experiment with the state banks had been found not to answer the exigencies of government.

In this state of things there occurred the division in the ranks of the dominant party in Pennsylvania, to which I have referred. The disputes and divisions in relation to the two candidates of that party for governor, were carried into the election of most of the representatives to the legislature and the senators, and gave their opponents a majority in the house of representatives. In the senate there was still a decided majority of members elected by the democratic party—a portion of whom, sufficient to change the majority, agreed to the passage of a bill for chartering the bank of the United States by the state legislature.

The passage of the bill in question was urged through the legislature with more haste than usually characterized legislation on great and important subjects. The title of the bill, as reported, said nothing about the incorporation of the bank. It professed to repeal state taxes, the laws it for which would have expired in a few days by their own limitation. And also professed to be a bill for the improvement of the state by roads and canals, which to be sure was one of its objects, or rather the consideration which the state received for granting the charter.

The votes of the senators to whom I alluded—the circumstances of the title—the operation of the tax laws—the numerous appropriations for works of internal improvement in various parts of the state, in order to concentrate influence and obtain votes of legislators, were seized upon, by the opponents of the bank as so many evidences of fraud and corruption, and thus a vast amount of prejudice was gotten up against it among the people at large, who are seldom peculiarly friendly to large monied institutions.

Very soon after the passage of the bill, it became a subject of discussion how this charter could be annulled or repealed. One distinguished citizen, now absent on a foreign mission, put forth the opinion that it was in the power of this body to annul it, and the promulgation of that doctrine, with the large powers claimed for this body in the letter containing it, by alarming the fears of many of our sober-sided citizens, for the security of their rights, and the safety of our political institutions, which they thought threatened thereby, greatly contributed to give to this body the political complexion which it bears. Another distinguished citizen, now a member of this body, in a public communication which I have before me, held that it was competent for the legislature to repeal the charter granted to that institution, under any circumstances, but especially if it were obtained by fraud. Herein differing in opinion with the distinguished citizen before referred to, who denied such a power to the legislature.

Let us view both these propositions. In the consideration of them I have carefully abstained from relying entirely on British precedents, preferring the decisions of our own courts, as best calculated to expound our own constitution and laws, and only introducing those of foreign authority, as auxiliary to our own. And it may be proper here to observe

that formerly in England all laws were construed favourably to corporations, inasmuch as there, the government is a monarchy, and all franchises or grants obtained from the crown, in favour of any number of subjects were so much obtained back again by the subject from the sovereign, while in this country the rule ought to be exactly the reverse, because here, whatever is taken from the public and given to a portion of that public, is so much abstracted from the rights of the whole in favour of the few, and therefore to be watched with care. The English doctrine on this subject, however, of late years, will be found changed, and is now in conformity with that of our own country, to wit: that corporal rights are to be strictly interpreted.

In discussing the subject, I will consider the general question as to the power of repealing or annulling charters in relation to charters to banking corporations.

The state legislatures have the right to grant charters of incorporation for banking purposes. This position was decided by the supreme court of Tennessee, a court never suspected of want of political orthodoxy, in the year 1823, in the case of Bell vs. the Bank of Nashville, reported in Peck's Reports, page 269. The question was brought up before the supreme court of the United States, in the case of Briscoe et. al. vs. the Bank of Kentucky, reported in 11th Peter's Reports, page 257, and solemnly decided by that court. The opinion of Mr. Justice McLean will be found commencing at page 311, and ending at 327. The result is given in this conclusion in the latter page. "We are of opinion that the act incorporating the Bank of the Commonwealth, was a constitutional exercise of power by the state of Kentucky, and consequently that the notes issued by the bank are not bills of credit within the meaning of the federal constitution."

Mr. Justice Thompson, in page 327, expresses himself thus: "I concur in that part of the opinion of the court, which considers the bills issued by the bank as not coming under the denomination of bills of credit prohibited by the constitution of the United States, to be emitted by the states."

Mr. Justice Story dissented from the opinion of the court, but he admits the power of the state to create banks, to issue notes, provided the state be not the exclusive owner of the bank or its stock—see pages 340-1-2.

The common sense of the community, and the uniform current of legislation from the days of the revolution, had treated this doctrine as established long before these judicial decisions were had.

At this point of his argument Mr. PORTER yielded the floor, and

The committee rose, reported progress, and asked leave to sit again; and,

The Convention adjourned.

TUESDAY, NOVEMBER 21, 1837.

Mr. FULLER, of Fayette, presented the following resolution, which was laid on the table for farther consideration, viz:

Resolved, That no member of this convention, who holds stock in any bank within this commonwealth, shall be deemed an impartial voter on any question in which the immediate interest of such delegate shall be involved, by any consiitutional provision, either restricting or regulating such bank institution.

Mr. CLARK, of Dauphin, presented the following resolution, viz:

Resolved, That the President of the convention draw his warrant on the state treasurer, in favor of Washington Barr, for eleven dollars, being a farther allowance of fifty cents per day for twenty-two days service as assistant door keeper.

Mr. CLARK moved the second reading and consideration of the resolution: and the motion being agreed to, the resolution was read a second time, and referred to the committee on accounts.

Mr. FULLER, of Fayette, presented the following resolution, which was laid on the table for farther consideration, viz:

Resolved, That the auditor general be requested, to furnish the convention with a list or statement, containing the names of all persons holding stock in the bank called the United States Bank, chartered the eighteenth day of February, A. D. 1836.

Mr. COPE, of Philadelphia, from the committee on accounts, reported two resolutions for the payment of sums of money to the binders of the debates and journals, which were read the second time, considered and agreed to.

Mr. SCOTT (leave having been granted) submitted the following resolution, which lies on the table for farther consideration, viz:

Whereas, In the course of the proceedings of the twentieth instant, when the yeas and nays were called upon a resolution, embodying very important princip'es, a large number of the members of this convention, at that time in their seats, declined voting: and whereas, such a course if persisted in, will and must effectually break up the proceedings of this convention: therefore, be it

Resolved, That a committee be appointed to inquire and report what this convention should do in similar cases, to assert its dignity, and secure the continued performance of its duties.

The Convention then resumed the consideration of the second resolution offered yesterday by Mr. MEREDITH, and which is in the following words, viz:

Resolved, That it is the sense of this convention, that a charter duly granted by act of assembly is, when accepted, a contract with the parties to whom the grant is made.

The question being on the motion Mr. PORTER, of Northampton,

To amend said resolution, by striking therefrom all after the word "Resolved," to the end, and inserting in lieu thereof the words as follow, viz:

"That the power to create banking corporations is a power committed by the constitution to the legislature of this commonwealth, and that when exercised according to the forms of the constitution, a contract is

created between the people of the state and the corporators, which it is not in the power of either party subsequently to impair, without the assent of the other. If the contract be violated by either party, redress is to be sought before the judicial tribunals of the country, which are competent to investigate and decide the subject; that the powers of this convention are confined to the consideration of alterations and amendments to the constitution of this commonwealth, to be submitted to the people. We have no power for other purposes: and therefore, the power to repeal charters, legally granted and accepted by the corporators, does not exist in this body, nor in the legislature of the commonwealth."

Mr. PORTER resumed his remarks:—

The next proposition which I lay down, is that a private corporation is a contract between the government, or sovereignty of a country, and certain of its subjects or citizens, the latter of whom undertake, in consideration of the privileges bestowed, to do what the government is interested in having done; and in support of this principle I refer to the case of Dartmouth College vs. Woodward, 4 Wheaton, 627; Lincoln and Kennebeck Bank vs. Richardson, 1 Greenleaf's Reports, 79. In the latter case, decided in 1820, Chief Justice Mellen says: "We apprehend that the same principle of law applies to an act continuing a charter beyond its original term, as to the act which granted the charter. That in both cases the grant or chartered power must be accepted, because a charter and the extension of it are, till so accepted, inoperative; *but when accepted they become a contract.*"

I do not understand that this doctrine has been impugned by the delegate from the county of Philadelphia, (Mr. Ingersoll) in the publication to which I have referred, but he denies the law as being applicable to banking corporations, alleging them to be *public* or political, not *private* corporations. Before proceeding to canvass this proposition, let us refer to some of the authorities which declare the grants to private corporations, and the acceptance of them by the corporators, to be contracts. What is the legal definition of a contract? It is defined to be "an agreement upon a sufficient consideration, to do or not to do a particular act." (Newland on Contracts, page 1.) What is usually the state of fact in regard to the grant of corporate powers? The sovereignty, in consideration of benefits to be received by the community, either in the promotion of some objects of general utility, or as is usually the case in bank charters, in consideration of a monied contribution to the public treasury, grants to the corporators certain rights and privileges to be enjoyed for a limited or an unlimited period. It is essential to the validity of an act of incorporation, that "the grant must be accepted by a majority of those who are intended to be incorporated." (See Rex vs. Dr. Askew and others, 4 Burrow's Reports, 220—Ellis vs. Marshal, 2d Massachusetts Reports, 278.)

Here then the public offer certain terms to the corporators, most generally, it is true, at their own request, and the corporators accept the terms, and agree to pay, and do pay the consideration stipulated therefor. Does not this seem to furnish all the evidence of a contract, and of a contract consummated, that is usually to be found in the dealings of individuals? But we are not left without authority on this important subject. The highest tribunal in our country, in the case of Dartmouth

College, before referred to, declares them to be contracts. See pp. 627, 628, 629, 636, 637, 638, 641, 656, of 4th Wheaton's Reports, in which Judge Marshall, Judge Washington and Judge Story lay down the law thus:

"It requires no argument to prove that the circumstances of this case constitute a contract. An application is made to the crown for a charter to constitute a religious and literary institution. In the application it is stated that large contributions have been made for the object, which will be conferred on the corporation as soon as it shall be created. The charter is granted, and on its faith the property is conveyed. Surely in this transaction every ingredient of a complete and legitimate contract is to be found.

"The provision of the constitution has never been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. "It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces.—Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties, because it has been broken by the other."

"By these means," (the creation of a corporate body) "a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power, or a political character, than immortality would confer such a power or character on a natural person. It is no more a state instrument, than a natural person, exercising the same powers, would be. If then a natural person, employed by individuals in the education of youth, or for the government of a seminary in which youth is educated, would not become a public officer, or be considered as a member of the civil government, how is it that this artificial being, created by law for the purpose of being employed by the same individuals for the same purposes, should become a part of the civil government of the country? Is it because its existence, its capacities, its powers are given by law? Because the government has given it the power to take and hold property in a particular form, or to vary the purposes to which the property is to be applied? This principle has never been asserted or recognized, and is supported by no authority. Can it derive aid from reason?

"The objects for which a corporation is created are universally such as the government wishes to promote. They are deemed beneficial to the country; and *this benefit constitutes the consideration, and in most cases the sole consideration, of the grant.* In most eleemosynary institutions, the object would be difficult, perhaps unattainable, without the aid of a charter of incorporation. Charitable or public spirited individuals, desirous of making permanent appropriations for charitable or other useful purposes, find it impossible to effect their design securely and certainly without an incorporating act. They apply to the government, state their beneficient object, and offer to advance the money for its accomplishment, provided the government will confer on the instrument which is to execute their designs, the capacity to execute them.

The proposition is considered and approved. *The benefit to the public is considered as an ample compensation for the faculty it confers*, and the corporation is created. If the advantages to the public constitute a full compensation for the faculty it gives, there can be no reason for exacting a further compensation, by claiming a right to exercise over this artificial being a power which changes its nature, and touches the fund for the security and application of which it was created. There can be no reason for implying in a charter given for valuable consideration, a power which is not only not expressed, but is in direct contradiction to its express stipulation.

"From the fact then that a charter of incorporation has been granted, nothing can be inferred, which changes the character of the institution or transfers to the government any new powers over it. The character of civil institutions does not grow out of their incorporation, but out of the manner in which they are formed, and the objects for which they are created. The right to change them is not founded on their being incorporated, *but on their being the instruments of government created for its purposes*. The same institutions, created for the same objects, though not incorporated, would be public institutions, and of course be controllable by the legislature. The incorporating act neither gives nor prevents this control."

The foregoing extracts are from the opinion of Chief Justice Marshall, unquestionably as great a jurist and as pure a man as ever graced the bench in any country. Mr. Justice Washington (the purity of whose life, and the extent of whose learning and experience entitle every thing he says to our highest respect,) says: "What is a contract? It may be defined to be a transaction between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised by the other." Under this definition, says Mr. Powell, (Powell on Contracts, p. 6) it is obvious that every feoffment, gift, grant, agreement, promise, &c. may be included, because in all there is a mutual consent of the minds of the parties concerned in them, upon an agreement between them, respecting *some property or right*, that is the object of the stipulation. He adds, that the ingredients requisite to a contract are parties, consent, and an obligation to be created or dissolved; these must all concur, because the regular effect of all is, *on the one side to acquire, and on the other to part with some property or rights*; or to abridge or to restrain natural liberty by binding the parties to do, or restraining them from doing, something which before they might have done or omitted. *If a doubt could exist that a grant was a contract, the point was decided in the case of Fletcher* vs. *Peck*, in which it was laid down that a contract is either executous or executed; by the former a party binds himself to do or not to do a particular thing; the latter is one in which the object of the contract is performed, and this differs in nothing from a grant; but whether executory or executed, they both contain obligations binding on the parties, and both are equally within the provisions of the constitution of the United States, which forbids the state governments to pass laws impairing the obligation of contracts.

If then a grant be a contract, within the meaning of the constitution of the United States, the next inquiry is, whether the creation of a

corporation by charter be such a grant as includes an obligation of the nature of a contract, which no state legislature can pass laws to impair?

A corporation is defined by Mr. Justice Blackstone, to be a franchise. "It is," says he, "a franchise for a number of persons, to be incorporated and exist as a body politic, with a power to maintain perpetual succession and to do corporate acts and each individual of such corporation is also said to have a franchise or freedom."

This franchise, like other franchises, is an incorporeal hereditament issuing out of something real or personal, or concerning or annexed to, and exercisable within a thing corporate. To this grant or this franchise, the parties are the king, and the persons for whose benefit it is created, or trustees for them. The assent of both is necessary. The subjects of the grant are not only privileges and immunities, but propriety, or which is the same thing, a capacity to acquire and to hold property in perpetuity. Certain obligations are created, binding both on the grantor and the grantees. On the part of the former, it amounts to an extinguishment of the king's prerogative to bestow the same identical franchise to another, or to impair it. There is also an implied contract, that the founder of a private charity, or his heirs or other persons appointed by him for that purpose, shall have the right to visit and to govern the corporation of which he is the acknowledged founder and patron; and also that in case of its dissolution, the reversionary right of the founder to the property, with which he has endowed it, should be preserved inviolate.

The rights acquired by the other contracting party are those of having perpetual succession, of suing and being sued, of purchasing lands for the benefit of themselves and their successors, and of having a common seal, and of making by-laws. The obligation imposed upon them, and which forms *the consideration of the grant is that of acting up to the end or design for which they were created by their founder.* Mr. Justice Buller, in the case of the King vs. Passmore, (3 T. R. 246,) says that the grant of incorporation is a *compact* between the crown and a number of persons, the latter of whom undertake, in consideration of the privileges bestowed, to exert themselves for the good government of the people. *If they fail to perform their part of it, there is an end of the compact.* The charter of incorporation, (says Mr. Justice Blackstone, 2 Black. Com. 484,) may be forfeited through negligence or abuse of its franchises; in which case the law judges that the body politic has broken the condition upon which it was incorporated, and thereupon the corporation is void.

It appears to me, on the whole, that these principles and authorities prove incontrovertibly, that a charter of incorporation is a contract.

Again—"*A charter is a contract, to the validity of which the consent of both parties is essential, and therefore it cannot be altered or added to, without such consent.*"

Mr. Justice Story, at page 683, says: "A gift completely executed is irrevocable. The property conveyed by it becomes as against the donor the absolute property of the donee; and no subsequent change of intention in the donor can change the rights of the donee. And a gift by the crown of incorporeal hereditaments, such as corporate franchises, when

executed, comes completely within the principle, and is, in the strictest sense of the terms, a grant. *Was it ever imagined that land voluntarily granted to any person by a state was liable to be resumed at its own good pleasure?* Such a pretension, under any circumstances, would be truly alarming; but in a country like ours, where thousands of land titles had their origin in gratuitous grants of the states, it would go far to shake the foundations of the best settled estates. *And a grant of franchises is not, in point of principle, distinguishable from a grant of any other property.*

If, therefore, this charter were a pure donation, when the grant was complete and accepted by the grantees, it involved a contract that the grantees should hold, and the grantors should not re-assume the grant, as much as if it had been founded on the most valuable consideration. But it is not admitted that this charter was not granted for what the law deems a valuable consideration. For this purpose it matters not how trifling the consideration may be; a pepper-corn is as good as a thousand dollars. Nor is it necessary that the consideration should be a benefit to the grantor. It is sufficient if it import damage or loss, or forbearance of benefit, or any act done or to be done, on the part of the grantee.

But it is alleged, that all banking corporations are public or political corporations. Where is any authority found in any adjudged case for such an allegation? Chancellor Kent, in the second volume of his Commentaries, p. 275, says:

"A hospital, created and endowed by the government, is a public and not a private charity. But a bank, whose stock is owned by private persons, is a private corporation, though its objects and operations partake of a public nature, and though the government may have become a partner in the association, by sharing with the corporators in the stock. The same thing may be said of insurance, canal, bridge and turnpike companies. The uses may in a certain sense be called public, but the corporations are private equally as if the franchises were vested in a single person. Nor will a mere act of incorporation change a charity from a private to a public one. The charter of the crown, (says Lord Hardwicke,) cannot make a charter more or less public, but only more permanent."

Judge Story, in the Dartmouth College case, says, (p. 668–9 of 4 *Wheaton*,)—

"Another division of corporations is into public and private. Public corporations are generally esteemed such as exist for public political purposes only; such as towns, cities, parishes and counties, and in many respects they are so, although they involve some private interests; but strictly speaking, public corporations are such as are founded by the government for public purposes, where the whole interests belong also to the government. If, therefore, the foundation be private, though under the charter of the government, the corporation is private, however extensive the uses may be, to which it is devoted, either by the bounty of its founder or the nature and objects of the institution. For instance, a bank created by the government for its own uses, whose stock is exclusively owned by the government, is, in the strictest sense, a public corporation

So a hospital, created and endowed by the government for general charity. But a bank, whose stock is owned by private persons, is a private corporation, although it is erected by the government, and its objects and operations partake of a public nature. The same doctrine may be affirmed of insurance, canal, bridge and turnpike companies. In all these cases, the uses may, in a certain sense, be called public, but the corporations are private, as much so, indeed, as if the franchises were vested in a single person."

Angel and Ames, in their valuable Treaties on Corporations, a work of undoubted authority, at page 21, &c. says:

"In the popular meaning of the term, nearly every corporation is public, inasmuch as they are created for the public benefit; but yet if the whole interest does not belong to the government, or if the corporation is not created for the administration of political or municipal power, the corporation is private. *A bank, for instance, may be created by the government for its own uses;* but if the stock is owned by private persons, it is a private corporation, although it is erected by the government, and its objects and operations partake of a public nature."

In the case of the United States v. the Planters' Bank of Georgia, reported in 9th Wheaton, 907, Chief Justice Marshall, who delivered the opinion of the court, said, "The suit is against a corporation, and the judgment is to be satisfied by the property of the corporation, and not by that of the corporators. The state does not, by becoming a corporator, identify itself with the corporation. The Planters' Bank of Georgia is not the state of Georgia, although the state holds an interest in it. It is (he says,) a sound principle that, when a government becomes a partner in a trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen."

"The same may be affirmed of *insurance, canal, bridge and turnpike* companies, &c. The same may also be affirmed of eleemosynary corporations: for a hospital founded by a *private* benefaction, is, in point of law, a private corporation, though dedicated by its charter to public charity; and a college founded and endowed in the same manner, though for the general promotion of learning, is private. With regard to *political* corporations for the government of counties, towns, &c.; it is true, they involve some private interests, yet, for the reason already given, they are generally deemed public."

Again: it has been said that the Bank of the United States, chartered by congress, was a public corporation, or congress would have had no right to create it. That it is on that ground alone that the power of congress to charter it can be sustained, and that the state Bank of the United States is but a continuation of it. To support this allegation, general Hamilton is referred to, when speaking of the advantages of public over private banks. Admitting, for the sake of the argument, that General Hamilton used the terms to distinguish private or individual bankers from corporate banks or banks established by law, yet casual or particular words inadvertently used even by a great man, will not change the settled law. The position is no where affirmed in any legal decision. It is not found laid down in the case of M'Culloh v. the state of Maryland,

reported in 4 Wheaton's Reports, page 316, where the power in congress to create the bank is affirmed by the court, nor in the case of the United States Bank v. Osborne, reported in 9th Wheaton's Reports, 733, in which the subject is again discussed, and in which, as well as the case of M'Culloh vs. the state of Maryland, the right of a state to tax the branches of the United States Bank, was denied by the supreme court.

Should the doctrine contended for even be true in relation to the bank chartered by congress, which it is not, it would not be so as to the state institution under the charter granted by the state of Pennsylvania, which did not *continue* it as a public corporation, but *created* it as a private corporation.

The authorities already cited show that a bank composed of private stockholders, and the government also a stockholder, is still a private corporation. The agency which it performs, in disbursing and transmitting the funds of the government, where required, does not change the character of the institution.

There is another allegation, made by a distinguished senator from this state in congress, that the creation of a banking institution is a grant of a portion of the sovereignty, by the legislature, which places them in the position of political or public corporations, so as to give the legislature the power of recission. This same argument was urged in the case of M'Culloh vs. the state of Maryland, in denying the right of congress to create a bank, and is met and answered by Chief Justice Marshall, at page 409, of 4th Wheaton's Reports, as follows:

"On what foundation does this argument rest? On this alone: the power of creating a corporation is one appertaining to sovereignty, and is not expressly conferred upon congress. This is true; but all legislative powers appertain to sovereignty. The original power of giving the law upon any subject whatever is a sovereign power; and if the government of the Union is restrained from creating a corporation, as a means of performing its functions, on the single reason that the creation of a corporation is an act of sovereignty; if the sufficiency of this reason be acknowledged, there would be some difficulty in sustaining the authority of congress to pass other laws for the accomplishment of the same objects. The government which has a right to do an act, and has imposed on it, the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception. The creation of a corporation, it is said, appertains to sovereignty. This is admitted. But to what portion of sovereignty does it appertain? Does it belong to one more than another? In America the powers of sovereignty are divided between the government of the Union and those of the states. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the other," &c. Again: "We cannot well comprehend the process of reasoning which maintains that a power appertaining to sovereignty cannot be connected with that vast portion of it which is granted to the general government, so far as it is calculated to subserve the legitimate objects of that government. The power of creating a corporation, though appertaining to sovereignty, is not like the power of making war or levying taxes, or

of regulating commerce, *a great substantive and independent power*, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished."

The synopsis of the opinion of the court on this part of the case, may be summed up in this, "that the power of establishing a banking corporation, is not a distinct sovereign power or end of government, but only the means of carrying into effect other powers which are sovereign. Whenever it becomes an appropriate means of exercising any of the powers given by the constitution to the government of the Union, it may be exercised by that government, and the degree of necessity is a proper question for legislative discretion, not judicial cognizance."

In the positions advanced in the pamphlet to which I have referred, a right is claimed for the legislature to change, remodel, alter or repeal bank corporations—

1. Because such charters are not contracts.

2. Because banks are political or public corporations.

3. Because the possession and exercise of such a power is essential to the public good.

I have thus far investigated the first two of these propositions, and I shall now proceed to the investigation of the third, in which I will consider the right claimed for the legislature, and for this convention, and the legality as well as the propriety or expediency of exercising the *power* claimed, for it is certainly not a *right*.

In England the power to dissolve corporations has been claimed for parliament. Its exercise in the days of Edward the second, in suppressing the order of templars, and in those of Henry the eighth, in dissolving the religious houses, have been relied on as evidence of the power. The abolition of the religious houses of that day, can scarcely be claimed as a precedent for interfering with private corporations. Because it was a political measure, casting off the jurisdiction of a foreign religious potentate, and reforming, as it was called, the religion of the state. And the suppression of the templars was a political measure also, savoring of despotism, at a time when constitutional law was little understood in England. But admitting the binding effect of the English rule on the subject, that as to all practical purposes a corporation may be dissolved—1st, by act of parliament. 2d, by the loss of all its members, or of an intregral part by death, or otherwise. 3d, by the surrender of its franchises; and 4th, by the forfeiture of its charter for abuse of the privileges conferred. It is only necessary for us here to inquire into the first of these means, the dissolution by act of parliament. This power, to dissolve by act of parliament, if it exists, grows out of the omnipotence of parliament, and has been but seldom exercised, I believe never, except in the two instances cited.

In the case of Van Horn's lessee vs. Dorrance, in 2d Dallas's Reports, 308, it is said, "The constitution of England is at the mercy of parliament. Every act of parliament is transcendent, and must be obeyed;" and this is certainly according to the theory of the British constitution. The omnipotence of parliament in regard to the dissolution of corporations, restrained by public opinion, rests mainly in theory. Indeed the

attempt to exercise it, has been deprecated by some of the greatest men and soundest jurists of that country. The attempt in 1783, sustained as it was by Mr. Burke and Mr. Fox, to remodel the charter of the East India company, was opposed by Mr. Pitt and Lord Thurlow, not only on the ground of its being a dangerous violation of the charter of that company, but as *a total subversion* of the law and constitution of the country, the latter pronouncing it, in his own nervous language, "*an atrocious violation of private property, which cut every Englishman to the bone.*"

Before examining into the legislative authority, we must inquire as to the power of this convention to annul a charter for any cause whatever. The authority which this convention possesses is derived from the act of the legislature, which put it to the people to say, by their ballots, whether or not a convention should be called to propose amendments to the constitution, to be submitted to the people, and for no other purpose. Under this act the majority of the people decided that such a convention should be called, and hence is all our commission. It is "*to submit amendments of the state constitution to a vote of the people for their ratification or rejection, and with no other or greater powers whatever.*" In prescribing the mode of voting, the act provides that those who were in favour of a convention *with limited powers as aforesaid*, should vote "for a convention," &c.

The subsequent act prescribing the details of the manner in which we should meet, &c. neither does nor could enlarge or diminish our power. Our power is delegated by the people in calling the convention, under the first mentioned act, and subsequently electing us to our seats here. It would from this seem that our labors are confined to amendments to the constitution, and that we cannot exercise legislative or judicial functions. But if it were otherwise, does a revolution in the government annul the charters granted by the previous authority of the land? An entire dissolution of the government by force and placing the power in the hands of the conqueror by like force, might perhaps do it. This it is not necessary here to investigate or decide. Here there is no revolution—it is merely the people meeting to change the form of their fundamental system of government. The people of Pensylvania are still the same—they possess the sovereign power. They are merely meeting, by their agents, to decide whether an improved mode of exercising that sovereignty can be devised.

The essential—the leading and characteristic difference between a republic and a monarchy is that in the former the sovereignty resides in the people—in the latter it resides in the monarch. Yet each is sovereign—the depository of the sovereign power. In a republic the sovereign never changes—it is the community. In a monarchy it changes with the demise or deposition of the emperor or king. Yet such a change works no destruction of existing rights in any individual, or associations of individuals.

The constitution of the United States, too, interposes to prevent such an idea as the destruction of existing rights, by changes of the constitution. It declares that no law shall be passed impairing the obligations of contracts. If corporate grants then be contracts, which the decisions cited would seem very clearly to establish, it follows, as a necessary con-

sequence, that we can make no law either in our constitution or laws under it, which would contravene this injunction of the constitution of the United States.

To establish the position that a revolution, such as that of 1776, did not dissolve charters, let us refer to the Dartmouth College case, in which the judges of the highest tribunal known to our laws, decided that the charter of a college in New Hampshire, granted by royalty before the revolutionary war, could not be altered or changed by the legislature of the commonwealth subsequently to that revolution. The rights of property remained, although the persons administering the government, nay, the forms of government themselves were changed.

Chancellor Kent, in 2d volume of his Commentaries, at page 277, says:

"In England, corporations are created and exist by prescription, by royal charter, and by act of parliament. With us they are created by authority of the legislature, and not otherwise. There are, however, several of the corporations now existing in this country, civil, religious, and eleemosynary, which owed their origin to the crown under the colony administration. Those charters granted prior to the revolution were upheld either by express provision in the constitution of the states, or by general principles of public and common law, of universal reception."

The same principle is substantially decided by the supreme court of the United States, in the case of Terret v. Taylor, in 99 Cranch's Reports, page 43, where it was held "that the dissolution of the colonial government and the establishment of the commonwealth in Virginia, did not involve in it a dissolution of civil rights." So in Pennsylvania, all our acts passed before the revolution remained in full force after that event. Every charter, theretofore granted was held as inviolate, in practice, as if granted in the days of the commonwealth, and so it was in every other state in the Union.

Did the change in the form of the govornment of the union from the old confederation, that "rope of sand," to the existing constitution, dispense with the obligations, either moral or legal, of that confederation? Did the change from the constitution of 1776 to that of 1790, work any such absolution in the government of Pennsylvania?

So too under the law of nations. Spoliations on the commerce of neutrals, are committed under a person exercising the sovereignty of a country: he is deposed and declared a usurper, and another ascends the throne. Still the government is bound to answer the demands of those who have been spoiled. Such has been the case in the relations between the United States and France, as well as other nations.

It is needless to pursue the argument further. The change in the constitution—in the form of administering the government gives no additional rights to the sovereign power, to authorize it to interfere with private rights. Nor will this be affected by the argument, that all laws passed subsequently to the decision that a convention should be called are liable to be abrogated when that convention shall assemble. The forms of government then existing were to be observed until changed by the sovereign people, and continued, and will continue to have their binding effect until they are actually changed. A prospect—a probability

change, could not stop the operations of any branch of the existing government, whether legislative, executive, or judicial. I speak now irrespective of fraudulent legislation—of that hereafter. The powers of this body are merely to settle principles of government; we cannot legitimately go into the details of legislation. "A constitution," (says C. J. Marshall, 4 Wheaton, 407,) "to contain an accurate detail of all the subdivisions of which its great powers will admit, and all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the constitution is not only to be inferred from the nature of the instrument, but from the language."

Again, at page 421—"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended." And this doctrine is as applicable to the constitution of Pennsylvania as to that of the general government, in relation to which it was declared.

Has the legislature the power to dissolve a bank corporation by repealing the act of incorporation? It will be recollected that by the constitution of the United States, as well as by that of our own state, *no law can be passed impairing the obligation of a contract.* The legislatures are creatures of the constitution; they owe their existence to, and derive their powers from the constitution. It is their commission, and all their acts must be conformable to it, or they are void. [See Van Horn's lessee v. Dorrance, 2 Dallas, 304.]

Prior to the adoption of the constitution of the United States, which went into effect on the first Wednesday in March, 1789, the state, in the exercise of its sovereignty, where not restrained by the terms of its own constitution, (which was the case in Pennsylvania under the constitution of 1776,) might make a law operating upon the rights of property vested before that time. This point is decided in the case of Owings v. Spead and others, in 5th Wheaton, 420, by the supreme court of the United States. But since that instrument has gone into operation, as also since the adoption of our present state constitution, even were there no constitution of the United States, the legislature is prohibited from doing any such acts.

The authorities cited have proved that corporations are grants—are contracts. And in the case of Fletcher v. Peck, decided by the supreme court of the United States, and reported in 6 Cranch, pages 87 to 148, the question as to the power of the legislature to repeal a previous act of their own body, under which rights had been acquired by third persons, was fully discussed, and in its decision certain principles were established. That case grew out of the celebrated Yazoo speculation. The circumstances of the case decided were these. On the 7th of January, 1795, the legislature of the state of Georgia passed an act authorizing the conveyance of half a million or more acres of land to James Gunn, Mathew M'Alister, George Walker and their associates. In pursuance whereof a deed was duly executed to them on the 13th of January, 1795, by the

governor, according to the terms of the act. On the 22d of August, 1795, they conveyed to James Greenleaf, who on the 23d September, 1795, conveyed to N. Prime, who on the 27th February, 1796, conveyed to Oliver Phelps, who by deed dated 6th December, 1800, conveyed a part to Benjamin Hickborn and Peck the defendant, who by deed dated 14th May, 1803, conveyed to Fletcher, the plaintiff and in his conveyance covenanted that the state of Georgia had good right to sell, and the governor lawful authority to convey, and that all the title the state of Georgia ever had in the premises had been legally conveyed to the said John Peck, and that the title so vested in him had not been in any way constitutionally or legally impaired by virtue of any subsequent act of any subsequent legislature of the said state of Georgia. The purchaser sued Peck on this covenant and assigned as breaches,

1. That the legislature had no authority to sell and dispose of the premises.

2. That Gunn, M'Alister, and Walker had promised and assured divers members of the legislature, while the bill was pending, that they should have a share in and be interested in all the lands which they should purchase under the act, whereby divers of the said members were induced to vote for the passage of the bill, whereby the said law was a nullity, by reason whereof the title never was legally conveyed, &c.

3. That subsequently, to wit: on the 13th February, 1796, because of the undue influence used as aforesaid, in procuring the said act to be passed, and for other causes, an act was passed by the general assembly of the state of Georgia, declaring null and void the said *usurped* act, passed by the said preceding legislature, on the 7th January, 1795, and for expunging from the public record the said usurped act, and declaring the right of the state to the lands therein mentioned; whereby the title which Peck had in the premises was constitutionally and legally impaired, and rendered null and void.

The defendant pleaded in substance, that the lands belonged to Georgia, that the legislature, acting within the scope of their constitutional authority, passed the first act in question; that under it the governor conveyed the premises, and protesting that Gunn, McAllister and Walker, did not make the promises and assurances to the members of assembly, pleaded that neither Greenleaf, Prime, Phelps, nor the defendant, had any notice or knowledge thereof. To all which the plaintiff demurred, admitting thereby the facts set forth in the defendant's plea.

Judge Marshall, in page 128–9, says that the legislature of Georgia possessed the power, being unrestrained in that respect by the constitution of the state, to dispose of the lands in such manner as its own judgment should dictate. And in the residue of the case, it will be found that all the arguments, as to the power of one legislature to bind another, the corruption of members, &c. were there urged, and are passed upon by the court, in giving their opinion, at page 131, they say:

"That corruption should find its way into the governments of our infant republics, and contaminate the very source of legislation, or that impure motives should contribute to the passage of a law, or the formation of a legislative contract, are circumstances most deeply to be deplored. How far a court of justice would, in any case, be competent, on proceedings

instituted by the state itself, to vacate a contract thus formed, and to annul rights acquired, under that contract, by third persons having no notice of the improper means by which it was obtained, is a question which the court would approach with much circumspection. It may well be doubted how far the validity of a law depends upon the motives of its framers, and how far the particular inducements, operating on members of the supreme sovereign power of a state, to the formation of a contract by that power, are examinable in a court of justice. If the principle be conceded, that an act of the supreme sovereign power might be declared null by a court, in consequence of the means which procured it, still would there be much difficulty in saying to what extent those means must be applied to produce this effect. Must it be direct corruption, or would interest or undue influence of any kind be sufficient? Must the vitiating cause operate on a majority, or on what number of the members? Would the act be null, whatever might be the wish of the nation, or would its obligation or nullity depend upon the public sentiment?

If the majority of the legislature be corrupted, it may well be doubted, whether it be within the province of the judiciary to control their conduct, and, if less than a majority act from impure motives, the principle by which judicial interference would be regulated, is not clearly discerned.

Whatever difficulties this subject might present, when viewed under aspects of which it may be susceptible, this court can perceive none in the particular pleadings now under consideration.

This is not a bill brought by the state of Georgia, to annul the contract, nor does it appear to the court, by this count, that the state of Georgia is dissatisfied with the sale that has been made. The case, as made out in the pleadings, is simply this. One individual who holds lands in the state of Georgia, under a deed covenanting that the title of Georgia was in the grantor, brings an action of covenant upon this deed, and assigns, as a breach, that some of the members of the legislature were induced to vote in favor of the law, which constituted the contract, by being promised an interest in it and that therefore the act is a mere nullity.

This solemn question cannot be brought thus collaterally and incidentally before the court. It would be indecent, in the extreme, upon a private contract, between two individuals, to enter into an inquiry respecting the corruption of the sovereign power of a state. If the title be plainly deduced from a legislative act, which the legislature might constitutionally pass, if the act be clothed with all the requisite forms of a law, a court, sitting as a court of law, cannot sustain a suit brought by one individual against another founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law.

The third count recites the undue means practised on certain members of the legislature, as stated in the second count, and then alleges that, in consequence of these practices, and of other causes, a subsequent legislature passed an act annulling and rescinding the law under which the conveyance to the original grantees was made, declaring that conveyance void, and asserting the title of the state to the lands it contained. The count proceeds to recite at large this rescinding act, and concludes with averring that, by reason of this act, the title of the said Peck in the

premises was constitutionally and legally impaired, and rendered null and void.

After protesting, as before, that no such promises were made as stated in this count, the defendant again pleads that himself and the first purchaser under the original grantees, and all intermediate holders of the property, were purchasers without notice.

To this plea there is a demurrer and joinder.

The importance and the difficulty of the questions, presented by these pleadings, are deeply felt by the court.

The lands in controversy vested absolutely in James Gunn and others, the original grantees, by the conveyance of the governor, made in pursuance of an act of assembly to which the legislature was fully competent. Being thus in full possession of the legal estate, they, for a valuable consideration, conveyed portions of the land to those who were willing to purchase. If the original transaction was infected with fraud, these purchasers did not participate in it, and had no notice of it. They were innocent. Yet the legislature of Georgia has involved them in the fate of the first parties to the transaction, and, if the act be valid, has annihilated their rights also.

The legislature of Georgia was a party to this transaction; and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a mere act of power which must find its vindication in a train of reasoning not often heard in courts of justice.

But the real party, it is said, are the people, and when their agents are unfaithful, the acts of those agents cease to be obligatory.

It is, however, to be recollected that the people can act only by these agents, and that while within the powers conferred on them, their acts must be considered as the acts of the people. If the agents be corrupt others may be chosen, and, if their contracts be examinable, the common sentiment, as well as common usage of mankind, points out a mode by which this examination may be made, and their validity determined.

If the legislature of Georgia was not bound to submit its pretensions to those tribunals which are established for the security of property, and to decide on human rights, if it might claim to itself the power of judging in its own case, yet there are certain great principles of justice, whose authority is universally acknowledged, that ought not to be entirely disregarded.

If the legislature be its own judge in its own case, it would seem equitable that its decision should be regulated by those rules which would have regulated the decision of a judicial tribunal. The question was, in its nature, a question of title, and the tribunal which decided it, was either acting in the character of a court of justice, and performing a duty usually assigned to a court, or it was exerting a mere act of power in which it was controlled only by its own will.

If a suit be brought to set aside a conveyance obtained by fraud and the fraud be clearly proved, the conveyance will be set aside, as between the parties; but the rights of third persons, who are purchasers without notice,

for a valuable consideration, cannot be disregarded. Titles, which, according to every legal test, are perfect are acquired with that confidence which is inspired by the opinion that the purchaser is safe. If there be any concealed defect, arising from the conduct of those who had held the property long before he acquired it, of which he had no notice, that concealed defect cannot be set up against him. He has paid his money for a title good at law, he is innocent, whatever may be the guilt of others, and equity will not subject him to the penalties attached to that guilt. All titles would be insecure, and the intercourse between man and man would be very seriously obstructed, if this principle be overturned.

A court of chancery, therefore, had a bill been brought to set aside the conveyance made to James Gunn and others, as being obtained by improper practices with the legislature, whatever might have been its decision as respected the original grantees, would have been bound, by its own rules, and by the clearest principles of equity, to leave unmolested those who were purchasers, without notice, for a valuable consideration.

If the legislature felt itself absolved from those rules of property which are common to all the citizens of the United States, and from those principles of equity which are acknowledged in all our courts, its act is to be supported by its power alone, and the same power may divest any other individual of his lands, if it shall be the will of the legislature so to exert it.

It is not intended to speak with disrespect of the legislature of Georgia, or of its acts. Far from it. The question is a general question, and is treated as one. For although such powerful objections to a legislative grant, as are alleged against this, may not again exist, yet the principle, on which alone this rescinding act is to be supported, may be applied to every case to which it shall be the will of any legislature to apply it. The principle is this; that a legislature may, by its own act, divest the vested estate of any man whatever, for reasons which shall, by itself, be deemed sufficient.

In this case the legislature may have had ample proof that the original grant was obtained by practices which can never be too much reprobated, and which would have justified its abrogation so far as respected those to whom crime was imputable. But the grant, when issued, conveyed an estate in fee simple to the grantee, clothed with all the solemnities which law can bestow. This estate was transferrable; and those who purchased parts of it were not stained by that guilt which infected the original transaction. Their case is not distinguishable from the ordinary case of purchasers of a legal estate without knowledge of any secret fraud which might have led to the emanation of the original grant. According to the well known course of equity, their rights could not be affected by such fraud. Their situation was the same, their title was the same, with that of every other member of the community who holds land by regular conveyances from the original patentee.

Is the power of the legislature competent to the annihilation of such title, and to a resumption of the property thus held?

The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature.

The correctness of this principle, so far as respects general legislation, can never be controverted. But, if an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power. Conveyances have been made, those conveyances have vested legal estates, and, if those estates may be seized by the sovereign authority, still, that they originally vested is a fact, and and cannot cease to be a fact.

When, then, a law is in its nature a contract, when absolute rights have vested under that contract, a repeal of the law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community.

It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be siezed without compensation.

To the legislature all legislative power is granted; but the question whether the act of transfering the property of an individual to the public, be in the nature of the legislative power, is well worthy of serious reflection.

It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments. How far the power of giving the law may involve every other power, in cases where the constitution is silent, never has been, and perhaps never can be, definitely stated.

The validity of this rescinding act, then, might well be doubted, were Georgia a single sovereign power. But Georgia cannot be viewed as a single unconnected, sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution. She is a part of a large empire; she is a member of the American Union; and that union has a constitution, the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several states, which none claim a right to pass. The constitution of the United States declares that no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

Does the case now under consideration come within this prohibitory section of the constitution?

In considering this very interesting question, we immediately ask ourselves what is a contract? Is a grant a contract?

A contract is a compact between two or more parties, and is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing; such was the law under which the conveyance was made by the governor. A contract executed is one in which the object of contract is performed; and this, says Blackstone, differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to re-assert that right. A party is, therefore, always estopped by his own grant.

Since, then, in fact, a grant is a contract executed, the obligation of which still continues, and since the constitution uses the general term contract, without distinguishing between those which are executory and those which are executed, it must be construed to comprehend the latter as well as the former. A law annulling conveyances between individuals, and declaring that the grantors should stand seiyed of their former estates, notwithstanding those grants, would be as repugnant to the constitution as a law discharging the venders of property from the obligation of executing their contracts by convevances. It would be strange if a contract to convey was secured by the constitution, while an absolute conveyance remained unprotected.

If, under a fair construction of the constitution, grants are comprehended under the term contracts, is a grant from the state excluded from the operation of the provision? Is the clause to be considered as inhibiting the state from impairing the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself?

The words themselves contain no such distinction. They are general and are applicable to contracts of every description. If contracts made with the state are to be exempted from their operation, the exception must arise from the character of the contracting party, not from the words which are employed.

Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each state.

No state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both.

In this form the power of the legislature over the lives and fortunes of individuals is expressly restrained. What motive then, for implying, in words which import a general prohibition to impair the obligation of contracts, an exception in favor of the right to impair the obligation of those contracts into which the state may enter.

The state legislature can pass no *ex post facto* law. An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed. Such a law may inflict penalties on the person, or may inflict pecuniary penalties which swell the public treasury. The legislature is then prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime which was not declared, by some previous law, to render him liable to that punishment. Why, then, should violence be done to the natural meaning of words for the purpose of leaving to the legislature the power of seizing for public

use, the estate of an individual in the form of a law annulling the title by which he holds that estate? The court can perceive no sufficient grounds for making this distinction. This rescinding act would have the effect of an *ex posto facto* law. It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased. This cannot be effected in the form of an *ex posto facto* law, or bill of attainder; why, then, is it allowable in the form of a law annulling the original grant?

The argument in favour of presuming an intention to except a case, not excepted by the words of the constitution, is susceptible of some illustration from a principle originally engrafted in that instrument, though no longer a part of it. The constitution, as passed, gave the courts of the United States jurisdiction in suits brought against individual states. A state, then, which violated its own contract, was suable in the courts of the United States for that violation. Would it have been a defence in such a suit to say that the state had passed a law absolving itself from the contract? It is scarcely to be conceived that such a defence could be set up. And yet, if a state is neither restrained by the general principles of our political institutions, nor by the words of the constitution, from impairing the obligation of its contracts, such a defence would be a valid one. This feature is no longer found in the constitution; but it aids in the construction of those clauses with which it was originally associated.

It is, then, the unanimous opinion of the court, that, in this case, the estate having passed into the hands of the purchaser for a valuable consideration, without notice, the state of Georgia was restrained, either by general principles which are common to our free institutions, or by the particular provisions of the constitution of the United States, from passing a law whereby the estate of the plaintiff in the premises so purchased could be constitutionally and legally impaired and rendered null and void."

Judge Johnson, at page 143, says:

"I do not hesitate to declare that a state does not possess the power of revoking its own grants. But I do it on a general principle, on the reason and nature of things: a principle which will impose laws even on the Deity.

A contrary opinion can only be maintained upon the ground that no existing legislature can abridge the powers of those which will succeed it. To a certain extent this is certainly correct; but the distinction lies between power and interest, the right of jurisdiction and the rights of soil.

The right of jurisdiction is essentially connected to, or rather identified with the national sovereignty. To part with it is to commit a species of political suicide. In fact a power to produce its own annihilation is an absurdity in terms. It is a power as utterly incommunicable to a political as to a natural person. But it is not so with the interests or property of a nation. Its possessions nationally are in nowise necessary to its political existence; they are entirely accidental, and may be parted with in every respect similarly to those of the individuals who compose the community. When the legislature have once conveyed their interest or property in any subject to the individual, they have lost all control

over it; have nothing to act upon; it has passed from them; is vested in the individual; becomes intimately blended with his existence, as assentially as the blood that circulates through his system. The government may indeed demand of him the one or the other, not because they are not his, but because whatever is his is his country's.

As to the idea, that the grants of a legislature may be void because the legislature are corrupt, it appears to me to be subject to insuperable difficulties. The acts of the supreme power of a country must be considered pure for the same reason that of sovereign acts must be considered just; because there is no power that can declare them otherwise. The absurdity in this case would have been strikingly perceived, could the party who passed the act of cession have got again into power, and declared themselves pure, and the intermediate legislature corrupt.

The security of a people against the misconduct of their rulers, must lie in the frequent recurrence to first principles, and the imposition of adequate constitutional restrictions. Nor would it be difficult, with the same view, for laws to be framed which would bring the conduct of individuals under the review of adequate tribunals, and make them suffer under the consequences of their own immoral conduct."

This case then, in so many words, decides, that a contract made by or under an act of the legislature, cannot be annulled by the legislature repealing the law.

In the case of New Jersey vs. Wilson, it is held by the supreme court of the United States, "That an act of the legislature, which declared that certain lands which should be purchased for the Indians, should not thereafter be subject to any tax, constituted a contract which could not be rescinded by a subsequent legislature." 7 Cranch, 164. And in the case of Terrett v. Taylor, before cited from 9th Cranch, 43, they held that "A legislative grant and confirmation vests an indefeasible, irrevocable title. It is not revocable in its own nature, or held only *durante bene placito*."

The grant of land, and the grant of corporate rights, are both within the constitutional powers committed to the legislature, who are the constitutional judges of the terms on which they ought to be granted. The public domain and the right to grant corporate franchises, are both in the people, to be parted with or granted for the public use and benefit, and of that benefit, the legislature granting the same, who are the agents of the people, are the judges.

One essential error, which is continually obtruded upon the minds of those, who have not attentively examined the structure of our government, is, that they treat the acts of the legislature, not as the acts of the people, but the acts of the legislative body only, and so treating them, say that one legislature ought not to have the power of binding its successors. But the premises being wrong, the conclusion is necessarily false also. The legislature are the agents of the people, and the act when done, or the contract when made, is the act or contract of the people themselves, done it is true, through their agents. The people remain the same, no matter how often they may change their agents, whose acts, within the scope of the authority given, always bind their principals. On the whole of this subject there is a most instructive argument found in

the works of Thomas Paine—a man who is good authority in every thing connected with the political institutions of our country, although I should be sorry to quote him on the subject of religion. The extracts, which I propose to give from his works, were written in relation to the repeal of the charter of the Bank of North America—a short account of which may be necessary by way of introduction :

The Bank of North America was created on the suggestion of Robert Morris, made in the spring of 1781, to congress, in consequence of which Congress passed resolutions for the incorporation of that bank, on the 26th of May, 1781. The bank commenced its operation on the 7th January, 1782, and its legal existence was not left dependent solely on the ordinance of Congress, which body had all the necessary powers for the purpose of creating corporations and regulating its details. Several of the states recognized and confirmed it, among them Pennsylvania, Massachusetts and Rhode Island. And the institution greatly and essentially aided, in bringing to a glorious and successful conclusion, the war of our independence.

Notwithstanding the benefits which resulted from this bank, many persons of influence in Pennsylvania, thought that whatever might have been its usefulness, it ceased with the war, and had become injurious. The petitions for the repeal of the charter did not come from the city of Philadelphia, where the bank was located, and where its operations were known in practice, but they came from the counties of Chester and Berks and Thomas Paine, in the treatise read, tells us that then, as now, they were concocted by leading men, and sent abroad for circulation and signature, for says he, " Those petitions have every appearance of being contrived for the purpose of brining the matter up. The petitions and the report have strong evidence in them of both being drawn up by the same person ; for the report is as clearly the echo of the petitions, as ever the address of the British parliament was the echo of the king's speech. The hasty and precipitate manner it which it was hurried through the house, prevented their constituents from comprehending the subject. The whole business appears to have been fixed at once, and all reasoning and debate on the case rendered useless."

The committee recommended a repeal of the acts, and on the 29th March, 1785, a bill was reported repealing them. The adjournment of the legislature on the 1st of April, prevented action on it. In the vacation much agitation was excited on the subject, and on the re-assembling of the assembly, the bill for repealing the charter was enacted into a law. The repealing law, however, did not much affect the operation of the bank. It continued to possess the confidence of the people of the United States, but lost in a degree the confidence of the monied men in Europe, which before had been very great. Its operations were still carried on under an impression that the charter of incorporation granted by Congress was sufficient, without the aid of the state, and that if the recognition and confirmation of Pennsylvania were necessary, they had been repeatedly given. It was further considered that the repealing act did not affect the corporate rights granted by the state, because it was beyond the power of the legislature to annul a charter solemnly granted to an institution, without a forfeiture incurred by an abuse of its franchises. The public mind was kept in much suspense upon the subject. The first talents of the

state were exerted in writing on both sides of the question. Memorials signed by about three thousand persons were presented to the succeeding legislature, praying the subject might be re-considered, and the act repealing the charter be itself repealed, or its operation suspended. The question was ably debated for many days, but the legislature finally refused the prayer of the petitioners. The members who voted in favor of it, entered on the minutes of the house the following dissentient:

1. Because we conceive that this house hath no power to revoke a charter which it hath granted. Instances adduced from Great Britain, or any other country are equally pernicious and inapplicable. The constitution of Pennsylvania had expressly designated and limited the power of the legislature. Every act which exceeds those limits is a usurpation on the rights of our fellow citizens: and if the conduct of the British parliament be a sufficient sanction for such success, this house, like the parliament, may extend its own existence for seven years, and deprive the people of their right to annual elections.

2. Because the act for repealing the charter of the bank contains, and is grounded upon, an assertion that the bank hath proved injurious to the state, which is destitute not only of evidence, but of truth, and hath accordingly been given up in the argument on this question.

3. Because, even if the authority of this house was admitted, yet the act in question would be unjustifiable. The stockholders of the bank have a property in their charter, and to deprive our fellow citizens of their property, without even the forms of trial, is a measure most dangerous and most tyrannical.

4. Because we conceive the repeal of that charter to be as unwise as it is unjust. If the attempt to overturn the bank should prove ineffectual, it will show at once imbecility and iniquity; but if it should succeed, it will give a severe wound to the commerce of Pennsylvania, and consequently to every order of her citizens: for we conceive it to be indisputable that the agriculture, manufactures and commerce of this commonwealth are so intimately connected, that no injury can be inflicted on the one which will not sensibly effect the others. [Minutes of the tenth general assembly, p. 266.]

The matter was not, however, allowed to rest here, but was revived in the next legislature, which, more friendly to the bank, on the 13th of December, 1786, adopted the report of a committee, stating, "that it is consistent with the policy of government immediately to revive the charter of the bank; but as this charter, altogether unlimited in duration, and almost so in the capital stock allowed to be employed may from these circumstances become an object of some jealousy and apprehension, your committee are of opinion that it might be expedient to qualify it, in its revival, in these respects, but in such manner, as that while all reasonable objection to an institution so eminently useful to the commerce and agriculture of the state is removed, the bank shall remain unmjured in its essential rights, and be left freely to its own operations;" and on the 17th March, 1787, an act was passed by a majority of seven, to renew the incorporation of the subscribers to the Bank of North America for fourteen years, which has since been renewed several times, and is still in existence. [See Rees' Cyclopædia, title banks.]

The part of Mr. Paine's works to which I refer, is his "dissertation

on government," and will be found in the first volume of his political works, in two volumes, published by S. King, New York, 1830, commencing at page 365, and which dissertation at large is respectfully recommended to the perusal of all who desire correct information on this subject. He says—

"In despotic monarchies this (sovereign) power is lodged in a single person or sovereign. His will is law; which he declares, alters or revokes without being accountable to any power for so doing. Therefore, the only modes of redress in countries so governed are by petition or insurrection. And this is the reason why we so frequently hear of insurrections in despotic governments. In republics, such as those established in America, the sovereign power, or the power over which there is no control, and controls all others, remains where nature placed it—in the people; for the people in America are the fountain of power. It remains there as a matter of right recognized in the constitution of the country, and the exercise of it is constitutional and legal. The sovereignty is exercised in electing and deputing a certain number of persons to represent and act for the whole, and who, if they do not act right, may be displaced by the same power that placed them there, and others elected and deputed in their stead, and the wrong measures of former representatives corrected and brought right by this means. Therefore, the republican form and principle leave no room for insurrection, because it establishes a rightful means in its stead.

The administration of a republic is supposed to be directed by certain fundamental principles of right and justice, from which there cannot, because there ought not, to be any deviation. And whenever any deviation appears, there is a kind of stepping out of the republican principle, and an approach towards the despotic one. This administration is executed by a select number of persons, periodically chosen by the people, who act as representatives, and in behalf of the whole, and who are supposed to enact the same laws and pursue the same line of administration as the people would do, were they all assembled together. The *public good* is to be their object. Public good is not a term opposed to the good of individuals. On the contrary, it is the good of every individual. It is the good of all, because it is the good of every one; for as the public body is every individual collected, so the public good is the collected good of those individuals.

The foundation principle of public good is justice; and whenever justice is impartially administered the public good is promoted: for as it is to the good of every man that no injustice be done to him, so likewise it is to his good that the principle which secures him should not be violated in the person of another, because such a violation *weakens his security*, and leaves to chance what ought to be to him a rock to stand on.

When a people agree to form themselves into a republic it is to be understood that they mutually resolve and pledge themselves to each other, rich and poor, alike to support and maintain this rule of equal justice among them. They therefore renounce not only the despotic form, but the despotic principle as well of governing as of being governed by mere will and power and substitute in its place a government of justice. By this mutual compact the citizens of a republic put it out of their power, that is, they renounce as detestable, the power of exercising at any future

time any species of despotism over each other, or doing a thing not right in itself, because a majority of them may have strength of numbers sufficient to accomplish it.

In this pledge or compact lies the foundation of the republic: and the security to the rich, and the consolation to the poor is, that what each man has is his own: that no despotic sovereign can take it from him, and that the common cementing principle which holds all the parts of a republic together, secures him likewise from the despotism of numbers: for despotism may be more effectually acted by many over a few, than by one man over all. Therefore in order to know how far the power of an assembly or a house of representatives can act in administering the affairs of a republic, we must examine how far the power of the people extends under the original compact they have made with each other: for the power of the representative is in many cases less, but never can be greater than that of the people represented: and whatever the people in their original compact have renounced the power of doing towards, or acting over each other, the representatives cannot assume the power to do, because the power of the representatives cannot be greater than that of the people they represent.

The people in their original compact of equal justice or first principles of a republic, renounced as depotic, detestable and unjust, the assuming a right of breaking and violating their engagements, contracts, and compacts with, or defrauding, imposing, or tyrannizing over each other, and therefore the representatives cannot make an act to do it for them, and any such kind of act would be an attempt to depose, not the personal sovereign, but the sovereign principle of the republic, and to introduce a despotism in its stead.

It may in this place be proper to distinguish between that species of sovereignity which is claimed and exercised by despotic monarchs, and that sovereignity which the citizens of a republic inherit and retain. The sovereignity of a despotic monarch assumes the power of making wrong right or right wrong as he pleases, or as it suits him. The sovereignty in a republic is exercised to keep right and wrong in their proper and distinct places, and never to suffer the one to usurp the place of the other. *A republic, properly understood, is a sovereignty of justice, in contradistinction to a sovereignty of will.*

The power of the representative is, in the first place, the power of acting as legislators in making laws: and in the second place, the power of acting in certain cases as agents or negociators for the commonwealth, for such purposes as the circumstances of the commonwealth require.

A very strange confusion of ideas dangerous to the credit, stability, and the good order and honor of the commonwealth, has arisen by confounding these two distinct powers and things together, and blending every act of the assembly, of whatever kind it may be, under one general name of *laws of the commonwealth*, and thereby creating an opinion (which is truly of a despotic kind,) that every succeeding assembly has an equal power over every transaction as well as law, done by a former assembly.

All laws are acts, but all acts are not laws. Many of the acts of the assembly are acts of agency or negotiation; that is, they are acts of con-

tract and agreement on the part of the state with certain persons therein recited. *An act of this kind, after it had passed the house, is of the nature of a deed or contract, signed, sealed and delivered, and subject to the same general laws and principles of justice as all other deeds and contracts are; for in a transaction of this kind, the state stands as an individual, and can be known in no other character in a court of justice.*

By "*laws*" as distinct from the agency transactions or matters of negociation, are to be comprehended all those public acts of the assembly or commonwealth which have a universal operation, or apply themselves to every individual of the commonwealth. Of this kind are the laws for the distribution and administration of justice, for the preservation of the peace, for the security of property, for raising the necessary revenue by just proportions, &c.

Acts of this kind are properly laws, and they may be altered, amended and repealed, or others substituted in their places, as experience shall d rect, for the better effecting the purpose for which they were intended: and the right and power of the assembly to do this, is derived from the right and power which the people, were they all assembled together, instead of being represented, would have to do the same things: because in acts or laws of this kind, there is no other party than the public. The law, or the alteration, or the appeal, is for themselves—and whatever the effect may be, it falls on themselves—if for the better, they have the benefit of it, if for they worse, they suffer the inconvenience. No violence to any one is here offered; no breach of faith is here committed. It is therefore, one of those rights and powers which is within the sense, meaning and limits of the original compact of justice which they formed with each other, as the fundamental principle of the republic, and being one of those rights and powers, it devolves on their representatives by delegation.

I shall pass on to distinguish and describe those acts of the assembly which are acts of agency or negotiation, and to show that they are different in their nature, construction and operation, from legislative acts, so likewise the power and authority of the assembly over them, after they are passed, is different.

It must occur to every person on the first reflection, that the affairs and circumstances of a commonwealth require other business to be done besides that of making laws, and consquently that the different kinds of business cannot all be classed under one name, or be subject to one and the same rule of treatment. But to proceed.

By agency transactions, or matters of negociation, done by the assembly, are to be comprehended all that kind of public business, which the assembly as representatives of the republic, transact in its behalf with a certain person or persons, or part or parts of the republic, for purposes mentioned in the act, and which the assembly confirm and ratify on the part of the commonwealth, by affixing to it the seal of the state.

An act of this kind differs from a law of the beforementioned kind; because here are two parties, and there but one, and the parties are bound to perform different and distinct parts, whereas in the beforementioned law, every man's part was the same.

These acts, therefore, though numbered among the laws, are evidently distinct therefrom, and are not of the legislative kind. The former are laws for the government of the commonwealth; these are transactions of business, such as selling and conveying an estate belonging to the public, or buying one; acts for borrowing money, and fixing with the lender the terms and modes of payment; acts of agreement and contract, with a certain person or persons, for certain purposes; and in short every act in which two parties, the state being one, are particularly mentioned or described, and in which the form and nature of a bargain or contract is comprehended. These, if for custom and uniformity sake, we call by name of *laws*, they are not laws for the government of the commonwealth, but for the government of the contracting parties, as all deeds and contracts are, and are not, properly speaking, acts of assembly, but joint acts, or acts of the assembly in behalf of the commonwealth on one part, and certain persons therein mentioned on the other part. Acts of this kind are distinguishable into two classes: First. Those wherein the matter inserted in the act have already been settled and adjusted between the state on one part, and the persons therein mentioned on the other part. In this case the act is a completion and ratification of the contract or matter therein recited. *It is in fact a deed, signed, sealed and delivered.* Second. Those acts wherein the matter have not already been agreed upon, and wherein the act only holds for the certain propositions and terms to be accepted of and acceded to.

I shall give an instance of each of those acts. First, the state wants the loan of a sum of money; certain persons make an offer to government to lend that sum, and send in their proposals; the government accepts these proposals, and all the matters of the loan, and the payment, are agreed on, and an act is passed according to the usual form of passing acts, ratifying and confirming this agreement. This act is final.

In the second case—the state, as in the preceding one, wants a loan of money; the assembly passes an act holding forth the terms, are accepted of and acceded to by some person or persons, and when those terms are accepted of and complied with, the act is binding on the state. And in the same manner are all acts, let the matters in them be what they may, wherein as I have before mentioned, the state on one part, and certain individuals on the other part, are parties in the act.

It may, though it ought not to happen, that in performing the matters agreeably to the terms of the act, inconveniences unforseen at the time of making the act, may arise to either or both parties. In this case, those inconveniences may be removed by the mutual consent and agreement of the parties, and each find its benefit in so doing; for in a republic, it is the harmony of its parts that constitutes their several and mutual good. But the acts themselves are legally binding as much as if they had been made between two private individuals. The greatness of one party cannot give it a superiority or advantage over the other. *The state or its representatives, the assembly, has no more power over an act of this kind, after it has passed, than if the state was a private person. It is the glory of a republic to have it so*, because it secures the individual from becoming the prey of power, and prevents *might* from overcoming *right*. If any difference or dispute arise afterwards, between the state and the individuals with whom the agreement is made respecting the

contract, or the meaning or extent of any of the matters contained in the act which may affect the property or interest of either, such difference or dispute must be judged of, and decided upon by the laws of the land, in a court of justice and trial by jury; that is by the laws of the land already in being at the time such act and contract was made. No law made afterwards can apply to the case, either directly or by construction or implication; for such a law would be a retrospective law, or a law made after the fact, and cannot be produced in court as applying to the case before it for judgment.

That this is justice, that it is the true principle of republican government, no man will be so hardy as to deny. If, therefore, a lawful contract or agreement, sealed and ratified, cannot be effected or altered, by any act made afterwards, how much more inconsistent and irrational, despotic and unjust would it be to think of making an act with the professed intention of breaking up a contract already signed and sealed.

That it is possible an assembly, in the heat and indiscretion of party, and meditating on power rather than on principle, by which all power in a republican government is governed, that of equal justice, may fall into the error of passing such an act, is admitted; but it would be an *actless act, an act that goes for nothing; an act which the courts of justice, and the established law of the land, could know nothing of.* Because such an act would be an act of one party only, not only without, but against the consent of the other, and therefore cannot be produced to affect a contract made between the two. That the violation of a contract should be set up as a justification to the violator, would be the same thing as to say, that a man by breaking his promise, is freed from the obligation of it, or that by transgressing the laws, he exempts himself from the punishment of them.

Besides the constitutional and legal reasons why an assembly cannot, of its own act and authority, undo or make void a contract made between the state, (by a former assembly) and certain individuals, may be added, what may be called the natural reasons, or those reasons which the plain rules of common sense, point out to every man. Among which are the following:

The principals, or real parties in the contract, are the state and the persons contracted with. *The assembly is not a party*, but an agent in behalf of the state authorized and empowered to transact its affairs.

Therefore, it is the state that is bound on one part, and certain individuals on the other part, and the performance of the contract, according to the conditions of it, devolves on succeeding assemblies, not as principals, but as agents.

Therefore, for the next or any other assembly, to undertake to dissolve the state from its obligation, is an assumption of a power of a novel and extraordinary kind. It is the servant attempting to free his master.

The election of new assemblies following each other, makes no difference in the nature of the thing. The state is the same state. The public is still the same body. These do not annually expire, though the time of an assembly does. These are not new created, nor can they be displaced from their original standing; but are a perpetual, permanent body, always in being, and still the same.

But if we adopt the vague, inconsistent idea, that every new assembly has a full and complete authority over every act done by the state in a former assembly, and confound together laws, contracts, and every species of public business, it will lead us into a wilderness of endless confusion and insurmountable difficulties. It would be declaring the assembly despotic for the time being. Instead of a government of established principles administered by established rules, the authority of government, by being strained so high, would by the same rule be reduced proportionably as low, and would be no other than that of a committee of the state acting with discretionary powers for one year. Every new election would be a new revolution, or it would suppose the public of the former year dead and a new public in its place.

Having now endeavored to fix a precise idea to, and distinguish between, legislative acts and acts of negociation and agency, I shall proceed to apply this distinction to the case now in dispute respecting the charter of the bank, (that of North America.)

The charter of the bank, or what is the same thing, the act for incorporating it, *is to all intents and purposes*, an act of negociation and contract, entered into and confirmed between the state on one part, and *certain persons therein named on the other*. The purpose for which the act was done on the part of the state is therein recited, viz: the support which the finances of the country would derive therefrom. The incorporating clauses in the condition or obligation on the part of the state; and the obligation on the part of the bank is, "that nothing contained in that act shall be construed to authorize the said corporation to exercise any powers in this state, repugnant to the laws or constitution thereof."

Here are all the marks and evidences of a contract—the parties—the purport and the reciprocal obligations.

That this is a contract, or a joint act, is evident from its being in the power of either of the parties, to have forbidden or prevented its being done. The state could not force the stockholders of the bank to be a corporation, and therefore, as their consent was necessary to the making the act, their dissent would have prevented its being made; so on the other hand, as the bank could not force the state to incorporate them, the consent or dissent of the state would have had the same effect to do or to prevent its being done; and as neither of the parties could make the act alone, *for the same reason can neither of them dissolve it alone;* but this is not the case with a law or act of legislation, and therefore the difference proves it to be an act of a different kind.

The bank may forfeit the charter by delinquency, but the delinquency must be proved and established by legal process in a court of justice, and trial by jury: for the state or the assembly is not to be a judge in its own cause, but must come to the laws of the land for judgment, for that which is law for the individual, is likewise law for the state."

I have given these extracts from Paine at great length, because they express the ideas which I would wish to convey, in clearer terms and more perspicuous style than I should probably use, and because of the weight of his authority. He was purely democratic in his views, and by his writings did as much to the establishment of the sovereignty of the people, as any other man of his day.

The authority attempted to be deduced from the repeal of the charter of the Bank of North America, is forcibly and fully met by this argument; and the subsequent re-enactment of the law for a term of years, was an acknowledgment of the impropriety of the repeal, and settled the matter by accommodation. But if in strict law the repeal could have been sustained, however unjust it might have been, it could only have been in consequence of the omnipotence of the legislature, which had then no constitutional provision in the state constitution to restrict their powers, and the constitution of the Union had not then been adopted. And this and similar acts of hasty legislation, very soon thereafter, led to the change of that constitution to the one of 1790, under which we have since lived.

The remaining position—"that it is essential to the public good that this power should be possessed by the legislature," remains to be considered.

If this proposition be true, then it is only to be used as an argument in favor of making a provision to that effect in the constitution, (or in the incorporating laws,) for the future. If not found to be according to law, as to existing institutions, an attempt to exercise it would be unwise and ineffectual: unwise, because it is the exercise of a despotic power, which ought never to be tolerated in a republican government. A republican government is emphatically a government of confidence. It can only exist where mutual confidence is felt and entertained. The prostration of this mutual confidence by the destruction of valuable rights—in fact, of property, or what is the same thing, the means of acquiring it, would be the end of the republic. It is the insecurity of rights under the miscalled republics which have heretofore sunk, that induced the people to rest contented, if not satisfied, under the despotic power that succeeded them. Insecurity of rights tends to anarchy, and from that to despotism there is but one step.

In what light did our fathers view this subject? For on these questions it is often profitable to recur to the days of the revolution, when the fire of patriotism burned purely, and when there really was a high regard to principle in every thing of a political character, which was done. In the declaration of independence, which the sages of 1776 put forth as the maifesto to the world, of the causes which induced them to cast off allegiance to the British crown, and to assume for our beloved country that equal station, to which the laws of nature and of nature's God entitled them, they say, speaking of the king of England, "He has combined with others to subject us to a jurisdiction foreign to our constitution and unacknowledged by our laws: giving his assent to their acts of pretended legislation, (among others,) for taking away our charters, abolishing our most valuable laws, and altering fundamentally, the forms of our governments." The *taking away our charters* was then esteemed a violation of one of our sacred rights, sufficiently so, to destroy all claim to allegiance—an act of despotism, which *ipso facto*, was an abdication of government. They said this power did not exist in the British crown. If this be an argument at all, it is an argument against the insertion of a provision, of the character contemplated, in the constitution. The plea of necessity is the tyrant's plea, and should never be allowed to prevail at the expense of sacred rights. Public faith, espe-

cially in a republic, should never be sullied; it should never be subjected even to suspicion. This regard to public faith and public justice, is strongly enforced in the circular letter written by the father of his country on the 18th of June, 1783, to the governor of each of the states, when he was preparing to resign his command: he says, "The path of our duty is plain before us: honesty will be found on every experiment, to be the best and only true policy. Let us then, as a nation, be just. Let us fulfil the public contracts which congress had a right to make, for the purpose of carrying on the war, with the same good faith we suppose ourselves bound to perform our private engagements."

Mark my words! If ever our republic falls, it will be by the destruction of the confidence of our citizens in the security of their individual rights. When such confidence shall cease to exist, it will rapidly sink—its institutions be broken up, and its liberties will be extinct. These consequences will necessarily follow, from government presuming to absolve itself from those legal obligations which, in individuals bind man to man.

I love the democracy of my country. I was reared in its principles—I have gloried in its triumphs, and mourned at its reverses; and because I love it, I desire to preserve it in its purity. If it be tarnished; if it lose that upon which alone it can subsist, public confidence, it is gone, and the imagination can scarcely conceive the injurious consequences to society which would follow its destruction. First comes anarchy, with all its horrors; hydra-headed, it presents monsters in all the variety which vice, and fury, and confusion can produce—fast as one may be decapitated, another, and another yet appears, rearing its hideous front. Liberty is gone, property insecure, religion desecrated, morality trodden under foot. Is it to be wondered that from such scenes, more than realized in France, in her bloody days, man, sickened at heart, and yearning for rest and security of any sort, siezes even with desperate avidity, upon the prospect of individual despotism ridding him of the horrors of the despotism of the many, unrestrained by law, unguided by reason?

But, I have no such fears for my country. I know the instinctive love of justice and good order which characterize our people; I know their intelligence and their integrity, and while I know that they are human—that like humanity they are liable to be operated upon by impulse—by excitement—they never can, they never will be deliberately unjust. There is on this subject a most interesting incident in the life of the father of his country—the Godlike Washington—which I do not recollect ever to have met with in print, but of its authenticity there can be no doubt, for I had it from one who was an eye and ear witness to the scene. Immediately after the appearance of the celebrated Newburg letters, which had produced so much excitement in the army, as nearly to have created mutiny, and caused the men who had perilled their lives in the service of their country, almost to tarnish their fame by insubordination, because they did not receive their pay, the commander-in-chief determined to address the officers upon the subject. As he held the paper containing his address in his hand, and was about to commence reading it, he was seen to tremble, so as to be incapable of commencing—with great presence of mind, he drew his spectacles from his pocket, and

while wiping the glasses with his handerchief, he said, in a voice awfully solemn, but still somewhat tremulous with emotion, "*My eyes have grown dim in my country's service, but I never yet doubted her justice.*" This simple, pathetic appeal, produced an electric effect on the stern audience, and more effectually quieted the excitement than the most laboured harangue could have done, not so accompanied or introduced. I trust in God the sentiment will never be forgotten. I too cannot doubt the justice of my country Nor dare any man doubt it, who loves our republican institutions, and desires to see their continuance.

An intelligent democracy is ever honest; it never seeks its own destruction; it therefore, never countenances the violation of contracts, the destruction of private rights, or the uprooting of charters. The amount of property invested under acts of incorporation in the state, will be found to be immense, perhaps equal in value to one third of all the real estate in the commonwealth, and where, by the terms of a grant of incorporation, the power has not been reserved to alter or modfy it, the commonwealth, by its legislature, can no more resume the grant, than they could that of the land which they granted by patent, when in a state of nature, and which the owner and his descendants have cleared, cultivated, improved, and made valuable. No man would be secure.

I conjure my democratic friends to beware of the injury they will inflict on the country, on themselves, on their party, by the advocacy or advancement of the Agrarian doctrines set on foot by certain persons of late years. They are of foreign root and origin. They are uncongenial to our soil, to our principles, and to our institutions. They are unlike the staid and sober-minded doctrines which have always found favour in republican, in democratic Pennsylvania. And if men will disregard the warning voice of truth and justice, they will have to take the consequences. He that sows the wind must expect to reap the whirlwind. A disregard of settled principles will ruin any cause, or any party. Let our friends beware. Has not the charge made against us as a party, falsely made I trust, already subjected us to temporary prostration in more than one portion of the Union? Let us then disabuse the public, or if we have erred in this respect, let us retrace our steps, and make the proper use of the adversity which has reached us for a time.

It seems ordered by Providence to teach man his own weakness that he ever errs in the days of his prosperity and power, and needs correction.

> ——————"Daily and hourly proof
> Tells us, prosperity is at highest degree
> The fount and handle of calamity,
> Like dust before a whirlwind those men fly,
> That prostrate on the ground of fortune lie,
> But being great, like trees that broadest sprout,
> Their own top heavy state grubs up their root."

And this is true of parties in politics as well as individuals. Might will forget right, and changes in power by political parties seem necessary, to correct the evil tendency of success in each. Sweet are the uses

of adversity. It makes men and parties reflective—teaches them to husband their resources, and to guard against false teachers.

> "The Gods in bounty work up storms about us,
> That give mankind occasion to exert
> Their hidden strength, and throw out into practice
> Virtues that shun the day, and lie concealed,
> In the smooth seasons and the calms of life."

I have said that the attempt to exercise a power to repeal private charters of incorporation, would be ineffectual. Such a law would, according to the decisions cited, be pronounced by the supreme court of the United States unconstitutional. A power which that court possesses, and would not fail to exercise. See the case of Van Horn, Lee *v.* Dorrance, 2d Dallas' reports, 304, to which I have already referred, as well as to the repeated decisions which have followed it.

I have spoken of the subject of corporations legally, of course fairly and honestly granted. If a case of corruption be made out, then the charter is utterly worthless. It is void, for fraud and corruption vitiate every contract. If the fountain be tainted, the streams flowing from it are polluted with the same impurity. Yet the fact of fraud and corruption must be established in the manner provided by law. If asked as to the proper course to be pursued to accomplish this object, I should say that if a succeeding legislature believed that a charter or other contract had been corruptly granted by their predecessors, it would be perfectly competent and proper for them to appoint a committee to investigate the facts, in order to judge of the propriety of a legal inquiry into, and determination of the matter. If on investigation sufficient facts are made to appear, then, if provision does not already exist, there should be provision made by law, for regulating the mode of trying the question, and by its determination the parties would be bound, and if guilty of the fraud, the charter would be pronounced invalid, and the perpetrators consigned to condign infamy.

As it regards the charter of the Bank of the United States, the legislature at the last session instituted an inquiry on the allegation of fraud, in the procurement of its charter.* A number of witnesses were examined, and the committee reported to the house that no evidence of the alleged fraud had been abduced to them. We do not know that this committee examined all the evidence that might have been procured. Nor do we know that they honestly and faithfully performed their duty. But the law presumes, and so does morality, that every man does his duty, and acts honestly and faithfully until the contrary appears. We are, therefore, to presume, in the absence of *proof* to the contrary, that this committee did their duty, and as fraud is not to be presumed, but must be

*The act incorporating the Bank of the United States, requires that corporation to pay in money, as bonus to the state, "in considera ion of the privi eges granted," two millions of dol ars within three months; five hundred thousand dolla" by the 3d March, 1837; and one hundred thousand dol ars per annum for nineteen years, to be appropriated to common schoo s; to subscribe in stock to various turnpike, rail road and navigation companies, to the amount of $6,750 000, besides being bound to loan the state as she may require it, the sum of six millions, at four or five per cent, if the latter, to advance $110 for $100, and at any time to make a temporary loan of one million to the state, reimbursab.e in a year. Feeling desirous of ascertaining precisely

proved, we cannot say, how muchsoever we may suspect, that this grant was fraudulently obtained. Indeed, much as bribery and corruption have been spoken of, it is seldom that a case of direct bribery occurs. Sir Robert Walpole says every man has his price, but this is perhaps more figuratively than actually true. I am aware of the seductive charms of wealth; I am aware of the influence of luxury and extravagance; these perhaps accomplish their purposes more by blunting the moral sense, than by at once corrupting it. Men have fallen when exposed to great and continuing temptation and importunity. But it is not a thing of frequent or common occurrence; when led astray, it oftener happens by indirect, than by direct means.

The system of legislation by which various projects are embodied in one act, I have ever reprobated. I think half the evils in legislation, of which we have any cause to complain, arise from this combination of laws in one bill. An appropriation bill is gotten up, and in the scramble, in order to procure some useful and necessary appropriations, a vast number of others, having no intrinsic merit, and which never could be obtained if standing alone, are introduced and passed, to procure votes of members for that which is useful. Again: by this system the interests of various portions of the state are combined, and support is obtained for an entire bill, for no one provision of which, if separated from the rest, could a respectable vote be obtained. The variety of objects embraced in this bill for chartering the Bank of the United States, made it objectionable in this point of view, independent of the objections to the provision for chartering a bank with more capital than all the other banks in the state possessed. And no man can doubt, that the bill would not have been passed, but for the provisions contained in it for various internal improvements, and for the advancement and support of the cause of education. But even these have not entirely recommended it to the people at large, and softened down their objections to it. If, however, there be no actual fraud in the obtainment of the charter, no matter how improvident a bargain the state has made, she is bound by it—a bargain is a bargain.

I trust, however, that the great opposition manifested throughout the state to this act, and to the institution created by it, will not be without its use. The gentlemen who are in the management of that institution

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what had been actually paid into the state treasury, up to this time, I addressed a note to the auditor general to that effect, and received from him in reply, the following statement:

"Amount paid by the United States Bank into the treasury of Pennsylvania, for and in consideration of its charter:

In 1836,	$1,500,000 00
In 1837,	1,000,000 00
	2,500,000 00
School purposes in 1836–7,	200,000 00
	2,700,000 00
For interest on bonus,	22,662 30
Total,	2,722,662 30

will find it to be their interest as well as their duty, so to manage the power and funds they have in charge, as to propitiate public opinion. There will be, there ought to be no inducement for them to do otherwise; for however secure they may be, and are in strict law, nothing can endure in this country, profitably and advantageously I mean, in opposition to the uniform and continued voice of the public. With regard to that institution, I own none of its stock. I never did. I do not own one hundred dollars' worth of bank stock of any kind. I however know personally several of the gentlemen in the board of directors of that institution, who are men of high character, of great intelligence, and eminent private worth. Men, who by their energy, intelligence and enterprise, have raised themselves to the distinguished station in society which they fill. Among them I recognise our venerable friend from the city, (Mr. Cope) the purity of whose character, and the intelligence of whose mind, with the experience of nearly three-score years and ten, have placed him at the head of the Philadelphia merchants. And among them also I see another, the personal friend, companion, and room-mate of my youth, who in that youth performed with exemplary fidelity, all the duties of a son and brother to his aged mother and orphan brothers and sisters: who afterwards represented the people in the legislature, and filled, and continues to fill, other honourable situations with like fidelity. Others of that board I know less intimately, but they are all men of character and intelligence, and I cannot but hope, that whatever have been our fears and apprehensions, they may not be realized, but that this large moneyed power may indeed be used to foster industrious enterprise—to develope the resources of our state; to give aid to the exhaustless energies of our citizens, in the prosecution of the legitimate pursuits of life; in increasing the capital and business of our citizens, prosecuting commerce and manufactures, and thus benefitting the agricultural interests, the foundation on which both the others rest.

I, sir, have never had any particular love for corporations; I have no connexion with the party who in 1835 established the one to which I have alluded. I was opposed to its creation at the time, and were it to be done now, I should still oppose it. The people whom I represent, desire, if it can be legally and constitutionally done, that the charter be annulled: but they do not ask that it shall be done otherwise than according to law and the constitution. I have accordingly examined this subject, with a view to ascertain if this power did exist, and I have arrived at the conclusion to which I have come, not from choice, but unwillingly. I have not sought it, but have been carried to it by the force of the authorities on the subject, and I am shut up to the conclusion contained in the amendments I have proposed, that the power to repeal charters for banking or other private corporations, does not exist, either in the legislature or this body. The current of authority is unbroken, and I may not, I dare not resist it. For nearly a quarter of a century have I been practising the profession of the law, and without incurring the imputation of egotism or vanity, I may say, that I have been actively and laboriously engaged in it; the result of experience has been, to teach me never to attempt to be wiser than the law—never to attempt to break through a settled course of adjudication. I have learned that the peace, order and safety of society are best attained, by adhering to adju-

dicated cases, unless they work such serious evils in practice, as to drive us to reverse them. Submission to the law is the duty of every citizen. The commotions in our country occasioned by lawless men assuming to regulate affairs, or to punish supposed or real crimes and offences without and against the ordinary forms of law, have excited, justly excited, the fears of our citizens for the awful consequences which may follow, if this thing be not put down by the force of public opinion. The law should be, it must be, supreme. Redress must be sought according to its forms, or not at all. Want of right and want of remedy are synonymous terms; it has been well said here that law is liberty, and liberty is law. I trust therefore, that this institution will use the powers and privileges they possess, with discretion and prudence, and not attempt to overstep their lawful bounds. Should they abuse them, our courts of justice are open; the provisions of our general act, giving our courts equity powers on the subject of corporations, and the particular provisions contained in their own charter, will authorize an investigation of any abuses they may commit And, my word for it, there is moral courage enough in the community to call them to account. I however would not be unjust even to my enemies, nor endeavor to take from them that which they legally possess; nor would I condemn them unheard.

While, nowever, I feel a repugnance to unsettle the law of the land, and to throw existing rights and institutions into confusion, I think the tendency of public opinion has been, and is, henceforth to reserve the right of repeal, whenever the same shall be required for the public good, in all charters to be hereafter granted, and to secure this right to the legislature by a constitutional provision. I am aware that many gentlemen fear the abuse of this power by the legislature, and it is possible that it may sometimes be misused; it however, will not often so occur, if we judge by the experience of the British parliament. Our legislature is composed of two branches, one of which has been expressly created to prevent the direct action of sudden excitement in legislation, and therefore I do not apprehend much danger from the undue or improper exercise of this power. But what is paramount with me is, that I think the voice of the people calls for it; nor will those who obtain charters have any right to complain, for it will be part of the contract, into which they need not enter, if they do not like the terms; and sir, I shall also support the provisions reported by myself, from the minority of the committee on the 9th article, upon the 24th day of May last, in the following words:

Sec. 27. No perpetual charter of incorporation, except for religious, charitable or literary purposes, shall be granted, nor shall any charter for other purposes exceed the duration of ——— years.

Sec. 28. No charter of incorporation for banking purposes, nor for dealing in money, stocks, securities, or paper credits, shall exceed the duration of ——— years, nor shall the same be granted when the capital exceeds ——— dollars, without the concurrence of two successive legislatures.

Sec. 29. The legislature shall have no power to combine or unite in any one bill or act, any two or more distinct subjects or objects of legislation, or any two or more distinct appropriations, or appropriations to distinct or different objects, except appropriations to works

exclusively belonging to and carried on by the commonwealth. And the object or subject matter of each bill or act shall be distinctly stated in the title thereof.

The two first of these resolutions, I think called for by public opinion, and ought to be adopted. But important as I consider them, I think the last infinitely more so, and essentially necessary to the preservation of the purity of legislation. And I shall, on the proper occasion, and in the right place; I mean, when the bill of rights shall be under consideration, urge their adoption by this body. The adoption of these provisions, filling up the blanks with the proper number of years, and then limiting the dividends by legislative provision to a proper rate per cent., say not to exceed eight per cent. in any one year, in all future charters, would go far to check the evils of which complaint has been made, and the latter provision, if deemed expedient, would effectually take away all motive to over-issues by the banks.

It has been said that the voice of the people calls for the exercise of the right to annul charters heretofore granted. If such be the fact, that voice ought to be obeyed, if it can be done without violating the principles of our government, or injuring private rights. But where it would ask obedience at the expense of these, that voice is not to be obeyed, because it is a call to do injustice, to commit wrong, to injure the people themselves. And although it may require more moral courage to stay the hand of the people, when from impulse and excitement they may be going wrong for the moment, than to go with them, and urge them on to their own injury, it does not follow that he who does the former is not their better friend at last. The noisy and turbulent demagogue is not always the purest patriot. Addison, in his tragedy of Cato, which in its essential features is a fair transcript of history, gives us a beautiful illustration of this in the characters of Sempronius and Lucius. Who of us has not, in his schoolboy days committed to memory the language of the former, where he says, "My voice is still for war," &c., going on with as fair sounding and patriotic words as any town meeting orator of the present day could use. Lucius was almost ostracised, and put out of the pale of popular favor for daring to say, "My thoughts, I must confess, are turned on peace." Yet in the sequel Sempronius turned traitor to the liberties of Rome, while Lucius stood by his country to the last.

I feel as deep an interest in my country as any man who hears me. I believe her happiness depends essentially on the maintenance of the principles of democracy in their purity. This can only be done by keeping the polar star of principle continually in view. In looking through the long vista of years, and figuring to ourselves a population of more than one hundred fold that which we now have, densely peopling our native land from the Atlantic to the Pacific, how vastly important the patriot must feel it to be, that no departure from principle should ever be countenanced or even looked upon with indifference. We have nothing to fear from bold and open attacks. If we are ever to sink, it will be in a war of details, where gradually, perhaps at first almost imperceptibly, the foundation is sapped and undermined, and the public awake not to their danger, until the noble structure, reared by the wisdom of our

parents, and cemented by their blood, shall be found tottering and falling, involving in one common ruin, the rights, liberties and property of our citizens. To such a result I can never intentionally contribute, and hence I have been impelled to the statement of my convictions on the important subject before us. I find the constitution and laws of my country to be thus, and I would be faithless to the trust committed to my charge, were I to fail in so declaring them. While I freely accord to others the right to think and to act for themselves, and give them the credit of purity of motives, although differing from me, for I know the human mind does not and cannot in different persons, always arrive at the same conclusions, even from the same premises, I claim for myself the belief that I am pursuing right ends by right means; and so believing, I commit this question to the decision of this body, and my own course in relation to it, to my constituents, and to posterity, satisfied myself that my own conscience will never reproach me, for having faithfully and fearlessly done my duty.

Mr. MEREDITH said he had listended, with great pleasure, to the remarks of the gentleman from Northampton; and he was so much a convert to his views, that he had determined to modify the resolution now under consideration, so as to suit them. As he should embody the principles of the gentleman's proposition in the proposed modification, he hoped the gentleman from Northamption would withdraw his amendment.

Mr. MEREDITH read the proposition as follows:

Resolved, That it is the sense of this convention, that a charter duly granted under an act of assembly, to a bank or other private corporation, is, when accepted, a contract with the parties to whom the grant is made; and if such charter be unduly granted or subsequently misused, it may be avoided by the judgment of a court of justice, in due course of law, and not otherwise, unless in pursuance of a power expressly reserved in the charter itself.

This, Mr. Meredith said, included all the views which were embodied in the proposition of the gentleman himself, and, that being the case, he hoped the gentleman would withdraw his amendment, and unite with him in the support of this.

Mr. PORTER, of Northanmpton, replied, that the proposition, as modified, embodied essentially what he had offered, and, as it was his wish merely to declare what was the law of the land, in relation to these subjects, he had no objection to withdraw his own amendment, and he did withdraw it accordingly.

Mr. EARLE wished, he said, to offer an amendment so as distinctly to convey the meaning of the proposition. As it was now amended, it would have one meaning to one person, and another meaning to another person. He moved to add the following to the end of the modified resolution: "And when it may be found by posterity, that a charter has been hastily and unwisely granted, and is inconsistent with the rights, the liberties or the happiness of the people, then the commonwealth will have an unalienable right to alter, modify or revoke such charter, in such manner as justice and the public good may require,

and upon the payment of such compensation, if any, as the corporators may justly and equitably claim.

Mr. President, said Mr. Earle, I understood the gentleman from Philadelphia yesterday, in introducing his resolution, to intend to express, and plainly declare by it, not only the meaning of the constitutions, both of the United States and of this commonwealth, but also to set forth the principles of policy which, in reference to this subject, are applicable to all nations and ages. The gentleman from Northampton, (Mr. Porter) had gone into a view of the various decisions made under the constitution of the United States on this subject, some of which were not at all applicable to the principles involved in the question. The decisions of the courts are in all cases only the declaration of what the law is, and not of the moral right involved in the law itself. I do not recognize the authority of these decisions as binding upon us. In the first place, I do not admit their authority as being decisive of the question at issue, and in the second place, I contend that they never did decide this question. They never did decide upon the validity of bank charters, or upon any private corporations.

The gentleman read a case which he says was one of a private corporation, but we had the express declaration of the supreme court of the United States, that it was a public corporation, and one which they justified, on the ground that it was necessary to carry on the government of the United States, under the constitution. They supported the constitutionality of the charter of the Bank of the United States, on the ground that it was necessary to the government, in order to enable it to perform its fiscal functions, clearly showing that they viewed it as a public and not a private corporation. It was now admitted too, that congress had no right to create a private corporation out of the limits of the District of Columbia, and, of course, the bank could not have been chartered but for public purposes. The supreme court, Mr. Earle contended, never decided the great question, whether a state government could resume a charter upon granting compensation for all damages sustained by private individuals from its annulment. He had never heard of any decision to the contrary. All the governments in the world go upon the principle, that, for the common good, the prosperity and rights of individuals may be taken, upon the payment of a proper equivalent. There was never, to his knowledge, a decision against that principle in this country. It was recognized by the constitution of the United States as a just principle; and, without it, no government could be sustained. It was the principle, in part, upon which government was founded. The rights of all were to be enjoyed, that the greatest amount of good would accrue to all.

It would never be supposed that any community would be so ineffably stupid as to put themselves and their interests so completely at the mercy of a private corporation as to be unable to carry out the objects of their associations. A charter, granted in a hasty and incautious manner, and construed not by the grantors, but by a third party, a tribunal having more sympathy perhaps with the corporation than with the people, might, if it was absolutely irrevocable

and subject to no change or modification, destroy all the ends of the wisest and best founded government. It was impossible that, upon any just principle of government, the people could be denied all redress against the inconveniences and mischiefs arising from the hasty granting of what are termed chartered rights, to promote corporations. The Dartmouth College case had been cited; in that case, there was an attempt to take private rights without compensation. In the Yazoo case, private rights were taken with compensation.

But, suppose for a moment, that the court had decided that the legislature could not resume rights granted to private corporations, upon proper compensation, it would not settle so great a principle as this. A principle of such vital importance to the well being and even to the existence of society and free government could not be surrendered upon the dictum of a court. Judges were liable to err, and, in even petty cases of law, which came before them, it was well known that they often fell into error and disagreed too from each other. How then should a decision of a court, and of a single court, which often varies its decisions upon principles of law and constitutional construction, carrying with it such mighty weight as to repeat an eternal principle which belongs to every government?

Every lawyer would admit that our supreme court had erred again and again, and very widely, even in small cases of *meum* and *tuum*, as well as in cases of law and equity, and should we undertake to declare that an erroneous decision, or any decision of a court so liable to error, should settle a great moral and political question, and settle it forever? Christians go to the Scriptures for a moral rule, and the Turks to the Koran; but we were to have set up over us a new code of morality, as well as of law in the oracular decisions of courts of justice. For one, he would bow to no such authority and recognize no code of morals thus declared and established. The decisions of the courts had often been directly in the teeth of the constitution of the United States—directly and palpably. Were such decisions to overrule the fundamental and written law of the land? If the courts were to decide every thing, why not let them go on in a career of judicial usurpation till they upset the whole government as well as some of the main principles of all free governments. We have a constitution of the United States, which provides that "congress shall make no law abridging the freedom of the press." But congress did pass the alien and sedition law which abridged the freedom of the press, and not only every judge on the bench of the supreme court, but every branch of the government, at one time or another, declared that act to be constitutional. But did this decision of the supreme court make that law constitutional which was violative of the constitution? Did the decision set aside the constitution? No. The people of the United States declared that the act was not constitutional, and they turned out the men who made it—overturning and changing all the branches of the government until the obnoxious and unconstitutional law was repudiated. Mr. Jefferson treated the law as unconstitutional, and congress had since remitted or rather returned the fines which were imposed under it.

He (Mr. Earle) took it that we were not to yield our judgments to legal decisions. It would lead to the most ruinous and absurd consequences to adopt them as authorities, even were they of a stable and permanent char-

acter. But, it is well known that these decisions were fluctuating with the times and with men. The people of the commonwealth of Pennsylvania, would not consent to be bound by such authority. The authority of all the world is against the doctrine. The people will always go by a sense of right, and, in following that course, they could not submit their government to such an arbitrary, irresponsible, erroneous, and fluctuating authority. What is the authority of a few individuals, even when they are wise, learned, prudent, disinterested and honest, against the common sense of mankind? It would weigh scarcely as a feather in the balance. But, we find authorities of this kind divided in opinion on this and on all other questions. We find various and different doctrines, sustained by an equal strength of intellect, and to which of the contrary authorities are we to yield? Of all questions of a public nature we find the great men ranged on both sides. After all, we are thrown upon the general judgment of mankind—upon that alone must we rely, and in no country have the people ever established the doctrine that any one public body or department of the government shall establish institutions which the people, in all subsequent time, shall be bound to abide by and to tolerate, however hostile they may be to their best interests. Never has the doctrine been established that a legislative body, elected for a limited time, shall establish corporations with exclusive privileges which all posterity shall never be able to repeal or modify. Such a doctrine would be fatal to the existence of limited and free governments. It would destroy all the guarranties of a limited constitution. It remits the people to revolution as the only remedy for hasty legislation.

Suppose some state legislature or congress should, in violation of the constitution, grant patents of nobility, and the supreme court, as in the case of the alien and sedition laws, should affirm their constitutionality, can these patents never be annulled? Must the order of nobles be perpetuated among us, contrary to the genius and objects of our government, because the authority of the decision of a court can be cited in support of the grant? To what absurdities would not this doctrine lead us? It is alleged that the people have their remedy in a revolution. But how can they thus seek redress? Must they have bloodshed as well as revolution? He admitted that, if the people went to war, and had the good fortune to conquer those who would oppress and defraud them, they would then be placed in a situation to obtain redress. They could then annul the obnoxious act. But suppose the people do not choose to fight and acquiesce in the power assumed by the majority, then there is a revolution in the form of the government without bloodshed. Every change in a government is, to a certain extent, a revolution, and every alteration in a constitution is a peaceful revolution. If a revolution cannot be peacably effected, the main object of a limited government is lost. Under all governments the people may revolt. That is a natural right But a limited constitution is intended to secure to the people a mode in which they may more easily protect themselves from the arts by which tyranny is always preferring to ensnare them.

In England, (said Mr. Earle) where the king grants a charter, he can by his own royal word revoke and repeal it. When the parliament grants a charter, they may revoke it also. Since authority had been so much relied upon, he presented to gentlemen the example of English law and

usages in relation to charters. This is the law and the practice in England, where, as it has been alleged here, charters are held to be so sacred. How much more ought the same doctrine to prevail here, where charters are suffered to be granted only with a view for the ultimate benefit of all, and where exclusive privileges are at war with the whole constitution of society. But the doctrine of authority cannot be sustained here. The supreme court may decide the question over and over again, in any way they choose, and it will not affect the question. The right of the people to resume powers and privileges which they may grant to corporations is indisputable and will never be yielded. Some of the arguments of the gentleman from the Northampton, went to support the views which he (Mr. Earle) had offered. The gentleman says that it is necessary to put in the constitution a provision which will prevent the people from being cheated by the means of a legislative grant of chartered rights to private corporations. This yields the whole argument.

If a charter be found to be inconsistent with the happiness of the people it must be repealed; or it cannot continue to exist. The legislature which grants the charter, makes a contract which binds only itself and not its successors. It cannot bind the people in all future time. He would refer to the authority of Mr. Jefferson on this subject. In the 4th volume of his works, page 275, speaking of the debts contracted by the government, he contends that each generation of men is, in succession, entitled to the possession of the earth and to subsistence from it. That was the doctrine of the best and wisest statesmen and political writer that ever lived. He held that one generation cannot make its successors slaves for life. Each generation is itself but a life tenant of the earth.

Mr. E. would also, he said, read farther from works of Mr. Jefferson on this subject: In page 241, of vol. 4, in discussing the question of forming a constitution for the state of Virginia, which question was there agitated, he urges reasons for the adoption of some provisions on this subject, with a view to prevent legislative usurpation by one generation over a successive generation. Referring to the tables of mortality in Europe, he shows that of any one generation the majority are dead in every nineteen years.

"Some men look at constitutions with sactimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age, a wisdom more than human, and suppose what they did, to be beyond amendment. I knew that age well: I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government, is worth a century of book-reading: and this they would say themselves, were they to rise from the dead. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know, also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlighted, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the

times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors. It is this preposterous idea which has lately deluged Europe in blood. Their monarchs, instead of wisely yielding to the gradual changes of circumstances, of favoring progressive accommodation to progressive improvement, have clung to old abuses, entrenched themselves behind steady habits, and obliged their subjects to seek through blood and violence, rash and ruinous innovations, which, had they been referred to the peaceful deliberations and collected wisdom of the nation, would have been put into acceptable and salutary forms. Let us follow no such examples, nor weakly believe that one generation is not as capable as another of taking care of itself, and of ordering its own affairs. Let us, as our sister states have done, avail ourselves of our reason and experience, to correct the crude essays of our first and unexperienced, although wise, virtuous, and well-meaning councils. And lastly let us provide in our constitution, for its revision at stated periods. What these periods should be, nature herself indicates. By the European tables of mortality, of the adults living at any one moment of time, a majority will be dead in about nineteen years. At the end of that period, then, a new majority is come into place; or, in other words, a new generation. Each generation is as independent of the one preceding, as that was of all which had gone before. It has, then, like them, a right to choose for itself the form of government it believes most promotive of its own happiness; consequently, to accommodate to the circumstances in which it finds itself, that received from its predecessors: and it is for the peace and good of mankind, that a solemn opportunity of doing this every nineteen or twenty years, should be provided by the constitution; so that it may be handed on, with periodical repairs, from generation to generation, to the end of time, if any thing human can so long endure. It is now forty years since the constitution of Virginia was formed. The same tables inform us that, within that period, two-thirds of the adults then living, are now dead. Have, then, the remaining third, even if they had the wish, the right to hold in obedience to their will, and to laws heretofore made by them, the other two-thirds, who, with themselves, compose the present mass of adults? If they have not, who has? The dead? But the dead have no rights. They are nothing; and nothing cannot own something. Where there is no substance, there can be no accident. This corporeal globe, and every thing upon it, belong to its present corporeal inhabitants, during their generation. They alone have a right to direct what is the concern of themselves alone, and to declare the law of that direction: and this declaration can only be made by their majority."

That, continued Mr. EARLE, was the doctrine of democracy, and that was the doctrine which he maintained. Each generation should act for itself. If one generation was free to say we will have banks and other corporations, the following generation might say we will have no banks, and no corporations. One generation might have turnpikes, and another rail roads, if they thought them better. Let each generation, as it comes upon the stage, manage its own affairs, in its own way. Each generation is more competent to regulate its internal policy, than a preceding generation.

He would admit freely, however, that, as a general rule, one generation could not rescind and retract, the privileges conferred by a past generation, upon individuals, without making therefor, an equitable compensation. The question, then, is simply this, whether one generation shall have the right to annul a grant, made by its predecessor, upon payment of a proper and equitable equivalent.

The affirmative of this question he had always sustained, and he believed that in it consisted the very essence of democratic principles.

Mr. BROWN, of the county of Philadelphia, said he did not rise to detain the committee long, at this time, knowing that, as the time for our departure hence was at hand, gentlemen were not much disposed to listen to long speeches.

He would like the gentleman who introduced this resolution, (Mr. Meredith, of Philadelphia) in its present modified form, to give him his attention for a moment, as he wished to indicate what appeared to him to be a defect in its phraseology.

He found in the modification, the phrase, "if such charter be unduly granted." This was a phrase of great ambiguity, and he wished to see it more clearly defined. What is the meaning of "unduly?" The term was too vague for legal or constitutional use. Very few charters were ever "duly" granted by the legislature, in one sense of the word,—that is, properly and fairly granted, without extraneous influence, and in consideration of the utility of the object. It was well known that charters were frequently granted at the instance, and under the influence, of the class of men called "*borers*," who besieged the capital during the session of the legislature.

He did not know whether that would be considered a due and proper influence or not; or whether a charter granted at their solicitation, could be said to be duly granted. He doubted whether the public interests were always duly considered by the legislature, in granting these charters, or whether the representations made to them by the "borers," were always correct.

Sometimes, too, a rail road was made to run one hundred miles out of the way, or at least through a less favorable route, in order that it might pass through a certain member's property. If the interest of individual members was thus consulted, instead of the public interest, in forming a charter, was such charter to be considered as having been granted under undue influences or not? Such is the sort of influence often exercised successfully in the procurement of charters, as we well know. We have all heard and seen it.

Threats and promises are often held out in order to induce members to vote for a charter. Can menaces and bribes, whether directly or indirectly offered, be considered as a due and proper influence, to be exerted by those who solicit charters, and to be acted under by those who grant them?

He had not mentioned the treats which the borers constantly gave the members. These were another means by which the borers exerted their influence, and obtained charters, whether duly or unduly. There are, it appears, very many inducements offered to the members, to secure

their votes. Temptation and misrepresentation assail them in every shape, clouding and misleading their judgment, and inducing them to look to the interests of the borers, and their own interests, rather than to the real welfare of the mass of the people of the commonwealth. How few charters were ever granted, in the obtaining of which, some influence was not exercised, not looking to the public good?

He would like to know from the learned member from the city of Philadelphia, who introduced the modified resolution, whether the sort of influence he had alluded to, was to vitiate a charter, or what kind of influence it was that would be considered undue, under this provision, and by which a charter would be liable to be set aside, and "avoided by the judgment of a court of justice, in due course of law." The use of the word "unduly," seemed to imply that any thing might vitiate a charter, which was not promotive of the public good,—that is, if there was any thing in the means by which the charter was obtained, that looked to the interest of individuals, whether members of the legislature, granting the charter, or not.

It would seem to him, that a charter which was to confer important and exclusive privileges, for a great length of time, to a private corporation, ought to be free from any taint of surreptitiousness. The least ground of suspicion ought not to exist, in regard to the influence and the motives which induced the grant. Still less should a charter be suffered to remain in existence, which was obtained by palpable corruption, however indirect it might be, or by any manifestly undue or improper influence.

The resolution provided that the charter which was unduly granted, or subsequently misused, might be avoided by the judgment of a court of justice, in due course of law; but the mode of proceeding against a charter, of which the people might complain, as unduly granted, or misused, to him appeared inexplicable. So vague, indefinite, and obscure, was the provision for avoiding a charter fraudulently obtained, that it would readily prove to be practically beneficial and efficient.

The course which this question had taken, was irregular, and was not to be accounted for, except on a supposition of a determination, on the part of some gentlemen, to evade the true issue in this matter. When an investigation was first asked—when it was proposed to appoint a committee to inquire and report whether the people of this commonwealth, by a legislative enactment, or by a provision in their new constitution, could repeal, alter, or modify, the act of assembly of this commonwealth, chartering the present Bank of the United States of Pennsylvania, and, if the people have such power, whether it would be proper and expedient to repeal, alter, or modify that act, or any part of it, it was strenuously opposed from the other side: and the opposition came from the same side which now supports the present proposition.

It was said that any action on the subject would be highly improper and dangerous, at the present juncture. The strongest appeals were made to us to shun and avoid a question so agitating and embarrassing. It was said that to agitate the question now, would renew all the pecuniary distress through which we have recently passed, retard the re-establishment of private and corporate credit, and dissipate the gleams of returning prosperity.

Other arguments were used. It was said that we had not time to deliberate on the subject, and that it was improper and unsafe to touch it, while so many members of the convention were absent. But the time now allowed is still shorter, and the number of absentees has increased.

We asked no action. We merely propose an inquiry with a view to future action. But then it was contended that the subject ought to be postponed, and it was indefinitely postponed.

What new reason was urged by the other side for bringing up the matter now? Have the absent members returned? No. The number present has been diminished. Has the state of the country been materially altered since the vote postponing that resolution, was taken? Not at all. The circumstances remain precisely as they were; and, if it was improper and dangerous to agitate the question then, it is equally so now.

When the proposition which we offered, was under consideration, my colleague, (Mr. M'Cahen) said Mr. Brown, was asked by the gentleman from Allegheny, (Mr. Denny) whether the resolution had been determined, in caucus, or rather, whether it had been settled, in caucus, that the subject should be brought up. I now put the same question to the gentleman from Allegheny, in regard to the present resolution. Was it the result of a proceeding in party caucus?

My colleague, said Mr. Brown, answered the question, when it was put to him, in the negative. Will the gentleman from Allegheny make the same answer? In what way are we to account for the extraordinary inconsistency between the arguments and the acts of gentlemen on the other side?

Are the convention now better prepared for action on this subject, than they were before? But we then proposed no action. We asked only an inquiry, and proposed that future action should depend upon the result of that inquiry.

I ask, therefore, whether the convention is now more ready to act, than they were before to prepare for action? What new light has broken upon the subject? If there has been any, it has appeared to us through the arguments of the gentlemen.

He found in the bank pamphlet before him, from which the gentleman from Northampton had quoted some passages in letters from Mr. Biddle, which had a bearing on this subject.

[Mr. Brown here read an extract from Biddle's letter on the subject.]

So, Mr. Biddle says, that the question shall be tried before this convention. He wishes to have it settled here and put to rest. The resolutions before us will perhaps have that effect, and for that purpose may be intended.

I know, said Mr. Brown, that the gentleman from the city of Philadelphia, who offered these resolutions, is not influenced by any such advice or order as that which the president of the bank had given in relation to this matter. But I appeal to the gentleman to say for what reason he now urges this proposition. Why should it now be brought up and forced to an issue?

But, if the gentleman thinks that this is a proper time to get the voice of the people of Pennsylvania and of this convention on the subject, he is certainly very welcome to do it, so far as I am concerned. I can have no objections to it.

But, said Mr. Brown, I want to know something more in relation to the object of this resolution. Its meaning, as I have already shewn, is very vague and uncertain.

The resolution says: "It is the sense of this convention, that a charter duly granted, under an act of assembly, to a bank or other private corporation, is, when accepted, a contract with the parties to whom the grant is made; and if such charter be unduly granted, or subsequently misused, it may be avoided by the judgment of a court of justice, in due course of law, and not otherwise, unless in pursuance of a power expressly reserved in the charter itself."

I now ask the gentleman who moved the resolution, whether it is *intended* to have a *retrospective operation*, or whether its operation will be altogether prospective. Is a provision, in conformity with the resolution, thus expressive of the sense of the convention, to be incorporated into the constitution, and, if so, will the provision be made retrospective or prospective only? That is certainly a very important consideration—whether the provision is to apply to charters already in existence, or to those only which may be "unduly granted" hereafter.

The gentleman from Northampton (Mr. Porter) said, that his proposition, which was withdrawn to make room for this, allowed any existing charter to be repealed or modified, in due course of law, in case it should be ascertained to have been fraudulently obtained or misused. But this modified proposition, did not seem to apply to existing charters. He did not know whether it did or not. It certainly denied all right to the legislature of repealing or modifying a charter, and it did not, in any way, restrict their action on the subject. They could grant as many charters and upon such terms as they pleased, and the only guard promised to the public was the uncertain and insufficient one of a way to avoid, by course of law, a charter unduly obtained.

He wished to know whether this resolution was to be made the basis of future action by the convention. Was it to go abroad that the legislature was not to be restricted in any way in regard to granting charters? The resolution seemed to him to be inconsistent with itself, in whatever light a charter was to be viewed. If the provision to be founded upon it looked to the past, and was to be applicable to charters already granted, then he appealed to the gentleman to say whether we have any power to submit to the people such an amendment upon the supposition that a charter is a contract and inviolable, as such. If a charter, under the old constitution, is a contract, as is contended on the other side, the convention cannot make it otherwise. If it is not a contract, the convention cannot make it a contract.

What was to be considered as a contract he could not certainly say: but it was clear that if a charter was a contract we could not submit it to the courts of law, and, if it was not, we could not make it one. What were we about to do? To take from the high courts of this state the power of deciding what shall be considered as contracts? To prescribe to the

legislature and to the legal tribunals the manner in which they shall act in relation to such cases? He was lost in this sea of uncertainty, where he was without rudder or compass. If we were to look only to the future then he could see his way clear; if to the past, he could not. The legislature, in his opinion, had the right to make void or modify any charter which they had heretofore granted, and, if charters heretofore granted were contracts and were not voidable by them, we could not make them voidable by any other tribunal or authority. He had, therefore, asked the gentleman whether he intended the resolution and the constitutional provision to be founded upon it as prospective only, or as retrospective.

But it may, perhaps, be said that banks are private corporations. The gentleman from Northampton (Mr. Porter) had told us that banks were private corporations, and had cited a decision in support of that opinion. He (Mr. Brown) did not wish to go farther into this question, at the present time, than was necessary for the purpose of placing his vote on the resolution upon proper grounds. But he would ask whether we were to decide what was the character of bank charters, and whether they were private or public corporations. He only wished to know whether the resolution was applicable to the past or not. If it applied only to future charters he would know how to vote upon it, and would vote accordingly. If we passed this point, he would know what to expect. He would never consent to place corporate privileges, however obtained, whether duly or unduly granted, on a footing superior to that on which the title to landed property was placed. He would not agree to put corporate privileges in an attitude so superior to the landed property of individuals; to own houses and farms, which are daily pulled down, cut through, and taken from us, in virtue of legislative power over private property. The soil which was given to individuals, by virtue of private contracts, was daily taken from them and given to corporations, upon the plea that it was for the public advantage; and this power was claimed for the legislature by those who deny to the legislature the power to alter or modify a charter which may be found dangerous and injurious to the people, because they say it is a contract and cannot therefore be violated. He would never consent to give corporations privileges superior to those enjoyed by individuals in respect to the rights of property under contracts. Lands which were the property of individuals under all the solemnity of legal contracts, were taken from them by legislative power and given to corporations for the purpose of making turnpikes and rail roads. The corporations could come to the legislature and ask for the property of individuals for their purposes; but, according to the doctrine maintained here, the people could demand of the legislature no restriction or modification of the privileges granted to corporations. Lands are taken for the benefit of corporations, call them public or private as you please, and they cannot be taken back. They are taken for the use both of public and private corporations and for the reason that the public good requires it. But when the public good requires that the legislature shall resume or modify the privileges granted to corporations, shall we be told that they cannot do it?

I assure gentlemen, said Mr. Brown, that there is a feeling abroad among the people adverse to their views on this subject—a feeling which cannot be controlled by a temporary restraint, and which will make itself

a pathway to the complete ascendency of popular rights. There is abroad in the country a feeling of deep jealousy against corporations. They are distrusted, because they have been found to be corrupt, oppressive, and dangerous, or liable to be misused for purposes very prejudicial to the public interests.

Gentlemen may fire their cannon; they may raise the shout of victory through the country, and proclaim their jubilee; but nevertheless, there is in the public mind a deep seated feeling of jealousy of corporate privileges. They have become alarmed at the doctrine that corporate rights, however obtained, and however pernicious they may be found to the public interest, cannot be resumed, but must remain in full exercise over them at whatever sacrifice, on the part of the public.

Gentlemen may talk of a voice from Indiana and a voice from New York, and they may make the air ring with their shouts of victory, but still they will not eradicate from the public mind the deep sense of the injury which the common interests sustain from the oppression of corporations. It is only necessary for the farmers to know that their lands may be taken for the benefit of corporations, and that the rights given to corporations cannot be taken back, and they will join in your jubilee.

You may boast of a voice from Maine to Georgia, and it will not avail against the feelings of the people. I will be bound for the people of Pennsylvania, that they will not agree to submit to the tyranny of irresponsible corporations which you have put above the laws, and above all other interests. You may set up your money king, and place the crown of empire upon his head, but the people of Pennsylvania will not bow down to him nor worship him. They will never humble themselves before your Juggernaut. Sir, I will live or die by this sentiment. I feel that this body is about to manacle and bind the people of Pennsylvania, and sell them as slaves to this lordly money power—to corporate despots.

He felt warm, he confessed, and how could he be otherwise, for he felt that we were about to manacle hand and foot, and sell as slaves the honest yeomanry of Pennsylvania to the power of corporations; and when he said this, those who knew him, knew that he was the friend of corporations, rightly guarded and restricted, and those corporations being established for the public good. And he warned gentlemen here that if they attempted to build up and create powers any where in the state that shall be above and beyond the reach of the people, and contrary to the will of the public, they must take the consequences if the people rise in their might and crush it to atoms, and leave neither good nor evil of it behind. If the gentleman would tell him that this proposition looked to the future, and it was desired to have the action of the convention upon it, he would vote against it; and if it looks to the past and we are called upon to go back now and make that law which was not law, to define law or to give a new meaning to terms, then he held that the convention had no power over it and he would have nothing to do with it.

He cared nothing for the zeal of gentlemen on this matter, and he was not going to be hurried away by the zeal of those who were desirous of giving character to the state in the manner indicated by the extract he had read from the letter of the president of the Bank of the United States. The people have some rights and some interests in this matter, and while we are about to lend ourselves to give stability to our great banking insti-

tutions, to give them a credit in Europe, let us remember that we are Pennsylvanians, and that the rights and interests of the people of Pennsylvania are involved in the matter.

He was anxious that the institutions of our country should be stable, because he was interested, deeply interested in them, but he was more anxious that the equal rights and liberties of the people of Pennsylvania should be regarded and cherished, and that no power, and no interests, and no power on earth could move him from the discharge of his duties, when these rights and liberties are about to be violated or impaired. He had no doubt but the motives of gentlemen were laudable, but as the learned judge from the city had said on a former occasion, there was never so great danger of doing wrong, as when we are influenced by good motives; and, therefore, as he believed their motives to be good, he trusted while they were passing upon this matter, that they would look to the interests of the people of this commonwealth, and see what influence this may have upon them. He called upon gentlemen to pause and reflect before they went farther in encroaching upon the rights and liberties of the people of Pennsylvania.

Mr. MEREDITH said, he had been called upon to answer certain questions by the gentleman from the county of Philadelphia: but before he did so, he must congratulate the house that that gentleman no longer remained a silent member. He regretted that the gentleman on this occasion thought it better, although he admitted the importance of the question, not to put his opinions into an affirmative or negative shape, but that he persisted in throwing them before us in the shape of declamation, and in no other.

The gentleman wishes us to satisfy him in relation to a matter which was not of the slightest importance to any one but himself: namely, whether or not he shall vote upon this question. Now, with all the respect and kindness of feeling which he entertained for that gentleman, he could not consent to enter into a lengthy argument in this body, on the question whether it would be most prudent for the gentleman to vote or not to vote on this question. That was a matter for the gentleman to settle in his own mind, as he cared little whether he voted or not. The gentleman has laid down principles here which he says he is prepared to live or to die by. He would tell the gentleman, however, that he was not called upon by the question under consideration, to live or to die by any thing, but merely to give his vote, on the principles laid down in the resolution under consideration. Now as to the bringing up of this resolution in relation to the powers and rights of corporations, the gentleman well knew from private conversations, that he had held the language down to Saturday last, that the question ought not to be brought up in this convention. It was well known that he had remonstrated against the introduction of these topics here in any shape; and he now confessed that when he had seen the resolution offered by the gentleman's colleague, (Mr. Doran) slumber on the files of the house for many months, he entertained hopes that this question would not have been pressed upon us. He had not anticipated when he came into this convention, that this matter which he contended we had no power to act upon would have been forced upon us. But what has been the history of this matter? This question has been forced upon us. We have been challenged by a reso-

lution to appoint a committee of inquiry into this very matter; and when that resolution has been indefinitely postponed, we are told that we have shrunk from the investigation; and he had no doubt when this convention adjourned, and we went home to our constituents, it would be proclaimed to the world that we have shrunk from this because of some improper motive.

It was, therefore, necessary that the majority which negatived this resolution should place upon the record the reasons which induced them to do so, and these reasons he had attempted to embody in the resolution he had submitted to this convention, and upon this resolution the gentleman from the county of Philadelphia, instead of coming up fearlessly to the question and maintaining his principles, takes the means of avoiding it by refusing to vote at all. It has become necessary for the majority of this convention to put upon the journals the reasons which influenced them in negativing the resolution submitted by the gentleman from the county of Philadelphia. If the convention would refer to the resolution of the gentleman from the county, they would see the propriety of adopting the resolution submitted by himself. It was alleged by the gentleman's resolution, that the charter of a certain institution had been obtained by some undue influence, and an investigation was asked for into this matter. The first question was as to whether the legislature had the power to grant a charter, which a future legislature could not take away, and secondly, whether the grant was not obtained by fraudulent means.

Now we say that neither this convention nor the legislature have the power to inquire into this matter; and we wish to place this opinion upon the record, therefore this resolution states that in cases where a charter is unduly granted, recourse is to be had to the courts of justice, and there the rights of these parties as of all other parties are to be sustained and acted upon, and he cared not whether those rights may be termed civil rights or whether it may be a criminal inquiry, as in cases of charters being obtained under false pretences. It mattered not as to this; the investigation was to be had in the legal tribunals of the land. We desire not to avoid the investigation, and therefore the resolution he had submitted pointed the convention to the mode by which the matter was to be inquired into. We have no desire to shrink from this question, but we wish to act upon it in the legal and constitutional manner. Why was it that the gentleman while he says we were not assembled here to decide legal questions, turns round and says he will not give his vote for this resolution because it was interfering with our courts of justice. The gentleman says the question involved, is a legal question, therefore, we have no right to decide upon it. The gentleman says it is a question of law. Well it is a question of law, a question of constitutional law, a question involved in our form of government—a question concerned with those divisions of power which was the first step towards the erection of any constitution. It is this question of law which we want to decide, and is this question first to be submitted to a civil legal tribunal to say whether it is or is not a matter which we ought to act upon? Why, sir, if we are deprived from expressing an opinion upon this subject we may as well adjourn and go home, at once, because we have no power to do any thing. Now the gentleman from the county,

has asked, what was the meaning of the term unduly granted. He would frankly state to the gentleman what was meant by it. He meant to say that that was unduly granted which might by due course of law be avoided. Then where a charter or any thing else was unduly granted, the remedy was in the courts of justice.

If the gentleman asked him to specify instances, he might give a great many and he might omit a great many that he could not now think of. He thought however a few instances would suffice. He should therefore call a charter unduly granted which was granted in violation of a direct clause in the constitution; and if the gentleman from Northampton should have his clause inserted in the constitution, limiting the powers of the legislature, he should call that unduly granted which was granted in contravention of such clause; and upon that being proved in a court of justice and before a jury of the country, the charter could be declared null and void. He should also call that unduly granted which was granted upon false suggestion, and if there has been any charter obtained by false suggestion, and the gentleman from the county of Philadelphia was desirous of having the rights of the people vindicated, there was a remedy for him in the courts of justice, and before a jury of his countrymen, and whenever the facts were made known, then the charter so obtained could be avoided; and he trusted that they would not be charged with endeavoring to avoid the question, and shrinking from the investigation while they were pointing gentlemen to the mode of having the question fairly and impartially tried. A charter may be unduly granted in other modes than these. An act of assembly may provide, that on certain conditions precedent, a charter shall be granted. For instance, they may say that upon the subscription of a certain amount of stock, and the payment of a certain proportion of it being made, and after all the forms provided by the law shall have been gone through with, that they shall obtain a charter. Well, upon the failure of the company to comply with these terms the charter may be avoided, it having been unduly granted. But the gentleman from the county of Philadelphia, treats this as a new question, and asks of us whether it is to look to the past or to the future, and if it looks one way he tells us he will vote against it, and if it looks another he will not vote at all, because he desires a clause in the constitution on the subject. Now he begged of the gentleman to look to the past history of Pennsylvania and see how this question has been considered; and then say whether the convention was called upon to negative a principle of this kind. He would now point the gentleman to a case which was within the recollection of every member of this convention, which had a hearing upon this question, and the case alluded to occurred in this very neighborhood. Some years ago the legislature granted a charter to the Harrisburg water company, by which the company was to take water out of the Susquehanna river upon a higher level and bring it to this town. The company after having obtained the charter allowed it to sleep, without taking any measures towards the commencement of the work, until about the time the state of Pennsylvania was going to lay out her canal to the mouth of the Juniata.

At this time the water company went upon the ground proposed to be taken for the state canal, run their line, and threatened to keep off the workmen on the state improvement by force, if they attempted to inter-

fere with them. There was nothing left undone in the way of provocation to excite the feelings of the legislature and those who had the interests of the commonwealth at heart; but the legislature did not so far forget the rights of the company as to bring to bear the aggregate force of the community to crush them in their weakness; and he was glad to have it to say that the legislature of that day possessed those feelings which he hoped every legislature of Pennsylvania would possess. They proclaimed to the world that they would abide by the decision of those tribunals which they had instituted for the purpose of deciding upon all matters between individuals, and to them they submitted the decision of their own rights. That legislature instead of adopting the doctrine held by some gentlemen here, and declaring the charter null and void, directed proceedings against the water company and a trial was had in the supreme court of Pennsylvania, and the result was that the charter was avoided as having been unduly granted; and if that charter had not been unduly granted, the commonwealth in taking the land would have been under the necessity of making compensation to the company for it. But the gentleman from the county has gone on to give us a description of the laws and usages in Pennsylvania which he (Mr. M.) could not subscribe to. He denied that the gentleman's description was correctly drawn, so far as we are concerned. The gentleman had said that no man in the commonwealth held his land but at the mercy of his neighbor; and that it was just and right, and the public good required that this should be so.

Mr. BROWN explained. He had said that individuals held their land subject to be taken away at the pleasure of the legislature and that corporations should be subject to the same powers, and be liable to be taken away in the same manner.

Mr. MEREDITH resumed. Yes, but every man held his land subject to be taken away for public use and public benefit, and that public use was a matter settled and determined by law; and those charters were only to be obtained when it was for public use and public benefit, and no man had the right to take the land of his neighbor for his own private use and benefit.

Nor could any man obtain the privilege by law of taking his neighbors property for his own use, as had been alleged in the case of certain landings on the Susquehanna river. Now he wished to ask from whence came this doctrine that private property could be taken for private use. From whence arose this doctrine that a man might seize his neighbors land for his own private use. He feared it had arisen from these new lights which have come upon us. He feared it had arisen under the same doctrines which had been contemplated to be inserted in the report of the committee asked for. For his own part he was ready to meet this doctrine now or at any other time in the face of the world; and he desired no report of a committee or no consultation to be had upon it, to enable him to come to an opinion upon this matter. He had already detained the convention longer than he had intended when he rose, as he had not desired to enter into a discussion at the time that he submitted the resolution, and should not now have gone thus far had not the call been made upon him by the gentleman from the county of Philadelphia. The gentleman had made this call upon him and he hoped that the reply

was sufficiently satisfactory to induce the gentleman to change his mind and give us his vote, so that his opinions may be definitively known on the subject. The gentleman had particularly inquired of him whether the resolution applied to the future or to the past. Now in reply to this, he would say that the resolution offered by the gentleman from the county, (Mr. Doran) contemplated the past, and contemplated that it was within the power of this convention to express an opinion upon the matter of rectifying the past legislation of the country. It was to consider the propriety of repealing an act of assembly now in existence. Now whether did this look to the past or the future. Why if he desired to prove that it referred to the past he need only to say that this act of incorporation was granted in 1836, and it was now 1837. Well the grounds on which this resolution was based were two fold. The first inquiry was as to whether the legislature had the power of annulling charters granted by itself, and secondly, whether this body had the power of making a provision on the subject. Now we have negatived that resolution and if gentlemen say that we have shrunk from the investigation we say we have not done so, and that we now refer the parties aggrieved to the ordinary and proper tribunal to take charge of matters of this kind—the courts of justice.

He would therefore now say that this resolution which he had the honor of submitting to the convention, had reference to the past as well as to the future. He did not mean by the passage of this resolution to establish any new principle in the granting of charters, or on any other subject. The resolution contemplates things as they are, and only declares, that inquiries of the kind alluded to should be referred to courts of justice, and to courts of justice alone, was it that they belonged. Now until some clause was inserted in the constitution, vesting in the legislature the judicial power of the state, he apprehended that the principles of the resolution would stand good. The resolution he would say then referred to the past, the present and the future; and even if the change was made in the constitution alluded to conferring upon the legislature judicial power, the resolution would still apply, because then the legislature would be a judicial tribunal, and justice would be obtained alike for all before that body in the legal and proper manner.

Mr. Brown apprehended that the gentleman from the city had entirely mistaken the resolution which had been submitted by his colleague, and he was of opinion that any gentleman who would read the resolution would say so. The whole resolution was a mere matter of inquiry. It was a matter of inquiry as to whether the convention had this power, and no one had asserted that it had the power. It was a mere matter of inquiry and as such ought to have been granted upon every principle of right and justice. Have we not given the gentleman from Adams, (Mr. Stevens) a committee upon the subject of secret societies, on the ground of its being a matter of inquiry; and have we not given to the gentleman from Perry, (Mr. Magee) a committee of inquiry in relation to the free negroes and runaway slaves coming into this state. Did any one suppose that in granting those committees we were sanctioning the doctrines of those who asked for the inquiry? Most assuredly not. We were merely sanctioning the inquiry and were sanctioning nothing else than the inquiry; and this was the first time in this convention that an inquiry in rela-

tion to any subject had been refused. The gentleman has answered the inquiries he had put to him in relation to this resolution and says that it looks to the past, to the present and to the future. Now he had called repeatedly upon gentlemen to show him what power the convention had to act in this manner. He desired to know what power this convention had to do any thing but submit amendments to the constitution. We have frequently been told by these same gentlemen that this convention had but limited powers, and the gentleman does not pretend to say that this is an amendment which he proposes to make to the constitution. He says it may be or it may not be, submitted as an amendment hereafter, but at present it is a mere expression of opinion of the convention, in no way connected with amending the constitution. But there was something more in the resolution than it showed upon its face. The gentleman says that this is to be the mode of proceeding unless there is an express provision in the charter of these institutions granting the power to the legislature to annul their charters. Now he would ask gentlemen whether they were any longer going to sanction these distinctions in the granting of bank charters—whether a portion of the banks were to receive charters which could at any time be taken away by the legislature and another and the most dangerous portion to have them free from any such limitations and restrictions. He believed that at present many of the bank charters had these restrictions placed upon them while the Bank of the United States had not. Then was it to be tolerated by this convention that these distinctions should continue to be made? He hoped not. He contended that the legislature had the power to repeal the charter of banks, and the provision reserving to them the power was contained in many of the charters of banks in this commonwealth, but the bank which had created this discussion had no such reservation. Then he would ask gentlemen whether they were going to give to the legislature the power to make these distinctions—whether they would authorize it to make this reservation in banks of a small capital, and give it the power to charter an institution with a capital of a hundred millions, without this restriction. He felt satisfied that the convention would not grant the power to the legislature thus to sport with public opinion in reserving the power to the legislature to repeal every bank charter in the state except one. Suppose the next legislature shall claim the right and exercise it, and repeal all the bank charters but this one, what would be the consequence? Why, sir, it would create a revolution. Now he asked the friends of this resolution whether they were going to carry into effect a principle of this kind. He was in favor of inserting in the constitution a provision which would prohibit the legislature from making these distinctions. He was for placing them on the same footing and saying that when the public good required it, that any of them should yield up their charters. He wished to know whether it was the desire of gentlemen to insert reservations in all the bank charters, so that they might all be repealed by the legislature except the Bank of the United States. This was a question of very great importance; and he desired to know distinctly whether it was the intention of gentlemen to throw barriers of protection around this one institution and break up all the other institutions in the state.

Sir, are we here acting under the mandate of a money king, or are we not? Is this question got up at his command, or is it not? Gentle-

men deny that it is so got up; but there seemed to him to be a singular coincidence between the letter he had a short time ago referred to, and this resolution. This vote, which we are about to give, was nothing more than an extra-judicial opinion, and could have no legal bearing upon the question, and therefore he desired to know of gentlemen why it was pressed with such eagerness.

Well now, with relation to the Harrisburg water company. The gentleman has cited it as an evidence in favor of his argument. He has told us that a suit was brought in the supreme court, and the charter was taken from the company. Now, so far as it relates to the taking of property from individuals, this was an evidence against the gentleman. Do these companies go through all this ceremony to take property from individuals. Not at all. It is taken by a law of the legislature, without ever carrying the matter to court. Then will gentlemen allow these charters of companies to be taken in the same way in which the land of the farmer is taken. He desired to see corporations hold their charters by no other tenure than the owner of the soil held it. He would give them the same tenure which the farmer had for his land, and no other. It was an acknowledged principle that private property should be taken for the public good, and he was willing that this principle should prevail, but he desired to have it prevail with corporations, as well as with any other species of property; and he was entirely opposed to allowing the legislature the power of permitting corporations to hold their property by any other tenure than the landholder held his property.

In the first place, all landed property belonged to the state, and it was granted to individuals, on condition that it was to be given up for the public use, when the public good required it. Suppose that all the states in the Union, should, some fifty years hence, determine that it was for the public good to abolish all banking institutions, and have an exclusively gold and silver currency, would Pennsylvania alone stand out in opposition to this, because her legislature had granted a perpetual charter to some favored institution? Was it proper, or was it right, that the legislature should have the power thus to act counter to the wishes of the people of the commonwealth.

He did not now desire to go into a discussion of the subject generally, because he did not know what it might lead to, and he was not anxious to go into a subject which might lead to so protracted a discussion; but it seemed to him most conclusive that the legislature had the power to regulate and modify the charters of banks, and repeal them if necessary. He found this principle recognized under various constitutions, and he believed it had been practised upon in Pennsylvania heretofore. Certainly laws had been enacted modifying the charters of banks, regulating the denominations of the notes which they should issue, &c. He knew not by what authority this had been done, but it certainly had been done. If it was to be conceded that we had this right, was it to be given to the legislature to establish one institution that no one could exercise any control over. If so, you might as well establish a tyranny over the people at once.

In the constitution of 1790, not a single word was said in relation to corporations; and any thing which the legislature might choose to put in the charter was duly granted, for the very reason that there was

no restriction. They were vested rights, as the gentleman from the city of Philadelphia had chose to call them; but he (Mr. B.) drew a very broad distinction between vested rights and vested wrongs; and well he knew that the just and honest feeling of Pennsylvania was to procure a vested right wherever it was given, if it was a right—and to remove a wrong wherever found, whether it was vested or not. If, therefore, the gentleman from the city of Philadelphia said that this proposition was not to look to the future, but was only to have reference to the past, he (Mr. B.) would not vote for it; but if the convention said that this was to go into the constitution, he could have no difficulty as to his course. He wished to know distinctly how he was voting.

I am now, continued Mr. B., giving my own individual opinions; and I am giving what I know to be the opinions of a very respectable portion of the people of the state of Pennsylvania. I am not here at the bidding, or to do the will of any institution. Let him who will, obey that bidding, I never will; nor will I ever be led into the expression of opinions which I do not conscientiously think are correct and proper.

Mr. MERRDITH, of Philadelphia city, rose to explain:

The gentleman from the county of Philadelphia, (Mr. Brown) has greatly misunderstood me, said Mr. M., if he thinks that I stated that this proposition was not intended for the future. I have expressed no such sentiment. I expressed a contrary opinion; and I have said that if this body should see fit to restrict charters in future, it could do so; and that this principle would still apply.

The gentleman has heretofore disclaimed any design to make observations personally offensive, to any member of this body; and I suppose, therefore, that he does not mean to say that I am here to obey the bidding of any institution.

Mr. BROWN resumed: I disclaim any personal observations, and every intention to make personal allusions of any kind. I have done so before, and I hope that gentlemen will now rest satisfied with my disclaimer.

Mr. MEREDITH: I supposed that such was the fact; and that the gentleman's declaration that he was not here to do the bidding of any institution, whoever else might do so, was intended merely as a flourish, to explain away his refusal to vote on this proposition.

Mr. DUNLOP said, that the question before the convention had led to a wider range of debate than he had supposed would have been permitted by the Chair, considering that the immediate question was on the amendment which had been offered by the gentleman from the county of Philadelphia, (Mr. Earle.)

Since, however, this wide range had been suffered, without intervention on the part of the Chair, he (Mr. D.) had risen principally for the purpose of replying to the gentleman from the county of Philadelphia, (Mr. Brown) who had so ardently expressed his sentiments on this proposition.

The gentleman, said Mr. D. asks us to instruct him upon the law—to fill him with correct notions of jurisprudence, on this subject. Sir, who can do it? Who will have the hardihood to undertake so gigantic a task? It would be counting the sands of the sea-shore; it would be drinking

the ocean dry. And even after all this has been done, the gentleman will ask us for intellect to comprehend it,—and this would be a worse task than the other, hapless as that would be. If, however, the gentleman was seriously desirous of obtaining the information, which we all know he but affects to seek upon this subject, why did he leave his seat yesterday, during the very full, and, I must say, the very satisfactory argument which was submitted to the convention by the gentleman from the county of Northampton, (Mr. Porter.) The gentleman paid no sort of regard to it—he left his seat—he did not want to hear it—there was too much solid information, and too much sound sense in it to suit his taste.

What manner of proceeding is this? The gentleman shuts his ears to every source of information, and then rises in his seat and asks other gentlemen to enlighten him! And yet if we were to enter upon a legal argument, with a view to his instruction, he would leave his seat that very instant.

Mr. BROWN, of Philadelphia county, rose to explain. He had never, he said, asked for a legal argument. All that he wished to know, was, whether this second proposition came within the legitimate powers of the convention. This was the point on which he had asked for information.

Mr. DUNLOP resumed: The gentleman wants us to instruct his mind —to enlighten his comprehension. With what reason—with what show of decency, can he ask this, when the very argument which would have instructed his mind, and would have enlightened his comprehension, he refuses to hear?

But suppose that we were to undertake this task! Where shall we begin with him? If I were to teach him law, I would first teach him latin. I would put him to his A, B, C. I would put him in the horn book, and send him to Thomas Dilworth, to learn the rudiments of arithmetic. I would then turn his attention to the study of Dilworth, then of moral philosophy. I would then introduce him into the precincts of a court,—where probably, he might learn to regard the laws of the land with due respect, and to conduct himself decorously towards men of intelligence and integrity. I would then put him to Blackstone's Commentaries; and, after that, I would lead him to Coke upon Littleton. I would then, after having instructed him in the primary history of the country, carry him through the supreme court of the United States. This is briefly the outline of the course of education through which I should conduct him, if I were to undertake his education. We all know, however, that this would occupy a great length of time, and therefore, the gentleman will excuse me if I let myself off. It is clear that, if I were to commence with him, the time we have to spare, would scarcely be long enough to enable me to bring him through his first reading of Blackstone's Commentaries. And, after all the trouble I had taken, how deplorable would be my condition, if it should turn out, as I fear it would, that the gentleman could not comprehend it! If the gentleman cannot understand the plain and straight forward argument of the gentleman from the county of Northampton, (Mr. Porter) how can I hope that he will understand me?

Sir, I shrink from the task. It is beyond the compass of human inge-

nuity, and human power, to instruct him in the laws and constitution of his country.

I admire his patriotism—I admire his ardor in behalf of the institutions of the state of Pennsylvania. He was not born here—he has come into the state but of late years, and he owns nothing except, it may be, the right to go to congress at the next election.

Mr. BROWN, of Philadelphia county, here rose and said, that he had been raised upon the soil, and that he was a native born citizen of the state of Pennsylvania.

Mr. DUNLOP resumed: Then there is, of course, an end to that part of the argument. The gentleman, however, received a great portion of his education in the state of Virginia; and it is strange that he should come here, and be so anxious to instruct us on a subject of this kind. He wants to know how these resolutions were got up. He asks if there has been any caucus held, and whether they are the offspring of a caucus? I should be enabled to instruct the gentleman, if I could lay my hand on a certain paper which I saw in the hands of his colleague, and in which the gentleman's own name appears in broad relief, as secretary to a caucus which was held some days ago. The names of himself and his colleague from the county of Philadelphia, flourish as secretaries to the meeting; and the name of the gentleman from Mifflin county, (Mr. Banks) appeared, I believe, as president. If I am mistaken in my facts, I shall feel very happy to be corrected. Let the gentleman, therefore, refer to his own documents. Let him look at the minutes of his own caucus, and see if he can derive any information there. I have heard some of the members of this body, and, among them, I believe, I have heard the gentleman himself deploring, in piteous accents, the introduction of that ruffian spirit of party, which prowls in the dark, and sheds its light only for the purpose of rapine. I say, sir, that the introduction of that spirit into this body, has been deplored by the gentleman himself. Let him look to his own household; for if he does not deplore that spirit now, I think he ought to do so—it would become him well. I perceive, sir, that the gentleman shakes his head; but, as Curran said to the judge, there is nothing in it. Others of his colleagues, if he did not, have deplored the introduction of that spirit into this body; we all know that it has been brought among us, and we know the unhappy excitement which has been produced in consequence of it. I allude to the first session of this convention. But, sir, as we came to be more together, and to understand each other better—when it was found that there was a mutual desire to live in good humor with each other—that no one was desirous, wantonly, to injure the reputation or wound the feelings of another, the fiery nature of that spirit began to subside; and, when we met here again, every man acted for himself, or, as the homely saying is, fought upon his own hook. I, among others, was foolish enough to place confidence in this seeming evidence of future peace and quiet. I was foolish enough to believe that the spirit of party was hushed to sleep—that its malignant workings were set to rest—that it would not again influence the mind of any member of this body, and that each man would act upon the independent dictates of his own mind, and actuated alone by the desire to do justice to his constituents. Sir, I had flattered myself, vainly as I now find, that these indications were true—that they were the harbingers of better and hap-

pier times among us; I flattered myself that the loco-foco party spirit had no longer any existence in this body, and that all of us were striving for the accomplishment of one great and uniform object; that is to say, to do justice to the people. I confess that all my hopes have been deceived; for, but a few days ago, at a time when the convention could scarcely muster its members to the number of a hundred, I discovered that this same spirit had again made its appearance among us, nothing milder or more subdued in its aspect, than we have heretofore witnessed; and it is in consequence of the actuation of that spirit, that we have had these caucuses, and that we have been enabled to see the paper in which the name of the gentleman from the county of Philadelphia, (Mr. Brown) flourishes as secretary. Sir, the intelligence of this fact was received by me with astonishment and deep regret. I had brought myself to hope, that the business of this convention was transacted openly on this floor, with the gaze of the people upon us; and that the secret operations of party were in motion no longer. But I was mistaken; the arch spirit was at work. And, Mr. President, when we found that this course was pursued, were we to be idle? Were we to be dumb before our shearers? Were we to be led to the slaughter and killed without an effort? Were we to be treated like boys in this matter? Were we to stand by, like confiding fools, and suffer our feelings to be outraged with impunity? Were secret meetings to be held by the members of a particular party of this body, to concert means for our overthrow, when we might be taken off our guard, and were we, like poor simple creatures, to stand passively by, and pay no regard to what was going on? No, sir, this is not the course which freemen should follow. We will let these gentlemen know that there is as much anxiety for the preservation of the rights and liberties of the people, on the one side, as there is on the other. It was found necessary to hold a counter meeting, and thus to commence together upon the proposition which was offered here. And offered under what circumstances? It was offered as far back as the month of May last, and it has been permitted to sleep on the files of this house, from that day to the present, without the manifestation of the slightest anxiety, as to its consideration, by the gentleman who was the author of it. And yet at a time when there was not the least reason to anticipate, that this bone of contention would have been thrown among us, the gentleman from the county of Philadelphia, (Mr. M'Cahen) who is attached to the post office department, and who possesses every means of facility of information, suddenly calls up the resolution for the consideration and decision of this body, and at a time when it was manifest to a man possessing any thing like the ordinary range of human intellect, that, in all probability, a great many of the members of a certain party would be away from this hall, attending the blooming intelligence of the New York elections. I watched the countenance of the gentleman, as he was passing through this operation. I saw how pleased he looked when he saw that, by a careless vote of myself and some others, the resolution was brought up. I saw the gentleman in conscious satisfaction, at having sprung thus unawares upon his prey.

Sir, with such opponents as these, to contend with, is it not time that we should look about us? Have we not need of care and vigilance? And when the gentleman from the county of Philadelphia, (Mr. Brown)

asks me if these resolutions spring from a caucus, I answer him, that they did. And for what was the caucus called? The gentleman from the county of Philadelphia, (Mr. M'Cahen) who called up the resolution the other day, says that he did so upon his own accord and without a caucus, or a combination of any kind. Courtesey tells us to believe this statement; and I, therefore, do so. I am bound to believe it, and, therefore, I do believe it. That resolution struck at the very vitals of the peace and welfare of society. It would have thrown confusion into the business concerns of this country, of which, I will have the charity to believe, the gentleman himself could have formed no conception. To say that we ought not to be in a condition where such a thing could affect us, is no argument at all; for we are precis ly in such a condition. The banks throughout the Union are making all the efforts in their power, to place themselves in a position which will enable them to return to specie payments. We know that the preservation and safety of every banking institution in the country, is essential to our prosperty at this particular crisis. There can not be a gentleman in this assembly who is ignorant of this fact. The resumption of specie payments is ardently desired by every man in this hall, and by every man in the community; and by none is such a consummation more ardently desired than by the banks themselves. Under such circumstances, and at such a time, to throw out a resolution of this kind, which will wing its way to the remotest limits of the United States, and probably to certain portions of Europe—announcing to the world that we are about to enter into the discussion of the question, whether we can take away, destroy, annihilate the chartered rights of any particular institution, but most especially, to the particular institution to which the resolution has reference, might have produced consequences which the gentleman could not have reflected on. I say he could not have reflected on them, because, if he had, we should find it difficult to believe that he would have adopted any course which would entail them upon us.

Such, Mr. President, was the condition of things; and under circumstances so threatening, it was right, I think, that the friends of peace—friends of the business and the commerce of the country should compare their opinions, and ascertain what would be the probable results of making the inquiry demanded by the resolution. And, sir, if the subject had been taken fairly into consideration, it was agreed unanimously, (though at the outset, I believe, there were some dissenting voices) but it was agreed unanimously, that the inquiry, if made, would be injurious to the business of the state. And I ask any gentleman who professes to know any thing of the nature of the business and commerce of this country, whether such might not, and in all probability would not, have been the effect. And, if it would, what must next be done. Why, it would, he said, give the subject the go by; the absurdity of making the inquiry was obvious; we could not ascertain whether the legislature had done right or wrong; we had no authority to send for persons and papers, and, therefore, any inquiry upon the subject was perfectly idle. What other inquiry could a committee make?—Nothing but an inquiry into a principle. We are charged to inquire whether such an act could be repealed or not. All the conservative members of the convention, all the true friends to the constitution, and

to the laws of the land, felt no difficulty in making the declaration, that all chartered rights, when granted in due course of law, by the legislature, are as valid as our titles to the land which we own; unless the corporations to which they may be granted, are municipal corporations, or connected with the administration of the government. Entertaining, as we do, these opinions, why should we appoint a committee? *Cui bono?* What beneficial end is to be accomplished? As there is no hope of good on the one hand, while, on the other, there is great prospect of injury. If this had been a concerted movement on the part of the radicals of this body—and I use the term without any disrespectful intention, and merely as characterizing the measures of the particular party referred to; if, I say, this had been a concerted movement on their part, it would have been entitled to more respect than it is worthy of receiving now. It comes from a solitary individual, who has no particular motive beyond pleasing a friend, or teazing an enemy. Gracious heaven! Is it come to this, that a gentleman, regardless of the peace of society, should throw such a proposition in at this late hour, when the body is notoriously thin, and merely for the purpose, as I have said, of pleasing a friend, or teazing an enemy. I can hardly conceive, that he could have done so with no other motive in view; but as he says so, we are bound to believe him. We have but one opinion in regard to this proceeding; and it is this, that coming before us in this guise, and under such circumstances, it was not entitled to much respect, from whatever quarter it might emanate; in such a guise, I say, and brought up under the influence of such feelings, the proposition is worthy of nothing better at our hands, than immediately to receive the go by.

As to the investigation itself, I can assure the gentleman that the conservative members of this body, do not dread it; they have no cause to be fearful of the result. They know well, that the principle has been discussed, not only in this hall, but before the people of this commonwealth. Yes, sir, the people have considered this subject among themselves; and it is not to be forgotton that, at a subsequent election, they left at home, to reverse his wrath as best he could, the gentleman who got up the question before the last legislature. We know that the subject has been fiercely investigated by a committee appointed by the ligislature of Pennsylvania—before a committee, too, which was composed of certain men, embittered against this particular institution, regardless of the consequences which might ensue—determined, if possible, to send forth their denunciations, not only against the institution itself, but against particular members of the body which granted the charter—desirous to blast the reputation of the commonwealth, and to hold it up as a vile thing, to the gaze of creation. Sir, we know that they were bent on this. They had power given to them to send for persons and papers; and they pursued their object with the savage tenacity of wolves. What was the report? Does the gentleman from the county of Philadelphia, (Mr. M'Cahen) who has called up the resolution in this sudden manner? does he, I ask, recollect—or did he ever hear, what the result of that investigation was? It was a complete and triumphant acquittal. Not one solitary fact was proved of all that had been alleged; not one solitary member of the house of representatives, nor of the senate, was found to be implicated, as having neglected his duty to his country—as having

trifled with her honor, or bartered away her interests. Why then should we upon the mere recommendation of an individual member of this body, who has manifestly, no just conception of the evils which may ensue; why, I say, should we now get up another committee of investigation? We know that no good can result, but that mischief may, and almost certainly will. Why should we grant a trial, when we know that a verdict has already been given? To set up one legislature to judge another is absurd enough; but to set up a convention to revise the acts of a legislature which had declared that no wrong had been done, is a proposition worthy of the source from which it springs.

The gentleman from the county of Philadelphia, (Mr. Brown) has told us that the institution referred to, is the "head and front" of this resolution. I tell him that it is not. The gentleman grew warm in the expression of his opinions, but I do not think he succeeded in making the convention equally so.

Mr. Brown, of Philadelphia county, begged to explain. He meant to say, and he now said, that that institution was the one main object looked to in this resolution and in this debate.

Mr. Dunlop resumed: I tell the gentleman that that institution is not the object looked to in this resolution and in this debate. Does he suppose, that there are no other corporations but the United States Bank of Pennsylvania? Does he suppose, that the agitation and the trouble which would result from this inquiry, are to be confined to the limits of this commonwealth alone? Will his mental vision carry him no farther? Does he not know that the whole country has sprung up in apprehension, at the doctrines which have been promulgated in the recent letter of Mr. Dallas? Does he not know, that the disorganizing doctrines of that letter, strike at the vitals of society, and at the security of all our property and all our rights? Sir, the whole country has been struck with fear, at the idea that the doctrines of that letter would be carried out. The people did not fear so much for their titles to their lands, as they dreaded the wild spirit of rapine which that letter might have been instrumental in spreading abroad among them, careless of their own, if they had any property, and anxious to seize upon all about them. "*Alieni appetens, sui profusus.*" This, sir, was the spirit which has had its reign in other countries; and which has destroyed and eaten up the republics of ancient times: and it is to be feared that it will have the same effect here. We of this republic, are made of the same materials as the men of the republics of other days; we, it is true, have lived but half a century; we are scarcely out of our swaddling clothes. And yet, at this early day, these doctrines are thrown in upon us to excite our passions, to appeal to our cupidity, and to make us dissatisfied with the condition of things around us. We are told that property ought to be divided, and that chartered rights must be first destroyed, to make way for the more greedy application of this destructive principle. This, sir, is the doctrine that has affrighted, and that ought to affright the people of this country. When gentlemen rise up and promulgate such opinions as these, when they proclaim the doctrine that the links which bind society together, are to be broken, and that property is to be divided according to the reckless dictate of some vile demagogue, it is time that the people should awake and speak out for themselves. If this will not rouse them to a sense of

their danger, I know not what will. But, sir, thank God, the people have risen in their strength; they have spoken out in a voice of thunder which has swept away these disorganizing demagogues like Noah's flood, leaving not one of the ungodly behind. Our ark of safety is landed at last; the family of the patriarch is safe; and, with the aid of God, we will keep them so. The ungodly have been carried down and swept away from among us, and we will try to raise a better race to take their places.

And, with such facts as these before him, does the gentleman from the county of Philadelphia, (Mr. Brown) intend to say, that the resolution has in view the charter of one institution alone? No, sir, such is not the fact. In the county in which I reside, when visiting the various parts at the last election, I told the people of this spirit—I warned them of what was to come, if it was not met with a determined resolution. I read to them the letters of more than one member of the political family. I told them that the time was come when this spirit must be encountered and put down; that no man could foresee the extent to which it might grow—and that small as it then appeared to be, it would, if not promptly subdued, increase until it became a dreadful monster. Does the gentleman still suppose that no man regards the chartered rights of any other institution, save this one alone? Does he undertake to say that any gentleman is influenced only for this institution, when there is so much at stake? Do we not know, that in the state of New York, hundreds, aye, thousands of people met together for the avowed purpose of dividing the property of the commonwealth; and, as has been facetiously remarked by a gentleman, the only reason why they did not carry their plan into execution, was because they could not agree as to the amount of the division. Sir, there is no feature in that party which is deserving of any praise, save one; that is to say, its daring. With the people rising in their majesty before them, they still stand up and beard the public, regardless of any consequences which may follow.

But the gentleman from the county of Philadelphia, (Mr. Brown) tells us that he wants corporations too; *he wants corporations too!* Aye, does he so? He rises up to decry the men that support the laws, that use their efforts to establish the security of chartered rights, as men who worship at the temple of Juggernaut, and in the very next breath, he tells us that he is for corporations too! Look at his conduct! What does it indicate? Sir, I can scarcely find words to express my abhorrence of the deduction which the gentleman wishes should be drawn from such language. He wants to point—to hold up to public reprobation—gentlemen composing a party, who are anxious for the preservation of legal rights, as the worshippers of Juggernaut; when it is manifest to every mind endowed with the least ray of reason or of intelligence, that he himself is worshipping at that very shrine, with the one only difference, that he pays his adoration to smaller Juggernauts than we! The gentleman desires to have these institutions, but he desires that they should be regulated! Mark the absurdity! He desires that they should be regulated! How regulated? By law? No—not by law. He wants to have the regulation of them himself, and he would like to be a member of a legislative body, which was at full liberty to dispose of a man's property, in such manner and at such time, as they might please; because I maintain,

that a man who holds under a chartered institution, is as much entitled to rights and privileges under that institution, and to the means which he has invested, as if he had invested them in any other property. But, sir, these institutions are to be regulated. The gentleman says he desires to have them regulated. How? We desire to have liberty with law. He desires to have liberty without law. We say that law is law, and that the constitution of the land guaranties the safety of property to every man who lives under it. Not so the gentleman from the county of Philadelphia. He is a democrat; a term which, I regret to say, is without any meaning in these days; for so changed and mangled is it that, if Thomas Jefferson could rise from his grave, and come among us for one hour, to see the men who have clothed themselves in his livery, he would own none of them. No, sir, he would scout them all—and, among the first, the gentleman from the county of Philadelphia, (Mr. Brown.) He would say, these are not my garments—they are so altered and patched up, that I can not recognize them. I have no concern with them. This, sir, would be the indignant language of Jefferson, if he could be permitted to see the vile uses to which his name and his doctrines have been turned.

But still, Mr. President, the gentleman calls himself a democrat; he belongs to what is called now-a-days, the democracy of numbers; and the democracy of numbers being now in a minority, it consists at the present time of a certain set of men who were very anxious to be in a majority, but do not know how to get there. They are not able to find out the means. The gentleman says he desires that these corporations should be regulated. How regulated? By the legislature; so that we should have the legislature of to day overturning and annulling the acts of the legislature of yesterday; the second legislature overturning the acts of the first—the third overturning the acts of the second; and so we should go on till every thing was confounded. We should have no stability, no certainty in any thing. What is a constitution made for? What is its object, if it is not to give stability, and to define the rights of every part of the government; and when we see that the legislature, in the exercise of its functions, can not go beyond a certain extent, can not impair the rights which are guarantied under that constitution, we have then before us a plain principle of action—a clear rule of conduct which every man is able to understand and by which the conduct of every man towards his neighbour and his neighbour's rights, is to be directed and controlled. And we go beyond our power when we say that we can touch, or in any manner interfere with the rights and privileges which was intended to be secured to us under this written instrument.

Mr. Shellito here interposed with a proposition for adjournment, which did not prevail.

Mr. D. resumed. I shall not, Mr. President, detain the convention with many more observations.

It has been said that bank privileges form no contract; and I have heard gentlemen go so far as to say, that any agreement made by the public with an individual is no contract. Now, look at this proposition, and let us see if it will stand the test of scrutiny. Suppose that the legislature of this state should pass a law, authorizing the government to make a contract with certain persons, for example, for the building of this Hall. And suppose the agent makes it. Whose contract is this? It is

the contract of the people, with that particular individual; that contract is made through the agent of the people—which agent is the government. Will any man, in possession of his reasoning faculties, say that this is not a contract in every essential feature? And yet, according to the doctrine here laid down, because it is made for the public use, it can be disregarded or destroyed. If we have a right to impair contracts, we have a right to do so without making compensation to the individual with whom it is made. No one desires that the government under which he may live should have the right to take private property for public use, without compensation rendered. But that clause of the constitution has nothing to do with matters of contract. A contract, according to the constitution of the United States, which we all, I presume, acknowledge as the supreme law of the land, can not be impaired by the laws of any other state; it not only can not be destroyed or abrogated, but it can not be impaired. And farther, not only the contract, but the obligation of a contract can not be impaired and so high did the supreme court hold this principle to be, as to decide that a state legislature could not declare that the writ of *fi fa* could not be issued, because it was tampering with a contract by taking away the means of enforcing it; and that, therefore, it was unconstitutional. And yet, in the face all this, we are to be told that an agreement with the government is no contract. What do we mean when we speak of a contract? What is it? It is an agreement entered into between two parties, that the one shall do, or shall not do, certain things for the benefit, or that would tend to the injury of himself or the other. If we, by an act of assembly, grant to a man a tract of land, even without him paying a dollar for it, that is a contract; and, if he takes possession, and builds upon it, the contract is confirmed. If the public, through their legislature, agree with certain individuals that if they will put their money into a stock for the construction of a rail road, and that if they will go on to make that road they shall have certain privileges, is not this a contract? A contract may be made between one and two, or any number of persons. If the whole people agree to make a contract, they authorize the legislature to make it. The legislature is the agent, and the contract is as valid and as binding as if made between man and man.

Under these circumstances and viewing the subject in this light, I can not perceive how a man can doubt, that a charter granted for any particular purpose, is a contract, and as valid as a contract of any other kind. If it is a contract, we are sworn not to impair it—we are sworn to execute it, for although the constitution of the United States says, that no state shall pass any law impairing the obligation of a contract, it does not follow that it means only a law by the legislature, but that we shall take no steps, as a state, to impair it. It seems to me, Mr. President, that the gentleman from the county of Philadelphia, (Mr. Brown) ought to feel himself satisfied with this answer. If he does not, I will give him some more, should he desire it.

Mr. Brown, of Philadelphia county, having risen to obtain the floor—

The Chair said that, as the gentleman had already spoken twice on this question, he could not again address the convention except by leave given.

Mr. BROWN appealed to the House, to suffer him to say a few words in answer to the personal reflections which had been made upon him by the gentleman from Franklin, (Mr. Dunlop.)

Leave having been given—

Mr. B. said, he would not abuse the courtesy which the convention had extended to him, by occupying more than a few moments of its attention; and even this indulgence he would not have claimed, had he not felt that it was his duty to make some reply to the personal attack which the gentleman from Franklin, had made upon him.

In reference, Mr. B. said, to my origin, my education and every thing of that kind to which the gentleman has been pleased to allude, I do not know that any member of this body, in sustaining the institution, whose charter has given rise to this debate, can feel himself justified in entering upon the private concerns of others. I shall pass this by, however, with the single remark, that the gentleman is welcome to any information he may have as to my origin, residence, education, or character; but I hope that he will satisfy himself that he is not mistaken in his premises, before he undertakes to draw deductions from them.

It is true that I have never learned latin. This, however, is not a source of any regret to me. On the contrary, I am glad of it. I should be sorry if, when my constituents sent me here to perform high and sacred duties, I were to apply my time to no better purpose than to show off the few latin fragments I might happen to have picked up. I leave the gentleman to the enjoyment of this hobby of his own, having no disposition to share it with him.

The gentleman has also said, that though I was warming myself, he did not think I had succeeded in warming the convention. I presume this is sincere, I will merely say, however, that warm as I may be, I do not look quite so much like a firebrand as he does.

He tells me that I shook my head, but that there is nothing in it. For my own part, I would much rather have a head with nothing in it, than I would have it filled with stale and nasty jests brought here to make men laugh. I leave this character to the gentleman from Franklin, and to others who are by nature so much better qualified than I am, to play the part to the life.

The gentleman says, there are other corporations besides the particular one referred to. I concur with him. We have been told by the gentleman from Northampton, (Mr. Porter) that the gentlman from Franklin, (Mr. Dunlop) has said, he is a corporation sole. I think the gentleman did raise a certain corporation, of a peculiar character, and the governor of the state said: "I believe, in reference to it, that it was a difficult matter to swallow the gentleman's broad-axe." I do not know, so keen has been the temper he has lately exhibited here, but that he may have swallowed his own broad-axe. As, however, this is a point on which he may feel very delicate, I will say no more about broad-axes.

The hour of one having arrived, the CHAIR interrupted Mr. B. with the announcement of that fact; and,

The Convention took a recess.

TUESDAY AFTERNOON, NOVEMBER 21, 1837.

The Convention resumed the consideration of the second resolution, submitted by Mr. MEREDITH, as modified, and which reads as follows, viz:

Resolved, That it is the sense of this Convention, that a charter duly granted under an act of assembly, to a bank or other private corporations is, when accepted, a contract with the parties to whom the grant is made, and if such charter be unduly granted or subsequently misused, it may be avoided by the judgment of a court of justice in due course of law, and not otherwise, unless in pursuance of power expressly reserved in the charter itself.

The question being on the motion of Mr. EARLE, of Philadelphia county, to amend the resolution, as modified, by adding to the end thereof, the following words, viz:

"And when it may be found by posterity, that a charter has been hastily and unwisely granted, and is inconsistent with the rights, the liberties, or the happiness of the people, then the commonwealth will have an inalienable right to alter, modify or revove such charter, in such manner as justice and the public good may require, and upon the payment of such compensation, if any, as the corporators may justly and equitably claim."

MR. BROWN, of the county of Philadelphia, concluded his remarks. He regretted that the committee had not indulged him a few moments longer before the adjournment this morning, in order that he might have concluded the personal part of his remarks. He would not now recur to that part of the subject. He then referred to an expression in debate which fell from the gentleman from Bucks, (Mr. M'Dowell) which had been laid hold of to found a charge against him of being an enemy to corporations, and in order to shew that the gentleman from Franklin (Mr. Dunlop) was not inimical to corporations he quoted a section from an act in the statute book of Pennsylvania, giving corporate powers to Isaac Worrel and James Dunlop, in carrying on a manufactory of certain articles of hardware. He had never before known why the remarks of the gentleman from Franklin cut so keen, but, it appeared from this act to be suffi ciently explained by the fact that he was a manufacturer of edge tools. He did not know but that this may be one of the incidents in sharpening the arts of gentlemen. These two gentlemen seem to have a considerable interest in selling shares, and the right of monopoly was granted to them until the year 1850. This was a reason why the gentleman from Franklin should wish chartered rights to be guarantied. He referred to this circumstance because he did not fully understand the nature of the transaction.

On the subject of caucuses, he wished to say a word or two, to set the opinions of gentlemen right. The resolution of his colleague had not been brought forward in the manner which had been stated. He (Mr. B.) had never acted as the secretary of a caucus, and he wished the gentleman who made the charge, to bring forward the proof. He was authorized to say that the subject now under consideration was never before

any caucus. So far as regards the action of a caucus in framing this resolution to protect ourselves, the imputation was utterly baseless. There was nothing of the kind. The question came up on its own merits, and not from any design to press the question in the absence of those who are opposed to it. He saw that three of the gentlemen on the other side voted for taking it up, and there was only three of a majority, therefore that argument was shown to be entirely without foundation. It had no reality in fact, and the charge that the proposition was taken for the purpose of a surprize, had no foundation on which to stand. If, therefore, the resolution had been opposed on this basis, there was no authority for the opposition, and another reason should be found. Gentlemen had said the adoption of the resolution would have the effect of unsettling the basis of the currency. It was also said that if the charters were to be repealed, and the rights which had been granted were taken away from the corporations, specie payments would never be resumed. He admitted that he was no lawyer. He had said so before, and after such an acknowledgment, he was surprized that gentlemen professing to be animated with a spirit of courtesy and good feeling—did not take that admission as an apology for his ignorance. He then read the restrictive clause in the old bank law. He did not, it was true, understand law, but he understood something of English, if not of latin, and he would say that in this clause he found the power reserved to annul charters, in case they were violated or abused, no matter how the corporators acted. Under this very clause banks had sprung up, and gentlemen were invited to take shares, and the stock rose above par. Why was this? It was because every one relied on the justice of the legislature, and it was only when one institution arose which was beyond legislative power, that new guards were introduced, but the justice of the legislature should be directed against it. Under this new guard, why would not the institutions flourish, and why could not the stock be taken? He would ask of any who take stock, if they had even supposed themselves to be alarmed by this uncertain tenure? It was a new idea, and the sense of justice in the community was adequate to refute it. If you doubt the legislature, if you begin to admit a distrust of that body, you double the justice of your cause, and then the necessity for the guard which we desire to impose becomes apparent. He was anxious that the public mind should be disabused in this point, and therefore he had appealed to the old acts of Pennsylvania. Before these new lights broke on gentlemen, they were not afraid to trust the legislature. Were they afraid that these new lights should shine in too detectingly, and shew the injustice of their cause?

Gentlemen had called him to account because he had said he was the friend of corporations. He believed them to be good, when they were well guarded. They were beneficial when they were open to all, when they were not subject to the caprice of the legislature, but to that universal examination by which their utility might be tested. He believed they had been serviceable, and that they may again be serviceable, but this was no reason why he should bow to one corporation which had set itself up above all control. He bowed to no Juggernaut, little or great. He was willing to give the country such institutions as would work for the public good, and would leave it to those who may live after us to regulate them as the circumstances of the country may require. He was not one of

those who believed that all wisdom is centred in the past or in the present generations, and that we can look for no wisdom or integrity hereafter.

The gentleman seems to think that the public voice is now sweeping all before it, and that none of the ungodly will be able to stand. We are all godly who are here, for we have been sent here by the people. If the gentleman alluded to recent events in New York, he (Mr. B.) was not disposed to take the same view of those events. The government of that state had protected corporations, and had lately met for the purpose of shielding them from responsibility, and we had as yet to learn what is the voice of New York. No man could be elected there now who would go for that question, any more than they formerly could have been, and there may be a redeeming spirit then which may bring on a new era in the history of corporations.

Recently in Vermont, there has been, a law passed making corporators liable and responsible in their individual capacity. There was a similar party in this hall who had voted for a similar provision in this constitution. It is the opinion, the voice of the people, and he cared not if it came to the rescue, if it was the voice of the people, which is the voice of God.

If, in New York, the legislature had taken up the corporations and carried them too far, he cared not how far the people had gone for the purpose of retrieving the error, and bringing them back within their proper limits. Gentlemen went too far when they assumed that the people had gone for strengthening corporate privileges. They should shew in what instances the party put out had weakened or restricted corporations, and then show whether this change has been made on that account. The term ungodly was too harsh, except it was confined to a political meaning. It is for the people, the whole people, to judge, as they will judge, of what they want and what they do not want. He was willing that they should flourish every where, that their voice should prevail, and those who oppose it should be swept from the face of the earth.

If the gentleman from Philadelphia would so shape his resolution as to submit it to the people, to say what restrictions they wish, he would be willing to vote for it; but he was not willing that we should shape it into its final action, without taking their opinion on it, and thus take the responsibility of deciding for them, whether they are disposed to sanction the measure or not. And if the gentleman was desirous to raise the further question, as to legislative control, even in reference to the past, he would be willing to go with him in submitting it to the people to determine whether the legislature has a right to repeal any existing charter. And he would submit to their decision, although the ungodly might be swept away before it. But it was not intended to put this question to the people; but in this convention to take it on ourselves, like the convention of 1790, to speak for the people, without having the popular voice. When the gentleman desires to put his proposition on record, let him put it in a shape in which we may test public opinion, and see if the people respond to it, or not. If the gentleman meant to rely on the past, he (Mr. B.) would call on gentlemen, in whose districts the elections had taken place since the last meeting, to say if the ungodly had been swept by the voice of the people from the face of the earth.

He would call on his friend from Bucks, (Mr. M'Dowell) to say whether there were none on the ungodly list in his county, and would put the same question to his friends from Washington and Bedford.

[Here Mr. M'Dowell said there were no ungodly in Bucks county.]

Mr. B. continued. He was glad to hear it. He had used the word in a political sense only, and hoped it would be taken in no other. We had been told that the people might run mad. He, however, did not believe it. He thought that in Pennsylvania, the people were right, and he would like to be shewn why they would not go for a repeal of it, apart from legislative action on the matter. He much feared that the firing of cannon had somewhat turned the heads of some gentlemen, and that they had mistaken the reports for the voice of the people. He had, in days that are past, heard the report of cannon in the city, seen the barrels of drink spread about the streets, and witnessed the flags flying in every direction in commemoration of the political victory gained over their opponents, and which threatened to sweep the ungodly from the earth. But, when the jubilee was scarce over, a deep voice (not a small still voice) was heard from the people, and they had ever since been in the ascendant—having beaten those who had but a short time before been their victors. He was much mistaken—he mistook the signs of the times, if that voice would not be heard again and again in this beautiful hall. Yes! good old Pennsylvania would be heard from her hills and vallies. Here democracy was still the same, and would be long triumphant—when national republicanism and federalism had all gone down. The motto of democracy was—equal rights and equal justice—free government meeted out to all—to the rich and the poor—the greatest good to the greatest number. That was the motto of Pennsylvania democracy, and it would be triumphant; it must be triumphant.

Mr. Shellito, of Crawford, said, he would make a remark or two. He was well pleased with the argument that had taken place this morning, and thought it had, in all probability, proved instructive to us all. It might be of great benefit to many. The result of the argument had shown that the existing constitution was not that matchless, perfect instrument that it had been proclaimed to be by some of the delegates on this floor. On the contrary, it had been proved to be deficient, and doubtless an opportunity would be offered to enable us to put in the constitution such an amendment as we desired. If a legislature, elected by the people could come into this hall, and do acts which the people never thought of and never asked for, it was full time that the constitution was altered. He hoped that the arguments would induce the convention to put some guards in the constitution, which would prevent these abuses hereafter. They would be of great and essential service. The people were rising up in their majesty, and would not only fight for themselves, but their children also. It was absolutely necessary that guards should be inserted in the constitution, in order that henceforth we and our children might not again be subjected to the will and machinations of a powerful, overshadowing, dangerons banking institution. What satisfaction, he asked, was it to him, that a man should become a member of the legislature, and do an act which made him (Mr. S.) a slave, and then be turned out? It was poor satisfaction, indeed. He wanted more. He hoped that the convention would so amend the constitution, as to pre-

vent any future legislature from chartering a great banking institution like that now in existence, with a capital of thirty-five millions of dollars! Let us repeal the law. Who could appear in a court of justice against thirty-five millions of capital? Money enough to buy every man in the state. And, yet we were told, that if aggrieved, to go to a court of justice! He hoped that such guards would be put in the constitution as would prevent the legislature from establishing such an engine of tyranny, as was the present mammoth banking institution, which the people of Pennsylvania had not asked for. The people would not be fooled again with it.

The PRESIDENT called the gentlemen to order.

Mr. S. proceeded. He had not troubled the convention much since he had had the honor of a seat on that floor, and the little he had to say he had endeavoured to make as comprehensible as he possibly could. He was no lawyer, neither was he learned in language; but he knew right from wrong. And, he was by no means sure that the legislature had a right to incorporate the present Bank of the United States. However, as he had already said, his desire was to prevent a future legislature from doing a like act. Let us submit to what cannot now be helped; but, for God's sake, let us not hand down to our children any thing having the slightest tendency to abridge them of their freedom. It had been said that the bank charter was not obtained by fraud. We could not get the evidence as to whether it was or not. Of course the parties interested would not swear against themselves. We know (said Mr. S.) that the people do not want the bank; and they will not be at ease until they get rid of it. They think it is an encroachment on their dearest rights, and they will, whenever an opportunity offers, immediately put it down. They want no bank. But should the time ever come when they desire one, I will be found the last man to act in opposition to their wishes. But the particular friends of the bank are afraid to put the question of "bank" or "no bank" to the people. If the question were put, and they assented, I should be satisfied.

Mr. HAYHURST, of Columbia, said: Mr. President, I can scarcely hope, at this late stage of the debate, to make any impression on this body, or to make one proselyte to my opinion: but if I fail to make an impression, I shall at least put my reasons for the vote I shall give, on record.

When the gentleman from the city (Mr. Meredith) called for the second reading of his resolutions, I voted against their consideration, because, they do not purport to be an amendment of the constitution to be submitted to the people for ratification or rejection, and hence I believe they are not legitimately within the sphere of our action. On the contrary, I thought and still think any expression of opinion by this body, gratuitous and uncalled for. A majority however having determined on the consideration, I felt myself relieved from the responsibility of voting on questions not within the province of this body, and therefore, voted for the first resolution cheerfully. The first resolution contains, in my opinion, nothing more than an affirmation of the very spirit and meaning of the constitution of the United States, and therefore, the principle would exist unimpaired even if we had negatived the resolution. It contains the doctrine which I have always held and still maintain; and as it cannot be construed to mean more or extend farther than the constitution of the United States and of this state, I am free to vote

for it, though unwilling to be instrumental in introducing unnecessary topics of debate here.

But, sir, I do not regard the second resolution now under consideration, as so innocent a proposition, and therefore I cannot vote for it cheerfully, nay, I cannot vote for it at all. If it means any thing, it looks to a *special* protection of chartered institutions. I cannot, judging from the source from which it comes, for a moment, persuade myself that it is a splendid abortion or a pompous nothing. It comes from a gentleman from whom we do not receive unmeaning phrases or mountains of empty sound. I take it therefore, that the resolution means to say that which has not been already said. We have been told that the courts have decided that charters are contracts and as such cannot be altered, modified, or repealed.

If this be so I am content, so let it be—but if this be so does not every reason for the adoption of this resolution vanish at once. If charters are already protected to the full extent of this resolution, why alarm the yeomanry of this country by passing that which may be *construed* at least to strengthen the corporate arm as contradistinguished from the land titles and other individual rights in your commonwealth? Why adopt that which looks to a special protection of banks by name, when it is known that your citizens are more jealous and easier alarmed on that subject, than any other?

The state is divided into two parties, the one asking for a restriction of charters and banking privileges, and the other thinking such abridgement impolitic and unnecessary. But, sir, neither party ever requested this body to extend or strengthen the power of corporations, and therefore this resolution is uncalled for by the public voice, and therefore is unwise, unnecessary, and injurious. But gentlemen tell us it does not add strength; then why adopt it, for surely it is not intended to restrict?

But another sufficient reason exists for its rejection in the fact that the gentleman who introduced and those who have advocated it with all their talents, and their learning and glowing eloquence, have failed to show that the proposition possesses any other than *negative* virtue They end by admitting that it *can do no harm*. Sir, when such talents, such research, and such experience (which I acknowledge are far above my ability to compute or compete with, on equal terms) fail to establish any thing more than naked, cold negative merit, ought we not to scruple, ought we not to discard it?

We were told at an early period of this body by different gentlemen who now advocate the measure under consideration, that no amendment ought to be made in the existing constitution until clearly proven to be beneficial; and that the fact that an alteration will do no harm, is not good reason for adopting it. I subscribed to the doctrine.

I hold that all change, not evidently for the better should alarm a mind taught by experience to distrust itself.

Here is a proposition, the friends of which, have failed to show its utility or propriety, and even place its chief claim in favor, in the assurance that it 'will do no harm.' Now I call upon these gentlemen to be convinced by their own argument, if they will not yield to mine. I

call upon them to come up to the work with me, and say at once that all propositions brought here must possess *more than negative virtue*, or find no favor.

If this proposition looks towards an amendment of the constitution, I have already shown by the arguments of its friends that we should reject it unless it has affirmative virtue: and I now say that if it looks to no such amendment, it is gratuitous and out of our jurisdiction, and therefore ought to be negatived.

To redeem it from these two causes of condemnation, it is necessary to presume that it has an affirmative quality—and if it has it goes to protect, strengthen and secure corporations and chartered privileges—a measure justly calculated to startle and alarm the community, a measure that I before said is injudicious, uncalled for, and dangerous. Its friends do not pretend that its tendency is to abridge. The gentleman from Northampton has shown that all charters 'duly' obtained and legally fulfilled are amply secured. All the friends of this resolution seem to hold that all charters are contracts, and as such inviolable. If this doctrine be true (I neither admit or deny it now) that all chartered privileges are on an equal footing with individual rights, and only to be tried by a due course of law, then where is the necessity of this special declaration now? Why should not those interested in this species of property rest satisfied by being placed beside their fellow-citizens on the common foot of justice? Is it right, is it wise, that we should now at one brush establish that which the decision of our learned judiciary have failed to establish in half a century? Or if they have established this doctrine, is it not perfect folly for us to step out of our province to affirm that which gentlemen friendly to this resolution, roundly assert, we have no power to reverse, or impair?

But sir, it is hinted that this resolution is proper and necessary to repel the evil influence and the alarm created by the calling up of the resolution of the gentleman from the county of Philadelphia. I confess I cannot see the alarm likely to proceed from the calling up of a resolution which was postponed indefinitely by a vote of this body, and the appointment of a committee refused. But suppose alarm is created. I warn this convention against hastily passing resolutions for allaying temporary excitement, which may create greater, and may be construed to extend that which its advocates do not profess to desire extended, and may throw obstacles in the way of the due administration of justice, when even their friends assert that the subjects they embrace are amply secured already. But sir, to redeem this measure from the arguments of its friends, it is contended that it possesses an affirmative quality, and that it must necessarily extend and strengthen, because its supporters do desire to abridge or shorten, *chartered privileges*.

And now for the argument. I contend we should not strengthen that which is already sufficiently potent, and that it is impolitic to make special provision for that which has ample security in general provisions. Notwithstanding the constitution of your state and of the United States declare that contracts are inviolable, the practice of your government has been ever since its establishment, to take *individual* property for *public* use whenever necessity requires it. Now whether this is right or wrong

I am not now required to say, but certain it is that the practice has prevailed from time immemorial, and the doctrine is not questioned.

Now if the farmer is compelled to yield up his land for which he has paid in full and for which you have given him an exclusive right without reserve save six per cent for common roads, whenever you call for it for the purpose of constructing a canal, a rail road, or any other public improvement, and to receive too, only such price as persons (in whose appointment he has no voice,) may affix; is it surprising he should look with a jealous eye at a provision which points towards casting a veil over corporations to screen them from a like liability? This resolution may not protect a company, but as far as it goes its tendency is to make companies less accessible, less accountable and more bold. If it does not produce this result it is nugatory.

The constitution of the United States and that of Pennsylvania construed literally, would surely forbid the state to resume any control over land once sold, or a right once granted for a valuable consideration, yet the state by virtue of some doctrine of construction or constructive necessity, which I cannot define, does exercise that right not only in time of war but in peace. If then this right to resume or interfere with rights once ceded to individuals, depends not on the letter of the constitution, but on very broad grounds of construction or something else still less definite, is it not very dangerous to introduce words into your constitution relative to corporations which prohibits that latitude of construction with regard to them and yet leaves individuals at the mercy of that doctrine as heretofore? The words in the matter under consideration have a tendency, as far as they go, to this inauspicious end, and even if we admit they amount to nothing, their tendency is to introduce doubt where none now exists—which doubt will tend wholly to favor corporations to the whole amount of its weight.

But, sir, you go farther. You not only take the land and other property of your citizens at your own price for the use of the state, but you take it at your own price to bestow upon incorporated companies, created without the consent of the persons whose rights you destroy. This may be right and necessary or it may be wrong and absurd, yet such deeds are every day occurrences and have ceased to attract notice. Let this be as it is, if you please, but I implore you to consider well before you pass a resolution calculated to favor a belief that you intend to exempt your corporations from like liability. If you intend to hold them liable to such coercions as individuals are exposed to, I beseech you to pass no resolution containing words of exemption, or at least of doubtful construction. Is it proper to grant special protection to the *strong* to the exclusion (by inference) of the *weak?* Such doctrine is unprecedented, impolitic and unnatural. But, sir, let us inquire into the results which may flow from this abridgement of construction by special words, in time of war or public danger.

I hope that this commonwealth may never be the theatre of war, and that no invading foe may ever pollute our soil. I desire the blessings of peace, and trust that they may long remain; yet the reverse is possible, and being so, it behooves us to guard against it by all honorable means: and certainly requires us to be careful not to introduce a phrase in our constitution calculated to injure us in that event. Suppose we should be

invaded and thus find it necessary to destroy a rail road, a canal, a bridge, or any other property owned by a company, to prevent an enemy from availing himself of it? While companies stand on the common foot of justice their property may surely be destroyed and their operations suspended the same as those of individuals: the constructive doctrine of necessity applying equally in both cases. If, however, the resolution under consideration, should pass and become a part of the constitution of the state, and it should be found necessary to destroy the property of a company and forbid its being rebuilt for a time, would not the words throw doubts into the minds of your officers? Might not those whose duty would require them so to destroy, hesitate and inquire what those protective words mean? Nay the company owning the property thus destroyed, and whose operations were thus suspended, would, in all probability, seize upon this resolution as an instrument to vex, if not to destroy, your officer. At best it would operate as a check in his duty, and thus favor the enemy by giving time: it would make that obscure, which by established usages and common consent are now plain. These exactions it is true, are military exactions, and not subject to the strict rules of civil jurisprudence, but the case may happen, and there is no exception in the resolution. I do not expect the case likely to happen, but as it is less trouble to leave ourselves guarded, than to remove that protection, I conclude prudence requires us to leave the protection of civil rights to civil laws, without special favors and exceptions.

Now, sir, the resolution embraces the term "banks." Let us inquire if a special exception in their favor can be injurious. Suppose a time of war or public danger to arrive. There are many ways in which a bank may give aid and comfort to the enemy indirectly, so as to defy you to convict the officers of treason, though an individual might be convicted for a less offence. A bank cannot in its corporate capacity be indicated, and so various are its functions and operations, that it is next to impossibte to reduce the offence to so tangible a shape as to be cognizable in a court of justice.

Besides the delay necessary to a prosecution, even if practicable, would defeat the very object of the prosecution, and the conviction of an officer would not for a moment suspend the operations of the bank. Therefore it will be better for us to leave charters as they are, and the legislature at liberty to suspend their operations whenever the public safety requires it, without throwing objections in the way.

It may be said that destruction of property and suspension of operation is not a violation of charter or contract. This I doubt, at least so far as regards suspension, unless we *roundly* admit the whole ground of "*no contract*," or else leave it open to a very broad application. For this reason I would leave the whole matter open, as heretofore, without any possible restrictive qualification either expressed or implied.

Sir, I speak extempore, and, therefore, I hope the convention will pardon me for being immethodical and unpolished. I now beg leave to notice an assertion which has been repeatedly made here, and which I now repel and utterly deny. We have been told that there is in this state, and in this house, a party who are in favor of uprooting all our civil institutions, and rearing the edifice of misrule upon the ruins. We have been informed that there is a party who desire to divide all the

property in the state equally among all its inhabitants. This assertion I deny. If there is any such party, I beg leave to be excused from being a member of it. I am in favor of a government of laws, and equal and exact laws to all, without distinction. The agrarian system that has been spoken of is impracticable, absurd and grossly unjust, and even if it were both practicable and *just*, I would oppose such a measure, because it would prove useless. If property were equally distributed now, it would not be ten years till it would be thrown up into mountains, and depressed into vallies as remote from a common level as at present.

We have been told that a certain party came here trembling with eagerness to attack the present constitution: for myself I can only say that if I have ever trembled at all, it has been at the awful reponsibility of touching that instrument. I do not assert that it is a "matchless instrument," but I do say it is one under which we have lived and prospered. It is the safeguard of our own rights, thrown around us by the wisdom of our ancestors, and, though susceptible of improvement, yet should be approached with circumspection. Though some change may be made with advantage, yet it is not so defective that each change is *necessarily* an amendment. I would treat it like my mother. I would endeavor to amend its faults, but I would not destroy its existence.

These are briefly my reasons for opposing the passage of the proposition under consideration. In advancing them I have only followed my conscientious conviction of duty, without any respect to party discipline. I voted in favor of the first resolution in the same spirit, and, therefore now ask those with whom I then voted, to shake off prejudice, adopt, their own argument and vote with me in the negative. I caution them to beware of running into measures for the benefit of some one favorite institution, which may be prejudicial to the state and arrest her onward course of prosperity. I again say let us not now try an unneccessary experiment in unsettled doctrines, when that experiment is in direct opposition to the wants of the community, unasked for by every portion of the state—and diametrically opposite to the wishes expressed by a portion of our fellow citizens, in the memorials on your table.

Mr. KEIM, of Berks, rose and said:

Mr. Chairman—In the present temper of the convention, it can hardly be supposed that one so unaccustomed to public debate should invite its notice, when others, "abler than myself" to do the cause justice, have scarcely received a passing attention. However uncourteous party discipline may be, however "lamely and unfashionable" it may be considered to exercise the common etiquette due from one to another, yet I cannot withhold the comparison of such a course with the general deportment of all corporators, who, although *individually* gentlemen, yet as an *aggregate*, exercise a tyranny for which they dare not singly hold themselves responsible.

A subject of this magnitude and importance, deserves the serious attention of this convention. The situation of the finances of the commonwealth is singularly embarrassing, not from a want of revenue, because in that respect, she is temporarily prosperous, but for want of some representative medium by which that revenue can be appropriated to its proper uses.

There appears to be a general stagnation of commercial enterprise, and a want of confidence prevails in every portion of our state.

Credit, the auxiliary of trade and commerce, is entirely lost, without it industry must languish, and mutual benefit, the result of general confidence can never be enjoyed.

I regret that the *causes* of this distress are so variously accounted for that very many whose judgments and opinions are entitled to respect, differ widely among themselves as to what it may be attributed.

In times like these, let each one endeavour to make rough places smooth, and waste places glad. Let each one administer to the alleviation of their severity.

It is true that man is singularly constituted, and that a difference of opinion is incident to his very nature. If then reason be deemed error by some, to " err is human," and its only palliative is, that motives are pure, and intentions honest. But my fears are excited lest even this subject, of more importance than any others presented to this convention, should become one of compromise.

Such doctrine seems popular here. Can any one doubt that principles have been conciliated on that basis. Look at your judiciary question and you will find it acknowledged.

If I may make a temprory digression, I would draw your attention, not only to the language of the delegate from Fayette, who solicited an adherence to the compromise of the judiciary question, but also to several other gentlemen whose counter reports being forgotten, they voted with their opponents to give a term of years its longest possible tenure.

Thus passes the glory of the world. Our highest hopes are but delusive dreams, and those upon whom they are centred are as phantoms that vanish from us when they seemed the nearest.

The warm attachments of many to the constitution, however, have softened down into some propriety, for when a vote was taken as to the election of an officer, now appointed, the compunctions so sedulously preserved, are merged into the consideration of the public weal, and the heretofore professions of inviolable faith are left " to waste their fragrance on the desert air."

The previous question too, one so abhorred, has been embraced at last by nearly every member of this convention. May we not say,

> There were who pretended to grieve,
> There were who pretended to save,
> Mere shallow empirics who came to deceive,
> And revel and sport on its grave.

The subject of incorporations I have said invites attention, possessing as they do, immense privileges, and some indeed, exclusive privileges, it becomes necessary to ascertain who and what they are.

The power of the seventh article of the constitution to create incorporations, has been most egregiously perverted and abused. It has assumed every latitude without the slightest regard for private rights. It has been exercised upon objects so insignificant as to deserve reproach. It has been concentrated upon objects so formidable as to excite our honest fears, and

threaten the perpetuity of free government. It is a power that has been prostituted to the beck and nod of interested and designing men, always at the cost of individual benefit.

The original object of incorporation was "to create in a body of men, a perpetual succession without incurring personal responsibility, or exposing any other property than what legally belonged to it."

When they originated, whether before the Deluge or by the laws of Solon, or are the *collegia licita* of the pandects, sufficient is known to say, that even so far back as under the Emperor Trajan, a small company of one hundred and fifty men, associated for avowedly benevolent purposes, (a fire company) was suppressed, "as societies of that sort had greatly disturbed the peace of the cities, and under whatever circumstances they were instituted, they never failed to be dangerous."

The erection of civil corporations were of very early origin, and in some instances working a good result.

It is said that some cities and fraternities possessed these privileges, as much from a spirit of liberty, as well as barriers against feudal tyranny.

The serf in this mode acquired by association with others an ameliorated condition, his personal service was commuted into pecuniary remuneration to the baronial despot that thus endowed him.

However beneficial they may have been towards the restoration of individual rights after the barbarism of Europe had manacled the freedom of her citizens, in more modern times they seem to overstep the benign purposes of their early origin, and assume a character altogether partial and exclusive.

Charters for municipal purposes, when confined solely to those purposes, are of all others least objectionable.

As to the influence they may exert, it is only hurtful when they are permitted to hold more property than the necessities of their proper government would require.

Charters too may be tolerated to effect a public benefit, where really the object is salutary to improvement, and where that improvement may be essential to the common interest, and yet not too promising in their revenue. Their legitimate sphere is only to effect what might be too expensive for individuals; thus the building of bridges, or churches, improving water courses, and roads or highways, are among the few objects to which they should ever be confined.

Civil corporations are said to be *public* or *private*. Wherever the whole interest belongs to the government, no matter to what object it may be directed, it is a *public* corporation, and according to legal decision, it has been held by Chief Justice Marshal, that even a state charter, owned and authorized by the state, is a *private* incorporation. The principle is established, and none will deny it, that if the foundation belong to individuals, and is distinct and disconnected from the government, it is a *private* incorporation. As to the ordinary incidents to a corporation, such as a common seal, to hold property, perpetual succession, to remove members, to sue and be sued, to make bye-laws, it is admitted that in ancient times these powers were always granted with much modification. It will

be seen, however, that most of the *private* incorporations hold not only these incidents, but others more alarming in their result. They are characterized by exclusive, irresponsible and perpetual privileges, conceded by, and in the name of the commonwealth, without any adequate consideration for the reserved rights of the people.

It matters very little what may be the beginning of these peculiar privileges. No matter whether even expediency may be their moving impulse. All enormities progress by degrees; it is an axiom here, "that power is always *stealing* from the many to the few," and it is sufficient to know that those enormities exist to claim from us a remedy. But we shall be told that vested rights, the titles to your property are involved in this question. Some indeed, may be so absorbed in their darling visions of plunder upon the hard earnings of others, that they are interested to pervert truth by sophistry, and sustain wrong and outrage at any and every peril.

Look at your bill of rights; read it carefully, and after you have done so, tell me whether it is not opposed to unequal power wheresoever and whenever it may present itself. Your bill of rights—of rights that we cannot consent to part with—of rights, the very muniments of freemen, our birth right tell us that no man's property shall be taken or applied to public use, without just compensation being made. And is this the kind of public use intended by the constitution? Is private monopoly to be construed as coming within the meaning of the term? Of private monopoly, *impairing*, as it does, the right of property; impairing as it does, the trial by jury; impairing, as it does, the right of redress before a proper tribunal; and destroying "the security of persons in their houses, papers and possessions." The doctrine of vested rights is a sacred one. It is one of the principal columns that supports the capital of republican government. It existed before these obnoxious charters were created, and upon it I plant my standard, firmly and fearlessly, against the innovation that modern speculative theorists would impose. It is the purity of our political compact that I sustain, and as well might you tell me that slavery is a vested right, independent of an unhappy and unavoidable necessity, as that corporate privileges, such as I have designated, are compatible with that right, or at all congenial with our welfare, our happiness, or our personal security.

Let me cursorily refer you to the charters of the numerous companies, as found upon your statute book, and you will, at a glance discover that the privileges authorized, are in derogation of every fundamental law, and destructive of every principle of common justice. With them a jury of the vicinage which your constitution allows, even to criminals, is denied the injured party. The limitation of suits which, as to trespass, *quere clausum fregit*, would be six years to them, in the redress of an individual, is limited to twelve months. If they hold a canal or rail road by excessive tolls and charges, they hold a monopoly. If they hold a manufacturing company, they interfere with private labor, free from the responsibility to which individuals are subjected. In every bearing that they assume, they revel in profits, generated by enactment, at the expense of the community.

Let me not be misinterpreted or misunderstood in my position. I bow to the public welfare, and would urge it onward; but while I depreciate

the accumulation of private incorporations for unworthy purposes, I would sustain the commonwealth in her progress, and cherish her in her well doing, with all my humble energy. With her, I can understand the maxim, that private rights must be made subservient to the public good, and that a private mischief is to be endured rather than a public inconvenience. On this ground only I can understand public necessity, and cheerfully submit to its demands. But I cannot understand how private companies can ever claim from us the same sympathy and regard.

I must confess that while we lament the inconsiderate exercise of granting monopolies, for such indeed they are, it does not seem in my power to suggest a remedy to abate the evil, at least as to some of them. Many, doubtless, from their disregard of the *compact* that engendered them, have incurred or may incur a forfeiture. They are said to be a contract, and the question, how far our eminent domain may become the subject of contract, or whether a want of consideration does not vitiate a contract, will doubtless receive the attention of others better qualified than myself to do it justice. It is sufficient, however, for me to know, that unless some effort is exerted to restrain the legislative power from the indiscriminate distribution of such anti-republican institutions through the land hereafter, we may discover perhaps too late that a separate and *distinct class of citizens of a privileged order* will become so powerful as to control all the resources of the country, and hold it in servile obedience to their oppressive dictation.

As an evidence of the general character of charters, that seem to be held so much in reverence by the delegate from Northampton and others, whose sentiments we have heard to-day, I have taken up by accident, a *mere* rail road charter, granted by the legislature of 1831-32, page 591, on the journal. This act embraces no lsss than five incorporations, so commingled together, that the first section of the one I refer to, is numbered sixty-eight; bearing from this latter circumstance, additional evidence of the dangerous system of "log rolling legislation." This charter is but a common place occurrence, and in its outset acknowledges the lottery principle in the "eduitation of stocks to excessive subscribers, to be drawn by lot." By its terms there is no power that can prevent them from holding extensive domains of unlimited acres; "forests and water courses' to any extent, under the plea of "being necessary or incident to the repairs of the road."

The right of entry upon lands is positive and *without proviso*, the mode of adjustment of damages *avoids the common statuary prvisions for selecting jurors, and allows the court of common pleas to appoint them.* This jury is to take into consideration "the advantages as well as disadvantages" of the improvement, and is in reality, a kind of commission in chancery, to ascertain and calculate imaginary profit, with *no other facts* than their own opinions to govern them. The right of appeal from the verdict, is authorized to the court of common pleas, *before the same judges that selected the jury*, whose deliberations are to be investigated. For injuries to the road *treble damages* and double remedy is authorized, by indictment at quarter sessions and by action of debt, the punishment by fine, or *imprisonment at the discretion of the court.* The tolls amount to a prohibition of all others from its use, by its excess. The dividends to any amount may be declared.

Thus, indeed, are monopolies—for private charters are monopolies without regard to the number of corporators—forced upon us under very specious pretexts, but when in point of principle, are making dangerous innovations upon that old and well established system of "liberty and equality," our fathers taught us.

I now come to those incorporations connected with the currency of the country. From the experience we have had with regard to them, I am convinced of their inefficiency for any good purpose as at present constituted. I would say of them, in the language of Sir Christopher Wren's epitaph at St. Pauls: *Si monumentum quæris, Circumspice.* The best commentary is their own condition.

Money, which is their object, I regard as the reward of labor. Labor is the criterion of value, and money but its price. The nearest possible approach to gold and silver coin present the best substitute to represent a safe currency. A metallic basis is so firmly fixed as the standard of exchange that it were folly to comment upon any doctrine that would sustain a contrary position.

If the merit of antiquity is asked for banking institutions, I would reply that the money changers in the temple were so important as to be rebuked by him "who spake as never yet man spake."

Public utility, always a specious pretext for wrong, was the parent of this kind of incorporation.

The banks of Venice, Genoa, Hamburg, Nunenburg and Amsterdam, were originated to establish a true value upon the clipped, worn and diminished currency, which from their intercourse with each other, poured in upon them from every avenue of commerce. The Bank of Amsterdam, under the guaranty of the city, was a mere bank of deposit. Persons having specie could ascertain its correct value and receive a certificate always redeemable in gold and silver, this passed from hand to hand, available whenever the party wished, and the bank subsisted by a small per centage for the certificate granted.

By degrees, sir, public utility again was urged as an inducement, that deposits should be loaned by the banks upon good security, retaining a sufficient sum, as might by observation be deemed necessary, for the cause of immediate demands upon it; this then was a bank of discount.

Again, *public utility* may have required a new arrangement to expand the circulating medium and certificate of deposits, or bank notes, were manufactured and sold without regard to the amount of specie in the vaults, or to the security of those who held them. This was a bank of deposit, discount and circulation, the fruitful theme of our own present embarrassment and distress.

Sir, I assert without fear of contradiction, that no bank unrestricted and unguarded in these functions, can ever maintain its credit against the common vicissitudes of trade, or the probable fluctuations of political excitement. Is it not susceptible of an easy calculation, that a greater circulation than can be redeemed is certain bankruptcy, that all interests inflated by this fictitious abundance, must be sacrificed in its withdrawal, and that this unavailable currency, if I may use the term, must be visited eventually in its consequences not only upon all connected with banks, but also upon the whole community, and more particularly upon that

portion of citizens who of all others should be entitled to protection: the honest laborer, in whose hands unfortunately this parentless issue may be found.

The Bank of Scotland, perhaps better guarded in her loans, has not been known in so great a degree to acknowledge the difficulties which might be supposed incident to all banks, owing to cautional provisions, she is restrained from over-trading and kept within the medium of safety.

The Bank of England affords a peculiarly interesting developement of the difficulties to be encountered when any basis, other than metallic is relied upon. Intimately connected with the financial operations of government, a country whose debt is so enormous that the quality of her ministry is judged by the ingenuity with which they devise taxes, she is at once their willing instrument or subservient coadjutor. For her support, no matter whether solvent or bankrupt, the government has been ever ready to protect her as essential for its own purposes. Even with this powerful support insolvency has often stared her in the face, while her great *alma mater* might be seen throwing around her the ægis of irresponsibility according to law. This monopoly forms a dangerous precedent, and proves the fallacy, that any superficial invention of a currency, can render that security which commerce requires, unless more substantially founded. Some, indeed, have thought her stability equal to the government, rather a negative stability, for she has suspended payment at several periods of rather a prolonged duration.

According to a new periodical, the Financial Register, a Col. Torrens adapting his research to the exigency of the times, has discovered, to use the phraseology of the notice, and solved the great problem that bank deposits are as much a component part of the currency as bank notes.

They are so indeed, as far as the bank is liable for them, but it is a melancholy fact that the issues of banks are too generally extended upon them, assuming them in the nature of stock paid in, and not as money borrowed, returnable in *cash* at any moment required. Deposits are but a delusive support for banks, and particularly so in the time of panic or danger.

Banks, as at present constituted, are in proportion to their extent of capital the most dangerous monopolies that ever existed. They know no principle in moral and political economy. They are not only inimical to public safety, but to the very equality that should ever be the bulwark of a nation's security. An uncontrolled bank note currency, being infinite in quantity, naturally from excess becomes valueless, or in reality, for want of intrinsic worth, the nominal price of every commodity is far beyond its just value.

Wealth, says Adam Smith, is power, the power of purchasing the command, over all the labor, or over all the produce of labor which is then in the market. The republican doctrine is, that knowledge is power, but certainly the effect of that wealth whose basis is but "rags and ink," must be destructive to all incentives to industry; by the fictitious distinction it creates between value and price, and demand and supply.

Without regarding the exciting topic of a national bank, as connected with our present purpose, or the question whether it be constitutional for the states "to regulate the value of money, or issue bills," it becomes our

province to effect some remedy that will reform the existing evils, as they now occur within the limits of Pennsylvania sovreignty. These evils require no elaborate calculation, no visionary hypothesis to point them out, but by a single reference to the statement of the banks, as presented to this convention by the Secretary of the Commonwealth, in May last; we will find that *insolvency* is apparent on every page, that great discrepancies of amounts, dangerous in their inequality to themselves, and dangerous in their aggregate to the whole community are among their leading features, and that there is almost a total want of ready means to meet their engagements.

Throughout all the ancient republics a ruling principle of equality seemed to be the basis of their political prosperity: with them, the *wealth* of every *individual* was the public treasure, and as soon as by stratagem, or usurpation, the public treasure become the patrimony of private persons, so soon they sunk into anarchy and despotism. Our public treasure is now indeed grasped at by a dangerous power, and I trust in heaven that we may yet avoid our prophetic fate, by guarding that treasure from the influence of an insatiate bank monopoly.

In the course of this debate from the singular, assumption of political virtue on the whig side, and the abuse heaped upon the democracy by them, it becomes a duty as well as pleasure to look into the history of past times and profit by its truths. Judge of my surprise when I found that the President of this convention "the very head and front of the present patent security party in 1816, was himself the prince of radicals, or modern loco-focos."

In the legislative and documentary history of the Bank of the United States, that delegate, (Mr. Sergeant) moved to reduce the capital of the bank from $35,000,000 to $20,000,000. Why sir, and for what reason? because, to use his own language "it was proposed to legislate without the power of *repeal* for twenty years to come, and when that legislation was to create a vast machine, the direction of whose *momentum* is to be put into the hands of we know not whom," "he was from the beginning for a specie bank, nor would he authorize a bank to issue any paper beyond what it could redeem in specie.

On the same occasion, another delegate (Judge Hopkinson) stated that "he considered the litter of banks lately created in Pennsylvania, as the offspring of private speculation and legislative fraud." These delegates are now among us, in our very midst, by what kind of metempsychosis they can change their identity it is not for me to define, but one remark I will venture, that while in the heat and frenzy of party strife, personalities are indulged and motives impugned for sentiments similar to those referred to, we have the consolation to know that there was a time, when those who now censure so bitterly, would have been obliged to thrust the same obnoxious chalice from their lips that they would now apply to ours. It was my anxious wish to have heard officially from the Auditor General relative to the statement of the present affairs of the banks, but that *dignitary* has moved with such Fabian policy, that his object is doubtless to prevent any investigation of the subject.

With national questions it is not desirable to trouble the convention, no human effort can persuade a rational mind, that a solvent banking system whether national or not, should not remain so through all changes and

exchanges that may occur short of an unavoidable calamity. How can the general government affect our local currency if that currency is well founded, what as Pennsylvanians have we to do with the currency of other states? As a reform convention, we are met to alleviate the evils of the commonwealth, by constitutional remedies, and as an *evil* only, can the subject come before us and require abatement at our hands.

It is amusing to notice what a variety of causes are invented to account for the present dilemma. One reason is alleged to be that the balance of trade is against us. Another reason is General Jackson's specie circular, and a third, Martin Van Buren's election to the presidency. As to the first reason that may have superinduced by over trading on the part of the banks, and as to the others I esteem them a blessing to the country. But without seeking reasons so remote the contiguous cause is that the banks are like

> "The circle in the water,
> "Which never ceaseth to enlarge itself,
> Till by broad spreading it disperse to nought."

There is not solidity enough in the base to support the elevated capital, nor specie enough to meet their engagements. And herein lies the whole mystification.

At some other period it may be more convenient to comment upon the discrepancy of the debt and credit side of the commonwealth finances, at present it will be sufficient to hazard the assertion that they are completely in the power of the Bank of the United States, and if the surplus revenue of the United States, and if the surplus revenue of the general government had not come to hand, a poll tax or insolvency was our inevitable fate. In a few more years, those who live will have the misfortune to feel what I construe to be "coming events" from "their shadows before."

With the learned delegate of Northampton, (Mr. Porter) it is impossible in all things to concur. His eloquence is more attractive, than are the premises of his argument sound, or the deductions conclusive. There is too much attachment to "Angel and Ames" and too little regard for American doctrine, too great a partiality for British precedents and too little attachment to republican principles.

That "corporators remained individually liable for the company's debts by the civil law," as asserted by that delegate, is at once admitting what is contended for, that modern corporations are not at all coincident with those of former times, but are entirely *sui generis* in that important particular. It was also stated "that formerly in England, all laws were construed favorably to corporations, inasmuch as there the government is a monarchy, and all grants from the crown was so much obtained back by the subject from the sovereign, and that in this country the rule should be exactly the reverse, because whatever is taken from the public and given to a portion of that public, is so much abstracted from the rights of the whole, in favor of the few," now this is not only a true distinction, but it should be carried into practical operations. It might be asked by what right a charter could be granted for any purpose that individuals could accomplish? All *enactments* of that nature, however "duly granted and accepted," should be construed not only unfavorably, but should be questioned upon more elementary and organic grounds. It is indeed a ques-

tion whether "the abstraction from the rights of the whole in favor of the few," might not more justly be construed to prevent any grant or privileges whatever, to private companies, or whether we have not "acquired back all our rights from the sovereign," by the declaration of independence.

I cannot understand the extent of that delegate's views, when he asks whether a revolution can dissolve charters? It was the prevailing opinion of jurists, before the revolution of 1776, that the King of England was not only by divine right but by all human laws, the sovereign of the colonies, and yet our fathers burst asunder the shackles that fettered us, and became free and independent. What would be the decision of the judges as to the inviolability of charters, if an oppressed and injured people were goaded into a revolution by the severity of an obdurate chartered monopoly? If private grants are made—and I consider all special grants as private—there is but one reason for them, and that is "public convenience." There is to my mind, at all times, an implied reservation on the part of the government, that public convenience will authorize a reversion of the grant, whenever necessity or the general welfare requires it, much stress is laid upon "the penalty of the bond," the terms of the *contract* as charters are called. The fact is admitted, that there must be a valuable consideration to every contract, which, when it fails, *must annul it.* What then, can be the obligation to maintain any charter founded upon fraud or misrepresentation; or created by an interested and corrupt legislature. Will the *mere letter of the law*, however incompatible, with the happiness and prosperity of the people, become so obligatory as to defy a remedy! It is preposterous, for a moment to entertain such an idea, for if it were so binding, "titles of nobility and special orders" might be created with impunity, based upon the principle of contract, however dangerous to our liberties that *bargain* might be. Such views, are subversive of the general good, which is the only motive that can be possibly urged for any special privileges; and which always bespeaks a watchful care on the part of the government, to protect all alike from the operation of unequal legislation.

The evidences of a contract are "the parties, the purport and the reciprocal obligations," all of which require due and careful reflection as to general rights, before they can be placed above the action of the people. To entertain the high conservative notion, that a contract cannot, under any circumstance be violated, bespeaks uncommon virtue in the *parties*, a *purport* of very positive public benefit, and a *consideration* that never ceases, to bestow the greatest possible good to the greatest possible number. How far the numerous charters accord with these incidents, is for the intelligence of the people to determine; I trust in them. They can investigate whether they have acted up to the intention and design for which they were established! or are they not, in most instances, engendered and brought forth, the bastard progeny of sordid interest, and a corrupt and prostituted power.

Mr. Dickey, of Beaver, demanded the previous question, which was seconded by the requisite number.

Mr. M'Cahen demanded the yeas and nays on the question, shall the main question be now put, and the demand was seconded by a sufficient number.

The question was then taken and decided in the affirmative, as follows, viz:

YEAS—Messrs. Agnew, Ayres, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cope, Cox, Cunningham, Denny, Dickey, Dickerson, Dunlop, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Purviance, Reigart, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Weidman, Young, Sergeant, *President*—56.

NAYS—Messrs. Banks, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavenger, Crain, Crawford, Curll, Darrah, Dillinger, Donagan, Donnell, Doran, Earle, Farrelly, Fleming, Foulkrod, Fuller, Gilmore, Hastings, Hayhurst, High, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, M'Cahen, Myers, Overfield, Porter, of Northampton, Read, Ritter, Scheetz, Sellers, Shellito, Smith, Smyth Stickel, Taggart, White—44.

Mr. M'CAHEN moved that the Convention now adjourn, but the motion was decided in the negative; yeas 29.

Mr. CHANDLER, of Chester, demanded the yeas and nays on the second resolution, and they were ordered accordingly.

The question was then taken on the second resolution, and decided in the affirmative, as follows, viz:

YEAS—Messrs. Agnew, Ayers, Baldwin, Barndollar, Barnitz, Biddle, Brown, of Lancaster, Chambers, Chandler, of Chester, Chandler, of Philadelphia, Chauncey, Clapp, Clarke, of Beaver, Clark, of Dauphin, Cochran, Cope, Cox, Cunningham, Denny, Dickey, Dickerson, Dunlop, Farrelly, Forward, Harris, Hays, Henderson, of Allegheny, Henderson, of Dauphin, Hiester, Hopkinson, Houpt, Jenks, Kerr, Konigmacher, Long, Maclay, M'Call, M'Dowell, M'Sherry, Meredith, Merrill, Merkel, Montgomery, Pennypacker, Pollock, Porter, of Lancaster, Porter, of Northampton, Purviance, Reigart, Russell, Saeger, Scott, Serrill, Sill, Snively, Thomas, Weidman, Young, Sergeant, *President*—59.

NAYS—Messrs. Banks, Bonham, Brown, of Northampton, Brown, of Philadelphia, Butler, Clarke, of Indiana, Cleavinger, Crain, Crawford, Curll, Darrah, Dillinger, Donagan, Donnell, Earle, Fleming, Foulkrod, Fuller, Gilmore, Hastings, Hayhurst, High, Hyde, Ingersoll, Keim, Krebs, Lyons, Magee, M'Cahen, Myers, Overfield, Read, Ritter, Scheetz, Sellers, Shellito, Smith, Smyth, Stickel, Taggart, White—41.

The Convention then adjourned.

WEDNESDAY, NOVEMBER 22, 1837.

Mr. M'CAHEN, of Philadelphia county, submitted the following resolutions, which were laid on the table for future consideration:

Resolved, That it is the sense of this convention, that the banks of this commonwealth, having refused to pay their debts according to law, have thus violated the laws of the commonwealth; and that the whole banking system, as it now exists, is injurious to the best interests of this community.

Resolved, That it is the sense of this convention, that the banking system of this commonwealth ought to be entirely reformed; the existing abuses of their privileges corrected, and a remedy supplied for the numerous impositions upon the public, through bank agencies.

No other business appearing to be before the convention,

Mr. DUNLOP, of Franklin, moved that the convention do now adjourn; and, the motion being decided in the affirmative,

The convention adjourned.

THURSDAY, NOVEMBER 23, 1837.

The PRESIDENT presented the following communication from the Auditor General, to the convention, accompanied by a statement, showing a list of incorporations not possessing banking privileges, that have paid dividends or revenue, and the amount thereof respectively, to the commonwealth, during the financial year, commencing November 1st, 1336, and ending October 31st, 1837.

AUDITOR GENERAL'S OFFICE,
Harrisburg, November 22, 1837.

SIR:—In compliance with a resolution of the convention, adopted on the 13th instant, I have the honor to transmit herewith, a statement of the dividends or revenues, received by the commonwealth, from incorporations not possessing banking privileges, for the year ending on the 31st October last.

I have also the honor to inform you, that statements in relation to the banks are in preparation, as well for the convention as for the legislature, and will be transmitted to each body as soon as they can be completed.

I am not aware that any bank has not made returns, as required by law, during the present year, and, consequently, no steps have been taken to require delinquent banks to make returns. The Erie Bank did

not make a return in conformity with the directions of the act of assembly, for the year 1836, but forwarded a statement of its affairs on the 7th day of November, of that year,—a copy of which statement was submitted by the Auditor General to the legislature, on the 7th day of January last.

I am, very respectfully, sir,
Your obedient servant,
NATH. P. HOBART,
Auditor General.

Hon. JOHN SERGEANT,
President of the Convention.

Statement, showing a list of incorporations not possessing banking privileges, that have paid a dividend, or revenue, and the amount thereof, respectively, to the Commonwealth of Pennsylvania, during the financial year, commencing November 1, 1836, *and ending October* 31, 1837, *viz:*

TURNPIKE COMPANIES.

Chambersburg and Bedford,	Dividend,	$5,676 70
Bedford and Stoystown,	do.	2,695 00
Bellefonte, Aaronsburg and Youngmanstown,	do.	843 00
Centre,	do.	1,600 00
York and Gettysburg,	do.	800 00
Lancaster, Elizabethtown and Middletown,	do.	800 00
Susquehanna and York Borough,	do.	400 00
Susquehanna and Lehigh,	do.	200 00
Erie and Waterford,	do.	150 00
		$13,164 70

BRIDGE COMPANIES.

Harrisburg,	Dividend,	$8,100 00
Allegheny,	do.	4,000 00
Monongahela,	do.	3,000 00
Robbstown,	do.	1,197 00
Wilksbarre,	do.	860 00
Lewisburg,	do.	700 00
Schuylkill, at Norristown,	do.	540 00
Conemaugh,	do.	350 00
Loyalhanna,	do.	220 00
Danville,	do.	300 00
Towanda,	do.	400 00
Schuylkill, at Pottsville,	do.	180 00
Milton,	do.	149 00
		$19,996 50

NAVIGATION COMPANY.

Schuylkill,	Dividend,	$12,250 00

LOAN COMPANY.

Mechanics' & Tradesmens',	Tax on dividend,	$411 09

COAL COMPANY.

Delaware,	Tax on dividends,	$1,474 80

RECAPITULATION.

Turnpike companies,	$13,164 70
Bridge companies,	19,996 50
Navigation company,	12,250 00
Loan company,	411 09
Coal company,	1,474 80
	$47,297 09

Respectfully submitted.

NATH. P. HOBART,
Auditor General.

AUDITOR GENERAL'S OFFICE, November 27, 1837.

Which were read and laid on the table.

On motion of Mr. BIDDLE, of Philadelphia, and, agreeably to order,

The Convention adjourned, to meet at the Musical Fund Hall, in the city of Philadelphia, at eleven o'clock A. M., on the twenty-eighth instant.

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THE FIFTH VOLUME.

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THE FIFTH VOLUME.

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ERRATA.

In page 5, line 30, for "*were*" read "*was*"

In page 407, in the poetical quotation, line 1, for "*difference*" read "*barriers*"